STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter of a Fact-Finding Between:	**)**	
	)	
	)	
City of Upper Arlington, Ohio	**)**	
	)	**Case: 12-MED-09-1063**
	)	**and**
and	**)**	**Case: 12-MED-09-1064**
	)	
	)	
Fraternal Order of Police,	**)**	
Capital City Lodge 9	**)**	

APPEARANCES

FOR THE CITY:

Mark J. Lucas, President & CEO
Clemans, Nelson & Associates, Inc.
Jeanine Amid Hummer, City Attorney
Joseph T. Valentino, Assistant City Manager
Brian Quinn, Chief of Police
Catherine Armstrong, Director of Finance

FOR THE UNION:

Russell E. Carnahan, Attorney at Law
Hunter, Carnahan, Shoub & Harshman
Keith E. Ferrell, Executive Vice President Lodge No. 9
Ernie Ankrom, Lieutenant
Brian Correll, Patrol 1st Shift
Matt Smith, Patrol, 1st Shift
Brian Daron, Patrol, 2nd Shift

Before: Richard J. Colvin, Fact-Finder

BACKGROUND

The first bargaining unit consists of approximately thirty-eight (38) employees classified as Police Officers. The second bargaining unit consists of Command Officers: approximately eight (8) Police Sergeants and three (3) Police Lieutenants.

The Fact-Finder was appointed by the State Employment Relations Board (SERB) on April 29, 2013. There were two (2) scheduled meetings of the parties with the Fact-Finder, June 28, 2013 and July 8, 2013. The parties met all time constraints.
At these Hearings, the parties introduced evidence and gave testimony in support of their respective positions. This Fact-Finder was extremely impressed with the professionalism of the representatives of the parties, the quality and completeness of the evidence presented and the competence of the witnesses giving testimony.

At the close of the hearing, the Fact-Finder requested the parties to submit written argument (Briefs) in support of their respective positions and the parties concurred.

The parties suggested that the Fact-Finder's Report be issued on August 21, 2013 or if that would prove to be unworkable, then on September 3, 2013.

While the parties were successful in reaching agreement on several issues, there remain eleven (11) open issues:

1. **SECTION 1.4 SANCTITY OF AGREEMENT**
2. **SECTION 1.5 PAST PRACTICES**
3. **SECTION 16.1 WAGES (GENERAL WAGE INCREASE)**
4. **ONLY COUNT HOURS ACTUALLY WORKED TOWARD OVERTIME PREMIUM PAY (IN ACCORDANCE WITH THE FLSA)**

   THIS ISSUE AFFECTS:
   SECTION 18.1 (HOURS OF WORK and OVERTIME) DEFINITIONS
   SECTION 18.2 OVERTIME; and
   APPENDIX B (PATROL SERGEANTS) REFERENCED IN SECTION 18.

5. **PAY 1.5x OVERTIME PREMIUM PAY ONLY ON WEEKLY OVERTIME, NOT ON DAILY OVERTIME (IN ACCORDANCE WITH FLSA)**

   THIS ISSUE AFFECTS:
   SECTION 18.2 OVERTIME; and
   APPENDIX B (PATROL SERGEANTS) REFERENCED IN SECTION 18.

6. **USE 42.5 HOURS IN 7 DAYS, NOT 34 HOURS IN 6 DAYS AS WEEKLY THRESHOLD FOR PATROL SERGEANT OVERTIME PREMIUM PAY**

THIS AFFECTS:
APPENDIX B (PATROL SERGEANTS REFERENCED IN SECTION 18

7. **SECTION 18.7 (b) SUBSTITUTION (TRADING) OF TIME**

8. **ARTICLE 24 UNIFORMS AND CLOTHING ALLOWANCE**

9. **SECTION 25.1 (INSURANCE) COVERAGE UNION WANTS TO BE PAID FOR WAIVING INSURANCE**

10. **SECTION 25.2 MEMBER PREMIUM COSTS (INSURANCE)**

11. **SECTION 25.6 ADMINISTRATION (INSURANCE)**

The Fact-Finder recommends that those issues upon which the parties have reached tentative agreement as evidenced by their signatures/initials be incorporated into these Recommendations.

INTRODUCTIONS AS SUBMITTED BY THE PARTIES

PREFACE:

It is not difficult for the Fact-Finder to determine why the parties are at impasse or why no mediation was suggested. The positions taken by the parties are, at this point, adamant. Needless to say these attitudes have resulted in some lingering mistrust between the parties. This is unfortunate, as the parties by their own admission have experienced a satisfactory relationship over almost 30 years of bargaining history yet as these are trying and difficult economic times, understandable. Each party is protecting what it firmly believes to be its economic interests.

The City's Position:

Recently the City has experienced "major blows" to its annual General Fund revenue stream. Accordingly, other bargaining units within the City of Upper Arlington and its non-bargaining unit employees have accepted material concessions in wages and benefits. Not, however the FOP who are demanding large pay increases and resisting any meaningful cost savings measures except a small increase in employees' insurance contributions. We (the City) understand they have to look out for their own interests, and we are disappointed in their approach, but we must pursue proposals the City submitted at Fact-Finding – they are fair and reasonable.

1. **Things do not have to stay the same. *Both* parties may propose changes to the labor contract, not just the Union.** The 3-year limit on the duration of labor contracts is specifically designed to encourage progressive change. The City's proposals to reform some benefits and remove obstructive language are not attacks on collective bargaining – they are the essence of collective bargaining.

2. **The City's proposals are practical solutions to concrete problems – primarily the loss of estate taxes and local government funds that were over 10% of its annual revenues.** The Union mischaracterizes the City's proposals as "philosophic" because they are trying to "avoid" the City's overall revenue stream losses, but they are "net losses" just the same.

3. **Respectfully, the economic situation for the City is not "improving."** While there was a recent uptick in the City's income tax revenues, it does not come close to replacing the millions of dollars of annual revenue the City is losing to the changes in estate tax and local government funding. The rise in income tax receipts took a small edge off the City's overall revenue stream losses, but they are net losses just the same.

4. **Financing future, ongoing expenses out of current balances is bad fiscal policy.** It is like taking out a mortgage to but a house one cannot really afford just because his/her savings account would temporarily let them keep up with the higher payments. If he has no substantial increase in actual *income,* the savings will soon disappear, and he/she will be in worse shape than before. And, if the savings account is used for mortgage payments instead of keeping up the roof and other infrastructure, the house will soon crumble around the owner while the owner crumbles under the weight of the added expense.

5. **Respectfully, the police should make the same types of concessions as the City's other employees – not profit from their sacrifice.** If the police won't do it willingly, the Fact-Finder should recommend it. The Union complains about police morale if this bargaining unit makes such concessions, but what about the morale of the other 200 employees of the City if they don't? The other employees have taken 1 or 2 year wage freezes, conceded changes to overtime formulas, removed the numerical percentage and dollar caps on insurance contributions by calendar year 2014 (except the Firefighters, who are next up), and removed contract language that hinders efficient, but equitable change in insurance programs.

The Union's Position:

The eleven (11) issues presented during this Fact-Finding essentially arise from the City's demands for concessions with respect to each of those issues. While the FOP did propose changes in two (2) Articles of the Contract – wages and insurance – those proposals reflect the Union's attempt to balance the City's concessionary

proposals in those Articles by offering realistic and reasonable alternatives to the City's positions.

While the City attempted to argue at the Hearing that the FOP has somehow been intransigent because it did not accept concession (especially in the area of overtime), the City itself has failed to articulate any sound reasons or offer any compelling evidence for the sweeping concession that it demands. The FOP, in an effort to understand and work with the City, made numerous requests during negotiations for detailed records. With each record produced, however, it became more apparent that the City's proposals were not founded upon any financial or administrative necessity. Instead, it is readily apparent that those proposals arise from "philosophical" positions – i.e., a desire to unreasonably compare the FOP bargaining unit to other groups of City employees and/or certain private sector employees.

The City's proposals ignore more than 40 years of collective bargaining history, relevant comparables from local law enforcement agencies, and ample data demonstrating the economic health and financial strength of the City of Upper Arlington. Stated simply, the City began its negotiations with the Union by demanding various concessions – all of which would have required the FOP to modify longstanding contractual benefits and effectively surrender its ability to negotiate over important terms and conditions of employment. The City never altered its position with respect to those demands, and it knew that, because its demands were both excessive and not founded upon necessity or compelling evidence, it would ultimately present its proposals in Fact-Finding

The City's approach to these negotiations – in which it effectively demanded that its proposals be accepted by the FOP – diverges from years of cooperation between the parties. As presented at the Hearing, and as discussed below, the City must not be permitted to benefit from such an approach; and, it should not be permitted to compel unnecessary concessions or fundamental changes to a contract that has been thoughtfully negotiated over four decades of good faith bargaining.

CRITERIA

When making his analysis and recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

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

(2) 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;

(3) 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;

(4) The lawful authority of the public employer;

(5) The stipulation of the parties;

(6) 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-FINDERS DETERMINATION ON THE MERITS OF THE ISSUES

ISSUE 1. To Delete Section 1.4 or not?

Discussion of the City's Position:

1. Section 1.4 sets forth a rule agreed to when there was no rule set by the State of Ohio.
2. Times have changed. The Act was adopted and SERB has since said that a City can make a change in a collective bargaining agreement, during its term, although only under very limited circumstances. See In re Toledo, SERB 2001-005 (Nov.1, 2001)…A party cannot modify an existing collective bargaining agreement without the negotiation by and an agreement by both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the agreement became effective that requires a change to conform to the statute.

Discussion of the Union's Position:

1. The language in Section 1.4 (Sanctity of Agreement) is often considered "boilerplate" because it reflects a very basic premise that is accepted by all parties who enter into contracts of any type. Section 1.4 simply reflects a very basic premise that is accepted by all parties who enter into

contracts of any type. Section 1.4 states the obvious – i.e., that the Agreement will not be modified in the absence of a written accord between the parties. It protects the sanctity of the Agreement: and, the City did not offer any compelling reason or explanation for its desire to delete this provision.

RECOMMENDATION:

DELETE SECTION 1.4

RATIONALE:

The elimination of Section 1.4 will cause no disruption in the relationship between the parties or harm to their Agreement. Section 1.4 is only the expression of a principle. It also gives us insight into how the parties' predecessors viewed the Agreement or Contract between them. Again, times have changed no doubt.[1]

ISSUE 2. To delete Section 1.5 – Past Practices or not?

Discussion of the City's Position:

1. Past practice clauses have been deleted from all but this Agreement with the FOP and the Agreement with the Teamsters. However, the Teamster's Agreement with the City does not prevent changes. The City is only required to notify the Union and get their input BEFORE changing a past practice.

2. The Fact-Finder has no creditable evidence that the deletion of Section 1.5 would in any way impede the ability of the parties to cooperate with one another or cause them harm.

3. The City did propose language for 1.5 that appeared to the Fact-Finder as if it could have been a mutually acceptable compromise but that proposal was not acted upon in a timely manner and the opportunity was lost.

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[1] See Black's Law Dictionary Seventh Edition
"[Sanctity of contract] is merely another facet of freedom of contract, but the concepts cover, to some extent, different grounds. The sanctity of contractual obligations is merely an expression of the principle that once a contract is freely and voluntarily entered into, it should be held sacred, and should be enforced by the Courts if it is broken. No doubt this very sanctity was an outcome of freedom of contract, for the reason why contracts were held sacred was the fact that the parties entered into them of their own choice and volition, and settled the terms by mutual agreement." P.S. Atiyah, *An Introduction to the Law of Contract* 12 (3rd ed. 1981).

Discussion of the City's Position:

1. Because both 1.5 (and 1.4) simply encourage communication and collaboration between management and the bargaining unit, it is apparent the City's proposals are based upon a change in labor relations philosophy.
2. Unilateral control by management. As such, there is no viable reason to adopt the City's proposals (1.4 or 1.5) or eliminate this language from the Agreement.

RECOMMENDATION:

DELETE SECTION 1.5

RATIONALE:

Adopt the position of the City. The Fact-Finder has no creditable evidence that the deletion of Section 1.5 would in any way impede the ability of the parties to cooperate with one another or cause them harm.

ISSUE 3. What general wage increase(s) should be given during the life of the Agreement?

Discussion of the City's Position:

The City introduces its arguments by providing a table of the parties proposals and the settlements of for other City employees:

	2011	2012	2013	2014	2015
FOP proposed increases:			3,50%	3.50%	3.50%
City proposed increases:			1.00%	0%	0%
IAFF increases:	0.00%	1.00%	2.00%	-	-
IBT increases:		1.00%	1.00%	0%	-
FOP/OLC		0.00%	0.00%	reopener –	

The general increases in the three (3) preceding years for the **FOP** were:

2010	2.50%
2011	3.00%
2012	3.00%

The City advances its claim that the past three (3) years settlements with the Union, as noted above, were too high and the reason for this was that the City relied upon a Fact-Finder's expectation that the City would continue receiving estate taxes. And, that the Union encouraged that Fact-Finder to award raises based upon that, in retrospect, erroneous assumption.

The City takes the position that they (the FOP) should accept the downside that one occurs when one takes a risk and it doesn't pan out – pared back benefits and a few years of wage freezes. It's not something the City enjoys proposing, but it is fair.

Looking at salient **internal** comparables that impact the subject of wages the City points out that:

The **IAFF** agreed to:

Higher contributions toward health insurance
Significant modifications to minimum manning
Deleting past practice
Some smaller changes to permit great efficiency and cost savings
Significant changes to overtime calculation, i.e. using only hours actually worked toward the threshold for paying 1.5x premium pay
Doing away with the 2x rate that had applied too much of the overtime and doing away with daily overtime. The actual language of their contract now provides for 1.5x pay only when an employee *actually works* more than 159 hours in a 21-day work period (or 40 hours per week for 40 hour employees)

The **Teamsters** agreed to:

Only count hours actually worked toward overtime, rather than all hours in paid status (except that with this Union we did agree to count vacation time toward overtime, in exchange for the continuing ability to easily contract out their work)
1,5x pay only for weekly overtime, not daily
A 3-year gradual rolling back of the City's payment of the employees share of pension, in exchange for an equivalent increase in wages – a pension swap
Increasing employee insurance contributions, including phasing out the numerical cap for premium contributions in exchange for a me-too clause by 2014 instead, so they will pay whatever the other bargaining unit and non-bargaining unit employees pay
An acknowledgment that the City can delete a past practice after notice and an opportunity for input

The **FOP/OLC Dispatchers** agreed to:

Count only hours *actually worked* toward 1.5x overtime pay
The same 3-year pension swap as the Teamsters
Increasing employee insurance contributions, including phasing out the numerical cap for premium contributions in exchange for a me-too clause by 2014 – instead they will pay whatever the other bargaining and non-bargaining unit employees pay
Deleting past practice
Some other smaller changes

The **Non-Bargaining Unit ("general") employees** received:

In 2011, the first portion of a pension swap
In 2012, those who scored a satisfactory performance rating received a 1% base wage increase and a 1% lump sum payment
In 2013, those who scored a satisfactory performance a 2% wage increase
Over the last few years, the City has:
(1) Changed the overtime formula to 1.5% only for *actually working* over the weekly 40-hour threshold, instead of counting all hours in paid status
(2) Pension swap
(3) No cap on employee insurance premium contributions
(4) No past practice provision
(5) Reduction on force through attrition, layoff, and/or contracting out
(6) Other smaller changes for efficiency

Looking at **external**[2] comparables the City points out:

It was the City's contention, without argument from the Union, that there are only 3 positions in the entire bargaining unit where the incumbent is not at top pay, meaning all others have at least 4-years of service. The City remarked that it has received approximately 305 Applications for the one vacancy it currently expects to fill.

The Union offered wage settlements from Franklin County cities as evidence and from Solon, Ohio. This Fact-Finder from first hand knowledge does not consider Solon as being relevant and will give it no weight.

The Union offered up other local cities and other types of employers of varying sizes that have police departments but the Union provided little or nothing about their income, expenses, situations, etc. Ms. Armstrong, Upper Arlington's Treasurer, testified that some of those cities, Dublin, Westerville, Grove City and Hilliard had large commercial bases and room to grow whereas Upper Arlington is a bedroom community with very limited commercial space and limited prospects for growing its revenue streams. The Union conceded that Bexley was the only other city among its proposed comparables that was impacted nearly to the same extent as Upper Arlington by the loss of estate taxes – a fact supported by the City's Exhibit M.

The City points to its greatly diminished ability to pay. While the Union points to the City's balances as money available for its raises, the City points out that it already had to dig itself out of a hole that occurred when its largest employer, Compuserve, left in the 1990's. City leaders do not want to be in that vulnerable position again. The City has a favorable bond rating because of its prudent fiscal management. The City leaders do not want to lose that. The Union commends the City for their bond

[2] The Fact-Finder considers Internal Comparisons and External Comparisons and as being meaningful. In this matter, Internal Comparisons are the more meaningful.

rating, all the while proposing to eat away at the balances that help the City maintain it.

Of approximately $29 million in recent annual operating revenues, the City lost the following:

1. $2.1 million lost in annual estate tax (total state tax revenue has been over $3,5 million annually, but we traditionally maintained $2.1 million in the General Fund for operations, and used the balance for capital improvements
2. $1.0 million lost in Local Government Fund revenues
3. Consequently, the City has lost the ability to use much (if any) operating revenues to offset the infrastructure funds that are expected to be depleted by 2016. Testimony of Ms. Armstrong)

Local Government Fund reductions amounted to approximately $637, 000 in 2012 and another $474,000 in 2013. Those were reductions in the annual allotments and are expected to continue indefinitely. So, the annual revenues going forward are over $1 million less than they were in 2011.

The loss of estate taxes took effect January 1, 2013. This tax will be collected for people that died through December 31, 2012 and some collections are delayed are delayed by administrative process. The City avers it will show $1,000, 021 expected to be collected in 2013. (City Exhibit G) Moreover, as noted in the indent, the City essentially expects to have no more infrastructure reserves by the end of 2016. So, the 2nd year of this three year Agreement with the Union is shaping up to be the year of reckoning for the City.

The Fact-Finder inquired whether things were improving.[3] Respectfully, the economy is improving in the State of Ohio. It seems to be improving in the nation, at least while the cost of federal health care reforms remains unknown. However, the financial situation of the City of Upper Arlington's governmental operations is not improving, and that is critical. Upper Arlington simply does not have much room for commercial or industrial development, which is the primary revenue driver for Ohio municipalities.

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[3] The Fact-Finder considers that the National economy is improving albeit much, much too slowly. The State of Ohio may be looking toward business growth, hence the vote to abolish the estate tax, a move to encourage skilled workers/employers to remain in/come to Ohio. Other taxes could be lowered for the same reason. Columbus/Franklin County is most fortunate in having a University of the stature of The Ohio State University. There appears to be a migration from northern and southern Ohio to Columbus, as the center of government, and these actions should benefit cities such as Upper Arlington, already known statewide as a superior place to reside.

Income taxes in Ohio are usually paid to the city where the taxpayer lives. So, Upper Arlington's lack of commercial and industrial space, it is 95% residential, puts them at a revenue disadvantage when compared to Dublin, Westerville, Hilliard, Grove City, Whitehall, and other such cities. The FOP offers evidence of an improving economy in Central Ohio, but if Upper Arlington residents get jobs and raises in Columbus, then Columbus is the big beneficiary, not Upper Arlington.

Interest income, another historical source of City revenue has all but disappeared. As investments bought years ago at higher interest rates mature and are replaced by lower yielding investments, the income drops, as is apparent from income for Investment Earnings on City Exhibit G.

As noted previously, there has been a recent increase in the City's income tax revenues – however – not enough to make up for the losses of the Local Government Fund and the Estate Tax. Income tax revenue is predicted to raise about $450,000 in 2013. That does not replace $2,000,000 annually lost collectively between the local government fund and estate tax.

There is no question that the last infusion of estate tax revenue in 2012 helped prop up the General Fund balance temporarily, but the General Fund is still projected to decline from $19, 3066, 243 in 2012 to $18, 177, 559 in 2013 to $14, 658,766 in 2014, to $10, 954, 810 in 2015 all the way down to $3, 462,100 in 2017. City Exhibit G, General Fund Summaries (General Fund).

The Union will claim that that is the result of the City transferring money out of the General Fund. But the General Fund will actually begin showing an *operating loss* beginning in 2014. About $1.7 - $1.8 million per year would be attributable to the garden variety annual operating losses – that is, the cost of salaries, benefits, liability insurance, office supplies, gasoline, and other routine costs of doing business will begin to outstrip the general revenue funds coming in. (See "Net revenue over operating expense" halfway down page 2 of City Exhibit G. The parentheses around the numbers beginning in 2014 indicate losses.

The Union tried in vain to chip away at the summary numbers to find money to finance their demands. They offered FOP Exhibit 14 to show that the City is transferring money to the Estate Tax improvement Fund instead of using that one-time money to ramp up wages and benefits that will be an eternal annual expense. The City already explained why funding ongoing expenses from non-replenished money is a bad practice. The Union offered their FOP Exhibit 15 to show that income tax is coming in a little bit ahead of expectation. However, Ms. Armstrong explained that it could just be a result of *when* people are paying their taxes (sooner instead of latter), rather than an indication of how much the City will have received when the year is out.

The Union offered FOP Exhibit 2 which appears to indicate $566,835 revenue to the City from the Lane Avenue TIF project, but Ms. Armstrong explained that that is an

error – that that is the revenue for the whole community including the schools, and much of that revenue must be used to pay off the debt, and only $200,000 of that will be available for operating expenses, and even that will not be available until well into the future when the project is complete. We are not receiving revenue from that currently.

Discussion of the Union's Position:

The Union has proposed wage increases of 3.5% for each year of the contract. The FOP's proposal is based upon: (a) relevant comparable wages and wage increases for other police bargaining units in Franklin County, Ohio; (b) a required increase in employee contributions to the Ohio Police and Fire Pension Fund (which will increase the employee contribution rate by 0.75% in each year of the Agreement, effectively reducing bargaining unit members' pay by 2.25% over the life of the contract); (c) the financial stability of the City, including its remarkable fund balances and healthy budget; and (d) the necessity to counter the City's regressive proposals.

The City affirmatively stated that: "it does not care" about comparable data from other police bargaining units within Franklin County; and, it attempts to argue that its financial position is somehow more tenuous than other local governments. Not only does this position ignore statutory requirements that comparable data be considered by the Fact-Finder, see R.C.4117.14(C)(4)(e) and (G)(7)(b), it ignores all the available evidence which establishes that Upper Arlington is in a stronger economic position that almost all of its peers.

Three (3) years ago (in June 2010) Fact-Finder Howard Tolley was presented nearly identical proposals and arguments regarding wage increases. At that time the City proposed a 0% wage increase in 2010 and only 1% increases in 2011 and 2012. The City at that time, as it does today, raised arguments related to "fairness" (i.e. that the FOP wage increases had been higher than other City employees), the negative impact various outside forces were having on the City budget (e.g. the recession, the "threat" of higher pension costs, a declining tax base, etc.), and the need for "prudent financial management…when forecasts project ongoing deficits**." See FOP Ex 1**, Tolley Fact-Finding Report, at p.3. After analyzing the available evidence related to the City's finances, Mr. Tolley correctly concluded that the City's revenues (especially from income taxes) were recovering nicely. He rejected the City's "doom and gloom" projections, acknowledged the appropriate use of comparable wage data from other local jurisdictions, and he recommended wage increases of 2.5% in 2010, and 3% in 2011 and 2012. See **FOP Ex 1**, at pp.3-6.

It is readily apparent that these wage increase did not result in a financial crisis for the City. *In fact, the City's ending General Fund balances are even higher today than they were three years ago.* As noted by Mr. Tolley, the ending fund balance for 2009 was 75.8% of total General Fund expenditures. See **FOP Ex 1**, at page 5. By the end of 2011, the City's Comprehensive Audited Financial Report ("CAFR") shows that the

General Fund balance had increased to 78.25% of total General Fund Expenditures. See **FOP Ex 7**, at p.3 (marked as p. "69" at the bottom of the page), which shows an "actual" ending balance $22,144,224 and "actual" total expenditures of $28,297,667 (i.e., 78.25%). At the end of 2012, available data shows that the ending General Fund balance had increased again to an astonishing 96.15%. See **FOP Ex 8,** at p.4, which shows an "actual" ending fund balance of $27,063, 702 and "actual" total expenditures of $28.147,505 (i.e., 96.15%).

Thus, while the City is correct that it will no longer be receiving estate tax revenues, it also is readily apparent that, because of significant growth in revenue from existing tax, the loss of estate tax revenues will not result in a budget deficit. This is plainly demonstrated by reference to **FOP Ex 8**. Specifically, this exhibit shows that:

a. The City's estate tax revenue in 2012 ((see p.3 of **FOP Ex 8**) far-exceeded the original budget projections (i.e., estate tax revenues were projected to be $2, 100,000 for 2012, but actual revenues were $9,344,141).
b. The City had a budget *surplus* of $11,002,149 in 2012 (see p. 4 **FOP Ex 8);** and,
c. Even if *all* estate tax revenues were removed from the City's budget in 2012, the City *still* would have enjoyed a budget surplus of $1, 658,008 (i.e., which reflects the remainder after the 2012 estate tax revenue of $9,344,141 is deducted from the actual budget surplus of $11, 002, 149).

Therefore, the strong and continuing growth of revenue from City income taxes more than compensates for the absence of estate tax revenue (which the City historically has budgeted at $2.1 million per year); and, even if the unusually large influx of estate tax revenue in 2012 had been completely eliminated, the final 2012 budget still would have resulted in a surplus (which is why the City's ending General Fund balances remain strong.

Finally, there is simply no evidence that the City's economy or financial condition is in any jeopardy. To the contrary, the City's finances remain "rock-solid" in the eyes of both Moody's and Standard & Poor's. See **FOP Ex's 4,5, and 6.** As such, the City remains one of a very few select group of municipal governments that enjoy an **"AAA"** bond rating from both of those agencies. Economic development within the City continues, and the City's tax base (for both property and income) continues to expand. See, e.g., **FOP Ex's 2,3, and 6.** Thus, while the City would like to paint a picture that "the sky is falling", it is unable to offer evidence in support of this theory.

As for relevant comparables, while the City asserted that it "does not care" about wage comparables and contends that its situation is different from that of other local governments, the City did not offer evidence to demonstrate that its finances are worse than those of the comparable law enforcement agencies listed in **FOP Ex**

11. Those agencies, which have long been utilized by the Union and relied upon by Fact-Finders as relevant comparables, demonstrate several important facts:

a. The wages for comparable agencies within the comparable job market uniformly reflect reasonable increases, even by local governments that do not enjoy the financial stability of Upper Arlington;
b. The 2013 wage increase for top-step officers that already are in place for local suburban municipal governments range from a high of 5.42% (Worthington) to a low of 2.00% Bexley). In 2014, the already established increases range from 3.5% (New Albany) down to 2.25% (Worthington).
c. For 2012, Upper Arlington was ranked fourth (4th) among comparable local agencies, with the top five being: Dublin (3%), Whitehall (net 2.5%), Grove City (2.76%) and Westerville (2.9%).
d. The average net increases that already have been established for *all* comparable agencies are: 2013 (2.68%); and 2015 (2.75%). See **FOP Ex 12.**

Financial consideration should be given to the unique increased costs to be borne by members of this bargaining unit due to also the 0.75% required contribution to the Ohio Police and Fire Pension Fund in 2013 and again in 2014 and 2015. While the City is not responsible for this increased pension contribution and the resultant reduction in take-home pay we feel it should be considered when determining the amount of a reasonable and appropriate wage increase in Upper Arlington.

The Union and the City both place the one-year "cost" of a 1% wage increase at approximately $50,000. (Note: The City calculated that its proposed 1% wage increase would, over the full three (3) year period of the Agreement, cost $158,505 more than the current wage rate (**City Ex H**) Thus, under the City's formula, 1% of the current payroll for the bargaining unit is equal to $52, 836. While the Union believes this calculation is not entirely accurate, our calculation is only slightly lower that that of the City.

Insofar as the City's General Fund balance at the start of 2013 was more than $27, 000,000 (**FOP Ex 8**, p.4) the Union proposed wage increase of 3.5% per year is both affordable and comparable to increases that have been agreed upon for police officers employed by other comparable local governments. In 2013, the FOP's proposal would increase the total payroll cost for the bargaining units by approximately $175,000. By 2015, the FOP's wage proposal would result in a total payroll for bargaining units that would be approximately $574,000 higher that the current total payroll. (As set forth in City Ex H, the total cost for the FOP bargaining units in 2012 was $6,028,941; and, the FOP's wage increases would increase that total annual cost to approximately $6,600.000 in 2015.) The total cost of the FOP's proposed wage increases thus comprise only a small fraction of the $11 million budget surplus and $27 million ending fund balance that the City enjoyed at the end of 2012. Such increases, therefore, are well within the City's "ability to pay"; they are

comparable to the increases being provided to other law enforcement agencies; and, they will prevent these bargaining units from unnecessarily dropping down in the wage rankings of those comparable agencies.

RECOMMENDATION:

1. **A GENERAL WAGE INCREASE OF ONE PERCENT (1%) AS OF**
2. **JANUARY 1, 2013**
3. **A GENERAL WAGE INCREASE OF TWO PERCENT (2%) AS OF JANUARY 1, 2014**
4. **A GENERAL WAGE INCREASE OF TWO PERCENT (2%) AS OF JANUARY 1, 2015**

RATIONALE:

The last Agreement negotiated by the parties expired December 31, 2012. As we know, the wage settlement reached was:

Effective:	January 1, 2010	2.5%
	January 1, 2011	3.0%
	January 1, 2012	3.0%

It is safe to say the City has been disappointed with the size of those last increases and with those it considers responsible for the settlement. Obviously both parties had to ratify the settlement. Nevertheless, three (3) years have passed. The funds administered by the City show reasonable balances although they are projected by the City to decline over the life of this Agreement and, the City's credit rating with both Moody and Standard & Poor is AAA.

The City has stated it has no available land for use as industrial parks. It is a highly desirable community for its residents to live in and it is very close to The Ohio State University campus. The City administration is aware of its need to put money aside when it is available. Infrastructure especially, always needs to be updated and maintained. If the appearance of the City deteriorates, the residents will find a more suitable residence in a more progressive community with unpleasant financial consequences including the possible downsizing of its police units. The image of the unfortunate city of Detroit is the latest example of the popular propensity of many municipalities to spend unwisely, incur unmanageable debt saving nothing only to face imminent bankruptcy.

There has never been any statement by any party that the police officers or command officers of this City are not superior employees. There is considerable evidence of prudent fiscal management planning by the City Administration.

It is this Fact-Finders opinion that the testimony and the evidence, the financial data submitted and the facts of this matter support the above Recommendation in the matter of wage increases.

ISSUES 4, 5, 6 AND 7

TO COUNT ONLY HOURS ACTUALLY WORKED TOWARD OVERTIME PREMIUM PAY (IN ACCORDANCE WITH THE FLSA) OR NOT?

THESE ISSUES EFFECT:

SECTION 18.1 [HOURS OF WORK AND OVERTIME] DEFINITIONS
SECTION 18.2 OVERTIME;
SECTION 18.7 B. and C.
APPENDIX B (PATROL SECTION SERGEANTS)

Discussion of the City's Position:

ISSUE 4. The City's proposal pertaining to18.1 is to only count hours actually worked when determining whether an employee is entitled to time and one-half pay for hours worked. Presently, all time in paid status counts as if the employee had worked it.

For example, if a police officer is off on paid leave for the first 5 days of the workweek, then returns and works a standard 8-hour shift on day 6, he/she is presently paid premium 1.5x pay for the extra eight hours. Under the City proposal, he/she would receive the 8 hours extra pay at straight time, not at premium pay – as he/she only had actually worked 8 hours all week.

The current formula works the same if the first day of the week is the employee's day off and he/she works an 8-hour shift, then takes sick leave the rest of the week. On the last day of his regular schedule, he is off on sick leave making 1.5x.

The current Agreement counts all paid leave time (paid sick leave, injury leave, vacation, compensatory time, etc.) as if the employee had **worked** it for purposes of determining when the employee must be paid time and one-half (1.5x) premium pay. Paying an employee at a premium rate while he or she is not working was not the intent of the FLSA. The City is willing to abide by what the Federal Government says is required. The exception being, that the City will still pay a minimum call-back pay amount when an employee is called-back for hours that do not abut his or her regular schedule, per Section 18.4, or when the employee is placed on stand-by or court duty as specified in Section 18.5.

ISSUE 5. The City's proposal pertaining to 18.2 is to pay overtime premium pay only on weekly overtime, not daily overtime. The City references incorporate its rationale presented in Issue 4, as if it were written here also.

The City's proposal is to pay overtime only on the basis of hours worked per week, not per day. The current Agreement provides that an employee will receive overtime for being in paid status for more than 8 hours in a day (or more than 8.5 hours per day in the case of a Patrol Sergeant working a 4-2 schedule). The City proposes that premium pay at time-and-one-half (1.5x) would not apply until a member actually works more than 40 hours per week ((or 42.5 hours per 7-day week for the Patrol Sergeants), i.e., no more daily overtime premium pay.

FLSA regulations do not require the payment of daily overtime at 1.5x pay.

The Dispatchers bargaining unit still has daily overtime. However, they essentially took a 2-year freeze to preserve that provision. Daily overtime is not acceptable to the City in this negotiation as much of this bargaining unit's overtime occurs because officers keep working beyond the end of their shift or come in early for their shift. Paying daily overtime would significantly nullify overtime cost savings for this bargaining unit even if the City counted only hours actually worked.

ISSUE 6. The City's proposal is to use 42.5 hours in 7-days, not 34 hours in 6-days as the weekly threshold for Patrol Sergeant overtime premium pay. This affects Appendix B [Patrol Sergeants] referenced in Section 18.

The current Agreement provides that Patrol Sergeants be paid 1.5x for being in paid status for more than 34-hours in a six-day schedule (they work 4-days on 4-days off) See City Exhibit U).

The City proposes that rather than using the 6-day schedule to determine when overtime is owed, the City pay 1.5x premium pay when the Sergeant has actually worked more than 42.5 hours in a 7-day period. That would coincide with FSLA Regulations.

Specifically, the FLSA permits a public employer to use a higher threshold than 40 hours in a for law enforcement officers. Specifically, the City may use 43-hours per week. (See City Exhibit N, second page.) However, since the Patrol Sergeants work 42.5 hours in a calendar week when they are scheduled for 5 shifts, the City is willing to use that lower standard.

It is easy to determine when a Patrol Sergeant has actually worked more than 42.5 yours in a week. So, there is no problem with administering the proposal.

During the calendar weeks that a Patrol Sergeant is only scheduled to work 4-days, he/she would have to work as additional 8.5 hours at straight time to reach the threshold, but the City is not proposing he/she work for without pay just not at 1.5x until he/she hits the weekly threshold.

This proposal 6 is in keeping with the FLSA and is well justified.

ISSUE 7. SECTION 18.7(B) SUBSTITUTION (TRADING OF TIME)

The current Agreement has a provision for trading time. It says:

> A member who works the shift for the originally assigned member has the option to either be paid for the shift *at the rate of pay the member would receive if he or she were assigned to the shift* (including shift differential) or to receive those hours of work in compensatory time. (emphasis added)

The language that says, "the rate of pay the member would receive" means straight time. The City is concerned that it might be read another way by future generations. The City proposes additional language to clarify it:

> "The member who works the shift for the originally assigned member has the option to either be paid for the shift at the rate of pay the member would receive if he/she were assigned to the shift (i.e., straight time, including shift differential) or to receive those hours of work in compensatory time (at straight time).

While the Union argued against the change because they said an employee who works on a holiday works at time and one-half ("1.5x), not straight time, and that a member working for another member on a holiday would be paid straight time when he/she should be paid 1.5x., that is not a valid argument. A member of this bargaining unit is granted 1.5x time in his or her holiday bank in advance for each holiday (See the Agreement Section 19.3, 1st paragraph). When he or she works a holiday, he/she is paid straight time (Section 19.3, 2nd paragraph). So, the City's proposal is still accurate and would make administration less complex.

Concluding, the City argues points to the fact that all other bargaining units[4] have made concessions for reducing overtime costs, as have the non-bargaining unit employees, principally agreeing to count hours actually worked.

The City has calculated that the savings to be realized if this proposal is adopted are $27,587.82, in wages. It is a meaning amount to the City. The City in commenting on the Union's argument that some of the officers work overtime for "free" because they choose to take compensatory time instead of cash for working overtime is in error. Employees are paid for comp time for the overtime hours worked. It is just that they are paid later rather than sooner.

[4] The Teamsters vacation being the exception, but this Union did agree to allow the City to contract for their work.

Discussion of the Union's Position:

The City has proposed sweeping changes to the overtime provisions established in Sections 18.1, 18.2, 18.7 and Appendix B of the parties' Agreement. These overtime provisions were negotiated in good faith, and have been applied with little or nor dispute during a four decade collective bargaining relationship. The projected savings amounted to $27, 587.82. The Union still contends that this figure is less and would be only approximately #19, 000.00, not justifying the evisceration of our longstanding overtime contractual provisions.

The City's proposals would establish an overtime system for Upper Arlington police officers that is different from that of every other police agency represented by the FOP who all use the "paid status" method of overtime computation. (See **FOP Ex 19**) which show that every other comparable agency utilizes the "paid status" method of overtime computation.

The City's attempt to ""tinker" with trade time/substitution time (as permitted by Section 18.7 is also misguided. While straight time, in fact is paid for trade/substitution time, there is no need to amend the language of this provision of the Agreement and potentially cause confusion or disputes worth respect to a system that has operated smoothly for many years. Again, this is not a common practice for law enforcement officers in most other local police agencies, but it has served Upper Arlington well.

If the City's sweeping overtime changes are adopted the incentive for members to volunteer for substation time, as reflected in **FOP Ex 22** was $49,434,89 in 2012. However, if the City's proposals for change are adopted, members will be incentivized to look for additional time and one-half overtime opportunities and will be less inclined to volunteer to provide for other members who wish to utilize vacation or compensatory time.

The Union cites the Fact-Finding Case of OPBA v. City of Wapakoneta in which the Fact-Finder rejected the City's efforts to utilize the minimum FLSA "hours worked" formula for overtime but that case can be distinguished from the instant matter as only one bargaining unit was involved. Also cited is the Fact-Finding Case of the City of Solon v. Solon Firefighters in which case the Fact-Finder noted as one of the reasons for rejecting the City's proposal that Solon enjoyed "a remarkable 75%" ending fund balance.

RECCOMENDATION:

Adopt the City's position on Issues 4. 5. 6. and 7. Modify the Agreement to reflect all of the above changes proposed by the City to this Article 18, HOURS OF WORK AND OVERTIME-COINSIDING WITH THE BEGINNING OF THE FIRST PAY PERIOD FOLLOWING JANUARY 1, 2014, SPECIFICALLY SECTIONS 18.1,18.2, 18.7 B AND C AND APPENDIX B IN THE THIRD PARAGRAPH ONLY.

18.1 **Delete** last sentence reading: "Paid status" shall include work hours as well as all hours in pay status while on any approved paid leave."

18.2 Overtime**. Delete** the immediately following words…"Members shall be compensated at straight time rates for all hours in paid status except that any time worked in excess of eight (8) hours in any work day or"…
Replace this with this sentence as the first line reading: "When a member actually works in excess of"…**Delete** the words "the" and "he or she" in the next line…and **add** the words that immediately after…"he or she"… and in the next line again **delete** the word "the" and again **add** the words…"his or her" After the word "Chief" in the next sentence **add** a new sentence reading: "The City may defer the changes in overtime calculation until a date after the Agreement takes effect that coincides with beginning of a pay period."…

[This proposal brings the Agreement more in line with the Federal Fair Labor Standards Act; provided that the Call-In provisions of Section 18.4 will apply, as will the Stand-By provisions of Section 18.5.]

18.7B **Add** the words to the last sentence of this B…(i.e., "straight time, including shift differential) or to receive those hours of work in compensatory time (at straight time)".

18.7 C **Add** the phrase after the word assignment, …"if necessary, and with the understanding that Section 18.3(B) does not apply."

APPENDIX B

Modify the third paragraph to read: "Overtime under the 4-2 schedule for hours actually worked by a Patrol Sergeant in excess of forty-two and a half (42.5) hours during a seven 7-day work period shall be compensated at a rate of one and one-half times his/her regular hourly rate. Overtime that does not exceed 42.5 hours actually worked in the 7-day work period shall be paid at straight time. The seven day work periods used for this calculation shall coincide with the first half and the second half of the fourteen (14) day period the City uses to calculate bi-weekly pay for the Patrol Sergeant(s). A supervisor, at the direction of the Chief, shall authorize all overtime."

RATIONALE

The City has made an excellent point. Every part of the Agreement is the result prior negotiations. There is really no way to reform any part of the Agreement without reworking some aspect of a former deal: Contracts are changed and deals are remade all the time. This is the nature of Collective Bargaining. The City appears sincere in its efforts to find funds to pay for the cost of the changes that will flow from this negotiation.

Conformance with the FLSA rules with reasonable overtime control at this time will assist the City in controlling here with its overtime expenses.

ISSUE 8.

ARTICLE 24 UNIFORMS AND CLOTHING ALLOWANCE

Discussion of the City's Position:

1. It wastes City money for a member to be allowed to buy items that he/she is unlikely to use
2. The Chief gave examples of why he might be concerned with some purchases, and he testified he *might not have approved some of the purchases listed in City Exhibit AA if he understood the Agreement to allow him to disapprove them. (Emphasis added)* In fact, the City's Representative and City Attorney read the Agreement as allowing the Chief to disapprove items, but the Union's defense indicates that they do not agree.
3. The City would also point out that its proposal only addresses items for which no number is already indicated in the Agreement.

Discussion of the Union's Position:

1. The current language has worked well for many years.
2. FOP Executive Vice President Keith Ferrell testified of the need for certain types and quantities of equipment that are extremely important for law enforcement officers and that each officers needs will vary from year to year. The City's overly broad proposal, which would grant the Chief complete discretion to determine all equipment replacement levels, also would eliminate any need to obtain input from the bargaining unit with respect to this important condition of employment. As with many other City proposals, this change to a longstanding provision of the parties' Agreement is not supported by any documented necessity and should be rejected.

RECOMENDATION:

Amend the Agreement as follows:

"Where there is no specification of the amount of initial issue of an item that would allow the Chief to determine if it was being "replaced" (see, e.g., item listed in 24.5(F), the Chief may set the amount at a level he determines is necessary for the members to carry out their duties to the City. For example, the Chief could determine that members could use the allowance to purchase up to three (3) 15-shot "extra magazines for approved weapons." The number allowed for any such item may not be less than 1. The member may also use the allowance to replace the items, when replacement is necessary."

RATIONALE:

No change to the existing language of the Agreement would have been necessary but for the obvious confusion in the minds of the parties at the Hearing. The testimony revealed that the parties had no meeting of the minds over the issues raised, e.g.: Who has decision-making control over the acquisition of certain equipment? Does the Chief have the power to overrule a decision made by a member? The parties may not have had any grievances to this point but as an Arbitrator, the Fact-Finder can assure the parties they likely would in the next Agreement. The Chief and his Officers should make a practice of communicating at all times as to their respective needs and the good and betterment of the Department.

ISSUES 9, 10. AND 11.

SECTION 25 INSURANCE

(9)	**SECTION 25.1**	**Coverage Provided**
(10)	**SECTION 25.2**	**Member Premium Costs**
(11)	**SECTION 25.6 (C) (D)**	**Administration**

Discussion of the City's Position:

ISSUE 9. SECTION 25.1

The Union proposes to add to the Agreement in 25.1 a provision stating that the City would pay a monthly supplement to a member who has other health insurance and waives City insurance. The City opposes this and proposes the current language in the Agreement.

The City does not now pay for employees for having waived City insurance. Were the City to consider doing so, it would first want to confer with its insurance consultant as a part of the regular annual, overall review of the plans. Furthermore, the proposal did not come up until Fact-Finding. We have not had time to consider if the amount of the waiver payment is appropriate. It would be approximately $2,700.00 per year. If it is beneficial to the City as the Union contends, the parties might easily include it as an aspect of the insurance plans during the term of the Agreement. It need not be forced in now. Consequently, the City respectfully opposes this change, unless and until it can be considered on a citywide basis.

Discussion of the Union's position:

The Union proposes to provide members with the ability to "opt-out" of insurance coverage. Members who are able to obtain other insurance coverage (typically through a spouse) can decline the City's coverage. Members would have an incentive to opt-out because they would be paid a percentage of the full cost of their normal insurance premium, and the City would receive considerable savings by not paying the cost of benefits of those members.

RECOMMENDATION:

No change to the existing language of the Agreement.

RATIONALE:

There is no logic in giving further consideration to a proposal upon which the parties have had no previous negotiation and, such a proposal should not have been placed before the Fact-Finder.

ISSUE 10. SECTION 25.2 MEMBER PREMIUM COSTS

Discussion of the City's position:

The City has proposed that these bargaining unit employees pay the same health and dental insurance premium contribution as non-bargaining unit employees with no reference to the other city bargaining units. The City also proposes that employees electing single coverage continue to pay nothing, unless and until a change is made on a citywide basis. The current cap for 2013 is 10% of $120.00 while the Union proposed a cap of 10%, not to exceed $135.00 per month for family. The City proposes a new $40.00 per month contribution for single coverage.

The City's goal is to have all employees pay the same rate and once the City rids all of the Agreements of "me-too" language it will be able to make premium adjustments in a timely manner without persistent delays.

Discussion of the Union's position:

As discussed at the Hearing, the Union acknowledges that everyone in the United States who has been dealing with significant health insurance issues changes, including the cost of coverage, for at least the last decade. As such, the Union has recognized that its members, when warranted, may have to negotiate changes in their health insurance plans, including changes to the amounts they pay for insurance premiums. In these negotiations, however, the City's proposals to amend this Section 25, simply eliminates its obligation to negotiate those benefit levels and costs. In particular, the City's proposals that going forward it will provide FOP members with the same coverage, at the same cost, that it unilaterally determines is appropriate for its non-bargaining unit employees. The City's proposal effectively eliminates the Union's ability to bargain coverage and costs for its members; and, as such, it would eliminate any predictability that is provided with respect to this important benefit.

The City's primary reason for this proposal is that it has achieved a similar concession from two smaller city bargaining units, although the City admitted that at least one of those units accepted the concession only with the understanding that their insurance benefit would mirror that of this bargaining unit. Additionally, the City argues that it needs this flexibility because of the uncertainty that has been created by the Affordable Care Act, although the City again did not offer any evidence of a particular problem or anticipated expense that would justify granting it unilateral control over this contractual benefit.

RECOMMENDATION:

No change in the existing language of the Agreement.

RATIONALE:

The Fact-Finder cannot entertain a proposal by one party to a collective bargaining agreement that, impliedly or explicitly attempts to limit or restrain the other party from its right to engage in collective bargaining through the National Labor Relations Act.

ISSUE 11. SECTION 25.6 ADMINISTRATION

Discussion of the City's Proposals:

Sub-issue 1: In 25.6(C)

The City is proposing to spell out in more detail the examples of those benefits. Significantly, the City wants to identify spousal exclusions as one aspect of the plan that might be adopted. It is an aspect of eligibility, and although Section 25.1 says the plan is available to "eligible" members of the family as defined by the City

insurance, the City believes it is helpful to put employees on specific notice regarding that aspect of insurance

Certain City employees have reported that they must take the City insurance because their spouse's employer requires it, if it is available. And spouses will take the City's insurance if the City is paying more than the other available insurance. There is an inherent unfairness in the City supplementing the other employer's operations by offering higher quality insurance, or insurance or insurance at a discounted price. So the City might implement a spousal exclusion, and wants the employees to be on particular notice. The City also does not want the Unions coming back any saying that since it is not listed in detail, it cannot be changed.

Sub-issue 2: in 25.6(C)

The City proposes to delete the language that refers to the Parties entering into discussions to "determine" how costs will be allocated if there are uniform plan changes. That could be confusing, given the change made in the last negotiations. The deal was, and is, that if there is a change in benefit levels, like deductions, the City could make those changes as long as they applied to everyone. So, the City proposes to delete the problematic language.

The Union disagrees that the parties agreed in the last negotiations that the City could make changes in certain aspects of the plans. The City maintains its position that the parties did, in fact, agree the City could change the plans as long as the same plans with the same aspects were available to all City employees.

The City has the most leverage to negotiate a favorable insurance rate when everyone has the same plan. It would be unconscionable to allow one unit to hold up everyone else or to hold out for a special deal themselves.

The City proposes to change subsection 26(D) for the same reason. There is a reference back to the (same level of benefits) that needs further explanation as it refers back to the level provided to other employees, not to some other same level.

Discussion of the Union's Proposals:

The Union's insurance proposals offer reasonable alternatives and increases in premiums that reflect the shared interests of both the City and its employees:

1. The Union proposes to provide members with the ability to "opt-out" of insurance coverage. Members who are able to obtain other insurance (typically though a spouse) can decline the City' coverage.
2. The Union recognizes that insurance costs have continued to increase and its members are willing to make certain concessions to assist the City in addressing those costs. The Union proposes as it did in 2010 to add a "premium share" for members who have single coverage. This proposal,

which would help spread insurance costs across all segments of the membership (and not just place the burden of increased premiums solely upon members with "family" insurance coverage), continues to be rejected by the City (which apparently prefers to continue to provide "single" health insurance at no cost! The Union also proposes to increase the percentage and amount of premium share for both single and family insurance coverage. The FOP proposes to increase the "cap" in monthly premium share from $105 to $135 for family coverage, and from $0 to $40 for single coverage. The City has rejected these proposals and stands on its "all or nothing" proposal under which it can unilaterally determine all benefit levels and costs.

The City's proposal to amend Sections 25.6(C) and (D) is not as the City contends simply a "clarification". Under current language, the City has considerable flexibility to change insurance plans and providers. However, the new proposals proposed by the City could effectively change the costs for coverage that are imposed upon bargaining unit members. The FOP has never conceded to such a sweeping change and, insofar as the City has not offered evidence of a particular problem or need for this language, its proposal must be rejected.

Summarizing, the City's insurance proposals are not founded upon any specific or articulated problems related to administration issues or to the provisions of current health benefits. Rather, the City simply argues that, because other bargaining units have given up their contractual guarantees the FOP should do the same. In the absence of evidence demonstrating any necessity, the Fact-Finder reject the City's proposals and should adopt the reasonable proposals of the FOP.

RECOMMENDATION:

No change in the existing language of the Agreement.

RATIONALE:

Any decision by the Fact-Finder on this issue arising under 26(C) without having dealt with the issues under 25.1 or 25.2 would not be in the best interests of the parties. These are all administrative issues and the Recommendation should address then all in good faith for the sake of uniformity and clarity.

The Fact-Finder would advise the parties to address these items again, with all of the issues on the table, through a Committee chosen by the City and a Committee chosen by the Union with a goal of agreement and implementation by January 1, 2014.

This Fact-Finders Report is dated August 21, 2013, and was written in City of Mason, County of Warren and State of Ohio.

/s/ Richard J. Colvin
Fact-Finder

CERTIFICATION OF SERVICE

The undersigned certifies that the foregoing Fact-Finders Report was served upon the following named organization and parties by electronic mail this 21st day of August 2013:

SERB	MED@serb.state.oh.us
Mark J. Lucas, Sr.	mjlucas@clemansnelson.com
Russell E. Carnahan	rcarnahan@hcands.com

/s/ Richard J. Colvin
Fact-Finder

I certify that this Fact-Finding Decision has been sent by email to the following parties on this 21st day of August 2013: