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IN THE MATTER OF FACT FINDING

BETWEEN

FRATERNAL ORDER OF POLICE, OLC, INC.

AND

THE CITY OF SPRINGDALE, OHIO

SERB CASES # 13-MED-09-1146, 1147
(Patrol Officers)
(Sergeants and Lieutenants)

Robert G. Stein, Fact-finder

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INTRODUCTION

The parties to this matter are the Fraternal Order of Police, OLC, Inc. (hereinafter "Union," or "bargaining unit") and the City of Springdale, Ohio (hereinafter "Employer" "City," or "Department"). The Employer is located in Hamilton County, which is located in southwest, Ohio. The City is approximately twenty miles north of Cincinnati, Ohio and occupies approximately 5 square miles with a population of about 11,200 residents. The household median income is around $50,000. The mean value of homes hovers around $135,000, and fifty-eight percent (58%) of the residents own their own homes. Twenty-three percent (23%) of the population have incomes below the poverty level. (City's Pre-hearing Statement, p. 2) In the City there are two bargaining units representing the Patrol Officers, Sergeants, and Lieutenants, and a bargaining unit representing Fire Fighters. The Fire Fighters collective bargaining agreement was settled through fact finding in the summer of 2013. Its duration is from January 1, 2013 to December 31, 2015. It provides for wage increases of 2% each year of the contract, a me- too clause (for unrepresented personnel), and the Fire Fighters are now on the same health care plan as unrepresented employees. The patrol officer unit was certified in 1999 and numbers around twenty-five (25). The sergeants/lieutenants bargaining unit has approximately seven (7) members and was certified in 2010. The FOP bargaining units negotiated together. Prior to fact finding the parties met ten (10) times. (FOP's Pre-Hearing Statement, p. 2) The parties declared impasse having yet to resolve three (3) issues. They are Wages, Step Increases, and Health Insurance. The City has signed a G (11) waiver as part of the negotiations process. Through the efforts of well-seasoned advocates and with the assistance of the fact finder, considerable progress was made in understanding these issues, but no tentative agreement

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was reached. As a result the fact finder set the issues aside for fact finding on the same day as the mediation, with the parties providing the fact finder with their evidentiary submissions.

General/State/Local Economic Overview: A mixture of prolonged uneasiness and continued hope for signs of improvement have characterized the mood of the country during 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 immediately 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 painfully slow since 2008, when job losses in Ohio were the second worst in the nation, behind Michigan. However, there appears to be cause for optimism during the first half of 2014. In the last several years the nation and state have been marked by uneven job growth and were unaided by considerable national political discord, which earlier in the year showed signs of a thaw in the long-existing failure of Washington to agree on legislation (e.g. Farm Bill, Budget Bill passage), but has returned to gridlock over issues like immigration reform and foreign policy as the mid-term elections approach. In spite of the long-drawn-out lack of agreement in Congress over many important issues that did little to relieve economic uncertainty, the private sector has continued to lead the way with stronger profits, and in adding jobs but in uneven numbers geographically. In June the national unemployment rate was 6.1%, a drop from 6.7% in the prior month. And in June an additional 288,000 jobs were created. And, while the jobless rate has returned to pre-recession levels in number, what is different is the fact that in Ohio over these many years more people have entered the job market and a sizeable percentage of the jobs that have returned are lower paying jobs, with little or no benefits, in the service industry. In Ohio the April rate was 5.7%, which was approximately the rate in 2008 (May's rate has yet to be announced). Yet, how much of that decline is due to new job creation rather than the effect of people dropping out of the labor market remains unclear. The stock market had a banner year in 2013, but experienced some retrenchment during the first two months of 2014. In May and early June that temporary downturn has reversed and the stock market has demonstrated considerable strength, reaching records highs at the end of June and in the first week of July. The job's report coupled with record stock market highs fully reflect a

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national economy that is steadily gaining sustained momentum, with hopes growth will be sustained. However, anyone who makes it their business to pay attention to these matters will readily admit the U.S. economy remains vulnerable to national and international events such as instability in Iraq, Syria, and Russia's renewed ambition in the Ukraine and possibly beyond. At the end of 2013 some economists predicted that *"There's still a sizable amount of pent-up demand in the consumer and corporate sector,"* and that may be "signaling strong demand at home and abroad that could boost growth prospects into next year." (WSJ, 12-3-13). If the sales of automobiles in May are any indicator this prediction is certainly holding up as we enter the second half of 2014. (Associate Press, 6-4-2014) What remain to be seen long term is the depth, breadth, and strength of the recovery across a broad array of sectors in the economy, and most importantly the creation of good paying jobs in an economy largely driven by consumerism.

Infrastructure issues along with recovery from record severe weather will be a challenge for cities and states across the country and in Ohio for the foreseeable future. Business continues to learn how to be more efficient and do more with less or with part-time rather than full-time employees. In the experience of this neutral, public sector entities in Ohio, having to have endured multiple rounds of severe reductions in state assistance in recent years, are following the lead of the private sector and are very leery to again be put in a position to have to cut back services, make drastic cuts in staffing, reduce benefits, and freeze or reduce wages just to balance their budgets. 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 and underemployed. Many of the jobs being created in Ohio, as in other parts of the country are not the same well-paid jobs, with good benefits that in the past created and sustained a vibrant middle class. Currently there are several million people who have been unemployed for 6 months or more. Complicating the future in another manner 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) What affect this will eventually have on markets and the willingness and ability of citizens to be able to financially support their communities is a question only time will answer.

As previously, stated Ohio's economic picture has been slowly improving, painfully

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slow for many, but hopeful signs of improvement from a very long and severe national recession appear to be gaining momentum. 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) But, as previously stated, the May unemployment rate in Ohio is the lowest it has been since 2008 and it is hoped that most of that is a result of new job creation. What holds for the remainder of 2014 is not certain on a national or statewide perspective, yet signs of a sustained recovery remain hopeful.

The local economy in northeast Ohio is a mixed bag of prosperity, recovery, and continued austerity. Depending upon location some municipalities are prospering, while others are still finding difficulty in adjusting to substantially less revenue from the state of Ohio, the elimination of the estate tax, lower property values, etc. The City of Springdale, like many others in Ohio, has been a passenger on a rollercoaster ride marked by the plunge of severe job losses and foreclosures, and the long, slow, and bumpy ride that has been in motion since the declared end of the recession in 2009. That ride was initially steepened by incremental elimination of loss of tangible personal property tax, and then made more jarring through severe "turns" of state legislation that drastically reduced local government funding and eliminated estate taxes, forcing many local governments to hang on while they figured out where to go from here. Again, not all municipalities experienced the same ride. Those who were better off economically were able to cushion their revenue losses with large funding balances and/or growth that were fostered by demographic and economic growth in prosperous geographic pockets of Ohio. The City of Springdale appears to have been able to take steps to lessen the effects of these changes, with a combination of necessary budget cutting, while receipts stabilized and began to improve over time.

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 conform to the statutory criteria that all fact finders must follow.

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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.

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MAIN ISSUES: Summary of the Parties' Positions and Discussion:

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

ISSUES 1 & 2 ARTICLE 11 WAGES AND STEP INCREASES

UNION: Wages are negotiated for the Patrol Officers, and by virtue of the negotiated rank differential the Sergeant and Lieutenant bargaining unit has wages adjusted accordingly. The issue of Step increases applies to the Patrol Officer bargaining unit.

The **Union** is proposing the following:

Wage increases for the Patrol Officers:

January 1, 2014 (retro) 3%,
January 1, 2015: 3%
January 1, 2016: 3.5%

Steps: **Section 3. The step increases for steps 1-4 are automatic each year until the employee has reached and received the step 4 increase and shall occur on the employee's anniversary of their date of hire.**

The Union makes the argument that it has negotiated in good faith with the City since the fall of 2013 and as a show of that good faith it was willing *"to accept lower than proposed wages, however, the employer was unwilling to negotiate insurance issues that have a substantial cost to the employees of these bargaining units."* It asserts that in the total economic context that includes general wages, steps, and health care its position is a fair one. The Union particularly highlighted the issue of automatic annual step increases, which it argues was an issue it won in arbitration, but one in which the City, even following the arbitration, takes a position that is in opposition with the FOP's stand on how step increases should be awarded. Union Ex. A. contains the Union's estimated costs for its proposed increases as well as other supportive data. Union Ex. H. contains the arbitration decision referred to by the Union in which it argues it prevailed on the issue how step increases are to be administered and now proposes to codify this practice in the Agreement. The Union also submitted considerable supportive data regarding its wage related proposals ranging from SERB data to the City's financial condition/outlook (Union Ex. B., C., D., and E.)

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

Wage increases for the Patrol Officers:

January 1, 2014 (retro)	**2%**
January 1, 2015:	**2%**
January 1, 2016:	**1%**

*** The City also proposes that if unrepresented employees receive a greater increase in pay, the bargaining unit shall receive the same increase.**

The City proposes adding the following language to Article 11(Wages) regarding step increases:

Movement from one step to a higher one (i.e. a "Step Increase") occurs at the recommendation of the Chief of Police with the concurrence of the City Administrator. Such movement is normally based on a combination of satisfactory performance and length of service. Step increases are not to be considered automatic or guaranteed. They may be accelerated or withheld based upon an individual employee's performance."

The City argues that *"…over the past six ye*ars, the FOP has received above-average wage increases." The City points out that from 2009 through 2013 the bargaining unit has received through negotiations annual wage increases of 4%, 3.5%, 0%, 2.5%, and 2% respectively. In contrast the City asserts that the nonunion employees in the City have received a compounded wage increase of 8.2% over this same period of time. (See City's Pre-hearing Statement, p.2) During this time the City has felt the effects of both the "Great Recession" compounded by severe revenue cuts from the state of Ohio. The City concedes that revenues are making a comeback, but are still some 4 million dollars below 2007 levels. Projections for 2014 indicate additional revenue losses of some 1.7 million dollars, primarily due to the loss of receipts from the estate tax. (See City's Pre-hearing Statement, p. 3) During this period of revenue losses and some recovery, expenses have continued to rise and are projected to be over 18 million in 2014, up from 17.5 million in 2013. And, while the City indicates it will have a carryover balance at the end of 2014, such balance is projected to be substantially reduced from 2013 levels. The City points out that in its position at fact finding, it is willing to grant the bargaining units any increases received by unrepresented employees should they be higher. The City also avers its proposed annual increases of 2%, 2%, and 1%, will still maintain its competitive position among comparable cities in the area. (See City's Pre-hearing Statement, p. 7) The City argues that step increases should not be automatic or guaranteed and that neither the Patrol Officer's contract nor the Sergeants/Lieutenants' contract specifies how step increases occur. It further asserts that when an employee misses a considerable amount of work, that should be factored into consideration of experience increases, along with increases in job knowledge and skill.

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DISCUSSION: The evidence and arguments proffered by the Union regarding wage step increases is of greater persuasive value in consideration of the statutory criteria of what has historically been usual and customary in public sector collective bargaining in Ohio. In addition, the arbitrator's award adds additional weight to this traditional view and in establishing language that codifies the past practice of providing annual step increases based upon service time. However, that is not to say that in the future the City's arguments may not return, particularly as they relate to merit, experience, and skill development, and what is demanded of city services by the public. In a case where an employee is absent for considerable periods of time during a year due to a non-work related illness or injury, he/she may not gain skill and experience that is assumed by an additional year of service. However, this is a complicated issue as it relates to questions of measuring merit, whether the salary schedule provides for a proper starting wage, and is further made problematical by benefit time, overtime, and other factors related to performance that are best known to the parties themselves. Accountability is a growing trend in all sectors of our economy and employers and employees will be required to find more efficient and effective ways to perform work. In the context of past bargaining, SERB data and the City's stabilizing, yet cautious financial condition support the large part of the City's position on wages. A 2% increase represents a growingly common figure among cities that are not impacted by being at either end of the continuum of fiscal emergency or considerable financial resources, or are not having to address inequities that may have recruitment or retention implications.

RECOMMENDATION (including any prior TAs):

Wages (units): **1st yr. 2%* retroactive to January 1, 2014**

2nd yr. 2%* effective January 1, 2015

3rd yr. 2%* effective January 1, 2016

Steps: **Section 3. The step increases for steps 1-4 are automatic each year until the employee has reached and received the step 4 increase and shall occur on the employee's anniversary of their date of hire.**

***If unrepresented employees receive a greater increase in pay, the bargaining unit shall receive the same increase.**

ISSUE 3 ARTICLE 28 (Gold unit), 29 (Blue unit) HEALTH INSURANCE

CITY: The **City** is again proposing conformity with the pattern for health care. It is proposing the following changes in language to Article 28 (new language bolded):

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ARTICLE 29

INSURANCE

SECTION 1 - MEDICAL INSURANCE.

(Delete current 1st paragraph) Bargaining unit members shall receive the same benefits from the health insurance plan made available to all other non-union employees at the same rates, co-pays, premiums, deductibles and obligations as other City employees, including the working spouse rule. It is understood that such health insurance plan may change from time-to-time during the term of this agreement. However, the benefits provided under the Employee Group Health Plan shall remain substantially the same during this Agreement.

Effective at the execution of this agreement, employees shall contribute 10% of the monthly premium through a payroll deduction for the remainder of 2014. If non-union employees pay less than 10% of the premium, the bargaining members shall pay the lesser amount.

In 2015 the employees shall contribute 12% of the monthly premium through a payroll deduction. If non-union employees pay less than 12% of the premium the bargaining unit members shall pay the lesser amount.

In 2016 employees shall contribute 15% of the monthly premium through a payroll deduction. If non-union employees pay less than 15% of the premium the bargaining unit members shall pay the lesser amount.

The City shall at all applicable times comply with the provisions of the Affordable Care Act and relevant regulations promulgated thereunder with respect to health insurance provided under this agreement. In the event the Affordable Care Act is repealed or substantially amended, either party to this agreement may require collective bargaining to negotiate with regard to the impact of such repeal or amendment on the City's health insurance plan.

If the City chooses a health insurance plan with a deductible of $2000

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single/$4000 employee/spouse, employee/child or family, the City will pay toward the deductible into the HSA/HRA account $1000 single and $2000 employee/spouse, employee/child, or family. If the City offers any other insurance plans to its employees and the employee elects such plan, the maximum amount the City will pay toward the deductible is 50% of the deductible not to exceed $1000 single/$2000 employee/spouse, employee/child, or family.

SECTION 2 - COORDINATION OF BENEFITS. Hospital and surgical benefits provided under the preceding section shall be subject to coordination of benefits in accordance with the requirements of the particular carrier.

SECTION 3 - LIFE INSURANCE. The City will provide group life and accidental death and dismemberment insurance in the amount of an employee's annual base salary.

SECTION 4 - LIABILITY PROTECTION. The City shall provide for the defense of a member and shall indemnify and hold the member harmless, in any action for damages, except for punitive damages, for injury, death, or property damage caused by an act or omission of the member in connection with a governmental or proprietary function, if at the time of the act or omission the member was acting in good faith and within the scope of the member's employment.

SECTION 5 - DENTAL INSURANCE. Each employee who wishes to participate in the City's comprehensive dental program shall be included provided the employee pays: $7.50/month for single coverage or $15.00/month for family coverage. The specific elements of the program will be as approved by City Council from time to time as communicated to the City employees. However, in the event that minimum participation levels required as a condition of coverage by the carrier cannot be met, the City shall not be obligated to provide dental coverage.

SECTION 6 - EYE EXAMINATION COVERAGE. The City shall provide one (1) eye examination every two calendar years for all employees under the Health Insurance plan.

SECTION 7 - EMPLOYEE ASSISTANCE PROGRAM.The City shall provide and pay the

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necessary premium for the implementation of an Employee Assistance Program (EAP). The specific elements of the program will be as approved by the City from time to time as communicated to the City employees.

SECTION 8 - NO ADDITIONAL PAYMENT. Employees will not receive remuneration over and beyond the hospitalization, dental and life insurance coverage provided all City employees if they do not avail themselves of the coverage provided by the City.

SECTION 9 - DEFERRED COMPENSATION PLAN. A voluntary deferred compensation plan by payroll deduction shall be provided by the City.

SECTION 10 - ADDITIONAL PROGRAMS. The City, at its option, may make available such additional medical and insurance programs which, in the City's opinion, will be beneficial to the employees.

The **City** avers its health care costs have risen dramatically beginning in 2009 and caused the City to join the Center for Local Government Benefits Pool ("the Pool") in 2010. The City describes the Pool as a consortium of some 17 local government employers who have joined together in an effort to better control costs. In the words of the City starting in the year 2011 additional complications regarding health care came to light as best outlined in the detailed statement contained in the City's Pre-hearing Statement:

"In early 2011, the Pool realized that its claims experience was not good, and that further substantial increases in health insurance costs were likely to result. The Pool performed a survey to assess ways to better control costs. The survey showed that a large percentage of claims were attributable to spouses of employees who participated in the Pool, and that many of those spouses had the ability to obtain health insurance through their own employers. Therefore, effective May 2011, the Pool decided to implement a "working spouse rule" which required all spouses of poll participants who could obtain "credible coverage" through their employers to take advantage of that coverage. "Credible coverage" meant that the spouse's employer must pay at least 50% of the premium, and the single deductible must be less than $5950. As required by the Pool, the City implemented the working spouse rule.

The FOP grieved the working spouse rule, and pursued that grievance to arbitration.[1] *At the arbitration, the City argued that it was authorized to implement the working spouse rule because the management rights clause retained to the City all rights of management except those that were specifically relinquished, and the agreement contained no such relinquishment with respect to anything like the working spouse rule. Arbitrator Stewart Savage issued his decision on May 8, 2012. He specifically found that the City acted in "good faith" when it implemented the working spouse rule. He further found that "The evidence is*

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persuasive that the working spouse rule is a logical and prudent rule." Nonetheless, he concluded that the contract language of Article 29, Section 1 – – providing that health insurance benefits remain "substantially the same" during the agreement – – prevented the City from implementing the working spouse rule. Arbitrator Savage's Award "struck down" the working spouse rule and indicated that damages would be limited to the prospective application of the award.

Almost immediately, the City and the FOP were at odds over how to implement the Award. The FOP's simplistic position was that the City could just put the working spouses back on the health insurance plan. The problem with this position was that the plan is controlled by the Pool. The Pool was not a party to the arbitration, was not bound by the Award, and did not allow working spouses on the plan. Nonetheless, the City requested the Pool to exempt the City from the working spouse rule. The Pool denied this request.

The City has since attempted to obtain other health insurance to cover the working spouses. That City's first effort to do this was through United Health Care ("UHC"), the third-party administrator for the coverage provided by the Pool. The City's rationale for doing this was simple: UHC already had knowledge of the prior claims experience of the FOP members' spouses from the prior policy, as well as other matters relevant to finding a suitable replacement policy, and this would speed up the process because the working spouses would not need to fill out new applications. But the City soon discovered that UHC was unable to even provide a quote for coverage because it did not offer a comparable plan for a group as small as the FOP.

The City then requested the FOP members to complete applications so that the City could get quotations from other insurers. Meanwhile, the City made arrangements to reimburse FOP members for their working spouses' out-of-pocket premium expenses. The City also made arrangements to reimburse FOP members for other out-of-pocket expenses incurred by their working spouses for healthcare matters.

On April 10, 2013, the FOP filed an action in the Hamilton County Court of Common Pleas seeking to enforce Arbitrator Savage's Award. That action is still pending before the Honorable Judge Marsh. The Magistrate assigned to the case by Judge Marsh has acknowledged that the Award is ambiguous at best. At present, the City has reimbursed working spouses for premiums and out-of-pocket expenses. To date, the City has not been able to obtain comparable health insurance for the FOP.

To summarize, the FOP is being treated differently than all other City employees in regard to the working spouse rule. The City has so far made FOP employees with working spouses' whole for their premium and out-of-pocket expenses, but cannot realistically continue to do so. There are too many potential problems with doing so, including: issues with verifying whether the spouses' out-of-pocket expenses would have been covered by the Pool plan, and are thus properly reimbursable; potential privacy issues with verifying that out-of-pocket expenses are reimbursable; potentially unlimited City exposure to claims for out-of-pocket expenses, and issues regarding the tax treatment of the City's reimbursement of expenses.

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There are only two potential solutions to this problem. One is for the FOP to have their own health insurance separate from the City's other employees. This is a poor solution for a number of reasons. The City has looked, and has not found any comparable health insurance plans for the FOP alone. Costs for smaller groups tend to be more volatile and tend to increase more rapidly. Over time this will tend to both increase the City's cost and decrease the level of benefits for the FOP. The City's administration of two separate plans would be more difficult and expensive. The City's leverage with the health insurance carriers would be less with smaller groups, further increasing costs and decreasing benefits.

The second solution is to make it clear that the FOP is subject to the working spouse rule under the terms of the new collective bargaining agreement. This would put all of the City employees on the same policy, and avoid the problems of having a separate plan for the FOP. Because the working spouses have already been made whole for out-of-pocket expenses to date, the City's proposal would resolve the suit in the Hamilton County Court of Common Pleas.

The City's proposal also calls for the employees to contribute a percentage of the health insurance premium through payroll deduction. The prior contract required employees to contribute $50 towards premium for single coverage, and $100 for family coverage. The City's proposal is for employees to contribute 10% for 2014 after contract ratification, 12% for 2015, and 15% for 2016.[2] For 2014 and 2015, these percentages are the same as Arbitrator Fitts recommended through the term of the Fire Fighters contract.

This proposal is consistent with current trends. Given the volatility of the cost of health insurance, most employers are going to a percentage contribution toward premium instead of a fixed contribution. Both Fairfield and Forest Park are currently at 15%. In Montgomery, employees pay 50% of the cost of insurance over a stated price. Without knowing their total premiums, the percentage employees pay cannot be determined. If Montgomery's premiums are the same as Springdale's, their police officers would contribute 13.9% for single coverage, and 17.3% for family coverage. Mason's police contract is about to expire, but its prior contract provided for employee contributions of $50 single/$100 family. Sharonville police employees currently contribute 10% towards premiums. The Blue Ash contract provides for 10% contribution in the third year."

UNION: The **Union's** proposal and rationale regarding ARTICLE 28 (gold unit) 29 (blue unit) is as follows**:**

INSURANCE

The Union proposes to maintain the employee contribution to insurance at $50 per month for single coverage and $100 per month for family coverage. We also propose to maintain the maximum out of pocket deductibles at $1,000 for single and $2,000 for all other

[2] Based on the current premium, a 10% employee contribution for 2014 would equal $52.84 Single, $101.32 Employee/Child, $113.18 Employee/Spouse, and $165.06 Family. New rates will come out in August.

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coverages. We propose that benefits remain substantially the same for the life of this agreement. These proposals are current language in both contracts under section 1. The city's proposals to go to a percentage contribution method, remove the deductible cap and eliminate the "substantially the same" standard has cost impacts that will put the employee's in the hole with the minimal wage proposal of the city.

The union proposes language that mandates bargaining as does 4117 with regards to insurance changes. The city believes because they have joined a collaborative that they do not have a responsibility to negotiate insurance as the group decides those issues. The law is clear; we negotiate with the City of Springdale not the group. We propose language that requires the City to negotiate any voluntary mandates of the Affordable Care Act they wish to implement. We propose language dealing with spousal coverage that was won in an arbitration ruled by Stewart W. Savage on May 8, 2012. While the city has continued to pay costs incurred by the employees they did not then and refuse now to allow spouses on the City's insurance as primary if they have other insurance. The City continues to drag this issue out in court at a high cost even though the arbitration language reads in part "shall be final and binding upon the parties" and "The award, if in favor of the grievant, will be immediately implemented by the City." This is another blatant attempt by the City to demonstrate that their word and signatures do not mean anything. Lastly we propose any new programs outside the scope of the traditional insurance coverage i.e. Office visits, surgery, preventive care; prescriptions etc. are required to be negotiated with the union prior to implementation.

DISCUSSION: Health care has been a contentious issue between the parties, and in the experience of this fact finder, this is not uncommon given its importance to employees and employers alike. Exemplifying the parties contention over this issue are the many legal venues that the parties have engaged in in recent years. Adding to this already difficult issue that is largely characterized by parties to a collective bargaining agreement attempting to manage health care costs primarily controlled by the insurance industry is the issue of the Affordable Care Act. Ironically, even though labor and management struggle with this issue, they are on the same side. It therefore behooves them to look for ways to cooperate in finding solutions to keep costs under control and adequate coverage in place. Over time the advantage of scale (size of the body of covered lives) has made a difference motivating employers to seek the advantages of a consortium. This larger body of members traditionally has more success extracting more favorable rates from the insurance industry, who in terms of sheer size and power wields considerable power. In fact, many public employers in Ohio, who previously desired to provide employees with plan options, have been forced to have just one plan, and insurers, as is the case in this matter; have been reluctant to cover a body of employees who are too small in size. And, where such coverage is available, it costs are often significantly higher when compared to that which a larger body of employees can secure. It is also noted that the parties have disagreed over the implementation of wellness program components and their implications for members and their families. While I understand the Union's concerns regarding costs and coverage, unfortunately the way health care is currently structured which forces small employers into consortiums gives employees and employers fewer and fewer independent options. And while the evidence indicates this approach has not always

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been smooth sailing for either party, it's appears to be the most pragmatic one at this point in time. In essence, the Employer's proposed changes are supported by internal comparable data for union and non-union employees, as well as the statutory criteria referring to what is now commonly found in collective bargaining contracts. Additionally, the changes being sought by the Employer, including the working spouse rule, with fewer and fewer exceptions, is becoming commonplace, as public and private employers jockey to reduce costs. And, while it is hoped the Affordable Care Act will have an ameliorating influence on health care quality and costs for a greater number of people, that will be borne out over time. There is also an additional lingering issue related to the spousal carve out issue that was raised by the Union and the accompanying temporary accommodation that the City had to make following arbitration of this issue.

RECOMMENDATION (including any prior TAs):

ARTICLE 29

INSURANCE

SECTION 1 - MEDICAL INSURANCE. Bargaining unit members shall receive the same benefits from the health insurance plan made available to all other non-union employees at the same rates, co-pays, premiums, deductibles and obligations as other City employees, including the working spouse rule. * It is understood that such health insurance plan may change from time-to-time during the term of this agreement. However, the benefits provided under the Employee Group Health Plan shall remain substantially the same during this Agreement.

Effective September 1, 2014, employees shall contribute 10% of the monthly premium through a payroll deduction for the remainder of 2014. If non-union employees pay less than 10% of the premium, the bargaining members shall pay the lesser amount.

In 2015 the employees shall contribute 12% of the monthly premium through a payroll deduction. If non-union employees pay less than 12% of the premium the bargaining unit members shall pay the lesser amount.

In 2016 employees shall contribute 15% of the monthly premium through a payroll deduction. If non-union employees pay less than 15% of the premium the bargaining unit members shall pay the lesser amount.

The City shall at all applicable times comply with the provisions of the Affordable Care Act and relevant regulations promulgated thereunder with respect to health insurance provided under this agreement. In the event the Affordable Care Act is repealed or substantially amended, either party to this agreement may require collective bargaining to negotiate with regard to the impact of such repeal or amendment on the City's health insurance plan.

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If the City chooses a health insurance plan with a deductible of $2000 single/$4000 employee/spouse, employee/child or family, the City will pay toward the deductible into the HSA/HRA account $1000 single and $2000 employee/spouse, employee/child, or family. If the City offers any other insurance plans to its employees and the employee elects such plan, the maximum amount the City will pay toward the deductible is 50% of the deductible not to exceed $1000 single/$2000 employee/spouse, employee/child, or family.

***As part of the September 1, 2014 conversion to implementation of the health care plan described above, including the working spouse rule, and to allow a reasonable transition for the small number of employees so affected the City shall continue to reimburse FOP members with working spouses (limited to those effected as of July 11, 2014) for premiums and out-of-pocket expenses through November 30, 2014, at which time the City's obligation shall end.**

SECTION 2 - COORDINATION OF BENEFITS. Hospital and surgical benefits provided under the preceding section shall be subject to coordination of benefits in accordance with the requirements of the particular carrier.

SECTION 3 - LIFE INSURANCE. The City will provide group life and accidental death and dismemberment insurance in the amount of an employee's annual base salary.

SECTION 4 - LIABILITY PROTECTION. The City shall provide for the defense of a member and shall indemnify and hold the member harmless, in any action for damages, except for punitive damages, for injury, death, or property damage caused by an act or omission of the member in connection with a governmental or proprietary function, if at the time of the act or omission the member was acting in good faith and within the scope of the member's employment.

SECTION 5 - DENTAL INSURANCE. Each employee who wishes to participate in the City's comprehensive dental program shall be included provided the employee pays: $7.50/month for single coverage or $15.00/month for family coverage. The specific elements of the program will be as approved by City Council from time to time as communicated to the City employees. However, in the event that minimum participation levels required as a condition of coverage by the carrier cannot be met, the City shall not be obligated to provide dental coverage.

SECTION 6 - EYE EXAMINATION COVERAGE. The City shall provide one (1) eye examination

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every two calendar years for all employees under the Health Insurance plan.

SECTION 7 - EMPLOYEE ASSISTANCE PROGRAM.The City shall provide and pay the necessary premium for the implementation of an Employee Assistance Program (EAP). The specific elements of the program will be as approved by the City from time to time as communicated to the City employees.

SECTION 8 - NO ADDITIONAL PAYMENT. Employees will not receive remuneration over and beyond the hospitalization, dental and life insurance coverage provided all City employees if they do not avail themselves of the coverage provided by the City.

SECTION 9 - DEFERRED COMPENSATION PLAN. A voluntary deferred compensation plan by payroll deduction shall be provided by the City.

SECTION 10 - ADDITIONAL PROGRAMS. The City, at its option, may make available such additional medical and insurance programs which, in the City's opinion, will be beneficial to the employees.

If during the term of this Agreement the City decides to implement other types of wellness programs such as programs addressing tobacco cessation, weight loss, cholesterol screening, etc., the union agrees to also participate in those programs, but the City agrees to negotiate with the FOP about the effects of those programs on the employees, and such negotiation will be subject to the impasse resolution procedures of the Ohio Revised Code, unless the implementation of a program is required by Federal law.

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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 July 2014 in Portage County, Ohio.

_____
Robert G. Stein, Fact finder

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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 14th day of July 2014 in Portage County, Ohio.

Robert G. Stein, Fact finder