

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT-FINDING**

STATE EMPLOYMENT
RELATIONS BOARD

Aug 5 11 03 AM '96

**AFSCME, OHIO COUNCIL 8
LOCAL 3922**

(UNION)

- and -

CITY OF TORONTO, OHIO

(CITY)

Case No. 96-MED-05-0444

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was assigned by the State Employment Relations Board to serve in that role in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the undersigned Fact-Finder was appointed on July 1, 1996.

I. APPEARANCES

FOR THE UNION:

Bill VanZandt (Union representative), John E. Prose (Driver), Peter Warren (Water Department), and Garry Dougherty (Street Department).

FOR THE CITY:

Richard W. Parker (Auditor) and William Haynes, Jr. (Law Director).

II. BACKGROUND

This proceeding involves collective bargaining negotiations between AFSCME, Ohio Council 8, Local 3922

and the City of Toronto, Ohio. The collective bargaining agreement expired on July 31, 1996. Prior to this hearing, the parties had met and negotiated to impasse.

A fact-finding hearing was scheduled and held on July 26, 1996 at the Administration Building in Toronto, Ohio. Prior to swearing in witnesses, the parties agreed to let the Fact-Finder attempt to mediate a settlement of the remaining issues. The mediation session did not lead to a mutually-agreed to settlement of the issues in dispute and this Fact-Finding report issues.

The AFSCME unit consists of four sub-departments; M&R with three (3) full-time employees, Water with four (4) full-time employees, Refuse with four (4) employees, and a Utilities Collection Office with two (2) full-time employees for a total of (13) full-time employees in the unit.

III. ISSUES

During the course of good faith negotiations, the parties tentatively agreed to most issues and those mutually resolved provisions of the contract are hereby recognized and adopted by the Fact-Finder.

At the hearing, the issues that remained at impasse were presented as follows:

- Issue 1: Contracting out bargaining unit work.**
- Issue 2: Whether current city employees Mr. Gary Daugherty and Ms. Tice should be included in the bargaining unit.**
- Issue 3: Clothing allowance.**
- Issue 4: Longevity pay.**
- Issue 5: Number of paid holidays.**
- Issue 6: Whether or not to offer the AFSCME health care plan.**
- Issue 7: Hospitalization Premiums paid by the city.**

- Issue 8: Hourly CDL licensure bonus.
- Issue 9: Monthly EPA licensure bonus.
- Issue 10: Length of the contract.
- Issue 11: Wages.
- Issue 12: The need for bargaining unit position job descriptions.
- Issue 13: Drug and alcohol testing.
- Issue 14: The counting of leave under the Family and Medical Leave Act.
- Issue 15: Call-In pay.
- Issue 16: Grievance administration.
- Issue 17: Inspection of Employee Personnel files.
- Issue 18: Hours of work / overtime.
- Issue 19: Union Security.

IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors which the State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.
2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors

peculiar to the area and classification involved.

3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In the preparation of this Report and Recommendations, the Fact-Finder did in fact consider these six (6) factors.

The Fact-Finder wishes to take a moment to recognize the professional manner in which Mr. Van Zandt and Mr. Haynes presented their respective party's interests during the Fact-Finding hearing. Not only were their presentations cogent and well reasoned, but their supporting documentation was thorough as well. This Fact-Finder takes notice of the fact that the City and the Union have a mature bargaining relationship marked by mutual respect and that both sides made a sincere effort to reach agreement during negotiations. My Report and Recommendations attempts to recognize this fact by setting forth recommendations which I believe are reasonable and fair and which both parties can recommend, although I realize that acceptance of the same would involve some degree of mutual sacrifice.

Issue 1: Contracting out current bargaining unit work - Articles 4 & 39.

Union:

The Union admits that under current contract language (Article 4, Management Rights/Article 39, Contracting Out), the City retains the right to subcontract out sanitation work to an outside contractor. However, it proposes that the language of this article be changed to prohibit subcontracting of bargaining unit work.

City:

The City adamantly resists giving up the right to subcontract out work, arguing that continuing budget pressures may make this option necessary. The City admits that it is exploring many other ways to contain costs,

including subcontracting out Sanitation work. However, it insists that should the Sanitation department be outsourced, bargaining unit jobs would be protected, most likely through a transfer of Sanitation workers to the M&R Department.

Finding and Recommendation:

As to the first issue, the Fact-Finder is certainly sensitive to the Union's concern over the need to maintain bargaining unit work. However, given the fiscal pressures facing Ohio municipalities today, and the need for Cities to be positioned to respond to the same, this Fact-finder recommends that Articles 4 and 39 remain unchanged, that is, the City retain the flexibility to subcontract out services. This recommendation is made with the recognition that in the event of subcontracting, Article 39 provides job security to all Union employees who were on the payroll as of August 1, 1993.

However, since it is not clear whether Department or City-wide seniority would apply in the event of absorption of bargaining unit employees into another Department, the Fact-Finder recommends that as part of a contract settlement, the parties draft a side letter of agreement addressing how related issues would be handled. In that regard, this Fact-Finder would recommend that the letter address pay maintenance for affected employees, advance written notice to the Union prior to implementation of subcontracting services, and a mutual understanding as to how City-wide and/or Department-wide seniority would apply.

Issue 2: Including Gary Daugherty and Ms. Tice into the bargaining unit.

Union:

The Union contends both Mr. Daugherty and Ms. Tice should be properly classified as bargaining unit employees inasmuch as they have been doing bargaining unit work; Mr. Daugherty as a laborer, and Ms. Tice as a part-time employee in the Utilities Collection Office.

City:

The City doesn't contest that Mr. Daugherty, who was initially hired with grant money, should now be placed in the bargaining unit, but points out that Ms. Tice is a temporary who earned only about \$2,000 last year doing part-time work, some of which was non-unit type work.

Finding and Recommendation:

Based on the nature of the work Mr. Daugherty has admittedly been doing and the City's concurrence, the Fact-Finder can find no reasonable basis to exclude his position from the unit. Accordingly, it is recommended that Mr. Daugherty be placed into an equivalent bargaining unit position, effective August 1, 1996. To ease the financial transition for the City, it is recommended that he be paid \$6.50/hour effective that date, \$7.00/hour on March 1, 1997, \$7.50/hour on September 1, 1997, and effective on August 1, 1998 the then going rate of a driver/laborer (or whatever position he's occupying at that time).

As to Ms. Tice, while her work occasionally skirts the edges of a bargaining unit position, this Fact-Finder believes that she is more properly classified as a non-bargaining unit part-time clerk.

Issue 3: Clothing allowance – Article 36.

Union:

The Union proposes that the \$250 each member currently receives for a clothing allowance be increased to \$400/year. It points out that both the police and fire units already receive \$500/year, with a rumored increase to \$600.

City:

The City responded by offering to supply uniforms and launder the same rather than increasing the current allowance.

Finding and Recommendation:

In light of the increasing cost of boots and other items of work clothing, the Fact-Finder recommends that the annual clothing allowance be increased to \$350/year. This not only helps defray increased costs, but puts this unit on a more equitable footing with the larger allowances granted to the fire and police units who are also required to wear City-approved uniforms. However, to help the City's budgeting process, it is recommended that the implementation of the increased allowance be delayed until January 1, 1997.

Issue 4: Longevity Pay – Article 34.

Union:

The Union asks that the longevity multiple be raised to \$3.00/hour from the current \$2.00/hour. They submitted that other, surrounding counties are already at rates greater than what they are being paid.

City:

The City contends that the current longevity bonus should be maintained.

Finding and Recommendation:

The Fact-Finder was not swayed by the Union's arguments in support of its proposed increase. In light of subsequent recommendations that will be made, infra, regarding other economic items, the Fact-Finder recommends that the current longevity bonus of \$2.00/hour remain unchanged.

Issue 5: Holiday Schedule – Article 25.

Union:

The Union asks that they be granted an extra paid holiday, from 10 to 11/year, arguing that other, surrounding counties already provide the same.

City:

The City contends that not only would an increase in paid holidays be unwarranted and costly, but it would put this unit out of conformity with the rest of the City's workforce.

Findings and Recommendations:

An increase in paid holidays would not only be a very costly economic item in and of itself, but it would be reasonable to assume that the City's other units and its non-union employees would expect the same consideration on so fundamental a benefit. That would create a situation which this Fact-Finder does not believe the City could afford. Therefore, the Fact-Finder recommends that the current number of paid holidays remain unchanged.

Issue 6: The AFSCME Care Plan.

Union:

The Union asks that its members be provided the AFSCME care plan, i.e., vision, hearing, life insurance, prescription drugs and dental insurance coverage.

City:

The City offered to consider extending the AFSCME vision and hearing coverage to this unit, provided it could reach an accommodation on wages.

Finding and Recommendation:

This issue, like many other open items in these negotiations, is economic in nature. In that context, this Fact-Finder finds that this unit has fallen behind the other City units in certain areas, particularly wages. While wages will be discussed later, the facts indicate that some economic "catch-up" is appropriate for this unit; therefore, it is recommended that the vision and hearing coverage of the AFSCME plan be provided, with implementation delayed until January 1, 1997 to ease the effect on the City's budget. The cost was projected to be approximately \$23.75 per employee per month.

Issue 7: Hospitalization – Article 38.

Union:

The Union requested that the City continue to pay for its members insurance premiums. It therefore proposes that the deductible language in the current contract be deleted.

City:

The City proposed to increase the single and family coverage cap to \$380/month (from the current levels of \$130/month for individual coverage and \$320/month for family coverage).

Finding and Recommendation:

The Fact-Finder recognizes that the City is moving to better control rising healthcare costs, including a proposed move to a managed care contract. While fully paid coverage is a benefit that many union members have come to expect, it is not unreasonable for the City to be reluctant to offer a blanket pick-up of costs. Therefore, the Fact-Finder recommends that the City's proposal be adopted. With the proposed increase in the cap to \$380/month, while the Union will not receive the blanket protection that it requested, but in any event all unit employees, particularly those with single coverage, will receive a significant boost in employer contributions.

Issue 8: Hourly CDL Hourly Bonus .

Union:

The Union proposes that unit employees who obtain a valid CDL license should receive an additional \$.25/hour in compensation. It believes that this additional compensation would adequately reward and recognize its member's commercial driver's licensure status.

City:

Depending on the wage settlement, the City proposes to grant a \$.10/hour increase to valid CDL holders, provided the CDL is required by the position; employees would not receive the bonus simply for holding a valid license if the same was not required for their job.

Finding and Recommendation:

The Fact-Finder believes that some bonus for valid CDL licensure status is appropriate given the study and testing that holders have to undergo. However, a \$.25/hour increase was not supported by the evidence, and payment for employees who are not required to hold the license, nor who serve as driving backup, is inappropriate. Accordingly, the Fact-Finder recommends adoption of the City's proposal of an additional \$.10/hour.

Issue 9: EPA Operator Bonus .

Union:

The Union suggested that the current EPA operator bonus of \$50/month for Class I operators, \$100/month for Class II operators and \$150/month for Class III operators be increased to \$100, \$150 and \$200/month respectively.

City:

The City pointed out in light of its current financial condition that the current bonuses should be maintained at their present levels.

Finding and Recommendation:

The Fact-Finder was unpersuaded that the current bonus levels were either inadequate or inappropriate. Accordingly, it is recommended that they be maintained at their current levels.

Issue 10: Length of the Contract – Article 42.

Union:

The Union proposed a one (1) year agreement, or else a multi-year contract with provisions for a wage reopener.

City:

The City argued that another three (3) year agreement was appropriate.

Finding and Recommendation:

The Fact-Finder not only believes that longer contracts provide a greater degree of stability, but the parties' previous agreement was for three (3) years. Further, a wage reopener would introduce an unnecessary degree of uncertainty into the City's budget planning process. Therefore, the Fact-Finder recommends that the contract be of three (3) years duration, with no provision for a wage reopener. In addition, the three (3) year agreement should begin running from August 1, 1996.

Issue 11: Wages – Article 37.

Union:

The Union proposed a wage increase of 5% per year for each year of the agreement, effective each August 1. At the hearing, it amended its proposal to 3% per year for each year of the contract. In support of its position, it

offered comparative wage data, both internal and external, that purported to show that an adjustment of this magnitude was necessary. It concluded that this increase was approximately only the projected increase in cost of living, it afforded it some "catch-up" with the other City bargaining units which had pulled significantly ahead in recent years and was something it believed the City could afford with appropriate adjustments in its rates.

City:

The City countered that it was not in a financial position to raise wages by even 3% per year. It testified that of all the departments represented by the Union, only Refuse was not in the red (and that would change to a deficit should a new truck be purchased. It pointed out that the fire and police unions had recently agreed to raises of 0-2-2% over three years. It countered with an offer to raise rates by 0-1-2% if vision and hearing coverage was provided, or 0-2-2% if these new benefits were not accepted. The City concluded by admitting that this unit was in need of some "catch-up" but that because of the City's finances, it was not able to provide the same at this time.

Finding and Recommendation:

The Fact-Finder agrees with the City of Toronto that it is a distressed community. The Fact-Finder notes that, at the present time, ability to pay is a determinative issue here and this Fact-Finder is certainly cognizant of this City's continuing duty to manage its finances responsibly. Its proposal to freeze wages in the first year of the contract, then increase them by 2%/year over the next two years indicates that it continues to be prudent regarding managing future income and expense projections. With this in mind, and recognizing that other, economic improvements have already been recommended in this Report, the Fact-Finder suggests that the City's 0-2-2%/year wage proposal be adopted.

The Fact-Finder recognizes that these recommended increases are less than the 3%/ year over three years that the Union formally requested, but exceed what the City proposed given that its proposal with the other improvements was actually 0-1-2%. While accepting these recommended increases will require compromises by both sides, the Fact-Finder believes this recommendation to be appropriate, both as to internal and external equity concerns, consistent with other comparable municipal contracts, and in the best interests of the parties. While the City can be expected to have difficulty in budgeting for any increase, there was testimony from the City that this unit had slipped behind the other bargaining units economically, that a proposed City income tax levy was on the November ballot, and that the City's water and sewage rates, a significant source of potential future revenue, have remain unchanged for twenty (20) years. Accordingly, this Fact-Finder believes that the projected funding for this wage increase is available.

Issue 12: Job Descriptions – Article 16.

Union:

The Union asks that the City draft job descriptions for all bargaining unit jobs. It contends that the contract currently requires them to do so already.

City:

The City counters with the fact that Article 16 does not require them to develop job descriptions, but rather, if they do, the Union is to be provided a copy of the same.

Finding and Recommendation:

While job descriptions perform a useful function, these traditionally are a management rights function. With the transition in department structure and services that the City is proposing, however, descriptions done today on jobs that could well be changing would be of limited value. In addition, the parties have a tradition of being flexible in terms of job assignments and written descriptions would limit that flexibility which is of mutual benefit to both a small municipality and to Union security. Accordingly, the Fact-Finder recommends no change to the current language providing the City the with the right, but not the obligation, to draft these position descriptions.

Issue 13: Drug and Alcohol Testing – Proposed Article 43

Union:

The Union opposes any contract changes that would provide the City with the right to randomly test all unit employees for drugs or alcohol at any time, and mandatory testing upon an employee's return from any leave of more than one (1) day.

City:

The City suggested that their proposed testing program was sound management practice. They pointed out that CDL regulations required the testing of certain employees and they believed that they were already permitted to test for cause. They added that random testing would be a valuable tool to prevent drug and alcohol abuse as well.

Finding and Recommendation:

Drug testing has become a common screening device, and many Ohio municipalities have instituted testing programs. A prudently designed testing program has been shown to reduce the incidence of on-the-job injuries/insurance claims/workers compensation claims, reduce absenteeism and salvage employees' careers.

It should be pointed out that CDL-required testing is not at issue here since federal regulations are not negotiable. In that respect, it is recommended that the City's proposed contract language, with changes as made during the hearing, be adopted as a new Article 43, titled "Alcohol and Drug Testing Policy". A copy of the suggested policy is attached. (Attachment #1).

As to the other testing, this Fact-Finder recommends that testing for cause (a fitness for duty issue), is in the best interests of both parties and language explaining the same should be incorporated into the contract. However, without a showing or reasonable suspicion that abuse has been a problem, a random drug testing program, while minimally invasive, is not recommended.

Accordingly, the following contract language is suggested as Section 8 of the new Article 43:

Article 43: Drug and Alcohol Testing of Non-CDL Licensed Employees

All other non-CDL licensed Service Department employees shall be subject to drug and/or alcohol testing only "for cause". While on the job, no employee shall use or be under the influence of alcohol and/or drugs, except for over-the-counter, non-prescription drugs, and/or drugs prescribed to the employee by a licensed physician, which do not impair, or warn of the impairment of the ability of the employee, to operate a vehicle, machinery or other equipment.

Should the City decide to proceed with a formal "for cause" drug & alcohol testing program, it is recommended that it offer to meet and confer with the Union at least sixty (60) days in advance of implementation to discuss both the procedural details and the testing options.

Issue 14: Family and Medical Leave – Proposed Article 44

City:

The City proposed that a new article dealing with the Family and Medical Leave Act be incorporated into the contract. In addition to a general explanation of the FMLA, it suggests that "double counting" of unpaid leave under the FMLA should be used concurrently with any other applicable leave under federal, state or local law, or under the terms of the contract, e.g., an employee going out on approved FMLA leave would have to use his/her accrued sick and vacation time up first before transferring to unpaid FMLA leave status.

Union:

The Union was in general approval of the proposed article, but asked that employees be permitted to hold back at least one (1) week of vacation in reserve.

Finding and Recommendation:

The Fact-Finder finds that an article dealing with FMLA issues is prudent. Further, it is noted that the Union had no problem with the City's proposed language except as to the exhaustion of accrued sick/vacation. The Union's suggestion that an employee be permitted to hold at least one (1) week of accrued vacation in reserve for use upon their return from FMLA leave is a reasonable compromise. Therefore, this Fact-Finder recommends that employees be permitted to hold up to one (1) week of accrued vacation in reserve, and suggests adoption of the City's proposed article (including the hand-written amendments), attached. (Attachment #2).

Issue 15: Call-In Pay-- Article 27.

Union:

The Union asks that employees who are called back to work should receive a minimum of four (4) hours pay at the applicable overtime rate, i.e., in other words, the Union suggests that the call-in rate be doubled from its current two (2) hour minimum.

City:

The City suggests that the current two (2) minimum be maintained, which it pointed out, would be consistent with its current firefighters' contract.

Finding and Recommendation:

The Fact-Finder recommends that the current two (2) hour minimum remain unchanged. Leaving the call-in rate unchanged would not only keep this unit consistent with the firefighters, but as is, it's already better than the Police Department's "time actually worked" policy. And, as an economic item, the Fact-Finder would prefer to see the City's scarce resources go to the limited wage and benefit improvements suggested earlier.

Issue 16: Grievance Administration – Article 14.

City:

In settling grievances, the City proposes removing the grievant's supervisor from the grievance administration process; i.e., where supervisor is mentioned, the City wants to have the service director involved instead.

Union:

The Union preferred to keep the language unchanged.

Finding and Recommendation:

Because of the City's valid premise that a grievant's service director, rather than his/her supervisor, is best able to resolve contract interpretation issues, the Fact-Finder recommends that the current language of Article 14 be revised, all as more fully set forth in Attachment #3.

Issue 17: Inspection of Employee Personnel Files – Article 10.

City:

The City proposes a modest revision to Article 10, to wit, adding language that would require that a management representative be present whenever an employee is inspecting his/her personnel file.

Union:

The Union indicated that they could support such a language change, provided the City agreed to language that would provide that an employee requesting an inspection of his/her file would not be unreasonably delayed in being provided access.

Finding and Recommendation:

The Fact-Finder believes that the suggested revisions of both parties are prudent and appropriate. Accordingly, he recommends that a new Section 2 be added to Article 10. It is suggested that this new section read as follows:

<p><u>Section 2.</u> A management representative shall be present when an employee is inspecting his/her file. In addition, an employee's request to see his/her file shall not be unreasonably denied.</p>
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Issue 18: Hours of Work/Overtime- Article 15.

City:

The City proposes amending the last sentence of Article 15 to read that any leave, paid or otherwise, should not count as hours worked for purposes of computing overtime in a workweek.

Union:

The Union proposes leaving the current language unchanged.

Finding and Recommendation:

Since there was no testimony indicating that the current language has presented a problem, a change as proposed by the City would result in a diminution of pay for Union members, and given the recommendation that the Union accept a wage freeze in the first year of the contract, the Fact-Finder does not believe it would be fair to recommend a change in the current language.

Issue 19: Union Security - Article 7.

City:

Because of a Federal court case that issued since this contract was last signed, the City is now concerned that the contract's "hold harmless" clause would be found invalid, i.e., if for whatever reason a union member contested the accuracy or appropriateness of his/her dues deductions, particularly in a fair share situation, the City

could be held responsible and not force the Union to indemnify it, no matter what the contract states. Therefore, the City proposes ending its obligation to deduct fair share fees on behalf of the Union.

Union:

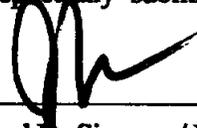
The Union responds that it "fought long and hard" to get this provision into the first contract and that it gave up some raises to do so. Therefore, it adamantly opposes this suggested contract modification.

Finding and Recommendation:

The Fact-Finder finds that while the City may have some apparent cause for concern over this issue, its proposed remedy is too severe. It should be pointed out that the provision is an important one to Unions, for many reasons, both procedural and practical, and to eliminate the City's payroll deduction obligations would work an undue hardship on this unit in exchange for an extremely limited protection for the City. In any event, the current provision, should it ever be contested and/or should the Union refuse to reimburse the City, could be contested in binding arbitration. The Fact-Finder finds that this alone provides adequate protection of the City's financial interests and so recommends no change in this contract provision.

Issued : August 2, 1996

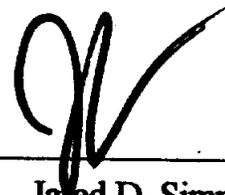
Respectfully submitted,



Jared D. Simmer / Fact-Finder

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the City of Toronto, Ohio (via Mr. William Haynes, Jr.) and AFSCME, Ohio Council 8 (via Mr. Bill Van Zandt) by overnight mail service, and upon the Ohio State Employment Relations Board (via G. Thomas Worley) by first class mail, this day of August 2, 1996.

A handwritten signature in black ink, appearing to be 'J. Simmer', written over a horizontal line.

Jared D. Simmer

Fact-Finder

ARTICLE 43

CITY OF Toronto

ALCOHOL AND DRUG TESTING POLICY**Section 1. General Provisions**

The provisions of this article are intended to comply with the Omnibus Transportation Act of 1991 and relevant U.S. Department of Transportation Regulations and applies to all safety sensitive employees as outlined in Federal Highway Regulations (49 CFR Parts 382, 391, 392, 395). These regulations apply to every person who operates a commercial motor vehicle (CMV) in interstate or intrastate commerce and who is subject to commercial drivers license (CDL) requirements. A CMV is a vehicle that weighs over 26,000 thousand pounds, has a gross combination weight over 26,000 thousand pounds inclusive of a towed unit with a gross weight of over 10,000 pounds, is designed to transport 16 or more passengers, or is used to transport hazardous materials. Such safety sensitive employees are subject to random, post-accident, reasonable suspicion, return to duty testing as outlined below. Certain provisions of this policy (ie. reasonable suspicion, return to duty and follow-up testing) shall apply to all employees.

A. Pre-Employment

Prior to commencing employment with the City, newly hired employees shall be required to pass a drug and alcohol test. Further, prior to performing a safety sensitive function for the first time, any current employee must pass a drug and alcohol screening as outlined in the Federal Highway Administration regulations listed above.

B. Random Testing

A scientifically valid method shall be used to randomly select employees for testing. Such testing for drugs and alcohol shall be conducted when (1) the employee is performing a safety sensitive function, (2) just before the employee is to perform a safety sensitive function or (3) just after the employee has ceased performing such

functions. An employee selected for random testing must proceed immediately to the testing site. Commencing January 1, 1996, twenty-five per cent (25%) of all affected employees shall be tested for alcohol and fifty per cent (50%) of all affected employees shall be tested for drugs in each calendar year. These percentages may be raised or lowered in subsequent years, depending on the annual rate of positive tests for all employees covered by this rule.

C. Post Accident Testing

Test will be required following all accidents. Testing will be conducted for each surviving driver if the accident involved a loss of human life or a driver receives a citation for a moving violation under state or local law. A collision or occurrence meets the definition of an "accident" when the incident involves a motor vehicle operating on a public road which results in: a death; bodily injury to a person who immediately receives medical treatment away from the accident; or one or more vehicles is disabled and must be towed from the scene. Other employees may be tested if it is determined, based on the best information available at the time of the accident, that such employee's actions could have contributed to the accident.

D. Reasonable Suspicion Testing

1. Employees who are observed, by at least one trained supervisor or employee, demonstrating evidence of alcohol or controlled substance impairment shall be subject to testing. Reasonable suspicion must be based on specific, contemporaneous and articulable observation concerning the appearance, behavior, speech or body odors of the employee.

2. Testing under this Section 1 D. must be administered promptly and in no case later than eight (8) hours after a determination of reasonable suspicion is made. The person who makes the determination of reasonable suspicion **shall not** conduct the alcohol test.

3. The observing supervisor or employee must document, in writing, the grounds for his reasonable suspicion within twenty-four (24) hours of making the determination, but at a time not later than before the results of the test are released, whichever is sooner.

4. Employees designated to determine whether reasonable suspicion exists must receive at least one (1) hour of training on alcohol and drug misuse and indicators of probable misuse.

E. Return to Duty Testing

1. An employee who has tested positive for a controlled substance or an alcohol concentration of 0.04 or above, in any of the above testing and is not discharged by the City, shall not be permitted to perform any safety sensitive function until he has been evaluated by a substance abuse professional, completed any recommended rehabilitation or course of treatment and has a verified negative test result for controlled substances if the conduct involved controlled substances or must undergo a return to duty alcohol test with a resultant alcohol concentration of less than 0.02, if the conduct involved alcohol.

2. An employee who tests positive for alcohol with an alcohol concentration of 0.02 but less than 0.04 shall not be permitted to perform any safety sensitive function until he undergoes a return to duty alcohol test with a resultant alcohol concentration of less than 0.02.

F. Follow-up Testing

Safety sensitive employees who test positive, and are not discharged by the City shall be required to participate in follow-up testing for twelve (12) months following the employee's return to work. The employee shall be required to submit to a minimum of six (6) unannounced follow-up tests in the first twelve (12) months following the employee's return to work. The number and frequency of the follow-up testing shall

be determined by a substance abuse professional (SAP). After the first year, the substance abuse professional may terminate this requirement or continue the follow-up testing for an additional forty - eight (48) months.

G. Refusal to Submit Required Testing

A refusal to submit to a drug or alcohol test shall be treated as a positive test. In the case of post - accident testing and the inability of the employee to voluntarily submit to required testing, the City may substitute a test for use of drugs or alcohol administered by police or other public safety officers under separate authority, in lieu of conducting its own testing.

Section 2. Testing Procedures

The following procedures shall be used in testing for controlled substances and alcohol:

A. Controlled Substance Testing

1. Testing for controlled substances will be by urinalysis only and will be performed by a Department of Health and Human Services certified laboratory. Split samples of all specimens are required under the Act.

2. Specimens may only be tested for the covered drugs and the specimen may not be used to conduct any other analysis or test. Covered drugs under the Act are limited to (1) Amphetamines, (2) Cocaine, (3) Marijuana, (4) Opiates, and (5) Phencyclidine. The City may only test for other controlled substances if approved by the DOT, and if there is a DHHS approved testing protocol for that substance.

3. Preparation for Testing

A standard drug testing custody and control form must be used. A statement on the form will inform the Employee that if there is a positive test, the Medical Review Officer (MRO) will contact the employee about prescription and over-the-counter medications. The employee may list medications only on the employee's copy of the form. The employee is not to provide any information about prescription or over-the-counter medication to the employer or the laboratory.

4. Specimen Collection Procedures

a. Urine specimens shall be collected at a collection site which complies with the procedures set forth in the Act and related regulations and which conforms to DOT protocols.

b. The collection area must be secure and the chain of custody form must be completed and shipped with the specimen.

c. The collection site person is the individual that insures the urine specimen is collected according to the required procedures. An employee's direct supervisor may not serve as the collection site person unless it is impracticable for any other person to perform this function.

d. Collection of urine specimens must allow individual privacy unless there is reason to believe that a particular person may alter or substitute the specimen. If specimen collection is directly observed by a non-medical person, the observer must be of the same gender as the employee. The following circumstances are the only grounds to believe a person may alter or substitute a specimen:

*The urine specimen is outside the normal temperature range (32.5 deg C, 90.5 deg-99.8 deg F) and the employee will not allow an oral body temperature to be taken, or the Oral body temperature is 1 deg. C/1.8 deg F different from the temperature of the specimen;

*The collection site person observes behavior that clearly indicates an attempt to alter or substitute a specimen; or

*The employee has previously been determined to have used a controlled substance and the test is a follow-up test after return to duty.

e. A "split sample" of urine is collected in this procedure. In the split sample method the urine specimen is divided into two containers. The purpose of the split sample is to allow the employee the opportunity to have the specimen retested at a different certified laboratory.

f. An employee must provide at least 45 ml (milliliters) of urine. Failure to provide an adequate amount of urine is considered a **refusal to submit** to a controlled substance test and the employee is considered to have engaged in prohibited actions. If the employee is unable to provide the minimum amount of urine, the collection site person will have the employee drink up to twenty-four (24) ounces of fluid and try to provide a sample within two (2) hours. If the employee is still unable to provide a complete sample, the test will be stopped and the employee will be sent for a medical evaluation to determine if there is a legitimate reason for the failure to provide a specimen or if there is a refusal to submit a specimen.

5. Laboratory Analysis Procedures

The initial test of the specimen is to be performed by an immunoassay test. The cutoff levels are listed below and are expressed in nanograms per milliliter (ng/ml):

Amphetamines

1,000 ng/ml

Cocaine metabolites	300 ng/ml
Marijuana metabolites	50 ng/ml
Opiate metabolites	300 ng/ml
Phencyclidine	25 ng/ml

A conformation test will be performed on all initial positive tests. The conformation test must be performed by gas chromatography/mass spectrometry (GC/MS) and this is the only authorized conformation test. The cutoff levels for the conformation test are:

Marijuana metabolites	15 ng/ml
Cocaine metabolites	150 ng/ml
<u>Opiates</u>	
Morphine	300 ng/ml
Codeine	300 ng/ml
<u>Amphetamines</u>	
Amphetamines	500 ng/ml
Methamphetamine	500 ng/ml
Phencyclidine	25 ng/ml

The laboratory must retain the sample in frozen storage for a minimum of one (1) year. The Medical Review Officer will notify the employee of any positive test result. After notification the employee will have seventy-two (72) hours in which to request that the MRO have the specimen tested in a different certified laboratory.

6. Reporting and Review of Results

A Medical Review Officer (MRO) will examine all confirmed positive test results to determine if there is an alternative explanation for the positive test result. Before making a final decision as to whether a positive test is valid, the MRO will provide the employee with the opportunity to discuss the test result. If the MRO determines there is

a legitimate medical explanation for the positive test result, the MRO will report to the employer that the test is negative.

B. Alcohol Testing Procedures

1. Testing Devices

Tests for alcohol will be conducted with evidential test devices (EBTs) approved by the National Highway Traffic Safety Administration (NHTSA).

2. Screening Tests

a. A Breath Alcohol Technician will administer the test. The employee's supervisor may not administer the test unless that employee's supervisor is the only available qualified BAT.

b. An individually sealed mouthpiece must be opened in view of the employee and attached to the EBT. the employee will blow forcefully into the mouthpiece for at least six (6) seconds or until an adequate amount of breath has been obtained

c. If the result is below 0.02 the BAT will record the result and no further testing will be performed.

3. Confirmation Tests

a. If the result of the screening test is above 0.02 a confirmation test will be conducted. The conformation test will be conducted at least fifteen (15) minutes but no more than twenty (20) minutes after the screening test.

b. Before the confirmation test, a test (air blank) will be run to ensure the EBT is working properly.

c. If the screening and confirmation test results are different, the confirmation test result will be used.

4. Inability to Provide an Adequate Amount of Breath

In the event an employee does not provide an adequate amount of breath for the test, he will be sent to a physician who will evaluate the employee's medical ability to provide the required amount of breath. If the physician is unable to find a medical explanation for the employee's failure to provide an adequate amount of breath, the employee will be considered to have refused to submit to a test.

C. Confidentiality

Test results will be confidential to the extent required by law. The cost of any required testing shall be paid by the City.

Section 3 Positive Test Results

The following shall apply when an employee tests positive for alcohol or controlled substances pursuant to any of the above testing.

A. Driver and Employment Eligibility

1. Any safety sensitive employee who, pursuant to any of the required testing above, is found to have an alcohol concentration of 0.02 but less than 0.04 shall be prohibited from performing safety sensitive functions for a minimum of twenty-four (24) hours and until the employee has passed a return

to duty test with an alcohol concentration of less than 0.02. Such an employee shall be placed on appropriate leave (paid or unpaid) until he/she has met the requirements of this sub-section A 1.

2. Any safety sensitive employee who, pursuant to any of the required testing above, is found to have an alcohol concentration of greater than 0.04 shall be prohibited from performing safety sensitive functions for a minimum of forty-eight (48) hours, and until he has been evaluated by a substance abuse professional, followed any recommended course of treatment and has passed a return to duty test with an alcohol concentration of less than 0.02. Such an employee shall be placed on appropriate leave (paid or unpaid) until he/she has met the requirements of this sub-section A 2. Employees who are not permitted to drive during this period shall be placed in an equivalent or lower rated (paid) non-safety sensitive position if available. If no position is available, the employee shall be placed in appropriate leave status until a non-safety sensitive position is available or until such time as he/she may return to his/her former position.

3. Any safety sensitive employee who, pursuant to any of the required testing above, is found to have engaged in the prohibited use of a controlled substance shall be prohibited from performing safety sensitive functions until he has been evaluated by a substance abuse professional, followed any recommended course of treatment and has passed a return to duty test for controlled substances. Such an employee shall be placed on appropriate leave (paid or unpaid) until he/she has met the requirements of this sub-section A 3. Employees who are not permitted to drive during this period shall be placed in an equivalent or lower rated (paid) non-safety sensitive position if available. If no position is available, the employee shall be placed in appropriate leave status until a non-safety sensitive position is available or until such time as he/she may return to his/her former position.

B. Discipline

1. In addition to the above mandatory consequences for a positive test result, the City may discipline an employee, up to and including discharge, for violations of the Act, this policy and/or misconduct or poor performance resulting from an alcohol or substance abuse problem and in accordance with Article ~~15~~ of the Collective Bargaining Agreement between the parties. However, any discipline shall be mitigated by the willingness of the employee ^{To} a rehabilitation program recommenced by a substance abuse professional, if the offense is not of such a nature which warrants discharge. In no event shall the City be obligated to provide more than one chance at rehabilitation. Failure to complete or participate in a prescribed rehabilitation program may result in the employee's discharge. The cost of rehabilitation services will be paid by the employee except that the employee may use the benefits provided under the City's health insurance plan.

*C. 15
Article 15*

2. Employees who test positive as result of a follow-up or return to duty test shall be subject to discipline in accordance with Article ~~15~~ of the Collective Bargaining Agreement between the parties.

3. Employees offered rehabilitation services under this section will be notified of all available resources for evaluation and treatment.

Section 4. Use of Alcohol or Controlled Substances

1. The parties agree that the workplace should be free from the risks posed by the use of alcohol and controlled substances. The unlawful manufacture, distribution, being under the influence, sale, possession or use of alcohol or a

controlled substance in the workplace strictly forbidden. An employee who violates this policy is subject to discipline, up to and including discharge, in accordance with Article 19 of the Collective Bargaining Agreement and/or referral to an appropriate law enforcement authority.

2. In specific regard to alcohol use, safety sensitive employees are prohibited from any use that could affect their performance including use during the four (4) hours prior to reporting for work, having prohibited concentrations of alcohol in their system while operating a vehicle, and the use of alcohol during the eight (8) hour period following an accident.

Section 5. Training

The City will ensure that persons authorized to determine reasonable suspicion are trained in compliance with the Act, to recognize the symptoms of impairment or intoxication. In addition two (2) employees of the bargaining unit will also be trained at no cost to the employees. Should a trained Union representative bring forward a case of reasonable suspicion and the employee tests positive as a result of a reasonable suspicion test, the affected employee shall not be disciplined but will be subject to the provisions of Section 3 of this policy.

Section 6. Medical Prescriptions

Employees who are taking a prescription medication which may interfere with their safe performance, ^{shall} should provide the City with a statement from a physician specifying the drug being taken and whether the drug will interfere with the safe performance of the employee.

Section 7. Employee Status

Employees shall be in paid status while submitting to any of the above testing performed during a time when the employee is scheduled to work. An employee who is not permitted to return to work pending the outcome of a test result conducted pursuant

to the provisions of this policy and where the result is ultimately negative shall be paid for the time he was not permitted to work. If the Employee used paid leave during this time, the amount of leave used shall be credited to the employee.

ARTICLE 44

ATTACH. 2

ARTICLE - FAMILY AND MEDICAL LEAVE

Section ____ Family and Medical Leave (FMLA). Employees who have worked for a minimum of twelve (12) months and twelve hundred fifty (1250) hours over the previous twelve month period shall be entitled to Family and Medical Leave in accordance with the following provisions:

- A) Employees shall be entitled to a leave of absence not to exceed twelve (12) weeks.
- 1) In order for the employee to care for a newborn or recently adopted child;
 - 2) In order for the employee to care for a foster child placed with the employee;
 - 3) The inability of the employee to work due to a severe health condition;
 - 4) In order for the employee to care for the employee's spouse, parent, child or the employee's spouse's parent(s) with a serious health condition requiring the presence or care of the employee.
- B) Employees shall be entitled to such leave as outlined in items A1 and A2 above only during the twelve (12) month period immediately following the birth, placement or adoption of a child. Employees requesting leaves pursuant to items A3 and A4 of this Article may do so once each year subject to the conditions outlined in paragraph 1 above.

C) For the duration of all such leaves as outlined in this Section employees ~~may utilize any or all of~~ the following combinations of leave: Must in order

- 1) Accrued, but unused sick leave;
- 2) Accrued, but unused vacation;
- 3) Leave without pay.

*concurrent with
loss of Family Leave
under this section.*

First
Second
Third

Nothing in the Article shall mandate the employee to exhaust paid leave prior to being granted an unpaid leave as outlined in this section. But in no case shall the employee be entitled to more than 12 weeks of Family and Medical Leave as defined in the Family and Medical Leave Act of 1993, However, AN Employer

May keep (1) one week accrued vacation on the books.

- D) During the term of any such leave outlined in subsection A of this Section _____ employees shall be treated as if they are in regular payroll status and shall suffer no loss of any benefit which shall exist as a term or condition of employment except that an employee shall not be compensated at his/her hourly rate of pay for that period which is requested as unpaid nor shall an employee accrue sick or vacation hours for the unpaid portions of such leave .
- E) Employees shall provide to the Employer as much advance notice as is possible when requesting such leave and shall provide a minimum of fourteen (14) days advance notice prior to returning from such leave.
- F) The Employer may require an employee's request for medical leave be supported by a certificate issued by the health care provider of the employee or of the child, spouse, parent or parent-in-law of the employee. The certificate should include the date on which the serious health condition commenced, the estimated duration of the condition, and the appropriate medical facts, within the knowledge of the health care provider, regarding the condition.

In the case of an employee requesting leave under subsection A3, the Employer may have the employee examined by a physician of the Employer's choice. Should there be a difference of medical opinions, a third opinion shall be obtained by a physician mutually selected by the Employer and the employee. This third opinion shall be binding upon the parties. The cost for any such examination shall be borne by the Employer.

- G) Upon return from any such leave outlined above, employees shall be placed in the classification and department from which they left or the same or similar position if the prior position no longer exists, and shall suffer no loss or any benefit which shall arise as a part of their employment or as a term or condition of this Agreement.
- H) The leave must be taken in consecutive eight (8) hour days except where it has been determined that it is "medically necessary" as related to a serious health condition to take a leave intermittently or by working a reduced work week. Intermittent or reduced workweek family and medical leaves will only be considered in cases of serious health condition of the employee or an immediate family member. Intermittent or reduced workweek family and medical leaves will not be granted for birth or adoption of a child, or the placement of a foster child. During intermittent or reduced work hour leaves, only the time actually taken

will be charged against the employee's twelve (12) week entitlement. Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospice or residential medical care facility;
2. Any period of incapacity requiring absence of more than three (3) calendar days work, school or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity or more than three (3) calendar days and for prenatal care.

J) Health Care Providers include:

1. Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or,
2. Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law; or,
3. Nurse practitioners and nurse mid-wives authorized to practice under State law and performing within the scope of their practice as defined under State law; or,
4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

K) Health insurance coverage will be maintained during family and medical leave but shall stop if and when an employee informs the City of an intent not to return to work at the end of the leave period or if the employee fails to return to work when the family and medical leave entitlement is used up.

Employees seeking to use family and medical leave must provide:

1. **Thirty (30) day advance notice of the need to take family and medical leave when the need is foreseeable;**
2. **Medical certification supporting the need the leave due to a serious health condition affecting the employee or an immediate family member on the form provided by the City;**
3. **Second and third medical opinions and periodic recertification when the City requires such at the City's expense;**
4. **Periodic reports during family and medical leave on the employee's status and intent to return work;**
5. **A "fitness-for-duty" certification upon return to work.**

**Certification of Physician Or Practitioner
(Family and Medical Leave Act of 1993)**

1. **Employee's Name:**

2. **Patient's Name if other than Employee):**

3. **Diagnosis:**

4. **Date condition commenced:**

5. **Probable duration of condition:**

6. **Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment including referral to other providers of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employees normal schedule of hours per day or days per week.):**
 - a. **By a Physician or Practitioner:**

 - b. **By another Provider of health services if referred by a Physician or Practitioner:**

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THROUGH 14. OTHERWISE, CONTINUE BELOW.

Check Yes or No on the lines below as appropriate.

- | | Yes | No | |
|----|-----|----|--|
| 7. | — | — | Is inpatient hospitalization of the employee required? |
| 8. | — | — | Is employee able to perform work of any kind? (If "No" skip Item 9.) |
| 9. | — | — | Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of the employee's position, or if none provided, after discussing with employee.) |

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY ILL FAMILY MEMBER. COMPLETE ITEMS 10 THROUGH 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15.

Check Yes or No on the lines below as appropriate.

- | | Yes | No | |
|-----|-----|----|--|
| 10. | — | — | Is inpatient hospitalization of the patient (family member) required? |
| 11. | — | — | Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? |

12. — — After review of the employee's signed statement (See Item 14), is the employee's presence necessary or would it be beneficial for the cure of the patient? (This may include psychological comfort.)
13. — — Estimate the period of time care is needed or the employee's presence would be beneficial:

ITEM 14 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE

14. When Family Leave is needed to care for a seriously ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Employee signature

Date

Signature of Physician/Practitioner

Date

Type of Practice(Specialization if any) _____

resolution of grievances at the earliest step possible. In furtherance of this objective, the following procedure shall be followed:

Step 1: In order for an alleged grievance to receive consideration under this procedure, the grievant, with the appropriate Union steward, if the former desires, must identify the alleged grievance to the employee's immediate supervisor within five (5) work days of the occurrence that gave rise to the grievance. The supervisor shall investigate and provide an answer within five (5) work days following the date on which the supervisor was informed of the alleged grievance. If the issue is not resolved, the employee shall reduce the grievance to writing, on the agreed upon form, and within five (5) work days following the response from the supervisor, submit said grievance to the employee's department head. The department head shall, within five (5) work days following the receipt of the written grievance, schedule a meeting with the employee and the Union steward, if the former desires such person be in attendance. The department head shall investigate and respond in writing to the grievant within five (5) work days following the meeting.

Senior Dir.

Step 2: If a grievance is not resolved at the first step of this procedure, the employee may appeal, in writing, within five (5) work days of receiving the department head's reply, to the Mayor of the City of Toronto. The Mayor shall initiate an investigation of the situation, and no later than ten (10) work days following the receipt of the grievance, unless otherwise agreed and arranged in writing, and meet with the employee, his Union representative (if the employee so wishes), the department head, and/or the employee's supervisor. The Mayor, within ten (10) work days after the meeting with the employee, shall issue a decision in writing to the employee.

Step 3 - Arbitration: If the grievance is not satisfactorily settled in Step 2, the Union may make a written request that the grievance be submitted to arbitration. A request for arbitration must be submitted within twenty-five (25) work days following the date the grievance was answered in Step 2 of the grievance procedure. In the event the grievance is not referred to arbitration within the time limits prescribed, the grievance shall be considered resolved based upon the second step reply.

Upon receipt of a request for arbitration, the Employer or his designee and the representative of the Union shall, within ten (10) working days following the request for arbitration, jointly agree to request a list of seven (7) impartial arbitrators from the Federal Mediation and Conciliation Service (FMCS). The parties shall agree on a submission agreement, if possible, outlining the specific issues to be determined by the arbitrator prior to requesting the list. The parties shall select an arbitrator within ten (10) working days from the date the list of seven (7)