

IN THE MATTER OF FACT-FINDING  
BETWEEN

CITY OF LORAIN	)	CASE NOS. 2016-MED-08-0827
	)	2016-MED-08-0828
AND	)	
	)	<u>FINDINGS</u>
	)	AND
FRATERNAL ORDER OF POLICE	)	<u>RECOMMENDATIONS</u>
LODGE 3	)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE FOP

Robert M. Phillips, Esq.  
Kyle Gelenius, President FOP  
Jessie Perkins, Vice President FOP  
Buddy Sivert, Union Representative

FOR THE CITY

Jeremy D. Iosue, Esq.  
Edward Zaborniak, HR Director  
Anita Harper, Deputy Auditor  
Celestino Rivera, Police Chief  
Roger Watkins, Executive Captain

**SUBMISSION**

This matter concerns fact-finding proceedings between the City of Lorain (hereinafter referred to as the City or Employer) and the Fraternal Order of Police, Lodge 3 (hereinafter referred to as the FOP or Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on April 19, 2017 in Lorain, Ohio.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. There were tentative agreements reached on several of the issues initially presented and those that remain for this fact-finder's consideration are more fully set forth in this report.

There are two bargaining units involved herein consisting of approximately 100 employees in the classifications of patrol officer, police sergeant and police captain.

This fact-finder in rendering the following findings of fact and recommendations has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Therefore, the following recommendations on the issues at impasse are hereby submitted.

**1. WAGES**

The FOP proposes a 2% wage increase on January 1, 2018, and an additional 2% wage increase on January 1, 2019. The FOP did not propose any wage increase for the current year but as more fully set forth hereinafter it has proposed a firearms proficiency allowance beginning in December 2017.

The City takes the position that there should be no wage increases in the first two years of the Agreement with a reopener on wages for the 2019 contract year.

The FOP recognizes that the City has faced financial difficulties in recent years. However as even the City's Deputy Auditor Anita Harper acknowledges, it is expected there will be no deficit balance in the General Fund at the end of 2017. The FOP presented its own financial expert, Mary Schultz, who testified that the City is experiencing some very positive financial indicators in recent years. Previously, the City had been placed in fiscal watch by the State Auditor. However at the current time, the City is no longer under fiscal watch and Ms. Schultz believes that the City would be able to fund the FOP's wage proposals for the years 2018 and 2019.

Ms. Schultz further testified that there are certain funds within the Police Department which could be used to cover the cost of the Union's proposals. She specifically referred to the Police Levy Fund, Police Special Revenue Fund and the Law Enforcement Fund. She stated that combined they had a balance of \$1,302,000 at the end of 2016. Ms. Schultz stated that the cost of the Union's proposal is affordable from the

current balances and future revenues of these three police funds without affecting the General Fund or any City department budget.

The Union also presented wage comparisons with other cities of similar size. The FOP submits that these wage comparables establish that the wages in Lorain on average fall below that paid to similarly situated police officers in the region.

The City contends that it does not have the ability to fund any wage increase during the first two years of the Contract. The City's Deputy Auditor stated that the City saw a drastic downturn in revenues beginning in 2015 when it sustained a 2.8 million dollar budget shortfall. This was due in large part to the closing of Republic Steel, US Steel and the RTI Metal Reclamation Project. In 2014, the City had a one million dollar reserve fund which is now completely depleted. The Deputy Auditor further indicated that the City started 2017 with a 1.7 million dollar budget shortfall. Because of the financial uncertainties facing the City, the Deputy Auditor does not recommend that there be any wage increase for the first two years of the Agreement with a reopener for the third year.

The City also disputes the FOP's claim that certain Police Levy Funds and Special Revenue Funds could be used to fund wage increases for the bargaining unit. As Chief Rivera noted, these Special Police Funds are subject to certain restrictions for use in such things as narcotic investigations. As the Chief indicated, they should not be used for any kind of wage increases for the police officers.

The City presented its own wage comparisons which show that Lorain patrol officer wages fall about in the mid-range of salaries paid to officers in the region. The City points out that other compensation must be included in any comparison including the amount paid to officers in Lorain for longevity and for a fitness incentive.

As indicated, the FOP has also proposed a firearms proficiency allowance beginning in December 2017. Specifically, the FOP proposed a firearms proficiency allowance of \$900 per member in December 2017, with additional \$900 per member payable in December 2018 and December 2019. The City opposes any firearm proficiency allowance. There is no current firearms proficiency provision.

The FOP argues that because it is agreeing to no wage increase for the current year then a firearm proficiency allowance would be appropriate for the bargaining unit considering that there are to be certain increases in medical insurance costs for the employees. The FOP also points out that based on relative city populations, the average wages here fall about \$6,000 to \$8,000 below the average patrol officer wages in the region.

The City maintains that it does not have the ability to fund the firearm proficiency allowance for the next three years.

ANALYSIS – After carefully reviewing the evidence presented with respect to the wage issue, this fact-finder would recommend that there be no general wage increase for the current year, with a 1% wage increase effective January 1, 2018. It is also recommended that there be a reopener on wages for 2019. In addition, this fact-finder

would recommend that there be a new firearms proficiency allowance. For the first year, \$300 would be payable to the bargaining unit in December 2017. An additional \$200 would be payable in January 2018. In December 2018 and December 2019, officers would receive a \$500 firearm proficiency allowance.

In making the above recommendation, this fact-finder has taken into consideration the shortfall in the City's General Fund at the beginning of 2017. The Deputy Auditor indicated that the City anticipates that there will be no deficit in the General Fund at the end of the current year. However as the Deputy Auditor stated, this is assuming that there would be no wage increase for 2017. Given the shortfalls in the General Fund experienced by the City in the past and the uncertainties facing the City at the current time, this fact-finder would agree that there should be no wage increase for the current year.

However, this fact-finder finds that it would be reasonable to provide the bargaining unit members with \$500 annual firearms proficiency allowances. Given the fact that the City has not budgeted for such a firearms proficiency allowance for the current year, this fact-finder finds that it would be reasonable in the first year to provide for a \$300 firearms proficiency allowance payable in December 2017 with an additional \$200 in January of next year. Again, the year-end budget outlook with its uncertainties requires this fact-finder to make such a recommendation with respect to the first year firearms proficiency allowance. In each of the subsequent years, the full \$500 firearms proficiency allowance would be payable in December 2018 and December 2019.

This fact-finder has further determined that a 1% wage increase would be reasonable effective January 1, 2018. The evidence indicates that with the healthcare changes recommended later in this report, the City has the ability to fund such a wage increase for next year. A wage increase of 1% would at least to some extent allow the bargaining unit members wages to keep pace with those in the region. Comparables indicate that wages here fall about in the middle range for those in the area considering the longevity payment, uniform allowance, as well as fitness incentive provided to bargaining unit members. Moreover as previously discussed, bargaining unit members will be receiving a \$500 firearms proficiency allowance in December 2018 as well as December 2019. This new firearms proficiency allowance has been taken into consideration by this fact-finder in determining that a 1% wage increase would be appropriate for 2018.

This fact-finder would also recommend that for 2019 there be a wage reopener. This would appear to be a reasonable approach considering the financial uncertainties facing the City at this time. The parties would be in a better position in 2019 to assess the City's financial situation at that time.

### **RECOMMENDATION**

This fact-finder recommends the following with respect to Wages and a new Firearms Proficiency Provision:

**ARTICLE 31, WAGES**

**Section 31.1**      Effective January 1, 2017 – No wage increase.  
                                 Effective January 1, 2018 – A one percent (1%) wage increase.  
                                 Effective January 1, 2019 – Wage Reopener

**ARTICLE 38, MISCELLANEOUS CONTRACT PROVISIONS**

**Section 38.9 Firearms Proficiency:** Throughout the term of this Agreement all members of the bargaining unit that meet or exceed the State of Ohio Annual Certification (as departmentally adopted) for firearms qualification (R.C. 109.801) and the standards of Continuing Education (R.C. 109.803) will be given a proficiency allowance paid by the City as follows:

Five Hundred Dollars (\$500) per member – December 2017\*

\*Note: Because the City did not budget for increases in 2017, this payment will be broken into two payments:

(\$300 in December 2017 - and \$200 in January 2018)

Five Hundred Dollars (\$500) per member – December 2018

Five Hundred Dollars (\$500) per member – December 2019



## **2. INSURANCE COVERAGE**

The City has proposed several changes to the Health Insurance Provision. First, the City proposes to increase premiums for employees both in 2017 and 2018. For 2017, employee premiums would be \$150 per month for family coverage, and \$71 per month for single coverage. For 2018, premiums would increase to \$80 per month for single coverage, \$160 per month for an Employee plus 1, and \$205 per month for family coverage. For 2019, the City proposes an insurance coverage reopener. In addition beginning on January 1, 2018, the City would have employees pay the full premium for dental and vision insurance. The City also proposes to remove discounts currently provided for non-tobacco use and the completion of a physical effective July 1, 2017. Also under the City's proposal, the out-of-pocket maximums for health insurance would be increased to \$1,500 for single coverage, and \$3,000 for family coverage. The City would also remove the requirement for spouses to take their insurance with their own employer and replace it with a more standard "opt-out" plan. The City's proposal would allow spouses to remain on the City's insurance plan and not take their employer's plan. However, the employee could opt-out of the insurance with his/her whole family and the City would pay the premiums up to \$500 per month.

The FOP has proposed that for 2017 employee insurance premium contributions be \$154 per month for a family plan and \$71 for single coverage. For 2018, the FOP would agree that the employee contribution be \$160 per month for family plan and \$80 for a single plan. For 2019, the FOP proposes that employee contributions be \$170 per

month for a family plan and \$85 for single coverage. In all other respects, the FOP requests that the Insurance Provision remain as is.

The City has proposed changes to the Health Insurance Provision in hopes of saving money without overly burdening employees. The City has faced economic hardships in recent years and at the end of 2016 ended with a 1.7 million dollar budget shortfall. In addition, the police levy fund is projected to have a budgetary shortfall at the end of 2017. The City also points out that its proposals essentially reflect statewide averages according to SERB's most recent report.

The FOP basically contends that the changes proposed in the insurance coverage provision by the City would constitute significant increases for bargaining unit members. Rather, the FOP maintains that its own proposal which reflects modest increases in out-of-pocket medical insurance costs should be adopted. Moreover, the non-tobacco use discount as well as the completion of a physical discount should be retained with respect to health insurance premiums. Because of those discounts, many bargaining unit members currently pay less than the \$154 per month for family coverage.

ANALYSIS- This fact-finder would recommend that there be certain changes in the Health Insurance Provision. First, effective January 1, 2018 an employee is to pay 100% of the premium for dental and 50% of vision premium. With respect to health insurance premiums, effective July 1, 2017 health insurance premiums for family coverage are to be \$154 per month and for single coverage \$71 per month. Also effective July 1, 2017, discounts would be permanently removed so all employees pay the above

amount. On January 1, 2018, the premiums would increase to \$160 per month for an Employee plus 1, \$205 per month for family coverage, and \$80 per month for single coverage. This fact-finder finds that the above insurance premiums are reasonable and provide the City with an opportunity to save money regarding insurance whereas at the same time not overly burdening the employees. The contribution amounts are similar to those which both parties have proposed. For 2019, this fact-finder finds that it would be appropriate to provide for a reopener regarding Article 22, Insurance Coverage.

This fact-finder also finds that the out-of-pocket maximum increases proposed by the City are reasonable and are in line with statewide averages according to SERB's Insurance Report. The statewide average according to SERB is \$2,000 for single coverage and \$4,000 for family coverage. The recommendation herein is for the maximum to increase to \$1,500 for single coverage and \$3,000 for family coverage. It should be noted that these costs are only applicable to employees using the insurance frequently and as a result likely will not increase costs for most of the bargaining unit.

This fact-finder is also recommending effective January 1, 2018, the adoption of the City's proposal with respect to the spousal opt-out provision. The City's proposal would allow spouses to remain on the City's insurance plan and not take their own employer's plan, but it would also allow any employee with the opportunity to opt-out of the insurance coverage with the City paying the premiums up to \$500 per month. It should be noted that to be eligible to receive this payment, the employee must have been

on the City's health insurance plan on January 1, 2017. This fact-finder believes that the change is necessary and reasonable.

### **RECOMMENDATION**

With respect to Insurance, Article 22, this fact-finder recommends modifications as follows:

#### **ARTICLE 22, INSURANCE COVERAGE**

**Section 22.3** Effective January 1, 2018 ~~2015~~, the City will provide Guardian Dental Insurance, the employee will pay 100% of the premium. ~~and will pay 85% of the dental premium.~~

#### **Section 22.4** Health Insurance Premiums:

July 1, 2017:

\$71.00 a month for Single Coverage  
\$154.00 a month for a Family  
(Note: Permanently remove discounts so all employees pay the above amounts beginning July 1, 2017)

January 1, 2018:

\$80.00 a month for Single Coverage  
\$160.00 a month for Employee plus 1  
\$205.00 a month for Family

It is also recommended the employee contribute:  
\$3.49 a month for Single Vision  
\$7.89 a month for Family Vision

For the contract year of 2019 ~~2016~~, the City and the FOP will re-open Article 22/Insurance Coverage negotiations.

**Section 22.6** Enrollment Criteria/General Information

6. Effective January 1, 2018, if an employee does not elect health insurance coverage under the City's plan, the City will pay for the employee's coverage on their spouse's plan with another employer up to \$500 a month.
7. Delete the current language regarding spousal coverage and substitute new language as above.
8. The co-insurance out-of-pocket maximum (excluding deductible and copays) will be **\$1,500** ~~\$1,000.00~~ single / **\$3,000** ~~\$2,000.00~~ family, for network: **\$3,000** ~~\$2,000.00~~ single / **\$6,000** ~~\$4,000.00~~ family for non-network (see Benefit Option 1 Schedule of Benefits).

**3. ARTICLE 6, UNION REPRESENTATION**

The FOP proposes a new provision, Section 6.4, which allows the FOP Lodge President to have sufficient time off during the workweek to attend Lodge matters within the President's capacity. The Lodge President during this time would continue to have entitlement to wages, fringe benefits, seniority accrual and all other benefits allowed a bargaining unit member. The proposal sets forth the various authorized functions of the Union President including attendance at negotiation sessions and at grievance hearings.

The City opposes the inclusion of any such new Lodge President language.

ANALYSIS- This fact-finder after reviewing this matter would not recommend any new contract language as proposed by the FOP regarding the Lodge President being permitted to have sufficient time off with pay during the workweek to attend to Lodge matters. The Union President, Kyle Gelenius did testify that such a provision would be helpful in allowing him to handle the appropriate duties of Union President. However, the Union President acknowledged that such a contract provision is not commonly found in other labor agreements. This fact-finder has determined that this fact-finding proceeding is not the proper venue to secure these rights. For this reason, no new Section 6.4 as proposed by the FOP is to be recommended.

**RECOMMENDATION**

It is the recommendation of this fact-finder that there be no new provision pertaining to the FOP Lodge President.

**No new Section 6.4** regarding FOP Lodge President.

**4. ARTICLE 11, DISCIPLINE/CORRECTIVE ACTION**

The City proposes to delete certain language from Section 11.6 pertaining to when the Step 3 hearing is to be held. The Union opposes any change in the current language.

ANALYSIS – This fact-finder would recommend modification to Section 11.6 as proposed by the City. It was shown that deleting the language in question would provide for a more reasonable amount of time for the Step 3 hearing to be held. It was shown that the current provision does not allow sufficient time for a Step 3 hearing to be held following the filing of a grievance.

**RECOMMENDATION**

This fact-finder would recommend the City’s proposal to modify Section 11.6 as follows:

**ARTICLE 11, DISCIPLINE/CORRECTIVE ACTION**

**Section 11.6** – In case of suspension, demotion, or discharge, a non-probationary employee may immediately file a grievance at Step 3 of the grievance procedure contained in Article 9 of this Agreement. ~~Such step 3 hearing shall be held within five (5) calendar days of the filing of the grievance and will be answered within three (3) calendar days of the hearing.~~

**5. ARTICLE 21, HOLIDAY**

The FOP has proposed changes to this provision pertaining to the cashing out of holiday time each year. Under the FOP's proposal, employees may cash-out up to 240 hours of "old and banked" holiday time each year. The current provision provides that employees may cash-out up to 120 hours of holiday time each year. The City opposes any change in the current provision.

ANALYSIS – This fact-finder has determined that the record presented does not provide for an appropriate resolution of the issue raised regarding cashing out of holiday time. Rather, this fact-finder finds that it would be more suitable for the parties to discuss this issue during the reopener which is to take place in 2019. That is, the holiday cash-out provision proposed by the Union herein is to be discussed during the wage and insurance reopener which is to take place at that time.

**RECOMMENDATION**

With respect to the FOP's proposal to change the current Cashing Out Holiday Provision, this fact-finder finds that it would be more appropriate for the parties to discuss this matter during the reopener which is to take place in 2019.

**ARTICLE 21, HOLIDAY**

**Section 21.7** – Any change to be discussed during 2019 reopener.



**6. TENTATIVE AGREEMENTS**

The parties tentatively agreed to the following provisions prior to the end of the fact-finding hearing. This fact-finder hereby adopts these tentative agreements as part of his report.

City Proposal – **Section 6.4, UNION REPRESENTATION** - modify to state:

**“The Union President shall provide at least ninety-six (96) hour advance notice.”**

Union Proposal – **Section 10.17, Notice of Discipline** shall state as follows:

**“The City will provide prompt and coterminous notice of of discipline to the Union with the name of the employee who is disciplined, the date of discipline, the reason for discipline, and the rules, policies and regulations being applied.”**

Further, this fact-finder would incorporate into his report and recommend the adoption of tentatively agreed to items which the parties entered into prior to fact-finding:

**ARTICLE 4 - EDUCATIONAL REIMBURSEMENT**

**ARTICLE 9, Section 9.7 - GRIEVANCE PROCEDURE**

**ARTICLE 9, Section 9.5 - GRIEVANCE PROCEDURE**

**CONCLUSION**

In conclusion, this fact-finder hereby submits his recommendations on all the outstanding issues presented and incorporates all tentatively agreed upon provisions. Otherwise, all other Contract provisions are to continue as is.

**MAY 11, 2017**

**James M. Mancini /s/**  
**JAMES M. MANCINI, FACT-FINDER**

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