IN THE MATTER OF CONCILIATION

BETWEEN

THE CITY OF LORAIN

AND

FRATERNAL ORDER OF POLICE, OLC, INC.

SERB CASE # 10-MED-01-0006

Robert G. Stein, Conciliator

ADVOCATE FOR THE UNION:

Lucy DiNardo, Staff Representative
FOP/OLC, Inc.
2721 Manchester Road
Akron OH 44319-1020

ADVOCATE FOR THE EMPLOYER:

Phillip K. Dore, Director of Public Safety
CITY OF LORAIN
200 West Erie Avenue
Lorain OH 44052

INTRODUCTION

Prior to conciliation the parties negotiated and eventually declared impasse and went to fact finding. The fact finder issued his report, the Union accepted it, and the City rejected it leading to conciliation as required by ORC 4117. A conciliation hearing was held on November 16, 2010 at 200 West Erie Street in Lorain, Ohio, during which the parties were offered a full and complete opportunity to present evidence and testimony in support of their positions. During conciliation the conciliator attempted to resolve all issues through mediation. Pre-hearing submissions were received from both parties. The bargaining unit is represented by the Fraternal Order of Police OLC, Inc. (hereinafter "Union" or "bargaining unit") and consists of three (3) detention/correction officers. The employer in this matter is the City of Lorain (hereinafter "Employer" or "City"), located in north central Ohio.

General/Local Economic Outlook

The economy in Ohio is still experiencing the effects of a national recession and a very slow recovery. While officially considered to have reached an end, the impact of the recession upon Ohio's revenue stream is plain. In Ohio, unlike many other states, there has historically been a substantial lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the "Great Recession" is far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers. Cities that were already weakened by the loss of industry and commerce in preceding years were particularly vulnerable as the events of the recession took hold. At this point in time it is difficult to say that Ohio's path to economic recovery will be predictable. Every month on a national and state level there are mixed signals being provided by various

sectors of the economy and by the public. The unemployment rate for November of 2010 indicated a net gain in jobs, and while encouraging, the unemployment rate remained at 9.6% for the nation and Ohio. One month later the national unemployment rate rose to 9.8%, yet retail Christmas sales were stronger than last year. Conventional wisdom indicates that the economy, while improving slowly, will experience uneven progress and even occasional setbacks, as has been the case in the past few months. One of the more certain and troubling aspects of the current economic times are losses of high paying skilled jobs in Ohio. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Moreover, conventional wisdom indicates that many of the losses of high paying manufacturing jobs are permanent, requiring a recovery in Ohio to take a very different course than it has in the past. All the news is not negative; there are indicators of recovery and some employers are doing well in this recession and its aftermath. The stimulus funds, while welcomed by many to sustain public services, were a temporary fix that buys public employers a little time. Looming on the horizon and what will most likely become a hotly debated matter now that the November elections are over is the projected deficit in the state of Ohio. Although the state's budget deficit has been estimated to be between four (4) and as high as eight (8) billion dollars, all public employers in Ohio, regardless of jurisdiction have reason to be concerned about the next biennium budget. With the likelihood of less support from the federal government, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. Barring any unforeseen windfall in revenue it is very likely additional budget cuts will have to be made at the state level in Ohio in order to balance the budget, which will predictably translate into cuts in funds to local municipalities. Projections of

a 10% to 20% cut in Local Government Funds to municipalities and counties were made as early as June of 2010, and while speculative, conventional wisdom appears to indicate that cuts and not tax increases are more likely in the next biennium. (Center for Community Solutions "Thinking the Unthinkable-Finding Common Ground for Resolving Ohio's Fiscal Crisis") Prudence would dictate that this potentiality needs to be factored into any projected budget of a municipality. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and township public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. When dealing with concessionary bargaining evenhandedness of sacrifice often takes on even greater significance than it does when comparing internal comparables in more normal times.

The City finished fiscal year 2009 with a deficit of $2, 802,880. In 2010 the financial condition of the City worsened and layoffs had to be enacted. Beginning in November of 2009, the City of Lorain laid off four (4) dispatchers; eighteen non uniformed employees in various General Fund Departments, and seven (7) firefighters. In spite of the execution of these difficult measures the City still needed additional revenue to balance the budget for 2010. The City then authorized the sale of a five (5) million dollar bond to pay for health care related expenses for one year. Said bond will have to be paid back. In November of 2010 voters in the City repealed the reduction in income tax credit passed by City Council. This vote is anticipated to result in a loss of between 1.8 million and 2.2 million dollars in 2011. In the City's words it is in a perfect storm right now, collections are not coming in, the income tax credit is going away, parks

department has been eliminated, there are no janitors in City Hall and inmates are cleaning the City Hall, instead of janitors. These are examples of the depth of the City's financial hardship, contends the Employer. The FOP police bargaining unit agreed to extend its contract in 2010 and the OPBA and USW agreed to extend their contracts into 2011. Finally, the 2009 LGF (Local Government Fund) represented about 14% to 15% of total revenue; in 2011 the City anticipates a reduction of at least 1 million dollars from this revenue source based upon the State's deficit.

Issues: Issue 1, Article 14 Hours of Work and Overtime: The Union's position in this is supported by both the fact finder's report and the evidence. The Union is seeking parity with language contained in the Police Officer's contract as an internal comparable. Moreover, its position on adding language to the fact finder's recommended language is consistent with language found in contract provisions that address twelve (12) hour shifts. **Issue 2**, Article 24 Educational Reimbursement: The Union again seeks parity with the internal comparable language contained in the Police Officers, and Firemen's collective bargaining agreements. The additional language sought by the FOP was once part of the collective bargaining agreement, but was relinquished in bargaining for a monetary benefit. The fact-finder in this case chose to incorporate almost all of the language contained within the article but excluded from Section 24.2 (C) three areas of curriculum: Business and Public Administration, Social Services, and Financial/Accounting. The Union feels that these areas of curriculum are valuable tools utilized more so by correction officers than Patrol. Education in Business and Public Administration with regards to running and working a jail; a valuable asset and one directly linked to the position of a corrections officer (see Union's Pre-hearing statement). The evidence also indicates that the fact-finder also reduced the amount of reimbursement within Section 24.4 from the current benefit to Patrol of $20,000.00 per year to $5,000.00 per year. Although the Employer

provided a strong argument against inclusion of three additional areas regarding educational reimbursement, the Union's arguments coupled with the internal comparable data from other bargaining units' supports its position. **Issue 3,** Article 31 Wages: It is readily recognized that the City is under serious financial constraints as expertly articulated by Director Dore and the Finance Director and they presented convincing arguments to support no across-the-board increases in wages. However, the Union presented a strong case for making one time equity adjustments in salary based upon comparable data and the bargaining history leading to conciliation. **Issue 4**, Present Benefits and Past Practice: The Employer made a strong case for the need to not be bound by past practices, particularly during a time of prolonged financial hardship. Based upon the compelling arguments forwarded by Director Dore, it is clear that the City must look for very creative ways to deliver services to the public with declining capacity and revenue. It is also noted that the fact finder never made a recommendation on this issue and was under the impression that the issue had previously resolved by the parties, the facts before the conciliator appeared to indicate the issue was never agreed upon prior to being submitted to conciliation. **Issue 5,** Duration: The parties, at the hearing, agreed to this provision and therefore, it shall be referenced in the Tentative Agreement section of this Award.

Based upon the above the following determinations are made:

Issue 1 Article 14 HOURS OF WORK AND OVERTIME:

DETERMINATION:

The position of the Union is awarded

Award the language recommended by fact-finder with regard to Article 14 sections: 14.1, 14.2, 14.4, 14.5, 14.6, 14.7, and 14.8. And award the Union's position regarding Section 14.3 as follows:

Section 14.3 Any employee may, in lieu of cash payments for all actual hours worked in excess of forty (40) hours in an established 7-day work week, **and in excess of eighty (80) hours within a two week pay period while on a twelve (12) hour rotation,** utilize compensatory time calculated at one and one-half (1½) times the excess hours worked. Compensatory time records shall be imputed to the department's record keeping system at the end of the 28-day period. Thereafter, accumulated compensatory time may be taken off by the Employee at the Employee's request and at the discretion of and with the approval of the Chief of Police. Accumulated compensatory time shall be taken off within a reasonable period of time after it is earned and shall in no event necessitate an overtime situation nor create an undue hardship in scheduling or maintaining operations. If compensatory time cannot be taken off within a reasonable period of time after it is earned, the Employee may elect to either be paid the overtime compensation or allow a carry-over not to exceed a maximum of four hundred eighty (480) hours of accumulated compensatory time. During the term of this Agreement, the Employer and the Employees may mutually agree to change work schedules to provide for abnormal shifts or the current work schedule for other Employees. If within one year after a mutually agreed to change in the work schedule, the Police Chief determines the work schedule is unsatisfactory, he may at his option reinstate the previous work schedule.

Issue 2 Article 24 EDUCATIONAL REIMBURSEMENT:

DETERMINATION:

The position the Union is awarded

Effective January 1, 2011, the conciliator awards all sections, per the fact-finder's recommendations with the sole exception of section 24.2 (C), where the conciliator disagrees with the fact finder and awards inclusion of Business and Public Administration, Social Services, and Financial/Accounting to the list of approved criminal justice related field of study courses as per the current patrolmen's collective bargaining agreement as follows:

Section 24.2. The Scholarship Loan Program (formerly the Educational Reimbursement Program) based on a 5 year service commitment after any reimbursement to be prorated by each year of service. For example; if an officer takes a class in 2008 that cost $2,000, they have a 5-year commitment from the time of reimbursement. If they leave prior to the end of that five (5) year commitment, the prorating would be as follows:

After 1 year, $1,600; 2 years, $1,200; 3 years, $800.00; 4 years $400.00; and, 5 years, $0. This section will take effect for any reimbursement commencing in 2008 and thereafter.

A. Approved criminal justice/crime related field of study courses that will tend to improve the employee's performance in his current position; or

B. Approved criminal justice/crime related field of study courses that will help prepare the employee for future assignments with the Employer for which the employee might reasonably be expected to qualify; or

C. Approved criminal justice/crime related field of study courses that are part of a curriculum leading to a degree in the fields listed below.

(a) Police Science/Police Administration
(b) Criminal Justice/Criminal Justice Administration
(c) Criminology
(d) Forensic Science/Criminalistics
(e) Juvenile Science
(f) Corrections/Correctional Administration/Probation-Parole
(g) Criminal Justice Planning/Evaluation
(h) Judicial Management/Court Administration
(I) Behavioral Science/Psychology
(j) **Business and Public Administration**
(k) **Social Services**
(l) **Financial/Accounting**
(m) Computer Informative Services

Issue 3 Article 31 WAGES

DETERMINATION:

The position of the Union is awarded

The following are wage rates for the corrections bargaining unit. The wage increase shall be retroactive to January 1, 2011.

	Start	1st year	2nd year
Correction's officer:	**$29,827 ($14.34hr.)**	**$32,136 ($15.45hr.)**	**$34,424($16.55hr.)**

Section 31.2: Correction's officers shall maintain parity with the Dispatch Unit with regard to wages for the duration of this agreement.

<u>Section 31.3:</u> Each bargaining unit member shall be entitled to a one time equity adjustment for the year 2010, of three-thousand one-hundred thirty six dollars ($3,136.00) to be paid the first pay period following the issuance of the Conciliator's award.

Issue 4 Article 34 PRESENT BENEFITS AND PAST PRACTICE

DETERMINATION:

The position of the City is awarded.

Issue 5 Article 40 DURATION OF AGREEMENT

DETERMINATION:

The parties reached tentative agreement during the conciliation hearing as follows:

DURATION OF AGREEMENT

Section 40.1. This Agreement shall be effective as of **January 1, 2010** and shall remain in full force and effect until **December 31, 2012.**

Section 40.2. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred fifty (150) calendar days nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

Section 40.3. The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the Employer and the F.O.P/OLC. and all prior agreements, either oral or written, are hereby canceled. Therefore, the Employer and the FOP/OLC each voluntarily and unequivocally waive the right and each agrees that the other shall not be obligated to bargain collectively on any subject matter for the life of this Agreement.

TENTATIVE AGREEMENT

During negotiations, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The conciliator respectfully submits the above recommendations to the parties this _____ day of January 2011 in Portage County, Ohio.

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Robert G. Stein, Conciliator

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TENTATIVE AGREEMENT

During negotiations, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The conciliator respectfully submits the above recommendations to the parties this 13th day of January 2011 in Portage County, Ohio.

Robert G. Stein, Conciliator