

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**IUPA AFL-CIO, LOCAL 32**

**AND**

**THE CITY OF UPPER SANDUSKY, OHIO**

**SERB CASE # 12-MED-09-1016**

**SERB CASE # 13-MED-06-0782**

**Robert G. Stein, Fact-finder**

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## INTRODUCTION

The parties to this matter are IUPA Local 32 (hereinafter "Union") and the City of Upper Sandusky, Ohio (hereinafter "Employer" "City," "Department"). The Employer is located in central Ohio. According to the documentation provided to the fact finder, the bargaining unit is comprised of approximately ten (10) Police Patrolmen and Lieutenants.

**General/State/Local Economic Overview:** Caution and uneasiness have marked the years since the "great recession" was declared to have ended on a national level. Of course, what is often declared to be ended nationally does not always translate at the local level, particularly in Ohio, which has had more than its share of job losses prior to and as a consequence of the great recession. Recovery has been incremental since 2008. It has been marked by unevenness and was unaided by considerable national political discord, which only recently has shown signs of incremental improvement. (E.g. Farm Bill, Budget passage) In spite of the prolonged gridlock in Congress over most issues, which did little to relieve economic uncertainty, the private sector has continued to add jobs (see latest BLS on 215,000 jobs created in November, and 184,000 jobs created in October, again in uneven numbers, but resulting in a lowering of the national unemployment rate to 6.7%). The stock market, which had a banner year in 2013, in January of 2014 has experienced some retrenchment and in spite of some recovery so far in February, is very vulnerable to national and international events. The index of manufacturing activity continues to rise hitting 57 in December and in stark contrast to 32.5 that existed in December of 2008. This may be "signaling strong demand at home and abroad that could boost growth prospects into next year." (WSJ, 12-3-13). What remain to be seen are the depth, breadth, and strength of the recovery from the recession and while there is reason to be optimistic regarding eventual recovery, there is much to be said as to what form. Lessons learned from the recession and the advancement of technology questions the way things used to be done and are affecting the nature of the recovery. Business has learned to be more efficient and do more with less or with part-time rather than full-time employees. One sign of the growing strength of employment is in manufacturing, adding some 27,000 jobs to elevate the factory employment nationally above 12 million for the first time since 2009. Moreover,

factory workers are averaging 4.5 hours of overtime per week, which is an increase of 10% over last year. (Josh Boak, Associated Press, 12-9-13) In Ohio the majority of manufacturing jobs are related to transportation, which has experienced sustained recovery. Yet, caution still exists and there is still cause for concern in the number of people unemployed. Currently there are more than 4 million people who have been unemployed for 6 months or more. The number of those who have been unemployed for more than 18 months has not changed significantly in spite of the aforementioned growth. Complicating the future more is the fact that extended unemployment benefits (28 weeks beyond the average of 26 weeks) for approximately 1.3 million Americans (approximately 40,000 in Ohio) expired on December 28, with the addition of another 800,000 that will see their unemployment benefits expire during the first two months of 2014, unless Congress approves extensions. Affecting things even more broadly is the fact that for millions of workers income has not changed markedly for several years. ("Incomes are Flat, Reflecting a Slowdown in Job Growth, but Consumer Spending Rises," Associated Press, 2-2-14)

The economy in Ohio has shown slow signs of improvement from a very long and severe national recession. Substantial activity has been initiated in the areas of shale gas and oil exploration, with a promise of billions of dollars of added income to Ohio in the future. ("Shale gas and oil will add \$5 billion to Ohio's economy by 2014, say economists" by John Funk, Plain Dealer, 2-29-12) And some would argue that jobs created from this exploration provide more employment for out of state workers than those who live in Ohio. ("Fracking: So where's the economic boom that was promised?" by Spencer Hunt and Dan Gearino, Columbus Dispatch, January 28, 2014) In 2012 additional jobs were created in Ohio, but in most of 2013 there have been signs that progress has stalled with the rate of job creation slowing down from the rate of growth previously experienced following the declared end of the recession. For example, in 2013, sustained job growth in Ohio never lasted longer than two months and several times in 2013 Ohio experienced the worst or second worst job losses in the country. ("Ohio added jobs in December", Frolik, Dayton Daily News, January 24, 2014) Simply put, 2013 has been a roller coaster ride of gaining and losing jobs. What holds for 2014 is not certain on a statewide perspective.

The local economy in spite of having to adjust to declining revenue from the state of Ohio (50% reduction in Local Government Funds, the elimination of the Estate Tax a loss of several hundred thousand per year, loss of Intangible Personal Property Tax) appears to be stable.

The parties brought seventeen (17) issues to fact finding. The fact finder, at the request of the parties, entered into mediation for several hours and was able to assist the parties in reaching tentative agreement on eight (8) issues in dispute. In spite of considerable effort made by the two very experienced advocates along with the fact finder, the parties, while making progress in terms of understanding, were unable to reached tentative agreement on the remaining nine (9) issues leading to the necessity of a hearing. The items specifically addressed by the fact finder in this report are based upon the evidence and arguments proffered by the Union and the City. The recommendations contained in this report are intended to conform to the statutory criteria that all fact finders must follow.

## **CRITERIA**

### **OHIO REVISED CODE**

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties

6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

### **Issue by Issue Summary of the Parties' Positions and Discussion:**

The Union's and the Employer's detailed position and rationale on each unresolved issue can be found in their respective Pre-hearing Statements and in evidence in the record. However, in summary the proposed position of each party is as follows:

#### **ISSUE 1      ARTICLE 11      HOURS OF WORK/OVERTIME**

**CITY:** The City is proposing the following language (**bold/highlighted/cross out**) be added to Article 11:

#### **ARTICLE 11 HOURS OF WORK, OVERTIME**

**Section 11.1.** Current contract language.

**Section 11.2.** Current contract language.

**Section 11.3.** . ~~In lieu of overtime pay, an employee may request to accumulate compensatory time at the rate of one and one half (1½) hours for each overtime hour worked. Any compensatory time in excess of one hundred (100) hours shall be paid at an overtime rate of pay. Usage of compensatory will be subject to the approval of the Chief of Police based upon the operational needs of the department and in compliance with the Fair Labor Standards Act (FLSA).~~ **All hours worked in excess of eighty-four (84) hours during the fourteen (14) day pay period shall be paid in accordance with Section 11.1 herein.**

**Section 11.4.** With the approval of the Chief of Police, or designated representative, employees may exchange days off **and/or** work assignments **shifts**. Such exchanges shall not affect the active pay status of either employee. This applies to police employees only.

**Section 11.5.** Current contract language.

**Section 11.6.**

A. Overtime shall be voluntary and not required except in situations which are deemed necessary by the Chief of Police or designated representative.

~~B. Any employee working in excess of his/her regularly scheduled shift, will be compensated at an hourly premium overtime rate equal to one and one half (1½) the employee's regular straight time hourly rate of pay for all such excess hours and fractions thereof.~~

**B.** Call-in Pay is defined as payment for work assigned by the City and performed by an employee at a time disconnected from the normal pre-scheduled time for work. ~~Work done in this manner shall be compensated at a premium overtime rate on one and one half (1½) times the employee's regular hourly rate of pay with a minimum of three (3) hours paid per day.~~ **Any employee called in at a time disconnected from his/her scheduled work shift will be paid for a minimum of two (2) hours at the applicable hourly rate.**

~~C.~~ Current contract language.

**Section 11.7.** Current contract language.

\*\*\*\*\*

**UNION:** The **Union** is proposing the following modifications to Sections 11.3, 11.7(2),

Special Duty and 11.7(3) Schooling/Training:

Section 11.3. In lieu of overtime pay, an employee may request to accumulate compensatory time at the rate of one and one-half (1 ½) for each overtime hour worked. Any compensatory time in excess of ~~one hundred (100)~~ **one hundred and seventy-five (175)** hours shall be paid at an overtime rate of pay. Usage of compensatory will be subject to the approval of the Chief of Police based upon then operational needs of the department and in compliance with the Fair Labor Standards Act (FSLA).

Section 11.7

2. Special Duty: Whenever the City is requested to provide security personnel for special community or civic functions such as, but not limited to, the festival of lights, car show, summer sizzle, and safety pup, such work assignments shall first be offered to ~~part time and/or auxiliary employees in a non overtime status before offering such work to full-time employees.~~ If sufficient personnel cannot be ~~obtained utilizing this method, the assignment shall be posted for bid by the full-time employees with the assignment being given to the most senior employee bidding.~~ If sufficient staffing is not obtained in this manner, the assignment may be filled as the Chief of Police determines. **bargaining unit employees in**

**order of seniority. If the City's manpower needs for such special events are not fully filled after offering said work to bargaining unit employees, the City may then fill the remainder of its manpower needs for said special events work by using auxiliary personnel.**

3. ~~Schooling/Training: Whenever additional personnel are needed due to a full-time employee's absence to attend work related training or schools, the Employer may utilize part time or auxiliary personnel to cover the full-time employee's absence.~~

**Whenever the employer determines additional personnel are required to replace a full-time bargaining unit employee due to a full-time employee's absence to attend work related training or schools, such work assignments shall be offered to available full-time bargaining unit personnel, utilizing a rotating list based on seniority, before offering such work to any part-time or auxiliary employees.**

The Union proposes current language all of provisions contained in Article 11

**Section 11.3.** The City's is proposing to eliminate the accrual of compensatory time and to raise the threshold to accumulate earn overtime to eighty-four (84) hours. It argues that bargaining unit employees are scheduled to work 78 fewer days, have 50% more holiday leave, and have between 5% and 10% more vacation time than non-bargaining unit employees who have the same length of service. Moreover, additional time off is afforded to the bargaining unit as the only employees in the City who have compensatory time. The City claims that compensatory time costs more than paying overtime because in a department of some ten (10) employees it is difficult to maintain adequate staffing. The use of compensatory time creates staff shortages in situations where employees already have considerable leave time. In terms of the 84 hour proposed threshold, the City argues that overtime should be based upon the biweekly work period of seven (7) twelve (12)-hour workdays. The Union proposes to increase the amount of compensatory time that can be accrued. It rejects the City's argument that there is a staff shortage that would make it

difficult for the City to grant a larger bank of compensatory time for each employee and points out that staff shortage presumably can be minimized due to the fact that the use of compensatory time has to be approved by the Chief.

**Section 11.4.** The City argues it is simply seeking clarification by changing the word “assignments” to “shifts.” The Union proposes current language.

**Section 11.6 (B).** The City argues its proposal to eliminate 11.1 is because Section 11.1 already sets the standard for overtime payment and it wants to eliminate contradictory language.

**Section 11.6 (C).** The City argues that this section should be relabeled to (B) and the City is proposing that the minimum call-in time be reduced to two (2) hours at the applicable rate. It argues that frequently police officers who are required to appear in court spend far less time engaged in this duty than justifies the 3 hours of overtime they are currently entitled to under this section. The City proposes to realign the minimum amount of pay to what more realistically occurs regarding average obligatory court time. The Union rejects this reduction, arguing court time obligations are unpredictable at best and this provision has served both parties’ interests.

**Section 11.7. (1) and (2).** The Union argues that overtime opportunities should be offered to full time employees prior to part-time or auxiliary personnel in cases of special event work and to fill-in for full-time officers who attend schooling/training. The City proposes current language arguing that the language of 11.7 represents a detailed previously negotiated compromise granting the City the ability to provide auxiliary officers with opportunities to work special duties outside of traditional police officer duties, while affording full-time officers opportunities to gain additional training and schooling.

**Discussion.** Both the City and the Union proposed several changes to this Article. The facts are insufficient to justify a change in what appears to be carefully negotiated “balanced language” in which both parties benefit and that has served the parties over several years. The history of bargaining is critical in this regard. The fact finder also finds that the interest and welfare of the public continue to be served by the ability of the City to effectively utilize auxiliary personnel for special events, while creating opportunities for bargaining unit members to receive training and or schooling to maintain and improve their skill levels. The Union’s point that the amount of contractual time allotted for court time has stood the test of time particularly when considering the inherent unpredictability of court proceedings is persuasive. Finally, the changes from both parties to Section 11.3 are not supported by the facts. The 100 hour maximum accumulation of compensatory time is arguably very competitive and the trend in public sector bargaining in Ohio is to not increase this liability for employers. Other changes being proposed by the City and Union are not supported within the context of the remaining recommendations contained in this report.

#### **RECOMMENDATION**

**MAINTAIN CURRENT LANGUAGE**

**ISSUE 2      ARTICLE 12 WAGES**

**UNION:** The **Union** is proposing the following wage increases:

- Effective January 1, 2013:            2.5%**
- Effective January 1, 2014:            2.75%**
- Effective January 1, 2015:            3.0%**

The Union also proposes current language for Sections 12.2 and 12.3, but proposes to add:

**New Section 12.4. Bargaining unit employees with ten or more years of service with the City shall receive a three (3) percent increase in addition to the wage rates called for in Article 12.**

**CITY:** The City is proposing the following wage increases:

- Effective January 1, 2013:            0%**
- Effective January 1, 2014:            1.0%**
- Effective January 1, 2015:            1.0%**

The Union argues that the City has the financial resources (See Wyandot Auditor's Financial Report) and has experienced significant increases in income tax revenue in 2011 (23% above 2011 totals) and in 2012 (18% above 2011 totals). It asserts that its proposed wage increases are modest when considering that its bargaining unit officers need reasonable wage raises in order to catch up or remain competitive with police officers in other comparable jurisdictions. The Union also proposes new Section 12.4 arguing that it is simply proposing an additional 3% because that amount was provided in the past to other City employees who had 10 or more years of service.

The City argues that police officers in the City have fared better in terms of wages than has the other safety force in the City. In 1997 police officers and fire fighters were on par in

terms of pay, but since then the patrol officer's unit has received substantial wage increases (e.g. 11% in 1998) that has resulted in police officers making almost \$2,700 more than firefighters today. The City points out that in 6 out of the last 15 years police officers have received higher wage increase than other City employees. (See City Ex. Wages Tab) Moreover, police officers have reduced their hours of work to 2080 from 2184 in 2007 when they went from 12 hour days to 8 hour days, but then in 2010 the new Mayor restored their 12 hour shifts, resulting in them again working 2184 hours. However, when the Mayor returned bargaining unit employees to 12 hour shifts they receive the benefit of a higher hourly wage that was based upon an eight hour shift and was not readjusted on an annual basis. The City argues that this change resulted in police officers receiving an additional 5% increase in annual pay and no other City employee made this gain in wages.

**Discussion.** The facts and testimony and the City's finances support an adjustment in pay to maintain (approximate) the value of current wages adjusted for moderate inflation that has occurred in recent years. While there is no way to project the future, during the past 5 years (2009 -2013) inflation has varied from - 3% to + 3.2% and has averaged 1.6% over this period of time. And, at the end of January 2014 it was 1.6%. (See BLS statics) It is also noted that because negotiations have dragged on so long, past what would have been the first year of the successor CBA or 2013, it is generally of greater service to parties in a situation like this to take a respite from negotiations and not to have to bargain all over again within a short period of time. The recommendations in this report are intended to be maintenance wage increases, in other words wage increases that when averaged over a three year period approximate inflation (based upon the past 5 years) in order to maintain

the relative value of wages during the life of the Agreement. This approach is being commonly applied in other comparable public sector jurisdictions in Ohio, with wages being pegged in and around the rate of inflation. It is noted that firefighters negotiated increases of 1% for each year of their CBA, and while close, this wage increase falls somewhat short of the rate of inflation. However, it is also noted that firefighters can increase their compensation further through gaining certification, an option not available to the bargaining unit. This additional gain takes the wages of firefighters closer to 2%.

### **RECOMMENDATION**

**January 1, 2013 through December 31, 2013: Maintain Current Language**

**Retroactive to January 1, 2014: 2.0%**

**Effective January 1, 2015: 2.0%**

**Effective January 1, 2016: 2.0%**

### **ISSUE 3 ARTICLE 16 MEDICAL BENEFITS**

The City proposes the following changes to Article 16:

#### **ARTICLE 16** **MEDICAL BENEFITS**

**Section 16.1.** ~~The City shall provide medical and hospitalization insurance coverage to each full-time bargaining unit employee as provided in this article.~~

~~Effective July 1, 2007 and thereafter, the Employer shall offer at least two (2) medical and hospitalization insurance plans.~~

~~Plan A shall provide similar coverage as contained in the City's health insurance plan in effect on January 2010, unless modified by agreement of the parties or as provided in Section 16.5 below.~~

~~Plan A Base Costs: The employee's base cost for Plan A shall be equal to 10% of the total cost (2010 premium rates for Plan A), effective beginning in April 2010, collected in March 2010.~~

~~A. single person, \$60.94 per month;~~

~~B. two (2) party, with no additional dependents, \$97.54 per month;~~

~~C. two (2) party, with additional dependents, \$146.28 per month.~~

~~Plan A Increased Costs: Any increases in costs for medical and hospitalization insurance coverage for Plan A above the rates in effect for 2010 shall be paid 75% by the Employer and 25% by the employee up to a maximum employee contribution equal to 15% of the total premium cost for health insurance coverage in 2011, and 20% of the total premium cost for health insurance coverage in 2012.~~

~~Plan B shall provide coverage as determined by the Employer. Bargaining unit employees shall pay the same share of the cost of Plan B as the City requires non-bargaining unit employees to pay.~~

~~Employees may elect annually by no later than November 30 to participate in Plan A or Plan B, or may decline insurance coverage at any time.~~

~~Bargaining unit employees shall pay no more than non-bargaining unit employees pay for Plan A.~~

**The employer shall continue to provide to each full-time bargaining unit employee and their eligible dependents during calendar year 2013, the current medical and hospitalization insurance plan, Plan A, at the current cost, as in effect at the time this agreement is signed.**

**Effective January 1, 2014, the City shall offer the same standard medical and hospitalization insurance plan to each full-time bargaining unit employee and their eligible dependents as offered to the majority of the City's non-bargaining unit employees. This standard plan shall be offered to each bargaining unit employee at a cost not to exceed that paid by the majority of the City's non-bargaining unit employees.**

**In the event of an increase in the cost of the standard health insurance plan for 2014, each bargaining unit employee's cost for such plan during calendar year 2014 shall not exceed fifteen percent (15%) of the total premium cost of the respective plan (i.e. single, two party, family) that applies to the employee.**

**In the event of an increase in the cost of the standard health insurance plan for 2015, each bargaining unit employee's cost for such plan during calendar year 2015 shall not exceed twenty percent (20%) of the total premium cost of the respective plan (i.e. single, two party, family) that applies to the employee.**

**Should the City offer a separate, enhanced medical and hospitalization insurance plan (i.e. lesser deductible, coinsurance, etc.) during the life of this agreement, the City will offer such a plan to bargaining unit employees at the same rates and costs as offered to non-bargaining unit employees.**

**Section 16.2.** The City's obligation to make insurance contributions on behalf of an employee shall cease immediately upon the Employee's termination from employment, layoff for thirty (30) consecutive days, or commencement of any leave of absence without pay **other than family and medical leave.**

**Section 16.3.** Eligible employees ~~may elect to contribute premiums~~ **electing to participate in the City's insurance plan** as provided for in this Article ~~and, upon election~~ shall authorize the City, in writing, to deduct from such Employees' wages the necessary contributions **for the employee's share of the premium cost.** In the event that any employee ~~shall not~~ elects to **not** contribute as provided herein, or ~~shall~~ refuses to authorize the City to deduct necessary contributions, the City shall be authorized to remove such employee's name from the affected insurance program and thereafter the City shall not be obligated to make contributions on behalf of such employee.

Nothing herein shall prevent any employee at any time from voluntarily declining to participate in any insurance program. In the event of such voluntary decision not to participate, the City shall be relieved of any obligation to make contributions on behalf of such employee.

**Section 16.4.** The City shall establish a fund to which it will contribute a maximum of \$575 per year for a single person; \$625 for an employee plus one (1) dependent; and \$750 for an employee with more than one (1) dependent per year per non-probationary employee. These monies shall be used by the employee **and the employee's family members covered by the City's medical insurance plan** for the reimbursement of any dental and/or optical expenses not otherwise covered by insurance. Payment may also be requested in the form of a joint check, payable to both the employee and the provider, in instances where the employee has not advanced payment for the completed services. This benefit is available to only non-probationary employees, ~~their spouses and their dependents.~~ **and covered family members.** Unused portions of the employee's annual fund ~~are forfeited~~ **may be carried over for one (1) additional year.** For the purpose of this section "family" means the full-time employee, his/her spouse, and the employee's dependent children who are covered by ~~or eligible for coverage under~~ the City's then existing ~~policy of~~ medical and hospitalization insurance ~~coverage~~ plan.

The reimbursements provided by this section for dental and optical expenses, shall only be paid after the employee or covered family member has received the professional service or product (e.g., eye glasses, dentures, braces, etc.). Said dental and optical funds may not be used to purchase dental or optical insurance or to purchase any type of prepaid dental or optical plan.

**Section 16.5.** The City shall have the right to change insurance carriers and or programs, ~~provided the same or comparable benefit levels are maintained for Plan A.~~ The parties agree to

~~work cooperatively in an attempt to control the rising costs of health insurance coverage. In furtherance of this objective, the Union and Employer may mutually agree to change benefit levels.~~

~~Any changes in coverage mandated by state or federal law shall automatically amend the coverage provided by the City. The union shall be provided written verification of the state or federal mandate.~~

~~Procedural changes under Insurance Plan A which do not adversely affect the economic benefits provided to the employees may be made upon notification to the union.~~

~~The City shall have sole discretion to determine, amend, or modify Insurance Plan B.~~

**Section 16.6.** Employees who choose to opt out of coverage under the Employer’s medical and hospitalization insurance plans shall receive a monthly payment as follows for each month they remain not covered by the Employer’s plans:

Employees eligible for single coverage .....	\$50.00 per month
Employees eligible for two (2) party coverage.....	\$75.00 per month
Employees eligible for two (2) party with additional dependents .....	\$100.00 per month

Employees may choose to opt out of coverage under the Employer’s plans at any time but may only re-enter a plan during the open enrollment period or as otherwise provided under the terms of said health insurance plan.

**If an employee’s spouse also works for the City, both employees must opt-out of coverage under the City’s medical and hospitalization plans in order for either employee to be eligible to receive the above payment. If both employees do elect to opt-out, both shall be eligible for the applicable payment outlined above based on the coverage previously provided.**

The City’s argument, taken directly from its Pre-hearing statement best summarizes its rationale for changing the health care plan, which it argues actually provides more or at least the same coverage for less costs to both the City and the employee. It is as follows:

*“The Employer has proposed several changes to this article. The most significant portion of the proposal is in regard to the health and hospitalization insurance plans offered to the bargaining unit employees. The Employer’s primary goal is to offer the same health insurance plan to all City employees.*

**Section 16.1.** *The employees in this bargaining unit are the only employees in the City currently covered by what is referred to as Plan A. The 10 employees in the bargaining unit are preventing the Employer from seeking any cost-saving changes to the existing plan A or from implementing*

*a single plan which would result in savings from having a larger insured group, which spreads the insurance company's exposure.*

*The bargaining unit's unyielding position on insurance coverage is driving the costs higher for Plan A. The City's insurance broker is advising the City to eliminate Plan A and place all employees on the same basic plan to help control the costs for both the Employer and the employees.*

*Normally, one would see such an uncompromising position from the Union when the Employer is proposing to gut the existing coverage and force employees to pay more. But, in reality, Plan A is costing both the employee and the Employer more money.*

*Under the City's insurance plans for 2013 and 2014, the City's "B" Plans were substantially lower in premium amounts for the employees. In 2013, the City offered the "B2" plan, which offered employee lower annual premiums. However, the greater savings afforded employees begins in the calendar year of 2014. The City is presently required to offer both the A Plan and the B2 Plan, even though the only employees remaining on the A Plan are seven (7) employees from the police bargaining unit. The City's insurance provider informed the City in late 2013 that the total cost to each plan would increase by 25%. That increase caused an exponential growth.*

*The employee's portion of the insurance premium for the B2 plan is \$1,535.04 less over the course of the year than the A Plan. That is, an employee on the B2 Plan will pay \$127.92 less a month in premiums than an employee on the A plan. The premium amounts are a fixed, guaranteed cost of an employee choosing to be on the insurance plan. Typically where there is a great disparity in premium choices, one plan should have much greater out-of-pocket expenses. However, that is not the case in our present situation. An examination of both the A Plan and the B2 Plan shows no such difference between the total out of pocket expense under each plan even though Plan A has a much higher premium cost.*

*For these two plans, should an employee reach the maximum out-of-pocket expenses for the calendar year, combined with the employee's share of the premium, an employee would still have to pay less on the B2 Plan than the A Plan. In fact, the B2 Plan's total potential employee cost is \$835.04 in-network and \$35.04 out-of-network less for family coverage under the B2 plan. Please note that the employee's total cost is less, even if all his claims are out of network.*

*The cost of the A Plan is greater for the City as well. For every bargaining unit employee that chooses the A Plan, the City will have to pay approximately \$3,600 per year more in premiums than if the employee were on the B2 Plan.*

*Plan A creates an unnecessarily small risk pool, separate from the remainder of the City's employees, **which includes all of the non-bargaining unit employees and the City's other bargaining unit — the firefighters.** There is no good reason to maintain Plan A since it is not a good bargain for the employee, and continues to drive the City's health insurance costs higher. Insurance is a product based on risk. The more risk you ask the insurance company to assume, the higher premium they will charge. The trick to controlling insurance costs to a reasonable*

*level is to strike a balance between risk and premium cost. The City has successfully done this with the B2 Plan, which the City controls.*

*The City is proposing to eliminate the current language in Section 16.1, the same as was done in the firefighters' negotiated agreement two (2) years ago.*

*In the firefighters' agreement, the language was replaced with a statement ensuring the firefighters that the City would provide that bargaining unit's employees with the same medical and hospitalization coverage as provided to the City's non-bargaining unit employees.*

*Due to the Police Officer and Lieutenants not settling their collective bargaining agreement, the bargaining unit employees were allowed to remain on Plan A for the remainder of 2013 and continuing into 2014. If the bargaining unit employees remain on Plan A, it will cost the City an additional \$30,205.92 for those two (2) years over the cost of the B1 plan in 2013 and B2 plan in 2014 which all other City employees were using. The City's proposal accounts for employees remaining on Plan A for 2013, but encourages the fact-finder to consider the City's willingness to go one step further by assuring the bargaining unit employees that their cost will not exceed a 15% cap for 2014 and a 20% cap for 2015, and that they will be offered any alternative plan the City elects to offer, also at the same rate as the other bargaining unit employees. While the City would prefer insurance language identical to the firefighters' agreement, it has offered these additional protections in the spirit of compromise to obtain an agreement acceptable to both parties.*

**Section 16.2.** *This section is amended to clarify that an employee continues to be eligible for City-provided health insurance while on family and medical leave.*

**Section 16.3.** *This section is proposed to be amended for grammatical purposes only.*

**Section 16.4.** *The Employer, in response to the Union's previous proposal, is offering to allow employees to carry over the annual amount provided to employees for dental and optical expenses for one (1) additional year.*

*In lieu of purchasing dental and optical insurance, which often is not utilized by all the employees to an extent that justifies its cost, the City elected many years ago to establish a self-funded account to reimburse employees for a portion of their dental or optical expenses. If the employee incurs such expenses, he/she can be reimbursed from the fund. If, however, which has been the City's experience, most employees do not utilize the funds, the money goes back to the City to be used for other purposes. A kind of win/win for both parties.*

*Now, the Union is attempting to increase the amounts provided and to be permitted to use these monies to purchase dental or optical insurance. Most employees don't use the monies currently provided, and purchasing insurance is contrary to the original reason the City was willing to establish such a plan.*

*The Fact-finder should note the clear and unambiguous language which was added to this article during previous negotiations, after having an employee grieve in an attempt to purchase*

*a prepaid dental plan. The last sentence of Section 16.4 clearly identifies the parties' intent from previous negotiations to not use this fund for the purchase of either dental or optical insurance, or any type of prepaid plan.*

*The Employer's compromise is to allow employees to carry over funds that are currently forfeited at the end of each year to the following calendar year. This would allow an employee to accrue monies over a two (2) year period for more major dental procedures or to purchase eyeglasses, while not increasing the City's current contributions to the fund it started voluntarily.*

*The remainder of the Employer's proposed changes to Section 16.4 are to clarify who the City considers currently eligible for dental and optical reimbursements.*

**Section 16.5.** *The City is proposing to delete the majority of the language in Section 16.5 to coincide with the changes made in the firefighters' contract and to permit the City to shop for the best insurance available at an affordable cost. History has shown that the Union uses the language in this section to prevent the City from making even minor changes in the insurance such as requiring a second opinion prior to major operations. Even when the City has attempted to show employees that a change saves them money, the City has been met with an unwillingness to change.*

*The insurance industry is constantly changing, offering different options, adding requirements to help control costs, etc. With the Affordable Care Act (commonly referred to as "Obamacare") looming, who knows what adjustments may have to be made to the City's health and hospitalization plan? The City must have the ability to modify its plan in order to control costs and meet the demands of this changing industry.*

**Section 16.6.** *The Employer opposes any increase in the amounts paid under Section 16.6.*

*The Employer's proposal does seek to clarify that both spouses must waive the health insurance coverage provided by the City in order to receive the cash bonus provided by Section 16.6. This is the current practice and the Employer only seeks to clarify it in the agreement.*

*The Employer respectfully requests that the Fact-finder recommend the above changes in his report".*

The Union's position is straightforward, maintain current language. The Union argues that the current Plan A is superior to Plan B2 and it does not agree with the City that Plan B2 is a far better value for a much lower cost to both the City and the seven (7) members of the bargaining unit who still have Plan A.

**Discussion.** For the past two years and in contrast to the prior decade, health care costs nationally have averaged 4% for family coverage. (“Health Care Costs Climb Moderately, Survey Says,” Andrew Pollack, NY Times, August 20 2013) “Over the period of 2015-21, health spending is projected to grow at an average rate of 6.2 percent annually, reflecting the net result of the aging of the population, several provisions of the Affordable Care Act, and generally improving economic conditions.” ([www.cms.gov/.../NationalHealthExpend](http://www.cms.gov/.../NationalHealthExpend), 11/20/13)

In the experience of this neutral it is the double digit increases that hit employers particularly hard and were commonplace as recently as a decade earlier. And, unless an employer has responded with joining consortiums and found more cost effective plans, substantial cost increases continue for those employers who have not made changes. Even after taking several steps to reduce costs, some employers are still being hit with double digit cost increases. Not only is this an item of major expense to an employer, but along with wages and pension it is arguably one the most important benefits for employees and their families. When it comes to health care coverage, parties in a labor relationship are by necessity allies who would benefit by cooperating to control costs. The parties need some stability since bargaining has dragged on for so long and health care uncertainty has been exacerbated by the troubled roll out of the ACA. The City’s proposal departs from what the fact finder has witnessed over the past several years when an employer proposes a new plan. Often with these proposals there is cost shifting to employees and they are asked to pick up a greater share of the premium. Also, the plan when compared to the old plan is not as comprehensive in coverage and results in greater out of pocket costs to employees in the form of deductibles and co-pays. However, this is a unique situation. What the City is

proposing, largely due to the fact the bargaining unit has had a very costly plan, will result in lower costs to employees for what appears to be very comparable coverage, even if an employee and his/her family has a high health care usage year. The facts do not support the Union's concerns in switching from the A Plan to the B2 Plan. And, if an employee and family have a year where they need little or no health care, the savings to employees and the City in premiums is substantial. In significant part this is due to the consortium the City is in with other jurisdiction for the B2 plan. The fact that, with the exception of the bargaining unit, very few consortium members have an A plan, contributes to its excessive costs for the City and bargaining unit employees. Common sense and economic sense strongly support the City's position in this matter, with a few transitional adjustments to make it easier for the bargaining unit to transition to the B2 Plan.

## **RECOMMENDATION**

### **ARTICLE 16 MEDICAL BENEFITS**

**Section 16.1.** The City shall provide medical and hospitalization insurance coverage to each full-time bargaining unit employee as provided in this article.

**The employer shall continue to provide to each full-time bargaining unit employee and their eligible dependents through the last full pay period in March of 2014, the current medical and hospitalization insurance plan, Plan A, at the current cost, as in effect at the time this agreement is signed.**

**Effective the first day following the last full pay period in March of 2014, the City shall offer the same standard medical and hospitalization insurance plan to each full-time bargaining unit employee and their eligible dependents as offered to the majority of the City's non-bargaining unit employees. This standard plan shall be offered to each bargaining unit employee at a cost not to exceed that paid by the majority of the City's non-bargaining unit employees.**

**In the event of an increase in the cost of the standard health insurance plan for 2014, each bargaining unit employee's cost for such plan during calendar year 2014 shall not exceed**

**fifteen percent (15%) of the total premium cost of the respective plan (i.e. single, two party, family) that applies to the employee.**

**In the event of an increase in the cost of the standard health insurance plan for 2015, each bargaining unit employee's cost for such plan during calendar year 2015 shall not exceed twenty percent (20%) of the total premium cost of the respective plan (i.e. single, two party, family) that applies to the employee.**

**Should the City offer a separate, enhanced medical and hospitalization insurance plan (i.e. lesser deductible, coinsurance, etc.) during the life of this agreement, the City will offer such a plan to bargaining unit employees at the same rates and costs as offered to non-bargaining unit employees.**

**Section 16.2.** The City's obligation to make insurance contributions on behalf of an employee shall cease immediately upon the Employee's termination from employment, layoff for thirty (30) consecutive days, or commencement of any leave of absence without pay **other than family and medical leave.**

**Section 16.3.** Eligible employees **electing to participate in the City's insurance plan** as provided for in this Article shall authorize the City, in writing, to deduct from such Employees' wages the necessary contributions **for the employee's share of the premium cost.** In the event that any employee elects to **not** contribute as provided herein, or refuses to authorize the City to deduct necessary contributions, the City shall be authorized to remove such employee's name from the affected insurance program and thereafter the City shall not be obligated to make contributions on behalf of such employee.

Nothing herein shall prevent any employee at any time from voluntarily declining to participate in any insurance program. In the event of such voluntary decision not to participate, the City shall be relieved of any obligation to make contributions on behalf of such employee.

**Section 16.4.** The City shall establish a fund to which it will contribute a maximum of \$575 per year for a single person; \$625 for an employee plus one (1) dependent; and \$750 for an employee with more than one (1) dependent per year per non-probationary employee. These monies shall be used by the employee **and the employee's family members covered by the City's medical insurance plan** for the reimbursement of any dental and/or optical expenses not otherwise covered by insurance. Payment may also be requested in the form of a joint check, payable to both the employee and the provider, in instances where the employee has not advanced payment for the completed services. This benefit is available to only non-probationary employees **and covered family members.** Unused portions of the employee's annual fund **may be carried over for one (1) additional year.** For the purpose of this section "family" means the full-time employee, his/her spouse, and the employee's dependent children who are covered by the City's then existing medical and hospitalization insurance plan.

The reimbursements provided by this section for dental and optical expenses, shall only be paid after the employee or covered family member has received the professional service or product (e.g., eye glasses, dentures, braces, etc.). Said dental and optical funds may not be used to

purchase dental or optical insurance or to purchase any type of prepaid dental or optical plan.

**Section 16.5.** The City shall have the right to change insurance carriers and or programs, **providing comparable benefit levels are maintained for Plan B2.** The parties agree to work cooperatively in an attempt to control the rising costs of health insurance coverage.

**Section 16.6.** Employees who choose to opt out of coverage under the Employer’s medical and hospitalization insurance plans shall receive a monthly payment as follows for each month they remain not covered by the Employer’s plans:

Employees eligible for single coverage .....	\$50.00 per month
Employees eligible for two (2) party coverage.....	\$75.00 per month
Employees eligible for two (2) party with additional dependents .....	\$100.00 per month

Employees may choose to opt out of coverage under the Employer’s plans at any time but may only re-enter a plan during the open enrollment period or as otherwise provided under the terms of said health insurance plan.

**If an employee’s spouse also works for the City, both employees must opt-out of coverage under the City’s medical and hospitalization plans in order for either employee to be eligible to receive the above payment. If both employees do elect to opt-out, both shall be eligible for the applicable payment outlined above based on the coverage previously provided.**

**ISSUE 4      ARTICLE 19 HOLIDAYS**

The **City** proposes the following changes in Article 19:

**ARTICLE 19  
HOLIDAYS**

**Section 19.1.** Current contract language.

1. New Year’s Day
2. Martin Luther King Day
3. Presidents Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day

8. Veterans Day
9. Thanksgiving Day
10. Christmas Day
11. Good Friday
12. Floating Personal Day

**Section 19.2.** Each bargaining unit ~~member~~ **employee** working eighty-four (84) hours every fourteen (14) days shall receive credit for ~~twelve (12) hours holiday time for~~ each of twelve (12) enumerated holidays. **For each holiday other than the floating personal day, each employee shall receive 8.4 hours of holiday time.** This holiday time will be credited to each individual member on January 1st for all holidays to occur during the ensuing year. This time may then be scheduled off anytime within the calendar year at the discretion of the individual member, subject to the approval of the Chief of Police or his designee. Any unused holiday time that remains at the end of the year it was credited, shall be forfeited. If an employee made a good faith effort to use a holiday before the end of the year and the Chief of Police or his designee did not approve the use of the holiday, the employee shall be allowed to request the carryover of the holiday. If the carryover is granted, the holiday must be used within 30 days from January 1st of the year carrier into or it will be forfeited.

Except in case of a bona fide absence due to illness or other absence authorized by the Chief in his sole discretion, to qualify for Holiday pay, an employee must work the entire shift the last scheduled day before and the first scheduled day after the Holiday.

Each employee will work the regularly scheduled shift through the year regardless of whether or not the regularly scheduled shift falls on one of the above holidays. If a shift falls on a holiday, the employee will be paid the premium overtime rate (i.e., time and one-half [1½] the employee's regular hourly rate) rate for the hours worked on a holiday. If the employee works on a holiday and works in excess of the regularly scheduled shift on that day, such that the employee would be entitled to premium overtime pay, then the employee shall be paid double time for all hours worked in excess of the regularly scheduled shift **on the holiday.**

If an employee is called to work on a **day holiday** which he/she ~~has been scheduled to take holiday time~~ **was not scheduled to work**, he/she will be paid the premium overtime rate as provided in this Agreement for the time actually worked (with a minimum of three (3) hours, to be paid at the premium overtime rate), in addition to the holiday ~~pay~~ **time provided in Section 19.2 above.**

**The holiday shall be the period which begins at 12:01 a.m. on the date the holiday is observed by the Police Division and ends at 12:00 midnight that same date.**

**Notwithstanding the above, bargaining unit employees shall receive one scheduled day off with regular pay for the floating personal day. The floating personal day shall be scheduled off as approved by the Chief of Police.**

**Section 19.3.** Current contract language.

**Section 19.4.** If a member of the bargaining unit resigns, retires, or service is terminated and the member has used holiday time and not been employed for each of the twelve (12) enumerated holidays, then the City reserves the right to recover the holiday time, as that time would be related to the holiday which occurred after the member's termination of employment. This time will be subtracted from the member's accrued but unused vacation time, deducted from the employee's final paycheck, or otherwise recovered by the City.

The City is seeking to reduce the amount of time off for bargaining unit employees who currently enjoy considerably more paid time off than the other employees. In using internal comparable data the City points out:

*“A 15-year non-bargaining unit employee who uses all of his available time off would still work 225.5 days per year. A 15-year bargaining unit employee who uses all of his available time off would work only 153 days per year. The bargaining unit employee’s number could be even smaller if he uses any comp time.”*

The City argues that “a non-bargaining unit employee receives 10 eight (8) hour holidays or 80 hours of holiday time off. While a bargaining unit employee “receives 10 12-hour holidays or 120 hours of holiday time off — 50% more than the non-bargaining unit employee.” In spite of the fact that the bargaining unit employee works only 5% more time annually, therefore, bargaining unit employees should only receive 84 hours of holiday time, or 5% more holiday time to match the additional amount of hours in their normal work year. The City adds, it has no objection to maintaining the personal leave day at 12 hours, and the other proposed changes are not substantive but are for clarification purposes. The Union is proposing current language. While acknowledging the bargaining unit has more holiday time, it argues such an arrangement is consistent with the work schedule of the bargaining unit, and assures they will receive proper pay for being off on holidays.

**Discussion.** With the limited resources available for wage increases and the importance

placed by City on securing a viable health care plan for the bargaining unit, a change of this nature, without an appropriate quid pro quo exchange is not supported by the facts.

## **RECOMMENDATION**

### **MAINTAIN CURRENT LANGUAGE**

## **ISSUE 5 ARTICLE 20 VACATION**

The **Union** proposes the following changes to Article 20:

### **ARTICLE 20 VACATION**

**Section 20.1.** All bargaining unit members shall accumulate and be granted Vacation in accordance with the following schedule:

<u>Completed years of service</u>	<u>Amount of vacation</u>
Less than one (1) year	None
1-7 years	<b>96 hours</b>
8-14 years	<del>132</del> <b>144</b> hours
15-22 years	<del>180</del> <b>192</b> hours
22+ years	<del>228</del> <b>240</b> hours

**Section 20.2.** Current contract language.

**Section 20.3.** Current contract language.

**Section 20.4.** Vacation time shall normally be taken within the anniversary year following the anniversary year during which such hours were accrued. Any vacation hours remaining at the end of the employee's anniversary year shall be paid to the employee at the previous year's rate of pay, up to a maximum of **96** hours. **The payment of vacation hours that are accrued but unused shall be paid to bargaining unit employees in a separate check.** All hours in excess of **96** shall be forfeited.

**Section 20.5.** In case of service retirement, disability, resignation, death, or layoff of the employee, vacation pay accrued shall be paid to the employee, the spouse, or any other beneficiary as provided by statute.

**Section 20.6.** Current contract language.

**Section 20.7.** Current contract language.

**Section 20.8.** Current contract language

**Section 20.9.** Current contract language

The City proposes the following changes to Article 20:

**ARTICLE 20**  
**VACATION**

**Section 20.1.** All bargaining unit members shall accumulate and be granted Vacation in accordance with the following schedule:

<u>Completed years of service</u>	<u>Amount of vacation</u>
Less than one (1) year	None
1-7 years	84 hours
8-14 years	<del>132</del> <b>126</b> hours
15-22 years	<del>180</del> <b>168</b> hours
22+ years	<del>228</del> <b>210</b> hours

**Section 20.2.** Current contract language.

**Section 20.3.** Current contract language.

**Section 20.4.** Vacation time shall normally **be credited at the beginning of and** be taken within the anniversary year following the anniversary year during which such hours were **accrued earned**. Any vacation hours remaining at the end of the employee's anniversary year shall be paid to the employee at the previous year's rate of pay, up to a maximum of 84 hours. All hours in excess of 84 shall be forfeited.

**Section 20.5.** In case of service retirement, disability, resignation, death, or layoff of the employee, vacation pay **accrued credited** shall be paid to the employee, the spouse, or any other beneficiary as provided by statute.

**Section 20.6.** Current contract language.

**Section 20.7.** Current contract language.

**Section 20.8.** If an employee is called in to work on a day on which the employee is

scheduled to take vacation time, the employee will be paid **for a minimum of two (2) hours** at the premium overtime rate ~~for the time~~ **or for the time** actually worked ~~(with a minimum of three (3) hours) or such time shall be credited to the employee's compensatory time at the option of the employee,~~ **whichever is greater. The employee shall also be charged for the vacation day.**

**Section 20.9.** It is the intent of the parties to this Agreement to waive any Ohio Revised Code provisions which conflict with anything contained within this article including, but not limited to R.C. section 9.44.

**Discussion.** The City and the Union are going in opposite directions on this issue. The Union is proposing to enrich the vacation benefit with additional hours at different tenure increments. In contrast, the City is proposing that this benefit be reduced based upon the fact that the bargaining unit has only a 5% longer work period per week and yet after year 8, the amount of vacation time for the bargaining unit is out of proportion to their normal work week, to say nothing of compensatory time that is taken. As with the issue of holidays, changes in this benefit are unsupported by the facts presented by the parties.

## **RECOMMENDATION**

**MAINTAIN CURRENT LANGAUGE**

## **ISSUE 6                      ARTICLE 21 SICK LEAVE**

The **City** proposes the following changes to Article 21:

### **ARTICLE 21** **SICK LEAVE**

**Section 21.1.** An employee shall accumulate sick leave at the rate of 0.0575 hours of sick leave per regular hour worked exclusive of any overtime or call-in hours. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one (1) hour for every hour or part thereof of absence from previously scheduled work.

**Section 21.2.** An employee may use sick leave:

- A. In case of his/her bona fide illness, injury, or exposure to a contagious disease.
- B. For medical, dental or optical examination or treatment **which cannot be scheduled outside of regular working hours.**
- C. Bona fide illness or injury of a member of the immediate family which requires the Employee's personal care and attendance. The City shall be governed by the following guidelines in approving sick leave usage.
  - 1. An employee may use sick leave to take a member of his/her family to or from the hospital and/or doctor, or to make arrangements for the care of the ill or injured.
  - 2. An employee may use sick leave on the day surgery is to be performed on a member of the immediate family if such occurs on a working day.
  - 3. An employee may be granted sick leave on the date of their child's birth and on the day the child is brought home from the hospital, if either occurs on a working day.
  - 4. Sick leave may be used by the employee for convalescence of a member of the immediate family **not exceeding five (5) workdays**, provided it can be shown that the presence of the employee is required.
- D. For exceptional circumstances, as approved by the City at its sole discretion.

**Section 21.3.** An employee ~~who requesting to~~ uses sick leave shall ~~report to~~ **notify** his/her supervisor as soon as possible prior to the beginning of the employee's shift. If an employee knows that he/she will be on extended sick leave, he/she shall inform his/her supervisor. In the event an employee needs a physician's care while on sick leave, he/she shall provide the City with a doctor's statement. ~~For any continuous absence that is in excess of three (3)~~ **or more** working days, the City may require the certification of a physician. In any case, the City may refuse to pay an employee for such leave when the City can show that the absence was not in accordance with this ~~Article~~.

**Section 21.4.** After an employee has exhausted his/her sick leave with pay, **and family and medical leave, if applicable,** such employee may, **at the employer's discretion,** be granted a leave of absence without pay for a period up to ninety (90) days because of personal illness or injury. Said period may be extended to one hundred eighty (180) days at the discretion of the Safety Committee.

**Section 21.5.** Upon the retirement of an employee who has not less than ten (10) years of continuous employment with the City, such employee or beneficiary shall be entitled to receive a

cash payment equal to thirty percent (30%) of the accumulated unused sick leave, up to a maximum payment of six hundred (600) hours. This payment shall be based on the employee's rate of pay at the time the employee applies for retirement under the applicable State retirement program.

**Section 21.6. It is intended that the sick leave provisions contained herein shall supersede and replace any provisions in the Ohio Revised Code addressing sick leave, including but not limited to R.C. sections 124.38 and 124.39.**

**Discussion.** The City proposes the above changes to encourage bargaining unit members to schedule doctor appointments on days off, which are more plentiful because of the bargaining unit's 12 hour schedule. Also, the City is attempting to control time off for taking care of family members and is seeking the ability to insist on medical verification from bargaining unit members who take 3 or more days off. As well as other clarifications in language as well as "*Batavia*" language to waive any potential conflicts between the CBA and the Ohio Revised Code. The Union rejects any changes in the language of Article 21 as being unnecessary and without justification. It proposes current language.

The Union's argument that there has not been proof of abuse to justify the City's proposed changes is persuasive. There was insufficient evidence to support changes in language that apparently have been serving the parties. For the bargaining unit to schedule doctor's appointments during their time off, if they can, are reasonable and logical, but there was no evidence of abuse in this area or in the other areas of change in language being sought by the City. However, what is supported by the facts is the City's inclusion of "*Batavia*" language in order to bring the CBA in line with prevailing law.

#### **RECOMMENDATION**

**Maintain Current Language, except add:**

**Section 21.6.** It is intended that the sick leave provisions contained herein shall supersede and replace any provisions in the Ohio Revised Code addressing sick leave, including but not limited to R.C. sections 124.38 and 124.39.

**ISSUE 7                      ARTICLE 27 MEDICAL EXAMINATIONS**

The City proposes the following changes to Article 27:

**ARTICLE 27**

**MEDICAL EXAMINATIONS**

**Section 27.1.** Current contract language.

**Section 27.2.** Current contract language.

**Section 27.3.** Current contract language.

**Section 27.4.** Current contract language.

**Section 27.5.** When the bargaining unit employee's personal physician and the City selected physician disagree regarding the employee's ability to return to work, ~~the two (2) physicians will mutually select an appropriate physician to provide a third opinion. In the event a third opinion is required, the employee will be placed on sick time if available, pending the examination by the physician jointly authorized in this manner. If the employee is ultimately determined to have been able to perform the essential functions of the employee's position during the period of absence, the sick leave will be reaccrued to the employee's account. The third opinion shall be considered final and binding on both parties.~~ **the employee shall be permitted to have his/her physician contact the City-selected physician to discuss the employee's condition or to submit any additional evidence of the employee's medical and/or mental condition to the physician selected by the City. The City-selected physician's opinion, after reviewing all of the evidence, shall be considered final and binding.**

**Section 27.6.** ~~The uninsured cost of the third opinion shall be paid by the City.~~ For the purpose of this Agreement, a physician shall be defined as a person graduated from a recognized school of medicine and licensed by the State of Ohio to practice medicine.

**Section 27.7.** Current contract language.

**Section 27.8.** Current contract language.

**Discussion.** The City proposes to limit the City's liability with the above changes to Article 27 if an employee is no longer able to perform the essential functions of his/her job. The

Employer wants to remove the third doctor from the process, due to the fact that this approach may result in the City having exposure where an arbitrator may overrule a medical professional. The Union argues these proposed changes are completely unnecessary, the procedure in this Article is not only sound, but it follows precedent in law and elsewhere. Seeking a third medical opinion when there is a disagreement as outlined in Article 27 is a tried, true, and fair method to resolve differences. As a neutral I can appreciate the concern of the City, yet as with other changes being sought by the City in language, there is a lack of supportive data to indicate there has been a problem with the current language serving the parties. Moreover, the Union's point regarding the "third physician selection method" being utilized in the Family Medical Leave Act, serves as an established and tested methodology for resolving differences of opinion that are most likely to be rare given the size of the bargaining unit.

## **RECOMMENDATION**

### **MAINTAIN CURRENT LANGUAGE**

## **ISSUE 8                      ARTICLE 35 DURATION**

The **City** proposes the following changes to Article 35:

### **ARTICLE 35** **DURATION**

**Section 35.1.** This Collective Bargaining Agreement shall be effective ~~January 1, 2010~~ **upon signing by both parties** and shall remain in full force and effect until December 31, ~~2012~~ **2015**, and shall thereafter be continued in full force and effect from year to year and shall be renewed for successive years, unless written notice of termination or a desire to modify, alter, or amend this Agreement is given in writing, via certified mail, by either party, at least ninety (90) days, but no more than one hundred twenty (120) days, before the expiration date. Notice from the union shall be sent to the Mayor. Notice from the City

shall be sent to the Local Union President.

The **Union** proposes a similar timeframe.

**Discussion.** The City argues the Agreement should not become effective until the date it is signed, and practically speaking cannot be retroactive, particularly as it relates to language changes in provisions. The Union disagrees with the City's position. The parties initially proposed during fact finding an ending date of December 31, 2015. However, during the mediation process and in fact finding both parties shared the same concern that an entire year has passed since the CBA has expired, creating a dilemma for both them and for the fact finder. Both parties indicated a willingness to address this dilemma with a new time frame for the Agreement. This delay requires a recasting of the CBA's duration that serves the parties by providing them an opportunity to take a respite from frequent negotiation engagement. Prolonged negotiations create uncertainty and aggravation which is often detrimental to a bargaining relationship, and does little to serve the interest and welfare of the public. In doing so, 2013 then becomes a roll over year for the CBA.

#### **RECOMMENDATION**

**Section 35.1.** This Collective Bargaining Agreement shall be effective **January 1, 2014** and shall remain in full force and effect until December 31, **2016**, and shall thereafter be continued in full force and effect from year to year and shall be renewed for successive years, unless written notice of termination or a desire to modify, alter, or amend this Agreement is given in writing, via certified mail, by either party, at least ninety (90) days, but no more than one hundred twenty (120) days, before the expiration date. Notice from the union shall be sent to the Mayor. Notice from the City shall be sent to the Local Union President.

#### **ISSUE 9      ARTICLE 36 PERMANENT SHIFTS**

The **City** proposes the following changes to Article 36:

**ARTICLE 36**  
**PERMANENT SHIFTS**

**Section 36.1.** Current contract language.

**Section 36.2.** Current contract language.

**Section 36.3.** Current contract language.

**Section 36.4.** Notwithstanding the above sections, the Chief of Police may reassign an employee's shift due to bona fide operational concerns, to deal with shortages in staffing on a particular shift, or for other justifiable reasons.

The City is seeking more flexibility for the Chief of Police to run the Department in terms of his ability to reassign personnel when the need arises. The Union strongly opposes any diminishing of its rights regarding shift assignments arguing that this substantial right for employees to choose a working shift has been and continues to be a significant benefit to employees. Moreover, it argues that with a schedule that has employees working 12 hours shifts the result is considerable coverage with less employees.

**Discussion.** The right of employees to choose their shift by seniority is well established in the history of labor relations both in the private sector and the public sector. However, given the size of the police force and events that may not be able to be planned for in today's world, the Chief carries considerable responsibility in providing a safe environment for the citizens and visitors to Upper Sandusky. The City made a persuasive argument to providing the Chief with additional flexibility to have his police officers respond to emergency events in order to serve the interest and welfare of the public.

**RECOMMENDATION**

**ARTICLE 36**  
**PERMANENT SHIFTS**

**Section 36.1.** Current contract language.

Section 36.2. Current contract language.

Section 36.3. Current contract language.

**Section 36.4.** Notwithstanding the above sections, in cases of threats or acts of terror (foreign or domestic), or in the event of natural or man-made disasters (e.g. tornados, earthquakes, winter storm events, flooding, fires, chemical spills, etc.) or other emergency conditions, the Chief of Police may reassign an employee's shift in order to meet operational staffing needs as determined by the Chief.

**TENTATIVE AGREEMENT**

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this \_\_\_\_ day of February 2014 in Portage County, Ohio.

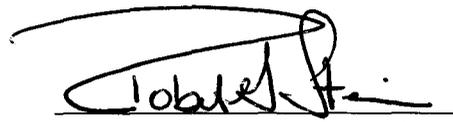
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Robert G. Stein, Fact finder

**TENTATIVE AGREEMENT**

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this 25<sup>th</sup> day of February 2014 in Portage County, Ohio.



Robert G. Stein, Fact finder