



STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2006 APR 19 A 8:42

IN THE MATTER OF THE CONCILIATION:)	BEFORE ARBITRATOR:
)	JAMES E. RIMMEL
Between)	
CITY OF CUYAHOGA FALLS)	CASE NO: 2005-MED-03-0249
and)	HEARD: ¹ 15 MARCH 2006
FRATERNAL ORDER OF POLICE,)	CUYAHOGA FALLS, OHIO
OHIO LABOR COUNCIL, INC.)	ISSUED: 10 APRIL 2006
		OUR FILE: 06.01116

APPEARANCES

For the City:

Robin Bell, Regional Manager
Clemans, Nelson & Associates

For the FOP:

Chuck Choate
Staff Representative

BACKGROUND

This matter came on for conciliation under the State of Ohio's 1983 Public Employee Collective Bargaining Act² after the rejection of Fact-Finder Marc A. Wilson's (Wilson) recommendations for settlement under report dated 5 December 2005. While the parties did meet

¹ It was under letter dated 28 December 2006 that SERB advised the parties and myself of my appointment as Conciliator in the subject matter, a notice that directed a hearing be scheduled "within 30 days of 12/20/2005 . . . or as soon thereafter as is practicable." The parties, however, opted to mutually extend the process on several occasions with all eventually selecting 15 March 2006 for a hearing on this matter.

² RC Chapter 4117, adopted 1983, vol. 140

on one occasion after the rejection of the Wilson Report, that effort, in the final analysis, was to no avail. At conciliation there are ten (10) issues the parties have been unable to resolve in their negotiations, mediation or fact-finding as part of their efforts to consummate a successor collective bargaining agreement. It was in accord with Ohio Revised Code (O.R.C.) Section 4117.14 (D)1 that I was appointed as conciliator, the involved bargaining unit police officers being prohibited from striking in support of their demands.

Now, under Ohio Administrative Code (O.A.C.) Section 4117-9-06 (E)(4), the parties were required to proffer their respective position statements, including a list of unresolved issues, at least five (5) days before the scheduled hearing, proffers that were timely made in this case. In any event, the parties did convene for hearing in this matter at the City Hall Offices of Cuyahoga Falls, Ohio on Wednesday, 15 March 2006. It was after initial joint discussions with the respective bargaining committees that extensive mediation efforts were undertaken, efforts that led to an accord on all unresolved issues, an accord the parties requested I adopt as my Award in this matter, a request I acceded to at hearing and codify herein. Accordingly, I order that the following contractual language be incorporated into the parties' successor collective bargaining agreement.

ARTICLE 5

EMPLOYEE RIGHTS

~~SECTION ONE~~ *Section 1. Union Membership*

- A. It is agreed that any member of the Cuyahoga Falls Police Department included in the classifications contained in the bargaining unit have the right to join the FOP/OLC for mutual aid or protection and to bargain collectively. Members also have the right to refrain from being a member of the FOP/OLC.

The FOP/OLC shall not indulge in restrictions or practices which deny membership of employees of the City of Cuyahoga Falls, Ohio because of race, color, creed, sex or national origin and shall be free of corrupt influences. It is further agreed that there shall be no discrimination among employees by virtue of participation or non-participation in "Union Affairs."

- B. If, while on duty, the FOP/OLC Staff Representative designee and/or alternate is invited or asks and is given permission by the Chief of Police or his designee to attend a departmental staff meeting, or asks to attend any public meeting of City Council where police business will be discussed, he shall, except in emergency staffing situations, be released from duty with pay, not to exceed a total of nine (9) hours per month for time actually spent attending such meeting.
- C. The FOP/OLC Staff Representative designee and/or alternate will request to the Chief of Police or his designee, at least two weeks in advance, to change the work schedule to

allow them to attend FOP/OLC meetings or seminars. The City will endeavor to accommodate such schedule change requests subject to departmental staffing needs.

- D. The City agrees to provide a list of names, addresses and telephone numbers of new hires after their first day worked.

~~SECTION TWO~~ Section 2. *A General*

- A. Before any member may be charged with any violation of the Rules and Regulations for a refusal to answer questions or participate in an investigation he shall be advised that his refusal to answer such questions or participate in such investigation may be made the basis of such a charge.
- B. Complaints against a bargaining unit member, anonymous or otherwise, when determined by the Chief of Police to be unfounded, shall not be included in the personnel file of the officer and may not be used in any subsequent disciplinary procedure or employment action.
- C. Any evidence obtained in the course of an internal investigation through the use of administrative pressures, threats or promises made to the member shall not be used in any subsequent criminal court action.
- D. If the contract rights of the member who is under investigation as provided for herein have been violated, the violation of procedure shall be subject to the grievance procedure.
- E. For purposes of ~~Article 5, Section Two~~, *this Agreement*, "serious disciplinary action" shall include discharge, suspension without pay, and any other discipline more serious than a written or oral reprimand.

~~B.~~ Section 3. *Investigation*

- A. On request, the member may have a Union representative present at an investigatory interview which the member has a reasonable basis for believing may lead to serious disciplinary action.
- B. A member who is to be questioned as a suspect in any investigation of any criminal charge against him shall be advised of his constitutional rights before any questioning starts.
- C. Questioning or interviewing of a bargaining unit member in the course of an internal investigation will be conducted at hours reasonably related to the member's shift unless operational necessities require otherwise. Interrogation sessions shall be for reasonable periods of time and time shall be provided for rest periods and attendance to physical necessities.
- D. A member will be informed of the nature of any investigation of himself prior to any questioning. If the member being questioned is, at that time, a witness and not under investigation he shall be so advised.
- E. No member shall be required to submit to a polygraph examination as part of any internal investigation which could lead to disciplinary action.

- F. When a member suspected of a violation is being interviewed or interrogated in an investigation, such interrogation may be recorded at the request and expense of either party. There will be no taping except with knowledge of all parties present.

☞ **Section 4. Disciplinary Action**

- A. Before a member is dismissed, suspended without pay, or otherwise given serious discipline as defined above, the member has a right to a hearing before the Chief of Police or his designee. At least seven (7) calendar days before the hearing, the member shall be notified of the charge(s) against him in writing. Nothing in this section shall limit the ability of the City and the FOP/OLC to enter into a mutual written agreement waiving or extending such seven day waiting period.
- B. A member who has been charged with a violation of any policy or rules and regulations shall, upon request of the member or his designated representative, be provided the opportunity to inspect and obtain copies of transcripts, recordings, written statements and any other evidence. The City shall, upon request, have a mutual opportunity to inspect and copy the member's evidence. The member must give written authorization to the Chief of Police for the representative to see his file.
- C. A member has the right to the presence and advice of the FOP/OLC Staff Representative and a department union representative at all disciplinary hearings before the Chief of Police. *The member or his/her FOP/OLC Staff Representative may request to reschedule a disciplinary hearing in order to permit the Staff Representative to be present, but in no event shall the hearing be held later than thirty (30) days after the original date unless mutually agreed to by the Chief and the Staff Representative. However, if the member is on paid administrative leave, the hearing shall not be delayed more than fourteen (14) days.*
- D. Within seven (7) calendar days after the close of the hearing, the Chief of Police or his designee shall forward a written recommendation for action to the Safety Director along with a copy of evidence presented and/or, if no formal record was made, a summary of evidence. The Safety Director shall then decide what discipline if any, to impose, and **to shall** notify the member in writing within **thirty (30)** calendar days. A copy of the notice shall be provided to the Union.
- E. If the decision of the Safety Director is to dismiss, suspend without pay or otherwise take any serious disciplinary actions, then the union, at the member's request, may appeal the decision to arbitration, and such appeal shall be made through the grievance procedure at the Step 5 level, requesting arbitration as set forth in the grievance procedure. If a timely notice of appeal is not filed, then the right to appeal shall be considered waived and the Safety Director's decision shall be final and unreviewable.
- F. Nothing in this Agreement shall preclude the City from removing a member ~~during the second half of~~ **at any time during** his probationary period as provided by State Law.
- G. The standard for review in an arbitration case alleging wrongful discharge, suspension without pay, or other serious discipline shall be whether the action was for just cause.

~~Section Three~~ 4.: When it becomes necessary for a supervisor to counsel a member it shall be done in clear, understandable language, civil in tone, in private, if the exigencies of the situation allow.

~~SECTION FOUR~~ Section 5. Personnel Records

- A. Any member shall be permitted to review his Personnel Service Records once each year or any time upon approval of the Chief of Police (such approval shall not be unreasonably denied) upon the presentation of a signed written authorization made by that person to inspect his file. If any member disputes the accuracy, relevance, timeliness or completeness of the personal information pertaining to him, the member shall be permitted within ten (10) days of his inspection of the record to include within his personnel file a notation that he protests that the information disputed is inaccurate, irrelevant, outdated or incomplete. The Police Department shall maintain a copy of the member's statement of the dispute in the personnel file. The member desiring to file his statement of dispute shall be brief, clear and concise in his statement.

~~SECTION FIVE~~ Section 6. Travel and Meal Allowance

- A. Members, who by virtue of their employment are required to travel outside the Summit County area, and who are required to use their own personal vehicles, shall be compensated therefore at the rate of twenty cents (\$0.20) per mile. ***Should the City adopt by resolution or policy a higher rate of reimbursement for meals for any other employees in the City, members shall receive such higher rates for reimbursement.***
- B. Whenever a member travels outside Summit County on official business or outside the City for training and is reasonably unable to return for any meal, the member shall be promptly reimbursed for meals during that time in accordance with the following schedule:

Breakfast \$ 5.00
Lunch \$ 7.00
Dinner \$13.00

Should the City adopt by resolution or policy a higher rate of reimbursement for meals for any other employees in the City, members shall receive such higher rates for reimbursement.

- C. Bargaining unit members shall be required to submit a written claim for reimbursement stating the period of time the member was gone and which meal(s) were eaten.
- D. Expense reports for parking and lodging submitted by a member within one week of the member's return shall be reimbursed according to City policy and subject to the approval of the Chief of Police and Finance Director, on a case by case basis. Approved reimbursements shall be paid within the pay period following such approval.

E.

~~SECTION SIX~~ Section 7. Training Courses

- A. The City is committed to trying to improve standards through training.

- B. Training Courses may be offered through and by the police division, and a sign-up sheet will be posted whenever practical to allow every member who desires to attend the course an opportunity to express his desire to do so. The decision of the Chief of Police as to the selection of the person(s) who shall attend said course or seminar, shall be final and not the subject of grievance under this Agreement. The cost of all training required by the City shall be paid for by the City.
- C. In the event a member wishes to attend training not offered by the City, he must obtain prior approval for the time off from the Chief of Police or his designated representative. The costs associated by such approved training shall be borne by the member. However, the Chief of Police, at his sole discretion, may pay the member his normal pay and or the total or partial cost of the training. Any decision by the Chief of Police under this section shall be final and not the subject of grievance under this Agreement.

~~SECTION SEVEN~~ **Section 8.** ***Seniority***

- A. Except as otherwise provided in this Agreement, seniority shall be defined as the length of service with the Cuyahoga Falls Police Department except that current members hired on or before July 1, 1990 who have credit for service with other City of Cuyahoga Falls Departments or as full-time police officers for the former Northampton Township Police Department will retain such seniority credit. Its uses shall be those uses specifically provided for in other Articles of this Agreement, including vacation scheduling. Seniority will commence on first day worked.
- B. Except as otherwise specifically provided for under State Law, this section shall not apply to any former employee who is on retirement status.
- C. A member who is unable to work because of a service connected sickness, injury or disability, or who is suspended or who is on official leave status of any kind, paid or unpaid, other than retirement, shall continue to accumulate seniority during any such period.
- D. Seniority lists shall be brought up to date by the City each year as of January 1, posted on bulletin boards showing the member's name, title, rate of pay and date of hire and appointment within classification and in order of seniority within department, with a copy forwarded to the FOP/OLC

~~SECTION EIGHT~~ **Section 9.** ***Rules, Regulations, Policies and Procedures***

The City shall provide a current master copy of the Cuyahoga Falls Police Department Rules and Regulations, policies, procedures, general orders, and IOC's, etc., to be kept at the front office; not to be removed and access to members not to be denied.

ARTICLE 15 TOUR OF DUTY

Section 1. Tour of duty shall mean a normal working time of five (5) consecutive eight-hour days except for normal shift changes which are required for a member to perform during his regular assigned duties, as the same shall have been established by the appropriate administrative official in order to meet the needs and requirements of the Police Department.

Section 2. The City will annually assign shifts within the Patrol Division of the Cuyahoga Falls Police Department based upon seniority with the following conditions:

- A. Employees will be eligible to participate in *annual* seniority based shift selection only after ~~completion of three (3) years~~ *one (1) year* of service with the Cuyahoga Falls Police Department *after completion of the Field Officer Training Program*. Annual shift assignments for employees with less than ~~three (3) years~~ *one (1) year* of service *after completion of the Field Officer Training Program* will be made by the Chief or his designee. ~~Probationary employees shall be subject to shift assignment and rotation at the Chief's discretion.~~
- B. *Seniority based shift selection by eligible employees* shall be by shift, and within the shift by slot related to regular days off. *The Chief or his designee shall post the shifts and choice of days off within each shift that are available for seniority based selection and shall indicate on the schedule those shifts on which he intends to place employees pursuant to Section A above. Day off assignments for those employees who are not eligible for shift selection shall take place after all eligible bargaining unit members have participated in the shift selection by seniority process.*
- C. *Probationary employees shall be subject to shift assignment and rotation at the Chief's discretion. The assignment and rotation of probationary employees shall not preempt an officer's seniority selection rights unless there are extenuating circumstances that makes such preemption necessary.*
- D. The Chief or his designee may temporarily change employee shifts due to temporary staffing needs, because of illness, injury or emergencies. Such changes shall affect members in reverse order of seniority.
- E. Consistent with progressive corrective management practices in the promotion of efficiency, the Chief or his designee may change shift assignment based upon an officer's unsatisfactory performance.
- F. A member transferred to the Patrol Division from another division shall not have the right to bump any other member but will be assigned to a vacant slot on a shift until the next annual selection.

Section 3. The parties agree to periodically discuss any problems with assignments through Labor-Management Committee meetings.

Section 4. Nothing in this Article shall be construed to affect the City's management rights as provided in the Collective Bargaining Agreement between the parties and in R.C. 4117.

Section 5. The provisions of this Article shall only be enforceable through the grievance procedure provided in the Collective Bargaining Agreement between the parties.

Section 6. Tour of Duty requirements may be waived by the parties where necessary to accommodate training and educational needs.

ARTICLE 16 OVERTIME

Section 1. The "work period" shall be twenty-eight (28) days. No more than one hundred seventy-one (171) hours actually worked shall be paid at straight-time rates during any twenty-eight (28) day work period. Hours actually worked in excess of one hundred seventy-one (171) hours in any twenty-eight (28) day work period shall be paid in cash at the rate of one and one-half (1 ½) times the straight-time rate, unless amendments to the Fair Labor Standards Act or regulations issued pursuant thereto, otherwise provided.

Section 2. Further, contractual overtime shall include hours or fractions thereof which are worked by an eligible member in excess of eight (8) hours in any continuous twenty-four (24) hour period, beginning with the normal starting time of the eligible member's working shift or in excess of those defined herein. Excess hours shall not be considered as overtime work where such excess hours result from normal periodic shift changes, the first hour of assignment to early car duty in a twenty-four (24) hour period or assigned training where the member is not required to report for his regularly assigned shift on the day of said training.

- A.** Contractual overtime which does not involve working more than one hundred seventy-one (171) hours in one twenty-eight (28) day work period (Paragraph A) may be compensated in cash or compensatory time as provided below.
- B.** No claim for overtime shall be made when a member is out of the City for training or other purposes except for time actually spent attending such training or performing actual work on behalf of the City. However, this section shall not be used to deprive a member of his regular eight (8) hours of pay in the event such training is for a period of less than eight (8) hours.

Section 3. If a bargaining unit member is required to make an appearance in court at the request of the Prosecutor or other member of the Law or Police Department *he shall be compensated for a minimum of two (2) hours at the overtime rate of pay. If the actual time spent in Court is greater than three (3) hours, he shall be compensated for all hours over three (3) spent in Court at the rate of two (2) times his regular rate of pay.* or if he ~~is~~ *If a bargaining unit member* is requested to appear for training purposes or is called in after being released from duty he shall be compensated for two (2) hours or the actual time spent in ~~Court~~; training or call in, whichever

is greater, at the overtime rate. If a Court appearance or training time is scheduled to begin within one (1) hour after the conclusion of a previous Court appearance or training time, the subsequent Court appearance(s) or training time(s) shall be considered a continuation of the initial court appearance(s) or training time(s).

ARTICLE 17 UNIFORM ALLOWANCE

Section 1. *Each bargaining unit members shall receive an annual clothing allowance for the purchase and maintenance of uniforms as follows:*

<i>First year of Agreement</i>	<i>\$1,100.00</i>
<i>Second year of Agreement</i>	<i>\$1,150.00</i>
<i>Third year of Agreement</i>	<i>\$1,200.00</i>

~~The City shall cause to be set aside for each member of the bargaining unit the sum of One Thousand Fifty Dollars (\$1,050.00) in each year of this Agreement for the purchase and maintenance of uniforms. This amount is payable one-half on December 31st and one-half on June 30th of each year of the Agreement.~~

Section 2. The member shall have the option of either cash or a voucher, which may be redeemed at an area uniform shop or shops designated by the City. This money shall be used by the members of the bargaining unit for the purchase and maintenance of uniforms and this money shall be expended for this purpose only. Any member of the bargaining unit who does not successfully complete his probationary period, shall return to the City all items purchased with the uniform allowance.

Section 3. The Chief shall determine the uniform for the Department and shall provide the Union with a copy of any modifications of the uniform *fourteen* (14) days prior to implementation. Any uniform changes may be subject to discussion at the Labor Management Committee as provided in Article 14. Members shall be granted a time period of two uniform allowance allotments to comply with any mandatory uniform change.

ARTICLE 19 WAGES

Section 1. ~~A.~~ Wages Rates

~~For the period beginning on July 1, 2002, and ending on June 30, 2005; Effective July 1, 2005,~~ the hourly wage rates for bargaining unit members shall be the rates set forth in Appendix A of this contract. *The wage rates as set forth in Appendix A reflect a three and two tenths percent (3.2%) wage increase for 2005, a three percent (3.0%) wage increase effective July 1, 2006, and a three percent (3.0%) wage increase effective July 1, 2007. [The Administration will pay all retroactive monies by means of a separate check].*

Section 2. ~~B.~~ Placement on Wage Scale

A. Except as otherwise provided in this Agreement, patrol officers and CSO's shall be placed on the wage scale in accordance with their seniority, subject to the City's right to withhold annual increases for reasons related to merit, consistent with past practice and the following guidelines:

- B.** Original appointments to a position in the bargaining unit shall be placed in Step A. Members classified under Step A shall not attain "Regular" status until they have served their required probationary period. The probationary period of various classes of the positions is filed with the records clerk in compliance with the Rules of the Cuyahoga Falls Civil Service Commission. At the expiration of one calendar year from their original appointment, regular employees in Step A shall be elevated to Step B only upon recommendation of the Chief of Police. Such recommendation shall be given after the employee is satisfactorily performing his duties.
- C.** Regular employees shall advance each calendar year thereafter, upon recommendation of the Chief of Police until reaching Step F, which recommendation shall be made for all members satisfactorily performing their duties. After eight (8) completed calendar years of service and after thirteen (13) completed calendar years of service said members shall advance to Step G and H respectively upon the same conditions set forth for advancement above.

APPENDIX A
Wages set forth in terms of hourly rates

2005 (3.2%)		Steps						
		A	B	C	D	E	F*	G**
CSO		16.3967	18.0995	18.9791	19.8587	20.9638	21.5953	22.2268
Patrolman		19.0468	21.0089	21.9901	22.9824	24.2567	24.9558	25.6776

*After 8 Complete Service Years

**After 13 Complete Service Years

2006 (3.0%)		Steps						
		A	B	C	D	E	F*	G**
CSO		16.8886	18.6425	19.5485	20.4544	21.5928	22.2432	22.8936
Patrolman		19.6182	21.6392	22.6498	23.6719	24.9844	25.7045	26.4479

*After 8 Complete Service Years

**After 13 Complete Service Years

2007 (3.0%)		Steps						
		A	B	C	D	E	F*	G**
CSO		17.3953	19.2018	20.1349	21.0681	22.2405	22.9105	23.5804
Patrolman		20.2067	22.2884	23.3293	24.3821	25.7340	26.4756	27.2414

*After 8 Complete Service Years

**After 13 Complete Service Years

**ARTICLE 22
HEALTH INSURANCE**

The Employer proposes the deletion of section A.

Section 1. The City shall make available to all full-time bargaining unit employees comprehensive major medical/hospitalization health care insurance, as set forth in Section 2. The participating employee may elect either single or family coverage.

Section 2. The following summary of medical benefits will be effective April 1, 2006.

Network:		Non Network:
Percentage Payable after deductible is met		
90%/10%		70%/30%
Maximum Out of Pocket	(excluding deductibles and co-pays)	
\$750/\$1,500	\$2,000/\$4,000	
Deductible		
\$100/\$200 except office visit		\$200/\$400
Office Visits/Urgent Care		
\$10 co-pay		70%/30%
The \$10.00 co-pay for office visits applies to all office visits including those for follow-up treatment for a single medical condition.		
Surgery (eliminate surgical schedule)		
90%/10%		70%/30%
Anesthesiology (eliminate 100% billed)		
90%/10%		70%/30%
Emergency Room Deductible:		
\$50 per visit (exclusive of other deductibles). The Emergency Room Deductible shall be waived if, as a result of the condition requiring the Emergency Room visit, the covered person is admitted to an area of the hospital other than the Emergency Room.		

Member Co-pay for Prescription Drugs	
Retail Purchases	Mail Order Purchases (90 day supply)
\$5 generic/ \$20 name brand	\$10 generic/ \$40 name brand
<p>If a name brand drug is dispensed, the co-pay for name brand drugs applies regardless of whether a generic equivalent is available. Members needing to take medication for at least ninety days shall, after obtaining two thirty day prescriptions of the drug at retail, obtain further refills through the City's mail order prescription drug service. Members needing to take medication for less than ninety days may purchase said medication by mail order with the co-pay prorated at the rate of the mail order co-pay.</p>	
MM Lifetime Maximum: \$2,000,000	
<p><u>Spousal Eligibility:</u></p> <p>When the spouse of a member is employed on a full-time basis (defined as 32 or more hours of work per week) or retired and the spouse's employer or retirement plan makes health care coverage available to the spouse -- regardless of the cost -- the City's coverage of the spouse shall be limited to being secondary to the coverage that is available from the spouse's employer or retirement plan.</p> <p>As an alternative to obtaining health care coverage from their primary employers, employed spouses may elect to enroll in the City's health care plan by paying a monthly premium equal to the greater of one-seventh (1/7) the established COBRA rate for single coverage or any sum received by the employed spouse from his/her employer to decline health care coverage from said employer.</p> <p>In the event a husband and wife are both employed by the City of Cuyahoga Falls, each will be enrolled with single coverage; provided that if they have dependent children, the husband and wife shall be enrolled together under a single enrollment for family coverage.</p> <p>A member seeking health care coverage from the City for his/her spouse shall be required to provide to the Department of Human Resources a statement indicating the spouse's employment status along with a statement from the spouse's employer or retirement plan administrator or other appropriate agency that health care coverage is not available to the spouse as a result of the spouse's employment status. The member shall promptly notify the Department of Human Resources of any change in the employment or insurance status of his/her spouse. If a member provides false information concerning his/her spouse, or fails to notify the Department of Human Resources of any required information, the member shall be required to reimburse the City for any medical expenses paid by the City on behalf of the spouse that would not have been paid had the City had accurate information concerning the spouse's employment or insurance status. Said reimbursement may take the form of a payroll deduction in an amount not greater than 5% of the employee's gross pay until full reimbursement is made.</p>	

Section 3. B. Dental Benefits – The City will continue to provide a dental insurance plan for all full-time members of this bargaining unit, their spouses and dependents.

Section 4. C. A description of benefits shall be given to each member.

ARTICLE 23
OTHER INSURANCES AND BENEFITS

Retention of Language in Prior Agreement

Section 1. A.—Life Insurance

All members of this bargaining unit shall be provided life insurance benefits in the amount of Forty Thousand Dollars (\$40,000) per person. Life insurance shall further be provided retirees of the Police Department who retire from the Department on or after January 1, 1969, at Nine Thousand Dollars (\$9,000) per person.

Section 2. B.—Professional Liability Insurance

The City will continue to provide liability insurance for its members. In the event of a suit filed against a member, the City's Law Director shall determine if a conflict of interest exists between his representation of the member and his representation of the City and its police members. If he determines that no conflict exists, then the City's legal staff or insurer or both will represent the member. If a conflict does exist, the member will have to retain a lawyer, as follows:

- A. Of his own choosing, at his expense or that of the F.O.P./O.L.C.
- B. With the assistance of any member of the City's Law Department, he may hire a recommended lawyer to represent him with the following understanding:

If the suit is dismissed, for any reason, or a trial verdict is rendered in favor of the member, the City will recommend payment for the member's legal fees, same to be established and agreed upon before the representation begins.

- C. Coverage of \$500,000 per person and \$1,000,000 per incident.

Section 3. C.—City of Cuyahoga Falls Fire Department EMS Transport

Any employee and/or member of the employee's immediate family residing with the employee who is transported by Cuyahoga Falls Fire Department EMS service shall be transported at no charge.

or he is not following a prescribed intervention program and showing reasonable progress toward meeting the requirements, then he may be subject to any of the following after initial warning of non-compliance:

1. Denial or reduction in pay grade steps.
2. Unsatisfactory semi-annual evaluations.
3. Ineligibility to sit for promotional exams upon receiving two or more unsatisfactory semi-annual evaluations.

For the purpose of this section "Denial or reduction in pay grade steps" means that a member may be reduced one (1) pay step if he fails to comply with the requirements of this Article. However, he shall be returned to his original pay grade step upon substantial compliance with the requirement of this Article. This same policy shall apply to denial of a pay grade step increase.

B. Section 2. Substance Abuse Screening.

- A.** Substance abuse screening tests shall be a part of the periodic physical examination to detect the use of illicit drugs or controlled chemical substances. If the screening is positive the member may be ordered to undergo a confirmatory test which shall be administered by a medical laboratory qualified to administer such tests.
- B.** The member may have a second confirmatory test done at a lab of his choosing, at his expense, provided however, such test must be done by a laboratory testing all known drugs and alcohol of abuse having a sensitivity of at least 60% and a specificity of 99+%. This test shall be given the same weight as the two previous tests. If both the screening and the confirmatory tests are positive, the City may require the member to participate in a rehabilitation or detoxification program which is covered by the member's health insurance program.
- C.** A member who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, vacation leave, or personal days for detoxification program. If no such leave credits are available, such member will be placed on leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program and a retest that demonstrates that the member is no longer using illegal drugs or abusing controlled substances, the member shall be returned to his position. Such member may be subject to regular retesting upon his return to his position for a period of one year from the date of his return.
- D.** Any member in the above-mentioned rehabilitation or detoxification program(s) will not lose any seniority or benefits should it be necessary that he be required to take a leave of absence without pay for a period not to exceed ninety (90) days. However, members in such program(s) shall be eligible for sick leave advance under the provisions of Cuyahoga Falls Ordinance 132-1985 except that the eighteen (18) month limitation on length of service shall not apply.
- E.** If the member refuses to undergo rehabilitation or a detoxification program, if he fails to complete a program of rehabilitation or if he tests positive at any time within one year after his return to work upon completion of a program of rehabilitation, such member shall be subject to disciplinary action including removal from office. Except as stated herein, no member shall be subject to discipline due to the fact that he tested positive on

the drug screening and/or confirmatory test.

- F.** For the purpose of this Article “periodic” shall mean not less than one time during the term of this Agreement except that substance abuse tests may be performed at any time upon reasonable suspicion of drug or alcohol use and a member may be tested more frequently during the one (1) year period after his return from a rehabilitation or detoxification program.

Section 3. Releases/Confidentiality

For the purpose of implementing the provisions of this Article each bargaining unit member shall execute medical releases in order for the City to obtain the results of the physical examination/drug screen testing provided for in this Article. Except as otherwise provided by state or federal law with regard to communicable diseases, or with the permission of the member, the releases referred to in this section shall authorize only the release of examination results and progress reports pertaining to the values established herein for Blood Pressure and Serum Cholesterol, along with Substance Abuse Screening Test results. No other medical findings may be released without the express written permission of the member.

**ARTICLE 28
SICK LEAVE**

Section 1. Members shall be entitled to sick leave of 4.6 hours per pay period of *eighty* (80) hours. Members with less than eighteen (18) months service shall be allowed a sick leave advance under the terms of Ordinance No. 132-1985.

Section 2. Members may use sick leave upon approval of the Chief of Police or his designee for absence due to the following:

- A.** Illness, injury, or pregnancy-related condition of the member.
- B.** Exposure to a contagious disease when the presence of a member at the member’s job would jeopardize the health of others.
- C.** Examination by a licensed practitioner of the member for health-related purposes including but not limited to medical, psychological, dental, *and* optical.
- D.** Illness, injury, or pregnancy-related condition of a member of the bargaining unit member’s immediate family where the bargaining unit member’s presence is reasonably necessary for the health and welfare of the bargaining unit member or family member.

- E. Examination of a member's immediate family member by a licensed practitioner for health-related purposes including but not limited to medical, psychological, dental, optical, where the bargaining unit member's presence is reasonably necessary.
- F. "Immediate family" is defined as the member, spouse of the member, children and the member's parents.
- G. Use of sick leave by reason of death in the member's family shall be granted as follows:

Spouse, Child, or Step-Child	Maximum of two (2) weeks
Parent, Parent-in-law, Sibling, or anyone in place of parent	Maximum of five (5) days
Sibling-in-law, Aunt, Uncle, Grandparents, Grandchildren	Maximum of three (3) days
All other relatives	Maximum of one (1) day

Section 3. Sick leave shall not be used for work related injuries.

Section 4. Sick leave taken shall be deducted on an hour for hour basis from the member's accumulated sick leave.

Section 5. The Chief of Police or his designee may at his discretion require that any member requesting sick leave furnish or submit to any or all of the following before he shall approve any request for sick leave:

- A. A detailed statement from the member specifying:
 1. the exact nature of any claimed illness or injury;
 2. the name, address and telephone number of any medical practitioner treating said illness or injury; and
 3. the anticipated number of sick leave days required to treat said illness or injury.
- B. A medical report from the member's treating physician, normally after three (3) days, however, medical reports may be requested for any absence of shorter duration if necessary.
- C. That the member submits to a physical examination by a physician of the City's choice.

Section 6. A member who reports himself absent from his assigned duties due to sickness or injury shall not be permitted to engage in any other outside employment

during the period of his absence, nor may he return to such outside employment until he returns to work or receives permission from the Chief of Police.

Section 7. Should it be determined by proper medical authority that the member will not be able to return to regular duties, the City has the right to require that member to apply for disability retirement. In the event of a difference of opinion as to the member's mental or physical status regarding his ability to perform his regular duties between the member's physician and the City's physician, the issue shall be submitted to a third physician specializing in occupational medicine, whose decision shall be final and binding. Fees and expenses of the physician shall be borne equally by the parties.

Section 8. *Bargaining unit members may donate up to forty (40) hours of sick time to another member's sick time account, as long as the donating bargaining unit member maintains a balance of forty (40) hours of sick time in his balance after the donation. Said donation may be made in accordance with the City's policy regarding Sick Leave Donation.*

Section 9. Upon retirement, *death*, or termination in good standing from active service with the City after December 31, 1993, and with ten (10) or more years of service with the City, a member of this bargaining unit, *or in the case of his death, his estate or surviving spouse*, shall be paid in cash one hundred percent (100%) of the value of his accrued but unused sick leave credit up to a maximum of nine hundred sixty (960) hours. Such payment shall be based on the member's rate of pay at the time of retirement. Such payment shall be made only once to any member.

Section 10. An employee who has qualified for a service pension under the rules from the Police and Fireman's Disability and Pension Fund by reason of age and length of service, and has accumulated a sick leave balance of *nine hundred sixty (960) hours* or more, may elect to cash out accrued sick time in three equal and annual payments of up to *three hundred twenty (320) hours* during the final three (3) years of employment with the City.

- A. These payments shall be based on the employee's rate of pay at the time of each payment.
- B. The eligible employee must notify the Chief of Police and the Director of Finance of this election at least thirty (30) days prior to the first distribution of funds.
- C. All hours paid under this provision shall be deducted from the payment of accrued sick leave as provided under this agreement. Any remaining sick leave credit may be used until the employee's retirement date at which time all remaining sick leave balance shall be deemed exhausted and no further sick leave payment will be allowed.

- D. Funds paid to the employee on an annual cash-out basis may be rolled over into an employee's deferred compensation account as allowed by plan rule or paid in cash as requested by the employee.
- E. For the purpose of funding this sick leave cash out payment, the Finance Director shall establish a fund and annually deposit a sum sufficient to cover the anticipated payout(s) under this provision. Money set aside in this fund shall only be used for the purpose of paying the benefit set forth in this section and for no other purpose.

MEMORANDUM OF UNDERSTANDING

The City of Cuyahoga Falls and the Fraternal Order of Police, Ohio Labor Council, Inc., hereby agree to meet within thirty (30) days after the execution date of this agreement to negotiate regarding a Sick Leave Donation Policy. Should the parties fail to reach agreement within thirty (30) days thereafter, the parties agree that the following Sick Leave Donation Policy shall apply.

City of Cuyahoga Falls

**Fraternal Order of Police
Ohio Labor Council, Inc.**

SICK LEAVE DONATION POLICY

- A. **Purpose:** The intent of the sick leave donation policy is to allow employees of the City of Cuyahoga Falls to voluntarily provide assistance to their co-workers (other employees of the Auditor) who are in critical need of leave due to an extended illness or injury of the employee or a member of the employee's immediate family.
- B. **Definitions:** For the purpose of this policy the following shall apply:
 - Donee: the employee in need of and approved to receive donated sick leave.
 - Donor: the employee volunteering to donate sick leave.
 - Immediate family: grandparents, brother, sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law, father, father-in-law, mother, mother-in-law,

spouse, child, stepchild, grandchild, a legal guardian or any other person who stands in place of a parent (loco parentis).

Serious health condition: an illness, injury, impairment, or physical/mental condition that involves a period of incapacity or treatment that requires absence from employment and involves care by a health care provider. Serious health condition also includes continuing treatment of chronic or long-termed incurable conditions and prenatal care.

Spouse: A legally recognized husband or wife.

- C. **Policy**: Employees of the Auditor's office may donate accrued sick leave to a fellow employee who is otherwise eligible to accrue and use sick leave. The intent of the leave donation program is to allow employees to voluntarily provide assistance to their co-workers who are in critical need of leave due to an extended serious health condition of the employee or a member of the employee's immediate family. This policy has been adopted pursuant to ORC 124.391.
- D. **Hours Donated**: Any hours donated shall be donated at a rate of pay equal to that of the Donor unless the rate of pay of the Donee is less than that of the Donor, in which case the donation shall be at the rate of pay of the Donee.
- E. **Receiving Leave**: An employee may receive donated leave up for a maximum period of up to three (3) months. Each pay period an employee may receive donated leave up to the number of hours the employee is normally scheduled to work each pay period (the equivalent of the employee's normal biweekly earnings), if the employee to receive donated leave or a member of the employee's immediate family has a serious health condition and the employee:
1. Has no accrued paid leave; and
 2. Has completed his or her new hire probationary period; and
 3. Has applied for any paid leave, Workers' Compensation, or benefits program for which the employee is eligible; and
 4. Has applied for and would qualify for Family and Medical Leave^{vvv1}; and
 5. Has not been disciplined for the improper use of sick leave during the past 12 month period; and

¹ Leave taken under this program will not be included in or subject to the twelve (12) week entitlement under the Family and Medical Leave Act.

6. Has provided acceptable written verification that a serious health condition exists; and
 7. Agrees to accept the leave under the terms of this policy and completes an "Application to Receive Donated Leave" form.
- F. Donating Leave:** Employees may donate leave if the donating employee:
1. Voluntarily elects to donate sick leave and does so with the understanding that donated leave will not be returned; and
 2. Donates a minimum of eight (8) hours; and
 3. Retains a sick leave balance of at least forty (40) hours; and
 4. completes an "Application to Donate Leave" form.
- G. Administration:** The sick leave donation program shall be administered on a pay period to pay period basis. The Employer shall review the Application to Receive Donated Sick Leave and the Application to Donate Sick Leave to assure compliance with Sections E and F of this policy. Donations of sick leave will be recorded in the order of their submission, and will not be considered actually donated nor be deducted from the Donor's balance or credited to the Donee's balance until the pay period such leave is actually used. Unused donation applications shall be returned to the Donor. Employees using donated leave shall be eligible to accrue sick leave and be entitled to any benefits to which they would otherwise be entitled. Vacation and sick leave accrued by an employee while using donated sick leave shall be used, if necessary, in the following pay period before additional donated sick leave may be received. Donated sick leave shall be considered sick leave but shall never be converted into a cash benefit. The Employer shall maintain records that are necessary for the administration of this program. The Employer reserves the right to discontinue the program at any time.
- H. Certification:** Employees who wish to donate sick leave shall certify:
1. The name of the employee for whom the donated leave is intended; and
 2. The number of hours to be donated; and
 3. the employee will have a minimum sick leave balance after donation of at least forty (40) hours; and
 4. The sick leave is donated voluntarily and the employee understands that it will not be returned.

- I. **Confidentiality:** The City of Cuyahoga Falls shall ensure that no employees are forced to donate leave. The Auditor shall respect an employee's right to privacy; however, the Auditor may, with the permission of the employee who is in need of leave or a member of the employee's immediate family, inform employees of their co-worker's critical need for leave donations from employees. The donation of sick leave shall occur on a strictly confidential and voluntary basis.
- J. **Applications:** An employee wishing to donate or receive donated sick leave should request the appropriate application from his immediate supervisor.

**ARTICLE 33
FITNESS EVALUATION**

Retention of Language in Prior Agreement

Section 1. The parties recognize the importance of member fitness in maintaining an effective and efficient department.

- A. A member who participates in the department's annual fitness evaluation shall be compensated as follows:
 - 1. For attending and participating in all aspects of the fitness evaluation, the member shall receive a minimum of four (4) hours straight pay or one and one-half (1 ½) times the actual time spent in testing, whichever is greater;
 - 2. For each component passed, the member shall receive the amount of fifty dollars (\$50.00);
 - 3. For passing all the components, the member shall receive an additional amount of one hundred dollars (\$100.00).
- B. Item 1 shall be paid with the member's regular paycheck; items 2 & 3 shall be paid with the second pay of December of each year.

Section 2. Participation in the fitness evaluation shall be voluntary, and the member shall not have either his failure to participate or his performance on the evaluation considered for any purpose other than as provided in this article.

Section 3. The components shall be the bench press, leg press, sit-ups, push-ups, flexibility, and twelve (12) minute walk/run. Tests shall be scored strictly on a pass/fail basis. The standards shall be those set forth in a memorandum agreed to by the parties.

**ARTICLE 34
TERM OF AGREEMENT**

This agreement shall be in effect from July 1, ~~2002~~ 2005 to June 30, ~~2005~~ 2008. To initiate negotiations for a successor agreement, either party may give written notice to the other at least ninety (90) days prior to June 30, ~~2005~~ . 2008

IN WITNESS WHEREOF, the City of Cuyahoga Falls has caused this agreement to be executed by its Mayor and F.O.P./O.L.C. has caused this agreement to be executed by its F.O.P./O.L.C. representative. This agreement is effective July 1, ~~2002~~ 2005, pursuant to authority duly granted by the Council of the City of Cuyahoga Falls, Ohio.

Signed at Cuyahoga Falls, Ohio this _____ day of _____, ~~2002~~ 2006.

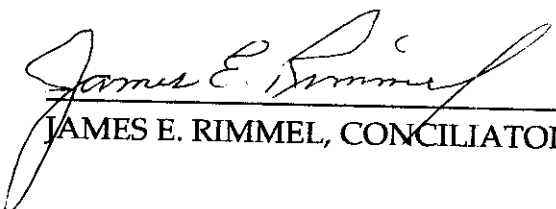
**ARTICLE 22
HEALTH INSURANCE**

The parties agree to add the following new section to Article 22, Health Insurance.

Section 5. Members of the Bargaining Unit as of the April 1, 2006, shall be provided with health care benefits upon retirement as provided in accordance with the terms of Ordinance 160-2003 (See Ordinance).

The Union agrees that it will dismiss with prejudice the unfair labor practice charge filed against the City regarding retiree health care.

IT IS SO ORDERED!



JAMES E. RIMMEL, CONCILIATOR