STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:	)	
CITY OF CLEVELAND, OHIO	)	**Case No. 2012-MED-12-1457**
-and-	)	**Jonathan I. Klein, Fact-Finder**
CLEVELAND FIRE FIGHTERS UNION, LOCAL 93, SAFETY SUPERVISORS	)	

FACT-FINDING REPORT and RECOMMENDATIONS

Appearances

For the Union:

Thomas M. Hanculak, Esq., Diemert & Associates Co. L.P.A.- Attorney for Union
Frank M. Szabo- President, Local 93
Thomas Lally- Vice-President, Local 93
Michael Abott- Steward, Local 93

For the Employer:

Patrick J. Hoban, Esq., Zashin & Rich Co., L.P.A.- Attorney for City
Jeanette Saunders- Chief of Admin.
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Roosevelt Davis- ARFF Chief

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I. PROCEDURAL BACKGROUND

This matter came on for hearing on March 26, 2015, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on January 12, 2015. The hearing was conducted between the City of Cleveland, Ohio ("Employer" or "City"), and the Cleveland Fire Fighters Union, Local 93, Safety Supervisors ("Union"), at Burke Lakefront Airport located at 1501 N. Marginal Road, Cleveland, Ohio 44113. The Union is the sole and exclusive bargaining representative of all employees in the classification of Airport Safety Supervisor as set forth in Article 1 of the collective bargaining agreement. (Employer Ex. A). At the time of the hearing, the bargaining unit was comprised of 12 Airport Safety Supervisors. (Union's Position Statement, at 1; Employer's Position Statement, at 2).

The parties reached a tentative agreement on March 18, 2005, regarding the following articles contained in the collective bargaining agreement: Article 17- Wages; Article 23- Insurance; Article 7- Overtime; Article 8- Grievance Procedure; Article 22- Safety and Clothing; New Article- Holidays; Article 32- Duration. (Employer Ex. B).

As of the fact-finding hearing, the following issues remained open and are properly before the fact-finder for resolution:

Issue 1:	Article 18 - Longevity
Issue 2:	Article 23 - Insurance
Issue 3:	Article 11 - Leaves of Absence (No-Fault Attendance Policy)
Issue 4:	Article 11 - Leaves of Absence (Sick Leave)
Issue 5:	Article 31 - Substance Abuse Policy

The fact-finder incorporates by reference into this Report and Recommendations any provision of the current collective bargaining agreement not otherwise modified during negotiations, as well as the abovementioned Tentative Agreement which is attached hereto as Exhibit 1. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

(1) Past collectively bargained agreements, if any, 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 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) 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.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The Employer initially notes the "overwhelming pattern on compensation" afforded all employees under each of the City's thirty (30) collective bargaining agreements. However, this pattern does not include increases to longevity and life insurance benefits which are proposed by the Union in this case. The Employer points out that 24 of the 31 unions have agreed to language lowering the breath alcohol threshold test from .04 to .03 grams. Additionally, 17 unions have agreed to the implementation of no fault attendance policies after the parties meet and confer regarding the matter. The applicable language also provides that the unions may grieve the reasonableness of those policies. The Employer also proposes to change the manner in which sick leave is charged so that the Safety Supervisors are treated just like every other City employee.

The record establishes a "strong pattern across a significant number of bargaining units," and the Employer emphasizes the "salutory effect of pattern bargaining, especially on economic issues." The Employer claims that the Union's proposed modifications to the contract "will cause significant issues for the City." Neutrals, including this Fact-Finder, have long-sustained City-wide patterns on wages, benefits, and other core terms. In fact, [p]arity, or the use of

patterns among a multitude of bargaining units that negotiate with a single employer, has long been cited as a controlling principle is settling negotiation disputes." (Employer's Position Statement, at 9).

The Union contends that the parties are "not wedded to patterns." According to the Union, "the most logical comparable is Big 93."[1] Additional internal comparable bargaining units are those that represent the police and EMS. The Union points out that its bargaining unit members and the employees represented by Big 93 are "all firefighters" and part of the safety force, notwithstanding the fact that safety supervisors are specially trained and work at the airports. It notes that Safety Supervisors and the City's Division of Fire employees both work 24 hour/48 hour work schedules. The Union maintains that the truly comparable internal bargaining units such as the police, fire and EMS "do not bear out the necessity" of the Employer's proposals. In fact, the Employer did not present one cogent reason to change the contract language regarding the three issues which it has presented. As it concerns each of the three proposals put forth by the Employer, "there is always the why?"

In regard to its proposal regarding longevity payments, the Union simply wants to tie this benefit to any wage rate increases. It notes that even under its proposed language, Safety Supervisors will still receive lower longevity payments than other City employees. The Union has also proposed an increase in the life insurance benefit afforded bargaining unit employees because "$15,000.00 is not very much given the economy." The rationale regarding the

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1. IAFF Local 93, which represents approximately 775 Cleveland Division of Fire employees, is commonly referred to by the parties as "Big 93."

longevity and life insurance issues clearly supports a determination by the Fact-Finder to recommend the Union's proposed contract language.

Issue 1: Article 18 - Longevity

Position of the Union

The current contract language provides for longevity payments ranging from $300.00 to $800.00 per year based upon a bargaining unit employee's tenure commencing after five years of service. Instead of negotiating this benefit with each new contract, the Union proposes ". . . that longevity be increased at each tenure level from its current amount at the same time and in the same percentage amount as any wage increases negotiated for the same contract term." (Union Position Statement, 2)(emphasis in original). The Union has proposed the following language: "Effective March 31, 2015, Longevity Compensation shall be increased at the same time and by the same percentage as any increases to wages. This means a 2% [increase] for Longevity for 2015." (Union Position Statement, 2).

At the hearing, the Union noted that the longevity schedule "has been the same" while "COLAs have not kept up." The Union reiterated that it "does not want to negotiate [this issue] each year." In response to the Employer's opposition to tying the longevity schedule to wages, the Union points out that "there have been a lot of zero percent [wage rate increases] in the past ten years." Local Union president Frank Szabo testified that "there have been no increases in longevity since 2001 and the proposal is modest." He maintained that the Union is "not seeking to recapture the past 14 years" in which there were no longevity payment increases. The Union

simply wants "longevity to increase in concert with base pay." Local Union president Szabo stated that a "5.1 percent base pay increase for this unit results in a $40.00 increase in longevity at the high end step." He compared the Union's position regarding longevity payments with the Employer's health care premium cost language. Specifically, "the City didn't want to re-negotiate health care every contract." As a result, "there is an automatic increase in premiums when health care costs increase." According to local Union president Szabo, "it is a reasonable request for the City to agree to the same process regarding longevity." He also pointed out that other City bargaining unit and non-bargaining unit employees "receive more longevity pay on the top end."

On cross-examination, local Union president Szabo acknowledged that Big 93's proposed percentage based change to longevity payments was withdrawn. However, he claimed that this was "part of a bundled package" accepted by the union. He also confirmed that there are three different longevity schedules for all City employees and each is based on a flat dollar amount. (Employer Ex. G). Local union president Szabo testified that health insurance was also a flat dollar amount until this round of bargaining. However, he acknowledged that health care costs are a "moving target and could change every year." Szabo reiterated that there is a disparity with other bargaining units regarding longevity payments and the City "never offered another step" for the Safety Supervisors.

Position of the Employer

The Employer has proposed that the current contract language regarding longevity payments should be maintained. It rejects the Union's ". . . proposed pattern-breaking wage

increase." (Employer Position Statement, 18). According to the Employer, "[t]he Union's proposal for a unit of 12 employees is radical and would wreak chaos in the City's future bargaining with all employee units." (Employer Position Statement, 18). It points out that there have been three overlapping schedules regarding longevity payments in all of the City's 31 collective bargaining agreements for many years. Each of these schedules provide for flat dollar longevity payments based on completed years of service. There are no contracts which provide for automatic longevity payment increases based upon negotiated wage rate increases. The Employer notes that only this bargaining unit has proposed a change regarding the current longevity provision.

As this fact-finder has previously stated, there is a heavy burden on a party which proposes to deviate from a well-established and wide-spread pattern. The Employer asserts that the Union has failed to satisfy this burden for the following reasons. First, the current provision contains a longevity benefit which is equal to that received by over 18 other internal bargaining units. Second, ". . . by providing longevity payments in flat dollar amounts based on five-year service increments, the current language is identical to that provided in all City labor contracts." (Employer Position Statement, 19) (emphasis in original). The Employer relies upon reports by Fact-Finder B. Trombetta in *City of Cleveland and International Brotherhood of Teamsters, Local No. 244*, SERB Case No. 04-MED-01-001 & 002 (April 10, 2006, B. Trombetta) and Conciliator Susan Grody Ruben in *City of Cleveland and Fraternal Order of Police, Lodge 8*, AAA Case No. 53 390 0259 08, 2008 AAA LEXIS 1560 (November 21, 2008) in support of its position that the Union's proposal to increase longevity payments should be rejected. The Fact-

Finder should not recommend the Union's proposed contract language in order "[t]o maintain labor harmony, uphold the well-established pattern on wages, and give effect to the fact-finding considerations set forth in Ohio statute and regulation." (Employer Position Statement, 20). Moreover, "to consider a longevity escalator is to ignore the reality of multi-unit bargaining."

Final Recommendation

The fact-finder recommends that the current language contained in Article 18 of the collective bargaining agreement should be maintained. The Union presented insufficient evidence to support its proposed modification to the long-standing provision regarding longevity payments. The arbitrator notes that there are no contracts between the Employer and any other internal bargaining units which contain language providing automatic longevity payment increases in concert with future wage rate increases. Additionally, the ratified 2013-2016 contract between the Employer and AFSCME Local 100, which represents the 39 Safetymen assigned to the Aircraft Rescue Fire Fighter ("ARFF") operations, contains no longevity schedule percentage increases. (Employer Ex. F). Furthermore, the tentative agreement with IAFF Local 93 which represents the Division of Fire employees also does not include an increase in longevity payments. (Employer Ex. F; Employer Position Statement, at 6).

The fact-finder notes that both Safety Supervisors and IAFF Local 93 bargaining unit employees receive identical longevity payments in accordance with Schedule B. (Employer Ex. G). Moreover, the Safety Supervisors are afforded a higher longevity payment at the top step of Schedule B than that which is received at the top step of Schedule C by the Safetymen whom

they supervise. (Employer Ex. G). The Union presented insufficient evidence to include percentage-based longevity payments in the new contract as opposed to maintaining the well-established pattern of flat dollar longevity payments afforded all other employees of the City.

Issue 2: Article 23 - Insurance (life insurance)

Position of the Union

Article 23 of the collective bargaining agreement provides, in part, as follows:

* * *

> Life Insurance
>
> During the term of this Contract, the City shall provide all members with Group Insurance in the amount of $15,000.00. Provisions for conversion at the time of retirement or other termination shall be in accordance with the provisions set for other employees.
>
> * * *
>
> (Employer's Ex. A).

The Union points out that the $15,000 life insurance benefit has not increased since 1996. It requests that this resulting inequity should be addressed by increasing the life insurance benefit to $25,000.00 under the new contract. According to the Union, "common sense logical thinking" dictates that this provision needs to be adjusted. Local Union president Szabo claimed that "$15,000.00 is barely enough for a decent funeral." He reiterated that the life insurance benefit afforded bargaining unit members has remained stagnant for 20 years notwithstanding inflation. Local Union president Szabo indicated that he is "not sure what Met Life charges the City for

premiums" because he does not have access to that information. He also noted that the Employer's only response to the Union's proposal regarding this issue was its intent to engage in pattern bargaining.

On cross-examination, local Union president Szabo acknowledged that there is no increase in the life insurance benefit contained in the tentative agreement with Big 93 although the union had initially proposed such language. He confirmed that the life insurance issue is "off the table now and they [the City and IAFF Local 93] are in arbitration." According to President Szabo, the issues regarding life insurance and percentage increases in longevity payments were "not important enough for Big 93 to take to impasse." He maintained that there are distinctions between Big 93 and this Union and "each bargaining unit has its own unique set of needs." Local Union president Szabo further testified that the "two negotiations are not related in any way," and he asserted that the Employer "would not get into bundles with the little 93 bargaining unit." He claimed that the overall agreements should be what is "best for both" unions.

Position of the Employer

The Employer proposes that the current contract language regarding life insurance should be maintained by the fact-finder for the following reasons. The evidence of record reveals that all of the contracts between the City and each and every collective bargaining unit provides for a $15,000.00 life insurance benefit without exception. The Employer points out that the life insurance coverage for its employees is negotiated on a single benefit basis City-wide. It contends that the Union presented this proposal ". . . to generate leverage to defeat City proposals

in line with the City-wide pattern on BAC and no-fault attendance issues or create a stalking horse to support its pattern breaking longevity increase proposal." (Employer Position Statement, at 20). The overwhelming pattern of bargaining does not include the increased life insurance benefit proposed by the Union. The Employer notes that "[t]he pattern compensation and benefit terms reached with the 23 other unions do not include . . . increases to the City's standard life insurance benefit." (Employer Position Statement, at 6). Accordingly, the Union failed to satisfy its burden to support its pattern-breaking proposal regarding life insurance.

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder recommends that there be no change to the language contained in Article 23 regarding the life insurance benefit afforded bargaining unit members. The record indicates that all employees of the City receive a $15,000.00 life insurance benefit, including both the Safetymen represented by AFSCME Local 100 and the Division of Fire employees represented by IAFF Local 93. (Employer Ex. F). Although the testimony presented at hearing reveals that the dollar amount of the life insurance benefit has not increased in nearly 20 years, insufficient evidence was presented by the Union regarding the average cost of funerals/burials for which such a benefit may be used by a surviving spouse or family member to cover such expenses. Additionally, the Union presented no evidence as to the cost which would be incurred by the Employer to obtain the proposed increase in the benefit amount under the present group insurance policy with Met Life or any other insurance provider. The fact-finder concludes that internal parity and consistent treatment

of the different bargaining units in previously negotiated agreements dictate that this provision should not be disturbed. Current contract language shall be maintained.

Issue 3: Article 11 - Leaves of Absence (No Fault Attendance Policy)

Position of the Employer

The Employer has proposed that the following language regarding a no fault attendance policy should be added to Article 11 of the collective bargaining agreement:

> The City reserves the right to implement a no-fault attendance policy pursuant to the following procedure. The City will first notify the Union no less than thirty (30) days prior to implementing such a policy and negotiate in good faith with the Union regarding the policy. If the parties are unable to reach agreement, the Union reserves the right to file for arbitration with AAA within fourteen (14) days of a written declaration of impasse. Each party shall present a proposal before the arbitrator, with the arbitrator selecting one or the other proposal based on his/her assessment of which proposal is the most reasonable. The arbitrator's decision must be rendered within thirty (30) days of the hearing date(s) and within sixty (60) days of his/her appointment, unless mutually agreed otherwise. If the Union does not timely file for arbitration following a declaration of impasse, the City may implement its last-proposed policy. The City will not implement any policy until the Arbitrator renders a decision and will implement the policy selected by the Arbitrator.
>
> The City may modify the policy after one (1) year following implementation. If the City desires to modify the policy it must first provide the Union with no less than thirty (30) days' notice and negotiate in good faith with the Union regarding its intended modifications. In the absence of an agreement, the City may not modify the policy unless ir establishes a demonstrable operational need.
>
> (Employer Ex. C; Employer Position Statement, at 16).

In support of incorporating its proposed language in the new contract, the Employer points out that it ". . . has negotiated the same language it proposes here with four other unions in this round of negotiations and has negotiated language more favorable to the City's unilateral implementation of a no-fault attendance policy with another 13 unions." (Employer Position Statement, at 17). Those 17 unions recognized the need to institute measures to curb the abuse of sick leave which is prevalent in all departments. The no-fault attendance policy language proposed by the Employer in this case was recommended by Fact-Finder Michael King in *City of Cleveland and Municipal Foreman & Laborers Local 1099*, SERB Case No. 2012-MED-12-1390 (November 18, 2014, M. King). The Employer notes that the proposed provision requires it to engage in good faith negotiations regarding the no-fault attendance policy and submit the issue to binding arbitration in the event that the parties cannot reach an agreement. It asserts that as supervisory employees, the Safety Supervisors should appreciate the need to curb sick-leave abuse. The Employer requests that the fact-finder recommend its proposed language which secures the Union's bargaining rights and subjects the terms of the policy to review by a neutral prior to implementation.

At hearing the Employer reiterated that the no-fault attendance policy requires good faith negotiations by the parties and "gives the City less discretion." However, Chief Roosevelt Davis acknowledged on cross-examination that there have been no attendance issues with ARFF employees and no Safety Supervisors have been placed on the sick leave abuse watch list.

Position of the Union

The Union is opposed to adding the Employer's proposed language regarding a no fault attendance policy to Article 11 of the collective bargaining agreement. According to the Union, the Employer's procedure for implementing a no fault attendance policy ". . . is basically a contract re-opener ending in arbitration in the event of impasse." (Union Position Statement, 3). It asserts that the proposed language is unnecessary and without rationale. The Union is also opposed to the time and cost of a mid-term re-opening of the contract.

The testimony establishes that no bargaining unit employees are on the sick leave abuse watch list and the Union reiterated its position at the hearing that there is no need for such an attendance policy. However, the Union indicated that it was "willing to sit and talk about it." In further support of its opposition to the Employer's proposed language, the Union points out that it does not know what the no-fault attendance policy entails. Although there is some value to mid-term negotiations, it took two years to get to this point in the current contract negotiations.

According to local Union president Szabo, there have been no attendance issues with this bargaining unit unlike others which have experienced significant absenteeism problems. He re-emphasized the Union's position that the Employer provided no reasons for the necessity of its proposed policy. Although other bargaining units may have agreed to such language, local Union president Szabo pointed out that the contract with Big 93 does not contain this clause. He maintained that this is not a pattern issue and he is unaware of the *quid pro quo* with other bargaining units which agreed to no-fault attendance policy language. President Szabo also pointed out that Article 11 already outlines specific procedures for the approval of sick leave. He

acknowledged on cross-examination that the proposed language requires the Employer to negotiate in good faith with the Union regarding the terms of the no-fault attendance policy and an arbitrator would determine which proposal is more reasonable if the parties are unable to reach an agreement.

Final Recommendation

Upon consideration of the evidence and arguments presented by the parties, the fact-finder recommends that the Employer's proposed language regarding a no-fault attendance policy should not be incorporated in the new contract. The Employer presented insufficient evidence regarding the necessity of such a policy for this particular bargaining unit. The record establishes that while other City departments may have problems with attendance and high rates of absenteeism, no such issues exist with the Safety Supervisors in this bargaining unit. Although the Employer stresses the fact that the Safety Supervisors should appreciate the need to curb sick leave abuse, there is no demonstrated need for the proposed no-fault attendance policy to curb sick-leave abuse in this department as there is no such proven activity by members of the bargaining unit.

Additionally, the fact-finder notes that in contrast to the above issues concerning longevity and life insurance, an established pattern of negotiated contract language pertaining to a no-fault attendance policy is not as clearly defined. In fact, both the IAFF Local 93 and AFSCME Local 100 contracts do not contain the language proposed by the Employer in this

case.[2] The record indicates that slightly more than one-half of the City's bargaining units have such a provision in their respective contracts. The fact-finder also recognizes the Union's reluctance to agree to the Employer's proposed no-fault attendance policy language due to the uncertainty of what the policy may entail and given the fact that it has already indicated a willingness to discuss this issue during the negotiations for the next collective bargaining agreement which commence in approximately nine months.

Issue 4: Article 11 - Leaves of Absence (Sick Leave)

Position of the Employer

Article 11 of the collective bargaining agreement provides, in part, as follows:

* * *

B. Sick Leave Pay

> All regular full-time employees shall be credited with paid sick leave at the rate of ten (10) hours per month. Unused sick leave shall continue to accumulate without limitations.
>
> An employee shall granted sick leave pay for actual illness or injury of the employee or a member of his immediate family, medically ordered confinement due to exposure to a contagious disease, and for medical, dental or optical examination or treatment of an employee or a member of his immediate family. A maximum of twenty (20) hours of sick time will be charged for each twenty-

2. The Employer's Position Statement indicates that an absence-abuse committee was established under the AFSCME contract and there are "no fault" components contained in the attendance policy. However, insufficient evidence was presented as to the precise language and application of the policy under which ARFF Safetymen are subject. (Employer's Position Statement, at 7).

> four (24) hour shift off when utilizing the above referenced sick leave with pay provision (Attachment 1).
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> * * *
>
> (Employer Ex. A).

The Employer has proposed to delete the last sentence of the second paragraph of Section B, "Sick Leave with Pay." (Employer Ex. C; Employer Position Statement, at 14). Under the current provision, bargaining unit employees who utilize 24 hours of paid sick leave have 20 hours of paid sick leave deducted from their accumulated paid sick leave balances. Therefore, the contract language in question affords Safety Supervisors ". . . a 16% increase in the amount of paid sick leave they have available for use and, upon retirement, payment." (Employer Position Statement, at 15). The Employer points out that Safety Supervisors utilized a total of 2,229.25 hours of sick leave in 2014, however, they were only charged 1,649 hours of sick leave. It acknowledges that the current language grew out of a practice which was memorialized by the parties in the 2007-2010 collective bargaining agreement.

During the current round of negotiations, the Employer proposed the elimination of similar language in the contract with AFSCME Local 100. In *City of Cleveland and AFSCME Ohio Council 8, Local 100*, SERB Case No. 13-MED-01-0019 (June 9, 2014, R. Stein), Fact-Finder Robert Stein recommended the Employer's proposal which was subsequently ratified by the members of AFSCME and became part of the 2013-2016 contract. (Employer Ex. H). The Employer notes that "[o]ther than the Division of Fire members of Local 93, none of the City's 7,000 other employees, whether they work 8-hour, 10-hour, or 12-hour shifts (Division of EMS

paramedics), have less than the full amount of paid sick leave deducted from their sick leave bank." (Employer Position Statement, at 15). The current contract language does not comport with either the City-wide pattern or the simple logic that employees should be charged for each hour of paid sick leave actually used. The Employer further asserts that the current language needlessly grants greater sick leave benefits to bargaining unit members over other City employees. Moreover, with the elimination of such language from the contract with AFSCME Local 100, the Employer claims that maintaining the provision for Safety Supervisors will create administrative difficulties and issues with morale.

The Employer maintains that "sick leave benefits should be charged equally" for all City employees. Moreover, Safety Supervisors and Safetymen should be treated identically regarding this matter because they work in the same department. It points out that sick leave is utilized "to help in recuperating from an illness and renders a greater benefit [to bargaining unit employees] than eight hour day employees based on how they use sick leave days." At hearing Chief Davis discussed the manner in which bargaining unit employees utilize sick leave and the pro-rated sick time deduction chart which reflects the applicable "algorithm." (Employer Ex. D). According to Chief Davis, there will be issues if Safety Supervisors continue to utilize the aforementioned sick time deduction chart because such a method for deducting sick time for Safetymen is no longer used. He also claimed that there will be administrative issues as a result of tracking sick leave hours under two different systems. Additionally, Chief Davis stated that there may be some "morale issues and resentment" regarding this issue because Safety Supervisors and Safetymen work side-by-side in the workplace. On cross-examination, he acknowledged that various

administrative duties such as different salary levels and overtime issues already exist, and it is currently a challenge for the one administrative employee assigned to the department "to keep things on track." Chief Davis reiterated that he could foresee issues with two different sick leave systems because there is "room for error with two calculations."

Position of the Union

The Union is opposed to the Employer's proposal which seeks to amend language which has been in the contract since its inception. It claims that the Employer has no rationale to support its position. The Union maintains that the contract language in question addresses the inequity between Safety Supervisors who work an average of 48 hours each week versus the normal 40 hour work weeks of most other City employees. The current language was negotiated to address this inequity by creating a formula which charges 20 hours of sick time for each 24 hour shift off when utilizing the applicable sick leave with pay provision. The Employer proposes that this formula should be changed to provide for a deduction of 24 hours from the available sick leave bank of each employee for each 24 hours of sick leave used. The Union questions ". . . just what has occurred to throw out the original bargained language?" (Union Position Statement, at 4).

The Union further asserts that the Employer is "reaching out to discern a pattern" by comparing Safety Supervisors who are assigned 48 hour work weeks with 40 hour work week employees. It points out that while the bargaining unit members work approximately 20 percent more hours per year than 40 hour work week employees, they earn the same amount of sick leave

per year (120 hours). The sick leave computation contained in the current contract language was created to address this inequity and create parity. (Union Ex. 1).

Local Union president Szabo confirmed that Safety Supervisors incur deductions [in their sick leave balances] at a 20 percent lower rate to make them comparable to other City employees." Although Chief Davis claimed that Safety Supervisors receive 16 to 17 percent more usable sick time than other employees, local Union president Szabo pointed out that they also work 20 percent more hours. He asserted that the Employer's proposal would reduce the time off received by Safety Supervisors relative to the number of hours that they work. This is very troublesome because this bargaining unit engages in safety sensitive work.

Final Recommendation

For the following reasons, the fact-finder recommends that there should be no change to the second paragraph of Section B of Article 11 as proposed by the Employer. Although the Employer maintains that sick leave benefits should be charged equally for all City employees, it does not suggest that such benefits should be equally earned by those employees based upon hours worked. The record establishes that while Safety Supervisors work approximately 20 percent more hours than most other City employees, they still earn the same amount of paid sick leave (120 hours per year). Safety Supervisors do not earn a corresponding higher number of paid sick leave hours in relation to hours worked. Therefore, it is clear that sick leave is not earned/accrued uniformly by City employees in relation to the number of hours that they work, notwithstanding the fact that additional sick leave hours may be needed in order to cover leaves

of absence occasioned by working a schedule such as the Safety Supervisors, which entails a greater number of required work hours.

The past practice of the parties, which was incorporated into the 2007-2010 collective bargaining agreement, addressed this precise issue. Insufficient evidence was presented by the Employer to deviate from the previously agreed language drafted by the parties to account for the particular work schedules of Safety Supervisors and the manner in which paid sick leave is charged for leaves of absences covered under Article 11 of the contract. The fact-finder notes that the City's contract with Big 93 also contains language which provides that 20 hours of sick leave is charged for every 24 hours of sick leave used by Fire Department employees. (Employer Exhibit F). There are a number of factors which may result in departures from pattern settlements with multiple bargaining units. The very nature of the work schedules of Safety Supervisors differentiates them from almost every other employee of the City with the exception of Safetymen represented by AFSCME Local 100 and Fire Department employees represented by IAFF Local 93. As a result, the language contained in the collective bargaining agreement between the parties necessarily contains various provisions that reflect the particular characteristics of the bargaining unit which differ from other bargaining units in the City.

In further support of a recommendation that the current contract language should be maintained, the fact-finder concludes that insufficient evidence was presented by the Employer that it would experience increased administrative burdens if its proposal was not adopted. Additionally, any assertion by the Employer regarding issues with morale is purely speculative at this point. The fact that AFSCME Local 100 agreed to accept the recommendations of a Fact-

Finding Report, which included sick leave charging language similar to that proposed by the City here, is not controlling or persuasive in this matter based upon the evidence of record before the fact-finder. Current contract language shall be maintained.

Issue 5: Article 31 - Substance Abuse Policy

Position of the Employer

Article 31 of the collective bargaining agreement provides, in pertinent part, as follows:

* * *

2. Definitions

* * *

(e) The term "Alcohol Test" means a test selected and certified under Federal Standards. An initial positive level of .04 grams per 210L of breath shall be considered positive for purposes of authorizing a confirming alcohol test. . . .

* * *

(Employer Ex. A).

The Employer's proposal regarding this issue is, as follows: "Amend Article 31, Section 2(e) to establish '.03 grams per 210L of breath' as 'positive' for the purpose of authorizing a confirming alcohol test." (Employer Ex. C; Employer Position Statement, at 17). The Employer has reached agreements regarding this issue with all but one of the bargaining units that have ratified their contracts to date and only this Union and IAFF Local 93 have insisted on proceeding to impasse. The Employer has proposed a reduction in the BAC testing threshold in

order ". . . to more effectively identify employees who are under the effects of alcohol in the workplace." (Employer Position Statement, at 18). Because they are a supervisory unit, the Employer would expect the Safety Supervisors to support this proposal. It notes that AFSCME Local 100 which represents the Safetymen has already agreed to this proposed language in their contract. The Employer suspects that the Union's opposition to the proposed language stems from its desire to gain leverage in this proceeding by presenting another open issue. The record clearly establishes pattern bargaining regarding this issue as 24 of the 31 unions have accepted the Employer's proposal to reduce the threshold level for a positive test from .04 to .03.

Position of the Union

The Employer has proposed that the long-standing substance abuse policy be modified by lowering the BAC threshold for a positive test from .04 to .03. In opposition to the Employer's proposal, the Union contends that nothing has occurred in the past three years to demonstrate a necessity to modify paragraph 2(e) of Article 31 of the contract. The Union questions "[j]ust what is the (non-percentage) difference between the current .04 and the proposed .03?" (Union's Position Statement, at 4). The Union points out that the substance abuse policy already contains language allowing "reasonable suspicion" testing.

At hearing the Union indicated that it "did not know why this issue is coming up." It speculated that the Employer's proposal may be related to workers' compensation benefits or a mandate by the federal government. According to the Union, "there is no difference between .03 and .04 levels." Therefore, there is no need to change the current contract language. The

Employer presented no evidence of any "on or off duty substance abuse situations by supervisors."

Union president Szabo confirmed that IAFF Local 93 has not accepted the Employer's proposal to lower the BAC threshold for a positive test from .04 to .03. He also indicated that no bargaining unit employees have been referred to EAP. On cross-examination, Szabo testified that he was opposed to lowering the level for a positive test because the parties should "build on the prior collective bargaining agreement," and "default to a position that both parties are familiar with." He stated that there is a "communication gap when there is a change just for the sake of a change." While the Union does not want employees "coming to work impaired," local Union president Szabo claimed that there are "problems with false positives because employees are put in difficult situations." The Union notes that Chief Davis acknowledged on cross-examination that there have been no drug or alcohol related issues with any Safety Supervisors during the past three years.

Final Recommendation

Based upon the evidence of record presented regarding this issue, the fact-finder concludes that the Employer's proposal to lower the threshold for a positive test from .04 to .03 grams per 210L of breath for purposes of authorizing a confirming alcohol test should not be incorporated in the new collective bargaining agreement. The arbitrator notes that the contract specifically provides, in part, that "[t]he term 'Alcohol Test' means a test selected and certified under Federal Standards." (Employer Ex. A, at 50). There was no evidence presented by the

Employer that the applicable federal standard for a firm positive test has been lowered from .04 per 210L of breath regarding alcohol testing. There was also no showing by the Employer of the need to modify the parties' previously negotiated language regarding this issue.

While both the Union and Employer recognize the importance of the principle that employees should not be impaired by drugs and/or alcohol while performing their duties, there is no evidence that any bargaining unit employees have failed to comply with this obligation. Chief Davis himself acknowledged that there have been no drug or alcohol problems with any bargaining unit employees during the past three years. In fact, the record is absolutely void of any such issues with the Safety Supervisors. The contract sets forth the basis for ordering bargaining unit employees to be tested for drug and alcohol abuse, including reasonable suspicion testing, post-accident testing, random testing, and return to duty testing. The Employer made no showing that the various forms of testing for drug and alcohol abuse permitted under the terms of the collective bargaining agreement have not been effective in identifying employees who are under the effects of alcohol in the workplace. For each of these reasons, the fact-finder recommends the current level for a positive test be maintained.

/s/ Jonathan I. Klein
Fact-finder

Dated: April 11, 2015

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Thomas M. Hanculak, Esq., Diemert & Associates Co., L.P.A., Attorney for Union, at 1360 S.O.M. Center Road, Cleveland, Ohio 44124, tmhanculak@aol.com; and upon Patrick J. Hoban, Esq., Zashin & Rich Co., L.P.A., Attorney for City of Cleveland, at 950 Main Ave., 4th Floor, Cleveland, Ohio 44113, pjh@zrlaw.com; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, donald.collins@serb.state.oh.us; each by electronic mail this 13th day of April 2015.

/s/ Jonathan I. Klein
Fact-finder