



City of Cleveland Memorandum

Frank G. Jackson, Mayor

TO: Barbara Langhenry, Director
Department of Law

FROM: Nycole D. West, Director
Department of Human Resources

DATE: April 18, 2018

SUBJECT: Request for Legislation

Please prepare legislation to ratify the tentative collective bargaining agreement for the Cleveland Patrolmen's Association (CPPA) – Non Civilian and to amend Section 56 of the City-wide pay band ordinance.

Classifications include:

1. Patrol Officer I
2. Patrol Officer II
3. Patrol Officer III
4. Patrol Officer IV
5. Trainee

WAGES

First Year:	0
Second Year:	2.0 % wage increase retroactive to April 1, 2017
Third Year:	2.0 % wage increase effective April 1, 2018
Trainee Wages	Effective April 1, 2018 increase Police Trainee rate to \$15.00 per hour

Equity Adjustment- Effective April 1, 2018 provide additional \$1,800 into the base rate of the Patrol Office I, II and III classifications, after application of the April 1, 2018 2.0% wage increase.

INSURANCE

- Effective April 1, 2018, premium contributions will be increased to 14-percent (14%) family and 15-percent (15%) single for those employees participating in City-defined wellness initiatives. NON-wellness premium contributions will be 18-percent (18%) family and 19-percent (19%) single coverage.
- Effective April 1, 2018, modify plan-design on Plus Plan as follows:
 - Modify annual deductible to \$750 single/\$1500 family
 - Increase out-of-pocket maximums to \$1500 single/ \$3000 family for in-network
 - Out-of-network terms to continue to be set by the carrier
- Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%) family and ten percent (10%) single of the City's monthly premium cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium

contributions to be reduced to five percent (5%) family and six percent (6%) single for those employees participating in City-defined wellness initiatives.

- Eliminate HMO options.
- Smoking Cessation. The City reserves the right to implement a smoking-cessation incentive policy during the life of this contract.

Section 56. Cleveland Police Patrolmen's Association (CPPA) Non Civilian

The annual salaries of persons appointed to the following ranks of the patrol officer shall be fixed by the appointing authority within the limits established in the following schedules:

		Minimum	Maximum
1	Police Officer I	\$63,219.35	\$63,719.35
2	Police Officer II	53,891.03	54,968.85
3	Police Officer III	52,015.41	53,055.72
4	Police Officer IV	50,677.56	51,691.11
5	Police Trainee	10.50	15.00

This piece of legislation is for introduction.

CC: Natoya Walker Minor, Chief of Public Affairs
Valerie McCall, Chief of Government & International Affairs & Acting Chief of Communications
Tracy Anderson, Special Assistant of the Mayor, Office of the Mayor
Ronda Curtis, Chief Assistant Director of Law, Department of Law
Lonya Moss Walker, Commissioner, Division of Accounts
Michael Spreng, Civil Service Commission
Austin Opalich, Labor Relations Manager
Gina Routen, Manager, Department Personnel & Human Resources
Rob Ryan, HR Fiscal Administrator
File

CITY OF CLEVELAND
AND
CLEVELAND POLICE PATROLMEN'S ASSOCIATION
(NON-CIVILIAN)

TENTATIVE AGREEMENTS

March 9, 2018

1. WAGES – Article XXVI

- Wage Increases:

First year – 0%

Second year – Retroactive to April 1, 2017, apply a 2.0% wage increase to Patrol Officer I, II, III and IV steps

Third year – Effective April 1, 2018 apply a 2.0% wage increase to Patrol Officer I, II, III and IV steps

- Trainee Wages – Effective April 1, 2018 increase Police Trainee rate to \$15.00 / hour
- Equity Adjustment – Effective April 1, 2018 provide additional \$1,800 into the base rate of the Patrol Officer I, II and III classifications, after application of the April 1, 2018 2.0% wage increase
 - Effective April 1, 2018 provide additional \$1,200 (for a total of \$3,000) into the base rate of the Patrol Officer I classification of ten (10) years or longer of employment, after application of the April 1, 2018 2.0% wage increase

2. INSURANCE – Article XVIII (See, attached language)

- Effective June 1, 2018, premium contributions will be increased to fourteen (14%)/ family and fifteen percent (15%)/single for those employees completing the City-defined wellness initiatives. Non-wellness premium contributions will be eighteen percent (18%)/family and nineteen percent (19%)/single coverage.
- Effective June 1, 2018, modify plan-design on Plus plan as follows:
 - Modify annual deductible to \$750 single/\$1500 family
 - Increase out-of-pocket maximums to \$1500 single/\$3000 family for in-network
 - Out-of-network terms to continue to be set by carrier

- Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%)/family and ten percent (10%)/single of the City's monthly premium cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to five percent (5%)/family and six percent (6%)/single for those employees participating in City-defined wellness initiatives. (See attached plan design.)
- Eliminate HMO options
- Smoking Cessation. The City reserves the right to implement a smoking-cessation incentive policy.
- City agrees to identify premiums and methodology behind the premiums upon request from the Union.

3. DISCIPLINE – Article VII

- Modify ¶ 10 as follows:

(10) Operational needs allowing, a patrol officer, upon reasonable request and during normal business hours, shall be permitted to review his personal service record. For the purpose of this Contract, the personal service record of a patrol officer shall be limited to attendance records and evaluations, his medical bureau records including any medical (non-psychological) evaluations, disciplinary hearings and charges, letters of reprimand and letters of commendation. Verbal disciplinary warnings and disciplinary written reprimands shall be removed from a Police Officer's record after six (6) months, but all other disciplinary actions or penalties will be removed shall not be used for progressive discipline purposes after two (2) years one (1) year from the date the discipline was administered, and disciplinary suspensions shall not be used for progressive discipline purposes after three (3) years from the date the discipline was administered.

- ¶ 11 – Public Records – Modify per grievance settlement (providing records to Union, not employee).
- ¶ 12(j) – Allow for Assistant Safety Director to conduct pre-disciplinary hearings.

4. BILL OF RIGHTS – Article VIII

- Modify ¶ (m) as follows:

(m) ~~All complaints filed by a citizen against bargaining unit members shall be submitted by the complainant in his or her own handwriting and signed.~~ When a citizen complaint is filed more than six (6) months after the

date of the alleged event, and the complaint could not lead to a criminal charge, the accused bargaining unit member may be ordered to respond to the complaint and to the investigation, but shall not be subject to disciplinary action for that complaint. Copies of ~~all such any written or recorded complaints~~ or the summary of an oral complaint prepared by a representative of the Division of Police or the Office of Professional Standards ("OPS") shall immediately be provided to the bargaining unit member and Union, with an opportunity to review same, before when the officer-member is asked to respond. In those cases where the complainant is illiterate, tape recordings of the complaint shall be made and retained on file, and the officer shall be given the opportunity to listen to the tape when asked to respond.

- ¶ (l) – Modify as follows:

(l) In such cases where the administrative investigation is initiated without a citizens' complaint, and the investigation could not lead to criminal charges, the City shall not bring administrative charges later than one (1) year after the date within which the ~~Chief~~ City (Safety Director, Chief, Command Staff) had knowledge of the alleged violation. If the administrative charges are not brought within one (1) year, the accused member may be ordered to respond to the complaint and to the investigation, but shall not be subject to disciplinary action. The City may be granted an additional ninety (90) days for good cause shown.

5. HOURS OF WORK – Article XI

Replace ¶ (l) with the following:

(l) COURT TIME

(i) EXTENDED TOUR. When an employee is required to makepresent at a court appearance, attend a prosecutor review, or because of his or her continued presence in aanother court-related matter, beyond the normal quitting time of his or her regular shift or of an extended tour of duty, the employee will be paid the overtime rate of pay for the actual time worked in excess of the employee's normal shift or extended tour as provided in paragraph (g) above. Tours shall not be extended or started early for the purpose of avoiding payment pursuant to paragraph (ii) below.

(ii) OUTSIDE REGULAR SCHEDULE. When an employee is scheduled to appear for a court appearance, prosecutor review, or other court-related matter at a time that does not fall within the employee's tour of duty, and neither the Extended Tour paragraph

above nor the Late Start Platoons paragraph below applies, the employee shall be paid for a minimum of three (3) hours work at one and one-half (1 ½) times the regular hourly rate.

(iii) LATE START PLATOONS. An employee whose regularly scheduled hours of work begin at or after 1800 hours and who is required to make a court appearance, prosecutor review or other court appearance on a day on which the employee completed a tour of duty shall be guaranteed pay for a minimum of four (4) hours of work ~~and at~~ one and one-half (1 ½) times the regular hourly rate.

(iv) Tours of duty shall not be scheduled early or otherwise adjusted or modified for the purpose of avoiding payment of a particular court-related matter pursuant to this paragraph (l).

6. SICK LEAVE – Article XIII

- Add following language regarding a no-fault attendance policy:

The City reserves the right to implement a no-fault attendance policy pursuant to the following procedure. The City will first notify the Union not less than thirty (30) days before implementing such a policy and negotiate in good faith with the Union regarding the policy. If the parties are unable to reach agreement, the Union reserves the right to file for arbitration with FMCS American Arbitration Association within fourteen (14) days of a written declaration of impasse. Each party shall present a proposal before the arbitrator, with the arbitrator selecting one or the other proposal based on his/her assessment of which proposal is the most reasonable. The arbitrator's decision must be rendered within thirty (30) days of the hearing date(s) and within sixty (60) days of his/her appointment, unless mutually agreed otherwise. If the Union does not timely file for arbitration following a declaration of impasse, the City may implement its last proposed policy. The City will not implement any policy until the Arbitrator renders a decision and will implement the policy selected by the Arbitrator. The City may modify the policy after one (1) year following implementation. If the City desires to modify the policy it must first provide the Union with no less than thirty (30) days' notice and negotiate in good faith with the Union regarding its intended modifications. In the absence of an agreement, the City may not modify the policy unless it establishes a demonstrable operational need.

- Delete references to Medical Bureau and Personnel Department and revise per the attached Article XIII.

7. GUN PURCHASE – Article XV

Delete second sentence of ¶ 27 which would eliminate the ability of officers to purchase their secondary handguns, rifles, etc. upon retirement.

8. ASSIGNMENTS AND TRANSFERS – Article XX

- Revise ¶¶ 44 and 45 per the attached language.
- Revise ¶ 47 as follows:

(47) DETAILS. Effective with the date of the Contract it is agreed that any detail shall be limited to one hundred-twenty (120) days per officer to a particular assignment during a rolling twelve (12) month period, and if they extend beyond that period the officer will be returned to his/her previous assignment and the assignment shall be posted via an anticipated assignment. At or before their inception the City shall notify the CPPA of all details under this provision. This provision is not to affect the special details to the Mayor's office and to the President of City Council and shall not limit the periodic details to the Personnel Unit for the purpose of conducting background checks or to the Training Section to fill a need for specific certifications or other skills not generally available. Upon mutual and written agreement of the parties, the limitations provided for in this provision may be extended.

9. HDI – Article XXI

[This Article is subject to the award of the Conciliator.]

10. GRIEVANCE PROCEDURE – Article XXII

Modify Article XXII per the attached language.

11. BINDING ARBITRATION OR IMPASSE ISSUES – Article XXIII

¶ 52 – Modify ¶¶ (a), (b), (c) and (d) as follows:

- (a) Each party shall appoint an arbitrator and those two (2) arbitrators shall agree on a third arbitrator within five (5) days, or they shall select a third impartial arbitrator by the strike-off method from a list of seven (7) furnished by the American Arbitration Association. In the alternative, upon mutual agreement, the parties shall select an arbitrator by the strike-off method from a list of seven (7) furnished by the American Arbitration Association.

(b) Five (5) days after the ~~third impartial arbitration panel or arbitrator~~ has been selected the parties shall submit their final offer on each issue which is at impasse to the arbitration panel ~~or arbitrator~~.

(c) The arbitration panel ~~or arbitrator~~ may hold hearings, receive evidence or documentation, and call witnesses in accordance with the arbitration rules of the American Arbitration Association.

(d) After receiving whatever evidence the parties wish to submit, the arbitration panel ~~or arbitrator~~ shall select the final offer of one (1) of the parties on each of the impasse issues and shall issue an award incorporating all of these selected final offers, without modification.

12. FTO – Article XXVI

- ¶ 59 – Modify last sentence as follows:

(59) Field Training Officers. Patrol Officers designated to act as Field Training Officers shall, as a minimum requirement, be in the rank of Patrol Officer I or Patrol Officer II, and if assigned to an eight (8) hour shift shall be entitled to receive an additional one and one-half (1-1/2) hours of compensation for days in which they act in that capacity. Patrol Officers assigned to a ten (10) hour shift shall receive an additional two (2) hours of compensation for days in which they act in that capacity. The Chief of Police, or his designee, shall fill the FTO assignments per management discretion. ~~However, employees cannot be mandated to become certified as an FTO. Moreover, an officer who is not certified as an FTO will not be assigned to serve as an FTO where there is a certified FTO working and available on that shift within the District, or where a non-certified volunteer FTO is working and available on that shift within the District, one half (1/2) of Field Training Officer assignments without regard to seniority and the remaining one half (1/2) of such assignments shall be filled by assigning the Patrol Officer I or II with the most seniority desiring such assignment. (Pursuant to the bid procedures identified in Article XX).~~

13. DRUG/ALCOHOL TESTING – Exhibit 6

Replace references to “Medical Director” and “Medical Unit” with “a medical professional designated by the City”.

14. DURATION – Article XXXII

Modify language to reflect contract duration from date of conciliator’s award until March 31, 2019, and adjust negotiation-commencement / termination dates accordingly.

ARTICLE XVIII
INSURANCE

(34) Hospitalization/Surgical. The City agrees to provide single or family coverage, whichever is applicable, for each eligible employee enrolled in any of the health coverage plans for the term of the Labor Contract under the terms and conditions set forth in this Article. There shall be no duplicate coverage if both spouses are on the City's payroll. The CPPA agrees that its President will participate in a city wide Management-Labor committee to examine the health coverage contracts in effect providing health benefits and to explore ways to reduce the costs of health benefits to the City and to consider alternative ways to provide the health benefits for City employees.

(35) Health Care Benefits. Effective through ~~November 30, 2015~~ May 31, 2018, the City will maintain the healthcare benefits and employee premium contributions currently in effect. Effective ~~December 1, 2015~~ June 1, 2018, the City will provide health insurance benefits as summarized in the attached Medical Insurance Plan Design (Exhibit H).

Furthermore, on the aforementioned plans, dependent coverage shall be limited to members of the employee's immediate family (*i.e.*, spouse and children).

Effective ~~December 1, 2015~~ June 1, 2018, all members shall contribute on any hospitalization/medical plans offered by the City and such contributions shall be deducted from the member's wages as follows:

Single – ~~17~~19% of premium (non-wellness); ~~13~~15% of premium (wellness)

Family – ~~16~~18% of premium (non-wellness); ~~12~~14% of premium (wellness)

Health care deductions of one-half the above amounts shall be made the first two pay periods of each month.

"Premium" for employee contributions is defined as the cost or the fully-insured equivalent-rate of hospitalization, prescription drugs, vision and dental.

The City will continue to provide the opportunity to enroll in any available alternative hospitalization/medical plans.

The City shall have the right to change insurance carriers or change to/from a self-insured model provided that benefit levels remain substantially the same.

For all mental, nervous, and substance abuse treatment, in-patient and out-patient coverage shall be that set forth as part of the health care insurance plan selected by the employee.

The prescription program shall be that set forth as part of the health care insurance plan selected by the employee.

The City shall have the discretion to implement and offer a voluntary, optional high-deductible hospitalization plan for employees with benefit levels as outlined in Exhibit I. If so implemented and elected, the premium rates shall be as follows:

	WELLNESS		NON-WELLNESS	
	Individual Coverage	Family Coverage	Individual Coverage	Family Coverage
Employee Premiums (including Rx, dental and vision coverage)	86%	85%	+210%	+29%

~~To Employees electing to satisfy the "wellness" requirements and~~ shall be eligible for the reduced premium contributions, wherein the employee must complete annually a health-risk assessment and have participated once annually in a biometric screening. The screening can be attained either through a program offered by the City, at its option, or by the employee through an annual physical conducted by a physician. The screening shall require the following measurements:

Height

Weight
Body mass index (BMI)
Waist circumference
Blood pressure

The screening shall also require a blood sample to measure:

Total cholesterol
High-density lipoprotein (HDL)
Glucose
Low-density lipoprotein (LDL) (available only with the fasting test)
Triglycerides (available only with the fasting test)

~~The City shall establish the initial deadline in 2015 on which employees must satisfy the wellness survey/screening requirements. The City shall provide no less than thirty (30) days' advance notice of said deadline. Until such deadline is set, the "wellness" premium contribution rates shall apply.~~

No later than 150 days prior to expiration, the parties shall convene a labor management committee with no more than three (3) representatives from each party in order to discuss the possible application of health-oriented results to the Wellness Initiatives in the next contract.

The City reserves the right to implement a smoking-cessation incentive policy.

(36) Life Insurance. During the term of this Contract, the City shall provide all members with Group Insurance in the amount of Fifteen thousand dollars (\$15,000.00).

(37) Dental Insurance. The City shall continue to provide all members with a dental insurance package which shall include orthodontist benefits. The benefit package and the insurance carrier shall be subject to approval of the City and the Union.

(38) Vision Insurance. The City shall provide a vision insurance plan for employees.

(39) Upon request, the City shall identify the premiums upon which premium contributions are based, as well as the methodology used to calculate them.

EXHIBIT H
CITY OF CLEVELAND
MEDICAL INSURANCE PLAN DESIGN

I. COMPREHENSIVE MAJOR MEDICAL PPO PLAN (PLUS)

In-Network

- | | | |
|----|--|--|
| a. | Annual Deductible: | \$500 <u>750</u> single
\$1,000 <u>1,500</u> family |
| b. | Comprehensive Major Medical:
(Co-Insurance percentage) | 90% - 10% |
| c. | Co-Insurance Annual Out-of-Pocket
Maximum (Excluding Deductible): | \$1,250 <u>1,500</u> single
\$2,500 <u>3,000</u> family |
| d. | Doctor and other Office visits:
--Specialists: | \$20.00 Co-pay
\$30.00 Co-pay |
| e. | Use of Emergency Room: | \$100.00 Co-pay
(Co-pay waived if admitted)
Non-Emergency use \$100.00
Co-pay plus 90% Co-
Insurance |
| f. | Wellness/Preventive Services: | |
| | Routine Physical Exam (One exam
per benefit period): | \$20.00 office visit Co-pay,
not subject to deductible |
| | Well Child Care Services including
Exam and Immunizations (to age nine,
limited to a \$500 maximum per benefit
period): | \$20.00 office visit Co-pay,
not subject to deductible |
| | Well Child Care Laboratory Tests (to
age nine): | 100% not subject to
deductible |
| | Routine Mammogram (One, limited
to an \$85 maximum per benefit period): | 100% not subject to
deductible |
| | Routine Pap Test and Exam (One per
benefit period): | 100% not subject to
deductible |

Routine EKG, Chest X-ray, Complete Blood Count, Comprehensive Metabolic Panel and Urinalysis (Ages nine and over, one each per benefit period):

100% not subject to deductible

CA 125 (cancer screening), Cholesterol Screening (Ages nine and over, one each per benefit period):

100% not subject to deductible

Routine PSA Test:

100% not subject to deductible

Routine Endoscopic Services (including Colonoscopy) and Colon Cancer Screening (Age over 50, one each per benefit period):

100% not subject to deductible

- g. Out-of-Network varies by standard carrier design.

~~II. HMO~~

~~The City will provide not less than two (2) HMO options.~~

In Network

a. ~~Co Insurance percentage:~~ ~~90% 10%~~

b. ~~No deductible:~~

c. ~~Co Insurance Annual Out of Pocket~~ ~~\$1,250 single~~
~~Maximum:~~ ~~\$2,500 family~~

d. ~~Doctor and other treatment visits:~~ ~~\$20.00 Co-pay~~

e. ~~Use of Emergency Room:~~ ~~\$100.00 Co-pay (Co-pay~~
~~waived if admitted)~~
~~Non-Emergency use: \$100.00~~
~~Co-pay plus 90% Co-~~
~~Insurance~~

IV.11. PRESCRIPTION DRUG

- a. Co-Pays:
- | | |
|---------------------------|---------|
| Generic (mandatory) | \$10.00 |
| Name Brand, Formulary | \$25.00 |
| Name Brand, Non-Formulary | \$40.00 |
- b. Mandatory Generic Requirement - Mandate individual's use of generic drugs where available; if individual chooses Name Brand Formulary or Name Brand Non-Formulary when generic is available, individual pays the applicable Name Brand Formulary or Name Brand Non-Formulary co-pay plus the difference between the Generic and Name Brand costs.

Note: Coverage levels for out-of-network services will be as established by the carrier.

HEALTH CARE ADDENDUM
HIGH DEDUCTIBLE PLAN

	<u>In-Network</u>
a. Annual Deductible:	\$2000 single \$4000 family
b. Comprehensive Major Medical: (Co-Insurance percentage)	80% - 20%
c. Co-Insurance Annual Out-of-Pocket Maximum (Excluding Deductible):	\$4000 single \$8000 family
d. -- Doctor and other Office visits: -- Specialists:	\$40.00 Co-pay \$60.00 Co-Pay
e. Use of Emergency Room:	\$250.00 Co-pay (Co-pay waived if admitted)
	Non-Emergency use \$200.00 Co-pay plus 80% Co-Insurance
f. Wellness/Preventive Services:	
Routine Physical Exam (One exam per benefit period):	100% not subject to deductible
Well Child Care Services including Exam and Immunizations (to age nine, limited to a \$500 maximum per benefit period):	100% not subject to to deductible
Well Child Care Laboratory Tests (to age nine):	100% not subject to deductible
Routine Mammogram (One, limited to an \$85 maximum per benefit period):	100% not subject to deductible
Routine Pap Test and Exam (One per benefit period):	100% not subject to deductible

Routine EKG, Chest X-ray, Complete Blood Count, Comprehensive Metabolic Panel and Urinalysis (Ages nine and over, one each per benefit period):

100% not subject to deductible

CA 125 (cancer screening), Cholesterol Screening (Ages nine and over, one each per benefit period):

100% not subject to deductible

Routine PSA Test:

100% not subject to deductible

Routine Endoscopic Services (including Colonoscopy) and Colon Cancer Screening (Age over 50, one each per benefit period):

100% not subject to deductible

- g. Out-of-Network varies by standard carrier design.

Note: Coverage levels for out-of-network services will be as established by the carrier.

ARTICLE XIII
SICK LEAVE, CONTAGIOUS DISEASE,
FUNERAL, MATERNITY, MILITARY

(17) Sick Leave. For all purposes of Sick Leave a work day is defined as an eight (8) hour day or a ten (10) hour day.

(a) Accrual of Leave. All regular full-time employees of the bargaining unit shall be credited with Sick Leave at the rate of ten (10) hours per month or one hundred-twenty (120) hours per year. Unused Sick Leave shall be cumulative and available for future use. Sick Leave accumulation shall be unlimited for full-time patrol officers from and after May 1, 1973.

An employee who voluntarily leaves the service of the City and is off the payroll for ninety (90) days or more loses any Sick Leave which he may have accrued during the time of his employment. Should such employee be rehired within ninety (90) calendar days he shall receive a credit for any Sick Leave which he previously accrued.

(b) Conditions of Sick Leave.

(i) Patrol Officers shall not be paid Sick Leave unless they notify their supervising officer ~~and/or Medical Bureau of the Department~~ at least one (1) hour before the employee's scheduled starting time on the first day of the absence on account of sickness.

(ii) ~~The Medical Bureau and/or the Personnel Department~~City may require a written statement from the employee justifying the request for paid Sick Leave and/or a certificate from a licensed physician verifying the nature of the claimed sickness or injury provided that such a medical certification must be submitted for any sickness or injury extending beyond three (3) days. The validity of all medical excuses and certifications are subject to review by the ~~Medical Bureau of the Department~~City and if refused by the ~~Medical Bureau~~City, the matter shall be subject to the Grievance Procedure. Falsification of either a written signed statement, request

for Sick Leave pay, or a licensed physician's certificate shall be grounds for disciplinary action including dismissal.

(iii) The Police Division will not require a patrol officer to obtain a release from ~~the Medical Bureau~~ City-designated medical professional to return to duty if the sick leave absence is three (3) days or less during the previous fifty-two (52) weeks, provided that the Police Division may notify a patrol officer that he or she will be required to report to the ~~Medical Bureau~~ City-designated medical professional after a day of sick leave at any time. Employees who report to the City-designated medical professional ~~Medical Bureau~~ consistent with applicable rules, but are not seen by a doctor or designee, will not be charged sick time for that day.

(iv) If the CPPA bargaining unit absentee ratio is maintained at four percent (4%) or less for a continuous six (6) month period, then employees who are absent on sick leave for ten (10) days or less during the previous fifty-two (52) weeks will not be required to obtain a medical release from the City-designated medical professional ~~Medical Bureau~~ prior to returning to duty. The City will calculate the absentee ratio for each six (6) month period and give the CPPA the results. This provision shall become inapplicable if the absentee ratio exceeds four percent (4%) over a six (6) month period and the stricter provision of (iii) above shall apply. The ~~Personnel Department~~ City may require an employee to justify any claimed sickness or illness and to be examined by the City-designated medical professional ~~Medical Bureau~~ and a medical examination must be obtained in all cases for a sickness or illness extending beyond three (3) days. In the event of any on-duty or off-duty injury resulting in time lost from work, an employee must receive a medical examination by City-designated medical professional ~~the Medical Bureau~~ before returning to work.

(v) Sick Leave with pay shall be granted only for (1) actual sickness or injury, (2) confinement by reason of a contagious disease, (3) visit to a doctor or dentist for medical or dental care, or (4) serious illness of a member of the employee's immediate family (emergency).

(vi) Sick Leave with pay shall not be granted for any sickness resulting from moral turpitude, intoxication or use of narcotics, except that Sick Leave will be granted for treatment or rehabilitation as approved by the City-designated medical professional ~~Medical Bureau~~ on the same basis as granted for any other illness. Moreover, employees are prohibited from engaging in strenuous or physical secondary employment (e.g. private security, physical labor) while on a sick leave.

(vii) New employees will accumulate Sick Leave credit, but cannot use Sick Leave until the satisfactory completion of the initial probationary period of ninety (90) days.

(viii) The policy of restricting officers to their homes during periods of extended recuperation is rescinded. Any officer affected by the rescission of this policy shall be granted a release from the recuperation restriction upon appearing before a City-designated medical professional ~~the Safety Medical Coordinator~~ for a medical evaluation of their injury or illness. The City-designated medical professional ~~Medical Bureau~~ shall devise a release form for use in this process. This policy shall not apply to any officer who strikes off on the sick list for short term recuperative periods in cases where the officer has had a history of sick leave usage suggesting a pattern of abuse or where the officer is suspected of engaging in secondary employment while on sick leave.

(ix) A patrol officer shall have an opportunity to present an explanation challenging any claim of suspected sick leave abuse. Any unresolved disputes shall be subject to the grievance procedure.

(18) Sick Time Donation. An employee who is suffering from a serious medical condition as defined by the FMLA; who has exhausted all of his/her sick, furlough, compensatory and holiday time; and who is not on any step of the sick-abuse policy, may submit a written request for sick leave donations from other sworn police officers.

In response to a request for sick leave from an eligible employee, an employee may donate, in writing, sick leave up to a maximum of one hundred-twenty (120) hours. Donating employees must have a minimum balance of one hundred-twenty (120) hours of sick leave immediately following the donation. Employees cannot contribute more than one hundred-twenty (120) hours of sick leave in total donations per calendar year.

The CPPA will indemnify and hold the City harmless from any action emanating from sick leave donations.

(19) Contagious Disease. In the event a patrol officer is found to have been exposed to an active infectious disease in the course or scope of his employment, the City shall inform the officer of such exposure as soon as the City acquires such knowledge and will bear the cost of medical treatment and/or prevention for the officer and members of the officer's family so exposed. The City shall grant medical leave to such an officer under the provisions of "Hazardous Duty Injury."

(20) Funeral Leave. Patrol Officers shall be allowed time off for funeral leave in accordance with past practice in the Division as contained in the presently existing Division of Police Manual of Rules and Regulations, Section 1801, 1804, Page 55.

(21) Family and Medical Leave Act. As appropriate, the City will designate an employee's use of paid and unpaid time as family medical leave consistent with the Family Medical Leave Act and with current City sick leave and leave of absence policies.

(22) Military Leave. A patrol officer shall be granted an extended leave of absence without pay for military duty in accordance with law, and after discharge, shall be restored to employment with the City, upon request, in accordance with law. Patrol Officers who are drafted or who enlist shall be granted a one (1) day leave of absence with pay for the purpose of taking a military physical. Upon return from military leave, an employee will be reinstated at the current applicable rate of his classification in accordance with law and the provisions as set forth herein. A patrol officer who is temporarily called to active duty (e.g. summer training) shall be granted a leave for the duration of such active duty and shall be paid the difference between his regular pay and his total military pay (upon receipt of a service pay voucher) for a period not to exceed thirty-one (31) days in any calendar year, and further, shall accumulate vacation and sick leave with pay credit during the period of such leave. Patrol Officers on military leave who thereafter return to employment with the City shall receive retirement credit for all time spent in active military service.

ASSIGNMENTS AND TRANSFERS – Article XX, §§ 44, 45

(44) The following procedures apply to assignments within each District.

The District Commander, or his designee, will transfer patrol officers to District non-basic patrol vacancies in accordance with the following bid procedure:

(a) The District Commander shall post a list of the minimum qualifications and objective criteria to be considered and required in filling the positions. The posting requirement shall be for each separate unit and no two or more units shall be merged in one posting. The officer with the most seniority who meets the minimum qualifications, as determined by the District Commander, or his designee, will be detailed to the position for a trial period of one hundred-twenty (120) days. One-half (½) of all Detective Unit vacancies, one-half (½) of all Traffic Car vacancies, ~~one-half (½) of all Strike Force vacancies, and~~ one-half (½) of all Downtown Safety Patrol Services Unit vacancies shall be transferred by seniority. For the duration of this Agreement, one-third (1/3) of all Vice Unit transfers shall be transferred by seniority. And all other vacancies in the District shall be filled by selection of the District Commander.

(b) The selected bidder will be detailed ~~to the position~~ for a trial period of one hundred-twenty (120) days. If prior to the end of the one hundred twenty (120) days the patrol officer does not like the new assignment, he may voluntarily return to his original tour of duty. If during the one hundred-twenty (120) days the District Commander or his designee determines that the patrol officer is not performing satisfactorily, he will be called in not later than the sixtieth (60th) day of the ~~detail~~ trial period and any shortcomings then known will be explained to the patrol officer. If at the end of the one hundred-twentieth (120th) day, in the opinion of the District Commander or his designee, or his designated representative, the patrol officer is still not performing satisfactorily, the patrol officer may be returned to his original tour of duty.

(c) It is agreed that the first time a patrol officer bids and is returned to his original assignment, the patrol officer shall have no recourse to the Grievance Procedure. If, however, a patrol officer is rejected for a permanent assignment after being detailed for a trial period on a subsequent bid, he may appeal the decision through the grievance/arbitration procedure and such rejection must be for good and sufficient cause, provided that no arbitrator shall have power to substitute his or her judgment for the professional judgment of the District Commander as to whether the patrol officer has the qualities and performance level required for successful and efficient police work in a particular assignment.

(d) Concurrent with the posting of positions required by this paragraph, the City shall provide a copy to the Union.

(45) The Chief of Police, or his designee, shall assign patrol officers to vacancies in accordance with the following bid procedure:

(a) The Chief of Police shall post a list of the minimum qualifications and objective criteria to be considered and required in filling the position. This posting requirement shall be for each separate unit and no two or more units shall be merged in one posting. The Chief of Police may transfer or assign patrol officers to one-half ($\frac{1}{2}$) of the vacancies without regard to seniority, except that the Chief of Police may fill all vacancies in the Narcotics Units, and the Organized Crime-Intelligence Units, and two-thirds ($\frac{2}{3}$) of the vacancies in the Homicide, Sex Crimes, and Domestic Violence Units without regard to seniority. With respect to the other one-half ($\frac{1}{2}$) or one-third ($\frac{1}{3}$) of the vacancies, the officer with the most seniority who meets the minimum qualifications, as determined by the Chief of Police, or his designee, will be given priority for the position.

(b) The selected bidder will be ~~detailed to the position~~ assigned for a trial period of one hundred twenty (120) days. If prior to the end of the one hundred twenty (120) days the patrol officer does not like the new assignment, he may voluntarily return to his original tour of duty. If during the ~~ninety (90)~~ one hundred-twenty (120) days the Chief of Police or his designee, determines that the patrol officer is not performing satisfactorily, he will be called in not later than the sixtieth (60th) day of the ~~detail-trial~~ period and any shortcomings will be explained to the patrol officer. If at the end of the one hundred twentieth (120th) day, in the opinion of the Police Chief or his designee, or his designated representative, the patrol officer is still not performing satisfactorily, the patrol officer may be returned to his original tour of duty.

(c) It is agreed that the first time a patrol officer bids and is returned to his original position, the patrol officer shall have no recourse to the Grievance Procedure. If, however, a patrol officer is rejected for a permanent assignment after being ~~detailed~~ assigned for a trial period on a subsequent bid, he may appeal the decision through the grievance/arbitration procedure and such rejection must be for good and sufficient cause, provided that no arbitrator shall have power to substitute his or her judgment for the professional judgment of the Chief of Police as to whether the patrol officer has the qualities and performance level required for successful and efficient police work in a particular assignment.

(d) Administrative positions and assignments to the Mayor's staff, the Safety Director's staff, City Council, and the Chief's staff may be selected by the Chief of Police without using the above bid procedure.

GRIEVANCE PROCEDURE – Article XXII, ¶¶ 50, 51

(50) It is mutually agreed that the prompt presentation and settling of grievances is to the benefit of both the City of Cleveland and the members of the bargaining unit. Discipline shall fall under the grievance procedure and shall be based upon internal investigation within the Department of Public Safety.

(51) The term “grievance” shall mean any dispute arising out of or connected with the subject matter of this Contract or the interpretation, application or enforcement of any of its terms. Disciplinary grievances may be filed either at the level at which the decision, discipline or action being grieved was made or at the step above that level. All grievances must be reduced to writing, signed by a Union representative and submitted within fourteen (14) calendar days after the event or knowledge of the event giving rise to the grievance. All grievances shall set forth the appropriate facts, the specific provision(s) of the agreement which were allegedly violated, and requested remedy and relief.

~~Step 1. A grievance must be reduced to writing within seven (7) calendar days after the event or knowledge of the event giving rise to said grievance. A member having a grievance shall, accompanied by a representative of the Union, present the grievance to the Commanding Officer of the Administrative Unit. The grievance shall be signed by both the grievant and a Union representative, and shall set forth in detail the appropriate facts and requested remedy and relief. A copy of all grievances and answers are to be filed with the Chief of Police and the Union. A member shall be entitled to have a meeting on the grievance within seven (7) calendar days of the time the written grievance is submitted to the Commanding Officer of the Administrative Unit, if the member requests a meeting. If the member does not request a meeting, the grievance shall be answered in writing within seven (7) calendar days. If the member requests a meeting, the Union~~

~~President or a designee may be present with the member at the meeting. The Chief of Police will designate an appropriate representative at the meeting, and will give the grievant a written answer to the grievance within seven (7) calendar days after the meeting.~~

Step 21. Chief of Police. ~~If the grievance is not satisfactorily settled at Step 1, said grievance may, within seven (7) calendar days after receipt of the Step 1 answer, be appealed to the Chief of Police. The Police Chief and/or the designated representative of the Department shall meet with the President or Vice President(s) of the Union within seven (7) calendar days of receipt of written appeal and shall render an answer in writing within seven (7) calendar days. Within ten (10) calendar days following receipt of a grievance the Chief of Police or his/her designee shall meet with the President of the union or his/her designee to discuss the grievance. The Chief shall respond to the grievance in writing within ten (10) calendar days following the meeting.~~

Step 32. Safety Director. ~~If the grievance is not satisfactorily settled at Step 2-1 the Union may, within seven (7) fourteen (14) calendar days after receipt of the Step 2-1 answer, appeal in writing to the Safety Director. The Director or his designee, which may include representatives of the Department of Personnel, shall meet with the Union President, or designee, within twenty (20) calendar days after the grievance is submitted-appealed to or initially filed with the Director. The Safety Director, or designee, shall provide the Union with an appropriate a written answer within twenty (20) calendar days and will institute any other appropriate procedures or hearings as required by the City Charter and applicable law.~~

Step 3-A. Department of Human Resources. ~~If the grievance is not satisfactorily settled in at Step 3-2 then the Union may, within seven (7) fourteen (14) calendar days after the Step 3-2 answer, refer-appeal said grievance with all lower-level history to the Department of Human Resources Labor Relations Manager for review. Failure to so attach the history will result~~

in suspension of the answer date until the history is provided. A written answer to the grievance shall be ~~given~~provided to the Union President, ~~personally or by mail,~~ within ~~twenty five (25)~~thirty (30) calendar days after the grievance is ~~submitted~~appealed to or initially filed with the Labor Relations Manager-Director of the Department of Human Resources or his/her designee.

All grievances involving the payment of wages may be filed at Step 3 A.

Step 4. Arbitration. If any grievance is not satisfactorily settled ~~by the Safety Director or pursuant to Step 3 A,~~ the Union, and only the Union, may submit the matter to arbitration either by:

a. Within thirty (30) calendar days after the receipt of the Step 3 answer, providing notice to the Law Director of its intent to demand arbitration and its desire to meet and discuss resolution of the grievance, which shall not delay the filing of a demand with the American Arbitration Association more than thirty (30) calendar days from the date notice is given to the Law Director; or

b. Immediately initiating arbitration by filing with the American Arbitration Association within thirty (30) calendar days after the receipt of the Step 3 answer. The Union shall notify the American Arbitration Association and the City at the same time of its intent to appeal the grievance. The arbitrators shall be chosen in accordance with the rules of the American Arbitration Association. The fees and expenses of the arbitrator shall be borne equally by the City and the Union. Further, the aggrieved member, his representative, and any necessary witnesses shall not lose any regular straight-time pay for time off the job while attending an arbitration proceeding.

In the event a grievance goes to arbitration, the arbitrator shall have jurisdiction only over disputes arising out of grievances as to the interpretation and/or application and/or compliance

with the provisions of this Contract, including all disciplinary actions and in reaching his decision, the arbitrator shall have no authority (1) to add or subtract from or modify in any way any of the provisions of this Contract; (2) to pass upon issues governed by law, (3) to make an award in conflict with law. The arbitrator shall issue a decision within thirty (30) calendar days after submission of the case to him.

The Grievance Procedure set forth in this Contract shall be the exclusive method of reviewing and settling disputes between the City and the Union and/or between the City and a member (or members), and all decisions of arbitrators shall be final, conclusive, and binding on the City, the Union, and the members. A grievance may be withdrawn by the Union at any time and the withdrawal of such grievance shall not be prejudicial to the filing of future grievances, even if on the same subject matter.

~~A policy grievance which affects a substantial number of employees may initially be presented by the Union at Step 2 of the Grievance Procedure.~~ "Policy grievances" are grievances concerning contract interpretation which may involve more than one employee.

The time limits set forth in the Grievance Procedure shall, unless extended by mutual written agreement of the City and the Union, be binding. Failure by the Union to timely process any grievance in accordance with these terms shall render the grievance void and/or a nullity and it shall not be arbitrable. ~~and any grievances not timely presented, or timely processed thereafter, shall not be considered a grievance under this Contract and shall not be arbitrable.~~ Any grievance not timely processed by the City at any of the preceding steps may be placed by the Union in the next Step.

In an effort to reduce the number of grievances proceeding to arbitration and promote bargaining between the parties, the following applies: If the parties proceed to arbitration under

this provision, the loser of said grievance shall pay the arbitrator's fees. If an arbitration award provides for "mixed relief" then the parties shall split the arbitration fees and arbitration costs. An example would be a disciplinary suspension upheld but reduced.

~~Calendar days as provided within the Grievance Procedure shall not include Saturdays, Sundays or Holidays.~~

MUTUALLY AGREED DISPUTE RESOLUTION PROCEDURE

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

April 6, 2018

In the Matter of:

City of Cleveland

and

Cleveland Police Patrolmen's Association

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)
)

SERB Case No. 2015-MED-12-1267

AAA Case No. 01-17-0004-1057

APPEARANCES

For the City:

Jon Dileo, Attorney

Joellen O'Neill, Deputy Chief Executive Officer

Mike McGrath, Safety Director

Austin Opalich, Labor Relations Manager

Veronica Jenkins, Office of Risk Management

Eduardo Romero, Risk Manager

Bill Menzalora, Chief Assistant Director of Law

Calvin D. Williams, Chief of Police

Deon McCaulley, Deputy Chief of Police

Brian Carney, Lieutenant

For the Union:

Susannah Muskovitz, Attorney

Joseph Delguyd, Attorney

Jeff Follmer, President

David Bronson, Trustee

Andrew Gasiewski, Second Vice President

Richard Mauer, Patrolman

Jonathan Shaffer, Patrolman

Jeffrey Petkac, Patrolman

George Mineff Jr., Witness

Arbitrator:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Cleveland and the Cleveland Police Patrolmen's Association. The city consists of 77.7 square miles and has an estimated 2018 population of 2,762,349. The union represents approximately 1,200 patrolmen and apprentices.

The parties have been engaged in negotiating a successor to the collective bargaining agreement that expired on March 31, 2016. When they were unable to reach agreement, they invoked Article XXIII of the contract, which provides for tripartite final-offer arbitration to resolve a bargaining impasse. In the instant case, the parties agreed to waive the requirement for a tripartite panel and opted for a sole Arbitrator.

The Arbitrator was notified of his appointment in July 2017. Mediation sessions were held on October 6 and 24, 2017. A number of issues were resolved but when no overall settlement was reached, the parties decided to continue negotiations on their own. On December 15 and 16, 2017, a tentative agreement was voted on by the union membership and rejected.

Subsequently, the parties contacted the Arbitrator and asked to schedule a hearing. A hearing was scheduled for March 9, 2018, to hear the five issues that were not settled. However, by the time of the hearing, the only remaining issue was the dispute regarding Hazardous Duty Injury. The hearing was completed that day and the parties opted not to submit post-hearing briefs.

The award of the Arbitrator is based on the criteria listed in Article XXIII, Section (e) of the parties' collective bargaining agreement.¹ They are:

- (a) Past collectively bargained agreements, if any, between the parties;

¹ The criteria in Article XXIII, Section(e), are those contained in Chapter 4117 of the Ohio Revised Code.

(b) Comparison of the issues submitted to final offer settlement 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;

(c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUE

The sole issue for the Arbitrator is Article XXI, Section (e) - Hazardous Duty Injury. The purpose of the article is to protect the interests of police officers when they suffer injuries as a result of "active police duty." The Arbitrator will summarize the positions of the parties, provide his analysis of the issue, indicate which of the parties' final offers he is selecting, and provide the language for the selected offer.

ANALYSIS

Article XXI consists of Sections (a) through (i) and a union-proposed side letter. There are no disputes regarding Sections (c), (d), and (e), but the remaining sections and the side letter include a number of differences in the parties' positions. The parties, however, treated Article XXI as a single issue for purposes of arbitration. Thus, the Arbitrator must select all of one offer or the other.

While the city and the union agree on a number of aspects of HDI leave, their final offers differ with respect to 11 issues. The current contract provisions and the final offers of the parties for Article XXI are as follows:

Issue 1 - Section (a) - Accumulation of sick leave

Current Contract - Patrolmen on HDI continue to accumulate sick leave

City Proposal - Patrolmen do not accumulate sick leave while on HDI

Union Proposal - Current contract language

Issue 2 - Section (a) - Determination of Hazardous Duty Injury

Current Contract - The eligibility for HDI is determined by the Safety Director and confirmed by the Medical Director and/or the officer's private physician

City Proposal - The Safety Director determines eligibility for HDI

Union Proposal - A medical professional designated by the city determines eligibility for HDI

Issue 3 - Section (b) - Definition of Hazardous Duty Injury

Current Contract - HDI is an injury resulting from active police duty, either on or off regular tours of duty, such duty including but not limited to apprehension or attempted apprehension of suspects, active participation the prevention of crimes, and pursuit of suspects.

City Proposal - HDI is injury limited to the pursuit, apprehension or attempted apprehension of suspects; where the officer is actively engaged in overseeing vehicular accidents, including disabled vehicles, or directing vehicle traffic; or, any other injury determined by the City to be the result of hazardous-type circumstances

Union Proposal - Current contract language

Issue 4 - Section (b) - Criminal activity and secondary employment

Current Contract - Injuries incurred by an officer responding to criminal activity unrelated to secondary employment fall within the definition of Hazardous Duty Injury

City Proposal - The city's proposal adds that an officer must provide a supervisor with timely notice of any injury for it to be considered a Hazardous Duty Injury

Union Proposal - Current contract language

Issue 5 - Section (f) - Periodic examinations to determine continued incapacity

Current Contract - A report shall be made by the Police Surgeon who shall review any reports of the employee's own physician

City Proposal - A report shall be made by "a physician designated by the City"

Union Proposal - A report shall be made by "a medical professional designated by the city"

Issue 6 - Section (g) - Designation of Temporary Assignments

Current Contract - The Safety Department may, at its option, designate certain assignments as temporary duty assignments. The assignment of said employees is the sole responsibility of the city based upon the Medical Bureau's examination results

City Proposal - No final offer

Union Proposal - The union proposes changing the Medical Bureau to "a medical professional designated by the city"

Issue 7 - Section (h) - Limit on Hazardous Duty Injury

Current Contract - After an employee has been on hazardous duty status for two years, the employee shall apply for a permanent disability retirement pension or return to normal duty

City Proposal - Hazardous Duty Injury is limited to one year with an option to extend for 90 calendar days at the city's sole discretion

Union Proposal - Hazardous Duty Injury is limited to 18 months but a six-month extension may be granted for good cause shown

Issue 8 - Section (i) - Disability Pension

Current Contract - An employee shall remain on HDI until his disability pension is effective

Union Proposal - The union omits this provision

City Proposal - The city omits this provision

Issue 9 - Union Side Letter - Labor-Management Committee Discussion

Current Contract - No provision

Union Proposal - A labor-management committee will be convened to discuss possible modifications to Article XXI

City Proposal - No Offer

Issue 10 - Union Side Letter - Employees currently on HDI

Current Contract- No provision

Union Proposal -Employees on HDI prior to the date of the award shall be governed by the 2013-2016 collective bargaining agreement

City Proposal - No proposal

Issue 11 - Union Side Letter - Exhaustion of HDI

Current Contract - No provision

Union Proposal - Employees who exhaust their HDI under the new contract can utilize their benefit time until their disability pension is effective

City Proposal - No final offer

The Arbitrator must select the city's final offer. First, internal comparisons, which are an important criterion in final-offer arbitration, strongly support the city's position. The Hazardous Duty Injury provision in the agreement between the City of Cleveland, Division of Corrections and Teamsters Local No. 507, effective through March 31, 2019, is less generous than the city's offer to the CPPA. (City Exhibit 9) In the Teamster contract, Paragraph 184 of Article XXI indicates that HDI is the result of a physical interaction with an inmate or arrestee while on duty and Paragraph 190 limits HDI to one year, which may be extended for an additional year at the sole discretion of the city and bars the accumulation of sick leave while receiving HDI benefits. These provisions were the result of a recommendation made by Fact Finder Anna Duvall Smith on April 1, 2008. (City Exhibit 10)

Second, the contract between the City of Cleveland and C.A.R.E./ILA, Local 1975, effective April 1, 2013 through March 31, 2016, is more restrictive than the city's final-offer.

(City Exhibit 16) Article XXIX, Section A, of the C.A.R.E. contract defines a HDI as an injury suffered on duty which is not caused by a failure to perform in the correct and standard manner, including injuries suffered as a result of an unprovoked assault, and an injury in an EMS vehicle responding with "lights and siren," and "aiding a patient ... which is determined to be of serious and debilitating nature by the Safety Director." Section G limits HDI to 120 days but allows it to be extended by 60 day increments by the Safety Director or for up to 300 days.

Most important, on February 21, 2018, Arbitrator Michael Paolucci awarded the city's offer in City of Cleveland and Fraternal Order of Police, Lodge 8; SERB Case No. 2015-MED - 12-1312.² At the conciliation hearing, the city proposed the same language for HDI as it proposed in the instant case and the FOP proposed the current contract language.

Arbitrator Paolucci focused on the wage issue and offered only a brief analysis of HDI. He stated that the city proposed "changing the Hazardous Duty Injury leave so that accumulated sick time can be used for time off; so that HDI is more narrowly defined; and so that HDI leave is limited to one (1) year from its current to (2) year period." (City Exhibit 1, page 14) Paolucci explained:

Similar to the previous issues already discussed, this is a reasonable change that is best justified for patrol officers, and the need to influence that negotiations is important. The city conceded that the issue lies with the minority of patrol officers who appear to be abusing the system. Although this unit does not have an ongoing issue with HDI, they are the leaders that establish standards, and it is fair to start the change with this unit. (Ibid.)

As indicated above, the city's final offer was selected.

External comparisons also support the city's final offer. First, in Cuyahoga County in 2017 the limits on hazard duty injury leave for 32 jurisdictions as were follows:

² The FOP represents approximately 280 ranking officers.

<u>City³</u>	<u>HDI Limit</u>
Bay Village	90 days
Beachwood	60 days
Bedford	120 days
Bedford Heights	120 days
Berea	182 days
Broadview Heights	180 days
Brooklyn	90 days
Brooklyn Heights	120 days
Cleveland Heights	90 days
Cuyahoga Sheriff	120 days
East Cleveland	120 days
Euclid	182 days
Fairview Park	180 days
Independence	90 days
Highland Heights	90 days
Lyndhurst	90 days
Mayfield Heights	90 days
Middleburg Heights	90 days
North Olmsted	90 days
North Royalton	90 days
Parma	180 days
Pepper Pike	60 days
Richmond Heights	60 days
Rocky River	180 days
Shaker Heights	180 days
Solon	180 days
South Euclid	40 days
Strongsville	120 days
University Heights	90 days
Warrensville Heights	120 days
Westlake	60 days
Average	115 days
City's Offer	365 days
Union's Offer	545 days
(City Exhibit 5, page 1)	

While the city's offer reduces HDI leave, it still is significantly longer than any of the 32 jurisdictions and is more than twice the average for them.

³ Brecksville and Lakewood offer Hazardous Duty Injury leave but it is not specified in their collective bargaining agreements.

Second, the city's final offer for HDI leave exceeds the other major cities in Ohio. The leave in the five other major cities is as follows: (City Exhibit 5, page 2)

<u>City</u>	<u>HDI Limit⁴</u>
Akron	365 days
Cincinnati	365 days
Columbus	180 days
Dayton	90 days
Toledo	60 days
Average	202 days
Union's Offer	545 days
City's Offer	365 days

The union demands 50% more HDI than Akron and Cincinnati and Cleveland's offer exceeds the average for the remaining cities by more than 80%.

The Arbitrator rejects the union's argument that its final offer should be selected because some of the items in its offer were included in one or another of the city's earlier proposals. First, most of the offers at issue are not ones that were involved in the Arbitrator's mediation efforts. He has no idea what trade-offs may have been involved in the city's proposals. It would be inappropriate to pick the union's offer simply because some of the items the union seeks were included in previous city proposals.

Second, the city is not bound by the variety of offers it made in negotiations. If that were the rule, the reluctance of the parties to suggest alternatives would make it more difficult to reach an agreement.

Third, the parties acknowledge that no agreement was ever reached regarding HDI, including the HDI language in the "Tentative Agreement," which was rejected by the union

⁴ The union's offer provides for 90 additional days at the discretion of the city. The city's proposal provides for 180 days at its discretion. The Arbitrator has no information indicating whether the other cities provide additional time to what is shown above.

membership. In addition, as the union pointed out, the five tentative agreements included differing language regarding HDI and none of the tentative agreements were agreed to by the parties. (Union Exhibits 8-12)

Finally, the Arbitrator's selection of a final offer is governed by the criteria agreed upon by the parties in Article XXIII, Section (e), of their contract. As discussed above, the internal and external comparisons are important criteria and both strongly support the city's final offer.

The union offered the testimony of George Mineff, an experienced workers' compensation attorney, who has represented many patrolmen in Cleveland as well as in a number of other cities. He testified that the city routinely denies claims which delays an injured patrolman's treatment and return to work. Mineff stated that "the City we believe appeals [workers compensation claims], A, unnecessarily; and B more than other employers." (Transcript, Page 27, lines 17-19)

The Arbitrator cannot attach significance to the union's complaint. First, the union's final offer includes little or nothing that would address the delays it complains about. Second, the union offered no data to support its claim. In fact, the testimony of the union's witnesses do not appear to support its claim. Richard Mauer suffered a serious injury to his right hand in 2006 that required surgery. He was off, however, for only five months. Andrew Gasiewski was involved in a serious motorcycle accident on June 30, 2017. He claims that the city challenged his Workers' Compensation claim and he is presently doing physical therapy which was approved only after a second appeal with the support of a spine surgeon. Gasiewski reported, however, that he returned to work at the end of July 2017 -- approximately one month after the accident.

The city charges that HDI has “morphed into basically Workers’ Compensation benefits but with full pay and benefits.” (Transcript, page 167, lines 4 - 6) It points out that in City of Cleveland, Ohio and Cleveland Police Patrolmen’s Association; AAA No. 01-15-000-5-9767; December 16, 2016, the grievant was stopped at a red light while following up on a missing person report when a car went by her at a high rate of speed and crashed into the car in front of her and then spun around and hit the driver’s side of her patrol car. The grievant was taken to the hospital complaining of pains in her back and neck and her left arm, shoulder, and knee, and missed 2½ weeks of work. Her supervisor investigated and determined that she was injured while performing her duties. When the Safety Director denied the grievant’s request for HDI, she filed a grievance. Arbitrator Robert Stein ruled that the grievant was engaged in “active police duty,” and sustained her grievance.

The city claims that the union’s view of HDI leave is illustrated by the testimony of Bill Gonzalez, who was the union’s First Vice President. In the above case, he testified on cross-examination as follows:

Q Let me clarify that hypothetical then. You’re pulling into the parking lot, driving in a parking lot and a car accident leaves a car ram into the cruiser and you suffer an injury. Under that scenario where you’ve called would that be an HDI?

A Yes. He’s in - - he or she is doing the duty of patrolling, whether they are on lunch or off.

Q How about if I get out of my car and walk inside the Burger King to get my lunch and I twist my knee in a pothole in the parking lot, is that an HDI, in your mind? Same scenario?

A Yes.

Q That would qualify as an HDI?

A Yes. (Transcript, page 167, lines 19-25, page 168, lines 1-90)

The union complains that the Fast Track program has not been adopted by the police department. It points out that under that program a firefighter who suffers an on-duty injury is transported to Metro Health's Occupational Medical Unit. The union notes that the unit is accustomed to treating Cleveland firefighters and as a result, their treatment and recovery is expedited.

Eduardo Romero, the city's risk manager, presented a very favorable view of the Fast Track program. In particular, he indicated that the costs of on-duty injuries in the fire department were reduced without any change in the fire contract language. The Arbitrator is sympathetic with the union's concern and believes extending the program to the police department should be explored.

AWARD

Based on the criteria set forth in Article XXIII, Section (e), the Arbitrator must select the city's final offer for Article XXI. It is as follows:

(a) Because of the hazardous nature of active police duty, days lost by a patrol officer herein defined, due to hazardous duty injury, shall not affect normal biweekly salary, holiday, accumulated overtime, accumulated furlough time, and vacation days. Nor shall an officer be deprived of any other benefit because of hazardous duty injury so determined by the Safety Director and any time lost due to such injuries shall not affect the formula for sick leave conversion at the time of retirement.

(b) "Hazardous duty injury" is defined as injury resulting from active police duty, either on or off regular hours of duty; such duty limited to the pursuit, apprehension or attempted apprehension of suspects; where the officer is actively engaged in overseeing vehicular accidents (including disabled vehicles) or directing the vehicular traffic; or, any other injury determined by the City to be the result of a hazardous-type circumstance. Employees injured while performing work in the service of another employer are not eligible for hazardous duty pay and benefits. However, injuries incurred consistent with the above definition by an officer responding to criminal

activity unrelated to secondary employment, provided a supervisor is timely notified of the injury, shall fall within the definition of "hazardous duty injury."

(f) - Change reference from "Police Surgeon" to "a physician designated by the city."

(h) An employee may not remain on Hazardous Duty Injury (HDI) leave in excess of one year. Aggravating a prior HDI injury shall not entitle the employee to a new one-year maximum period. Upon request from the member, the City, within its sole discretion, may extend HDI leave up to an additional ninety (90) calendar days.

(i) - Delete this section.

In addition to the above, at the request of the parties, the Arbitrator awards the tentative agreements, dated March 7, 2018, and March 8, 2018, as the parties as their mutually agreed upon final offers.



Nels E. Nelson
Arbitrator

April 6, 2018
Russell Township
Geauga County, Ohio