FILE NO. 373-2019-A

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:	)	
THE CITY OF CLEVELAND	)	**Case No. 2016-MED-01-0043**
-and-	)	
	)	**Jonathan I. Klein, Fact-Finder**
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, LOCAL 4340	)	

FACT-FINDING REPORT and RECOMMENDATIONS

Appearances

For the Union:
Leonard Brooks - Business Agent, Communication Workers of America (CWA), Local 4340
Dave Passalacqua - Executive Vice President, CWA
Michael Threat - Chief Union Steward

For the Employer:
George S. Crisci, Esq. - Zashin & Rich Co., L.P.A.
Nicole Carlton - Commissioner
Austin Opalich - Labor Relations Manager
Edward Eckart, Jr. - Asst. Safety Director

Date of Issuance: March 1, 2019

I. PROCEDURAL BACKGROUND

This matter came on for hearing on January 22, 2019, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on November 30, 2018. The hearing was conducted between the City of Cleveland ("Employer" or "City"), and the Communications Workers of America, Local 4340, AFL-CIO ("Union" or "CWA"), at Burke Lakefront Airport, 1501 North Marginal Road, Cleveland, Ohio 44114. As set forth in Article II of the collective bargaining agreement effective April 1, 2013 through March 31, 2016, the Union is the sole and exclusive bargaining representative of all full-time employees with the job title of EMT Supervisors (Captains) who have completed their probationary period. At the time of the hearing, the bargaining unit was comprised of approximately 16 Captains.

The parties reached tentative agreements regarding numerous articles contained in the collective bargaining agreement. However, as of the fact-finding hearing the following issues remained open and are properly before the fact-finder for resolution:

Issue 1:	Compensation- Article 28
Issue 2:	Leaves of Absence- Article 9
Issue 3:	Shift Assignments- Article 14
Issue 4:	Holidays- Article 17
Issue 5:	Overtime- Article 22
Issue 6:	Discipline- Article 25
Issue 7:	Hazardous Duty Injury- Article 27
Issue 8:	Advanced Life Support- Article 29
Issue 9:	Uniform Allowance- Article 32
Issue 10:	Appendix A- Attendance Policy
Issue 11:	Staffing- new article

The fact-finder incorporates by reference into the Report and Recommendations any provision of the current collective bargaining agreement not otherwise modified during negotiations, as well as the parties' tentative agreements. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

(1) Past collectively bargained 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 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 the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Issue 1: Compensation- Article XXVIII

Position of the City

To date, the City has settled 20 of its 22 non-safety force bargaining agreements and seven of eight safety force contracts. At the present time, the Union is the last safety force bargaining unit in negotiations. The City's pre-hearing statement discussed the events and circumstances which it has faced since 2004, including, but not limited to, the Great Recession; cuts in local government funding by the State of Ohio; loss of revenue from the traffic camera program; increases in expenditures; a consent decree with the U.S. Department of Justice; and various lawsuit pay outs. In November 2016, the City's residents passed a 0.5 percent income tax increase effective in 2017. The bargaining unit employees will receive the benefit of this income tax increase in the second and third years of the new contract. However, the City only projects to stabilize the budget, address some basic needs, and gradually build reserves to acceptable levels as a result of the tax increase. Therefore, it needs to remain financially cautious and judicious.

According to the City, the tax increase is projected to generate an additional $83.5 million for the General Fund. The projected General Fund carryover will increase from 3.12 percent at

the end of 2016 to approximately 10 percent by 2020. However, even at the aforementioned level, the General Fund carryover balance will not approach the minimum acceptable level of 16 percent recommended by the Government Finance Officers Association. The record indicates that the City had a $32.8 million carryover in its General Fund at the end of 2017, representing just over five percent of its expenditure budget. The City notes that this carryover is misleading as it was only able to fill a small number of its budgeted vacancies and the cost of wage increases and filling vacancies was projected to be in excess of $20 million in 2018. The City estimated that it would have a carryover balance of $33.4 million at the end of 2018. However, the City spent more on health benefits last year than it anticipated, and it has lost approximately $250 million in funding from the State of Ohio during the past decade. In sum, the income tax increase will only stabilize the City's financial condition and avert further layoffs and cuts. Nonetheless, the City acknowledged that it has realized a significant financial improvement.

The City also discussed its massive unfunded needs. The record indicates that it has hired hundreds of essential personnel in an effort to rebuild its employment rolls. However, overall staffing is still lower than it was in 2004. The City expended almost $7 million in 2018 and 2019 on personnel and equipment improvements in the Division of EMS. Specifically, 60 paramedics, eight emergency medical dispatchers and four captains were hired at a cost of $4.5 million. The City also purchased nine new ambulances. The City asserts that the ongoing costs associated with filling hundreds of vacancies and addressing the structural deficit will largely consume the $83 million generated by the income tax increase. It notes that the identified costs of repairing and/or replacing buildings, road and bridges is nearly $1 billion.

The City rejected the Union's wage proposals and its opposition to the cost-saving measures which it negotiated with nearly every other bargaining unit. The terms proposed by the Union would be ruinous for the City during the next round of negotiations. Furthermore, the economic struggles of the City during the past 15 years do not support the Union's wage demands. During the current round of negotiations, the City has a well-established wage and insurance-benefit pattern. The City recently resolved its negotiations with AFSCME Local 100, which represents the largest civilian bargaining unit of 1,123 members, by agreeing to wage increases of 0%, 2% and 2%, as well as a $500.00 lump sum ratification bonus. In turn, AFSCME agreed to the City's health insurance proposal. The City reached a settlement on the aforementioned pattern wage and health insurance terms with 20 of the 22 civilian bargaining agreements.

In addition to the reasonableness of a 0%, 2% and 2% wage rate pattern, the City took the extraordinary measuring of offering more to some of its safety forces. The City ultimately agreed to pattern wage increases without lump sum increases, equity adjustments effective prospectively and pattern health insurance terms for over 2,600 civilian and non-civilian safety force employees. The City also developed a number of proposals which it made in all of its collective bargaining negotiations to address a number of operational issues. It points out that neutrals have long rejected proposals that would break the City's established pattern bargaining agreements. The City cited awards by this fact-finder and others in support of its position regarding pattern bargaining. According to the City, "[p]arity, or the use of patterns among a multitude of bargaining units that negotiate with a single employer, has long been cited as controlling in

settling negotiation disputes." (City Pre-Hearing Statement, at 13). It claims that there is no surer way to undermine goodwill than to grant more to one group than is negotiated with another. The fact that the City and the unions representing its employees have endorsed parity is no surprise. During the current round of negotiations, the enhanced terms for the City's non-civilian safety forces followed a specific pattern: "a $3,000 equity adjustment for employees with more than 10 years' service and a $1,800 equity adjustment for employees with fewer than 10 years' service (or those amounts factored into a wage differential), effective after the 2% general wage increase on April 1, 2018, . . ." (City Pre-Hearing Statement, at 19).

The City's wage proposal in this matter is as follows:

a. Wage Differential Schedule

Modify the current wage schedule as follows:

Reduce the current five-step wage schedule (Start-After Year 4) and replace with a three-step schedule (Start-After Year 2).

For the three steps on the new wage step schedule, establish the following wage differential for each step, based upon the top rate for the Top CARE Paramedic ($52,724 under 2013-16 City/CARE Labor Agreement):

Start:	10%
After Year 1:	12.5%
After Year 2:	15.0%

Place employees in the current wage step schedule on the following steps under the new wage step schedule:

Current Step	New Step
Start	Start (Old After Year 2)
After Year 1	After Year 1 (Old After Year 3)
After Year 2	After Year 2 (Old After Year 4)

After Year 3	After Year 2 (Old After Year 4)
After Year 4	After Year 2 (Old After Year 4)

b. Wage Increase:

After placing employees on the new wage step schedule, amend Article XVIII to reflect the following across-the-board wage increases:

First Year	0% wage increase effective April 1, 2016
Second Year	2% wage increase retroactive to April 1, 2017
Third Year	2% wage increase retroactive to April 1, 2018

c. CARE Contingency

If members of the CARE bargaining unit receive an equity adjustment for the 2016-2019 Labor Agreement, then employees in this bargaining unit will receive prospectively the same equity adjustment, enhanced by the wage differential.

(City Pre-Hearing Statement, Appendix B).

The City emphasizes that it has maintained a nearly unabridged adherence to pattern bargaining for the last 25 years. In being faithful to the wage pattern in these negotiations, the City points out that its proposal is retroactive so that the bargaining unit members will not be disadvantaged. Regarding the majority of the City's unions whose members are paid from the General Fund, no neutral has ever issued an award or recommendation at variance with an established pattern on wages and insurance.

As indicated above, the City's wage proposal is comprised of three components. First, the City's proposed annual base wage increases of 0%, 2% and 2% during the term of the contract are the same as it negotiated with every other bargaining unit. Second, the City

proposed to establish a multi-step wage differential which is based upon the regular wages of the highest paid paramedic in the CARE bargaining unit.[1] This arrangement is currently in effect with the police, civilian law enforcement and fire units and the 10 %, 12.5% and 15% differentials which are proposed by the City track the arrangement between the chief dispatchers and dispatchers. Third, the City proposed contingency language which allows Captains to receive an even greater wage increase if the paramedics receive an equity adjustment to their wages.

The City asserts that the above enhancements will significantly increase the compensation for Captains. For example, simply converting to a wage differential tied to the top paramedic rate without factoring in the wage rate increases will result in an increases of $1,997.91 for a new captain; $2,755.18 after year one; $3,391.27 after year two; $2,616.24 after year three; and $1,304.86 after year four. When factoring in the zero percent, two percent and two percent wage increases, the proposed enhancements result in increases of $4,340.96 for a new captain; $5,151.49 after year one; $5,840.83 after year two; $5,065.80 after year three; and $3,754.42 after year four. Additionally, establishing a wage differential that is at least 10% higher than the top paramedic rate also addresses issues regarding the difference between the starting rate of a

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1. The City notes that paramedics assigned to perform the duties of a paramedic crew chief receive a supplemental pay of $3,000.00, which is not used in the calculation of wage increases and is always in addition to the employee's base rate. A crew chief is not a regular civil service job classification and the EMS Commissioner has the sole discretion whether to assign an employee to serve as a crew chief. Therefore, the City asserts that it is inappropriate to tie a Captain's wages to that level of compensation.

Captain and the compensation for a paramedic crew chief (top rate for paramedic plus $3,000.00 stipend). Currently the difference is only $274.49 ($55,998.49 compared to $55,724.00). The ten percent wage differential for the starting rate of a Captain before factoring in the wage increases results in a difference of $2,272.40.

In sum, the maintenance of the pattern wage increase is reasonable and recognizes the City's broader collective bargaining realities. Moreover, the City's proposal results in a fair compensation increase for the bargaining unit employees. For each of the aforementioned reasons, the City requests that the fact-finder recommend its proposals regarding Article XXVIII.

Regarding the Union's wage proposal, the City indicates that it was rejected for the following reasons. First, the City's proposed wage differential and CARE contingency proposals largely moot the Union's equity adjustment proposals. Any equity adjustments received by the Captains will be related to the equity adjustments received by their subordinates. Second, the contingency language addresses the possible delay caused by the motion to vacate the CARE conciliation award by ensuring that the Captains will receive such an equity adjustment when and if CARE members receive an adjustment. Third, the Union's demand for a nearly $5,000.00 equity adjustment for employees with ten years of service is excessive in comparison to the equity adjustments afforded employees in other safety forces bargaining units.

Position of the Union

The Union proposes that the wage step schedule be modified to include only two steps, a starting step and after 1 year. The Union indicated that it agreed to the City's proposed general wage increases of 0% in year one; 2% in year two with retroactivity; and 2% in year three with

retroactivity. Additionally, the Union also agreed with the City's proposed $3,000.00 equity adjustment after the above percentage increases. The Union further proposes an additional $1,962.57, or an ALS incentive of $1,962.57, after ten years of service.

The Union contends that the City is not in the same financial strait which it suffered through years ago. It points out that only three out of the 16 Captains have at least 10 years of service at the present time. Therefore, its wage proposal will not have a significant impact upon the City, nor will it result in a financial burden. The Union asserts that its ". . . additional ask was just under $2,000 as an additional equity adjustment based on years of neglect, in our opinion, of rightful increases, commensurate with the position of supervisor as compared to other public safety forces like police and fire." (Tr. at 35). The testimony indicates that the Captains supervise approximately 280 EMTs, paramedics and dispatchers represented by CARE.

Michael Threat, a Captain with the City's Emergency Medical Service and the chief Union steward, provided the following testimony regarding how the Union arrived at its proposed wage increase of $1,962.00:

> Because that represents the amount of salary that's described in the City Record for the captains group. Every other public safety group, whether it be police or fire, their top salary is represented in City Record. So whatever the range of pay is between the beginning range and end range is recorded in City Record. City Council votes on it, and once its approved the members that are in those affected units get the pay based on where they sit in that particular procedure.
>
> (Tr. at 39-40).

According to Mr. Threat, the maximum pay in the City Record is consistent with the top salary of each group in public safety with the exception of EMT supervisors. The top of the range maximum for EMT supervisors as of March 2014 was $61,147.43, while the current top wage rate for a Captain is only $59,327.74. Regarding the requested equity adjustment, Mr. Threat pointed out that the FOP, sergeants, lieutenants and captains all received $3,000.00 equity adjustments. Additionally, he claimed that all of the other safety forces units have two wage steps. Mr. Threat reiterated that the Union's proposal would not have a huge financial impact upon the City.

Final Recommendation

Based upon the evidence of record presented in this case, the parties are in agreement regarding annual, percentage wage rate increases. Accordingly, the fact-finder recommends that bargaining unit employees shall receive the following wage rate increases in the new contract: 0% effective April 1, 2016; 2% retroactive to April 1, 2017; and 2% retroactive to April 1, 2018. These percentage was increases shall be applied prior to any equity wage adjustment.

The fact-finder further recommends that the current wage step schedule should be modified to provide two steps: a Starting Step (old step After Year 3) and After Year 1 step (old Step After Year 4); and a wage differential of 10% and 15% at each new step, respectively, based upon the top rate of pay for the top CARE paramedic ($52,724.63 under the 2013-2016 City/CARE collective bargaining agreement). Although the top rate of pay for a paramedic to be used for purposes of applying the aforementioned wage differentials does not include the supplemental pay received by a paramedic while performing the duties of a crew chief, the

arbitrator notes that the enhancements of a compressed wage step schedule and the wage differential will still result in a significant increase in the compensation afforded Captains over the employees whom they supervise. The fact-finder determines that the City is able to absorb the costs associated with a two-step wage scale, rather than three steps as it proposed, based upon its improved financial condition.

While *The City Record* provides a minimum and maximum pay range for various classifications as approved by City Council, it does not mandate a maximum wage for a specific job classification under the terms of a collective bargaining agreement. Those wages are determined through the process of negotiation and agreement between the City and the union representing the employees in that bargaining unit, or in the absence of an agreement, as set by a conciliator. As previously stated by this fact-finder in *City of Cleveland -and- Fraternal Order of Police, Ohio Labor Council, Inc. (Scientific and Fingerprint Examiners)*, Case No. 03-MED-12-1396, at 10, January 29, 2006: ". . . the concept of City-wide pattern of bargaining has, with few exceptions, existed for many years. To break the established pattern, the Union 'bears a significant burden to demonstrate' that its members warrant a more favorable wage increase relative to other bargaining units performing similar work." (City Tab 26).

In this case, the fact-finder determines that the Union has presented insufficient evidence to warrant an additional equity adjustment for the Captains in light of the above recommended wage rate increases; modification of the wage step schedule; wage differential; and the equity adjustment discussed below. Based upon the record presented, the fact-finder recommends that all Captains should receive the same equity adjustment, if any, that is ultimately received by

members of the CARE bargaining unit, enhanced by the above recommended wage differentials.[2] This equity adjustment shall be applied after the 2% increase in the third year, effective April 1, 2018. No further equity adjustments or other incentives as proposed by the Union are recommended by the fact-finder.

Issue 2: Leaves of Absence- Article IX

Position of the City

Article IX of the collective bargaining agreement entitled "Leaves of Absence," provides, in pertinent part, as follows:

* * *

F. Union Leave

* * *

> The City shall grant the Union twelve (12) days per calendar year, with pay, for the Representative of the Union to take care of Union business as operational needs permit. The Union shall decide how the time is spent, and shall notify the City at least five (5) days in advance.

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2. The motion to vacate the CARE, Local No. 1975 and City of Cleveland conciliation award referenced by the City does not, at a cursory glance, allege any error by the conciliator with respect to the equity adjustment. The implications for the viability of the equity adjustments if the motion to vacate and relief requested are granted remains unclear, however. *See, City of Cleveland Association of Rescue Employees, Local 1975 (Cuyahoga Cty. C.P., CV18908520)(2018).*

I. Sick Leave With Pay

* * *

5. Upon retirement or death, an employee, or his legal representative, shall have the right to convert his accumulated paid sick leave into cash at the rate of one (1) day's pay for each three (3) days of unused accumulated paid sick leave. The pay rate used shall be the same three (3) years average as used under "P.E.R.S." Once sick leave is converted upon retirement, all then accumulated sick leave is forfeited.

* * *

K. Sick Leave Without Pay

After an employee has exhausted his sick leave with pay, he or she shall be granted a leave of absence without pay for a period not to exceed six (6) months because of personal illness, injury, or pregnancy (including post-partum recovery periods), upon request, supported by medical evidence satisfactory to the City if the employee has reported such illness, injury, or pregnancy (including post-partum recovery periods), to his or her department head or immediate supervisor by no later than the second day of absence. If the illness, injury, or pregnancy (including post-partum recovery periods), continues beyond six (6) months, the City may grant additional sick leave under this paragraph upon request. An employee on sick leave is expected to keep the City informed on the progress of his or her illness, injury or pregnancy (including post-partum recovery periods), as circumstances allow. An absence of three (3) or more consecutive shifts requires a doctor's certification in order for the employee to return to work.

* * *

The City proposes to modify the second sentence in paragraph I.5 of Article IX to base the formula for sick leave cash-out on an employee's current base hourly rate, rather than on his

or her three-year average of total earnings. The City also proposes to modify the first sentence of paragraph K to specify that the granting of the first six months of unpaid leave resides within the sole discretion of management.

The City's sick leave pay out proposal is based upon the economic savings of the proposed language. Under the current provision, employees contemplating retirement within the next three years have the ability to cash out their accumulated and unused sick leave at the same average rate used to calculate their pension, which includes overtime, longevity and other earnings. This provision has potentially massive economic implications for the City because there is no contractual limitation on the amount of sick leave that employees may accrue. An employee who converts sick leave into 1,300 hours of pay would receive over 60 percent of their annual wages. The City notes that the overall difference between a base hourly rate and a rate which includes overtime, longevity and other earnings is substantial. Under its proposal, the City does not seek to eliminate this sick leave conversion benefit or place a cap on the amount of sick leave that an employee may accumulate. The City simply desires to ensure some economic savings by paying this benefit to bargaining unit employees at their base hourly rate.

At hearing, the City reiterated that it seeks to reduce the amount of sick leave cash out in an effort to save money. The City acknowledged that its proposed language has only been negotiated with the bargaining unit represented by the Ohio Nurses Association. The City also asserts that it is not penalizing employees for being healthy as claimed by the Union. It points out that the 1/3 rate at which it pays out accumulated sick leave is higher than the statutory rate and there is no ceiling on the number of hours that may be cashed out.

The basis of the City's second proposal regarding this issue is to ensure that it has the discretion to deny an unpaid leave request for up to six months when operational and staffing needs preclude allowing so much time off for an employee. The record establishes that the City has appropriately administered this benefit for the bargaining unit. It points out that employees who have FMLA-covered leave have been permitted to use this benefit to extend their absence if supported by appropriate medical documentation. For each of these reasons, the City requests that the fact-finder recommend its proposal on leaves of absence.

The City rejects the Union's proposals to modify the current contract language to provide that each CWA representative may take up to 12 days of leave with pay to conduct Union business; and that employees be allowed to take paid or unpaid sick leave in four-hour increments instead of the requirement that such time off be used in full-day blocks. The City maintains that there is no justification for increasing the amount of paid Union leave. It asserts that employees are paid to perform their jobs and allowing such an increase in paid time off is both expensive and inefficient. Regarding the Union's comparison to the amount of union time received by CARE representatives, it points out that CARE is almost 20 times larger than this bargaining unit. Additionally, the Union provided no indication of the number of days used for Union leave by CWA representatives. Commissioner Carlton asserted that grievance hearings or pre-disciplinary hearings have only been rescheduled due to operational concerns.

Regarding the Union's use of sick time proposals, the City contends that it would cause operational problems in situations where ". . . an employee calls in sick, the City adjusts for that employee's absence by making necessary staffing changes, and the employee 'feels better and

desires to return to work on that same day; and . . . employees schedule medical appointments in the middle of their shifts and wish to work immediately before and after that appointment." (City Pre-Hearing Statement, at 30-31). Furthermore, the City claims that reducing the increments in which an employee must use sick leave does not necessarily reduce overall sick leave usage. According to the City, it is actually a deterrent for an employee to take sick time if it must be utilized in full 12-hour blocks. The City believes that there is no basis to change the current system. However, the City indicated at the hearing that it would be acceptable for an employee to utilize sick leave at either the beginning or end of his/her shift.

Position of the Union

The Union proposes to modify Section F of Article IX to provide as follows: "The City shall grant the Union 12 days per calendar year, with pay for each Representative of the Union to take care of Union business [as] operational needs permit." The Union also proposes to add a new paragraph 8 to Section I of Article IX which provides that "Employees shall have the option of using partial sick time in two hour increments." Lastly, the Union proposes to add the following sentence at the end of Section K of Article IX: "Employees shall have the option of using partial sick time without pay in two (2) hour increments." The Union notes that it has countered with four hour increments regarding its use of sick time proposals.

Mr. Threat pointed out that CARE representatives receive 36 days of union time per quarter. However, he acknowledged that there are approximately 300 members in the CARE bargaining unit. The Union claims that its representatives have run out of union leave and pre-

disciplinary hearings and grievances have been rescheduled because the City would not approve union time.

In support of its proposed new language regarding the partial use of sick leave, the Union claims that its members are forced to take an entire day off when it is unnecessary to do so. As an example, Mr. Threat testified that he recently had to take a whole day off in order to attend a two-hour medical appointment. The Union asserts that employees are placed on an accelerated path towards violating the no-fault attendance policy as a result of being forced to utilize sick leave in 12-hour increments. It also maintains that the forced use of an entire shift for sick leave creates operational issues for the City. Under its proposal, less sick time would be used by bargaining unit employees. The Union also points out that the City has adopted the concept of partial sick time usage with some bargaining units.

Regarding the City's proposal to modify the sick leave cash out formula, the Union maintains that the City already receives a reduction of value at the expense of the employees because it only pays out one hour of sick leave for every three hours earned. The Union asserts that any further reduction would result in an extreme hardship for the bargaining unit employees. Additionally, other safety forces units have not agreed to the City's proposal regarding this issue. In response to the City's proposal to modify Section K of Article IX, the Union points out that there is no evidence of any bargaining unit employees abusing the sick leave policy. In fact, the forced use of sick leave under the current contract language is causing a hardship for employees in terms of being paid while sick.

Final Recommendation

The fact-finder determines that the Union presented insufficient evidence to support its proposal to increase the amount of union leave afforded representatives under Article IX, Section F of the collective bargaining agreement. The comparison of union leave afforded CARE representatives is unpersuasive given the significant difference in the number of employees represented by CARE as compared to the size of this bargaining unit. The Union presented no evidence that any bargaining unit employees have been denied representation or that it has been unable to conduct any necessary Union business. The fact-finder notes that the current language provides that such leave will be granted as operational needs permit. Although some grievance meetings or pre-disciplinary hearings may have been rescheduled by the City, there is insufficient evidence that it did so for any non-operational reasons.

The fact-finder further recommends that the City's proposal to base the formula for sick leave cash out on an employee's current base hourly rate should not be incorporated into the new contract. Under the current language, the pay rate utilized for calculating sick leave cash out is the same three year average set forth by OPERS for pension purposes. The City presented no basis for modifying this long-standing formula, other than its simple desire to save money. The fact-finder notes that the City's proposal would result in a significant cost to employees who have accumulated a significant bank of sick leave as a result of their good attendance. As discussed above, although the City is not flush with cash its financial position has certainly improved as compared to prior years. The fact-finder notes that the City estimates that its General Fund balance will increase from $32,851,044.00 to $33,436,680.00 in 2018.

The City's proposal to modify Section K of Article IX is also not recommended by the fact-finder. The City presented insufficient evidence to warrant a modification of the current contract language. There is no evidence that any bargaining unit employees have abused sick leave in the past, or that the granting of unpaid sick leave at the request of an employee during the first six-months upon submission of appropriate medical documentation has resulted in any undue hardship upon the City.

Based upon the evidence of record presented at hearing, the fact-finder recommends that new language should be added to Article IX of the collective bargaining agreement to allow bargaining unit employees to utilize both paid and unpaid sick leave in four hour increments as proposed by the Union. In order to alleviate issues faced by bargaining unit employees who are forced to utilize more sick leave than is necessary and address administrative and scheduling concerns raised by the City regarding the Union's proposal, the fact-finder recommends that the new language added to the contract should provided that bargaining unit employees may utilize paid and unpaid sick leave in four hour increments either at the beginning or end of their shifts.

Issue 3: Shift Assignments- Article XIV

Position of the City

Article XIV of the current collective bargaining agreement entitled "Shift Assignments," provides, in part:

> Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to four (4) employees to an alternate shift and/or key.

Three shifts shall be established for operation of the system. They shall be as follows: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. Provided, however, that the City reserves the right to change the foregoing shift hours as operational needs dictate. It is the general policy of the City that shifts shall be rotated every three months for each employee. It is also the general policy of the City to rotate shifts from days to nights to afternoon shifts. The rotation and shift schedule shall be posted quarterly.

* * *

The City will staff all employees (except Coordinators) on twelve (12) hour shifts through the expiration of this Collective Bargaining Agreement (March 31, 2016), except as provided below. If the City desires to convert the schedules of the employees back to eight (8) hour shifts, it must commence negotiations with the Union over the decision and effects of that decision no less than thirty (30) days prior to implementation. Upon expiration of this thirty (30) day period (but no sooner than March 31, 2016), the City may convert the schedules of any of its employees to eight (8) hour shifts.

* * *

Employees scheduled to work twelve (12) hour shifts shall be governed by the following modification in this Agreement:

* * *

4. Overtime.

   a. Every pay period in which an employee works a forty-eight/thirty-six hour schedule including paid union leave, the employee will earn and be paid two additional hours of pay (at straight time) and will accumulate six hours to be applied toward a star day.
   b. Every pay period in which an employee is scheduled a star day (36/36), the employee will not be paid the additional two hours.

c. The City will attempt to schedule the star day either every third or fourth pay period. If the star day is not scheduled until the fourth pay period, the employee will have earned an additional six hours toward the next star day.

d. If the City is unable to schedule the star day by the end of the fourth pay period, the employee at his or her option, may either bank the accumulated time earned or be compensated in cash (i.e., 24 hours at straight time).

e. Unless the affected employee advises the payroll officer of how he or she wishes to be compensated within five business days prior to the end of the next pay period, the City will maintain discretion on how the employee will be compensated.

f. Any cash payments owed will be paid on the succeeding pay period following the employee's request or the City's discretionary judgment.

* * *

The City proposes to delete the second and fourth paragraphs of Article XIV in order to provide management with the discretion to change shifts and schedules if operational and staffing needs warrant such actions. According to the City, the motive for its proposal is preventative and not reactive. The City asserts that it does not contemplate making any changes to the current operations in the foreseeable future in the event this proposed modification is adopted.

As it concerns the Union's proposal to modify paragraph 1 of Article XIV, the City claims that it ". . . needs the discretion to transfer employees if there is a documented deficiency in employee performance . . . , if there is a need for coaching or training, and to maintain staffing

balance based upon operational needs." (City Pre-Hearing Statement, at 31). It points out that the initial proposal by the Union placed a cap on the number of employees who could be transferred and based it on seniority. The City maintains that there are certain instances where transfers need to be made for operational or performance based reasons. However, it acknowledged that one of the reasons for these transfers in the past was to maintain racial balance among the ranks. According to the City, there is significant distrust on both sides regarding this issue. Nonetheless, the City indicated that it would accept a proposal that affords management the necessary discretion for transfers when operationally required.

The City further asserts that the Union's proposal regarding paragraphs four and five of Article XIV is more than clean-up language. The current provision allows it to move to either eight or ten-hour shifts if operationally necessary. The City acknowledges that employees are currently assigned to 12-hour shifts, however, there is a built-in overtime cost associated with such a schedule. The City would like to retain its managerial discretion to modify the work schedule and it points out that it did not agree with the conciliator's award regarding the CARE contract. It notes that this Union is not a conciliation bargaining unit.

Regarding the Union's star day proposal, the City indicated that it would agree to pay bargaining unit employees for star day hours if it is not optional. The City notes that it needs to maintain consistency in administrating the program and it would be adversely affected by allowing bargaining unit employees an option to select either payment or banking the accumulated time. According to the City, compensatory time places a strain on scheduling, costs more money, and is an "administrative nightmare to keep up with." (Tr. at 143). The City

indicated that it has not been giving comp time for star days since 2009 and it is easier to just pay cash for overtime work. It points out that the bargaining unit employees currently receive more days off than most employees of the City due to the nature of their work schedules. The City would simply like to memorialize the parties' regular practice in the contract by removing the current star day language and paying out the time earned at the overtime rate. Commissioner Carlton pointed out that bargaining unit employees are able to track their star days earned on TeleStaff, notwithstanding the Union's argument that there are flaws in the system.

Position of the Union

The Union proposes to delete the first paragraph of Article XIV of the collective bargaining agreement, and it indicates that the parties reached a tentative agreement on the following language: "If there is an elimination of keys/shifts after bidding but before completion of vacation canvass there shall be a reposting of the available shift/keys from the most senior affected captain down." According to the Union, the misapplication of the above contract language has caused conflicts regarding seniority scheduling. This has resulted in numerous grievances and a civil rights complaint being filed by the Union. (Union Tab 9). Therefore, the Union seeks to eliminate any ambiguities in the language and the possibility of abuse by the City.

The Union also proposes to modify the first sentence in the fourth paragraph of Article XIV to state that the "[t]he City will staff all employees (except Coordinators) on twelve (12) hour shifts through the expiration of this Collective Bargaining Agreement (March 31, 2019)." Additional, the remaining language in the fourth paragraph and the entire fifth paragraph of Article XIV are deleted under the Union's proposal. The Union maintains that all of the

bargaining unit employees are assigned to 12-hours shifts and there is no need to reference either 8 or 10-hour shifts in the contract.

The Union further proposes that the following new subsection should be added to Section 4, Overtime contained in Article XIV of the contract: "g. Employees at his/her option, shall be paid star day hours earned in the pay period that it is accumulated." The Union's Pre-Hearing Statement indicates that the City agreed to this proposal, however, the issue of the pay treatment is unresolved. Specifically, whether the payment should be six hours at the straight time rate or overtime pay.

Mr. Threat acknowledged that bargaining unit employees have been paid by the City for their star days, rather than receiving compensatory time, since at least 2009. However, time off is what was agreed to in the contract and the City should not arbitrarily decide whether it will give an employee a star day. According to Mr. Threat, the bargaining unit employees want the compensatory day off because their jobs are stressful, and the City should be required to explain the hardship if it cannot accommodate the time off. Additionally, the timeliness of the City in paying star days is also in dispute.

Final Recommendation

The fact-finder determines that the City presented insufficient evidence to support its proposal to delete paragraphs 2 and 4 of Article XIV. The City itself recognizes that it does not contemplate making any operational changes at this time. The fact-finder notes that the City retains some discretion to modify the shift schedules as set forth in the current contact language. Therefore, in order to afford the City such discretion, the fact-finder does not recommend the

Union's proposals to delete the fourth and fifth paragraphs of Article XIV. However, the first sentence in the fourth paragraph shall be modified to provide that "[t]he City will staff all employees (except Coordinators) on twelve (12) hour shifts through the expiration of this Collective Bargaining Agreement (March 31, 2019), except as provided below." The last sentence of the fourth paragraph of Article XIV shall also be changed so that the date of March 31, 2016, reads March 31, 2019.

Additionally, the fact-finder recommends that the first paragraph of Article XIV shall not be deleted as proposed by the Union, but shall remain in the new contract with the inclusion of language which allows management to transfer employees for legitimate operational concerns. It shall read: "Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to four (4) employees to an alternate shift and/or key for legitimate operational concerns."

The fact-finder further recommends that language should be added to the new contract which provides that star days shall be paid out by the City at the overtime rate in the pay period in which they are earned to reflect the current practice of the parties over the past ten years. Although the Union expressed concerns over the lack of time off for star days, it presented insufficient evidence that any bargaining unit employees have been adversely affected by the current practice. For at least ten years bargaining unit employees have received pay, rather than compensatory time for star days. No proof of grievances or protests filed over application of this provision were in evidence. The fact-finder recognizes that employees desire paid time off. The reverse is often just as true – instead of time off they desire cash payments. It is important,

however, that contract language on an issue of this importance accurately reflect the parties clear, unambiguous custom and practice in the application of the language.

Here, there is a decade of undisputed application consistent with the removal of star days from the agreement. In order for employees to use compensatory time by working standard overtime, no changes shall be made to Article XXXIV – Compensatory Time, and the election of either a 40 or 240 hour cap shall remain unchanged. As an aside, no contract ready language was offered to improve the timing or tracking of star days of which the Union complained – an issue disputed by Employer witnesses at hearing as having no basis in fact. Finally, the term "star day" in Article XIV, 4. Overtime shall be deleted, and that numbered paragraph shall simply refer to overtime earned as the result of working twelve hour shift assignments per Article XIV. Article XIV shall read as follows:

SHIFT ASSIGNMENTS

> Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to four (4) employees to an alternate shift and/or key for legitimate operational concerns.
>
> Three shifts shall be established for operation of the system. They shall be as follows: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. Provided, however, that the City reserves the right to change the foregoing shift hours as operational needs dictate. It is the general policy of the City that shifts shall be rotated every three months for each employee. It is also the general policy of the City to rotate shifts from days to nights to afternoon shifts. The rotation and shift schedule shall be posted quarterly.
>
> The City will maintain an overtime distribution policy aimed at providing equal distribution of available overtime, recognizing that supervisory personnel may be assigned overtime where after reasonable efforts or under extenuating circumstances, such overtime cannot be assigned to bargaining unit employees.

The City will staff all employees (except Coordinators) on twelve (12) hour shifts through the expiration of this Collective Bargaining Agreement (March 31, 2019), except as provided below. If the City desires to convert the schedules of the employees back to eight (8) hour shifts, it must commence negotiations with the Union over the decision and the effects of that decision no less than thirty (30) days prior to implementation. Upon expiration of this thirty (30) day period (but no sooner than March 31, 2019), the City may convert the schedules of any of its employees to eight (8) hour shifts.

The City may assign employees to four (4) ten-hour shifts with thirty (30) days advance notice. Employees moved from twelve-hour to ten-hour schedules will receive an additional five percent (5%) of their base salary while assigned to a ten-hour shift.

Employees scheduled to work twelve (12) hour shifts shall be governed by the following modifications in this Agreement:

1. Working Hours. Employees working twelve-hour shifts will work an average of seven days every two weeks, or 84 hours.

2. Holidays. Employees shall receive their two floating holidays on a day-for-day basis (i.e., each floating holiday will consist of twelve hours). In addition, if the employee works on any of the other nine holidays, the employee will receive twelve hours per pay at the overtime rate. In addition, all employees, whether they work the holidays or not, shall receive twelve hours of compensatory time for each holiday.

3. Vacations. Vacations will be pro-rated on an hour for hour basis and partial vacation days may be combined with compensatory time to add up to entire days. For example, one week of vacation will equal 40 hours, or 3 and 1/3 days. The employee may add eight hours of compensatory time to the partial day for a total of four vacation days.

4. Overtime. Overtime earned as the result of working twelve (12) hour shift assignments shall be paid out by the City at the overtime rate in the pay period in which they are earned.

5. Sick Leave. Employees will continue to earn sick leave at the same rate, i.e. 120 hours per year.

6. Hazardous Duty Injury. Hazardous Duty Injury will be pro-rated. The 120 day benefits shall be provided for 80 twelve-hour days and the 60 day extension benefits shall be provided for 40 twelve-hour days.

7. Union Leave. Union time shall be granted on a day-for-day basis.

8. Other Leave Provisions. Jury Duty Leave, Educational Leave and Administrative Leave are not affected.

9. Disciplinary Suspensions Without Pay. Disciplinary suspensions without pay will be pro-rated on an hour for hour basis, and partial days may be combined with compensatory time or accumulated time to add up to entire days. For example, an employee who is suspended for one day will be suspended for eight hours, and may add four hours of compensatory time to the partial suspension day, for a total of one twelve-hour day. An employee suspended for three days will be suspended for the equivalent of 24 hours, or two twelve-hour days.

Issue 4: Holidays- Article XVII

Position of the Union

Article XVII of the collective bargaining agreement entitled Holidays," states in relevant part:

* * *

> To be entitled to holiday pay, an employee must work on or be on paid benefit time other than sick leave (i.e., vacation, personal holiday, or compensatory time) for his or her full shift scheduled immediately prior to and immediately after the holiday, and work the holiday if scheduled on that day.

The Union proposes to modify the above holiday pay provision to provide as follows:

> To be entitled to holiday pay, an employee must work his/her scheduled work day before and first scheduled work day after the holiday unless on an approved vacation, personal day, FMLA leave, compensatory day off, funeral leave, paid administrative leave, military leave or on full or partial sick day where the

> employee has presented a certified letter from a licensed physician (or medical provider) immediately upon return to work.

Using the Martin Luther King holiday as an example, the Union asserts that there are two things wrong with the current language regarding eligibility for holiday pay:

> The first is the forced whole day off. The forced 12 hours off without having a partial sick day. That's a practice that's accepted by the City and allowed with other employees of the City. And the second thing is the inability to get paid for the holiday if you have a doctor's excuse.
>
> (Tr. at 186-187).

The Union claims that the current language which it seeks to modify is unfair and ". . . causes the employee to have a hardship on a day that is much more expensive than a regular day off." (Tr. at 187). It also points out language regarding holiday pay which is contained in the City's attendance policy in further support of its proposal regarding this issue.

Position of the City

Under the current language, employees are precluded from receiving holiday pay if they fail to work their last scheduled workday immediately before and their first scheduled workday after a holiday, or if they fail to work on a holiday when scheduled to do so. The City maintains that such restrictions deter employees from attempting to extend a holiday weekend by improperly utilizing sick leave or avoid working on a holiday. The later concern is significant for a 24/7 operation that provides life-saving services to the public. However, the City expressed a

willingness in its Pre-Hearing Statement to establish requirements and limitations which satisfy the Union's concerns and are consistent with the current attendance policy.

At hearing the City reiterated that it was not philosophically opposed to the Union's proposed modification and would agree to language which included ". . . that this requirement of a medical certificate apply not only for the last workday before and first workday after, but if they were actually scheduled to work the holiday and they call in sick they have to have medical certification." (Tr. at 188).

Final Recommendation

Based upon the positions of the parties, the last paragraph of Article XVII shall be modified to provide as follows:

> To be entitled to holiday pay, an employee must work his/her scheduled work day before and first scheduled work day after the holiday and the holiday, if scheduled to work, unless on an approved vacation, or personal day, FMLA leave, compensatory day off, funeral leave, paid administrative leave, military leave or on full or partial sick day where the employee has presented a certified letter from a licensed physician (or medical provider) immediately upon return to work.

Issue 5: Overtime- Article XXII

Position of the City

Article XXII entitled "Overtime - Premium Pay," provides, in pertinent part: "All overtime may be earned in cash, and paid in the pay period in which it is earned, or compensatory

time at the same rate, at the employee's discretion. Compensatory time earned may be banked in accordance with Article XXXIV of this Agreement." The City proposes that the aforementioned language be modified to provide that it shall determine whether overtime is paid in cash or compensatory time off. This proposal is submitted in order to maintain staffing levels which could be impaired in the event that too many employees seek to take compensatory time. The City asserts that this may be a recurring issue due to the fact that structural overtime is built into the employees' schedules as they work 12-hour shifts with alternating three/four-day workweeks. As a result, employees work eight hours of overtime every two weeks. The City maintains that it needs the authority to pay employees for working overtime, instead of receiving paid time off.

Position of the Union

The Union proposes current contract language.

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder recommends that Article XXII should retain current language. This recommendation is justified in light of the elimination of star days and the corresponding reduction in compensatory time. There can be little debate that the administration of overtime compensation is more complicated by the inclusion of compensatory time in lieu of cash payments. Problems with manpower coverage increase when large banks of compensatory time accumulate and employees seek to utilize their bank of compensatory time off.

That said, the administration of any large municipality necessitates a level of skilled administration properly staffed. Excessive overtime may result in employee fatigue, and an increased risk of less than optimum performance – critical factors with emergency medical services. For these reasons, the fact-finder recommends current contract language be maintained.

Issue 6: Discipline- Article XXIV

Position of the City

Article XXIV of the collective bargaining agreement entitled "Discipline," provides, in part, as follows:

> Discipline is defined as any verbal or written warning, suspension, discharge, demotion, or reduction in pay. An employee who is disciplined must be disciplined within thirty (30) working days from the date the Commissioner or Chief of Operations had knowledge of said event. If the event is referred to the City's Accident Review Committee or the City's EEO office, this shall be extended to sixty (60) working days. . . .
>
> * * *
>
> The City shall not consider, as a basis of progressive discipline, any reprimand, suspension, or other disciplinary action which occurred more than two (2) years previous.
>
> **Administrative Suspensions**.
>
> Any employee arrested for any felony charge or a misdemeanor offense of being in possession of or under the influence of alcohol or drugs, or for failure to possess a valid driver's license for those employees required to drive a City

> vehicle can be placed immediately on administrative suspension following a pre-disciplinary hearing. Employees are required to report to the Commissioner arrests and/or convictions for any of the aforementioned offenses. Following criminal adjudication of such charges, any discipline undertaken against the employee must be administered within thirty (30) days of the time the Commissioner or Chief of Operations had knowledge of the adjudication.
>
> * * *

The City proposes to modify the above language by increasing the time frame for discipline from 30 working days to 60 calendar days, and increasing the shelf-life for discipline from two to three years.[3] According to the City, its proposals are intended to improve the discipline process, both procedurally and substantively. The City notes that it succeeded in negotiating this proposed change in many of its contracts. (City Ex. 30).

The City contends that 30 working days is not enough time to conduct a thorough investigation, pre-disciplinary hearing and necessary follow-up investigation before issuing a decision. Management will be able to thoroughly investigate the issue before assessing discipline if the time frame is expanded.

According to the City, this will avoid issues which result from the initial discipline constraints. The City maintains that it is simply ". . . looking to give ourselves more time to get the job done based upon the resources we have available, . . ." (Tr. at 192). Additionally, the proposal will reduce confusion for employees and management regarding the computation of

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3. The City notes that a change would also need to be made to the language contained in Article XIX of the contract entitled "Personnel Records," regarding its proposal to increase the shelf-life for disciplinary actions.

"working days" where the City has multiple divisions with 24/7 operations and a wide variety of shift schedules.

Regarding its second proposal to increase the shelf life of discipline, the City seeks to improve workplace performance and conduct by increasing the deterrence of repeated offenses. The City claims that there is a noticeable amount of discipline imposed between two years and one day and three years after the employee's most recent disciplinary action. It argues that a number of employees use the two-year shelf life of discipline as their gauge for how long they must be on good behavior.[4] As such, it is reasonable to extend that period of good behavior to three years under its proposal. The proposed language will not affect those employees whose *modus operandi* is good behavior. The City notes that its proposal has been accepted by nearly all of the non-safety forces bargaining units. According to the City, the basis for its proposal is to maintain a consistent policy citywide. The testimony reveals that the City's proposed language is contained in the contracts with the FOP, CPPA and Local 93.

Position of the Union

The Union does not agree with the City's proposal to extend the shelf life for disciplinary actions. It claims that contracts for other safety forces bargaining units do not contain the City's

4. At hearing, the City asserted that it has ". . . noticed on a citywide basis, and I can't give you any definitive evidence but [anecdotally] we've noticed employees tend to behave themselves when they have discipline on the shelf and shortly after that they tend to deteriorate." (Tr. at 192).

proposed language. The Union also notes that there are currently no bargaining unit members at any of the disciplinary steps. Therefore, it does not understand the urgency of the City to force such a provision on its members.

Regarding its opposition to the City's proposal to extend the period for issuing discipline to 60 days, Mr. Threat testified, in part, as follows:

> . . . We have a lot of violations of deadlines when it comes to us and the City and we would never get anything done if we extended it to 60 days. Our grievance, our PDH, whatever deadline is in place for the Union, the City violates it. Grossly violates it. We have grievance answers from steps that are two years old that we haven't gotten an answer on. The person is out of the policy by that time.
>
> (Tr. at 198).

The Union indicated that it would be willing to agree to the City's proposal if the grievance procedure is modified to provide that the Union would prevail by default in the event that the City does not respond in a timely manner at any point. The City rejected this proposal.

Final Recommendation

Based upon the evidence of record presented, the fact-finder declines to recommend the City's proposal to increase the time frame for issuing discipline to sixty (60) calendar days; rather, an increase of the time frame to forty-five (45) working days is reasonable and should be incorporated into the new collective bargaining agreement. This recommendation is based on several factors. First, it is important that any employer prior to taking disciplinary action against an employee have sufficient time to conduct a thorough and fair investigation. Forty-five

working days should aid efforts to achieve those twin goals of any investigation. Second, the record lacks probative evidence to warrant sixty days, or problems with counting working days. Third, Article XXIV has additional language that the City does not propose to change which contains reference to working days. Finally, the Union presented insufficient evidence that any bargaining unit employee(s) would be prejudiced or harmed in any manner as a result of this modification to the discipline procedure which will afford management additional time to conduct a thorough investigation concerning alleged misconduct.

As to the City's proposal on extending the roll-off period for discipline, the fact-finder does not recommend the City's proposal to extend the shelf life of discipline to three years. There is no evidence that bargaining unit employees are "sharpshooting" the disciplinary roll-off period, or that extending the retention period to three years would largely resolve recurrences of employee misconduct. As such, the current contract language regarding the two-year look back period for discipline should remain unchanged. The testimony reveals that no bargaining unit members are currently at any disciplinary steps.

Issue 7: Hazardous Duty Injury- Article XXVII

Position of the City

Article XXVII of the collective bargaining agreement entitled "Hazardous Duty Injury," currently provides, in pertinent part, as follows:

* * *

A. "Hazardous Duty Injury" is defined as an injury suffered on duty which is not caused by a failure to perform in the correct and standard manner and which meets one of the following conditions:

* * *

3. Any fracture, serious abrasion, or visible contusion suffered as a result of aiding a patient and which is determined to be of a serious and debilitating nature by the Safety Director and the City's Medical Bureau.

4. Any injury not covered by paragraphs one (1) through three (3) which has been jointly determined a "Hazardous Duty Injury" by the Safety Director and the City's Medical Bureau.

* * *

G. An employee may receive hazardous duty injury benefits for a total of one hundred twenty (120) days per incident, and may be extended, as deemed necessary by the Safety Director, for additional periods of sixty (60) working days, but not to exceed three hundred (300) working days.

* * *

City has proposed the following changes regarding hazardous duty injuries. First, delete reference to the "Medical Bureau" in paragraphs A.3 and A.4; and second, confirm that the 120-day benefit period set forth in paragraph G means 120 calendar days. The City points out that the Medical Bureau no longer exists as an in-house operation and its functions have been outsourced. The City's proposal regarding paragraph G simply confirms the current interpretation of the

contract that the duration of hazardous duty injury leave is measured by calendar days, rather than working days.

Position of the Union

The Union is not opposed to deleting the reference to "Medical Bureau" in Article XXVII of the contract. However, the Union would like to substitute "Medical Bureau" with "the City designated medical professional" as agreed to by the City and police bargaining unit. The Union also agreed with the City's proposal to clarify the language regarding the benefit period.

Final Recommendation

Based upon the stated positions of the parties, all references to the City's "Medical Bureau" in Article XXVII shall be deleted and replaced with the City's "designated medical professional." Additionally, the initial 120-day hazardous duty injury benefit period referenced in paragraph G of Article XXVII shall be clarified to provide that said period is 120 calendar days in duration.

Issue 8: Advanced Life Support- Article XXIX

Position of the Union

The Union proposes that the following language should be added to Article XXIX of the contract: "Upon successful completion of the examination, the employee will receive incentive pay in the amount of eight percent (8%) of base pay." The Union pointed out that this was still an open issue at the time it was proposed. However, not long before the hearing the Union ". . .

came up with the idea of using an ALS incentive pay to the compensation portion of our proposal." (Tr. at 203). The Union references various forms of incentive pay received by fingerprint scientific examiners; police officers; and airport safety officers in support of its position regarding this issue. Mr. Threat stated that Captains are required to pass the advanced life support functioning test in addition to all of the certification requirements which are necessary for paramedics. He pointed out that this additional testing is required in order for an employee to maintain his or her position as a Captain. In the event that an employee does not pass the test he or she is either returned to the rank of paramedic or terminated by the City. Mr. Threat indicated that the Union's proposed ALS pay incentive should either be contained in Article XXIX or in the wage article of the contract.

Although the Union acknowledged that the proposed ALS incentive pay is approximately $4,500.00 per employee, its proposal is intended to make up for missed increases which were available based on the maximum pay band portion of its argument. Additionally, the Union simply wants a monetary value associated with passing the examination as it is required of its members to continue as supervisors.

Position of the City

The Union's proposal appears to be in response to the requirement that CARE bargaining unit employees possess paramedic certification for which they receive a wage adjustment. The City contends that its proposed wage differential renders moot the Union's proposal regarding ALS

incentive pay as this wage adjustment would be included in calculating wage differentials for Captains. According to the City's calculations, the Union's ALS incentive pay proposal of eight percent of an employee's base wage rate would result in a sum of between $4,500.00 to $5,000.00 per employee. Those sums are entirely unacceptable to the City. Additionally, the City's position in its wage proposal is that ". . . paramedics get paid more than EMTs because they have that certification. So to the extent that you have a rank differential [then] that additional compensation from having that certification is reflected in the rank differential, enhanced by the rank differential itself." (Tr. at 208-209). The City maintains that the Union's proposal regarding this issue should not be recommended by the fact-finder.

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder determines that the Union's proposal should not be incorporated into the new collective bargaining agreement. An ALS incentive is not warranted at this time in light of the wage increases, wage differentials, modification of the wage step schedule enhancements, and potential equity adjustment discussed above.

Issue 9: Uniform Allowance- Article XXXII

Position of the Union

Article XXXII of the collective bargaining agreement entitled "Uniform Allowance," provides as follows: "Beginning in 2015, all regular full-time employees shall receive an annual

maintenance allowance of Two Hundred Dollars ($200.00), payable on March 1 and an annual uniform allowance of Four Hundred and Fifty Dollars ($450.00), payable on June 1, of each year." The Union proposes to modify this provision so as to state: "Beginning in 2016 all regular full-time employees shall receive the same as CARE Union but not less than the current ($200.00) annual maintenance allowance payable March 1 and an annual uniform allowance ($450.00) payable on June 1, of each year." The Union also proposes to add the following language to Article XXXII of the contract: "Upon promotion, new Captains shall receive a one-time clothing allowance of $150.00." It notes that this clothing allowance is in addition to the quartermaster provided uniform.

The Union asserts that while CARE bargaining unit members have received increases in their uniform allowances the Captains have not. According to the Union, the uniform allowance afforded the Captains is low compared to other supervisors. It points out that police officers and police supervisors receive $1,150.00; firefighters receive $1,000.00; and paramedics and EMTs receive $800.00 respectively for their annual uniform allowances, which also includes maintenance. The Union maintains that all of the uniforms worn by officers are similar with the only distinction being the patches. It requests that the Captains receive a uniform allowance which is at least equal to that afforded employees represented by CARE.

The testimony presented by the Union indicates that uniforms often get stained and shirts are required to be replaced more often. It also notes that there is increased wear and tear on the uniforms caused by wearing bullet proof vests. Additionally, the carrier for the vest gets soiled

on occasion requiring it to be air dried. The testimony reveals that each Captain possesses only one vest carrier. The Union also desires a one-time promotion allowance of $150.00. Although it recognizes that the City provides the initial uniforms for Captains, it requests this sum so that newly promoted employees may purchase the required brass for their lapels.

Position of the City

The City opposes both of the Union's proposals to increase the uniform allowance for bargaining unit employees. It points out that any differences in the uniform allowances between CARE and CWA bargaining unit employees is a product of the bargaining choices that the unions have made during negotiations over the years. Additionally, new Captains do not need an additional uniform allowance as they already receive basic uniform clothing from the City at no charge. The City asserts that any extra items may be purchased with the annual uniform maintenance and uniform allowances. There is simply no reason for the one-time allowance requested by the Union. As it concerns stains on the Captains' uniforms, the City responded that there are proper ways for uniforms to be washed. The City also finds it interesting that the Union wants to tie its uniform allowance to CARE while still requesting a minimum amount regardless of any changes to the CARE contract in the future. The Union's proposals should not be recommended by the fact-finder for each of the aforementioned reasons.

Final Recommendation

The fact-finder recommends that the Captains receive the same uniform allowance afforded CARE bargaining unit employees as the two units are closely related to each other and perform their respective assignments in the same work settings. Therefore, the Captains shall receive an annual maintenance allowance of $325.00 and an annual uniform allowance of $475.00 during the term of the new contract. There is no substantive justification for members of the bargaining unit to receive a one-time promotion allowance of $150.00, and that proposal is rejected.

Issue 10: Appendix A- Attendance Policy

Position of the City

The City proposes to delete Appendix A attached to the current collective bargaining agreement because it is obsolete and has been replaced by the current attendance policy which provides for no-fault absences. (City Exhibit 31). The Union previously agreed in the last contract to permit the City to implement such a policy. This is precisely what the City did when it implemented a new attendance policy during the term of the last collective bargaining agreement. Therefore, the bargaining unit employees are no longer subject to the policy attached to the contract as Appendix A. Accordingly, its removal is mandated. The City also points out that both the police and firefighter bargaining units have no-fault attendance policies.

Position of the Union

The Union indicates that there are a couple of items in the attendance policy attached as Appendix A, which are not mentioned in the City's no-fault attendance policy. The issue of tardiness is the Union's primary concern. Mr. Threat asserted that the Union wants to retain the tardiness language because although the Union ". . . is invited to negotiate with the City, ultimately the City has the final say. . . the negotiations is a formality and the City can really make the choice that they want and the Union has to kind of take it." (Tr. at 228).

Final Recommendation

Based upon the evidence presented at hearing, the fact-finder recommends the City's proposal to delete the attendance policy attached as Appendix A to the collective bargaining agreement. The fact-finder notes that Section O of Article IX provides as follows:

> The City reserves the right to implement a no-fault attendance policy. The City will notify the Union prior to implementing such a policy and will negotiate with the Union regarding the policy wherein the City may implement a policy if an impasse is reached in those negotiations. The Union reserves the right to file a grievance regarding the reasonableness of a newly-implemented policy.

The City clearly reserved the right to implement a no-fault attendance policy under the aforementioned provision. The Union presented no evidence that any grievances were filed to challenge the reasonableness of the new no-fault attendance policy implemented by the City. Furthermore, the Union presented no proposal to modify Article IX, Section O of the contract.

Therefore, the no-fault attendance policy is now the current policy and Appendix A of the collective bargaining agreement is obsolete and shall be deleted.

Issue 11: Staffing- new article

Position of the Union

The Union proposes the following language should be added to the collective bargaining agreement as Article XV: "At no time shall only one Captain be assigned to field operations. The City shall have at least three (3) Captains covering the City of Cleveland at all times."

The Union maintained that there is only one Captain in the field "more than half the time." However, there should be at least three Captains in the field at all times given the number of employees that they supervise and the increased call volume. On average, there are 27 ambulances and 54 employees in the field at any given time. Mr. Threat indicated that the Captains are ". . . running from one side of town to the next." (Tr. at 156). The Union notes that pursuant to the National Incident Management System (NIMS), the recommended supervisor to subordinate employee ratio is between 1:3 and 1:7. The Union is only requesting one additional field Captain, rather than the cited national ratios. According to the Union, ". . . given the understanding that the City is a participant of a NIMS program receiving federal funding and things of that nature, and the definition of the expectations of being under that system is what's

driving this proposal." (Tr. at 169). The Union simply seeks to operate in a safe and efficient manner when responding to calls.

Position of the City

The City asserts that the Union's proposed language is nothing more than an unnecessary and potentially costly minimum manning proposal. It maintains that staffing should remain a matter of managerial discretion without the need to pad the number of employees in any classification. The City requires discretion to implement changes regarding the staffing of Captains in the field if operational or financial needs dictate a reduction.

At hearing, the City reiterated that it would never accept a minimum manning requirement proposal from any bargaining unit. Additionally, the City does not staff for emergencies because those situations do not occur that often. The City maintains that it has the resources required to deal with emergencies, and it ". . . schedule[s] enough people if everybody shows up to work." (Tr. at 172). Regarding NIMS, the City asserts that it is "irrelevant" because it deals with domestic incidents, rather than day-to-day operations. Therefore, the Union's reliance upon NIMS in support of its staffing proposal is misplaced. Furthermore, the draft deployment model does not support the Union's position because EMS and Fire were never combined into an integrated unit. As such, there were no operational cost savings which may have allowed increased staffing. For each of these reasons, the City requests that the fact-finder not recommended the Union's staffing proposal.

Final Recommendation

The fact-finder recommends that the Union's proposal to add a new staffing provision to the contract should not be adopted. The Union presented insufficient evidence that the City has managed its EMS field operations in an unsafe or inefficient manner. No evidence was presented that any of the Captains were placed in undue physical danger as a result of the City's current staffing levels. Additionally, there is no evidence that any federal agency has indicated that the City is not adequately prepared to address emergency situations that may arise. The fact-finder also notes that the City recently hired four Captains following the income tax increase. The City needs to retain some managerial discretion in assigning employees and there is no evidence that this has been abused by management so as to warrant granting the Union's proposal.

/S/ Jonathan I. Klein, Fact-finder

Dated: March 1, 2019

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Leonard Brooks, Communications Workers of America, AFL-CIO, Local 4340, at 1400 East Schaaf Road, Brooklyn Hts., OH 44131, *Brooks4340@hotmail.com*; and upon George S. Crisci, Esq,, Zashin & Rich Co., L.P.A., 950 Main Avenue, 4th Floor, Cleveland, OH 44113, gsc@zrlaw.com; and upon the Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, MED@SERB.ohio.gov ; each by electronic mail this 1st day of March 2019.

/s/ Jonathan I. Klein, Fact-finder