STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:	:	
	:	
Ohio Patrolmen's Benevolent, Association	:	**05-MED-09-1042-1044**
	:	
	:	**CONCILIATION REPORT**
and	:	
	:	
City of Norton	:	**June 21, 2006**

APPEARANCES

For the Union:

S. Randall Weltman, Attorney
Bob Bari, Director
John Canterbury, Director
Gary Rafferty, Dispatcher Negotiating Committee
Thad Hete, Sergeants and Lieutenants Negotiating Committee

For the City:

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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on March 9, 2006, pursuant to Ohio Revised Code Section 4117.14(D)(1) and Ohio Administrative Code Rule 4117-9-06(D). The parties are the Ohio Patrolmen's Benevolent Association (Union) and the City of Norton (City). Norton is a city of more than eleven thousand (11,000) residents and is located in the southwestern corner of Summit County. It is a suburb of Akron.

The conciliation involves the City and employees of its Police Department. The conciliation includes three (3) bargaining units, consisting of fourteen (14) Patrol Officers, four (4) Sergeants and Lieutenants, and five (5) Dispatchers. All three (3) units are covered by the same collective bargaining agreement. The parties have agreed to multi-unit bargaining. The units are represented by the Ohio Patrolmen's Benevolent Association. The parties have had a collective bargaining relationship dating nearly to the inception of ORC 4117.

The parties engaged in bargaining and then proceeded to fact finding. The fact finder issued his report and recommendations on February 13, 2006. The Union accepted the report and the City rejected it.

The City has two (2) other bargaining units. One is composed of firefighters, consisting of three (3) full time and approximately thirty (30) part time employees. This unit did not go to conciliation. Rather, the full time employees accepted a zero percent (0%) increase for the first year with a wage reopener after the first year. The part time firefighters received approximately a two percent (2%) increase. The other unit consists of the service department employees and is not a conciliation unit. It went to fact finding

and the fact finder recommended increases of two percent (2%), two and one-half percent (2.5%), and three percent (3%). The unit did not strike and eventually received increases of one percent (1%), two percent (2%), and three percent (3%).

Since the collective bargaining statute, ORC 4117, was enacted, the dispute resolution procedures it established have evolved. Over the years, it has become generally accepted that conciliation is somewhat akin to an appellate review of the fact finding hearing and the report and recommendations issued by the fact finder. That is, conciliation does not begin the process anew and the parties do not have another opportunity at fact finding. The fact finder's report becomes part of the record and the party objecting to any recommendation of the fact finder must show somehow that the fact finder was incorrect. Conciliators have differed as to the standard of reviewing a fact finder's report. Some have shown great deference to the fact finder and concluded that the party must show, in effect, clear error on the part of the fact finder. Others have found that, while deference should be shown, the fact finder's report is simply one (1) factor for the conciliator to consider. There is a minority view that the conciliator is not restrained from rejecting the fact finder. In this Conciliator's view, the generally accepted notion is the correct one. That is, that the fact finder's report is entitled to some deference. The question is the weight to be given to the report. On this issue, the Conciliator concludes that the proper weight depends on many factors, including the experience and expertise of the fact finder, the persuasiveness of the report, the quality of the parties' presentation at the fact finding hearing, and the grounds asserted for challenging the recommendation of the fact finder. As the Conciliator is bound by law to decide this matter on an issue by issue basis, he will consider the fact finder's recommendations on an issue by issue basis.

II. THE HEARING

The conciliation hearing was held on April 28, 2006 at the City's Shirley L. McGuire Community Center, located next to the Administration Building at 4060 Columbia Woods Drive. The parties provided their pre-hearing statements. The hearing began at 9:30 a.m. and adjourned at approximately 2:30 p.m. The parties attended, introduced evidence, and presented their positions regarding the unresolved issues. The parties jointly introduced the following exhibit into evidence:

1. Collective Bargaining Agreement, effective January 1, 2003 through December 31, 2005 (Agreement).

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. *Beck v. City of Cleveland*, 6th Circuit Case No. 1:99-cv-01271-PAG.
2. City of Norton CAFR for the year ended December 31, 2004.
3. City of Norton General Fund Status @ Commencement of 2006.
4. Fact Finding Report of Michael D. McDowell, Case No. 05-MED-09-1046, Dated February 28, 2006.
5. Comparison of Benefits for Ten Year Patrol Officer, Summit County Cities.
6. Comparison of Benefits for Ten Year Patrol Officer, Summit County Cities Without Twinsburg and Monroe Falls.
7. Comparison of Benefits for Ten Year Patrol Officer, Medina County Cities.
8. Comparison of Benefits for Ten Year Dispatcher, Summit County Cities.
9. SERB Annual Wage Settlement Report.
10. Conciliation Report of Dennis M. Byrne, Case No. 02-MED-03-0171.

11. City of Norton Health Care Plan Proposal.

12. Time Sheets.

City Exhibits

1. City of Norton General Fund Summary.

2. City of Norton General Fund Status at Commencement of 2006.

3. City of Norton/AFSCME Local 265 Service and Clerical Summary of Changes.

4. Table 1A. Cost Out of Trombetta Factfinding Wage Increases of 3%, 3%, 3% Police and 4%, 3.5% and 3% Dispatchers.

5. Table 1B. Cost Out of Wage Increases of 2%, 2%, 2% Police and 2.5%, 2.5%, 2.5% Dispatchers.

6. City of Norton Demographic Data on Income.

7. Labor Market General Wage Increases, Patrol Officers.

8. Labor Market General Wage Increases, Dispatchers.

9. City Income Tax Collections Based on 2003 Data from the Ohio Department of Taxation.

10. City of Norton Uncompensated Balances 1/1/06.

11. City of Norton General Fund Status at Commencement of 2006 #2 with Wage Demand Amount Money Comp Absences.

12. The Kaiser Family Foundation and Health Research and Educational Trust Employer Health Benefits 2005 Annual Survey, and detnews.com article regarding Ford Motor Company spouse health care.

13. Comparison of Medical Mutual Health Care Coverage for various collective bargaining units.

14. 2005 Employee Calendars Showing Hours Worked.

15. CCA Form Showing 2005 Work City Tax Rates.

III. CONCILIATION CRITERIA

The Ohio public employee bargaining statute sets forth criteria the Conciliator shall consider in making a final offer settlement award. The criteria are set forth in ORC 4117.14(G)(7)(a)-(f) and OAC 4117-9-06(H)(1)-(6) and are:

(1) Past collectively bargained agreements, if any, between the parties;

(2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(4) The lawful authority of the public employer;

(5) The stipulations of the parties;

(6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

IV. POSITIONS, DISCUSSION, AND AWARD

Issue: Article 16, Duty Hours

Union Position: The Union withdrew this proposal at the hearing.

City Position: The City seeks no change in the Agreement.

Discussion: During the term of the expired Agreement, the City assigned a part time employee to fill the afternoon shift. Part time employees are not part of the bargaining unit. The Union contended that the shift has always been filled by a bargaining unit employee and sought to insert language that full time employees only could work the afternoon shift. Between the date of the fact finding and the conciliation hearings, the City hired a full time employee to work the afternoon shift. The Union withdrew its proposal at the hearing and recommended that the shift start and end times be amended to reflect the correct times followed. Shifts begin and end on the half hour, not at forty-five (45) minutes after the hour as reflected in the Agreement. The City did not object to changing the times.

Award: The language of Article 16 will be changed to reflect the correct shift start and end times as follows:

Section 4. (Dispatch only)

Day Shift	Mon.-Fri.	6:30 a.m. to 2:30 p.m.
Afternoon Shift	Tues.-Sat.	2:30 p.m. to 10:30 p.m.
Night Shift	Thurs.-Mon.	10:30 p.m. to 6:30 a.m.
Swing Shift	Sat./Sun.	6:30 a.m. to 2:30 p.m.
	Monday	2:30 p.m. to 10:30 p.m.
	Tues./Wed.	10:30 p.m. to 6:30 a.m.
	Thurs./Fri.	OFF
Records Dispatcher		
Shift	Mon.-Fri.	8:00 a.m. to 4:00 p.m.
Open Shift	Sunday	2:30 p.m. to 10:30 p.m.

Article 17, Overtime Pay and Court Time

Union Position: The Union proposes to eliminate the second sentence of Section 5 and add the following sentences at the end of the section:

Compensatory time requests must be granted unless the Department suffers an undue burden. Having to replace employees at the overtime rate does not constitute an undue burden.

City Position: The City offers a new Section 5 as follows:

> **Section 5.** Employees shall have the right to accumulate compensatory time in lieu of overtime pay up to a maximum of eighty (80) hours of accumulated compensatory time. The use of Non-FLSA Compensatory Time shall be at the Chief's discretion and must not result in the payment of overtime.
>
> FLSA Compensatory Time will be granted pursuant to 207(o)(5) of the FLSA. Employees who have requested the use of FLSA Compensatory Time shall be permitted by the Employer to use such time [1] within a reasonable period after making the request [2] if the use of the compensatory time does not unduly disrupt the operation of the Police Department.
>
> FLSA Compensatory Time may be accrued for hours actually worked in excess of one hundred and seventy-one (171) hours within a twenty-eight (28) day period pursuant to 29 U.S.C. 207(k).

Discussion: The Union argues that the City's proposal was unlawful and cannot be considered. At the fact finding, the City made no proposal regarding overtime. It rejected the Union's proposal on the basis it cannot afford to pay unnecessary overtime. At the conciliation hearing, the City made its current proposal. The Union argued that, since the City had made no prior proposal, its proposal made at the conciliation was an unfair labor practice. In fact, it has filed a charge with SERB. The City contended that its proposal was proper.

The Conciliator is without jurisdiction to determine that the City's proposal was an unfair labor practice. SERB has exclusive jurisdiction to make that finding. The Conciliator concludes that he cannot rule on that issue. As to the Union's argument that it was unlawful or improper under ORC 4117 and SERB rules, the Conciliator disagrees. ORC 4117.14(G)(3) provides only that the parties must submit their final offers as to the

unresolved issues. OAC 4117-9-06(E)(4) requires the same. Neither addresses the situation where a party submits an offer as to an issue for which it had not previously made an offer. One could argue that, by using the phrase "final offer," there must have been a previous offer. However, a party's first offer can also be its final offer. The City's contention that it simply responded to the Union's position at fact finding has merit. In short, the Conciliator does not find the City's action to be improper under the statute. He leaves it to SERB to decide whether it is an unfair labor practice.

As noted above, the Union made this same proposal at fact finding. It based its proposal on the recent case of *Beck v. City of Cleveland, 390 F. 3d 912 (6th Cir. 2004)*, which held that, absent a clear showing by the city of undue disruption of its police services due to severe financial constraints to pay overtime to substitute officers, denying timely requests for accrued compensation leave violated the FLSA. In this case, the City did not make a counter proposal at fact finding. Instead, it relied on its inability to pay for unnecessary overtime. The fact finder considered the parties' positions and recommended essentially the same position espoused by the Union at conciliation. The City did not argue that the fact finder made any error or was somehow incorrect. Nor did it argue that the fact finder's recommendation should not be given deference. Indeed, the City now proposes to amend the Agreement, eliminate the Chief's discretion in granting FLSA overtime, and provide a method for granting overtime.

As the Conciliator set forth above, the fact finder's recommendation is entitled to some weight. Here, I. Bernard Trombetta was the fact finder. Mr. Trombetta has been on the SERB roster of neutrals for approximately ten (10) years and has issued a number of fact finding reports. He addressed the City's position that it could not afford to pay

unnecessary overtime and found it not warranted. He also analyzed the contract provision in light of the *Beck* decision and found it to be applicable. Furthermore, the City has not presented any reason to disagree with the fact finding recommendation. The Conciliator concludes that the recommendation should be given weight.

Additionally, the City's proposal makes a distinction between non-FLSA and FLSA compensatory time. This is the first time any distinction between overtime has been raised. There were no negotiations on this issue. The Union asserts that the City's proposal reflects the FLSA as it was amended twenty (20) years ago and the City has negotiated away some of its rights under the statute. The Conciliator believes the City's proposal should not be adopted in this conciliation. It has not been raised before, the parties did not have the opportunity to respond and reply to the other's positions, and there was little evidence as to the number of hours and tours of duty as required by 29 U.S.C. 207(k). The FLSA is a complex statute, particularly as it relates to public safety forces. While the Conciliator concludes the City did nothing improper in making this proposal at conciliation, it does put the Conciliator at a disadvantage. The Conciliator believes this proposal is better addressed between the parties in negotiation, where they can adequately consider the requirements of the FLSA, research the law to determine if certain actions are permitted, and conform the proposal to the parties' practices and needs. Furthermore, the parties disagree as to the requirements of the law and whose proposal better follows the law. The Conciliator is not in an appropriate position to address these issues.

Award: Section 5 of Article 17 shall be amended to read as follows:

> Employees shall have the right to accumulate compensatory time in lieu of overtime pay up to a maximum of eighty (80) hours of accumulated compensatory time. Compensatory time is defined as time off with pay in

lieu of contractual overtime pay. Compensatory time requests must be granted unless the Department suffers an undue burden. Having to replace employees at the overtime rate does not constitute an undue burden.

Issue: Article 19, Vacations

Union Position: The Union seeks to abolish the two-tiered vacation provision. It also wants to modify Section 4 to allow employees to bank or rollover accrued vacation hours up to four hundred eighty (480) hours.

City Position: The City rejects any change in Article 19.

Discussion: The Union's position is the same here as at fact finding. The fact finder addressed each of its arguments and recommended no change in the language. The Union has pointed to no error or incorrect analysis on the part of the fact finder. Indeed, the fact finder specifically stated his opposition to tiered benefit packages. However, he also found that the parties had negotiated the two-tiered vacation levels several contracts ago and the Union offered no *quid pro quo* for its elimination. As to permitting employees to accrue up to four hundred eighty (480) hours of vacation time, the fact finder concluded that the Union was seeking to create the very type of two-tiered system it sought to eliminate in another part of Article 19. He found it went beyond a benefit accrual and was intended to allow employees to cash in upon retirement or separation, resulting in increased costs for the City.

The Conciliator concludes that the fact finder's recommendation is a reasonable one and is entitled to weight. The Union agreed to the two-tiered vacation levels and now seeks to change it without offering anything to the City in return. As the fact finder concluded, it has not proved that retaining the current language is unjust or in clear error.

Rather, the Union seeks to eliminate what is a disagreeable provision. Given the effects of two-tiered wage or benefits schedules, this is understandable. However, the Union has not established the need to eliminate it or shown the fact finder erred in his recommendation. As to the banking of vacation hours, the Conciliator agrees with the fact finder that the Union's proposal is more than a benefit accrual and provides retiring or separating employees with a significant cash out benefit, at a significant cost to the City. The Union showed no clear need for the change. Further, it sets up a similar two-tiered system the Union is attempting to eliminate elsewhere in Article 19.

Award: Current language.

Issue: Article 26, Compensation

Union Position: The Union proposes a three percent (3%) increase each year for lieutenants, sergeants, and patrol officers, and increases of four percent (4%), three and one-half percent (3.5%), and three percent (3%) for dispatchers.

City Position: The City offers two percent (2%) increases each year for lieutenants, sergeants, and patrol officers, and two and one-half percent (2.5%) increases each year for dispatchers.

Discussion: The City claims an inability to pay the wage increases sought by the Union. In fact, John Moss, the Finance Director, testified that he does not believe the City can afford to pay any increase, even that offered by the City, although he recognized that some increase would be likely. Moss further testified that the state of the general fund is poor. The City's underwriters want it to have a two (2) month carryover to cover finances and support debt. The City is short of that two (2) month carryover by almost two hundred

thousand dollars ($200,000.00). The City has stopped making certain expenditures, unless they are covered by grants or other resources. For example, it has stopped replacing police vehicles and other equipment. It has also cut expenditures in recent years to make up for a lack of revenue. The City needs to put aside money to repair roads, sidewalks, etc. It has not done so. Capital purchases have ceased. The budget is overweighted with debt; the City has not had cash to pay for certain expenses and has turned to debt to finance them. However, by law the City cannot use debt for operational expenditures such as wages. There is also a claim by Barberton for underpayment of past taxes under a previous agreement for tax collection. The City disputes this liability, but has not funded for this claim. Additionally, the state legislature has stated that it may eliminate local government funding from the budget. Norton currently receives five hundred eighty thousand dollars ($580,000.00). If the City increases wages as sought by the Union, it would have to cut other expenses and may have to cut back on personnel. If a wage increase is granted, the only question is the amount of any cost cutting.

The Union argues that the City can pay the increase it seeks, but is unwilling to pay. The City's other units received increases and comparables in Summit County show that three percent (3%) is the average increase for police units. This unit needs a three percent (3%) increase to keep up with other police units in the county. The City's financial situation is not unlike other cities. Every city faces unfunded liabilities to some extent. The difference between the Union and City's proposals totals ninety thousand dollars ($90,000.00) or thirty thousand dollars ($30,000.00) per year. The City has always been able to pay past increases and the Union's proposal is no different than past years. Finally, the fact finder recommended the increases the Union seeks. It accepted the

recommendation.

The fact finder considered the same evidence that is before the Conciliator. The parties introduced evidence of the City's financial condition, wage rates in other communities in the county, and other factors. Contrary to the Union's assertion here, the City claimed an inability to pay and the fact finder considered it. He concluded that the City could afford a reasonable increase without creating an undue burden on its finances. Indeed, the fact finder concluded the City's finances have improved recently over past years. After considering the evidence, he recommended the increases the Union has adopted.

The Conciliator determines that the fact finder's recommendation is entitled to deference. He considered all of the evidence and arguments made by the parties. His report sets forth his reasoning, which was explicitly based on the factors set forth in the ORC and OAC. His recommendation was reasonable in light of the evidence and argument. The City now contends that the fact finder erred in his recommendation and the cost of the recommendation is too great. There is a fine line between an inability to pay and an unwillingness to do so. Put simply, the former involves not being able to while the latter means the money might be there, but the party would rather not spend it. An inability to pay typically is evidenced by deferring needed maintenance, repairs, or capital expenditures, reducing or eliminating services, taking on unsupportable debt to finance current operations, and, in more extreme situations, laying off employees and defaulting on existing obligations. Obviously, municipalities attempt to avoid the latter two (2) actions.

Here, the City has taken some of these actions. It has cut expenditures and deferred maintenance. It has turned to debt to pay for certain expenses. However, the

City has not reduced or eliminated services, taken on unsupportable debt, laid off employees, or defaulted on existing obligations. The City increased its tax rate by one-half (.5%) and contracted with an outside agency to collect revenues on a monthly basis to enhance cash flow. The City's revenues have improved. It created a rainy day fund to better its bond rating. On the whole, the record shows that the City has some financial concerns. It needs to redo its income tax ordinance and bring in outside money. Further action may be necessary. The record establishes, though, that the City can find the necessary funds to meet its obligations. It has always found the money to pay past increases. The City's own evidence showed that the difference between its proposal and the fact finder's recommendation is just over ninety-one thousand dollars ($91,000.00) over the three (3) year period. On this record, the Conciliator concludes that the fact finder did not err in his analysis and recommendation. The Conciliator finds that the City did not meet its burden of proving an inability to pay.

Issue: Article 29, Uniform Allowance

Union Position: The Union proposes an increase in the uniform allowance of fifty dollars ($50.00) for all members of the unit for each year.

City Position: The City wishes to keep the current amounts.

Discussion: The Union proposes the increase to cover inflation in the cost of uniforms as well as put more money into the Agreement. The Union contends that inflation has increased more recently than in past years. It also points out that uniforms must be purchased at a uniform store, not a department store, and typically cost more than ordinary clothing. The City counters that the allowance is intended for employees to purchase

uniforms, not to put money into the contract. Additionally, during negotiations, the City asked the Union to provide the cost of uniform items to justify its request and the Union failed to do so. The City posits that this shows the increases are not warranted.

At fact finding, the Union proposed a one hundred dollar ($100.00) increase. However, it failed to document the cost and useful life of uniform items. The fact finder determined that uniform allowances were originally intended to offset uniform costs and unit employees, over the life of the current contract, receive over two thousand dollars ($2,000.00), which was more than enough to cover the cost of uniforms. Additionally, much of the evidence concerned the purchase of weapons, which are not specified in Article 29. No evidence was introduced regarding upgrading weapons or their useful life. The fact finder recommended no change to Article 29. The fact finder's analysis and judgment were reasonable and must be given weight.

The Union now seeks a fifty dollar ($50.00) increase. However, it supported this increase with only the price of a pair boots. There was no evidence as to the cost of other items, their useful life, and how many of each item (shirts, pants, etc.) are required by various employees. The Conciliator takes administrative notice that the cost of police uniform items is higher than day-to-day clothing. It is also not uncommon that uniform allowances are another way for employees to receive more compensation during the life of a contract. However, when a party asks for an increase in fact finding or conciliation and the other party opposes it, the requesting party must somehow justify the increase. The Union has failed to do so. On this record, the Conciliator determines the fact finder did not err in his analysis and recommendation on this issue. The Union did not meet its burden to justify an increase.

Award: Current language.

Issue: Article 30, Insurance

City Position: The City proposed significant changes to insurance coverage, consisting of three (3) parts. The first was employee premiums, effective July 1, 2007, and an IRS Section125 Plan. The second changed coverages somewhat, including prescription coverage, effective May 1, 2006 and January 1, 2007. The third step included changes in spousal coverage as follows:

> **Section 9**. Spousal Coverage
>
> (A) If an employee's spouse is eligible for insurance coverage under a retirement system's plan or is eligible for coverage through his or her Employer's medical, dental or other insurance plan, based upon the employee's spouse working an average of twenty-five (25) or more hours per week as per HIPAA Standards, then primary coverage must be carried with the primary Employer of each spouse to be eligible for under the City of Norton medical plan.
>
> (B) The employee must notify the Plan Administrator immediately in writing of the commencement of such group health insurance coverage for the spouse and other dependents. For eligibility determination under this provision, an annual Spousal Medical Coverage form shall be completed by the employee. The Spousal Medical Coverage form is attached to this Agreement as Appendix B. The Employer reserves the right to verify this information at any time.
>
> ©) Under this provision, the Employer reserves the right to pay spousal and covered dependent medical claims as a secondary payer, but not as the primary payer based on items A and B above.
>
> (D) Implementation is required at the spouse's next earliest open enrollment period.
>
> (E) It shall be the employee's responsibility to notify the Employer of any change in spousal coverage or any qualifying event in regard to coverage.
>
> (F) 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 Norton 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.

Union Position: The Union's final offer is as follows:

Section 3. The Employer will provide and pay effective 30 days after the contract is executed for full-time employees, the full premium for a life insurance policy in the amount of Forty Thousand Dollars ($40,000.00).

Section 4. a. Effective January 1, 2006, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	Network	Non-Network
Deductibles	Individual $250 Family $500	Individual $500 Family $1000
Maximum out-of-pocket (includes deductible) Calendar Year	Individual $400 Family $900	Individual $1000 Family $2000
Hospital Expense	90%	70% of R & C
Outpatient Surgery	90%	70% of R & C
Sterilization	90% up to $500 Females and Males	70% of R & C up to $500 Females and Males
Coinsurance	90%/10%	70%/30% of R & C
Prescription Drugs Up to 30 day supply All within Network	Generic = $5 Preferred Brand = $10 Non-preferred Brand = $20	Generic = $5 Formulary Brand = $10 Non-formulary Brand = $20

b. Effective January 1, 2007 the following changes to the provisions set forth above shall be implemented:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	Network	Non-Network
Deductibles	Individual $300 Family $600	Individual $600 Family $1200
Maximum out-of-pocket (includes deductible) Calendar Year	Individual $500 Family $1100	Individual $1200 Family $2500
Prescription Drugs Up to 30 day supply All within Network	Generic = $8 Preferred Brand = $12.50 Non-preferred Brand = $25	Generic = $N/A Formulary Brand = N/A Non-formulary Brand = N/A

c. Effective January 1, 2008 the following changes to the provisions set forth above shall be implemented:

Deductibles	Individual = $350 Family = $700	Individual = $750 Family = $1400
Office Calls	$15.00	$30.00

Discussion: The City seeks changes in insurance coverage due to increase health care costs. Currently, there are no employee premiums so the City covers the entire monthly cost of insurance. There are certain out-of-pocket costs to employees, so employees do share some of the burden. Any employee premium negotiated, however, will take money away from employees monthly.

There is no question that health care costs continue to rise at a greater rate than employers can absorb and the wage rate increases employees typically receive. Prescription drug expenses have been rising particularly fast in recent years. It is understandable that employers want employees to share the burden of such increases.

Not only does it reduce employers' expenses, but the theory is that such burden sharing will make employees better consumers of medical care. It is just as understandable that employees wish to share as little of the burden as possible. Wage increases are in the single digits, while medical costs increase by double digits almost every year. Any increase in wages can be offset by increased insurance costs.

The fact finder concluded that the City's proposal was reasonable and necessary. He recommended that it be implemented with some exceptions. First, the effective date was delayed until May 1, 2006. The City included this in its conciliation proposal. Second, the fact finder was concerned about the spousal coverage provision and the possibility it could result in additional cost to employees. He recommended that any increases in premium sharing be paid by the City as a secondary carrier. In its conciliation package, the City reserved the right to pay spousal and covered dependent medical claims as a secondary payer. The City's proposal does not, though, cover an employee's increased cost when his or her spouse must elect coverage at a higher cost than the City's coverage.

The Union asserts that the fact finder erred in his recommendation. The City is seeking a radical change in health care coverage that is not justified by the evidence introduced by the City. There is no pattern bargaining to look to in this matter. The City's AFSCME unit has a "me too" clause as to health care and the firefighter unit has a "me too" clause" regarding spousal coverage. Nor are there any comparables. The City stated at the hearing that the cities of Canton, Kent, and Cuyahoga Falls have similar spousal coverage provisions, but there was no corroboration of this. Thus, there was no evidence as to comparables. The other evidence it provided was not relevant. It included an article about Ford Motor Company and an employer health benefits study done by The Kaiser

Family Foundation and the Health Research and Educational Trust. Neither was limited to the public sector and the Kaiser study was nationwide. Finally, the City has not shown an inability to pay and this is simply another method of controlling costs. It did not justify its method of controlling costs.

The Conciliator finds that the fact finder erred and his recommendation is not entitled to deference. The Conciliator agrees with the fact finder that health care costs are a problem that employers must address. While it is understandable that employees want to share as little of the burden as possible, the skyrocketing costs of medical care require employees to share more. The City's approach regarding spousal coverage, however, is new and atypical. There are very few municipalities that have tried this approach. The Conciliator has yet to encounter an entity where this method has been put in place. With such little history, it is yet unknown whether requiring spouses to get coverage under their own plans will have the desired result – to control costs. The fact finder specifically noted potential problems that could occur, namely, when the spouse's premium costs exceed those under the City's plan. In that instance, the City has declined to pay the difference. This could result in employees and their spouses incurring greater costs than they currently have. What effect this may have is anyone's guess. While any change in contract language may have unintended effects, typically there has been enough history with the proposed change that the parties know what to expect. Here, that is not the case. There is simply not enough history as to this spousal coverage proposal. Given the number of two (2) income families in today's society, the effects could be significant.

Additionally, the City seeks to implement both premium sharing and require spouses to seek their own coverage. Doing so hits employees doubly hard. Premium sharing costs

employees money on a monthly basis while the spousal coverage proposal could cost even more if the spouse's coverage is greater than what the City's proposal covers. Doing both at the same time is simply too much.

The Union proposed increasing employee out-of-pocket expenses as a means to control costs. While it may not do as much as the City would like, the Conciliator believes, on this record, it is the better approach.

It must be noted that the Conciliator does not believe the Union justified an increase in the face amount of life insurance proposed by the Union. However, as the Conciliator is constrained to accepting a party's proposal on an issue by issue basis, it must be accepted.

Award: Sections 3 and 4 shall be amended as follows:

Section 3. The Employer will provide and pay effective 30 days after the contract is executed for full-time employees, the full premium for a life insurance policy in the amount of Forty Thousand Dollars ($40,000.00).

Section 4. a. Effective January 1, 2006, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	Network	Non-Network
Deductibles	Individual $250 Family $500	Individual $500 Family $1000
Maximum out-of-pocket (includes deductible) Calendar Year	Individual $400 Family $900	Individual $1000 Family $2000
Hospital Expense	90%	70% of R & C

Outpatient Surgery	90%	70% of R & C
Sterilization	90% up to $500 Females and Males	70% of R & C up to $500 Females and Males
Coinsurance	90%/10%	70%/30% of R & C
Prescription Drugs Up to 30 day supply All within Network	Generic = $5 Preferred Brand = $10 Non-preferred Brand = $20	Generic = $5 Formulary Brand = $10 Non-formulary Brand = $20

b. Effective January 1, 2007 the following changes to the provisions set forth above shall be implemented:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	Network	Non-Network
Deductibles	Individual $300 Family $600	Individual $600 Family $1200
Maximum out-of-pocket (includes deductible) Calendar Year	Individual $500 Family $1100	Individual $1200 Family $2500
Prescription Drugs Up to 30 day supply All within Network	Generic = $8 Preferred Brand = $12.50 Non-preferred Brand = $25	Generic = $N/A Formulary Brand = N/A Non-formulary Brand = N/A

c. Effective January 1, 2008 the following changes to the provisions set forth above shall be implemented:

Deductibles	Individual = $350 Family = $700	Individual = $750 Family = $1400
Office Calls	$15.00	$30.00

Article 33, Miscellaneous

Union Position: The Union proposes to add the following sentence at the end of Section

6:

No part-time officer will be permitted to work more than 32 hours in any week.

City Position: The City seeks to keep the current language.

Discussion: The Union argues that there has long been language in the Agreement to limit the use of part time employees to sixteen (16) total shifts per week. However, even with this limit some part time employees are able to work overtime, which is contrary to the intent of the language. This takes overtime away from full time, bargaining unit employees. Part time employees are not part of the bargaining unit. The idea behind using part time personnel was to supplement the department and assist officers who were on patrol. With the passage of time, however, the use of part timers has gone beyond this intent and the Union wants to limit each part time employee's hours to thirty-two (32) within a week.

The City wishes to continue the current use of part time employees. This allows it to provide police service to its residents more effectively. The City contends the Agreement contains sufficient limits on the use of such employees. Part time employees can be regularly scheduled for only sixteen (16) shifts per week. However, if a full time employee calls off, a part time person can replace him. The Agreement requires that at least two (2) bargaining unit employees be used on each shift. The parties have negotiated this arrangement. Schedules are posted and the Union is notified. The Union objected only once in 2005 and the parties resolved the dispute. Further, full time personnel can and do call one (1) hour prior to a shift to request time off. The department allows it if it can find a part time employee to cover the shift. This often occurs on holidays, for which part time employees can receive overtime. Scheduling is one of the City's

management rights and it wants to retain it. No grievances have been filed over this issue. The Union counters that grievances have not been filed because the Agreement does not restrict the use of part time personnel. That is what the Union now seeks.

At fact finding, the City proposed eliminating Section 6, which would give it an unfettered ability to use part time employees. It did not make this proposal at conciliation. Nevertheless, the fact finder determined that using part time employees more than sixteen (16) shifts a week did not violate the Agreement or support the Union's proposal. The Union could file a grievance if it believed the contract was violated, but no grievance had been filed. Further, he found the Union did not prove that its members were passed over in favor of part time employees. As a result, he recommended no change in the language.

The Union's position and arguments are virtually the same here as at fact finding. The lone exception is that it points out that, since the language does not prohibit the City's use of part time employment, a grievance would not be justified. While this is true, there are limits in the contract on the use of part timers. At least two (2) bargaining unit employees must be utilized on each shift. Section 6 also provides a remedy of overtime hours to an affected officer if a part time employee is incorrectly scheduled. More important, though, is the lack of evidence that bargaining unit employees were being passed over for overtime in favor of part time officers. In fact, the evidence revealed that it was just as likely that the use of part timers was due to full time employees calling off shortly before a shift. The Union's own evidence does not refute this, as the majority of overtime worked by part time employees was due to holiday shifts. Thirty-one and one-half (31.5) hours of overtime worked in 2005 and 2006 were the result of holiday shifts. Twelve and one-half (12.5) hours were for other reasons. These amounts of overtime worked by

part time employees do not indicate there is a problem requiring a change in the language. It is understandable that the Union desires to limit the use of non-bargaining unit personnel. However, the Union did not establish the need for the change in language.

Award: Current language.

Issue: Article 37, Duration of Agreement

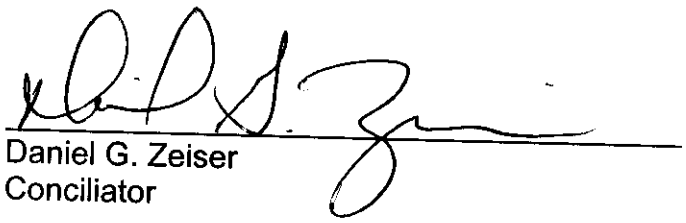
City Position: The City proposed changing the effective dates in Article 37 to reflect the Agreement will be in effect from January 1, 2006 until December 31, 2008.

Union Position: The Union agreed to the dates proposed by the City.

Award: Article 37 shall read as follows:

> This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and Ohio PBA and shall become effective upon execution, and shall be retroactive to January 1, 2006. This Agreement shall remain in full force and effect until December 31, 2008.

Dated: June 21, 2006



Daniel G. Zeiser
Conciliator