

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

<b>In the Matter of Fact-Finding Between</b>	:	
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<b>CITY OF WESTLAKE (OHIO)</b>	:	
	:	
<b>Employer</b>	:	<b>Case No: 2012-MED-10-1250</b>
	:	
<b>and</b>	:	
	:	
<b>OHIO PATROLMEN'S</b>	:	
<b>BENEVOLENT ASSOCIATION</b>	:	
	:	
<b>Union</b>	:	
	:	

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

Michael D. McDowell, Esq., Fact-Finder  
Report Dated: October 18, 2013

APPEARANCES

For the City of Westlake:

Ms. Sandra Conley  
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For the Ohio Patrolmen's Benevolent Association:

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Ohio Patrolmen's Benevolent Association  
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**SUBMISSION**

The undersigned was appointed as Fact Finder in this dispute, pursuant to written notice to the Fact Finder dated July 10, 2013. A Collective Bargaining Agreement is in full force and effect between the City of Westlake, Ohio ("City" or "Employer") and the Ohio Patrolmen's Benevolent Association ("OPBA" or "Union"), and is hereinafter referred to as the "Agreement." The express terms of the Agreement states that the Agreement would end on February 28, 2013, but the Parties appear to have agreed to continue honoring its terms, pending this Report and Recommendations of the Fact Finder.

In this case there is one (1) bargaining unit represented by the OBPA which consists of thirty-seven (37) police patrol officers and detectives. The bargaining unit is responsible for enforcing the laws of the state.

Prior to the Fact-Finding session of August 20, 2013, the parties met for five separate bargaining sessions.

On August 20, 2013, the Parties met in the City of Westlake, Ohio, City Hall for a Fact Finding session. The Fact Finder heard argument and admitted evidence submitted by the Parties on the following issues for both bargaining units:

- Article 15 – Wages
- Article 16 – Shift Differential
- Article 18 – Longevity
- Article 20 – Vacations
- Article 21 - Health Care
- Article 23 – Sick Leave
- Article 23 – Sick Leave (Credit for Military Service)
- Article 37 – Duration

The Parties agreed to extend the time periods to and including the issuance of the Report and Recommendations of the Fact Finder ("Fact Finder Recommendations") as provided under the Ohio Administrative Code Rule 4117.260. The Parties also agreed to waive overnight delivery of the Fact Finder Recommendations and agreed to delivery of the Fact Finder Recommendations by electronic mail only.

In presenting the Fact Finder Recommendations, the Fact Finder has given full consideration to all reliable information relevant to the issues, and to all criteria specified in

O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS**

The issues are described and resolved as follows:

#### **ARTICLE 15** **WAGES**

**City Proposal:** The Employer proposed a 1.5% wage increase in 2013, and a 1.25% increase each year in 2014 and 2015. The increases are proposed to be effective March 1 of each year. The City argues that bargaining unit employees are well situated when compared to similar jurisdictions within the general geographic area.

- Financial Position

The City initially asserts that it is not arguing inability to pay and agrees that the City is affluent. The City states that it has an obligation to its taxpayers to spend within its means. It argues that employee compensation, including wage increases, cannot be established in excess of what is necessary to ensure that the employees are fairly compensated. In this regard the City notes that bargaining unit members received a six (6%) percent wage increase over the 1 term of the Agreement when many municipalities were providing minimal increases, no increases, or concessions. The City also notes that 33% of the households in the City make less than \$75,000, which is about the average income of the bargaining unit members in combined wages and longevity pay. The City also points out that its population has increased by a modest 1.7% from 2000 to 2010, and as a result its resident tax base has not increased substantially over that 10 year period.

The City argues that there are numerous circumstances which have arisen since the Agreement was entered into with the OPBA which should be considered.

The City asserts that its general fund revenues had modest increases in 2009 and 2010. The City notes that although it had an exceptional increase in general fund revenue in 2011 because of estate tax payments from three large estates that year, in 2012 general fund revenues decreased back to 2008 levels. Over that same period of time, general fund expenditures were reduced in 2010 and thereafter to attain more manageable and fiscally responsible levels as compared to higher spending levels seen during 2008 and 2009. As a result of the fiscally responsible actions taken by the City, it is in a position with a sufficient carryover balance so that it can deal with the inevitable uncertainties linked to cuts in revenues and increasing operational and personnel costs.

From 2008 to 2012, City income tax collections have increased modestly. It is estimated that the 2013 collections will be near 2012 levels.

The City states that, like all public entities, multiple sources of revenue such as the Estate Tax, Commercial Activity Tax (CAT), Local Government Funds (LGF), property tax collections, and Interest Income have significantly decreased or become stagnant, resulting in a decrease of millions of dollars in revenue. It notes that the state budget calls for the elimination of the Estate Tax and the CAT, and continued substantial reductions or the elimination of LGF funding are envisioned. It notes that property tax collections remained stagnant for the last full five-year

period and that collections in 2012 were just above 2008 levels. They were approximately \$550,000 less than 2009 real estate tax collections.

The City states that there is proposed legislation pending in the Ohio legislature, entitled House Bill 5, which, if passed as written, would have a substantial impact on the income tax revenue for the City. In addition, the City notes that it has sought to change its water supplier from the City of Cleveland Water Department to Avon Lake Municipal Utilities. In order to do so, it has filed a declaratory judgment action against the City of Cleveland Water Department with respect to contractual issues and the City of Cleveland has asserted stranded cost issues in that proceeding which may require payment by the City of tens of millions of dollars in stranded costs.

- Comparables

The City asserts that bargaining unit members are compensated equitably when compared to like external jurisdictions within close geographic proximity and that the City has mutual assistance agreements with which most of these jurisdictions. Those jurisdictions are Avon, Avon Lake, Bay Village, Fairview Park, North Olmsted, North Ridgeville, and Rocky River. The City asserts that these are the jurisdictions are also those the City competes with in civil service examinations for patrol officers.

The average base wages for patrol officers in that comparable group is a minimum of \$24.50 and a maximum of \$31.87, while the base wages for a patrol officer for the City is a minimum of \$28.48 and a maximum of \$33.84. The City argues that the base hourly rate of a patrol officer in City at the minimum hourly rate is \$3.98 more than the average of that comparable group, and \$1.97 more than the average for the maximum rate for the comparable group. The City notes that it's minimum and maximum wage rate for patrol officers is the top pay for patrol officers in that comparable group. The City states that it pays its patrol officers \$4,000 over the average when wage payment, plus longevity and uniform allowance are considered for that coparable group, and also pays the highest of that group. The City also notes that patrol officers are compensated equitably when compared to Ohio Department of Job and Family Services and the Department of Labor, Bureau of Labor Statistics. The City also notes that it provides additional pay for its detectives when many jurisdictions do not do so.

OPBA Position: The OPBA seeks wage increases of 3% in each year of a three year contract, with the first year wage increase being retroactive to March 1, 2013. The OPBA asserts that these increases are needed as it would need 2% to stay up to the jurisdictions that are indeed comparable but it would need an additional 1% per year to catch up with the more prosperous

jurisdictions with which the City is comparable. The Union places its argument in three categories: bargaining history, comparability and ability to pay.

- **Bargaining History**

The Union first argues that the bargaining history must be considered. It asserts that it replaced the Fraternal Order of Police approximately 10 years ago as the bargaining unit representative of the City patrol officers.

The OPBA argues that the first contract it negotiated was for 2004-2007, and although the OPBA was not satisfied with the contract, the OPBA followed the pattern and took it as the first contract.

The second contract went to fact finding and a fact finding was rendered in *City and OPBA, SERB Case No. 06-MED-12-1426 (Nels E. Nelson, October 12, 2013)*. The OPBA points out at pages 5 through 8 that there is a significant discussion about comparability, the OPBA's contention that the City was not being paid as much as the comparable cities as well as the contention that the City was not being paid like other wealthy cities in the area. The City appealed the fact finders report to conciliation and the parties settled at conciliation. There was no conciliation report.

The OPBA states that the next negotiations occurred in 2010 and also went to fact finding in *City of Westlake and OPBA, SERB Case No. 10-MED-04-0580 (Dennis M. Byrne, October 17, 2010)*. As with the prior contract, the City appealed this to conciliation and the parties settled at conciliation. There was no conciliation report.

The OPBA argues that the same problem is present in this case, as there is a City Council that is extremely conservative, who work in the private sector and have no idea as to the way the public sector should be treated. The OPBA states that the City has historically come to the negotiation table with a lowball offer with respect to revenue and/or benefits and an overextension of take aways. The OPBA states that this time is no different and that we will repeat everything we've already seen in prior negotiations.

- **Ability to Pay**

The OPBA argues that Westlake is a very affluent suburb, is the richest in the state of Ohio, and therefore its ability to grant the OPBA wage increases is obvious. The OPBA cites extensively

from the City's Comprehensive Annual Financial Report for the year ended December 31, 2011, media coverage of comments by the Mayor of the City in 2013, and the City's 2013 Annual Budget as to the City being financially stable and well funded.

- Comparability

The OPBA notes that the county has about 38 suburbs including the City and that the county is typically divided into Westside and Eastside by the Cuyahoga River. The City is in the outer edge of the Westside and is a newer suburb to which people have flocked over the last 20 years. The City is affluent as it is filled with wealthy individuals, has great corporate and commercial sectors and is well-managed.

The OPBA first notes that the contiguous jurisdictions to the City listed in OPBA Exhibit 5 show that the Gross Wage Increase<sup>1</sup> of the top pay of City patrol officers is over \$4,000 more than the average. The OPBA argues that this is not a very good comparable grouping as just because the jurisdictions are contiguous doesn't make them comparable. It points out that Bay Village is a tiny community to the north with no corporate presence. North Olmsted is south with a big commercial presence but it has had some economic problems and the police suffered through some zeros but had a catch-up in 2013 which shows in the payrolls together with the rolling in of their longevity. Rocky River took a zero but one thing that is not listed is the fact that almost all of their police officers receive an educational bonus every year that is up to 7% of their base. The OPBA notes that a fact finder did determine that Rocky River had an inability to pay because of infrastructure problems and it is depleting its capital fund and general fund to make those repairs.

The City next notes that Westside suburbs show a GWI increase in 2013 of 2.04%. OPBA Exhibit 5 also shows that the top pay for a City patrol officer is more than \$5,000 over the average for the Westside suburbs.

When the whole county is considered, the GWI across the county for 2013 is 1.79%. OPBA Exhibit 5 also shows that the top pay for a City patrol officer is more than \$4,000 over the average for the Westside suburbs.

The OPBA also compares the City, which it describes as probably the richest in the state of Ohio, with other wealthy suburbs in the county (Prosperous Suburbs). It also includes a few suburbs in a neighboring county as the OPBA asserts that the cities are also comparable. The

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<sup>1</sup> The GWI is the gross wage increase - it is just the wage increase as in this areas the increases are generally found in the wage increases and not many increases in other components.

GWIs average 1.92%. OPBA Exhibit 5 shows that the top pay for a City patrol officer is more than \$1,167 less than the average for the Prosperous Suburbs.

The OPBA argues that the 2013 GWI increases in the Westside, County and Prosperous Suburbs are at 2.02%, 1.79% and 1.92% respectively, each greater than the 1.5% proposed by the City in 2013, and the 1.25% and 1.25% being proposed by the City for the subsequent two years. Further, the OPBA asserts that in order to maintain its current level in comparison with the Prosperous Suburbs, it needs a 2% increase each year. The OBPA further states that the City patrol officers are underpaid when compared to the Prosperous Suburbs described above and that in order to catch up with the Prosperous Suburbs, the increases of 3% per year are appropriate.

**Recommendations of the Fact Finder:** It is recommended that the wages for the bargaining unit for the first year be increased 2.0% retroactive to March 1, 2013, increased 2.0% for the second year on March 1, 2014 and increased 2.0% for the third year on March 1, 2015.

The rationale for this is that the City is affluent and has not raised the inability to pay argument. This recommendation also takes into account that there is no question that the City will suffer, as will all municipalities in Ohio, from the elimination or reduction of, among other things, the Estate Tax<sup>2</sup>, the RAC tax and LGF. Interest Income has also been reduced significantly from the time the last contract was negotiated. This may be offset by other revenues, including the location in the City of American Greeting, Inc. However, that has not yet occurred and can not be counted on as a source of revenue. Also, the passage of House Bill 5 with its potential of decreasing income tax revenues is speculative, as is the potential payment of stranded costs to the City of Cleveland as result of the City's declaratory judgment action over the transfer of the water contract as no determination had been made on those matters at the time of the Fact Finding Hearing in this case.

It is recognized that the Westside, County and Prosperous Suburbs have shown average increases in 2013 which are over the increases proposed by the City. It is also recognized that the City patrol officers are paid above the average when compared to the Westside and County municipalities. However, the rationale of Fact Finder Byrne in *City of Westlake and OPBA, SERB Case No. 10-MD-04-1580 (Fact Finder Dennis M. Byrne, October 17, 2010)*, at pages 12-13 is persuasive with regard to giving diminished weight to the Prosperous Suburbs as comparables, but that "the information provided by the Union is somewhat useful in determining wage and benefit levels in wealthy, suburban areas." Id.

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<sup>2</sup> The City allocated \$500,000 of the Estate Tax to the General Fund, with the remainder allocated to capital projects.

Finally, the recommended increase takes into account all the recommendations in this report including the significant changes recommended in health care.

The Recommended Contract Language for Article XV - Wages is set forth in the attached Exhibit A and is incorporated herein by reference.

## **ARTICLE 16** **SHIFT DIFFERENTIAL**

**City Proposal:** The City proposes to modify the shift differential provisions so that differential pay applies only to employees regularly assigned to and actually work a shift starting after 1500 hours (3:00 p.m.). The City has also proposed that shift differential shall not apply to call-ins, holdovers, overtime or excess hours worked. The City argues that shift differential pay is generally established to compensate for the “inconvenience” of a regular non-day-shift work schedule and it does not make sense to pay the differential when an employee is not scheduled to start work at 3:00 pm or later. Additionally, when employees are called in, held over or otherwise work overtime, they already receive premium compensation in the form of time-and -one-half for the “inconvenience”. The City cites comparable data that it asserts support its proposal.

**OBPA Proposal:** The OPBA proposes to maintain the current language. The OPBA states that the shift differential language existed prior to the OPBA representing the bargaining unit employees and that it has possibly increased the rate marginally. It states that this is part of a package and that if the City wishes, it can negotiate to roll this into a higher base rate. The OPBA also asserts that there has been no reasoning to support the request for change. The OPBA notes that the employees don’t get shift differential pay for all hours paid, only for the hours worked. That is, shift differential is not paid for vacation, holiday or sick pay. With respect to inconvenience, the patrol officers stay over their regular shifts because the City requests they do so, and in doing so, the employees disrupt activities they had planned. The OPBA states that the City has not sustained its burden of showing that this is a problem that needs to be addressed.

**Recommendation of the Fact-Finder:** The Fact Finder recommends that the current contract language be retained as the state of the record does not support a modification of the language at this time.

**ARTICLE 18**  
**LONGEVITY**

**City Proposal:** The City initially proposed limiting eligibility for longevity pay to those employees who were hired on or before February 28, 2008, and “freezing” the payment at the amount in effect as of February 28, 2013.

The City modified its proposal at fact finding to limiting eligibility for longevity to those employees who were hired on or before February 28, 2013. Employees hired prior to or under the Agreement which expired February 28, 2013 (“current” Agreement), would continue to be eligible for longevity and any applicable increases; only employees hired after February 28, 2013 would not be eligible for longevity payments.

The City notes that this is a key issue for City Council as they promote transparency and are uncomfortable that base wages are listed as one item but that an employee may be receiving additional pay in the form of longevity as a separate form of compensation. The City argues that longevity was instituted possibly 25 to 30 years ago as a way of compensating public employees when they were paid less than their private sector counterparts, and still giving them some compensation based on years of service. The City argues that public employee wages have improved drastically and are now comparable to their private counterparts.

The City asserts that non-bargaining unit employees of the City have had this pay eliminated for future hires while current employees who had received longevity have had their longevity pay frozen. The City notes that this issue was voluntarily agreed to by the AFSCME bargaining unit (City Service employees).

The Employer’s argues that its proposal is fair, as even without escalating longevity payments, new hires will be fairly compensated.

**OPBA Proposal:** The OPBA proposes to maintain the current language. The OPBA maintains that it will not consent to a two-tiered system proposed by the City due to the disruptions it has historically caused.

The OPBA argues that only two of the 36 municipalities in the County do not have longevity compensation for their police unit. It argues that the only evidence presented with respect to the elimination of longevity happened in situations which were not police units and where the parties

agreed to the revision of their entire compensation system, revamping the wage schedule accordingly. That is not happening in the City. The OPBA asserts that the City has not pointed to one jurisdiction which has eliminated longevity pay for new hires in a police unit.

**Recommendation of the Fact-Finder:** The Fact Finder recommends that the current contract language be retained as the state of the record does not support a modification of the language at this time.

## **ARTICLE XX** **VACATIONS**

**City Proposal:** The Employer proposes that vacation accumulation be capped for new hires at a maximum of five (5) weeks for new hires. Under the “current” Agreement, bargaining unit employees are eligible for six (6) weeks of vacation beginning with the twenty-sixth (26<sup>th</sup>) year of service. Additionally, the Employer has proposed to eliminate the “twenty-two days” vacation level as no other (non-police department) bargaining unit within the City has such a level.

This approach will better enable the City to manage its operations and staffing in the future with an approach that does not negatively impact the current workforce.

The City asserts that it provides more vacation leave to its employees in comparable jurisdictions. The City’s proposal to limit the maximum vacation accumulation to 200 hours, or five (5) weeks, is reasonable and fair as ORC Section 325.19 caps vacation accumulation at 200 hours after twenty-five (25) years of service.

Additionally, the OPBA proposed adding a provision to allow for utilization of vacation time in one hour increments which the City continues to reject. Employees already are able to utilize personal time (28 hours annually) in one-hour increments; the Employer is averse to increasing the one-hour increment due to scheduling and coverage concerns.

The City also notes that 3 non-police bargaining units do not receive a 22-day level of vacation.

During negotiations, the OPBA proposed an escalated vacation schedule whereby employees would reach the higher levels more quickly; the City continues to reject this OPBA proposal.

**OPBA Proposal:** OBPA proposes that there be a change in the vacation levels so that 30 days of vacation comes earlier. The OPBA proposes that the 25 days of vacation begin at the 16<sup>th</sup> year and that the 30 days of vacation begin at the 20<sup>th</sup> year. The OPBA points out that there are two comparable jurisdictions contiguous to the City that utilize that approach. Three of the Prosperous Suburbs support that approach out of a dozen, and eight out of 36 for the county.

The OPBA also seeks to add language entitling employees to use their vacation time in one (1) hour increments as its use is now restricted to a day block even though there is no rationale to treat vacation time different from other time off grants such as comp time.

The OPBA rejects the City proposal and notes that the statute requires that the main focus of comparability is those doing like work. The OPBA secondly asserts that using nonunion employees and the AFSCME group shows that this was done without a neutral considering the evidence. The OPBA also points out that the comparables produced by the City show that seven out of the nine have 30 days of vacation.

**Recommendation of the Fact-Finder:** The Fact Finder recommends that the current contract language be retained. The state of the record does not support a modification of the current language at this time.

## **ARTICLE XXI** **HEALTH BENEFITS AND SPENDING PLAN**

**City Proposal:** The City notes that it has six bargaining units, three of which are OBPA units. There was a general meeting with the groups in January and negotiations started in March. One of the key issues for the City is containing healthcare costs and sharing that cost. It contends that the evidence will show that City employees pay less than their counterparts with respect to comparables.

The City notes that in the same jurisdictions which the City compared wages, and with which it competes for employees, the average employee contribution per family is \$167 per month; in the City, the cost is \$100. The City provided comparables with respect to total plan cost for cities of 25,000 to 99,999 in population; the City's total cost exceeds the statewide averages for those cities. The City also showed comparables concerning the premium percentage contribution for both family and individual for City employees, and the contributions were less than the statewide averages. In addition, it showed that average premium dollar contributions for City employees were less than the statewide averages. It states that this information comes from the *2012 20th*

*Annual Report on the Cost of Health Insurance in Ohio's Public Sector*, issued by the State Employment Relations Board Research and Training Section.

The City modified its proposal at fact finding to incorporate the recommendations of the recent fact finding report involving the City Service Unit. *City of Westlake and AFSCME Local 3904, SERB Case No. 2012-MED-10-1315*(Robert G. Stein, July 3, 2013).<sup>3</sup>

The City's proposal would maintain: the current level of benefits for years 1 (2013) and 2 (2014) of a new successor agreement; maintain the 10% employee contribution in 2013 with a removal of the "cap"; incorporate a wellness initiative ("wellness plan") with an incentive for participating in an annual wellness screening and a single disincentive for tobacco use; and incorporate a union/employee dominated committee that would be empowered to actively manage the health care plan and costs by evaluating options and setting plan design. The wellness initiative is based on moderate healthcare measures as opposed to more stringent National Institute of Health (NIH) standards.

In 2014, the base employee health care contribution would be established at 15%, with the ability to reduce that amount to 12.5% by participating in the annual wellness screening.

In 2015, once the health care committee is in place and active, costs above the base (2014 cost) would be split between the Employer and participating employees.

During the course of negotiations, the City initially sought a more aggressive wellness program with higher levels of employee contributions through disincentives and enactment of a spousal carve out as a means of dealing with escalating health care costs, inclusive of the looming increases that are anticipated with the full implementation of the Patient Protection and Affordable Care Act and the Health Care Education Reconciliation Act of 2010 ("Affordable Care Act"). However, after several days of mediation with Fact Finder Stein, culminating with the issuance of his report and recommendations on July 3, 2013, the City is accepting of the more modest approach that he recommended.

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<sup>3</sup> The OPBA initially raised the issue that the imposition of the fact finding report on the City Service unit was due to a race to impose a contract bar due to another union seeking to represent the City Service unit. The City represented that the fact finding, the City Service unit's rejection of the fact finding report, and the City's implementation of the City's "Last, Best and Final Offer" on July 18, 2013, was all prior to the filing of the Teamster petition to represent the City Service unit.

OPBA Proposal: The OPBA proposes to maintain the current language. The OPBA states that the parties share the view that the health care benefit is valuable and that there is a need for all employees to “buy in” to their vital roles as consumers of healthcare. The OPBA states that as such, it generally accepts the wellness concept proposed by the City. The OPBA argues that its impasse stems from what it considers the City's overreach in regard to the actual terms and implementation of the wellness plan.

The OPBA states that it is realistic in regard to employee participation in the cost of health care benefits. It states that bargaining unit members have paid employee contributions for some time now, and over the years OPBA has proposed and accepted costly changes to plan design.

The OPBA maintains that the current healthcare provision of the City is by no means employee friendly. The plan is 80/20 with the family maximum out-of-pocket expense of \$3000, a family deductible of \$500, and office co-pays of \$15. Employees pay 10% of the premium, currently capped at \$100 per month.

The OPBA maintains that it is insistent on maintaining predictability in regard to the plan design for the duration of the successor contract. It states that the City refuses to do so, and proposes instead that it be able to be unilaterally modified at any time.

The OPBA states that there is no proof that the City's health care costs are becoming uncontrollable. It states that the City is doing very well and has a hospitalization fund that is well-funded. It states that there is no evidence suggesting the claims have spiked unusually, forcing costs higher.

The OPBA also cites the *2012 20th Annual Report on the Cost of Health Insurance in Ohio's Public Sector*, supra, in support of its position that healthcare cost increases have dramatically been reduced in the last several years, showing a drop from 15.5% in 2005 to 2.3% in 2013. The OPBA also presented evidence of other Westside municipality healthcare plans with respect to employee contribution, coinsurance, employee deductibles, and employee maximum out-of-pocket to show that when all these are considered there is no basis to support a contribution that goes above 10%.

The OPBA also presented the fact finding report in *City of Brooklyn and OPBA, SERB Case No.s. 12-MED-10-1145 (Patrolmen), 1146 (Sergeants) (Nels E. Nelson, June 5, 2013)* for the proposition that a 15% premium contribution is not appropriate.

**Recommendation of the Fact-Finder:** It is recommended that the City’s proposal be accepted. There is no question that health care costs are, and will continue to be, rising. Although the imposition of certain deadlines for the Affordable Health Care Act have been delayed until January 1, 2015, there are other aspects which are applicable now that affect the cost of health care now and will continue to do so in the future. Internal comparisons are more relevant here for healthcare issues than external comparisons. The fact that the health care proposal was recommended by a fact finder in *City of Westlake and AFSCME Local 3904, supra*, even though it was implemented through a “Last, Best and Final Offer”, is still persuasive and it should be implemented here to allow the parties more flexibility in dealing with evolving health care matters.<sup>4</sup>

The Recommended Contract Language for Article XXI – Health Benefits and Spending Plan is set forth in the attached Exhibit B and is incorporated herein by reference.

### **ARTICLE XXIII** **SICK LEAVE**

**City Proposal:** The Employer has proposed capping sick leave accumulation at a maximum of 1,500 hours; the current maximum is 2,500 hours. The Employer further proposes to establish a single conversion (cash out) rate of 50% for employees hired on or after March 1, 2003 (i.e. employees who had not attained ten years of service with the City as of the expiration of the “current” agreement). Employees with ten or more years of service as of February 28, 2013, would continue to be covered under a graduated cash out schedule as already set forth under the “current” Agreement (e.g., 50%, 60%, 68% or 75%). Current employees with ten or more years of service as of February 28, 2013, who have accrued more than 1,500 hours of sick leave will be able to cash out their excess accumulation in December 2013 in accordance with the graduated cash out schedule (e.g., 60%, 68% or 75%). Further the Employer’s proposal retains the existing annual cash out program (Section 23.02). Under this structure, employees will retain the generous annual conversion program and, if eligible, continue to be compensated for unused accumulated time upon retirement/separation. Additionally, the City will be able to plan for a more reasonable accrued liability. The City states that the AFSCME unit has agreed to similar language for a two tier system, and to reduce the hours to a maximum of 2,000.

**OPBA Proposal:** The OPBA asserts its own proposal to replace the current sick leave incentive benefit with the sick leave benefit enjoyed by the City’s Sergeants and Lieutenants bargaining

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<sup>4</sup> *City of Brooklyn and OPBA, supra*, is distinguishable as the increase sought was 15% over three years. *Id.* at page 22. It is also noted that the City of Brooklyn has had a Health Care Plan Review Committee, similar to what the City proposes, since 2011. *Id.* at page 17.

unit, who are the supervisors of the patrol officers. The current sick leave incentive benefit in the Agreement pays the sum of \$100 to each employee who does not miss more than four (4) hours in a stated three-month period with certain exceptions. The OPBA proposal is in line with the Employer's Sergeants and Lieutenants bargaining unit Agreement which provides a sick leave incentive benefit that pays the sum of \$50 to each employee who does not miss more than one (1) hour in a stated one (1) month period with certain exceptions. The current Agreement provides a maximum incentive of \$400.00: \$100.00 under this provision in each quarter over four quarterly periods in the year while the City's Sergeants and Lieutenants bargaining unit is paid a total of \$600.00, that is, \$50.00 each month in the year. The OPBA states that the Patrol Unit just wants parity. The OPBA cites *City of Westlake and OPBA, 10-MED-04-0580 (Dennis M. Byrne, 2010)* which did not recommend this proposal in that fact finding proceeding as the fact-finder was unsure if there was an internal inequity but opined that if there was, it should be addressed at the bargaining table.

The OPBA opposes the City's proposal. It states that the City has never bargained for this before and has not presented any economic necessity for this proposal or shown that relief is necessary because of a surge in retirements. It asserts that the City has not shown any other negotiations that resulted in a second tier as they propose or a reduction of the sick leave cash out. They have shown no need for a second tier.

**Recommendation of the Fact-Finder:** It is recommended that neither proposal be accepted as the state of the record does not support a modification of the language at this time. Further, it is not clear why the City seeks a reduction to a maximum of 1,500 hours when it agreed with the AFSCME unit for a maximum 2,000 hours. Also, the existence of the language sought by the OPBA in the Sergeants and Lieutenants Agreement does not itself support its proposal here.

### **ARTICLE XXIII** **SICK LEAVE (CREDIT FOR MILITARY SERVICE)**

**OPBA Proposal:** In Section 23.03, employees with 10 or more "years of service" are entitled to a cash-out of their accumulated sick leave when they are separated from the Employer. The OPBA proposes to change the threshold to "10 or more years of service credit" so as to capture the time that bargaining unit members spend in the military or other police agencies. Stated another way, the OPBA has proposed to allow (purchased) military service credit to count as "years of service with the Employer" for purposes of eligibility for the sick leave cash out. The

credit would apply to those employees who have purchased such service time for credit through the Ohio Police and Fire Pension Fund (OPFPF).

City Proposal: The City asserts that it is not inclined to have military service time count toward the ten year threshold of “service with the Employer” and, as previously indicated, has proposed to move away from the graduated cash out schedule. The City states that the parties have not discussed this concept in depth. The Employer asserts that the Union has represented that there may be a handful of employees who are eligible and one of the problems is that the parties have no real handle on who is eligible and who is not at this time. The City states that the other concern is whether or not this would apply to the threshold amount, that is, the 10 years of service. The City’s position is that if the Fact Finder would determine that this is to be applied, this should only be applied only after the employee has worked for the City for 10 years and that the credit be limited to a maximum of four (4) years.

**Recommendation of the Fact-Finder:** The OPBA proposal is not recommended as the state of the record does not support a modification of the language at this time. The OPBA has not made a threshold showing as to how many employees this would affect, and there is an inadequate foundation for the consideration of this proposal.

#### **ARTICLE XXXVII DURATION OF AGREEMENT**

Employer's Proposal: The Employer has proposed a duration of three (3) years for the successor Agreement. Its rationale for this is that a three (3) year Agreement provides stability for both parties.

The Employer has also proposed language be added to the Agreement that clearly establishes that the provisions of the collective bargaining agreement supersede the civil service laws, Ohio statutes and local city ordinances, except that statutes pertaining to administrative leave and partisan politics will remain applicable to the bargaining unit. Its rationale is that since entering into a collective bargaining agreement with final and binding grievance arbitration is designed to allow for variances from state statutes, civil service laws and local ordinances under Ohio’s collective bargaining law, it is reasonable that such language be added. The collective bargaining agreement governs wages, hours, terms and conditions of employment for bargaining unit employees. The Employer cited the following cases support of its position: *State ex rel. OAPSE/AFSCME Local 4, et al. v. Batavia Local School Dist. Bd. Of Edu. (2000) 89 Ohio St. 3d*

*191; Dryden v. City of New Philadelphia Civil Service Commission, 2005-Ohio-3919; and City of Youngstown v. Youngstown Police Association (Paolucci), 06-MED-09-0943.*

OPBA Position: The OPBA also proposes a three (3) year agreement effective March 1, 2013, and expiring April 29, 2016. With respect to the Employer's proposal to insert language stating that the contract prevails over variances from the state statutes, civil service laws and local ordinances under Ohio's collective bargaining law, the Union asserts that while it agrees that the contract prevails in those situations, it is unnecessary and superfluous to add the *Batavia* language.

**Recommendation of the Fact-Finder:** It is recommended that this Article be modified to provide that the Agreement be effective March 1, 2013 and expire on February 29, 2016. It is also recommended that this Article be modified to include the *Batavia* provision.

The Recommended Contract Language is set forth in the attached Exhibit C and is incorporated herein by reference.

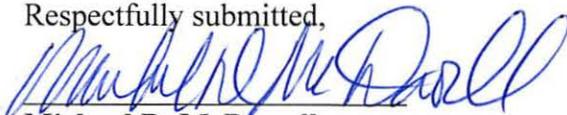
**MATTERS PREVIOUSLY AND TENTATIVELY AGREED TO,  
AND MATTERS NOT ADDRESSED IN THE RECOMMENDATIONS**

**Recommendation of the Fact-Finder:** It is recommended that any matters previously and tentatively agreed to by the Parties regarding issues not specifically addressed in this Report and Recommendations of the Fact Finder be deemed incorporated by reference. It is also recommended that all language not addressed in these recommendations, and not so incorporated by reference, will stay the same in the new Agreement.

This concludes the Report and the Recommendation of the Fact Finder.

The Parties are respectfully reminded that, pursuant to Ohio Revised Code Section 4117.14 (C) (6) (a), any mistakes in the language recommended by the Fact Finder are correctable by the mutual agreement of the parties.

Pittsburgh, PA  
October 18, 2013

Respectfully submitted,  
  
**Michael D. McDowell**  
**Fact Finder**

In the Matter of Fact-Finding Between the City of Westlake (Ohio) and Ohio Patrolmen's Benevolent Association, Case No. 2012-MED-10-1250

**CERTIFICATE OF SERVICE**

This is to certify that per the agreement of the Parties, an electronic copy in .pdf format of the duly executed original of the foregoing was emailed this 18th day of October, 2013, to Ms. Sandy Conley at [sconley@clemansnelson.com](mailto:sconley@clemansnelson.com) and to S. Randal Weltman, Esq., at [srwelt@sbcglobal.net](mailto:srwelt@sbcglobal.net).

A handwritten signature in blue ink, appearing to read "Michael D. McDowell", written over a horizontal line.

**Michael D. McDowell**  
**Fact-Finder**

**EXHIBIT A**  
**RECOMMENDED CONTRACT LANGUAGE**

**ARTICLE XV**                      **WAGES**

**15.01** Effective March 1 of each applicable contract year, ~~10, 2010,~~ all employees shall be paid bi-weekly every other Friday, according to the following schedule:

	2.0% 2013*	2.0% 2014	2.0% 2015
PATROLMAN DETECTIVE GRADE	\$76,092.00	\$77,613.84	\$79,166.12
PATROLMAN 1st GRADE	\$71,785.56	\$73,221.27	\$74,685.70
PATROLMAN 2nd GRADE	\$64,741.44	\$66,036.27	\$67,356.99
PATROLMAN 3rd GRADE	\$60,430.92	\$61,639.54	\$62,872.33

<del>PATROLMAN 1st GRADE</del>	<del>\$66,338</del>
<del>PATROLMAN 2nd GRADE</del>	<del>\$59,828</del>
<del>PATROLMAN 3rd GRADE</del>	<del>\$55,845</del>
<del>PATROLMAN DETECTIVE GRADE</del>	<del>\$70,318</del>

~~15.02 Effective March 1, 2011, all employees shall be paid bi-weekly every other Friday, according to the following schedule:~~

<del>PATROLMAN 1st GRADE</del>	<del>\$68,328</del>
<del>PATROLMAN 2nd GRADE</del>	<del>\$61,623</del>
<del>PATROLMAN 3rd GRADE</del>	<del>\$57,520</del>
<del>PATROLMAN DETECTIVE GRADE</del>	<del>\$72,428</del>

~~15.03 Effective March 1, 2012, all employees shall be paid bi-weekly every other Friday, according to the following schedule:~~

<del>PATROLMAN 1st GRADE</del>	<del>\$70,378</del>
<del>PATROLMAN 2nd GRADE</del>	<del>\$63,472</del>
<del>PATROLMAN 3rd GRADE</del>	<del>\$59,246</del>
<del>PATROLMAN DETECTIVE GRADE</del>	<del>\$74,600</del>

*\*This provision is also retroactive to March 1, 2013.*

**EXHIBIT B**  
**RECOMMENDED CONTRACT LANGUAGE**

**ARTICLE XXI**                      **HEALTH CARE BENEFITS AND SPENDING PLAN**

***21.01 For the term of this agreement, the Employer agrees to provide bargaining unit employees the same health insurance plan, inclusive of medical, hospitalization, dental, eye-care and prescription coverage (health care), as that provided to non-bargaining unit employees under a group insurance plan. Such group insurance may be provided through a self-insured plan or an outside provider. For the years 2013 and 2014 the benefits shall remain comparable to those contained in attachment "A." The Employer reserves the right to self insure or to change insurance carriers at its discretion, providing the benefits under the plan are comparable to those provided under this Agreement. A charge in insurance carrier, plan administrator or health care system (PPO, HMO, etc.) that requires a change in health care providers but does not reduce financial or related benefits is a comparable benefit under this Section. (Note: Last two sentences were moved from former Section 21.03)***

***Beginning 2015, cost containment measures may be adopted by the Employer pursuant to the provisions of Section 21.05 herein***

~~Effective January 1, 2011, employees shall receive medical, hospitalization, dental, eye care and prescription coverage as follows:~~

~~a. Employee co-pay participation:~~

<del>Tier</del>	<del>80/20 Limit</del>	<del>80/20 Max Out-of-Pocket</del>
<del>Single</del>	<del>80/20 of max \$5,000.00</del>	<del>\$1,000.00</del>
<del>Employee &amp; Spouse</del>	<del>80/20 of max \$10,000.00</del>	<del>\$2,000.00</del>
<del>Employee + 1</del>	<del>80/20 of max \$10,000.00</del>	<del>\$2,000.00</del>
<del>Family</del>	<del>80/20 of max \$15,000.00</del>	<del>\$3,000.00</del>

~~b. Office visit participation:~~

~~i. \$15.00 per visit (not included in calculation of deductible or out-of-pocket maximum)~~

~~ii. Non-emergency use of emergency room - \$75.00 per visit.~~

~~c. Annual deductibles: Single - \$200.00; Employee & Spouse - \$350.00; Employee & Dependent - \$350.00; Family - \$500.00~~

~~d. Prescription co-pays:~~

- ~~i. Generic (level 1) \$0.00 only applicable to generics available from all discounted generic providers (\$4.00 will be reimbursed by City);~~
- ~~ii. Generic (level 2) \$15.00~~
- ~~iii. Formulary (preferred) \$30.00~~
- ~~iv. Non-Formulary 30%/\$100.00 cap~~

~~All enrollments, coverages, and movement from one type of plan to the other must be in accordance with the plan documents.~~

~~Employees shall continue to pay the difference when a name brand or formulary is selected over an available generic or formulary. The eye care plan shall be as follows:~~

~~\$50.00 maximum every two (2) years for an eye examination and \$150.00 maximum every two (2) years for qualified prescription eyewear. The annual maximum payment for qualified dental benefits is \$1500 per covered person.~~

***21.02 Annual Wellness Screening Program. Commencing in calendar year 2014, the City shall institute an annual wellness screening program that will be offered to all employees and spouses participating in the group health plan made available through the City. The City will determine the manner in which screening is to be accomplished. The wellness screening program will allow each employee to receive a two and one-half percent (2.5%) reduction in their applicable monthly premium for certifying to the City that they and their spouse if applicable have been screened from a health care provider in the following categories: (1) Tobacco Use, (2) Blood Pressure, (3) Cholesterol, (4) Obesity, and (5) Glucose level. The reduction will apply to the first month following the submission of the required verifying documentation to the City. In order to receive this reduction, the Employee and his spouse (if applicable) shall be required to complete a City form certifying that the screening has occurred and complete a release the will permit the Employer to verify with the health provider the date/time of the screening and a positive/negative result on the nicotine test. Application of the two and one-half percent (2.5%) reduction will result in the employee base contribution being reduced from fifteen percent (15%) to twelve and one half percent (12.5%) for 2014. For 2015, the reduction is expressed in the formula contained in 21.04.***

~~Employees shall be required to share in the employer's cost for premiums. Effective January 1, 2011, the premium sharing shall be ten (10%) percent of the total cost per employee per coverage type per month, subject to the following maximums:~~

~~2011 and 2012 seventy (\$70.00) dollars, effective January 1, 2011 and, effective January 1, 2012, such maximum shall be increased to one hundred (\$100.00) dollars per month.~~

**21.03 Tobacco Use Surcharge.** *Commencing in calendar year 2015, the City shall institute a tobacco use surcharge for all employees and spouses participating in the group health plan made available through the City. Under this program employees shall be required to pay a five percent (5%) surcharge in their applicable monthly premium for tobacco use by the employee or the covered spouse if applicable. The surcharge rate is reflected in the base cost sharing formula contained in 21.04. In order to avoid the surcharge, an employee and spouse (if applicable) whose Tobacco use is not covered in 21.02 shall be required to complete a City form certifying that the Tobacco screening has occurred and complete a release that will permit the Employer to verify with the health provider the date/time of the screening and a positive/negative result on the screening test. ~~The Employer reserves the right to self insure or to change insurance carriers at its discretion, providing the benefits under the plan are comparable to those provided under this Agreement. A change in insurance carrier, plan administrator or health care system (PPO, HMO, etc.) that requires a change in health care providers but does not reduce financial or related benefits is a comparable benefit under this Section.~~*

**21.04 Cost Sharing.** *Employees shall be required to share in the cost of health care coverage up to the maximums permitted by the ACA. Effective March 1, 2013, the Employer shall contribute ninety percent (90%) and the employee shall contribute ten percent (10%) of the cost the total base cost for health care, prescription, and ancillary benefits. For 2014, the Employer shall contribute eighty-five percent (85%) and the employee shall contribute fifteen percent (15%) of the cost the total base cost for health care, prescription, and ancillary benefits. Effective January 1, 2015, the Employer shall contribute a maximum base amount of the total cost per employee, per coverage type, per month as set forth below, and participating employees shall contribute the minimum base amount as set forth (base costs computed from 2014 costs):*

**Base Contribution For those Employees Qualifying for Screening Reduction (2.5% reduction)**

<i>Monthly Maximum</i>	<i>Employer Contribution</i>	<i>Monthly Minimum</i>	<i>Employee Contribution</i>	<i>Total Base Contribution</i>
<i>January 1, 2015</i>	<i>% of 2014 Cost</i>	<i>January 1, 2015</i>	<i>% of 2014 Cost</i>	<i>2014</i>
<i>Single</i>	87.5%	<i>Single</i>	12.5%	<i>2014 Total</i>
<i>Employee + 1</i>	87.5%	<i>Employee + 1</i>	12.5%	<i>2014 Total</i>
<i>Family</i>	87.5%	<i>Employee/Child(ren)</i>	12.5%	<i>2014 Total</i>

**Base Contribution w/o Surcharge or Incentive (No Screening/No Tobacco Use)**

<i>Monthly Maximum</i> <i>January 1, 2015</i>	<i>Employer Contribution</i> <i>% of 2014 Cost</i>	<i>Monthly Minimum</i> <i>January 1, 2015</i>	<i>Employee Contribution</i> <i>% of 2014 Cost</i>	<i>Total Base Contribution</i> <i>2014</i>
<i>Single</i>	85%	<i>Single</i>	15%	<i>2014 Total</i>
<i>Employee + 1</i>	85%	<i>Employee + 1</i>	15%	<i>2014 Total</i>
<i>Family</i>	85%	<i>Employee/Child(ren)</i>	15%	<i>2014 Total</i>

**Base Contribution For Tobacco Users w/ Screening (5% surcharge less 2.5% credit = 2.5% surcharge)**

<i>Monthly Maximum</i> <i>January 1, 2015</i>	<i>Employer Contribution</i> <i>% of 2014 Cost</i>	<i>Monthly Minimum</i> <i>January 1, 2015</i>	<i>Employee Contribution</i> <i>% of 2014 Cost</i>	<i>Total Base Contribution</i> <i>2014</i>
<i>Single</i>	82.5%	<i>Single</i>	17.5%	<i>2014 Total</i>
<i>Employee + 1</i>	82.5%	<i>Employee + 1</i>	17.5%	<i>2014 Total</i>
<i>Family</i>	82.5%	<i>Employee/Child(ren)</i>	17.5%	<i>2014 Total</i>

**Base Contribution For Tobacco Users w/ no Screening (5% surcharge)**

<i>Monthly Maximum</i> <i>January 1, 2015</i>	<i>Employer Contribution</i> <i>% of 2014 Cost</i>	<i>Monthly Minimum</i> <i>January 1, 2015</i>	<i>Employee Contribution</i> <i>% of 2014 Cost</i>	<i>Total Base Contribution</i> <i>2014</i>
<i>Single</i>	80%	<i>Single</i>	20%	<i>2014 Total</i>
<i>Employee + 1</i>	80%	<i>Employee + 1</i>	20%	<i>2014 Total</i>
<i>Family</i>	80%	<i>Employee/Child(ren)</i>	20%	<i>2014 Total</i>

*Commencing in January 2015, any costs above the cumulative total of the Employer and employee base contribution amounts set forth above shall be paid fifty percent (50%) by the Employer and fifty percent (50%) by the participating employee. In the event that costs for coverage are reduced below the total base contribution amount, such savings shall be apportioned on the base contribution percentage to the Employer and to the employee. The parties recognize that employee affordability under the ACA will be measured based upon the cost of the bronze (i.e. lowest tier plan being offered) single plan and the employee's household income. Any employee who believes his contribution exceeds the maximum allowable by law may submit a written request for review to the Finance Director.*

**21.05 Health Care Committee.** *A health care committee will be created for the purposes of monitoring and supporting the wellness program, and for reviewing usage, studying cost containment programs and options for health plan coverage (medical, hospitalization, dental, eye-care and prescription), and recommending changes to the plan and benefit levels. Once created, the Union agrees to participate in the committee. The committee shall consist of one*

*(1) representative from each of the bargaining units, one (1) non-bargaining unit employee, and a number of management representatives of the Employer equivalent to or less than the total number of city bargaining unit representatives participating in order to allow for an odd number of voting representatives. The health care committee shall have the authority to recommend alterations to the plan and benefit levels and/or recommend adjustments to coverage levels through majority vote. The committee's authority will vest and begin with the 2015 plan year.*

*Specifically, the committee may recommend any of the following options:*

- A. To keep the same plan and/or benefit levels and pass on any cost increase above the levels set forth in Section 21.04 of this article to the participating employees; or*
- B. To change the plan and/or alter the benefit levels to reduce or minimize the cost increase to be passed on to participating employees; or*
- C. To change the plan and/or alter the benefit levels so that there is no increase in the cost of the plan.*

*Recommendations of the committee shall not result in costs to participating employees exceeding the maximum permitted by the ACA. A valid recommended option of the committee (A, B or C above) will be implemented by the City. Recommendations of the committee, and Employer actions to carry out those recommendations, are final and binding on all parties involved and shall not be subject to the grievance procedure or any other avenue of appeal. If, however, the committee fails to submit a valid recommendation by November 30 for the following plan year, the City may unilaterally select and implement one of the options (A, B or C above).*

**21.04 6** ~~As soon as possible subsequent to the execution of this Agreement,~~ The Employer will provide each employee with term life insurance in the amount of twenty-five thousand (\$25,000) dollars.

**21.05 7** The Administration will ~~establish~~ *continue to make available* a voluntary Section 125 qualified cafeteria plan (flexible spending) for employees that meet IRS requirements for pre-tax preferences for qualified expenses.

**ATTACHMENT A**

*For the 2013 and 2014 plan years, benefit levels shall be as follows:*

a. Employee co-pay participation:

<u>Tier</u>	<u>80/20 limit</u>	<u>80/20 max out of pocket</u>
Single:	80/20 of max \$5,000 =	\$1,000.00
Employee + Spouse	80/20 of max \$10,000 =	\$2,000.00
Employee + 1:	80/20 of max \$10,000 =	\$2,000.00
Family:	80/20 of max \$15,000 =	\$3,000.00

The max out-of-pocket is for co-payment portion only. All other deductibles apply. Deductibles shall be: single – two hundred (\$200.00) dollars; employee + spouse – three hundred fifty (\$350.00) dollars; employee + dependent – three hundred fifty (\$350.00) dollars; and, family – five hundred (\$500.00) dollars.

b. Office visit participation:

- i. Fifteen (\$15.00) dollars per visit (not included in calculation of deductible or out of pocket maximum).
- ii. Non-emergency use of emergency room – seventy-five (\$75.00) dollars per visit.

c. Prescription co-pays:

- i. Generic (level 1) \$0 - only applicable to generics available from all discounted generic providers (\$4.00 will be reimbursed by City).  
Generic (level 2) \$15.00
- ii. Formulary (preferred) \$30.00
- iii. Non-formulary - 30%/\$100.00 cap.

Employees shall continue to pay the difference when a name brand or formulary is selected over an available generic or formulary.

- d. Dental and eye care: The eye care plan shall be as follows: fifty (\$50.00) dollars maximum every two (2) years for an eye examination and one hundred fifty (\$150.00) dollars maximum every two (2) years for qualified prescription eye wear.
- e. Premium sharing: Employees shall be required to share in the employer's cost for premiums. Effective January 1, 2011, the premium sharing shall be ten (10%) percent of the total cost per employee per coverage type per month subject to the following monthly maximums: 2010 - – twenty-five (\$25.00) dollars; 2011 – seventy (\$70.00) dollars; and 2012 – one hundred (\$100.00) dollars.
- f. Specialist may be contacted directly. Referrals from the primary care physician are no longer required.
- g. Well child care and immunization coverage is provided so that children from birth to age two (2) are covered for a maximum of seven hundred fifty (\$750.00) dollars for the first twenty-four (24) months and children from age two (2) to twelve (12) are covered for a maximum of two hundred fifty (\$250.00) dollars per benefit period.

**EXHIBIT C**  
**RECOMMENDED CONTRACT LANGUAGE**

**ARTICLE XXXVII**            **DURATION**

**37.01** This Agreement shall be effective as of March 1, 2013 and remain in full force and effect until February 29, 2016.

**37.02** If either party desires to modify or amend the Agreement, it shall, by November 1, 2015, give written notice of such intent and the parties shall hold their first negotiation meeting by November 15, 2015, at which meeting they shall set forth the nature of the amendment and modifications sought in this Agreement. If a conciliator is appointed pursuant to the provisions of Chapter 4117 of the Revised Code the Conciliator shall have the authority to order increases in wage rates and other economic items in the fiscal year in which he is appointed.

**37.03** This Agreement constitutes the sole, entire and existing Agreement, supersedes all prior agreements and undertakings, oral or written, express or implied or practices between the parties. *The parties agree that no section of the Civil Service Laws contained in the Ohio Revised Code, Chapter 124, ORC Sections 9.44 and 737.12, nor any local city ordinances pertaining to wages, hours, terms and other conditions of employment shall apply to employees in the bargaining unit where such matter has been addressed by this agreement, except that Sections 124.34 (A) relative to convictions of a felony, 124.388, and 124.57 O.R.C. shall continue to apply to bargaining unit employees.*

*Notwithstanding the above, the parties agree that original appointments are not appropriate subjects for bargaining pursuant to Section 4117.08 O.R.C.*