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IN THE MATTER OF CONCILIATION

BETWEEN

THE FRATERNAL ORDER OF POLICE, OLC, INC.

AND

THE CITY OF ALLIANCE, OHIO

**SERB CASES # 2012-MED-09-0919 (SERGEANTS AND ABOVE)
MAD**

Robert G. Stein, Arbitrator

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INTRODUCTION

The parties to this matter are the Fraternal Order of Police (hereinafter "Union or bargaining unit"), who represent sergeant and above rank in this conciliation: Rank (approximately 10 in number). The Employer in this matter is the City of Alliance, Ohio (hereinafter "Employer" "City," or "Department"). The parties selected Robert G. Stein, as a fact finder and following mediation, they entered into a MAD agreement requesting that Stein serve as an interest arbitrator in this matter. The parties bargained for several months prior to declaring impasse, following the failure of passage by the Union of two tentative agreements. Several bargaining units, including the Patrol Officers, have reached agreement with the City, with still others remaining to bargain in the coming months in a staggered schedule.

Open Issues:

This Arbitration arises as a result of a MAD agreed upon during the fact finding hearing and arises out of a dispute between the Fraternal Order of Police, Ohio Labor Council, Inc. (FOP) and the City of Alliance, (Employer) regarding the following open issues:

Issue 1: Article 20 (old 23) Health Insurance Benefit

Issue 2: New Article, Firearms Proficiency Pay

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

Employer's Summary and Final Position on Open Issues:

Issue 1: The Employer proposes an opt-out provision for spousal coverage to begin immediately upon ratification of the Agreement. It argues that several bargaining units have agreed to this provision and that this proposed change would affect a minority of the bargaining unit members who have working spouses and are eligible for health insurance coverage with their employers. The City also argues that what they are proposing will not only help ensure quality healthcare for all employees, it will give the health care committee time to study health care coverage in the future with an eye to managing costs and maintaining adequate coverage.

Issue 2: The Employer has agreed to establish a new Firearms Proficiency Pay benefit for the bargaining unit based upon annual qualification requirements per the Ohio Revised Code and Regulations. It now proposes an annual \$300.00 payment for employees who successfully

complete their Firearms Re-qualification Program. The Employer had previously proposed a \$500.00 payment in lieu of an immediate change in spousal health care coverage for working spouses who have available coverage from their employer, prior to it being rejected by the bargaining unit.

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:

Issue 1: The Union rejects the Employer's proposed change in spousal coverage and argues that the Patrol Unit having completed its negotiations was able to maintain the same spousal coverage in its contract that currently exists in the Sergeants current Agreement. The Patrol Officer's Agreement ends on 12/31/16.

Issue 2: The Union is in favor of establishing a firearms proficiency payment at a level of \$500.00 per year, even though it realizes it would be the first bargaining unit to receive such a payment.

General/State/Local Economic Overview/Discussion: A combination of prolonged uneasiness and continued hope for signs of improvement has 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 a 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. From the information provided to the conciliator in mediation it is clear that the City of Alliance like many other cities is seeking its economic equilibrium. It has suffered by what many Ohio cities have endured before and particularly since 2008. It 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 ride 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 Alliance, as exemplified by the current round of negotiations is seeking incremental changes to bring costs in line with revenue.

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.

ISSUE 1 ARTICLE 20 (old 23) HEALTH INSURANCE BENEFIT

ISSUE 2 NEW ARTICLE FIREARMS PROFICIENCY PAY

Discussion: While what the City is proposing is becoming more common place in Ohio (See SERB Health Care Report) as public employers and their unions struggle to maintain affordable health care coverage, a change of this magnitude should be gradual and with sufficient notice given the long history of bargaining between the parties. Moreover, the other main FOP bargaining unit covering Patrol Officers recently concluded bargaining and did not agree to a change in spousal coverage.

The parties are in agreement with the establishment of pay for firearms proficiency, which is commonly found in collective bargaining agreements in Ohio and which places an emphasis on the importance of proficiency and the safe handling of firearms. The Patrol Unit does not have this benefit, however, in light of the determinations made below to realign health care coverage for working spouse in the distant future, the establishment of this pay at a lower level followed by a subsequent increase in the benefit in the year in which the City's proposal to realign spousal coverage becomes effective is reasonable.

Based upon a careful review of the parties arguments proffered in mediation, along with the application of the statutory criteria listed above, the following determinations **(in bold)** are made:

DETERMINATIONS:

ARTICLE 20 (old 23) HEALTH INSURANCE BENEFIT

Section & 7. Spousal Coverage. Effective January 1, 2014 through June 30, 2016, spousal coverage shall be governed by the following restrictions:

- 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 HIPPA Standards and the employee's spouse is not required to contribute more than fifty percent (50%) of the single employee insurance premium, then primary coverage must be carried with the primary Employer of each spouse to be eligible for medical coverage under the City of Alliance's health care plan. Eligible dependents for which the City of Alliance has a formal, legal responsibility for the primary medical insurance coverage will continue to be eligible under the City of Alliance 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. The Employer reserves the right to verify this information at any time.
- C) 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.

Effective July 1, 2016, Spousal coverage will be available, only upon proof that the spouse does not have other medical insurance coverage available to him/her through the spouse's employer. If such coverage is available, the employee's spouse must enroll in at least single coverage from his/her employer and will not be eligible for coverage under the City plan. The employee must notify the Plan Administrator immediately in writing of the commencement of such group health insurance coverage for the spouse. The Employer reserves the right to verify this information at any time. 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.

NEW ARTICLE FIREARMS PROFICIENCY PAY

Section 1. Annual Qualification. Annually and in accordance with the standards set forth in Ohio Revised Code Section 109.801 et. seq., all bargaining unit members shall be required to complete an approved Firearms Re-qualification Program consistent with requirements of the Ohio Revised Code and Regulations issued pursuant thereto.

Section 2. Payment Amount. For the contract term January 1, 2014, through December 31, 2016, all eligible employees as set out in this section, who have qualified in firearms proficiency as set out in this article, shall be entitled to an annual proficiency payment. For the years 2014 and 2015 the payment amount shall be three hundred dollars (\$300.00). For the year 2016, the payment amount shall be increased to six hundred dollars (\$600.00)

Section 3. Payment Method. Firearms proficiency payment shall be paid in a separate lump sum check during the first full pay in December each year.

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.

Robert G. Stein, Arbitrator