

**CONCILIATION PROCEEDINGS
AMERICAN ARBITRATION ASSOCIATION**

IN THE MATTER OF)	
CONCILIATION BETWEEN:)	
)	
CITY OF CLEVELAND)	
PUBLIC EMPLOYER)	
)	CONCILIATION AWARD
-AND-)	
)	
CLEVELAND ASSOCIATION)	
OF RESCUE EMPLOYEES,)	
ILA, LOCAL 1975)	
EMPLOYEE ORGANIZATION/UNION)	

AAA CASE NO.: 01-17-0007-3460

BARGAINING UNIT:

ARTICLE 2, RECOGNITION

The Union is recognized as the sole and exclusive representative for the following job classifications for the purpose of establishing rates of pay, wages, hours and other conditions of employment, but excluding all Supervisors.

The Union's exclusive Bargaining Unit shall include all full-time Employees who have completed their initial probationary period in the following job classification, but excluding Supervisors:

- * Emergency Medical Technician
- * Emergency Medical Dispatcher
- * Paramedic
- * Sergeant

However, members who have not completed their initial probationary period shall be entitled coverage under the Article concerning Hazardous Duty Injury.

MEDIATION SESSION(S): February 16, 2018; Cleveland, Ohio

HEARINGS: March 6, 2018;
April 5, 2018;
April 6, 2018;
Cleveland, Ohio

APPEARANCES

FOR THE CITY OF CLEVELAND

Jon M. Dileno, Attorney
(Principal Representative)
William M. Menzalora, City Attorney
Nicole Carlton, Commissioner-EMS
Natasha Brandt, Manager of
Internal Audit
Austin Opalich, Manager, Labor Relations
Janet Schiavoni, Manager,
Organizational Effectiveness -
Department of Human Resources

FOR CARE, ILA LOCAL 1975

Ryan J. Lemmerbrock, Attorney
(Principal Representative)
Brooks W. Boron, Attorney
Paul Melhuish, President
Matt Sykes, First Vice President
Daniel J. Nemeth, Former President
Jonathan Wearstler, Former Sergeant
at Arms
Marilyn Vasicek, Secretary
Chelief Caldwell, Sergeant -
Dispatch "Red" Center
Mary Schultz, Financial Expert

ADMINISTRATION

By email correspondence dated December 22, 2017 from Ryan J. Lemmerbrock, Attorney, and Principle Representative for the Union, with copy to Jon M. Dileno, Attorney, and Principle Representative for the City of Cleveland, the Undersigned was notified of his mutual selection to serve as Conciliator pursuant to the contractually-sanctioned Impasse Arbitration Procedure set forth in Article XXVII, titled "Voluntary Dispute Settlement Procedure". In accordance therewith, each Party to submit their "final offer" on each Issue at impasse between them and as is generally recognized in the Conciliation process. The Conciliator is to choose one Party's final offer without consideration of "melding" the two positions as presented.

Pre-Mediation statements were presented by the respective Parties, which did not serve as the basis for the "final offer" positions articulated in each Party's Conciliation Statement subsequently submitted. On February 16, at the Burke Lakefront Airport, Cleveland, Ohio, Mediation was engaged in as suggested by the Conciliator wherein that effort proved unsuccessful. Accordingly, transcribed Conciliation Hearings were conducted on March 6; April

5; and April 6, 2018 at Burke Lakefront Airport, 1501 North Marginal Road, Cleveland, Ohio wherein each Party was afforded a fair and equitable opportunity to present testimonial and/or documentary evidence supportive of positions advanced.

The evidentiary record of these transcribed proceedings was closed upon the conclusion of the presentation of evidence subject to the submission of the three (3) volume transcript comprising 665 pages. Additionally, extensive documentation was provided by each Party's Principal Representative and their respective Teams in support of positions advanced relative to the Issues that remained at Impasse. Accordingly, this matter is ready for final-offer disposition in accordance with the mandated Voluntary Dispute Settlement Procedure set forth at Article XXVII of the Predecessor Collective Bargaining Agreement.

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Through the course of the Administrative aspects of scheduling this matter, the Conciliator discussed with the Principle Representatives the collective bargaining history; atmosphere; and, negotiation efforts engaged in by and between the Parties. Each Party Representative articulated and characterized the overall relationship as an amicable collective-bargaining relationship recognizing financial prudence while also endeavoring contractual enhancements and parity, where applicable, among Employees. The Parties have stipulated that any and all Tentative Agreements reached prior to the Conciliation Hearings as identified, as well as, those reached during the course of these Hearings, be included in the Successor Collective Bargaining Agreement. The extensive evidentiary record of this proceeding was presented to the Conciliator who has determined such provides a sufficient basis to support the issuance of this Conciliation Award. Those issues that were the subject of the Impasse, processed under Article XXVII of the Predecessor Collective Bargaining Agreement, are

identified in this Conciliation Award for consideration by the City of Cleveland and the Cleveland Association of Rescue Employees, ILA Local 1975.

ARTICLE XXVII
VOLUNTARY DISPUTE SETTLEMENT PROCEDURE

Either the City or the Union may initiate negotiations by letter received by the other Party no earlier than 150 days before and no later than 120 days before the Agreement expires. The Parties shall hold their first negotiation session within 15 days of notification, at which time they will jointly notify SERB of the commencement of negotiations and impasse procedures identified in this Agreement in place of the procedure alternatively provided and then in effect under Ohio Revised Code 4117.14 and related sections.

All negotiation sessions shall be closed to the public and media and conducted during times mutually agreed upon by the respective Parties.

If within forty-five (45) days before the nominal expiration of the Agreement, or a date mutually agreed upon, tentative Agreement on all items is not reached, either Party may use the services of the Federal Mediation and Conciliation Service (FMCS) or SERB mediation, as follows:

- A. FMCS or SERB shall be contacted by either Party so that mediation may start within three (3) days after petitioning FMCS or SERB on the date mutually agreed upon.
- B. Once started, mediation shall continue until tentative agreement is reached on all unresolved items with mediation sessions being held at the direction of the mediator.

In the event Parties are unable to reach agreement by March 31, 2010 or a date mutually agreed upon, either of the Parties may request a list of Arbitrators from either the State Employment Relations Board, or the American Arbitration Association and the Parties shall select an Arbitrator by the Alternative Strike Off Method, beginning with the Union. As soon as practical thereafter, the Parties' positions with respect to all unresolved issues will be presented to the Arbitrator for a final and binding decision.

The Arbitrator shall select either the City's proposal, or the Union's proposal on an issue-by-issue basis. As set forth in this language and as articulated by and stipulated to by the respective Party Representatives, the Arbitrator's role in this conciliation matter is to select one Parties' position as articulated versus that articulated by the opposing Party. There is no room in this process, generally, as conciliation is understood to be applied, to provide for any middle ground with respect to the issues at impasse between the Parties.

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STATUTORY CRITERIA

Eventhough this matter arose under the Parties' contractual Dispute Resolution Procedure and the list of Conciliators was submitted by and administered through the American Arbitration Association, the "Statutory Criteria" as recognized under ORC Chapter 4117, are useful in considering the Issues at impasse between Public Sector contracting Parties in the State of Ohio. The following awarded "final offers" were arrived at based on the Parties' mutual interests and concerns; and, are, to a certain degree, made in accordance with consideration of these statutory "guidelines" set forth in Ohio Revised Code 4117.14 (C) (4) as follows:

1. Past collectively bargained agreements, if any, between the Parties;
2. Comparison of 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 interests and welfare of the public and the ability of the Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the Public Employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in 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

THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

As set forth in the supporting documentation provided by the Parties, the predecessor Collective Bargaining Agreement, with effective dates - April 1, 2013 through March 31, 2016 - identifies at Article II, titled, "Recognition" the afore-mentioned Bargaining Unit as follows:

The Union is recognized as the sole and exclusive representative for the following job classifications for the purpose of establishing rates of pay, wages, hours and other conditions of employment, but excluding all Supervisors.

The Union's exclusive Bargaining Unit shall include all full-time Employees who have completed their initial probationary period in the following job classification, but excluding Supervisors:

- * Emergency Medical Technician
- * Emergency Medical Dispatcher
- * Paramedic
- * Sergeant

However, members who have not completed their initial probationary period shall be entitled coverage under the Article concerning Hazardous Duty Injury.

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Each Party has provided extensive supporting documentation, both based on internal and external comparability, in support of their respective positions. Comparability, as generally recognized, does not require the unobtainable exactness Parties strive to suggest; it exists as “general benchmarks” from which comparisons are made and analyzed. Classification “titles” recognized under Collective Bargaining Agreements generally represent one of the few commonly analyzed themes of comparability. A jurisdiction’s population/size, geographic makeup, revenue/funding sources and other budgetary considerations, as well as, the composition of each Bargaining Unit with respect to age and experience levels, and duties performed, must be addressed when analyzing comparability of jurisdictions providing “similar job functions.” Each jurisdiction represents a “mixed bag” of attributes which can be helpful in determining comparability even though there are generally no “on-point” comparisons, just similarities to be balanced with other components.

The Conciliator has considered “comparable” Employer-Employee Units regarding their overall makeup and services provided to the members of this metropolitan area. As is typical,

the Parties in their respective Pre-Hearing Position Statements and supporting documentation, have relied upon comparable jurisdictions, entities and/or municipalities concerning what they deemed “comparable work jurisdictions” in comparison to that provided by this Bargaining Unit. While there are indeed certain similarities among these entities cited, there are no “on-point comparisons” relative to this Bargaining Unit. In other words, while Classification/Unit titles may be exact to other entities relied upon as the Classification/Unit title(s) suggest, the overall makeup of the entity will differ with respect to funding sources, geography, structure, staffing, budget, General Fund receipts and expenditures and the makeup of the Employees performing these and other functions. It has been, and remains, the position of this Conciliator, the Party proposing any addition, deletion, or modification bears the burden of proof and persuasion to compel the addition, deletion, or modification as proposed.

These Parties met in pursuit of negotiating a successor Collective Bargaining Agreement wherein proposals were exchanged, and certain Tentative Agreements were reached regarding numerous Articles recognized in the predecessor Collective Bargaining Agreement. During those negotiations, the Parties tentatively agreed to certain Articles and/or portions thereof, and as such, are to be incorporated as Tentative Agreements, as found in, and supported by, both the Union and the Employer’s respective presentations and accompanying documentation. Additionally, during the course of the Conciliation Hearings, the following Issues were either tentatively agreed to and/or withdrawn:

- Issue 1: Management Rights - Current Contract Language
- Issue 9: Overtime – OT payable in cash or comp time (last paragraph of page 28 of CBA) – Current Contract Language
- Issue 10: Discipline – Time period to issue discipline (Current Contract Language) (City withdrew its first “bullet point,” page 4 of City Pre-Hearing Statement)

- Issue 15: HDI – Time period for review of HDI request (Parties agreed to CARE’s proposal to add 14 calendar-day time period to approve or deny HDI and to strike first sentence of third paragraph of Article 29 (B))
- Issue 17: Compensation – Training Wage (Effective April 1, 2018 – Training wage be increased to \$15.00/hour)
- Issue 18: Compensation – FTO & DTO Pay - Current Contract Language
- Issue 19: Compensation – Senior Medic Pay (CARE withdrew)
- Issue 21: Sergeant/Crew Chief - Current Contract Language
- Issue 22: Advanced Life Support – Tuition Reimbursement – Current Contract Language
- Issue 26: Legal Representation (City withdrew)
- Issue 27: Duration (Through 3/31/2019)

~~Article 49~~ Termin

THE UNRESOLVED ISSUES

In accordance with the Position Statements provided by each Party Representative, the following represents a listing of those issues *initially* proposed as being at impasse between the Parties:

- ARTICLE III - Management Rights (Privatizing or Sub-contracting) - J
- ARTICLE IX - Leaves of Absence (Attendance Policy – No-Fault Policy)
APPENDIX A
- ARTICLE XV - Shift Assignments (EMD'S on 12- Hour Shifts)
- ARTICLE XV - Shift Assignments (Star Days)
- ARTICLE XXIII - Overtime/Premium Pay (When Overtime is Payable)
- ARTICLE XXIII - Overtime/Premium Pay (Procedure for ordering Mandatory Overtime)
- ARTICLE XXIII - Overtime/Premium Pay (Uninterrupted time off before return to duty)
- ARTICLE XXIII - Overtime/Premium Pay (Limits on mandating Overtime)

- ARTICLE XXIII - Overtime/Premium Pay (Overtime payable in cash or Comp-time)
- ARTICLE XXV - Discipline
- ARTICLE XXVIII - Health Coverage (Contribution Rate)
- ARTICLE XXVIII - (Health Coverage (Addendum A and B) Deductible and Maximum Out-of-pocket)
- ARTICLE XXVIII - Health Coverage (Other Plan Changes)
- ARTICLE XXIX - Hazardous Duty (Mental Trauma qualifies for HDI)
- ARTICLE XXIX - Hazardous Duty Injury (Time period for review of HDI request)
- ARTICLE XXXI - Compensation (Step Schedule)
- ARTICLE XXXII - General Wage Increases
- ARTICLE XXXI - Compensation (Training Wage)
- ARTICLE XXXI - Compensation (FTO and DTO Pay)
- ARTICLE XXXI - Compensation (Senior Functioning Paramedic Pay)
- ARTICLE XXXIV- Uniform Allowance
- ARTICLE XXXIX - Sergeant/Crew Chief and Sergeant/Coordinator Assignments
- ARTICLE XL - Advanced Life Support (Tuition Reimbursement)
- NEW ARTICLE - Training and Continuing Education
- NEW ARTICLE - Employee Mental Health Evaluations
- NEW ARTICLE - Employee Assistance Program
- NEW ARTICLE - Legal Representation
- ARTICLE L - Duration

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As set forth in the evidentiary record, the Public Employer, the City of Cleveland, hereinafter referred to as the "Employer" and/or the "City" lies in the north-central geographic area of the State of Ohio. The City, according to its Principle Representative, unlike the mass majority of cities within the State of Ohio, has its share of what were characterized as "financial stressors." The City maintains it has the highest priority rate and the lowest household median income. Its resident base does not do a great deal to contribute to the coffers of the City; however, its requirements to sustain its services to the Community are vast. According to the record, the City faced a \$60 million budget deficit in 2004, requiring the layoffs of hundreds of Employees versus those numbers in 2016. The City underwent massive cuts in 2004 and again faced similar budgetary constraints in 2009 and 2010, respectively. Much was the case for the majority of the country and, according to the record, this City was not exempt.

For calendar years 2015 and 2016, the City faced a \$30 million potential deficit as projected for 2016. In 2017, a 1/2% Income Tax increase was placed before the voters and passed. Such resulted in the injection of approximately \$83 million into the General Fund Budget. According to the City, such was necessary to "make ends meet". Given these efforts, the City has increased its hiring efforts to replace those Employees lost as a result of lay-offs in 2004. Seventy-five percent of the General Fund Budget addresses personnel costs. While hiring efforts have increased, the numbers of Employees are still lower than they were in 2003. The City does not contend it cannot afford general wage increases but emphasizes the need for fiscal prudence and responsibility.

According to the record, negotiations began before the Income Tax, as previously referenced, was passed in November of 2016. A small number of the other Unions with the City had wages frozen for the first year of 2016, a 1% increase in the second year, and a 2% increase

in the third year. Following the passage of the Income Tax, the City addressed the influx of additional funding with its largest civilian unit, the AFSCME Bargaining Unit, wherein the Parties agreed to “adjust the pattern” upward as a result of the Income Tax passage, resulting in increases of 0, 2% and 2% for the three-year Collective Bargaining Agreement. The City also provided a \$500 lump-sum signing bonus to these Employees. The City then began negotiations resulting in Fact Finding with the Teamsters Local 244 involving primarily Truck Drivers for the City of Cleveland.

Following the receipt of the Fact Finding Report for the Teamsters Local, the Fact Finder determined the passage of the Income Tax would not provide a great windfall for the City. The City met with other smaller Unions and provided the same package it had provided to the ASFCME Bargaining Unit. The City negotiated a Tentative Agreement with the Cleveland Police Patrolmen's Association providing a zero percent increase in year one, 2% increase in year two, and a 2% increase in year three. It also provided a \$1,800 equity adjustment rolled into the base of the Patrol Officers with 2 to 10 years service and for those in excess of 10 years service, they would receive an additional \$1,200 bump for a total of \$3,000 equity adjustment. Essentially, such created a “new step” at 10 years. Such resulted in a Tentative Agreement; however, the leadership within that Union and discontentment among its Members, resulted in the Tentative Agreement being voted down. As the City characterized it, the CPPA and the FOP received monetary consideration and in return it received relief in its operational needs. As characterized, it received relief on Hazardous Duty, Discipline, and Civilian Complaints, and the No-fault Attendance Policy. Such also included relief in the bidding language for specialized units affording the Chief greater discretion to select candidates.

The rejected Tentative Agreement resulted in the Parties, the FOP and the City, pursuing adjudication in Conciliation. The \$3,000 equity adjustment was proposed by the FOP equating to a \$3,480 into their base due to a 16% rank differential for Sergeants. The City proposed approximately \$700 less than that. The Conciliator awarded in favor of the Union, equating to a \$3,480 equity adjustment and provided the City relief as mentioned previously.

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With respect to this Impasse, the City of Cleveland and the Cleveland Association of Rescue Employees, ILA Local 1965, are Parties to the Collective Bargaining Agreement provided to the Conciliator by both Principal Representatives and identified herein as the Predecessor Collective Bargaining Agreement. As the record demonstrates, CARE represents approximately 240 Paramedics and 30 Emergency Medical Dispatchers, otherwise known as EMD's, who work in the City's Department of Public Safety, Division of Emergency Medical Services, otherwise known as "EMS".

As the record further demonstrates, the Parties commenced negotiations in March 2016 and met approximately 15 times over the next 22 months. According to the City, it sits in a hopeful, but tenuous, financial position wherein over the last thirteen years it has exhausted virtually every mechanism to balance the budget including reduction in services, attrition, furloughs, and layoffs in light of the declining revenue and increasing expenditures. In November 2016, the City passed the 0.5% income tax increase which took effect in 2017. The City ended 2016 with a General Fund carryover of \$12.8 million, which represented 2.3% of its expenditures. With the passage of the income tax increase, the City projects to stabilize its budget, address basic needs, and slowly build reserves back to acceptable levels. It concluded negotiations with approximately 15 Unions within the framework previously identified.

The City characterizes its financial condition as deteriorating at such a level that it was forced to conduct layoffs, seek concessions, slash expenditures, by other means and seek new revenue sources. At the end of 2003, the City faced a \$60 million deficit for calendar year 2004 and was forced to lay-off approximately 500 employees. In 2009, it sustained another financial crisis, as did much of the United States, with the great recession resulting in concessions from Employees in the form of unpaid furloughs and suspension of, or other specified compensation-based benefits and more layoffs. State government in 2011 slashed the Local Government Fund wherein revenues impacted by personal property tax, estate tax, and commercial activity taxes were diminished. The City then imposed trash collection fees for the first time, which resulted in the influx of additional revenue. Based on these efforts, the City's cash reserve increased to a reasonable level. The property tax foreclosure crisis and the State's decision to cut local government funding revenues, the personal property tax, the estate tax and commercial activity taxes resulted in an annual loss of approximately \$48 million.

For calendar year 2012, revenues substantially exceeded expenditures due to extreme cost cutting measures wherein the City saw structural deficits of \$2.6 million and \$2.2 million in 2013 and 2014, respectively. By the end of calendar year 2015, expenditures far outpaced revenues by approximately \$8.1 million. The City's expenditure-to-revenue ratio led to a lower carryover balance by the end of 2016 and while the City finished 2012 with a \$50.6 million carryover, or 10.4% of expenditures, that balance dropped to \$42.1 million, or 8% of expenditures by the end of 2015. Such was inflated because the City did not pay \$5.3 million in retro wage payments from 2013 to 2016 under the Collective Bargaining Agreements with the Police Union until January 2016 and delayed the filling of certain vacancies. According to the City, given these financial "stressors" and the significant costs emanating from the Consent

Decree reached with the U.S. Department of Justice concerning its Division of Police; a five-year agreement after the initial cost of 2016, the City estimates ongoing expenditures of \$7-9 million per year for 2017 through 2020.

The 2013 to 2016 cycle of Collective Bargaining, which saw increases in Employee salaries and benefits, resulted in a \$20 million price tag based on these enhancements. The City derives income tax from those employed in the construction of projects and those that are employed in resulting businesses. Property taxes are often times extinguished on a short-term basis through tax abatement and most property tax receipts go to the public schools and the County. The City has no local sales tax and only the State and County receive sales tax from entities such as new restaurants, etc. Moreover, during the National political process, the City hosted the RNC, Republican National Convention, that led to positive exposure for the City, however, did not result in a significant direct economic impact.

The City contends it faced a budget deficit for 2016 and beyond wherein deficits were projected to the General Fund of over \$30 million annually through 2020. The City ended 2016 with an ending fund balance of \$12 million representing 2.3% of its expenditure budget. The City in 2017 proposed an increase to the Income Tax from 2% to 2.5% projected to generate \$83.5 million for the City's General Fund. The City's residents in 2016 passed this increase and with the additional funds, such will be used to ensure a structurally sound budget and partial restoration of employment levels and services that had been reduced dating back to 2004.

With the passage of the November 2016 Income Tax increase, the City indicated it would project its General Fund Carryover Balance slowly increasing from 3.12% at the end of 2016 to approximately 10% by 2020. For year-end 2017, the City ended the year with \$32.8 million in its General Fund representing just over 5% of its expenditures. Such will be impacted with the

City being able to fill a smaller than anticipated number of budgeted vacancies and funding a 2% wage increase in 2017 for the majority of the Unionized Employees. Such will also be impacted by the Safety Force Equity Adjustment and 2% wage increase applied to all Employees in calendar year 2018. It contends that these wage increases, and the feeling of the afore-mentioned vacancies would cost in excess of \$20 million for calendar year 2018. The passage of the Income Tax, while generating revenue, will stabilize the City's financial state by avoiding further layoffs and other budgetary cuts and to fill some long-vacant positions. It also takes into consideration capital infrastructure and service needs improvements.

The City budgeted for the hiring of 769 additional Employees in 2017 which comprises the filling of 400 existing vacancies and adding 369 positions to its budget. The Division of Police will see a hiring of 100 additional Patrol Officers, more Supervisors, Dispatchers, and Community Engagement Officers to allow for more community engagement and strengthen the City's existing crime-reduction strategy. The Patrol Officer compliment has been slated to increase by an additional 100 for calendar year 2019. With respect to the Division of Emergency Medical Services, the City will hire approximately 72 more Paramedics, Dispatchers and Supervisors and purchase additional Ambulances to reduce the overall response time to critical life-threatening 911 calls. Additionally, the City will hire 28 additional personnel to better inspect rental and vacant properties, remove condemned properties and blight and address critical need abatement needs. The ongoing cost associated therewith will result in approximately \$83 million generated by the Income Tax increase consuming a large portion if not all of that tax increase. It will continue to need to address the resident base with respect to roads, bridges and buildings with repairs and replacement costs of buildings, roads and bridges

exceeding \$1 billion. The lesser repairs, including electrical, plumbing and carpentry amass thousands of work orders being placed on hold.

When the City began the current round of negotiations based on this backdrop, with its 32 Unions, the City initially reached an agreement on Successor Contracts, including SEIU Local 1, with approximately 117 members; IBEW Local 38 and the Plumbers Local 55. Those Agreements included a 0%, 1% and 2% three-year wage package and modifications to help Insurance benefits. Teamsters' Local 244, comprising 294 members, and the City went to Fact Finding wherein the Fact Finder recommended a 0%, 1% and 2% wage package and the same Insurance modifications, but delayed the implementation of those changes until April 1, 2018. The Fact Finder recognized the City's financial obligations despite the passage of the Income Tax. The City then resolved its negotiations with the ASCFME Local 100, which is the City's largest Bargaining Unit. The City agreed to a second-year wage increase of 2% for a package of 0, 2%, 2%, respectively. The City also agreed to provide a \$500 one-time, lump-sum ratification bonus to obtain AFCSME's agreement to the City's proposed Insurance modification(s). As previously discussed, the CPPA membership rejected the Tentative Agreement reached by the Parties resulting in Conciliation.

CLEVELAND DIVISION OF EMS

PRELIMINARY CONSIDERATIONS

The Cleveland Division of EMS operates as the primary responder for all medical emergencies within the City of Cleveland, including pre-hospital care and transport of those individuals in need of further care at the healthcare facilities. These EMS Bases are located at the various Firehouses throughout the City. As of December 2017, the City operated 21 advanced life support ambulances during the day and 19 units at night. Each unit is staffed with

two Bargaining Unit Members. The EMS field personnel, the Paramedics and the EMT's, are assigned to specific Bases including a float pool of Employees. This float pool is maintained and assigned to different Bases to fill the gaps when Employees that are assigned to these Bases are absent from work. As the evidence of record demonstrates, there are approximately 282 Bargaining Unit Members of which 195 are Paramedics, 39 are EMT's, 20 are EMD's, and 28 Sergeants, 6 of which are Sergeant/Crew Chiefs. These Paramedics and EMT's work rotating 12-hour shifts also known as A Key and B Key. Within each Key, there are two shifts, the day shift from 0700 to 1900 hours and the night shift from 1900 to 0700 hours. When A Key is working, B Key is off and vice-versa. The Keys rotate so they can have every other weekend off, i.e., when they work Saturday, Sunday, Monday, they are off Tuesday, Wednesday, work Thursday, Friday, and are off Saturday, Sunday and Monday.

The record demonstrates that the EMS call volume has increased 31% from 2011 to 2017 and currently handles approximately 117,000 emergency calls per year with 106,000 medical runs dispatched and 77,000 patients transported to various hospitals. The average annual cost per annum in 2016 was \$5,780. EMS field personnel run non-stop throughout their shift of handling emergency calls throughout their shifts. As the record demonstrates, the Cleveland EMS suffers from high Employee turnover. From 2005 to 2015, 182 Employees have resigned and 66 have retired. All EMS field personnel are EMT's and must become certified and be functioning Paramedics within three (3) years of their hire date. New hires undergo a three-month academy and field internship. The City does not pay the tuition cost of the Employees to obtain the Paramedic certification. In order to become licensed as a Paramedic in the State of Ohio, an EMT is required to undergo 1,000 of required training as opposed to a Firefighter II Certification of 260 hours and basic Police Officer training of 600 hours. These Cleveland

Paramedics receive a maximum annual salary of \$52,724 compared to a Cleveland Firefighter's salary of \$58,327 and a Cleveland Patrol Officer's salary of \$58,362. These Employees are not eligible to retire until after 32 years of service, compared to 25 years for Fire and Police. With respect to the expenditures of the General Fund being applicable to the various units, the Cleveland EMS receives approximately 4% of the General Fund expenditures, while 34% is applicable for Police and 17% for the Fire Division. The total expenses for the Cleveland EMS in calendar year 2017 was \$25.8 million. EMS does generate revenue through billing and fees, wherein in calendar year 2017, Cleveland EMS received \$13.2 million in collections.

As the record demonstrates, the Parties began negotiations on March 3, 2016 with additional Bargaining meetings on March 22, May 6, May 19, June 9, June 27, September 8 and December 9. Simultaneously, the City was meeting with several of its other 31 Unions. Prior to the Income Tax increase as previously discussed, the City had reached agreement with some of its non-safety service units, including the SEIU, Plumbers and Teamsters. Following the passage of the Income Tax, the settlements with the other non-safety service Units increased as did the 2017 settlement with the AFCSME Unit. During calendar year 2017, the Parties met on February 10 and again on September 6. It was suggested following the February meeting the City indicated to this Bargaining Unit it was considering offering the Police Patrol Officers' Unit a larger economic package than that offered to the non-safety Units and this Unit would likely be treated similarly. The Parties reconvened for further negotiations following that of the City and the CPPA. Following the September 6 meeting, the Parties met on October 16; 19; November 29; and, December 21, 2017. During Mediation with the City and the CPPA, the Parties agreed to an economic package consisting of 0% for calendar year 2016, 2% for 2017, and 2% for 2018, plus a \$1,800 bump to the base salary of Patrol Officers with less than 10 years service and a

\$3,000 bump into the base salary of Patrol Officers with more than 10 years of service.

Unfortunately, the CPPA membership rejected the terms of the Settlement Agreement. That matter proceeded to Conciliation with the Conciliator awarding the wage increases of 0, 2, and 2, respectively, with a \$3,480 equity adjustment. Moreover, the FOP has a rate differential of 16% thereby equating to Cleveland's Police Sergeant's receiving a \$3,480 equity adjustment. A \$3,480 equity adjustment for Cleveland's Police Sergeants is equivalent to a \$3,000 equity adjustment for Cleveland's Patrol Officers. (*See*, "Patrol Officer I – Max").

This Bargaining Unit and the City engaged in Mediation with the undersigned on February 16, 2018, wherein no Tentative Agreements were reached. While the Parties continued to discuss potential settlement terms, no settlements were obtained. On March 1, 2018, the Bargaining Unit notified the City it was withdrawing approximately nine (9) of its proposals and advised the City of certain changes it was agreeable to on the Training Wage and the time period for review of HDI requests. The City withdrew two of its proposals, thus resulting in 27 open issues remaining for consideration by the undersigned. Prior to Mediation and during the course of negotiations, the Parties reached agreement on approximately 27 issues primarily involving language and/or the maintaining of current Contract language on certain issues raised during negotiations.

The Parties have stipulated that any and all Tentative Agreements reached during the course of negotiation sessions engaged in by them; subsequent efforts through Mediation assisted by the undersigned and subsequent to those Sessions; and, during the Conciliation Hearings, are to be included in the Successor Collective Bargaining Agreement - any and all Tentative Agreements reached that have not been addressed herein are subject to that agreed to by the Parties.

* * * * *

The City of Cleveland and the Cleveland Association of Rescue Employees, ILA Local 1975, find themselves in a very unique situation. Unique in such a way that comparable EMS Units within the State of Ohio that are stand alone as this Bargaining Unit is, as far as the record demonstrates, do not exist making a comparison extremely difficult. Virtually every City in the State of Ohio have combined the Fire and EMS tasks where one Unit discharges these responsibilities as the need arises. Most, and it is safe to say likely all, Units discharging and providing similar services, do so through Paramedics and EMTs who are also Firefighters. The substance of this Opinion and Award setting forth the issue-by-issue Awards, as articulated herein, is done so based on criteria recognizing both the inability to compare this Unit with others within the State of Ohio, as well as, that which has occurred internally with respect to other Bargaining Units with which the City has Collective Bargaining Agreements. Internal parity and maintaining “pattern” within, in many ways, is compelling and usually affords the “large” governmental entity the administrative ability to finance and implement these functions more effectively and efficiently.

It is important to note the financial data, while voluminous, sets forth a financial picture of the City's ability to fund and finance whatever economic enhancements set forth herein, is one based on fiscal prudence and responsibility in light of the historical and ongoing struggles a municipality of this size and geographic makeup presents. Indeed, the passage of the increase to the Income Tax provided an additional source of income which was not intended to "fix" each and every financial issue facing this City. It was characterized as an attempt to provide the City the opportunity, and the financial ability, to provide basic services, as well as, to address some historical and ongoing financial needs based on the deterioration of the City's infrastructure,

manning issues concerning other Bargaining Units and the duties they provide, and more importantly, an attempt to regain the compliment of those Employees necessary to provide these basic services following significant financial hardships placed upon this City, as well as, others throughout the Country within the last 10-20 years.

While the trends within the State of Ohio are rising upward with respect to recovery and the attendant financial improvements associated therewith, the need to exercise fiscal prudence and caution is always a consideration with a municipality of this size. While this evidentiary record does indeed provide numerous proposals concerning many economic enhancements, both direct and indirect, it is important to put into perspective the overall and overwhelming impact this final and binding dispute resolution process has, not only on this Bargaining Unit, but those that have yet to engage in negotiations concerning their respective Collective Bargaining Agreements. As such, the Conciliator is indeed mindful of the overall impact this Award may have on the City's ability to fund and finance such obligations, as well as, much needed improvements in the way of financial security for Members of the Bargaining Unit.

* * * * *

The City began negotiations with CARE wherein discussions included the presentation and offering of what was characterized as an even larger equity adjustment than that provided to the CPPA members. After numerous bargaining sessions failed to result in a Tentative Agreement being reached, the Parties declared Impasse and moved to Conciliation pursuant to the Collective Bargaining Agreement recognizing a contractual alternative dispute resolution process culminating in this Conciliation Hearing.

During the course of the Conciliation Hearings, the undersigned advised the Parties that based on the Pre-Hearing Statements, supporting documentation, internal and external

comparables, the statutory criteria commonly followed, and certain stipulations of the Parties, the following issue-by-issue final offer Conciliation Award will address issue-by-issue and the prevailing Party with respect thereto, certain modifications with respect to that contained in the Predecessor Collective Bargaining Agreement while taking into consideration the articulated positions of the respective Parties. Such are supported by the evidentiary record and warranted while others sought were not and therefore no compelling basis is found to exist to compel the awarding of a certain position that may have been sought. The Conciliator has extensively reviewed the Parties' Statements prior to, and following, the Mediation Session and Conciliation Hearings, the voluminous evidence in support of positions articulated by each Party, the internal and external comparables relied upon, and the Tentative Agreements reached. Based thereon, the following awarded positions are to be recognized during the duration of the Successor Collective Bargaining Agreement, including core economic issues and other non-economic issues. Certain other issues with either direct and/or indirect economic budgetary impact contained herein will impact the overall consideration of the core benefits at the heart of this Impasse.

As gleaned from the evidentiary record, the transcript of the Conciliation Hearings, the financial resources of the City, based on forecasts and projections, which are largely based on factors outside the control of both the City and the Union, and recognizing the City's ability to fund and finance those issues with direct economic impact at impasse, as well as, those that may have an indirect impact economically, it is with these considerations that the following issue-by-issue Conciliation Award will represent the contractual language for inclusion into the Successor Collective Bargaining Agreement. These factors and others, as articulated by the Parties, impact the position granted by the Conciliator and take into consideration the City's desire to remain fiscally prudent and the Union's objective in receiving certain direct and/or indirect economic

enhancements to those benefits received by members of this Bargaining Unit. Accordingly, the following sets forth the language, based on an issue-by-issue consideration of the positions articulated by each Party, for inclusion into the Successor Collective Bargaining Agreement as follows:

ISSUE 1

**ARTICLE III - MANAGEMENT RIGHTS - PARAGRAPH (J)
(Privatizing or Sub-contracting)**

With respect to Management Rights, Article III, sub-paragraph (J), concerning Privatization and/or Sub-contracting, the status quo - current Contract language - shall be maintained.

ISSUE 2

**ARTICLE IX – LEAVES OF ABSENCE
(Attendance Policy, No-Fault Policy)**

CITY CONCILIATION PROPOSAL

The City proposes a No-Fault Attendance Policy. It indicates that when Employees are absent for reasons other than FMLA; Workers' Compensation; or, Hazardous Duty Injuries, the City could start tabulating points and progressively disciplining Employees for usage without regard to whether a Doctor's note or any other kind of medical verification was provided. Through Conciliation with the Fraternal Order of Police, it was able to obtain the No-Fault Policy it seeks with this Unit. It maintains the language awarded through Conciliation is that language contained in its proposal in these negotiations. Moreover, the Cleveland Police and Patrolmen's Association reached Tentative Agreement with the City which also recognized the No-Fault Attendance Policy it seeks herein. It emphasizes the process involves discussions with the Union and if agreement cannot be reached, then such may be submitted to an Arbitrator for a

final and binding determination. It seeks internal comparability with other Bargaining Units that have this very policy and those that are seeking to implement this that have not resolved their Contracts. The EMS Supervisors have a No-Fault Attendance Policy. Overall, the City is seeking certain operational relief with respect to the manner in which Discipline is monitored given the large number of Employees in the various Bargaining Units as such relates to Attendance.

UNION CONCILIATION PROPOSAL

The Union disputes the City's contention it has a right to implement a No-Fault Policy since such has been bargained and is currently set forth in the Predecessor Collective Bargaining Agreement under Appendix A. While the Union recognizes the City's desire to seek operational relief in this area, it proposes modifications incorporating certain, but not all, of the modifications being sought by the City. The history of the Parties indicates an Absence Abuse Policy for EMS has been included dating back to 1992. Such details the absences falling under that Policy and the terms relating to controlling absence abuse. Such includes a seven-step progressive disciplinary schedule for abuse consisting of more than 30 hours of sick leave in a rolling calendar quarter and engaging in pattern abuse, being AWOL, arriving three times late in a pay period, or missing three "swipes" at the time clock in a pay period.

The Union opposes the City's "right" to implement a No-Fault Policy as proposed, but it will agree to negotiate changes to the terms of the Attendance Policy. It has proposed revisions including renaming that Policy to a "No-Fault Attendance Policy". It indicates the City's proposed changes have no basis since the current Attendance Policy effectively represents a No-Fault Policy allowing the City to consider all non-FMLA and non-hazardous duty injury absences. The City has proposed no empirical data supporting its proposal. The Union's

proposal adopts the City's proposal to lengthen the period within which tardies may result in discipline, lengthening the period in which missed swipes at the time clock may result in discipline, and shortening the Progressive Discipline steps from seven to six.

ANALYSIS & AWARD

Given the plethora of issues at impasse herein and, based on what the Conciliator characterizes as “core issues” of significant importance to the Party proposing such, the City seeks to gain operational relief with respect to a City-wide, if you will, Attendance Policy that would provide ease of implementation and assessment with respect to the nature of an Employee's absence from work. While the evidence of record simply does not support an overuse or abuse of attendance, the very nature of the job duties of these Bargaining Unit Employees would compel a greater opportunity, or more frequent opportunity, to miss a day of work to simply “recharge” and/or "get away from" this very difficult job. It is indeed consistent with the internal success the City has achieved with other Bargaining Units and that awarded in the Conciliation Award with the Fraternal Order of Police, Lodge #8. The significance with respect to what the City is in fact proposing is that the Parties will indeed meet and confer, negotiate the terms and if an agreement cannot be reached relative thereto, such shall be subject to consideration by an Arbitrator for final adjudication on how the Policy would look. All this being said, and more importantly, in light of the other issues subject to this Award, it is hereby ordered that the Successor Collective Bargaining Unit contain the City's proposal concerning the No-Fault Attendance Policy as identified while recognizing also the portions thereof wherein the Union has indicated its agreement in those areas.

ISSUE 3

ARTICLE XV - SHIFT ASSIGNMENTS (EMD's on 12-hour shifts)

UNION CONCILIATION PROPOSAL

The Union proposes to delete what it characterized as outdated language referring to 10-hour shifts that are no longer used by the City and add language assigning all EMD's working in the Red Center to 12-hour shifts. The current schedule of rotating eight-hour shifts for EMD's results in the EMD's receiving only two weekends off every five to six weeks. Due to the lack of adequate number of EMD's, they are frequently subjected to mandated overtime; often working 12-16-hour shifts. The stress of these frequent mandates combined with low pay and a stressful position results in turnover and poor morale. The eight-hour shifts have also adversely affected EMS operations wherein Supervisors and Sergeants working in the Red Center, the Communication's Center, alongside the EMD's, have 12-hour shifts, which would be consistent for the EMD's.

CITY CONCILIATION PROPOSAL

The City recognizes the problematic aspect with respect to these shift assignments being primarily based on diminished manpower and having enough Employees to man the necessary shifts of operation. Whether they are working 12-hour shifts or eight-hour shifts, those shifts need to be covered; consequently, more Employees need to be hired. Placing these Employees on 12-hour shifts versus eight simply does not resolve the coverage issue. The EMD's are not exempt Employees under the Fair Labor Standards Act and as such converting to a 12-hour schedule would have an overtime component for the week wherein the Employees work 48 hours. Such represents a cost implication to the City. Such, as the City contends based on the built-in overtime component, equates to an approximately 5% increase for these Employees. It contends such represents an inherent Management right to schedule Employees as needed.

Commissioner Nicole Carlton indicated there were 33 mandated overtime hours per EMD for calendar year 2017 equating to approximately four shifts per year that were mandated. She indicated there were approximately 7,600 hours of overtime for these Employees, equating to approximately 254 hours per year per person, minus approximately 24 hours a year for training, equating to 230 per person, per year. Such equated to a little over 20 hours per month. She raised concern about if indeed 12-hour shifts were implemented Employees do still call in sick and finding coverage for a 12-hour shift is much more difficult and exhausting to the Employee if in fact they are mandated up to six hours, equating to an 18-hour day to address a shortage.

ANALYSIS AND AWARD

Extensive testimony was provided concerning the overall operations in the Communication Centers both from a 22-year Employee, as well as, the Commissioner. Documentation was provided concerning cost implications, the number of hours of overtime, mandated overtime, training hours equating to overtime, and the average number of hours worked on a voluntary basis of those affected Employees. It would seem, based on the experiences throughout this jurisdiction and the State of Ohio that, by and large, many service forces whether they be a complimentary component, i.e., communications, etc. to other services, i.e., Police and Fire, many recognize the importance of “time off”. Such affects the overall ability of retention and morale of Employees, not to mention the effectiveness of discharging their duties when the need arises to fill vacancies, whether by mandate or on a voluntary basis. It would seem consistent with other means employed with this Bargaining Unit that the Dispatch component thereof also work under a consistent operational timeframe basis.

Indeed, while it was suggested there were cost savings relative to a decrease in overtime, the fact of the matter remains additional Employees are necessary; to be trained in hope of retaining them. Those efforts are being endeavored by the City; unfortunately, those endeavors are time consuming and the benefit of additional personnel is not immediately realized. Indeed, the communications component of the services provided is stressful in nature and the need for recuperative time off is of tantamount concern.

Based thereon, and based on the other issues addressed herein, it is hereby ordered that the Union's final offer be awarded.

ISSUE 4

ARTICLE XV - SHIFT ASSIGNMENTS (Star Days)

UNION CONCILIATION PROPOSAL

The Union seeks to modify the existing terms requiring the City to schedule “Star Days” off every third or fourth pay period, so long as, the scheduling thereof does not unduly disrupt the division of EMS operations. It indicates the Star Day is a bi-product of the 1995 Agreement between the City and the Union to comply with FLSA overtime threshold requirements while simultaneously working Paramedics and EMT's on 12-hour shifts. These Bargaining Unit Members are not covered by the same FLSA exemptions as Police and Fire Units and as a result, any hours worked over 40 hours per week are payable at the applicable overtime rates. With a rotating 12-hour shift schedule, Paramedics and EMT's work 36 hours one week and 48 hours the next. To compensate an Employee for working eight hours of overtime in the “long week”, or the 48-hour week, the Parties agreed these Employees would be paid 12 hours for straight time with four hours payable in the short week bringing pay from 36 to 40 hours for the short week, two additional hours at straight time, and another six hours accumulating toward a Star

Day. The City would attempt to schedule the Employees off on a Star Day every third or fourth pay period, once the Employee had accumulated 12 hours of Star Day time. If the City was unable to schedule the Star Day after the fourth pay period, the City would pay out the time to the Employees. From approximately 1996 to 2006, the negotiated Star Day terms resulted in an average Employee receiving approximately nine Star Days off per year.

In calendar year 2007, the Paramedics and the EMT's were unilaterally changed to eight-hour shifts and from that timeframe until 2010, the Bargaining Unit lost approximately 60 members. In 2010, the Paramedics and EMT's went back to 12-hour shifts, but due to the severe lack of staffing, the City was unable to schedule off Star Days. In 2011, the City announced it planned to integrate the Division of Fire and the Division of EMS. By 2013, this Bargaining Unit lost another 40 Employees dropping to 168 members, down nearly 100 Employees since 2007. In 2014, the Parties negotiated terms governing the potential integration of Fire and EMS and the EMS staffing began to increase in incremental steps. There are currently 280 Bargaining Unit members. As such, in April 2016, with the staffing improving, the Union requested the City to begin to schedule Star Days off when able. The Commissioner responded she was compliant with Article XV's terms and conditions whereupon the Union resolved to address the matter in these negotiations.

The Union indicates the intent of a Start Day was that overtime work be payable to Employee's in the form of time off, i.e., a Star Day, sometimes referred to as a "Kelly Day" in the Division of Fire. Due to insufficient staffing in the Division of EMS, the City was unable to schedule Star Days off. Given the fact staffing has improved, the Union seeks the restoration of Star Days when the City is able to schedule them. The City proposes to eliminate Star Days entirely and instead pay overtime in place of the Star Days. For approximately eight years, it has

not scheduled any Star Days for Employees and instead has been paid the overtime in place thereof. The City's position was that it did not schedule these days off because of insufficient staffing. However, given the fact staffing has improved, the City must now live up to the benefit bargained by the Union. Given the manner in which these Employees are overworked, according to the Union, the Employees would rather have the day off rather than the pay.

CITY CONCILIATION PROPOSAL

The City, too, recognizes these Paramedics do not fall within the FLSA, Section 7(K) exemption as do Police Officers and Firefighters. These Employees receive overtime compensation for all hours worked in excess of 40 hours in a workweek. The City's Paramedics work 12-hour shifts working 36 hours one week and 48 the next. As such, their regular schedules contain a built-in overtime component. The City's current language contemplates the four hours of built-in overtime earned every two weeks be converted into 12-hour day every six weeks. If the City is not operationally capable of providing the day off every six weeks, it will either pay it out in cash, or it will be banked as Comp Time. It emphasizes that for approximately eight years, due to staffing concerns, the City has paid the "Star Day" in a cash payment. The Union has not challenged this practice for the duration of this time period. The City seeks to memorialize this practice that has long existed. This proposal will not modify the *status quo*, nor would it impact the compensation received by the Paramedics.

ANALYSIS AND AWARD

The crux of the Union's shift assignment proposal concerning the recognition and scheduling of Star Days to address the 12-hour schedules of 48 for the long week and 36 for the short week, has a built-in component for overtime consideration the Union indicates the Employees would rather have the time off as opposed to the pay. The record demonstrates the

existence of the Star Day is similar to that of a Kelly Day in the Division of Fire. The Union's language in its Final Offer Proposal, dated March 2, 2018, has in Paragraph (C) the deletion of "attempt". Other than that deletion, that contained in the Union's proposal concerning this, represents, by and large, the *status quo*. The City seeks to eliminate that altogether based on the unchallenged nature of this issue by the Union for the past eight years when it was incapable, based on short staffing, to schedule these additional days off for these Employees working under this schedule. As the record clearly indicates, at this juncture staffing has improved and additional Employees are in the process of being added to address the staffing concerns within this Bargaining Unit. Given the existence of this language, the historical evolution of this language, and its existence in the Collective Bargaining Agreement, there is no compelling evidence to suggest that complete elimination of this concept is supported by the evidentiary record.

An abundance of evidence was presented relative to the stressful nature of these positions as first responders to accident scenes, shootings, and other catastrophic incidents that definitely take a toll on one's psyche and emotional state. Based on the process agreed to by the Parties, the Conciliator is to consider the final offer proposal based on that articulated by the Parties and supported by the evidence of record. The City acknowledges the Parties negotiated an FSLA settlement over 20 years ago. Since that time, the staffing levels of this Bargaining Unit has declined rendering it incapable of providing these Star Days for a period amassing eight to nine years. Moreover, the vast majority of these Employees in the Bargaining Unit have not experienced what a Star Day represents.

It is compelling to note the City's proposal would eliminate the existing language acknowledging the existence of Star Days. The Union's language, on the other hand, provides

certain considerations as modifications to that language but maintaining the “core” elements contained in the Predecessor Collective Bargaining Agreement. It provides the City relief with respect to the unduly disruption of the Division of EMS operations as a “safeguard” when scheduling Star Days. The other modification in Paragraph D, under Sub-paragraph 4, titled “Overtime”, addresses the settlement agreement reached concerning the Division of Police and City some 20 years prior. Based on this evidence and based on the impact of each proposal, one providing modifications, the other eliminating the entire concept of the Star Day, the proposal submitted as a final offer by the Union is hereby awarded.

ISSUE 5

ARTICLE XXIII – OVERTIME-PREMIUM PAY
(When Overtime is Payable)

ISSUE 6

ARTICLE XXIII – OVERTIME-PREMIUM PAY
(Procedure for Ordering Mandatory Overtime)

ISSUE 7

ARTICLE XXIII – OVERTIME-PREMIUM PAY
(Uninterrupted Time-off Before Return-to-Duty)

ISSUE 8

ARTICLE XXIII – OVERTIME-PREMIUM PAY
(Limits on Mandating Overtime)

ISSUE 9

ARTICLE XXIII – OVERTIME-PREMIUM PAY
(Overtime Payable in Cash or Comp-Time)

Inasmuch as Issues 5, 6, 7, 8, and 9 deal with Article XXIII, titled “Overtime - Premium Pay” and the various aspects contained therein, they will be discussed with respect to the overall Article in the Analysis and Award in relation thereto.

UNION CONCILIATION PROPOSALS

The Union rejects the City's proposal to delete the current terms establishing overtime being payable for hours worked in excess of the Employee's regular daily shift, 8 or 12 hours, respectively per day, depending on that shift. These Employees have received overtime compensation for hours worked in excess of their regular day shift whether it is 8 or 12 hours dating back to 1992. As such, there is no basis to overturn this longstanding process.

The Union also seeks to clarify the procedure for ordering mandatory overtime by specifying the more senior volunteer will be selected first for the mandatory overtime and once that volunteer overtime eligibility list is exhausted, utilize all available methods to fill the slot with a volunteer before mandating Employees.

The Union also seeks an increase in the number of uninterrupted hours off before returning to duty from 6 until 8 when an Employee is mandated to stay on duty for 18 consecutive hours or who volunteers to work 24 consecutive hours.

The Union also seeks to place limits on mandating overtime for those Employees already working overtime not be mandated to working additional contiguous overtime hours and that Employees not be mandated to work overtime on two consecutive shifts.

It also seeks to maintain current contract language that affords Employees discretion whether to receive overtime and payment of cash or accrue compensatory time.

CITY CONCILIATION PROPOSALS

The City, as articulated, seeks operational measures to address the abundance of overtime that arises for various reasons. It emphasizes its endeavors to increase personnel to those levels that would hopefully reduce overtime and the adverse implications such has on its administrative

and operational needs, as well as, the manner in which such impacts Members of the Bargaining Unit.

Moreover, it seeks to eliminate the payment of overtime in excess of the 12-hour workday and limit overtime hours to hours worked in excess of 40 in a week; allow the City to determine whether overtime is paid in Comp-time or cash; and, eliminate any references to applying Comp-time to “Star Days” as such is impacted by the built-in overtime component based on the 48/36 hour schedule and continue to, as it has for the last 8-9 years, pay the extra time in cash.

ANALYSIS AND AWARD

ISSUE 5 – Union Proposal Awarded

ISSUE 6 – City Proposal Awarded

ISSUE 7 – City Proposal Awarded

ISSUE 8 – Union Proposal Awarded

ISSUE 9 – Current Contract Language (As agreed to during Conciliation Hearings)

It must be noted the City’s endeavors to increase the compliment of personnel in the EMS Division will undoubtedly impact many aspects of this Article. Having additional personnel to “share the load” will address the Employer’s operational and staffing issues as they arise and should reduce mandated Overtime and thereby afford Bargaining Unit personnel more time off. Balancing the needs of both the Employer and the affected Employees is compelling and serves as the basis for that awarded regarding this Article.

With respect to Issue 5, as clarified by the Parties, such is impacted by the outcome of the Star Days Issue. The City’s proposal to eliminate Star Day scheduling time off and pay for such time, was not awarded herein (*See*, Issue 4). As such, this language would simply coincide with,

and be complimentary to, that proposal and Award. The elimination of Star Days scheduling time off was not upheld based on the length of time it has existed in the Collective Bargaining Agreement. The Union's proposal in regard to this aspect of Article XXIII, as such is impacted by the Star Days award, is awarded herein.

Given the testimony of record concerning the operational impact within this Bargaining Unit facing the City with scheduling and vacancies as they arise, the current system employed seemingly, effectively addresses the operational needs of the Employer and shall be ordered. While this process involves an “either or proposition”, the consideration of some middle ground, which would indeed be effective and appropriate in many ways concerning this particular Article, nonetheless does not lend itself to that agreed to by the Parties and thus conferred upon the Conciliator. The "sticking point" as characterized, had to do with the amount of time off before an Employee is to return to their next shift; extending the six hours off to eight consecutive uninterrupted hours off-duty before being required to return to duty. It would seem the crux of this Article has more to do with finding a better means of filling vacancies in a more effective manner than resorting to the use of mandated overtime. Unfortunately, at times, such simply cannot be avoided and the Employer must exhaust any and all measures to carry out its mission of providing these services to the community.

Much discussion ensued about the problematic aspect of filling an eight-hour off-duty time slot mandated under the Agreement versus a six-hour mandated time slot as the current practice indicates. With respect to the procedure for ordering mandatory overtime, the current language, is ordered.

With respect to the uninterrupted time off between the return-to-duty as set forth in Issue 7 of the Union's Conciliation Proposal, which currently provides for six hours off before return

to duty, the testimony of record from the Commissioner compels the determination that the current practice be awarded. Given the problematic operational dilemma such creates, it would indeed seem logical and reasonable that a six-hour obligation would be easier to offer and fill than an eight-hour obligation.

With respect to the limits on mandating overtime, in Paragraph 2 of Article XXIII, the current language identifying six uninterrupted hours off-duty before being required to return to duty shall be maintained.

Based on common sense safety concerns involving the Union's proposal - Issue 8 - Employees already working on overtime shall not be mandated to work additional contiguous overtime hours.

Employees shall not be mandated on two consecutive shifts. This language, based on the issue-by-issue proposals on a final-offer basis, indeed seems reasonable based on safety concerns.

With respect to Issue 9, both Parties indicated Agreement with maintaining current Contract language and as such, shall be awarded.

ISSUE X

ARTICLE 25 – DISCIPLINE

CITY CONCILIATION PROPOSAL

The City of Cleveland seeks to increase the timeframe for discipline from 30 to 60 days; increase the “shelf life” for discipline from 2-3 years and to, as it contends, to allow sufficient time to conduct proper investigations of workplace incidents potentially resulting in disciplinary action.

The City acknowledges and emphasizes that it was successful in negotiating in the Cleveland Police Patrolmen's Association's contract with respect to the Article 25 changes. It contends it must maintain the workforce effectively requiring Employees to perform their duties and the longer it can look back in the terms of discipline for Progressive Discipline purposes, the better it can monitor disciplinary matters. It emphasizes such was awarded through conciliation with the Police Department.

UNION CONCILIATION PROPOSAL

The Union contends and proposes to maintain current contract language with respect to 30 working days within to issue disciplinary action, not 60 days as proposed by the Employer. It seeks to maintain current language for past disciplinary action for Progressive Discipline consideration continue to be limited to two years and rejects the City's proposal to increase that timeframe, i.e. shelf life, to three years.

ANALYSIS AND AWARD

The historical evolution of these components of discipline as set forth in Article 25 dates back to 1992. The Parties had five working days to issue discipline. They negotiated an extension of that time period to 30 working days from when the Commissioner has knowledge of the event. That was negotiated in 1995 and has remained that timeframe since then. There is no evidence to suggest that the timeframe as it currently exists in any way has proved problematic with the City with respect to the issuance of disciplinary action to Employees. Additionally, the so-called "shelf life" of prior discipline for purposes of Progressive Discipline currently recognizes a two-year timeframe agreed to by the Parties in 1992. The bargaining history of the Parties suggests making a change with such historical and longstanding existence would be misplaced; the Tentative Agreement reached with the Cleveland Police Patrolmen's Association,

as well as, the Cleveland Police Department Conciliation Award, notwithstanding. This record simply does not contain a compelling evidentiary basis to warrant any change with respect to Article 25. The Party proposing any modification, deletion, or alteration to existing language, particularly that with this historical magnitude, bears the burden of persuasion to compel the modification as proposed. Based on this record, there is no evidence that would suggest any changes relative thereto would be warranted.

Moreover, current Contract language was agreed to during the Conciliation Hearings and is so ordered herein. Additionally, the City withdrew its proposal regarding an extension to the “shelf-life” of Discipline and as such, current Contract language is awarded and ordered.

ISSUE XI; ISSUE XII; AND, ISSUE XIII

ARTICLE 28 – HEALTHCARE COVERAGE

(Contribution Rate);

(ADDENDUMS A & B – Deductible and Out-of-Pocket Maximums); and,

(Other Plan Changes)

CITY CONCILIATION PROPOSAL

The City proposes to increase the premium contributions effective June 1, 2018 to 14% for the Family Plan and 15% for the Single Plan for those Employees completing the City defined Wellness Initiative. The non-Wellness premium contributions would be 18% for the Family Plan and 19% for the Single Plan coverage. Additionally, effective June 1, 2018, it would propose to modify the Plan design on the Plus Plan to modify the annual deductible to \$750 for the Single Plan and \$1,500 for the Family Plan; increase the out-of-pocket maximums to \$1,500 for the Single Plan and \$3,000 for the Family Plan in-network, while the out-of-network terms would be set by the Carrier. It would also modify the Premium Contributions for

an optional High Deductible Plan requiring Employees to pay 9% for the Family Plan and 10% for the Single Plan of the City's monthly premium cost for hospitalization, prescription drug cost, vision and dental coverages. It would allow for the Employee Premium Contributions rates to be reduced to 5% for the Family Plan and 6% for the Single Plan for those Employees participating in the City defined Wellness Initiatives. It would eliminate the HMO option and provide the City the right to implement a Smoking-Cessation Incentive Policy.

UNION CONCILIATION PROPOSAL

The Union proposes to maintain the current contract language wherein Employees would contribute 12% for Family coverage; 13% for single coverage under the Wellness Plan and 16% for the Family Plan, 17% for the Single Plan under the Non-Wellness Plan. It would propose to reject the City's proposal to increase the Premium Contributions as previously identified. It submits Bargaining Unit Members primarily utilize two of the Plans offered by the City, the Major Medical PPO Plan through Anthem and the High Deductible Plan through Medical Mutual. Under the Medical Mutual Plan, the Wellness Plan Members pay a monthly premium contribution of \$134.92 for Family coverage and \$57.74 for Single coverage. Under the Anthem Wellness Plan, the Family Plan premium is \$168.88 per month and \$73.68 for a Single Plan per month. The Employee premium cost for the Family coverage under the Anthem Plan, based on the City's proposal, would increase by \$465 for calendar year 2018 representing a 0.9% of the top-paid Paramedic's annual salary. Under the Medical Mutual Plan, such would increase by \$372 for calendar year 2018, a 0.7% increase of a top-paid Paramedic's annual salary. It emphasizes that any economic settlement take into consideration the additional Healthcare costs the City seeks to shift onto the Employees.

ANALYSIS AND AWARD

As set forth herein, Issues XI; Issue XII; and Issue XIII, respectively, are combined and addressed collectively as such relate to Healthcare. It is hereby awarded the Successor Collective Bargaining Agreement contain that proposal concerning Article 28 as proposed by the City. Given the magnitude of the number of Employees within the City, not only in this Bargaining Unit, but other Bargaining Units and non-Union alike, it would indeed be practical to have all Employees participating in the same or similar Health Insurance Plans with the same and/or similar contribution rates, premium contributions, plan particulars and the like. Indeed, given the number of Employees, it is fiscally prudent to all involved to have the vast majority, if not all, Employees under the same Plans. Given the types of Plans available to Employees and the contribution rates, etc. in relation thereto, it would indeed seem more fiscally prudent to reap the benefits of having a vast majority of insured Employees under fewer Plans as the proposed Plans suggest.

Moreover, given the other economic enhancements awarded herein, the consistency of that reached either through negotiations with other Bargaining Units and/or through Fact Finding and/or Conciliation, would seem consistent with the manner in which the City and other Employee groups have addressed this Article. Therefore, the City's proposal with respect to Article 28 is hereby awarded.

The consideration of Article 28, as such relates to the contribution rate, the deductible, maximum out-of-pocket, and the other Plan changes, are summarized for disposition herein and represent the Award pertaining to those items, as well as, Addendum's A and B, respectively, as proposed by the City as previously discussed. As such, Issues XI, XII and XIII, with respect to Healthcare, are awarded based on the City's conciliation proposals.

ISSUES XIV

**ARTICLE 29 - HAZARDOUS DUTY INJURY "HDI"
(MENTAL TRAUMA QUALIFYING FOR HDI);**

AND,

ISSUE XV

**HAZARDOUS DUTY INJURY "HDI"
TIME PERIOD FOR REVIEW OF HDI REQUEST**

The following issues concerning Issue XIV concerning, Article 29 titled “Hazardous Duty Injury” (mental trauma qualifies for HDI) as characterized by the Union; and, Issue XV concerning the “time-period for review of HDI requests” will be addressed collectively based on the dependence of each Issue on the other and the inner-workings of this Article.

UNION CONCILIATION PROPOSAL

The Union seeks to add post-incident mental trauma recognized by a City physician to the list of injuries qualifying for Hazardous Duty Injury under the Collective Bargaining Agreement. The Agreement provides paid leave for injuries sustained on duty as a result of assault, patient transport, patient care issues and other grounds that qualify as Hazardous Duty Injuries. It emphasizes Paramedics and EMT's, who respond to emergencies, can suffer from post-incident mental trauma. Exposure to these traumatic EMS calls have been associated with increased risk for development of mental disorders, post-traumatic stress, depression, panic, anxiety, and vulnerability to alcohol and drug abuse.

The City has in place similar considerations for the Police Department and Division of Fire. The Police have Post-Traumatic Incident Protocol wherein a confidential Wellness Program of peer support; an Employee Assistance Unit composed of Police Unit Members

providing assistance to members and Return- to-Duty Program to help decrease stress in returning to work after an extended leave.

The Fire Department has an Employee Assistance Program with a Bargaining Unit Member serving as an EAP Representative who provides assistance to the Fire personnel. It also recognizes mental stress, injury/illness, may qualify for HDI when related to an emergency incident and approved by the City's Medical Director. The EMS has no equivalent EAP Program; no specific EMS person for Members to speak to after such traumatic calls; and, no mental health program in place like the Police and Fire. The Union seeks to modify the HDI terms to recognize post-incident mental trauma as qualifying for HDI after a traumatic call contingent upon a City physician deeming the leave appropriate.

CITY CONCILIATION PROPOSAL

The City rejects consideration concerning these two issues since neither the history of Collective Bargaining with these Parties, as well as, the comparables relied upon, do not have emotional distress as a basis for fully-paid leave. It emphasizes the Union is not privy to what occurs internally within the City and its other Units and to grant the Union's proposal herein would “open the door” for something so nebulous that claims of emotional distress would exponentially increase. The City emphasizes the EMS Division is at liberty to utilize the services it currently has in place for these types of matters and it again reiterates its proposition to solidify the existing resources available to the Police and Fire and make those available to the EMS Division. Police and Fire, both first responders, see very traumatic matters as does these members of this Bargaining Unit. Many of them are EMT's providing initial treatment when they arrive at a scene and a certain number are in fact Paramedics. The City, based on its contention that these resources are currently available and its further assurance that it would

make these resources available to this Bargaining Unit, thereby rejects the Union's proposal to add additional personnel to address these mental traumatic stress issues, and the qualification for paid leave based thereon.

ANALYSIS AND AWARD

Much discussion ensued concerning the duties and responsibilities, the job-related experiences, and the aftermath those experiences have had on Members of this Bargaining Unit. Indeed, those in the first responder positions, i.e., the Police, Fire and EMS, indeed see the aftermath of some very horrific events. The PowerPoint presentation presented by the Union indicates the types of events, accidents, shootings, stabbings, events of all types wherein fatalities result, and/or traumatic injuries are sustained. Indeed, such would have an immediate, and in some ways, lasting impact on those who, unfortunately, experience that which is present at an accident scene or an event scene that may in some ways be incomprehensible to fathom. The nature of the work in question is such that these events, these individuals, i.e., members of the EMS Division, are called upon because of their expertise, because of their abilities, because of their training, to address; to be dispatched to arrive at a scene and triage the circumstances to ascertain the severity of the injured parties and then proceed to provide whatever medical care that can be provided at an accident scene or event scene. They then provide the necessary transportation to a Healthcare Facility that may have a better opportunity to address these types of injuries, etc.

The evidentiary record demonstrates that indeed the Police Department has approximately 7, for lack of a better characterization "EAP Counselors", who deal with events involving members of the Police Department; and, the Fire Department has in place funding for apparently two positions. At the time of the Hearing, it was unclear as to whether they were

currently filled since one individual had left the employment of the City and one was apparently retiring and was, at that point, training his replacement. In any event, both Police and Fire, two first responders providing vital support at these horrific scenes, have in place the ability to address the mental consequences and aftermath of what is observed by them. Given these internal considerations, and the overall consideration of providing the necessary initial treatment for such that impacts the mental well-being of these Employees, the proposals contained concerning Issues XIII and XV, respectively, as articulated by the Union, shall be awarded and implemented.

While the Conciliator is indeed mindful that such would necessarily require a posting a bidding process to ascertain an individual to serve in this capacity, as well as, training attendant therewith for someone serving in this Capacity, the implementation date to afford the City the ability to put this position into place, shall not occur until January 1, 2019. Otherwise, that contained in the Union's proposal concerning Article 29 concerning Hazardous Duty Injury with respect to Issues XIV and XV, respectively, are hereby awarded. Additionally, pursuant to that agreed to during the Conciliation Hearings, the time period for review of an HDI request shall be 14 calendar days to either approve or deny HDI; and, the deletion of the first sentence of the third Paragraph of Article 29 (B) as indicated.

ISSUE XVI

ARTICLE 31 – GENERAL WAGE INCREASE;

AND,

ARTICLE 32 – STEP SCHEDULE

UNION CONCILIATION PROPOSAL

The Union proposes an increase to Bargaining Unit Members' General Wage effective April 1, 2016 of 0% wage increase; effective April 1, 2017 a 2% wage increase; and, effective April 1, 2018 a \$1,800 equity adjustment to "Start" salary, \$1,200 equity adjustment to "After 9 Years" salary and a 2% wage increase. The Union contends this wage package was the same as the City agreed to tentatively with the Patrol Officer's Bargaining Unit and the equivalent of the same wages recently awarded to the Fraternal Order of Police through Conciliation. It contends Paramedics make far less than the Members of the Police and Fire Departments, respectively in annual compensation and receive less clothing allowance, a less call-in pay, less training benefits, less FTO pay, a less maximum of HDI, and less contributions in pension. The pattern, it contends, concerning the equity adjustment for the other safety units, should be awarded to this Bargaining Unit so not to exacerbate the current pay disparity between the EMS Bargaining Unit and the Police and Fire Departments. Such, if less, would create a retention problem for new Employees and those frequently leaving the City for other Units outside the City. It contends there is no basis to penalize this Bargaining Unit by awarding a lesser wage package merely because they are already under paid.

CITY CONCILIATION PROPOSAL

The City proposes no wage increase for year one of the Successor Collective Bargaining Agreement; retroactive to April 1, 2017, apply a 2% wage increase to all classifications, i.e., EMT's; Paramedics I, Paramedics II, Paramedics III, and EMD's. Effective April 1, 2018, apply a 2% wage increase to all classifications as previously identified. It also proposes an equity adjustment effective April 1, 2018 of an additional \$1,600 into the base rate of the Paramedics I, II, and III Classifications after application of the April 1, 2018 2% wage increase; effective April 1, 2018, provide an additional \$1,150 into the base rate of Paramedics III with 10 years or more

service after application of the April 1, 2018 2% wage increase and within 60 days of the Conciliator's Award, the EMT's and EMD's shall receive a one-time lump sum signing bonus of \$500 not rolled into the base. It also proposes to modify the Training Rate effective April 1, 2018.

The City emphasizes that with respect to Police and Fire, and the comparison to and with this Bargaining Unit, it represents “apples and oranges” regarding the duties and responsibilities each group performs. The pattern relied upon by the City with respect to wages, given the other enhancements referenced herein and sought by the Union, places the City in a tenuous position with respect to its overall budgetary concerns and its ability to finance these economic enhancements.

ANALYSIS AND AWARD

As the evidentiary record demonstrates, the Patrol Association had a tentative Agreement that was rejected by Members of the Bargaining Unit and the Fraternal Order of Police went to Conciliation wherein the wage package as proposed contained certain annual increases and such was consistent with the Patrol Association and the FOP Bargaining Unit. The Parties are in agreement with respect to 2016 receiving a 0% increase for what constitutes the “year one” of the Successor Collective Bargaining Agreement. Also, the Parties are in agreement with respect to a 2% base wage increase added to the base rates of the Classifications retroactive to April 1, 2017. With respect to year two, the Parties are in agreement to a 2% wage increase effective April 1, 2018. As such both are awarded.

Additionally, there is no basis not to follow the pattern with respect to wages as received by the Patrolmen's Association, as well as, the FOP Bargaining Units. In that regard, effective April 1, 2018, a \$1,800 equity adjustment shall be made to the "Start" annual compensation of all

Bargaining Unit classifications set forth under Step Schedule (EMD, EMT, Paramedic I, II, III); and, another \$1,200 equity adjustment to the "After 9 Years" annual compensation of the same Bargaining Unit classifications. Such shall be reflected as well in the Step Schedule currently existing in the Predecessor Collective Bargaining Agreement. Reference was made regarding maintaining the "pattern" throughout the Bargaining Units within the City and such have been considered with respect to other Issues. Wages are awarded based on maintaining that received by other "first responder" Units.

ISSUE XVII

**ARTICLE 31 – COMPENSATION
TRAINING WAGE**

The Parties are in agreement that effective April 1, 2018 the Training Wage shall be increased to \$15.00 per hour. Inasmuch as the Parties are in agreement relative thereto, such is hereby awarded.

ISSUE XVIII

**ARTICLE 31 - COMPENSATION
FTO AND DTO PAY**

UNION CONCILIATION PROPOSAL

The Union proposes to increase the Field Training Officer and Dispatch Training Officer pay from an additional 1.5 hours of pay for FTO/DTO work to an additional two (2) hours of pay for FTO/DTO work which it contends is equivalent to that received by the Patrol Officers for their FTO work.

CITY CONCILIATION PROPOSAL

The City rejects the Union's proposal to increase the amount of pay for the FTO and DTO work in that such represents yet another financial consideration to its overall budgetary concerns. It opposes the inclusion of any increase relative to this Bargaining Unit.

ANALYSIS AND AWARD

Based on this evidentiary record, there exists no compelling basis to increase the amount of pay for FTO/DTO work as proposed by the Union. Absent compelling evidentiary basis to change existing contractual language an Award of the *status quo*, which is the position taken by the Employer, will be awarded. Based thereon, the City's proposal of maintaining current Contract language relative to FTO/DTO work is awarded. Additionally, based on the discussions during the Conciliation Hearings, the Parties agreed to maintain current Contract language. As such, current Contract language is awarded.

ISSUE XIX

ARTICLE 31 – COMPENSATION **SENIOR FUNCTIONING PARAMEDIC PAY**

UNION CONCILIATION PROPOSAL

The Union sought to have those Employees who maintain functioning Paramedic Certification, with no lapse, a lump-sum of \$1,000 payable at 15, 20, 25, and 30 years of continuous maintenance of that Paramedic Certification. It contends these Paramedics are grossly underpaid in comparison to those Police and Fire counterparts and other comparable external jurisdictions, as well as, Paramedics and EMT's working at area Hospitals. The Cleveland Paramedics require greater training and certification than their Police and Fire counterparts and are required to work longer than the Police and Fire Employees. They receive lesser benefits on several additional terms in comparison to Police and Fire and this would

certainly lessen the disparity in pay that exists between this Bargaining Unit and the Police and Fire Departments of the City. Such would compensate these long-term Paramedics for constant expansion of their scope of job responsibilities and would keep pace with evolving patient care protocols and medical technology beyond their Police and Fire counterparts.

CITY CONCILIATION PROPOSAL

The City rejects the Union's proposal concerning the receipt of these lump-sum payments based on the other financial enhancements sought by the Union. Such, it contends, would provide yet another economic impact on an already strained budget that it contends is simply not warranted. Throughout these negotiations, mediation and culminating in this Conciliation, much discussion ensued about the comparison of this Bargaining Unit with the Police and Fire Employees with the City of Cleveland. The City contends there is no comparison. The nature of the Police work is different from that of Fire and Fire is different from that of Police. The same can be said for the duties and responsibilities provided by this Bargaining Unit compared to those. In this regard, the City rejects the Union's proposal for this increase.

ANALYSIS AND AWARD

Given the magnitude of the number of outstanding issues in this Conciliation proceeding, it goes without saying that emphasis must be placed on those benefits that will provide the greater good for those seeking them while also recognizing the financial obligation of the entity providing them. It must be noted that given the overall financial impact of the numerous issues with either direct or indirect economic consequences, the evidentiary record must be compelling to support that being sought relative to those unresolved issues.

During the course of the Conciliation Hearings, CARE withdrew its Proposal concerning this Issue, and as such, no “award” relative thereto is warranted.

ISSUE XX

ARTICLE 34 **UNIFORM ALLOWANCE**

UNION CONCILIATION PROPOSAL

The Union proposes an increase to the Employee's total annual Uniform and Maintenance allowances from \$800 to \$1,100 effective contract year 2018. The Union indicates the Police receive an annual Uniform Allowance of \$1,150; Police Supervisors receive an annual Uniform Allowance totaling \$1,150; and, Firefighters receive an annual Uniform Allowance of \$1,000 with the Firefighter's turnout clothing furnished by the City. The Paramedics and EMT's receive \$800. The Union submits there is simply no basis these Employees receive an annual Uniform Allowance below that received by the City's other safety forces. These uniforms suffer the same wear and tear, are just as expensive, if not more, ranging in the types of clothing required to be worn and the prices they demand. They also must buy "Class A" uniform items including dress shirts, ties, belts, dress hats, hat badges and other items and purchase their replacements for bulletproof vests which run approximately \$800 per replacement.

CITY CONCILIATION PROPOSAL

The City rejects the Union's proposal to increase the Uniform Allowance arguing such represents yet another economic imposition on an already strained City budget. It emphasizes the amount of the Uniform Allowance is indeed in line with that received by other comparable jurisdictions and draws distinction between Police and Fire Employees compared to this Bargaining Unit.

ANALYSIS AND AWARD

Based on this evidentiary record, there exists no compelling basis to compel the awarding of the Union's proposal to increase the Uniform Allowance as proposed. Again, while the

distinction must be drawn with respect to job duties and responsibilities of this Bargaining Unit compared to Police and Fire, it nonetheless has Uniform obligations as well. However, given the other economic enhancements concerning, especially the equity adjustment, and wages, and the number of other items previously addressed, there simply exists no compelling basis to grant that sought by the Union. As such, the City's proposal maintaining the *status quo* of current Contract language is awarded.

ISSUE XXI

ARTICLE 39

SERGEANT/CREW CHIEF; AND, SERGEANT/COORDINATOR ASSIGNMENTS

CITY CONCILIATION PROPOSAL

The City proposes to require that where an EMD is certified as an EMT and serving as a Sergeant, the EMD has to have passed the EMT State Certification Examination and the EMT Functioning Examination in order to receive the same compensation as the EMT Sergeants modifying the language contained in Article 39.

UNION CONCILIATION PROPOSAL

The Union proposes to maintain current Contract language and rejects the City's proposal to require any EMD's working as Sergeants to have passed the EMT Functioning Examination in order to receive Sergeant pay. It submits the City has not articulated the basis for requiring the EMD's to pass these Exams in order to receive Sergeant pay. The addition of conditions to receive Sergeant pay would result in these members losing Sergeant pay bargained for and attained.

ANALYSIS AND AWARD

Inasmuch as the Union's Conciliation Proposal is to maintain current Contract language and absent a compelling basis to award that sought by the City, the Union's Conciliation Proposal to maintain current Contract language, or the *status quo*, is hereby awarded. The evidence of record simply does not suggest that the current process, based on the current language contained in Article 39, is in anyway problematic and the modification sought by the City is simply unsupported based thereon.

Additionally, during the Conciliation Hearings, the Parties agreed to maintain current Contract language. As such, current Contract language is awarded.

ISSUE XXII

ARTICLE 40 - ADVANCED LIFE SUPPORT (Tuition Reimbursement)

UNION CONCILIATION PROPOSAL

The Union proposes that effective April 1, 2018, the City reimburse new Employees for tuition expenses from obtaining Paramedic Certification. If an Employee receives the Employee reimbursement and leaves his/her Employment for another EMS and/or Fire-related position within five (5) years, the Employee must repay the City for the tuition reimbursement. It emphasizes the City now pays the expenses of its Firefighters and Police Officers to obtain the certification needed for job classifications. It does not, however, currently pay the expenses of an Employee to attend Paramedic Certification. It submits these Paramedics should not be denied any type of tuition reimbursement afforded to Police and Fire. It also recognizes given the nature of the work and the fact it is looked at as a "Paramedic training ground" for area Fire Departments, the repayment obligation if the Employee leaves within five (5) years after

receiving the tuition reimbursement, would deter Employees leaving the City to seek employment elsewhere after receiving this Certification.

CITY CONCILIATION PROPOSAL

The City rejects the Union's proposal concerning tuition reimbursement with respect to Article 40. It contends such represents another financial obligation placed upon its budgetary concerns. Its ability to fund and finance other economic enhancements sought by the Union will strain its budget and such is simply unsupported by the evidentiary record.

ANALYSIS AND AWARD

The evidence of record simply does not support the enhancements sought by the Union to provide tuition reimbursement for new Employees' tuition expenses in obtaining Paramedic Certification. Despite the Union's proposal regarding the tuition reimbursement "payback" to the City in the event an Employee leaves after five (5) years of receiving the tuition reimbursement, and while such represents a safeguard in place, the emphasis placed on the disparity in pay received by these Employees concerning base wages has been addressed wherein the wage increases have been awarded as sought by the Union, as well as, the equity adjustments received by other Bargaining Units within the City. As such, this additional economic outlay/expenditure is unwarranted. Therefore, the City's position relative to maintaining the *status quo* or current Contract language is awarded.

Additionally, during the Conciliation Hearings, the Parties agreed to maintain current Contract language. As such, current Contract language is awarded.

ISSUE XXIII

TRAINING AND CONTINUING EDUCATION - (NEW ARTICLE)

ISSUE XXIV

EMPLOYEE MENTAL HEALTH EVALUATION - (NEW ARTICLE)

ISSUE XXV

EMPLOYEE ASSISTANCE PROGRAM - (NEW ARTICLE)

ISSUE XXVI

LEGAL REPRESENTATION – (NEW ARTICLE)

These Issues identified herein and above concerning what are characterized as “New Articles”, most proposed by the Union, except for the Legal Representation Article which was withdrawn by the City, represent new language proposed to be included in the Successor Collective Bargaining Agreement. Each of these proposals, relative to the emphasis placed on them, while they may in fact have a basis for consideration, the evidence of record simply does not support their inclusion at this time.

The overall theme surrounding the negotiations with this Bargaining Unit and the magnitude of unresolved Issues subject to this Conciliation Award, warrant consideration of that which affords the City the opportunity to finance and fund either directly or indirectly that awarded herein, as well as, in other areas of this Award, provide the Union what it characterized as much needed enhancements to address the pay disparity externally and internally with respect to Police and Fire.

As previously indicated, the Parties seeking the addition, deletion and/or modification of either existing language; or, new Contract language bears the burden of proof and persuasion to compel the awarding of that sought. There simply exists no compelling evidentiary basis to grant the proposals sought by the Union with respect to Training and Continuing Education; Employee Mental Health Evaluations; and, the Employee Assistance Program, wherein a Bargaining Unit member would be assigned as the EMS/EAP Representative. Such represents

additional costs associated therewith, as does, the other “new” Article proposed by the City. Based on a totality of that contained in this Conciliation Award, such are simply unwarranted at this time and are not awarded.

ISSUE XXVII

ARTICLE L - DURATION

Given the positions articulated by each Party relative to other Articles contained in this Conciliation Award, it is clear the duration of the Successor Collective Bargaining Agreement would become effective the day following the expiration of the Predecessor and remain in full force and effect until March 31, 2019. Inasmuch as the Parties are in agreement thereto, such is hereby awarded.

* * * * *

During the Mediation Session and Conciliation Hearings the undersigned advised these Parties that based on the Pre-Hearing Statements; supporting documentation; internal and external comparables; the statutory criteria as such generally assist with Fact Finding and Conciliation; and, the stipulations of the Parties, certain modifications are supported by the evidentiary record and warranted, while other changes sought were not and therefore no compelling basis exists to warrant any modification sought. The Parties submitted the above issues bargained to impasse to the Conciliator and requested the Conciliator to consider the presentations and positions made during the Hearing. The Conciliator has extensively reviewed the Parties’ Pre-Mediation and Pre-Conciliation Statements, prior to and following these Proceedings; the voluminous evidence in support of the positions taken by each Party; the internal and external comparables as relied upon; the statutory criteria; the stipulations reached by the Parties; and, the Tentative Agreements reached during this process. The following Award

based on contractual language as proposed, recognizes for the duration of the successor Collective Bargaining Agreement, the core economic issues including Wages and Health Insurance benefits; certain other Issues with either direct and/or indirect economic budgetary impact as set forth herein.

As gleaned from the evidentiary record, the financial resources available to the City of Cleveland, based on forecasts and predictions which are largely based on factors outside the control of the Parties as indicated therein. It is with these considerations the following represents the contractual language for inclusion into the successor Collective Bargaining Agreement. These factors, and others, impact the awarded Issues contained herein based on the Employer's desire to remain fiscally prudent and the Union's objective in receiving certain direct and/or indirect economic enhancements to those benefits received by the Members of this Bargaining Unit.

ISSUES - ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Those issues/Articles, if any, not subject to the presentation of evidence, not identified/addressed during the course of either the Mediation Session or the Conciliation Hearings, or those not referenced by either Party, shall be subject to the *status quo* – current Contract language - relative to whatever policy, practice, provision or procedure that may have existed relative to a predecessor Collective Bargaining Agreement. Such shall be maintained for consideration/inclusion in the successive Collective Bargaining Agreement as the *status quo* provides.

The Conciliator has extensively reviewed the Parties' Pre-Mediation and Pre-Conciliation Hearing Position Statements, prior to and following the Mediation Session and Conciliation Hearings; the voluminous evidence in support of the positions taken by each Party; the

Transcript of these Proceedings; the internal parity and external comparables relied upon by each Party; the statutory criteria; the stipulations reached by them as gleaned from their respective Principle Representatives; and, the Tentative Agreements reached during this very time-consuming process.

CONCLUSION

The presentations made by the Parties based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in the many Tentative Agreements reached, are supported by the internal parity and external comparable data provided; the manifested intent of each Party as reflected during the course of these Proceedings; and, the stipulations of the Parties as set forth in the positions taken.

Be it so ordered.

David W. Stanton

David W. Stanton, Esq.
Mediator & Conciliator

September 17, 2018
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies a true copy of the foregoing Conciliation Award, based on the positions of the Parties and the supporting documentation introduced, has been forwarded by electronic transmission to Jon M. Dileno, Esq., Zashin & Rich Co., LPA, 950 Main Avenue, 4th Floor, Cleveland, Ohio 44113, Counsel and Principal Representative for the City of Cleveland (jmd@zrlaw.com); and, Ryan J. Lemmerbrock, Counsel and Principal Representative for CARE, ILA Local 1975, Muskovitz & Lemmerbrock, LLC, The BF Keith Building, 1621 Euclid Avenue, Suite 1750, Cleveland, Ohio, (lemmerbrock@mllabor.com); on this 17th day of September 2017.

David W. Stanton
David W. Stanton, Esq. (0042532)
NAA Arbitrator & Mediator
Conciliator