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IN THE MATTER OF FACT FINDING

BETWEEN

FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE 9

AND

THE CITY OF DUBLIN, OHIO

SERB CASES # 13-MED-10-1273, 1274

Robert G. Stein, Fact-finder

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INTRODUCTION

The parties to this matter are Fraternal Order of Police, Capital City Lodge 9 (hereinafter "Union," or "Unit") and the City of Dublin, Ohio (hereinafter "Employer" "City," "Department"). The Employer is located in central Ohio in a suburb of Columbus, Ohio. According to the documentation provided to the fact finder, there are two (2) bargaining units; (1) Police Officers and (2) Corporals and Sergeants, who in the instant matter have been engaged in multi-unit bargaining, which ended in fact-finding. There are approximately 44 full-time police officers and 12 full-time corporals and sergeants. In this report the current collective bargaining agreement the for units shall be referred to as ("CBA" or "Agreement").

General/State/Local Economic Overview: Caution and uneasiness 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 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, but cause for optimism appears to be on firmer ground in 2014. Through 2012 it has been marked by unevenness and was unaided by considerable national political discord, which only recently has shown signs of improvement. (E.g. Farm Bill, Budget Bill 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 lead the way, with generally stronger profits, and adding jobs but in uneven numbers geographically. In March the national unemployment rate was 6.7%, which is similar to the previous two months. The stock market, which had a banner year in 2013, in January of 2014 experienced some retrenchment, but in March and April it recovered most of what it lost in value. 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 Syria, and the Russian takeover of Crimea. The index of manufacturing activity continues to rise hitting 57 in December in stark contrast to 32.5 that existed in December of 2008. *"Manufacturing remains a bright spot for the economy," said Russell Price, senior economist at Ameriprise Financial in Detroit and the best ISM index forecaster over the past two years, according to Bloomberg data. "There's still a*

sizable amount of pent-up demand in the consumer and corporate sector.” 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 it takes and in what geographical location of the United States. One only has to view a map of the fifty states to see how unemployment rates vary as of February (e.g. North Dakota, 2.6% v. Illinois 8.7%)

Lessons learned from the recession and the advancement of technology question the way things used to be done and are affecting the nature of the recovery. Business continues to learn how 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 saw their unemployment benefits expire during the first two months of 2014. 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, but hopeful 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 were 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) Yet, since January of 2013 some 67,000 new jobs have come to Ohio, and the unemployment rate has dropped to 6.4%. (BLS data, 3/28/14) And, recently the Department of Labor reported that Ohio added some 16,700 jobs in January of 2014, only second to Texas. Simply put, job creation has been a roller coaster ride of gaining and losing jobs. In January 23 states reported adding new jobs, while 27 states reported job losses. What holds for the remainder of 2014 is not certain on a national or statewide perspective, yet signs of sustained recovery remain in positive territory.

The local economy along with much of central Ohio has been the state's bright spot. The City is located in three counties in central Ohio (Franklin, Delaware, and Union) and it is a very well managed and economically prosperous city. While many Ohio cities suffered greatly during the recession, Dublin weathered the downturn in a manner that would be the envy of many Ohio cities. The City economy in the words of the City "is booming" as it develops a unique mix of quality housing, economic activity, public entities, and cultural attractions and it's the home of several multi-national and global companies. Its median household income is over \$113,000 and the median value of housing is \$330,000. It has approximately 43,000 residents, more than double the number it had in 1990. Over 70,000 people work in the City on a daily basis, which adds to the City's revenue stream. It clearly is one of the most thriving cities in Ohio, and along with great prosperity comes an expectation of excellence in terms of service to the citizens. It is also one of the safest cities in Ohio, which mostly likely is a result of a number of factors, but in significant part begins with the selection and training of high quality personnel, dedicated performance by law enforcement officers, and leadership grounded in commitment, knowledge, and

competence. And, Lodge 9 of the FOP, arguably one of the premier labor organizations representing police in Ohio, has, as evidenced by the Agreement, negotiated contracts with the City over many years that have placed the Police Officers, Corporals, and Sergeants at or near the top in terms of pay and benefits.

Following mediation by the fact finder which resulted in the settlement of several issues, the parties brought the remaining seven (7) issues to fact finding. Mediation occurred for several hours spanning more than two (2) days in terms of overall hours. Considerable effort was made by the experienced advocates along with the fact finder, in terms of understanding and flexibility, but they were unable to reach tentative agreement on these seven (7) issues leading to the necessity of a hearing on day 3. 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.

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 Section 9.8 CITIZEN COMPLAINT

CITY: The City is proposing modification of the language contained in Section 9.8 as follows:

Section 9.8 Citizens Complaint.

In order for a citizen complaint to be considered as possible grounds for disciplinary action, it must be reduced to writing, signed by the citizen made with an attestation of truth within thirty (30) calendar days after the date of the alleged event complained of **unless the allegation can be independently verified by the investigating supervisor.** If the incident alleges conduct which, if true could lead to criminal charges, the thirty (30) day requirement shall not be applicable.

In its Pre-hearing Statement, the Employer offers the following arguments in support of its proposed change in Section 9.8:

"This is one of the most important proposals for the City. In short, the City wants to permit discipline in cases where complaints, though not signed or attested to, are independently verified. This proposal is common sense. This proposal maintains the heightened standard for pursuing discipline based on citizen complaints, but it allows the City to pursue cases where there is no written complaint, but the complaint is supported by independent facts.

The Police Department fully investigates all citizen complaints, including anonymous complaints. Most cases result in a finding of no misconduct on the part of the employee. However, some citizens are intimidated by signing a written complaint about a police officer even though their complaint may be valid. In an age with increasing technology, especially in audio and video recordings, it is easier to verify such complaints. Where complaints are independently verifiable, the City should be permitted to pursue discipline.

The problems with limiting employee discipline to written, signed complaints were realized recently in the neighboring jurisdiction of Hilliard. In 2013, there was a situation in which a Hilliard police officer filed charges against a citizen who made a written signed complaint. In addition, there was a complaint in 2013 where several witnesses confirmed misconduct by a Hilliard officer. The officer in question did not deny the allegations. But there was no discipline because there was no signed, written complaint. These types of cases are avoidable by including a simple rule that permits discipline for complaints that are independently verifiable.

Finally, it should be noted that police officers receive significant protections from unwarranted discipline. These employees may only be terminated with just cause, and such discipline is appealable to binding arbitration. The arbitration process adequately protects employees from unwarranted discipline. There is no reason why the City should not be permitted to pursue discipline when there are independent facts that confirm that an employee engaged in alleged misconduct. The Fact-Finder should recommend the City's proposed language."

UNION: The **Union** is proposing current language. In its Pre-Hearing Statement is provides the following rationale:

"The City proposes to add language that would permit it to conduct administrative investigations of "citizen complaints" in the absence of a signed written statement whenever "the allegation can be independently verified by the investigating supervisor". The City has not offered any examples whereby current contract language has prevented it from conducting an investigation and/or imposing discipline upon a member; and, there is no reason to permit the conduct of "fishing expeditions" based upon anonymous complaints.

The FOP has proposed that current contract language be maintained. This provision of the contract provides members with important protections against false and frivolous complaints. First, the language ensures that a complainant is serious and is willing to stand behind their allegations. Second, the Franklin County Prosecutor's office will not prosecute an individual for making false allegations against a police officer unless their complaint has been reduced to writing and verified by the complainant. Unfortunately, because of the nature of police work, it is not uncommon for law enforcement officers to become the subjects of unwarranted and malicious allegations of misconduct. However, if complainants are required to verify their allegations in writing, frivolous complaints are reduced and officers potentially have recourse if they are unnecessarily subjected to a stressful (and potentially career damaging) investigation as a result of a false allegation.

In summary, the City has not provided evidence or arguments that would warrant a change from current contract language."

Discussion: One of the most often referenced statutory criteria utilized by fact finders is *"The interest and welfare of the public and the ability of the employer to finance the settlement."* And while I understand the FOP's argument that they are concerned about an issue remaining open and an investigation being carried on by supervision, the interest and welfare of the public is better served by a modification of this language to reflect the technological world in which we live. Much of what occurs is increasingly being watched (e.g. security cameras) or monitored in other ways (internet sources, social media, etc.) If a Police Officer is not doing his/her job and such conduct results in a complaint, and can be independently validated in a reliable manner the interest of the public, the City, and the integrity of the Department as a whole are well served. Quality of service is what the City is known for and what it must sustain. Integral to Quality is integrity, which is at the core of law enforcement work, and feedback from those served is one significant measure of this quality. Therefore, the City's desire to modify Section 9.8 and be able to investigate non-criminal matters where other demonstrable sources of validation are available is reasonable in this age of

technology.

RECOMMENDATION (bold/cross out, including any prior TAs):

*In order for a citizen complaint to be considered as possible grounds for disciplinary action, it must be reduced to writing, signed by the citizen made with an attestation of truth within thirty (30) days after the date of the alleged event complained of **unless the allegation can be independently verified by confirmable corroborative evidence.** (e.g. video, audio, other valid sources, etc.) If the incident alleges conduct which, if true could lead to criminal charges, the thirty (30) day requirement shall not be applicable.*

ISSUE 2 SECTION 19.1 WAGES

CITY: The City is proposing wage increases of 2% (1st Yr.), 1% (2nd Yr.), and 1% (3rd Yr.) the following:

A. Wages: Article 19, Section 19.1

City's Proposal:

Section 19.1 Wages.

The wage tables shall be updated to reflect a wage increase of 2% in 2014, 1% in 2015, and 1% in 2016.

WAGE STRUCTURE – JANUARY 1 THROUGH DECEMBER 31, 2014

Police Officer – Hired Prior to January 1, 2011				
	Step 1	Step 2	Step 3	Step 4
	\$56,293.87	\$64,604.13	\$72,918.68	\$83,876.28
Police Officer – Hired After January 1, 2011				
Training Step	Step 1	Step 2	Step 3	Step 4
\$51,941.66	\$56,293.87	\$64,604.13	\$72,918.68	\$83,876.28
Corporal				
\$90,796.05				
Sergeant				
\$97,715.87				

WAGE STRUCTURE – JANUARY 1 THROUGH DECEMBER 31, 2015

Police Officer – Hired Prior to January 1, 2011			
Step 1	Step 2	Step 3	Step 4
\$56,856.81	\$65,250.17	\$73,647.87	\$84,715.04

Police Officer – Hired After January 1, 2011				
Training Step	Step 1	Step 2	Step 3	Step 4
\$52,461.08	\$56,856.81	\$65,250.17	\$73,647.87	\$84,715.04

Corporal
\$91,704.01

Sergeant
\$98,693.03

WAGE STRUCTURE – JANUARY 1 THROUGH DECEMBER 31, 2016

Police Officer – Hired Prior to January 1, 2011			
Step 1	Step 2	Step 3	Step 4
\$57,425.38	\$65,902.67	\$74,384.35	\$85,562.19

Police Officer – Hired After January 1, 2011				
Training Step	Step 1	Step 2	Step 3	Step 4
\$52,985.69	\$57,425.38	\$65,902.67	\$74,384.35	\$85,562.19

Corporal
\$92,621.05

Sergeant
\$99,679.96

The City argues that the internal and external comparable data support wage increases of 2%-1%-1% over the next three (3) years of the Agreement. The details of the City's position is included in its Pre-hearing Statement and in the submission of its evidence. In summary, the Employer is asserting that *"The internal comparables do not support a base wage increase in excess of those proposed by the City ...and is fair in light of the circumstances.* The City also points out that the Union mischaracterizes the recent pension requirements for employees to pay increased employee contributions as a pay decrease. The City argues that while bargaining unit employees may take home less pay, they will benefit from additional contributions in retirement. Employees *"are not worse off."* The City also pointed out in the last contract the bargaining unit received wage increases of 2%-3% and 3%,"*while many jurisdictions throughout the state were implementing wage freezes."*

UNION: The **Union** is proposing wage increases of 2.75%, 3% and 3% over the life of the Agreement. The details of its position are contained in its Pre-hearing Statement and in the submission of its evidence. In summary, it argues the City has never argued an inability to pay the wage increases being proposed by the Union for reasons that are clear from the facts. The Union states, *"...the City's finances are rock-solid in the eyes of both Moody's and Standard and Poor's; and, as such, the City remains one of a very select group of municipal governments that enjoy an "AAA" bond rating ...Economic development within the City continues, and the City's tax base (for both property and income) continues to expand. Thus, this City cannot reasonably argue that finances prevent it from agreeing to a reasonable wage increase for its police officers."*

Discussion: Both parties propose a wage increase. The crux of the difference between the parties is over the amount of the wage increase that is reasonable for the bargaining unit to receive. There is no meaningful disagreement that bargaining unit salaries are at or very near the top of comparable jurisdictions in central Ohio. Whether you use the City's data (City Ex. 14) or the Union's data (Union Ex. 12) Dublin pays at or near the top in salary to its Police Officers. And, there is no disagreement that the City is growing in population and income and is financially sound. The City's Comprehensive Annual Financial Report ending December 31, 2012 made it clear as to the financial condition of the City. It states in part:

"The financial health of the City is a direct result of the health of the City's corporate residents as employees withholding taxes represented 81.6% of the total income tax receipts. In 2012, withholding taxes increased nearly \$2.5 million, or 4.2% over 2011. Corporate net profit income taxes....increased 12.7% from 2011 levels...58% of the 3,624 available nonresidential acreage has been developed. The future development of the remaining 42% of available nonresidential acreage will have a positive impact on the City's income tax base, and on its financial ability to provide services to citizens." (Union Ex. 8)

Tax revenues for 2013 were estimated to exceed 2012 levels by 4% (Union Ex. 9), but in actuality they exceeded 2012 levels by 8.8%, according to the Union.

According to Union Ex. 14, which is similar to the data contained in City Ex. 14, minus the

City of Whitehall, which the Union includes in its list of comparable cities, Dublin's maximum salary as of 12/31/13 ranked number 1 at \$82,231.65 versus Whitehall at 81,511.87 (2nd in FOP's listings) or Grove City at 80,475.20 (2nd in the City's listings). Whitehall, with a maximum salary over \$1,000 higher than Grove City and approximately \$720 or .0088% below number one, Dublin, will have general salary increases of 2.5% in 2014, and given the same projected increase in 2015, and 2016, it will have a 2016 maximum salary for Police Officers of \$87,779.37. Given what is known and reasonable projections for increases based upon past bargaining history, both internally and externally, for Dublin to maintain its 0.88% lead over Whitehall and remain there in 2016, its maximum salary would have to rise by the same percentage of 2.5% each year. In 2016 its maximum salary would be 88,554.49 or 775.12 above Whitehall's maximum.

The City makes the argument that Dublin does not have to be number 1, but history appears to stand contrary to this argument. The facts indicate that Dublin is a premier Ohio city in many ways and has not hesitated to provide wage increases that are at the high end of the "going rate." And, from the evidence it also appears that along with this higher salary comes expectations of a higher level of performance. From 2006 through 2010 wage increases were 4% each year. (City Ex. 15) During those same years SERB data demonstrates salaries for police averaged a 2.7% increase. (City Ex. 17) In years 2011 and 2012 Dublin police salaries increased by 5%, an average of 2.5% per year over this two year period. SERB reported that police salaries over this same period increased by 2.16%, an average of 1.08% over the two year period. Seven years of bargaining history places wage increases for the City in excess of 1% of the state average for police units. And, there is also something to be said for historically maintaining position relative to those cities that have served as benchmarks, and who compete for top talent. In this case the cities are those in central Ohio such as Westerville, Upper Arlington, Whitehall, and Grove City.

Of course true comparable external data is difficult to validate. There are always differences. For example, Police Officers in Whitehall, the Union's number one comparable, employees pay insurance premiums in dollar amounts, currently about \$90 per month, according to Union Ex. 21. And, in Grove City, the City's number two comparable, employees pay 10% of their health insurance premium. In Dublin employees do not pay health insurance premiums, a rare exception in Ohio's public sector, but they have recently experienced higher maximum out of pocket costs, depending upon usage, but with HSA and wellness offsets that are somewhat untested. The difference between wages and health care benefits are becoming blurred as employees and employers alike are equally concerned by both, particularly as the cost of health care continues to far outpace inflation. And other forms of compensation such as longevity, shift differential, clothing allowance, etc. also vary among comparable districts. So in making a recommendation all these factors must be given consideration in arriving at a reasonable decision.

The City talks about the new economy, which has validity, particularly when considering how private sector businesses are performing post-recession. Efficiency and judicious hiring (full time vs. part time) is being intensely practiced, as are many other best practices aimed at lowering costs and increasing profitability. Public sectors, after experiencing the shock of major reductions in local government funding, estate taxes, etc. in Ohio are following suit in their staffing decisions, and in being smarter about health insurance

practices. The Union's argument regarding increased pension costs as a foundation for higher wages is offset by the arguments made by the City that in the long run additional employee contributions will result in increased pension benefits.

Taking into consideration the statutory criteria, the data that favors Dublin police officers over other comparable city officers, bargaining history that indicates the City has treated its police officers on the more generous side of average (or "going rate") of wage increases, considering the advantage for employees to not have to pay insurance premiums, considering the City is in excellent financial condition, and taking into consideration the value, absent unusual economic circumstances, of maintaining the relative position of salaries in relationship to competitors in terms of recruiting the best talent, and retaining them, and finally projecting a likely increase in the cost of living in an economy that is beginning to experience sustained recovery, the following recommendations are made:

RECOMMENDATION (bold/cross out, including any prior TAs):

1st Year: 2.0% (retroactive, 1/1/14) 2nd Year: 2.50% 3rd Year: 3.0%

ISSUE 3 SECTION 19.8 SHIFT DIFERENTIAL

UNION: The **Union** is proposing increasing the shift differential rate to \$1.25. The Union argues that its proposed increase helps to compensate for the health and relationship effects of working evening and night time hours and *"is in line with increases that have been made at other comparable agencies."* (See p. 8, Union's Pre-hearing Statement)

CITY: The **City** is proposing current language, keeping the shift differential at \$1.10. It argues that *"it is in the mainstream with respect to this benefit."* And, that there is only one other comparable district that provides the rate being proposed by the Union. (See p. 18, City's Pre-hearing Statement)

Discussion: It has been a number of years since the shift differential has been adjusted. In order to simply maintain its value given moderate inflation over the same period, an adjustment is reasonable beginning in year 2 of the Agreement.

RECOMMENDATION (bold/cross out, including any prior TAs):

1st year: Current language 2nd year: \$1.15 per hour 3rd year: \$1.20 per hour

ISSUE 4 NEW SECTION 19.9 ACCREDITATION INCENTIVE

UNION: The **Union** is also proposing to add new language that provides compensation to bargaining unit members upon reaccreditation by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing. In summary, it argues that only four (4) municipal law enforcement agencies in Franklin County out of forty-four (44) have attained such accreditation, which is the “gold standard” for law enforcement agencies. It contends that it is only reasonable that officers should receive a form of compensation that rewards that certification.

CITY: The **City**, while appreciating the dedicated and excellent work of the members of the bargaining unit, argues that separate compensation of CALEA certification is not warranted for two reasons. The first reason is that this proposal is new, and has not been vetted in the negotiations process and therefore is not brought to fact finding in good faith. Secondly, the Employer objects to this proposal on policy grounds. Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing.

Discussion: As previously stated the Dublin Police Department is clearly a leader among cities in central Ohio. Maintaining CALEA certification since 1990, and with excellence, is an achievement for the Department that few police departments in central Ohio have duplicated. Many successful organizations use various forms of accreditation to both challenge themselves and distinguish themselves as members of an accomplished group. A police department is a para-military organization, and like the military a high performing team is recognized for its professionalism and accomplishments, in a number of ways that help to build esprit de corps and emphasize discipline among its ranks. There is a sense of pride in working for an organizations that is considered to be performing at or near peak level. The value of working for a premier department is all about expectations, and a department that is willing to measure itself against national standards and comes out on top cannot be underestimated in terms of an employee’s self-respect and motivation to perform at a high level. The fact finder, who has seen a fair amount of departments over the years, can readily attest that the level of professionalism became apparent in interacting with police and HR personnel who participated in mediation and fact finding. And, CALEA recognition goes hand in hand with the changes recommended in 9.8. It’s about maintaining a quality service to the public. If a city has the resources, it appears reasonable that it would want to distinguish itself with CALEA certification, being the Gold Standard in Public Safety with its emphasis on “professionalism, stewardship, integrity, diversity, independence, continuous improvement, objectivity, credibility, consistency, knowledge, experience, accountability, and collaboration,” arguably traits found in the most successful companies in the America and the world. For the City to have achieved this standard and to have maintained it for several decades has created in Dublin something of considerable value and something that came about through concerted effort. And as in business, excellence is rewarded in monetary terms as it is achieved, most often in terms of a bonus. This is what the FOP is seeking and it is a persuasive argument. And, since this accreditation must be renewed every 3 years, it makes sense to reward it once in this timeframe.

However, it must also be stated that the maintenance of such a standard must remain a

managerial determination. It is common knowledge that accreditation agencies and standards may change over time and standards once being sought may no longer have the same value to an agency. Effective leadership is determinative of the quality of an organization's performance and therefore it is up to Department leadership to decide that achieving or maintaining such a standard remains a desired goal.

RECOMMENDATION (bold/cross out, including any prior TAs):

New Section 19.9 language to be added:

As long as the Department determines CALEA accreditation is valued in distinguishing the Department during the life of the Agreement, the bargaining unit members shall receive a one-time bonus of \$250.00 within 30 calendar days following official notice of accreditation or reaccreditation. If the Department/City determines that CALEA certification is no longer in its best interests and CALEA standards are not being required, this language will no longer have any force or effect.

ISSUE 5 SECTION 21.5 COMPENSATORY TIME

CITY: The **City** is proposing a reduction of compensatory time for purposes of banking from the current cap of 240 hours to 160 hours during the life of the Agreement and in addition to change the method to re-fill the bank back to the cap. Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing.

UNION: The **Union** is proposing current language, arguing that such a reduction is not justified and is not "well-reasoned." Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing.

Discussion: The benefit of compensatory time is an earned benefit that can either be paid in the form of higher wages or future time off. The Union argues "*it is not simply a 'free benefit.'*" The fact finder concurs with this characterization, however, as other benefit time (e.g. vacation, holidays, sick leave, etc.) has grown overtime and as employers are paying more in salaries and benefits (particularly health benefits) just to maintain staffing, more time away from the job can reasonably affect departmental performance and service to the public. Moreover, if compensatory time off has to be replaced with additional overtime, costs also become an issue. The statutory issue that comes into focus here deals with the needs and interest of the public and the quality of service being provided at a reasonable cost. It's a matter of keeping people on the streets, and given the amount of available benefit time off that already exists, what the City is proposing is very much in line with what its trending in the public sector in Ohio. In the experience of this neutral, the amount of compensatory time has become an issue that employers are concerned with and where negotiated reductions are being sought. And with a revision in the cash out provision, an officer has the opportunity to recapture time up to the cap. It also makes sense to drop the cap over time in order to allow officers time to make the adjustment. Finally, on the basis of external and internal comparables, 160 hours is not unreasonable.

RECOMMENDATION (bold/cross out, including any prior TAs):

Section 21.5 Compensatory Time

At the election of the member, overtime may be compensated with compensatory time off in accordance with the provisions of the Fair Labor Standards Act. Such compensatory time off shall be equal to one and one-half (1-1/2) times or two (2) times as applicable for hours for each one (1) hour of overtime worked. The maximum number of accumulated compensatory hours ~~permitted in a member's compensatory time bank, at any point in time, shall be Two Hundred Forty (240)~~ **shall be as follows:**

- **2014: 240 hours.**
- **2015: 180 hours.**
- **2016: 160 hours.**

When a member has accrued the maximum hours of total compensatory time in any calendar year, any further hours worked that qualify for overtime pay will be paid and no further compensatory time may be accrued by the member that calendar year with one exception. The specific number of hours cashed out on June 1 may be restored up to the maximum number allowable.

~~At the end of each calendar year, the member shall be permitted to convert up to fifty (50) hours of accrued compensatory time in said bank to cash if, at the end of each year (December 31), the member has a minimum of fifty (50) hours of compensatory time in his compensatory time bank~~

An employee shall be permitted to cash out up to 50% of the maximum compensatory time hours that the employee has accrued two times per year: June 1 (for payment on July 1); and December 1 (for payment on January 1).

At the end of each calendar year, any remaining accumulated compensatory hours in a member's compensatory time bank will be paid out in cash to the member. Each member will begin each calendar year with a zero (0) balance of compensatory hours in their compensatory time bank.

The calculation for converting compensatory time to cash **at the end of each calendar year** shall be the member's established hourly rate of pay multiplied by the number of hours ~~the member desires to convert~~ **remaining in the member's compensatory time bank**. ~~In the event the member wishes to exercise this option, it shall be his or her responsibility to forward a memorandum to the Department of Finance specifying the number of hours the member wishes to convert to cash, prior to December 31, of each year.~~ The **end of year** cash conversion will ~~then be paid in a separate check which shall be~~

forwarded to the member **separately** on the scheduled pay date at the conclusion of the 1st pay period in the following year.

Compensatory time shall be denied in instances where usage of such would reduce the shift below minimum staffing levels.

In the event that a request for compensatory time is denied because of operational needs, the employee will be given the opportunity to take the compensatory time at another time. If the alternate time is not acceptable for either party, then the number of hours requested up to 48 may be paid out in the next pay per the request of the employee.

ISSUE 6 SECTION 21.9 ON-CALL PAY

UNION: The **Union** is proposing to raise the On-Call Pay to \$1.65 per hour, effective upon ratification. The Union argues that the current rate of \$1.05 was established over ten (10) years ago and has not been raised. Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing.

CITY: The **City** is proposing to maintain current language. It contends that there is no justification for this increase and that none but two of the comparable jurisdictions pay on-call pay to detectives for on-call hours not worked. Details of its arguments are included in its Pre-hearing Statement and in evidence it presented at the hearing.

Discussion: The City makes a compelling argument to maintain the status quo from the standpoint of external comparable data. However, the fact that this level of payment was determined to be useful by both parties for the past decade an update in terms of attempting to restore some of its former value in today's dollars appears to be reasonable.

RECOMMENDATION (bold/cross out, including any prior TAs):

Modify Section 21.9 as follows:

Section 21.9 On-Call Pay. When a Detective or Technical Crash Investigator is placed in an on-call status by the Division, the on-call member shall receive a **\$1.40** ~~\$1.05~~ per hour pay supplement as compensation for all non-working hours in which the members serves in the on-call status. In addition to the off duty hours spent in the on-call status, the member shall also receive the **\$1.40** ~~\$1.05~~ supplement during on-duty hours, including their regularly scheduled eight-hour shift, when such hours fall within the time frame (normally a 4 to 7 day block of time) the member has been designated to serve in the on-call status. This **\$1.40** ~~\$1.05~~ per hour supplement shall be included in any calculation of overtime and shall be paid as part of the member's bi-weekly pay check.

ISSUE 7 ARTICLE 26 INSURANCE 3 issues remain unresolved:

(1) Opt-Out Provision; (2) HSA Contribution; (3) Payment Date of HSA Dollars.

At mediation, the parties discussed the insurance proposals and in general reached agreement on all but three issues concerning the health insurance language. Specifically, the following issues are still open for consideration by the Fact-Finder: (1) Opt-Out Provision; (2) HSA Contribution; (3) Payment Date of HSA Dollars. In addition, the issue of whether the specifications of the plan remain in the Agreement and possible changes to the Agreement required by the Affordable Care Act (ACA) law need to be resolved.

In addition to a desire to remove the plan specifications from the Agreement, and to retain flexibility to change the plan to conform to possible ACA requirements the **City** proposes the following:

Opt-Out

The City rejects the Union’s proposed opt out provision. It argues that an opt-out provision would create an unnecessary cost to the City by providing an unnecessary windfall to employees. Most employees who do not participate in the City’s insurance plan are insured through another source—typically, a spouse. These employees choose not to participate in the City’s insurance plan because, at least in their estimation, it is advantageous to do so. These employees choose to waive insurance for reasons independent of any payment by the City. Thus, an opt-out payment would only provide a windfall to employees who are fortunate enough to have more than one insurance option. The City asserts, “...*only 1 employee has opted out of the insurance plan. In addition, only two other officers are not covering their spouses under the plan. All other police officers receive insurance through the City. An opt-out provision rewards employees for something they would have done anyway—to pass on health insurance coverage provided by the City. This is an unfair windfall and an unnecessary expense to the City, and thus should be rejected.*”

The City also points out that the Union’s proposal that an employee can opt in or out of the plan annually, “*promotes a gaming of the insurance system to insure that employees maximize benefits.*”

HSA Contribution The City is proposing to maintain the current level of guaranteed health savings account contributions. It currently provides \$1,250 for single and \$2,250 for family plans. It also proposes a results-based contribution system where employees can earn health savings dollars based on good health habits. For example, the City proposes a \$150 contribution for blood pressure, cholesterol, and tobacco-free status. In addition, the City proposes a \$300 weight incentive. By contrast, the City rejects the Union’s proposed a contribution of \$2,000 for single and \$4,000 for family plans.

The City argues its proposal is “...*better suited for its long-term health care goals.*” The City states it is incentivizing healthy behaviors rather than providing all employees with the same

contributions. The City argues this approach will reduce all employees' health insurance costs in the future, will result in a healthier workforce, and is the now becoming a common approach taken by employers. The City asserts, "...it wants to engage its workforce and challenge it to develop healthy lifestyles." The City also points out that the United Steelworkers and communications employees have agreed to language including healthy lifestyle incentives for health savings accounts. Finally, the City rejects the Union's requested HSA funding amounts as being too generous in light of addition to the wellness incentives.

Payment of HSA Dollars

Under the current contract language, the amounts are to be deposited in one-third lump sums in January, May, and September. The City is proposing a two payment system in which these dollars are deposited in accounts in equal amounts in January and May. The Union is proposing language to require a single lump sum payment of all HSA dollars in January. The City argues its proposal is reasonable because it spreads its obligations out over a longer period of time, and protects the City from depositing large sums in an HSA account for the whole year and then have an employee leave the City. The City points out that "*according to IRS regulation, the City cannot recoup these payments once made. Therefore, the Union's proposal exposes the City to unnecessary risks.*"

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

The Union position on the three areas in dispute: (1) Opt-Out Provisions (2) HSA Contribution; (3) Payment Date of HSA Dollars is as follows:

Opt-Out Provisions

The Union is proposing an annual opt-out provision or payment of \$1,000 for single and \$2,000 for a member who opts out of family coverage as a cost savings to the City.

HSA Contribution

The Union points out that the health insurance plan has changed significantly during the last two contract periods and the current HSA took effect in 2013. As a result of the time that has passed, members have realized the impact of the new plan and the fact that the average member's cost for health insurance has increased by \$1,399 or 84% for approximately one-third (1/3) of the bargaining unit increased costs have exceeded \$4,500 per year. The Union argues that by increasing the HSA contributions by \$1,000 for single coverage and \$2,000 for family coverage a more equitable balance will be restored between the portions of health care costs that are borne by members.

Payment of HSA Dollars

The Union asserts that under the current three payment system, "*...members who incur large*

health care expenses early in the year do not have access to the full City contribution, and they have been forced to unnecessarily utilize personal funds and/or place health care bills on personal credit cards.” The Union argues that by advancing the contribution to January the problem is alleviated. In addition, the Union argues the problem of an employee leaving can be resolved with additional protective language that would allow the City to recoup on a pro-rata basis any amount advanced that should be paid back.

The Union also makes the following arguments in response to the City’s proposals on health care to do the following:

- (a) Moving language out of the contract that provides a detailed description of the plan and benefit levels;
- (b) Adding a premium surcharge for use of tobacco products;
- (c) Breaking out dental and vision plans from the medical plan;
- (d) Adding language that would permit modification of the plan to ensure compliance with the Affordable Care Act (ACA); and,
- (e) Modification of standards for incentives to comply with the ACA.

“The FOP’s response to the City’s proposal focuses primarily on items (a) and (d), above. With respect to item (a), the FOP membership is opposed to removing the descriptive plan language and terms from the collective bargaining agreement. The City has not offered any reason for making this change, other than it would be less language in the contract and easier to change the city-wide plan description (rather than change both the plan description and the contract). The FOP membership is concerned that plan changes can and will be made without bargaining or FOP input if the specific plan terms are removed from the contract; and, insofar as there is no compelling reason to remove that language, the City’s proposal on this issue should be rejected.

With respect to item (d), the FOP is opposed to any language that would permit the City to make unilateral changes to the negotiated plan design and benefit, even if the purported basis for that change is “compliance with the ACA.” Such language leaves compliance up to interpretation by the City, and it potentially results in disputes over plan changes that the City deems to be necessary for “compliance.” Certainly, if the ACA or any other statute arguably requires a modification of the City’s insurance plan (or any other term of the agreement), the parties are capable of meeting and working through those issues. When that is not possible, the parties always can avail themselves of the available dispute resolution mechanisms available both in the contract and at law. As such, the City’s proposed language on this issue is not warranted.”

Discussion: Opt-Out: There is insufficient evidence to demonstrate that the Union’s proposal would result in savings for the City, which is the primary purpose of this type of

provision. **HSA Contribution:** This provision went into effect in 2013. Insufficient time has passed to properly assess this provision's efficacy, particularly without knowing the effect wellness initiatives may have on experience and usage. However, by the end of the Agreement the parties should be in a better position to return to this issue with some meaningful data. **Payment of HSA Dollars:** Both parties agree that even limited experience with the HSA funding by the City requires the parties to consider City funding to be more front-loaded. The Union's arguments are most persuasive here, and from a personal health planning perspective it appears that this important benefit would be most helpful to an employee who needed access to health care early in the calendar year and would benefit from one payment in January. In addition, the City would save the time it takes to process two payments. However, in order to implement this change, the parties shall be required to agree upon wording that would permit the City to recoup on a pro rata basis any amount of funding owed to the City for an employee who does not remain employed during the calendar year. **ACA Compliance:** It remains unclear if and how the rollout of the ACA implementation will affect employers, particularly in light of the many deadlines that have had to be modified since it was enacted. The savings clause contained in Article 1, Section 1.3 appears sufficient to address any changes that may be necessary during the life of the Agreement.

RECOMMENDATION (bold/cross out, including any prior TAs):

All provisions of Article 26 as tentatively agreed to or not changed to through negotiations and/or fact finding are recommended. The plan shall remain in the Agreement, except modify and add to the following provisions of Article 26 regarding the payment of HSA:

Payment of HSA Dollars:

~~For the calendar year beginning January 1, 2013, t~~The City's annual HSA contribution for each participating employee is:

Participation - Based

Single Coverage: \$1,125

Family Coverage: \$2,250

Schedule: The above amounts will be paid by the City in one annual installment to be deposited during the month of January, effective January of 2015.

Members shall pay to the City the prorated amount of the City's annual HSA contribution, based upon the number of full months remaining in the calendar year, when they are no longer enrolled and participating as current City employees in the high deductible health insurance plan by reason of separation from employment (for any reason other than the Member's death, or service or disability retirement from City employment) or as a result of a Member's election not to participate in the City's health insurance plan coverage. The City is authorized to collect the above payments through payroll deduction from the Member's wages, year-end or terminal pays.

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.

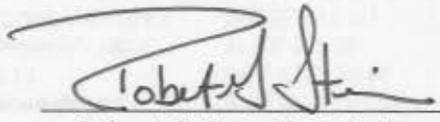
The fact finder respectfully submits the above recommendations to the parties this ____ day of April 2014 in Portage County, Ohio.

Robert G. Stein, Fact finder

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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 9th day of April 2014 in Portage County, Ohio.


Robert G. Stein, Fact finder