

**IN THE MATTER OF CONCILIATION**

**BETWEEN**

**THE FRATERNAL ORDER OF POLICE, OLC, INC.**

**AND**

**THE CITY OF EAST CLEVELAND, OHIO**

**SERB CASES # 2010-MED-09-1204 (RANK)  
SERB CASES # 2010-MED-09-1207 (PATROL)**

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## INTRODUCTION

The parties to this matter are the Fraternal Order of Police (hereinafter "Union or bargaining unit"), who represent two units in this conciliation: Rank (approximately 13 in number) and Patrol (approximately 29 in number). The Employer in this matter is the City of East Cleveland, Ohio (hereinafter "Employer" "City," or "Department"). The parties, after reaching tentative agreement on numerous issues in negotiations (See p. 2-4, Employer's Pre-hearing Statement), bargained to impasse on the remaining unresolved issues in early 2014 and a fact finding was held on April 9 and 18, 2014. The fact finder, Thomas J. Nowel, submitted his report on May 13, 2014 and it was rejected by the Rank and Patrol bargaining units on May 16, 2014, which led to the instant conciliation. It should be noted that there was another bargaining unit represented by the Union (CPO/BPOs) that was not rejected following the fact finding process and was not forwarded to the conciliation process. On July 17, 2014 the parties along with the conciliator, engaged in mediation, which also included a financial presentation by the Employer along with two state auditors. Six of the twelve issues brought to conciliation were resolved in mediation; however, six issues remained unresolved and the parties and the conciliator agreed that since the financial presentation was completed with both parties having an opportunity to present evidence and testimony, the advocates would submit post hearing briefs in lieu of holding a second day of hearing. The briefs were received mid-August with the understanding the conciliation report would be issued in September.

### Open Issues:

This Conciliation arises as a result of a dispute between the FOP, Ohio Labor Council, Inc. (FOP) and the City of East Cleveland, (Employer) regarding the following open issues:

Issue 1. Article 23 Clothing Allowance (Patrol)  
Article 25 Clothing Allowance (Rank)

Issue 2. Article 24 Wages, Re-opener Language  
Article 26 Wages, Re-opener Language

**Issue 3. Pension Pick up (Patrol)\***  
**Pension Pick up (Rank)\***

\* This issue was not listed by the Employer as being open.

Issue 4. Article 29 Health, Dental, and Life Insurance (Patrol)  
Article 30 Health, Dental, and Life Insurance (Rank)

Issue 5. Article 36 Duration (Patrol)  
Article 35 Duration (Rank)

## Issue 6. Suspension of Benefits MOU

For the sake of efficiency and accuracy, the background of this case and the basis for the positions taken by each party and their respective positions are described verbatim as follows:

### **Employer's Summary and Final Position on Open Issues:**

From the start of these proceedings, one thing needs to be stressed - the City of East Cleveland is not comparable to any other jurisdiction in this state. East Cleveland is unique even when compared with other cities in various stages of fiscal oversight by the State Auditor.

It faces challenges greater than any other governmental unit in Ohio history due in large part to the failure of all parties to address the problems that plague this City. And while this may be uncomfortable to face, all parties includes past administrations, past city councils, bargaining units themselves, and SERB neutrals who "took a pass" on dealing with the tough issues of the day.

East Cleveland's financial difficulties have developed over a period of decades. For over 17 years, from 1988 to 2006, East Cleveland was in fiscal emergency – which still represents the longest single period of time a municipality has ever been in fiscal emergency. After this protracted fiscal emergency, the City emerged from that designation less than five years ago with the hope that it had righted itself and could build toward a better future. Contracts were negotiated under the premise that the City could generate funds for increases by operating more efficiently and living within its means and these units benefited from those agreements. Unfortunately, certain events intervened and that did not happen.

East Cleveland was only able to stay out of fiscal emergency for six years before its common problems—declining property values, lack of jobs, high unemployment, decaying infrastructure, increased operating costs along with the great recession of the last few years—became too much for the City's limited financial means to overcome.

Already on shaky foundations because of traditional challenges/factors listed above, the events that have taken place since 2010 have left the City reeling. The City's population base continues to shrink. The state has acted to cut away at local government funding. One of the City's largest tax generating facilities, a local hospital, has recast its operations in a manner that will greatly reduce the amount of taxes generated going forward. Over the past 36 months, the City has been designated as being in Fiscal Caution, elevated to Fiscal Watch, and has now been placed into Fiscal Emergency. (The last time this neutral heard a case between the parties, the City had not been placed into Fiscal Emergency.)

All of the factors coalescing together have led to a situation that has become unsustainable. Understandably, this bargaining unit wants to hold onto what it has and ignore this, but the reality is that things must change. The City of East Cleveland must live within parameters approved by the State Commission and the State Auditor so that it can live within its means and pay off outstanding obligations.

Unfortunately there are many factors related to East Cleveland's financial condition that the City's representatives are unable to change. The City of East Cleveland still ranks last in income per capita, median family income, median household income, and a host of other economic indicators. It has one of the lowest median home value rates, which leads to low property tax collections. It also has one of the lowest per capita income tax collection rates.

These economic factors were in place when the parties last resolved the Dispatch and Corrections agreements; however, since that time, the state has cut local government funds further, slashed other aid, and one of the City's largest taxpayers has shut its doors. It is only by the grace of massive one-time infusions of cash linked to that closure that the City was able to avoid laying off more than half of its police force (it temporarily had to do that). The City's designation of distress has further increased and the Fiscal Emergency Commission has unilaterally slashed City spending authority.

Still the FOP refuses to offer any meaningful solutions to operate more efficiently and within the budget parameters approved by the Fiscal Emergency Commission. In fact, the union's representative suggested as recently as the day prior to fact finding that the proceeding (fact finding) could only legally address the time period between 1/1/2011 and 12/31/2013.

With all due respect to that position (rejected by fact finder), nothing in the law or any other authority elsewhere requires that a contract actually be executed to cover the period in question. R.C. 4117 has operated to fill that gap, maintain the terms and conditions during that time, and the proceeding today should be about providing the Employer and the union with stability going forward for a new three year agreement.

But just when the level of absurdity and denial could not be increased further, on the day of the fact finding hearing (FOR THE FIRST TIME) the union introduced new, never bargained demands for additional compensation items for the first time.

Without reliving the past and the reasons for it, this bargaining unit has made no concessions at all over the past three years while other employees have had to change, and now going into conciliation, it is anticipated that this unit will again be proposing to receive increases in compensation and make no changes to the contract that would assist the City in dealing with its fiscal emergency.

Their counterparts under other FOP contracts that were resolved moved to new insurance language that increased contributions modestly and provided the City with more flexibility with regard to benefit levels. Members of the fire department recently settled an agreement through conciliation that: 1) institutes 10% insurance contributions, provides the City authority to adjust insurance as long as those changes are consistent with those provided to other employees, and eliminates insurance coverage for spouses who have coverage available through their employer; 2) cuts sick leave accruals by 50%; 3) eliminates more than \$250,000 in manning related overtime; 4) allows for shrinking the department from 46 to approximately 39 FTEs over time (approximately \$500,000-\$750,00 in projected reductions),

and 5) embraces the integration of part time personnel into the workforce (this may enable the City to shave another 3 FTEs off the necessary department full-time compliment). It is now time for these bargaining units to do the same, if not more.

The City cannot continue on the path it has traveled over the last four plus years, and the fact that the State Auditor's office is once again back trying to mend the City's financial disrepair is evidence the City needs to support its position that major operational changes are necessary within all areas of the City, including the Police Department. The City has to affect cost controls because it is the fiscally responsible thing to do, because it is the morally right thing to do, and because without changes in the labor agreement between the parties the City will not be able to chart a path out of fiscal emergency.

The Union may chafe at the changes that the Employer has demanded and continued to insist upon, but the reality is that it must occur if the City is to take the necessary actions to deal with its return to Fiscal Emergency Status. There can be no more half measures, quick fixes, or temporary solutions. The City and the citizens it serves deserve a permanent solution and for that to happen dramatic change must occur. No longer can the status quo continue. Cost savings need to be achieved and the City must have the ability to better manage its operations. Final Position of the Employer on the open issues:

### **Issue 1. Clothing Allowance**

The fact finder recommended and the Employer has proposed identical changes to those agreed to with the other FOP bargaining units to address the transition of payments under this provision into bi-weekly amounts. The union has offered no explanation as to why these pattern changes are unacceptable, and did not even offer on scintilla of evidence as to why a bi-weekly payment schedule was unacceptable. Given that the City has issues making large balloon payments due to its cash flow concerns, such a revision would seem to be common sense. In addition to this, the City's proposal should be awarded based on the following specific rationale:

1. The current uniform and shoe allowance amount is reasonable given the Employer's dire financial circumstances.
2. The Employer's proposal to standardize language and form of clothing allowance payments is reasonable.
3. This language was recommended by the fact finder and there are no changed circumstances nor error to support a departure from that award. In fact, to do so would break a pattern of internal consistency that the recommendation represents.

### **Issue 2. Wages**

#### **a. General Wage Increases**

The Employer has proposed that the fact finder's recommendation be adopted so that wage rates remain unchanged for the year 2014 and 2015 of the Agreement. Obviously, the fact finder realized the gravity of the Employer's financial situation, which has actually worsened since the original fact finding date and finds the Employer with the distinct possibility of missing payroll for this month. Nothing short of a wage freeze is acceptable in situations such as these. Based on this and the below rationale the Employer submits that wage rates should remain unchanged for the first two years of the Agreement.

1. From 1988 to early 2006, the City was in Fiscal Emergency. In order to emerge from the Fiscal Emergency in February 2006, certain assumptions were made about the future state of City finances, revenues, and expenditures. (Exhibit B)
2. The intervening fiscal collapse and recession shortly thereafter led to a situation where the projected revenues never materialized, and expenditures continued to be made in a manner that outpaces monies coming into the City. This was discovered in the City's 2008 Audit, not completed until December 23, 2011. (Exhibit C) Later audits from the State Auditor released covering the years 2011 and 2012 show the City's finances continued in a downward spiral in those years. (Exhibit C)
3. At the conclusion of the audit, the City's General Fund deficit for the year 2008 stood at more than \$730,000. The audit further sounded the alarm about continued deficit spending through 2010 that had accumulated a deficit across all funds of more than \$1,400,000 and left the City with a cash balance of approximately \$7,000 as of December 21, 2010. (Exhibit C)
4. The City was placed in Fiscal Caution almost immediately (1/5/2012). (Exhibit D)
5. This was followed by a Declaration of Fiscal Watch (5/23/2012). (Exhibit E)
6. In June of 2012, the State of Ohio Auditor's Office warned of the dire nature of the situation with reports indicating a deficit general fund balance of more than \$1,900,000 and a cash balance of \$716,000. (Exhibit F).
7. Shortly thereafter, on August 27, 2012, the gravity of the situation escalated with reports indicating a deficit general fund balance of more than \$5,500,000 and a cash balance of \$492,000. (Exhibit G). {8/12/2014 CNECLCI 00139715.DOC } 5
8. At that stage there was a serious possibility of not being able to pay personnel which would have triggered a fiscal emergency. The City was, however, able to negotiate with a large hospital system that was leaving the area to receive a large infusion of cash to offset the departure. This avoided missing payroll, but it is only a stopgap measure. On October 9, 2012, a fiscal emergency was initiated by the State of Ohio Auditor's Office. (Exhibit H)

9. In order to understand how this has unfolded, you only need to look at the City from a historical perspective. Over time the City has steadily lost population and with it tax revenue. During the last decade, population loss exploded with the City losing more than 34% of its population. (Exhibit I)
10. During that time period, municipal income tax collections took a corresponding reduction. This revenue stream is the primary source of funding for the City's general fund, out of which police department wages and operating costs are paid. (Exhibit J)
11. And while 2010, 2011, 2012, and 2013 might appear to be a sign of recovery, nothing could be further from the truth. The hospital departure provided the City with one-time revenues of:

	<u>Hospital Payment</u>	<u>Total Collection</u>	<u>Repetitive Income Tax</u>
2011	\$3,000,000	\$7,699,990	\$4,699,990
2012	\$3,000,000	\$8,229,390	\$5,229,390
2013	\$1,700,000	\$6,928,467	\$5,228,467

The reality is that the City's repetitive income tax revenue is at its lowest point in more than a decade. And the population that remains is not capable of generating more income through tax increases or levying other funds. (Exhibit K)

12. And even with these large one-time cash infusions, the City has still been stuck in a deficit spending pattern. (Exhibit L) Going forward the City must rein in costs and align them with revenues because it will continue to face the challenge of cuts in state assistance and increasing fire department personnel and operating costs. (Exhibit L)
13. The first step in the process to recovery is to reign in expenditures, especially since the City is seeing less revenue coming in through the door, and the City has a deficit balance of over \$3,289,000 in the General Fund as of the end of February 2014. (Exhibit H). The City has 14 funds with a total deficit balance of \$5,183,815. (Exhibit H). As of February 2014 it had cash on hand of just over \$175,000. (Exhibit H). As evidence of the dire nature of the City's situation, its reconciled balances for all funds decreased from \$1,051,155 to \$175,508 from September 2013 to February 2014. At the same time its General Fund deficit increased by almost \$800,000. (Exhibit H). Not surprisingly, the City has had difficulty making payroll and has had to accrue obligations like pension and healthcare in recent months.
14. The City must reign in and contain expenditures to chart a path out of Fiscal Emergency, since it has seen large drops in income tax and had its local government funding cut by more than half. The City will also no longer be receiving monies from the hospital.
15. In addition to funding operations at sustainable levels, the City must also find ways to pay back approximately \$1,700,000 in obligations to vendors.



16. With the Police Department making up over 32.45% of the General Fund Expenditures, the City must make expenditure cuts not expenditure increases in the department for the City to turn the corner.
17. The City is now in its second fiscal emergency. The purpose of such actions is to preserve the fiscal integrity of political subdivisions for not just the good of local citizens but of the public statewide. (Exhibit M)
18. In such situations, SERB neutrals recognize that the status quo is not sustainable and the status quo much less any increase should be rejected. [Exhibit N: Girard & OPBA 09-MED-10-1213 (Meredith); Girard & OPBA 09-MED-10-1213 (Bullard); Mansfield & FOP/OLC 12-MED-03-0440 (Rimmel); Campbell & FOP/OLC 06-MED-10-1167/1174 (Rimmel); Girard & OPBA 06-MED-10-1197/1198 (McDowell); Girard & OPBA 06-MED-10-1300 (Wallace-Curry); Campbell & IAFF 06-MED-10-1300 (Wallace-Curry); Campbell & FOP/OLC 05-MED-03-0245/0246 (Mancini)]

#### **b. Re-Opener Provision**

The fact finder recommended that the parties engage in a wage re-opener for the year 2016. With all due respect for that recommendation, it was issued in early May after two days of hearing in early April. Conciliation was held in mid-July, the union essentially spent the entire day going over the same TA's that it had previously executed, and then attempted to suggest another date for hearing (which was rejected), and the parties ended up submitting briefs for mid-August. This will put the parties back at the bargaining table less than 18 months from the actual expiration of the entire agreement and likely force another costly conciliation because ultimately this unit is simply unwilling to accept the City's fiscal situation or offer any type of package that indicates a willingness to address financial concessions. Even after the fact finder issued a concessionary award, the union's conciliation position is that no concessions should be made at all, while more than 18% in compensation should be amputated from City funds.

The Employer cannot express enough its extreme displeasure at the prospect of what has become a perpetual process of re-openers and conciliation with its FOP/OLC units. However, in keeping with the fact finder's desire to see some sort of re-opener, it's position is that if it must be done, such should only take place after a more lengthy period of time has passed since the conciliation award in this matter is issued. Accordingly, it proposes that the reopener be conducted based on the contractual anniversary date, as opposed to a date certain. This language adjustment coupled with the Employer's proposal on duration that the Agreement commence July 1, 2014, and run for a three year period will provide the parties approximately two years before the reopener.

The City desperately needs stability, not piecemeal reopeners that offer unrealistic hope and saddle the taxpayers of a very real cost when the Employer must say that it cannot offer anything to the bargaining unit. In the end, this type of process is just an exercise in perpetual

conciliation and fact finding on a repetitive scale. A period of stability needs to be established prior to engaging in any re-opener if it is to be done.

Additionally, it is likely that the union will attempt to argue that its position on this issue is consistent of that awarded by the fact finder. However, upon examination of the fact finding award, it is evident that nowhere in the award did the fact finder ever make reference to a binding (g)(11) waiver being included in the re-opener. He did not include nor recommend that language. Accordingly, while the union has represented itself as taking a position consistent with the fact finder, in reality it has not.

Further, it is important to note that the prior (g)(11) waiver was not included in the contract by virtue of conciliation, but by a fact finding award that was mutually accepted by the parties. It applied to a specific time period and set of bargaining where the parties mutually agreed to such. The union's attempts to force a waiver of (g)(11) beyond the expired, not recommended language is inappropriate in conciliation. Based on this and the below stated rationale and authority, the Employer believes that its proposal on the re-opener language should be recommended. The Employer further submits the following in support of its position:

1. The Union's Proposal is permissive in that it seeks to mandate and require that a waiver of R.C. 4117.14(G)(11) be included as part of any re-opener. In doing so, the union is essentially proposing in conciliation that the conciliator order a waiver of the statutory procedures under R.C. 4117 which would be creating a MAD.

The suggestion that a conciliator should attempt to alter R.C. 4117 via conciliation is wholly improper, if not *ultra vires*, and should be rejected. [See Exhibit O: Hancock Co. MR/DD v. OEA, 95-MED-04-0432 (Sugarman); Exhibit P: City of Girard v. OPBA, 09-MED-10-1213 (Meredith)]

2. Circumstances have changed and/or the fact finder erred in his recommendation based on the following:

- a. The City just missed a major debt payment because it had to also meet a payroll obligation. Maintaining the timing of a re-opener is wholly unrealistic given that it will force the City into another costly proceeding less than 18 months from this conciliation proceeding.

3. The Employer's offer to maintain the re-opener meets the desire of the fact finder to offer an opportunity for employees to seek potential future increases (though unlikely), while addressing the concerns previously noted. It is also structured in such a manner as to avoid the improper inclusion of a MAD component into the agreement via conciliation.

### **c. Pension Pickup**

The union has proposed that pension pickup language be incorporated into the agreement. This issue was never bargained at all, and in fact was submitted as a new, never before discussed issue to the fact finder for resolution. The fact finder rightfully rejected its inclusion in his

recommendation. Aside from the blatant ULP that such action constitutes, the fact that a massive compensation demand would arrive the day of a fact finding hearing, in the midst of a fiscal emergency, is simply unconscionable. It is further evidence of the problems that short term reopeners produce with this unit and the reason that the City requires significant savings in this time of crisis.

This issue was submitted for the first time at fact finding, never bargained at all, and should not even be given the slightest consideration by the conciliator. [See Exhibit Q: City of Solon v. IAFF, 12-MED-05-0559 (Ruben)]

### **Issue 3. Insurance**

The Employer has proposed the language recommended by the fact finder which is pattern language based on the IAFF conciliation award and modeled after prior language that was included in other FOP contracts except that it has made exception so that the language would not take effect until after the issuance of the conciliation award. This is actually more beneficial to the union and practically speaking more administratively feasible. The language is crucial to the City's ability to manage the issue of insurance going forward and ensure conformity among all City personnel in this area. Based on the above and the below listed rationale, the Employer submits that its position should be recommended:

1. The Employer's fiscal condition and the interest of the public require that it be given more flexibility to deal with insurance cost issues.
2. This bargaining unit has benefited greatly from contributions and costs that are not in line with what is going on throughout the public sector.
3. This bargaining unit costs more than its peers in the public sector to insure both statewide and in smaller cities.
4. This language was recommended by the fact finder and there are no changed circumstances, nor error to support a departure from that award. In fact, to do so would break a pattern of internally consistency that the recommendation represents.

### **Issue 4. Duration**

The fact finder recommended a new three year agreement, effective January 1, 2014, through December 31, 2016, after a hearing that was held over two dates, April 9, 2014, and April 18, 2014, with a re-opener provision for wages only in 2016 (beginning in 2015). With all due respect to that determination, due to the union's reluctance to conclude the process (as is its right) such a recommendation puts the parties back at the table in a time frame that is likely less than 18 months from the entire agreement expiring and approximately 12 months from the re-opener.

The Employer proposes that the contract become effective July 1, 2014, and expire June 30, 2017. This proposal, in conjunction with the alteration to the wage reopener contained elsewhere, creates a cooling off period for the parties and provides the city some measure of stability going forward so that it can address the serious issues that it is facing.

Additionally, it is likely that the union will attempt to argue that its position on this issue is consistent with that awarded by the fact finder. However, upon examination of the fact finding award, it is evident that nowhere in the award did the fact finder ever make reference to a binding (g)(11) waiver being included in the re-opener. He did not include nor recommend that language. Accordingly, while the union has represented itself as taking a position consistent with the fact finder, in reality it has not.

Further, it is important to note that the prior (g)(11) waiver was not included in the contract by virtue of conciliation, but by a fact finding awarded that was mutually accepted by the parties and it was not contained in the Duration article at all. This expired reopener language was not recommended for inclusion in the wage article under the fact finder's recommendation. It also only applied to a specific time period and set of bargaining where the parties mutually agreed to such.

The union's attempts to force a waiver of (g)(11) beyond the expired, not recommended language is inappropriate in conciliation. Based on this and the below stated rationale and authority, the Employer believes that its proposal on the re-opener language should be recommended. The Employer further submits the following in support of its position:

1. The Employer's proposal is reasonable and provides for needed stability with regard to the Employer's labor contracts.
2. The Employer opposes any argument that this contract should be retroactive. The City needs labor stability going forward to move out of Fiscal Emergency status.
3. The City cannot afford to engage in further negotiations with these units without a significant period of stability.
4. The Union's Proposal is permissive in that it seeks to mandate and require that a waiver of R.C. 4117.14(G)(11) be included as part of any re-opener. In doing so, the union is essentially proposing in conciliation that the conciliator order a waiver of the statutory procedures under R.C. 4117 which would be creating a MAD. The suggestion that a conciliator should attempt to alter R.C. 4117 via conciliation is wholly improper, if not ultra vires, and should be rejected. [See Previously Cited Hancock Co. MR/DD v. OEA, 95-MED-04-0432 (Sugarman); City of Girard v. OPBA, 09-MED-10-1213 (Meredith)]
5. The Fact Finder did not award the union's position as has been represented. The fact finder did not recommend the inclusion of a statutory MAD procedure waiving the provisions of R.C. 4117.14(G)(11).
6. Circumstances have changed and/or the fact finder erred in his recommendation based on the following:

- a. The City just missed a major debt payment because it had to also meet a payroll obligation. Maintaining the timing of a re-opener is wholly unrealistic given that it will force the City into another costly proceeding less than 18 months from this conciliation proceeding.

## **5. MOU Suspension of Benefits**

The Employer has proposed to temporarily suspend certain contractual benefit provisions for the duration of the parties' agreement with the reactivation of those benefits to be a subject of negotiations during bargaining for the next contract. However, if such is approved by the fiscal emergency commission, payment of all or a portion of those benefits may be made during the term of the Agreement.

The fact finder did not recommend the suspension of benefits language based on the mistaken belief that the City did not ask the union for concessions to assist it in coping with the Fiscal Emergency. To the contrary, the City asked that the union make concessions and the union essentially said "no way." The union previously stated to the fact finder that it would step up and address matters if the City's condition warranted, but the facts demonstrate that they have done just the opposite. The union did not come into fact finding offering to make any concessions to address a worsening condition. It did just the opposite.....introducing demands for new pension pickup benefits and wage increases (more than 18% over the new contract term) with no changes at all elsewhere. With all due respect to the fact finder, such an analysis is utterly flawed.

Temporarily suspending benefits, while providing a vehicle for them to be reinstated, is crucial to the City's ability to move forward in recovery. It is reasonable. And while not pleasant, it is what needs to be done in this instance in order to place this governmental unit in the best position to be continually viable.

The Employer has altered the complete suspension that it proposed previously so that the suspension will be subject to the reopener proposed elsewhere in this Agreement. Given the temporary nature of this item, half-measures simply are not enough. This proposal, while drastic, is made in drastic times. The Employer has altered its position to allow for it to be lifted sooner in bargaining as opposed to the full contract duration. This needs to be done to ensure the City's ability to deal with its dire circumstances. In addition to the foregoing, the City offers the following specific rationale in support of its position.

1. The Employer's financial position dictates that for the near future certain benefits of the parties' agreement be suspended to help reduce expenditures.
2. The Employer's proposed reductions of a temporary nature balance the interest of the public (citizens of both this locality and the state overall) in alleviating one of the most

grave financial situations that City of East Cleveland (or any governmental unit for that matter) has had to face and that of unit members who may see those benefits restored provided that such action is approved by the State.

3. In dire circumstances, difficult decisions must be made. SERB Neutrals are often called upon to make these difficult decisions. It is imperative that this course of action be implemented. **(Exhibit B)**
4. The time for half measures and empty promises has now passed. The very positions taken here at this proceeding are exactly contrary to what the union claimed it was more than willing to do should the City end up in a fiscal emergency the last time the parties were before this neutral. **(Exhibit C)**
5. Recent actions taken by the Fiscal Emergency Commission to dramatically reign in spending authority demand that some form of concrete, substantial move be made to bring expenditures in line with budgeted authority. The police department is not immune for making sacrifices that others have already begun the process of making. **(Exhibit D)**
6. Circumstances have changed and/or the fact finder erred in his recommendation based on the following:
  - a. The City just missed a major debt payment because it had to also meet a payroll obligation. Insulating bargaining unit members from what is now a critical action that must be taken, while forcing the public and citizens to bear the brunt of default payments and forcing other units to do more, is simply unacceptable. The City can no longer afford to function on changes that provide little meaningful relief.
  - b. The fact finder was not considering the same offer by the Employer as is present at this proceeding. Among the differences in the offers are that the current offer is structured for prospective implementation only and allows for the suspension to be subject to reopen (as opposed to an automatic full term).
  - c. The fact finder's recommendation fails to significantly address the City's growing issues with deficit spending in a manner that aligns revenues and expenditures going forward.
  - d. The fact finder did not recommend the suspension of benefits language based on the mistaken belief that the City did not ask the union for concessions to assist it in coping with the Fiscal Emergency. To the contrary, the City asked that the union make concessions and the union essentially said "no way." The union previously stated to the fact finder that it would step up and address matters if the City's condition warranted, but the facts demonstrate that they have done just the opposite. The union did not come into fact finding offering to make any

concessions to address a worsening condition. It did just the opposite.....introducing demands for new pension pickup benefits and wage increases (more than 18% over the new contract term) with no changes at all elsewhere. With all due respect to the fact finder, such an analysis is utterly flawed.

### **III. CONCLUSION**

Throughout the course of this entire negotiations, fact finding, and now conciliation, the union has sought to delay the inevitable of what must rightfully now be done under the statutory criteria set forth in R.C. 4117. The City's position is summarized best by Jim Rimmel, "Little purpose would be served to discuss and rehash this long and drawn out set of negotiations. The City's proposals are essential if it is to meet the fiscal demands of the State Auditor's oversight committee relative to a balance budget and fiscal responsibilities. The reality of the matter is that cogent, relevant financial data presented here today, data that cannot be rightly ignored or spun for the sake of some other more pleasing result, will lead to but one conclusion. And, while Chapter 4117 and, more specifically 4117 .14(G) (7), provides criteria for consideration in resolving this type of dispute that which must be deemed most controlling here are subparagraphs (7) (c) and (d) reading: The interest 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. The lawful authority of the public employer." See SERB Case No: 2006 MED-10-1167/1174 (Rimmel)

The City urges the conciliator to adopt its positions put forth as part of this conciliation.

### **Union's Summary and Final Position on Open Issues:**

The Employer's pre-hearing statement prior to these proceedings cited numerous opinions, some of which the Union would wholeheartedly agree to. One, the City of East Cleveland is not comparable to any other jurisdiction in this state. Two, the City of East Cleveland is unique even when compared with other cities in various stages of fiscal oversight by the State Auditor. The Union would agree in part with the Employer's Third opinion regarding that all parties including past administrations, and past city councils took a pass on dealing with the tough issues of the day. The Union doesn't feel that bargaining units or past neutrals ever have or had the ability to "take a pass" make any decisions regarding budget issues, but instead suffered the consequences of "very bad decision making made by those who were in charge of the budget, namely City Council and the Mayor. The Mayor and City Council were constantly at odds with one another and unable to agree on much of anything. Suspensions between the parties just added to all the hostility. Mayor Norton in 2012 continued to pay himself a salary of which he was not entitled to, according to East Cleveland City council President Dr. Jordan, and in the meantime while most employees were taking pay cuts, he was paying himself a healthy pay raise. Mayor Norton had a brand new SUV purchased for him with funds used from forfeited vehicles, vehicles obtained with funds obtained as a result of the work performed by the Police bargaining units. This purchase was made even after testimony by the State Auditor's Nita

Hendryx, Chief Program Manager and Tisha Turner, Asst. Chief Program Manager to the State Auditor's office, regarding the City's inability to pay even the gas and electric company what is owed to them. Health care bills and Workman's Compensation payments unable to be made by the Employer, and the threat of not meeting a third payroll term in August. The only persons to look to for the financial gloom of this City are those elected officials running it. They and they alone have been and continue to make the decisions regarding the finances of the City of East Cleveland, and much of the culpability is with them.

**Issue 1. Article 23 Clothing Allowance (Patrol)  
Article 25 Clothing Allowance (Rank)**

The Employer proposes to transition the current clothing allowance payments into bi-weekly amounts. The bargaining unit members strongly oppose this concept and wishes to maintain current contract language. The Union and the Employer have had conflict regarding this issue in the past and "class grievances" had to be filed by all unions regarding payment. The Employer mandates a uniform, specific in nature be worn by the members, and now says they want to pay for it by adding a few cents to each pay check to cover the costs. This now leaves the burden of payment completely up to the Employee, along with the burden of double checking each paycheck to insure payment has even been made. The Employer has not mandated this process with the Fire Department and continues to pay them in lump sum payments. The Union seeks parity regarding this issue, and requests the Conciliator grant the Union's last best offer regarding Articles 23 and 25 Clothing Allowance.

**Issue 2. Article 24 Wages, Re-opener Language  
Article 26 Wages, Re-opener Language**

The Union seeks a wage increase of 1.5% for the year 2014 retroactive to January 1, 2014, 1.5% for the year 2015 commencing January 1, 2015 and a wage re-opener for the contract year of 2016 with a re-opener filing within 90 days prior to the end of the year 2015.

This unit has not seen an increase in over three years. This unit is the least paid in all of Cuyahoga County and with the SERB comparables, can barely say they are paid an actual police salary. This unit has been working with below minimum safety standards and the crime rate in East Cleveland continues to escalate. The City is currently looking to hire part time officers; the City is buying brand new vehicles for the Mayor. The City is paying their Fire Department an increased wage of 1.5% in 2014 and 1.5% in 2015, and only went to hearing to have the final "SETTLEMENT AGREEMENT" reached drafted by a neutral. The same neutral the Employer claims has taken a pass on dealing with the tough issues of the day. According to SERB's bookmark Report of June 12, 2014, our Captains are paid \$14,835.02 dollars less than the average, our Lieutenants are paid \$22,832.61 dollars less and our Sergeants are paid \$19,565.11 dollars less than the average. Our Patrolmen are paid \$16,410.86 less than the average.



The City of East Cleveland is in terrible shape we agree, however these bargaining unit members still have an obligation and duty to serve and protect the residents of East Cleveland while employed, they have no choice. We have lost more than seven officers in the last two years to either retirement or new jobs, their salaries alone could fund a 1.5 % increase each year.

The Union requests the Conciliator grant the Union's last best offer regarding Wages, and a salary re-opener.

**Issue 3. Pension Pick up (Patrol)  
Pension Pick up (Rank)**

The Pension pick up language the Union proposes is for parity with the East Cleveland Fire Department, again, the increase to this Article for the E. Cleveland Fire department was a "deal struck at the table" agreed to by both parties. An increase in the pension pick up was awarded to the Fire Department in addition to an increase to their salary base. The Union seeks this same "deal" be awarded to our members as well, and the Pension Pick Up Article be implemented into the successor agreement. The Police and Fire units generate revenue to the City, with the police and its ticket counts generating the most revenue from any bargaining unit. The Union requests the Conciliator grant the Union's last best offer regarding Pension Pick Up.

**Issue 4. Article 29 Health, Dental, and Life Insurance (Patrol)  
Article 30 Health, Dental, and Life Insurance (Rank)**

The Union's position regarding Health, Dental and Life Insurance is that it cannot take another increase in contribution without some type of economic increase to their wages. Another "deduction" to the already low wages suffered by these members is just unconscionable. The healthcare was recently changed to self-insured by the City in the hopes they would be able to "get a handle" on the increased cost of health care and we applaud the City's efforts regarding this adjustment. The Union requests the Conciliator grant the Union's position of current contract language regarding Articles 29 and 30, Health, Dental and Life Insurance.

**Issue 5. Article 36 Duration (Patrol)  
Article 35 Duration (Rank)**

The Union proposes duration of January 1, 2014 through December 31, 2016 with a wage re-opener in the year 2015 for the 2016 rate of pay. Fact Finder Nowel awarded the Union's position in Fact Finding citing that all the previous agreements commenced as of January 1, and he sees no reason to deviate from that pattern. The Union's opinion is that the City has not given any just reason or provided testimony as to why the successor agreement should deviate from the January 1, 2014 start date. As a matter of Fact, the Employer's representative had no issue with entering into an Extension Agreement to include the (G) 11 waiver the night before the pre-hearing statements were submitted to the Conciliator. The Union stresses that the

previous contract's duration ran from January 1, 2008 through December 31, 2010. The contract language from January 1, 2011 through December 31, 2013 remained unchanged; the successor agreement should begin the start of January the following year. The Employer proposes a completely different Duration than anything discussed in any negotiation session of July 2014 through June 30, 2017 with no agreement to a wage increase which would force the members to go nearly seven years without a wage increase. The Union requests the Conciliator grant the Union's position regarding Article 35 and 36 Duration.

#### **Issue 6. Suspension of Benefits MOU**

The Employer has proposed a Suspension of Benefits Clause and they state have altered it after the Fact Finder erred by not recommending the Employer's position due to the fact that the Employer never asked the Union for concessions... nothing could be further from the truth. The Fact Finder did not award the suspension of benefits due to the fact that as written in Fact Finding the proposed language unilaterally allowed the City to make any changes they saw fit in an financial crises (which we all know East Cleveland has been in for the last 18 years), and suspend up to anything economic they saw fit within the contract, all Articles at their discretion. Why bother negotiating???? Why bother with the process???? The Employer then "amended" their position to specifically include Articles of interest of which the Employer would suspend should the City suffer financial crisis. When hasn't this City suffered it, yet the Employer did not feel the need to negotiate this ludicrous language with any of the other bargaining units within the City, nor did they have it granted. The Police Department, a unit already working in deplorable conditions for less than a fair wage and the Employer wants to be able to suspend the majority of the economic benefits currently contained within the bargaining agreement until the conclusion of the party's agreement, or at the whim of the fiscal emergency commission, whom have testified in numerous hearings on behalf of the Employer with all the current bargaining units and were present for the " negotiated wage increases given to the Fire Department". The Union would implore the Conciliator not even entertain such an absurd MOU become a part of the successor agreement, if implemented the may just be the straw that will definitely break the already strained camel's back with these units. The Union would request the Conciliator award the Union and the Fact Finder's position and not allow the MOU to become a part of the successor agreement.

**General/State/Local Economic Overview/Discussion:** A combination of prolonged uneasiness and continued hope for signs of improvement have characterized the mood of the country during the years since the "great recession" was declared to have ended on a national level. Of course, what is often declared to be ended nationally does not always translate immediately at the local level, particularly in Ohio, which has had more than its share of job losses prior to and as a consequence of the great recession. Recovery has been painfully slow since 2008, when job losses in Ohio were the second worst in the nation, behind Michigan. However, there appears to be cause for optimism as we approach the last quarter of 2014. In the last several years the nation has experienced considerable national political discord, which earlier in the year showed signs of a thaw in the long-existing failure of Washington to agree on legislation (e.g. Farm Bill, Budget Bill passage), but quickly returned to gridlock over issues like

immigration reform as the mid-term elections approach. In spite of the long-drawn-out lack of agreement in Congress over many important issues that did little to relieve economic uncertainty, the private sector has continued to lead the way with stronger profits, and additional jobs. Yet, in an economy that is more than two-thirds driven by consumer spending volatility is always a concern. And, on 9-5-14 the U.S. Labor Department reported that some 142,000 jobs were created in August, which is much lower than an expected number in the 220,000 range. This unadjusted figure represents a break in what had been string of months where job growth regularly topped 200,000 jobs, a possible indication of a weaker job market or simply a pause in an improving economy. Such has been the nature of the recovery from the great recession. On the positive side household income just hit its seventh straight month of gain in July, and recently the barometer of Midwest factory activity shot up to 64.3 in July-the biggest monthly point gain since July 1983. (NY Times, August 30, 2014)

Infrastructure issues along with recovery from record severe weather will be a challenge for cities and states across the country and in Ohio for the foreseeable future. Business continues to learn how to be more efficient and do more with less or with part-time rather than full-time employees. In the experience of this neutral, public sector entities in Ohio, having to have endured multiple rounds of severe reductions in state assistance in recent years, are following the lead of the private sector and are very leery to again be put in a position to have to cut back services, make drastic cuts in staffing, reduce benefits, and freeze or reduce wages just to balance their budgets. In Ohio the majority of manufacturing jobs are related to transportation, which continues to experience sustained recovery. Yet, caution still exists and there is still cause for concern in the number of people unemployed and underemployed. Many of the jobs being created in Ohio, as in other parts of the country are not the same well-paid jobs, with good benefits that in the past created and sustained a vibrant middle class. Currently there are several million people who have been unemployed for 6 months or more. Complicating the future in another manner is the fact that for millions of workers income has not changed markedly for several years. ("Incomes are Flat, Reflecting a Slowdown in Job Growth, but Consumer Spending Rises," Associated Press, 2-2-14) What long-term effect this will eventually have on markets and the willingness and ability of citizens to be able to financially support their communities is a question only time will answer.

As previously stated, Ohio's economic picture has been improving, painfully slow for some, but hopeful signs of improvement from a very long and severe national recession appear to be gaining considerable momentum. Substantial activity has been initiated in the areas of shale gas and oil exploration, with a promise of billions of dollars of added income to Ohio in the future. ("Shale gas and oil will add \$5 billion to Ohio's economy by 2014, say economists" by John Funk, Plain Dealer, 2-29-12) The July unemployment rate was 5.7%, a marked improvement over July 2013 where it was 7.5% and lower than the national rate of 6.2%. What holds for the remainder of 2014 is not certain on a national or statewide perspective given considerable instability in many parts of the world, yet signs of a sustained recovery remain very hopeful.

The local economy in northeast Ohio is a mixed bag of prosperity, recovery, and continued austerity. Depending upon location some municipalities are prospering, while others are still

finding difficulty in adjusting to substantially less revenue from the state of Ohio, the elimination of the estate tax, lower property values, etc. And, there are others, like the City of East Cleveland that has been long suffering and has been particularly crippled by what all Ohio cities have endured since 2008. The City of East Cleveland, like many others in Ohio, has been a passenger on a rollercoaster ride marked by the plunge of severe job losses and foreclosures, followed by a long, slow, and bumpy rise that has been in motion since the declared end of the recession in 2009. That ride was initially steepened by incremental elimination of loss of tangible personal property tax, and then made more jarring through severe “turns” of state legislation that drastically reduced local government funding and eliminated estate taxes, forcing many local governments to hang on while they figured out where to go from here while coping with less revenue related to decreases in real property value. Again, not all municipalities experienced the same ride. Those who were better off economically were able to cushion their revenue losses with large funding balances and/or growth that were fostered by demographic and economic growth advantages through a combination of effort and fortune that came with being located in a prosperous geographic location in Ohio. The City of East Cleveland has had the dubious distinction of being chronically in severe financial straits, longer than any other in the experience of this neutral. From late 1988 to early 2006 the City was in financial emergency, than again placed in Fiscal Watch in early 2012 and then placed back into Fiscal Emergency where it remains. Its population continues to decline and it ranks last in per capita income, median family income, median household income and its home values are among the lowest in the state. There is no use in sugar coating this situation, this once proud city, the first suburb of Cleveland, a leader in the Women’s Suffrage movement, the once location of the summer home of John D. Rockefeller, is in dire straits and painful decisions must be made if it has any chance to survive in the long run. Fact-finder Nowell stated, “...*the Union did not challenge the fiscal condition of the City as illustrated by the testimony of State Auditor representatives.*” (See p. 7 of *Fact-finding Report*) And, from the perspective of this neutral, the Union with few exceptions, did not dispute the testimony and presentation of evidence provided by the Auditors of the State in conciliation. However, the Union did not mince words when it came to fixing blame. In its post hearing brief the Union stated:

*“The Union doesn’t feel that bargaining units or past neutrals ever have or had the ability to “take a pass” make any decisions regarding budget issues, but instead suffered the consequences of “very bad decision making made by those who were in charge of the budget, namely City Council and the Mayor. The Mayor and City Council were constantly at odds with one another and unable to agree on much of anything. Suspensions between the parties just added to all the hostility. Mayor Norton in 2012 continued to pay himself a salary of which he was not entitled to, according to East Cleveland City council President Dr. Jordan, and in the meantime while most employees were taking pay cuts, he was paying himself a healthy pay raise. Mayor Norton had a brand new SUV purchased for him with funds used from forfeited vehicles, vehicles obtained with funds obtained as a result of the work performed by the Police bargaining units. This purchase was made even after testimony by the State Auditor’s Nita Hendryx, Chief Program Manager and Tisha Turner, Asst. Chief Program Manager to the State Auditor’s office, regarding the City’s inability to pay even the gas and electric company what is owed to them. Health care bills and Workman’s Compensation payments unable to be made by the Employer, and the threat of not meeting a third payroll term in August. The only persons to*

*look to for the financial gloom of this City are those elected officials running it. They and they alone have been and continue to make the decisions regarding the finances of the City of East Cleveland, and much of the culpability is with them.” (Union Post Hearing Brief, p. 2-3)*

In the experience of this neutral is not uncommon for employers, particularly those responsible for financial oversight, to underestimate revenue and overestimate expenses, while at the same time unions have a tendency to seek the most optimistic view of a city's financial condition. And while such posturing during negotiations which hyperbole sometimes overwhelms fact is commonplace and expected in the give and take of collective bargaining process, it is not the case in the City of East Cleveland. By any reasonable measure the City has been tragically locked into a spiral of debt for decades. And, while there is plenty of finger pointing as to what should have been done sooner, who should have sacrificed more, who seems to be in denial, and who may be making leadership misjudgments, the depth of the financial difficulty for the City is so broad and pervasive, and grounded in a very weak economic foundation that no amount of finger pointing can change the fact that the City's financial condition is bad, really bad. (See testimony and evidence submitted by the Auditors of the State, led by Chief Project Manager, Nita Hendryx and Asst Chief Project Manager, Tisha Turner) The often over used analogy of robbing Peter to pay Paul was particularly appropriate as the Auditors in the conciliation hearing pointed to one example after another of how payroll has been met during the last few months, by not paying other bills and financial obligations. And, while the Union has legitimate claim to the fact that its members are woefully underpaid in comparison with other like employees, many of whom have more desirable working conditions, the monetary facts are unequivocal as to what needs to be done and done with reasonable dispatch. Other bargaining units in the City appear to have come to the realization that the City must develop a workable plan to extract itself from this continuing cycle of debt and deficit spending and stick to it. Whether it currently has a feasible plan remains to be seen, but it is clear that no plan can succeed without the cooperation of all employees to carry it out. Certainly, it begins with trust and belief that City leaders will make similar sacrifices they are asking of employees and they must be sensitive to the real struggle these employees have borne while continuing to serve the citizens of East Cleveland. The Union cites the agreement reached with the Firefighters, where they received a modest increase, to justify its wage and pension pick-up demand. And, while this would normally be a significant internal comparable in support of proposed monetary gains, the facts demonstrate that the Firefighters made concessions that were greater in the aggregate than what they received. The police bargaining units did not have the same ability to make a substantial monetary concession, in lieu of a modest pay increase.

The fairness of what the City is asking of the police bargaining units must be viewed in the context of the City's very survival as a political entity. The stark reality, which all parties wish was different, is reflected in the comments of fact finder who quoting a previous fact-finder, stated in his report, "It would be completely irresponsible for the Fact Finder to recommend any increase of wages in the face of the dire financial condition of the City of East Cleveland", a condition that Nowell states "...has deteriorated further since that time." The conciliator concurs that the financial condition of the City is the central story in this matter supporting the City's position on Issues 2, 3, 4, and 5. However, the bargaining history of the parties and other factors traditionally considered in negotiations support the Union's position on Issues 1 and 6.

## CRITERIA

### OHIO REVISED CODE

In the finding of fact, the determinations contained in this report are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private sector employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

Based upon the above discussion, along with a careful review of the fact finder's findings and the application of the statutory criteria, the following determinations are made (See the Pre-hearing Statements of the Parties for exact language):

**ISSUE 1    ARTICLE 23**

Article 23 Clothing Allowance (Patrol)  
Article 25 Clothing Allowance (Rank)

**DETERMINATION:**

**The Union's Position is awarded**

**ISSUE 2    ARTICLE 24**

Article 24 Wages, Re-opener Language  
Article 26 Wages, Re-opener Language

**DETERMINATION:**

**The City's position is awarded.**

**ISSUE 3    ARTICLE NEW**

**Pension Pick up (Patrol)  
Pension Pick up (Rank)**

**DETERMINATION:**

**The City's position is awarded**

**ISSUE 4 ARTICLE 29**

Article 29 Health, Dental, and Life Insurance (Patrol)  
Article 30 Health, Dental, and Life Insurance (Rank)

**DETERMINATION:**

**The City's position is awarded.**

**ISSUE 5 ARTICLE 36**

Article 36 Duration (Patrol)  
Article 35 Duration (Rank)

**DETERMINATION:**

**The City's position is awarded.**

**ISSUE 6 ARTICLE NEW**

Suspension of Benefits MOU

**DETERMINATION:**

**The Union's position is awarded.**



**TENTATIVE AGREEMENT**

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The conciliator respectfully submits the above determinations to the parties this \_\_\_\_ day of September 2014 in Portage County, Ohio.

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Robert G. Stein, Conciliator