

**IN THE MATTER  
OF  
CONCILIATION**

FEB 5 10 18 AM '98

**FINDINGS & AWARD**

<p><b>BETWEEN</b></p> <p style="text-align: center;">The Fraternal Order of Police,  and the  City of Oakwood, OH</p>	<p><b>CASE NO. : 97-MED-08-0797</b></p> <p><b>CONCILIATOR: JOHN S. WEISHEIT</b></p> <p><b>DATE OF HEARING: January 5, 1998</b></p> <p><b>DATE OF REPORT: February 4, 1998</b></p>
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**REPRESENTATION**

by

<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
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**AUTHORITY**

This matter was brought before Arbitrator John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Conciliator is for consideration and directive based on merit and fact according to the provisions of ORC 4117, in particular those that apply to safety forces.

**BACKGROUND**

The City of Oakwood, hereinafter called the "city" and/or "Employer", recognizes the Fraternal Order of Police, Lodge 107, hereinafter called the "FOP" and/or "Union", for purposes of collective bargaining regarding the wages, hours, and other terms and conditions of employment affecting full-time Public Safety Officers of the City. The City is a suburb of Dayton, OH, has a population of about 9,500 and is commonly referred to as a stable residential community. The safety forces operate in a unique manner. The current bargaining unit includes 24 members, all of which are cross trained as law enforcement officers and fire fighters. About 1/2 of them are also certified for EMS service. The unit provides police, fire, and EMS services for the community. All but three (3) officers regularly are scheduled to work a twenty-four (24) hour on, forty-eight (48) off shift. This is 1 of 2 communities so organized in the State of Ohio. Only about 40 such structured departments exist in the United States.

The parties have a long collective bargaining history that precedes the Ohio collective bargaining law. A review of the documents indicates it is common that labor contracts were brought to closure after utilizing third-party intervention through fact finding and/or conciliation. Current bargaining took place on a successor agreement for the one expiring October 26, 1997. Impasse occurred in these negotiations and unresolved issues went to fact finding. The Fact Finder's Report was issued November 20, 1997. The fact finding process did not bring closure to bargaining. The issues in dispute were then submitted to conciliation in keeping with applicable terms of ORC 4117. This Conciliator was appointed by the State Employment Relations Board (SERB) in keeping with the applicable provisions of ORC 4117.

A Conciliation Hearing was held at the NCR Education & Training Center, Oakwood, OH, January 5, 1997. Prior to commencing the Hearing, the parties were offered an opportunity to mediate the disputed issues. The parties indicated expressed mutual interest to proceed directly to Conciliation. The Hearing was formally called to order and the parties proceeded to introduce their respective final position on each issue at impasse, item by item, with such testimony and documentation they considered relevant. The Hearing was adjourned after determining the parties had a fair and adequate opportunity to submit testimony and evidence considered relevant by the City and FOP.

The determination in this Conciliation Award incorporates what is considered the "final best offer", issue by issue, as presented by the respective parties on the issues at impasse. Compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board were taken into consideration in making this Award including:

1. Past collectively bargained agreements 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 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 effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public 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 issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

**SUMMARY OF LAST BEST OFFER  
ITEM BY ITEM**

The following sets forth the final position of the City and Union on each issue at impasse, item by item. Each unresolved subsection of an Article is a separate item whether stated independently or collectively. As such, each item is addressed as a separate issue and subject to item by item determination.

Article, Section, and/or paragraph labels are for identification of issue and format structure only and are not substantive issues before the Conciliator for determination.

City Final Position	Issue	FOP Final Position
No new contract language.	Issue #1 Article 1 <u>Cooperation</u> (New)	Add new provision stated in Attachment "A" of this Award.
No new contract language.	Issue #2 Article 1. <u>Cooperation</u> (New)	Add new provision stated in Attachment "A" of this Award.
No new contract language.	Issue #3 Article 6. <u>Wages</u> (New)	Add new provision stated in Attachment "A" of this Award.
"Increase the wage schedule: First year: 4.0% Second year: 4.0% Third year: 4.0%"	Issue #4 Article 6 <u>Wages</u> Sec. 6.2	Section 6.2: Increase by "4.7% across-the board at each premium base step from 1/1/98 to 10/26/98; 4.6% across-the-board at each premium base rate step from 10/27/98; and 4.6% across the board at each step from 10/27/99 to 10/26/2000, with appropriate changes in the annual aggregate compensation and average uniform biweekly pay reflecting the increases across-the-board for each step for all three years."

City Final Position	Issue	FOP Final Position
No new contract language.	<b>Issue #5</b> <b>Article 6.</b> <u>Wages</u> (New)	add "Section 7. Longevity Pay On an employee's anniversary date, the employee shall receive longevity pay on each anniversary date as set forth below. 5 -10 years - \$ 150.00 11-14 years - 300.00 15-19 years - 500.00 20 + years - 750.00"
add: "Section 6.7. Paramedic Certification. In addition to the annual aggregate compensation listed under Section 6.2, employees who hold and maintain paramedic certification shall receive a lump sum payment of \$400 each calendar year. Such payment shall be made on or before the first non-pay Friday following Thanksgiving. Employees who either receive their certification or fail to maintain their certification during the course of a contract year shall receive a pro-rated lump sum payment."	<b>Issue #6</b> <b>Article 6.</b> <u>Wages</u> (New) Sec. 6.8	add: "Section 6.8 Paramedic Certification. In addition to the annual aggregate compensation listed under Section 6.2, employees who hold and maintain paramedic certification shall receive a lump sum payment of \$750 each contract year. Such payment shall be made on or before the first non-pay Friday following Thanksgiving. Employees who either receive their certification or fail to maintain their certification during the course of a contract year shall receive a pro-rated lump sum payment."
Paragraph 2: " replace \$800.00 with \$900.00." Add the following language to para. 2: "If the City determines a major is job related, then any class taken in fulfilling requirements for that major will be eligible for reimbursement."	<b>Issue #7</b> <b>Article 7.</b> <u>Tuition</u> <u>Reimbursement</u>	Paragraph 2:" replace \$800.00 with \$1,500.00."
Retain current contract language.	<b>Issue #8</b> <b>Article 9.</b> <u>Vacations</u>	Retain current contract language.

City Final Position	Issue	FOP Final Position
Retain current contract language.	<b>Issue #9</b> <b>Article 10.</b> <u><b>Extra Days Off</b></u> Sec. 10.1 Sec. 10.4	"Sec. 10.1 change eleven (11) extra days off to twelve (12) extra days off. Sec. 10.4 change five (5) personal leave days to six (6) personal leave days."
Retain current contract language.	<b>Issue #10</b> <b>Article 10.</b> <u><b>Extra Days Off</b></u> Sec. 10.2	Modify Section 10.2 by deletion and replacement as stated in Attachment "A".
"Sec. 11.1 (Rate of Accumulation) Retain current contract language. Sec. 11.2 Increase maximum sick leave accrual from 135 to 150 days."	<b>Issue #11</b> <b>Article 11.</b> <u><b>Sick Leave</b></u> Sec. 11.1 Sec. 11.2	"Sec. 11.1 change accumulation rate from fifteen (15) days per year, twenty-four (24) days per year, (two (2) days per month). Sec. 11.2 change one hundred thirty-five (135) days maximum accumulation to one hundred fifty (150) days."
Retain current contract language.	<b>Issue #12</b> <b>Article 11.</b> <u><b>Sick Leave</b></u> Sec. 11.8 (New)	Withdrew its proposal to change current language.
Retain current contract language.	<b>Issue #13</b> <b>Article 11.</b> <u><b>Sick Leave</b></u> Sec. 11.9 (New)	Add "Section 11.9. Family Medical Leave Act. "Any member using time off under the Family Medical Leave Act shall be entitled to use any combination of earned, paid leave (sick leave, vacation, EDO, PL days), at the discretion of the member."
"Increase life insurance from \$40,000 to \$50,000."	<b>Issue #14</b> <b>Article 14.</b> <u><b>Life Insurance</b></u>	"Change \$40,000 to \$60,000."
Retain current language.	<b>Issue #15</b> <b>Article 17.</b> <u><b>Uniform Allowance</b></u>	"Change Nine Hundred Dollars (\$900.00) to Twelve Hundred Dollars (\$1,200.00) a year."
"Under Steps 1 and 2 of the existing grievance procedure, change the response time for the Captain and Public Safety Director from 5 days to 7 days."	<b>Issue #16</b> <b>Article 18.</b> <u><b>Grievance Procedure</b></u>	Retain current language.

City Final Position	Issue	FOP Final Position
"Increase minimums for Oakwood Court time from 2 to 3 hours, and from 3 to 4 hours for other courts."	Issue #17 Article 19. <u>Additional Work &amp; Additional Compensation</u> Sec. 19.5	"Change a minimum of two (2) Hours for each appearance in Oakwood Municipal Court to a minimum of three (3) hours, and change a minimum of three (3) hours for each day's appearance in any other Court to a minimum of four (4) hours for appearance in any other Court."
No new contract language.	Issue #18 Article 19. <u>Additional Work &amp; Additional Compensation</u> Sec. 19.9 (New)	"When two (2) or more members assigned to the same twenty-four (24) hour shift are assigned to training for more than one (1) hour out of the City on the same day, the training will be done on an overtime basis, i.e., fire tower type training, outdoor range, et al."
No new contract language.	Issue #19 Article 23. <u>Limitations</u>	"Add to Section 23.2 no unmarked cars assigned to supervisors shall be washed by on duty crew members."
Retain current contract language.	Issue #20 Article 25. <u>Work Week Schedule</u> Sec. 25.1-9	Modify and add new language as stated in Attachment "A" of this Award.
Retain current contract language.	Issue #21 Article 25. <u>Work Week Schedule</u> Sect. 25.10	Modify and add new language as stated in Attachment "A" of this Award.
No new contract language.	Issue # 22 Article 25. <u>Work Week Schedule</u> Sec. 25.11	Modify current language stated in Attachment "A".
Adopt new policy, attached as Exhibit # "B".	Issue # 23 Article (New) <u>Substance Abuse Policy</u>	No new contract language.

City Final Position	Issue	FOP Final Position
<p>“...the contract be effective on the date that the conciliator issues his report, and be for three years thereafter.”</p>	<p>Issue #24 Article 29. <u>Duration</u></p>	<p>“A three year agreement from October 27, 1997 to October 26, 2000, with all appropriate economic increases effective January 1, 1998, except as specifically delineated otherwise.”</p>

**Topic**

**Discussion & Determination**

**General**

The following findings are based on a comprehensive review of issues and respective positions of the parties. This includes consideration of applicable statutory provisions, generally accepted practices in the field of interest arbitration/conciliation, and direction of the party as previously stated.

Last Best Offer

The determination is restricted to the “last final offer” of the parties without modification by the Conciliator. Where the last position of each party is found incomplete or absent appropriate content, the “lesser of two evils” position is used. Issues at impasse are weighed and considered in light of total context of the Contract when making determination between the final positions of the parties, issue by issue.

Comparables

The review and findings take into consideration the uniqueness of the bargaining unit, bargaining history and contract development, as well as comparables with other safety force units. Selection of comparables and supportive data, as can be expected, tend to support the relevant position of the respective party. In addition, comparables have limited use in this situation considering the unique structure of this unit with other safety force units.

Uniqueness of Unit

It is particularly difficult to place controlling impact in this case due to the cross-training and operations of this unit. It is unique in a number of ways and that is taken into consideration.

It is important to also note the apparent strong adversarial relationship between the parties. This atmosphere demonstrates a strong commitment to quality service to the community. This is likely fueled by the level of quality and quantity of knowledge attained by this professional group of employees and representatives. While this attitude reflects a strong professional commitment and well trained personnel involved in the process, it can result in a rigid position on issues and is not necessarily conducive to compromise or concession. The City and Union clearly express an overriding concern in providing the highest quality of service and program to the community and its citizens. Many issues, if not expressed, by implication, reflect a difference of opinion on methods of delivering services, rather than what services constitute a high level of quality in the best interest of the citizens and community.

#### Fact Finder's Report

The parties have modified and/or withdrawn some positions since fact finding. A number of these modifications incorporated the recommendations of the Fact Finder. The differences in role, authority, purpose, and timing of fact finding and conciliation under ORC 411 are taken into consideration.

#### Bargaining History

The statutory process provides the parties the opportunity to continue traditional bargaining and/or use mediation after fact finding but prior to submitting unresolved to final and binding conciliation. The parties did not choose to use this process.

#### Staffing Levels

The availability of bargaining unit members for adequate shift and program needs is raised in a number of issues at impasse. This is a sound and reasonable concern. The size and deployment of the work force is recognized as a management right under the Ohio collective bargaining law, unless such provision has otherwise been included in the contract. It is noted that there has occurred a reduction of non-unit supervisory staff within recent years. Traditionally, safety force command officers are trained and licensed in the same general areas as the non command officers. This is particularly significant in this situation since adequate staffing is raised in a number of issues. When the issue of adequate staffing, or lack thereof, is raised, such argument is tempered by effects of City action.



- Totality Determination** All terms and conditions set forth in the agreement between the parties in effect from October 27, 1994 through October 26, 1997, are to be included in this Agreement subject to by addition, subtraction, or otherwise modified in the Determinations set forth in this Section of the Conciliator's Findings and Award.
- Issue # 1  
Article 1  
Cooperation  
(New)** The Union's focal point on this issue originated from the City's action directing a unit member to attend paramedic training. The general premise stated by the Fact Finder is concurred with by this Conciliator on this issue. It is further found that more meaningful dialogue is necessary between the parties prior to a determination that changes the status quo related to work assignments. This is also reflected in other determinations in this Award.
- Determination** The Contract is to include the City's final position of "No new contract language", regarding Issue #1, Article 1, paragraph 2.
- Issue # 2  
Article 1  
Cooperation  
(New)** The Union is not persuasive that the proposed clause is appropriate for Contract inclusion by the Conciliator. There lacks evidence that other more appropriate problem solving means have been sought prior to bringing this issue before the Conciliator. The language in the Union's final position is found to go beyond the stated limits of the expressed concern.
- Determination** The Contract is to include the City's final position of "No new contract language", regarding Issue #2, Article 1, paragraph 3.
- Issue # 3  
Article 6.1  
Wages  
(New)** It is not uncommon that State field auditors findings and "recommendations" resulting in a change of established and payroll practice cause discontent among affected employees. Change, in general has an unsettling effect on most groups. The Union seeks reinstatement of a long standing pay practice regarding the issuance of pay checks. It is not uncommon to set forth such a provision in a labor agreement. The Conciliator's role is to bring closure on the Contract, inclusive of this issue. Testimony and evidence indicates the Union final position is to retain the established practice regarding the issuance of pay checks. No conflict is found persuasive that by retaining the pay check practice will deny the City from the introduction of other "sound" fiscal practices and procedures desired.
- Determination** The contract is to include the FOP's final position as stated in Attachment "A" regarding Issue #3, Section 6.1, paragraph 3.

**Issue # 4  
Article 6.2  
Wages**

It costs about \$15,000 to increase The Base Wage Schedule by 1%. The parties are less than 1% apart in each year of a proposed 3-year agreement their final positions. The initial year, under the FOP proposal is an effective increase of about 3.92% while the City's proposal would be about 3.5%.

There is no question that more than sufficient funds exist to finance the wage rate increase stated in the Union's final position. Ability or inability to pay is not at issue in this situation. Any wage increase is subject to other factors. This includes the fair and appropriate standard among other considerations. The unit employees are "on the clock" for significantly more hours than an employee working an 8-hour shift. What an employee does "on the clock" is generally at the direction of management. Such authority is limited only by the express terms of the labor agreement. The fact that the safety forces are cross-trained staff, as well as the 24 hour on, 48 hour shifts provides the community a unique level of safety service.

The overall economic and financial benefit adjustments reflected in this Award are considered moderate, taking all factors into consideration.

**Determination**     **The Contract is to include the FOP's final position regarding Issue #4, Section 6.2.**

**Issue # 5  
Article 6 (New)  
Longevity Pay**

Longevity pay is considered in total context of the compensation package. This includes provisions at impasse as well as at tentative agreement. The primary emphasis of wage and economic determinations are reflected in Wage Schedule determination ( Section 6.2).

**Determination**     **The Contract is to include the City's final position of "No new contract language", regarding Issue #5, Section 6.7.**

**Issue # 6  
Article 6.7  
Wages  
(New)**

The final position of the City and FOP is same regarding Paramedic Certification except for the amount of added compensation. The FOP has further modified its position on the amount since the issuance of the Fact Finding Report. The financial incentive for bargaining unit members to voluntarily attain the added certification and increase the flexibility and use of staff. This finding takes into consideration the total effects of wage and economic determinations.

**Determination**     **The Contract is to include the City's final position regarding Issue # 6, Section 6.7, Longevity Pay.**

**Issue # 7  
Article 7  
Tuition Reimb.** The tuition reimbursement provision reflects the City's position of an increase to \$900 and FOP's increase to \$1,500. Comparables favor the lower amount on this issue. It is noted that this benefit was first included in the expiring contract (1994-'97). With frequent modest adjustments continue to be made, the relative comparable standing and appropriate level should be maintained. This determination considers the total wage and economic benefits included in this Contract.

**Determination** The Contract is to include the City's final position regarding Issue #7, Article 7.

**Issue # 8  
Article 9  
Vacation Lv.** The Union withdrew its final position to retain current contract language regarding the number of vacation days at the Conciliation Hearing.

**Determination** The Contract is to include the City's final position of "No new contract language", regarding Issue #8, Article 9.

**Issue # 9  
Article 10  
EDO's  
10.1 & 10.4** Increases in leave and day off benefits tend to increase when wage and other "hard" economic benefits are low or stagnant. The current level of leaves and time off benefits, for the most part, are found to compare favorably with other safety force units. Comparison leaves and time off are more accurately reflected in fire departments where 24-hour work days are more common. The scheduling of work time in this instant case is unique, as previously noted. Within the current contract terms allocation is found adequate for employees on this issue.

**Determination** The Contract is to include the City's final position of "No new contract language", Issue # 10, Sections 10.1 & 10.4 .

**Issue #10  
Article 10.2  
EDO's,  
Scheduling of** Article 10 impasse issues focused attention on the matter of staff utilization and availability. The parties retain as their final positions the same position introduced at fact finding. Each party raises legitimate concerns; however until there is resolution regarding general staffing matters, it is determined premature to impose changes in related terms. Further the Union's final position is found too rigid and does not provide for reasonable exceptions to the rule. Such provisions are normally included in contract language to accommodate non-routine or emergency staffing needs.

**Determination** The Contract is to include the City's final position of "No new contract language", regarding Issue # 10, Article 10.2.

**Issue # 11  
Article 11  
Sick Leave  
11.1 & 11.2**

This Conciliator concurs with the Fact Finder's assessment regarding rate of sick leave accumulation (Section 11.1). Regarding the maximum days of accumulation (Section 11.2), the City and FOP final position reflect the Fact Finder's recommendation.

**Determination**

The Contract is to include the City's final position of "No new contract language", regarding Issue # 11, Section 11.1.

The Contract is to include the FOP and City's final position regarding Issue# 11, Section 11.2, increasing the maximum sick leave accumulation to 150 days.

**Issue # 12  
Article 11  
Sick Leave  
(New)**

The Union withdrew its proposal on this issue at the Conciliation Hearing.

**Determination**

The Contract is to include the City's final position "To retain current contract language" regarding Issue #12, Article 11.

**Issue # 13  
Article 11  
Sick Leave  
(New)  
FMLA**

Family Medical Leave Act requires a minimum period of time off for employees due for medical reasons of defined family members. The employer exercised its recognized authority to establish policy governing how FMLA leave is used in relationship to established other leave provisions. The Union's final position would significantly increase leave benefits. Such broad language is not normally found in contractual terms without some limits

**Determination**

The Contract is to include the City's final position of "No new contract language", Issue # 13, Section 11, FMLA .

**Issue # 14  
Article 14  
Life Insurance**

The face value of life insurance has increased periodically in past collective bargaining agreements. Adjustments reflect increases in various amounts from no increase to as much as \$15,000 in 1994. It is recognized that the cost to increase this benefit is minimal; however cost is not the only reasonable consideration. In view of comparables and significant increase included in the last contract, a more modest increase is appropriate at this time.

**Determination**

The Contract is to include the City's final position to "Increase life insurance from \$40,000 to \$50,000.", regarding Issue # 14, Article 14.

**Issue # 15  
Article 17  
Uniform  
Allowance**

Necessary, fair, and appropriate standards are considered controlling on rate of Uniform Allowance. Comparables are found relevant on this issue and are persuasive that current levels of reimbursement are fair and reasonable.

**Determination**

The Contract is to include the City's final position regarding Issue #15, Article 17.

**Issue # 16  
Article 18  
Griev. Proc.**

The City's proposal adds uniformity in response time. It also provides for a calendar week to its response time. The proposed modification does not alter the substantive terms of the provision. The proposed increase in response time is within normally set limits.

**Determination**

The Contract is to include the City's final position, Issue #16, Article 18, to increase its response time, at steps 1 & 2 of the grievance procedure, to 7 days on this issue.

**Issue # 17  
Article 19  
Add. Work &  
Add. Comp.**

The City and FOP have introduced the same final position regarding Section 19.5.

**Determination**

The Contract will include the final position of the FOP and the City regarding Issue #17, Article 19.

**Issue # 18  
Article 19  
Add. Work &  
Add. Comp.  
(New Prov.)**

The Union rationale on this issue is not found persuasive. Even if convinced that the concept was with merit, unaddressed concerns regarding potential pyramiding hours in overtime computation and other related matters are not adequately set forth in the final position.

**Determination**

The Contract is to include the City's final position of "No new contract language", on Issue #18, Article 19.

**Issue # 19  
Article 23  
Limitations**

The FOP argument for inclusion of its final position is not persuasive. There is found no rational distinction found between a City owned vehicle, marked or un-marked, in relation to established contract terms and work rules.

**Determination**

The Contract is to include the City's final position of "No new contract language", regarding Issue 19, Article 23.

**Issue # 20  
Article 25  
Wk. Week Sch.  
Sec. 25.1-9**

This issue is not only a highly volatile and emotional issue to bargaining unit members, but of considerable consequence to the citizens and community. The Fact Finder's opinion is found well stated. It is noted that management's ultimate authority in assigning its work force is not compromised or restricted. The proposal only provides a period to reflect on the full implications of change and, as stated by Fact Finder Keenan, "... the F. O. P. proposal can result in meaningful accomplishment of many of the City's 'missed opportunities' for community policing goals." It is concluded that this issue is crucial for resolution in order to meaningfully address a number of other concerns in dispute.

**Determination**      **The Contract is to include the FOP's final position, as set forth in Attachment "A" regard Issue # 20, Sections 25.1-9 of this Determination and Award.**

**Issue # 21  
Article 25  
Wk. Week Sch.  
Sec. 25.10**

This provision has been a part of the parties CBAs since 1988. This issue can better be addressed after greater discussion between the parties, and hopefully a satisfactory resolution of concerns reflected in Section 25.1.

**Determination**      **The Contract is to include the City's final position of "No new contract language", regarding Issue # 21, Section 25.10.**

**Issue # 22  
Article 25  
Wk. Week Sch.  
Sec. 25.11**

Both parties originally sought change in this provision. The Fact Finder's recommendation of "no change" has been accepted by the City. It is determined that further changes regarding contract terms involving work schedules until the basic scheduling issue in (25.1) has been determined.

**Determination**      **The Contract is to include the City's final position of "No new contract language", regarding Issue # 22, Section 25.11**

**Issue # 23  
Article (New)  
Substance  
Abuse Policy**

The City position is too extensive and lacks necessary meaningful dialogue between the parties to be directed for inclusion in the Contract.

**Determination**      **The Contract is to include the FOP's final position of "No new contract language", regarding Issue #23, new policy governing Substance Abuse.**

**Issue # 24  
Article 29**

The FOP final position is to be included regarding the duration of the Agreement. This is will relate in tandem with the determination of the Wage Schedule (Section 6.2). It also maintains the established pattern of contract periods established between the parties.

**Determination**

The Contract is to include the FOP's final position setting the duration of the Contract from October 27, 1997 thru October 26, 2000, regarding Issue # 24, Article 29.

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## ATTACHMENT "A"

### Selected FOP Final Positions

#### Article 1. Cooperation

##### Add a 2<sup>nd</sup> paragraph

"The City shall take no action which unjustly and arbitrarily has an adverse effect on the rights, privileges, and working conditions enjoyed by the members at the present time. This would include, but is not limited to, ordering members to obtain paramedic certification unless mutually agreed upon."

##### Add a 3<sup>rd</sup> paragraph

"It is the responsibility of the City to provide and maintain safe working conditions, tools, equipment, and work methods for all Safety Department members. No member shall be disciplined in any manner initiating a complaint and/or grievance regarding safety and/or environmental conditions of their quarters."

#### Article 6. Wages

##### Add to 2<sup>nd</sup> para., Section 6.1

"Paychecks will be dated, available and negotiable on every other Thursday at 0700 hours in the dispatch area. If Thursday is a holiday, then the paychecks will be dated and available on Wednesday. Late signing of pay sheets (time cards) will not delay in any way the receipt of the paycheck."

#### Article 10. Extra Days Off

"Sec. 10.2 delete scheduling of EDO's. Replace with following language: For the purposes of scheduling vacation and EDO's, every day will be available, regardless of unscheduled leave, special assignment, or crew shortages for other reasons. Two (2) members shall have the right to be scheduled off duty on vacation and/or EDO every day. Vacation and EDO's will be picked by seniority and, if the member has the earned time available, the time off will be scheduled by the crew supervisor. Vacation of one (1) to three (3) days will be scheduled at least one (1) work day in advance and four (4) or more vacation days will be scheduled seven (7) days in advance each calendar year. EDO's will be scheduled ten (10) days prior to the start of the EDO period."

#### Article 25. Work Week Schedule

"Present language in sections 25.1 through 25.9 shall be maintained for the life of the collective bargaining agreement, provided that the present practice of scheduling officers (except detectives and the youth officer) to the basic 24 hours on, 48 hours off duty schedule shall be maintained for the first 18 months of the collective bargaining agreement until April 27, 1999, after which time the City shall have the right to utilize the full provisions of Article 25."



Section 25.10

“Section 25.10. In the event of a crew transfer, the following will be the method used to determine the work schedule: The City will examine how the transfer fits into three consecutive pay periods. Employees within three consecutive pay periods scheduled (as a result of the transfer) to work fifteen (15) days shall be entitled to either one work day of overtime pay or an additional work day off at the choice of the City. Employees who are scheduled for 14 days within those three consecutive pay periods shall not be entitled to any additional overtime or time off independent of the employee’s work schedule so long as the employee is not working two consecutive 24-hour shifts in a row. All crew transfers and shift transfers shall require two week’s notice from the City to the affected employee(s).”

“Section 25.11. Trade of Times.

Trade of times will be allowed without restriction on the number of trades; however, they must be paid back within one (1) year. The City must give approval within five (5) days of the request being submitted unless the City can show compelling reasons why a trade should not be approved, i.e., no paramedic on duty. Trades of eight (8) hours or less will only need verbal notice to the crew supervisor.”

## ATTACHMENT "B"

### Selected proposed final positions of the City New Article

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#### SUBSTANCE ABUSE POLICY

The City of Oakwood and FOP Lodge 107 are jointly committed to providing a safe workplace free from the dangers associated with the use of controlled substances and alcohol. It is our goal to make sure that officers are fully capable of performing their duties safely and effectively, and in the best interest of their fellow officers and the citizens of Oakwood. To ensure this goal, the parties hereby agree to adopt a substance abuse policy.

The following conduct or behavior is strictly prohibited by this policy:

1. Selling, purchasing, possessing, distributing, or ingesting any controlled substance or alcohol in the workplace.
2. Use of alcohol or controlled substances while on duty.
3. Reporting to work, or working, under the influence of a controlled substance or alcohol.
4. Possession of drugs or related drug paraphernalia which is outside the scope of an employee's regular job duties.

Possession of a prescription drug is permissible only if the following conditions are met:

1. The prescription drug is kept in the original bottle with the original label and both the employee's name and the prescribing physician on it.
2. The drug was dispensed within 12 months.
3. Written permission is submitted from the prescribing doctor which permits the employee to work while taking the drug.

#### Drug and Alcohol Testing

Drug and alcohol testing shall be performed under each of the following circumstances:

A. Reasonable Suspicion Testing

An employee shall submit to alcohol or drug testing if there is reasonable suspicion to believe the employee has violated any of the prohibitions of this policy. Examples of reasonable suspicion may include, but are not limited to:

1. Documentation of unsatisfactory work performance or on-the-job behavior.
2. Physical signs and symptoms consistent with alcohol or substance abuse, including the odor of alcohol or drugs.
3. Excessive, unexplained absences.
4. Occurrences of a serious or potentially serious accident that may have been caused by human error.
5. Tardiness.
6. A record of decreased productivity or quality of work.
7. Unusual behavior such as a slurred speech and/or unusual lack of coordination.
8. An employee possess alcohol or drugs or related drug paraphernalia which is outside the scope of his or her job duties.

A supervisor requesting a drug screen and/or an alcohol intoxicilizer test as a result of reasonable suspicion must submit a written report to the Public Safety Director. This report will outline the facts and/or observations gathered by the Supervisor on which he/she bases reasonable suspicion. The Public Safety Director or designee will review the Supervisor's report and then determine if sufficient facts and/or observations have been gathered to establish reasonable suspicion.

If the Public Safety Director determines reasonable suspicion requirements have been met, he may order an immediate drug and/or alcohol test. Tests will be administered consistent

with the specimen collection and testing procedures set forth in this Policy.

In the event that time will not permit a written report to be submitted, Supervisors shall obtain verbal approval from either the Public Safety Director or his designee prior to initiating a drug screen or an alcohol intoxilizer test for reasonable suspicion.

B. Just Cause Drug Testing

Just cause for drug and/or alcohol testing shall exist when:

1. An employee admits to drug or alcohol use or possession.
2. There is direct observation of drug or alcohol usage.
3. An employee returns to duty after participation in a drug or alcohol abuse rehabilitation program regardless of the duration of the absence. Such employee shall be required to submit to drug and/or alcohol testing, once a month for a 12-month period commencing from the date of return to duty.
4. An officer has seriously injured an individual by any means.
5. An employee possesses alcohol or drugs or related paraphernalia which is outside the scope of his/her job duties.
6. An officer fires a weapon at someone whether or not the person is injured.

C. Collection

The following procedures will be utilized for all drug testing:

1. When an employee has been directed by a supervisor to provide a urine specimen for any of the reasons detailed in this policy, he/she will be taken immediately to the collection side by an officer of higher rank.
2. Failure or refusal to submit to the requirement that a specimen be provided or any undue delay by the employee may result in discharge.
3. Specimen collection will be in accordance with the guidelines of the certified testing facility.

D. Testing

All drug screening tests shall be conducted by medical laboratories accredited by the College of American Pathologists. Specimen collection will be in accordance with the guidelines of the testing facility being used. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the Chain of Custody as prescribed by the guidelines of the testing laboratory. The test results will be treated with the same confidentiality as other employee medical records.

An initial positive report will not be considered positive, rather it will be classified as confirmation pending. When a confirmation pending report is received, urine specimens shall be maintained under secured storage for an indefinite period of time. Notification of the test results shall be held until confirmation test results are obtained. Verified and confirmed positive drug screen test results are for administrative purposes and shall not be used in criminal proceedings unless required by judicial order. Under no circumstances may the results of the drug screening or testing be released to a third party for use in a criminal prosecution against the affected employee unless required by judicial order.

E. Disciplinary Action

An employee who voluntarily admits to a drug or alcohol problem and who fails a drug or alcohol test will not be disciplined provided they follow the procedures outlined in the article. However, an employee may be disciplined up to and including discharged, if he/she is found to be in violation of any of the following items:

1. Any employee who sells or traffics illegal drugs outside of his/her official duties as a public safety officer.
2. Any employee who upon reasonable suspicion by the City refuses to be tested for drugs or alcohol.
3. Any employee who has tested positive for drug or alcohol use and refuses

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to seek or fails to complete rehabilitation or counseling as required by the City.

4. Any employee who refuses to undergo a drug or alcohol test or attempts to adulterate a test.

An employee who participates in a rehabilitation or detoxification program shall first use sick leave, vacation leave, EDO's or personal leave days for the period of the program. If no sick leave is available, the employee shall be placed on an unpaid medical leave for the period of the program. Upon completion of the program and a re-test that demonstrates the employee is no longer using illegal drugs or alcohol, the employee shall return to duty as a Public Safety Officer. The employee will be subject to regular testing for a period of one (1) year following successful completion of a rehabilitation program. Any positive test result during that year may result in disciplinary action up to and including discharge.

## TOTALITY OF AGREEMENT

This will affirm this Award, consisting of 23 pages, inclusive of this page, contain the findings, determination, and Award of the Conciliator. All terms in the agreement between the parties, effective October 27, 1994 - October 26, 1997, shall be included in this Agreement as stated unless specifically deleted, modified, or otherwise changed in the Determinations set forth in this Award.

To the best of my knowledge, this Report complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I hereby affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this 4<sup>th</sup> day of February, 1998.



John S. Weisheit, Conciliator