

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

Fraternal Order of Police,
Ohio Labor Council, Inc.

Employee Organization

Case No. 12-MED-02-0168

And

Cuyahoga Metropolitan Housing Authority

Fact-finder: Jerry B. Sellman
Date of Report: October 3, 2012

The Employer

FACT-FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Charles L. Wilson - Senior Staff Representative with Fraternal Order of Police, Ohio Labor Council, Inc., representing the Union

FOR THE EMPLOYER:

Craig M. Brown, Esq. – Attorney with LITTLER MENDELSON, P.C., representing the Employer, Cuyahoga Metropolitan Housing Authority.

INTRODUCTION

This matter concerns a Fact-finding proceeding between the Cuyahoga Metropolitan Housing Authority (hereinafter referred to as the “CMHA” or the “Authority”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter on July 13, 2012. A Fact-finding hearing was scheduled and commenced on August 23, 2012, at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The initial unresolved issues were as follows:

1. Article 3, Recognition
2. Article 5, Dues Deduction/Fair Share Fee
3. Article 6, Management Rights
4. Article 7, Employee Rights
5. Article 8, General
6. Article 10 Discipline
7. Article 11, Associate Representation
8. Article 14, Non-Discrimination
9. Article 15, Obligation to Negotiate
10. Article 17, Seniority
11. Article 18, Layoff and Recall
12. Article 20, Overtime Court Pay
13. Article 26, Personal Leave
14. Article 27, Funeral Leave
15. Article 28, Line of Duty Injury Leave
16. Article 32, Wages
17. Article 35, Uniform Allowance
18. Article 36, Insurance
19. Article 37, Miscellaneous
20. Article 41, Drug/Alcohol Testing
21. Article 44, Duration of Agreement.
37. Article 45, Execution.

The Parties engaged in productive discussions for an entire day, but were unable to find consensus on all major issues. As a result, a second day of mediation was set for August 28, 2012, at which time further mediation took place to resolve the outstanding issues. While many additional issues were resolved, the parties were still unable to resolve all of the outstanding issues. Unable to find consensus on all of the issues, a Fact-finding hearing was set for September 18, 2012, at which time eight issues remained for consideration of the Fact-finder.

The open issues identified by both parties included:

1. Article 6, Management Rights
2. Article 7, Employee Rights
3. Article 10 Discipline
4. Article 18, Layoff and Recall
5. Article 20, Overtime Court Pay
6. Article 32, Compensation
7. Article 35, Uniform Allowance
8. Article 36, Insurance

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder's consideration. The parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issue before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

I. BACKGROUND

CMHA is a public housing authority located in Cleveland, Ohio. CMHA owns and manages property and administers rent subsidy programs. Its mission is to serve the community by helping people access affordable housing. By working with collaborative partners, it develops, renovates and maintains housing, promotes neighborhood revitalization, and assists residents in accessing needed social services. CMHA serves over 50,000 residents.

The Cuyahoga Metropolitan Housing Authority Police Department is a state-certified law enforcement agency and is nationally accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA). Sworn police officers of the CMHA Police Department are certified by the Ohio Peace Officers Training Commission and have full police arrest powers. They enforce all city, state, and federal laws, as well as agency policies and procedures. The CMHA Police Department provides quality law enforcement service to residents, employees, and visitors of CMHA properties located throughout Cuyahoga County. The Department provides policing services to CMHA residents 24 hours a day, seven days a week, year-round and has an authorized staff of approximately 135.

The bargaining unit represented by the Union in this matter is comprised of approximately fifty-six (56) Sworn Police Officers. Prior to these negotiations, the bargaining unit was represented by the Ohio Patrolmen's Benevolent Association ("OPBA"). The collective

bargaining agreement between CMHA and the OPBA covering this bargaining unit expired December 31, 2011.

The FOP filed a petition with SERB on September 26, 2011, seeking the right to represent the bargaining unit employees in this matter. A mail ballot representation election was held during the polling period of January 4, 2012 through January 17, 2012, and on February 13, 2012, SERB certified the FOP as the representative of the bargaining unit employees. Thereafter, CMHA and the FOP began negotiations for a new collective bargaining agreement.

Since June 6, 2012, CMHA and the FOP had ten (10) meetings and had resolved many issues. After the August 23 and 28, 2012, mediation sessions before the Fact-finder, the parties met again on September 11, 2012, without the assistance of the Fact-finder to further discuss outstanding issues. During the mediation sessions and the meeting on September 11, 2012, the parties were able to resolve additional disputed issues; however, a number of issues remain unresolved. In an attempt to resolve these remaining issues, the parties agreed to proceed to fact-finding on September 18, 2012. Pre-hearing statements were exchanged by 5:00 p.m. prior to the day of the hearing and the hearing commenced on September 18, 2012.

In fashioning a new collective bargaining agreement, the parties used the agreement between the Employer and the OPBA, which expired on December 31, 2011, as the template for many of their proposals. As a result, where reference is made in this Report to “current language,” such reference is in regard to language agreed to by the Police Officers and the Employer in their expired Collective Bargaining Agreement.

The Employer is currently party to a contract with the OPBA on behalf of the Sergeants, Lieutenants, Captains, Commanders, Chief Safety Officers, Safety Officers and RCC Supervisor, which has an effective date of January 1, 2010 through December 31, 2012; a contract with the OPBA on behalf of the Radio Communications Personnel/Dispatchers, which has an effective date

of January 1, 2010 through December 31, 2012; a contract with Local 1355, AFSCME Ohio Council 8, AFL-CIO (Maintenance Employees), which has an effective date of July 1, 2011 through June 30, 2014; a contract with Local 1355, AFSCME Ohio Council 8, AFL-CIO (Clerical Employees), which has an effective date of July 1, 2011 through June 30, 2014; a contract with the International Union of Operating Engineers, Local 18-S, which has an effective date of July 1, 2011 through June 30, 2014; and a contract with the International Union of Painters and Allied Trades, AFL-CIO District Council #6, which has an effective date of January 1, 2012 through December 31, 2012.

Both parties relied upon internal and external comparables to support their positions. The Employer based its primary position on its multi-year reliance on pattern bargaining among the various unions representing bargaining units engaged in collective bargaining with the Employer.

The parties referred to wages and benefits of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

II. UNRESOLVED ISSUES

The following discussion and resulting recommendation for each of the unresolved issues has been set forth in consideration of all of the proposals taken as a whole in light of the criteria in Rule 4117-9-05 (K) of the State Employment Relations Board as set forth above.

The parties and their representatives are to be commended for bargaining, negotiating and successfully mediating the multiple provisions of this new collective bargaining agreement. The parties initially brought thirty-seven (37) Articles to Fact-finding and through good faith mediation were able to resolve all but eight (8) Articles of the new Agreement. While mutual agreement was reached on most, including the various tentative agreements that were signed prior to Fact-finding, a final agreement could not be reached on a wage package that encompassed several articles and a new article concerning employee rights and discipline. The following findings and

recommendations are based upon the evidence, testimony and arguments presented at the Fact-finding hearing.

The issues presented regarding Layoff and Recall, Overtime/Court Pay, Compensation, Uniform Allowance and Insurance all have an impact on a bargaining unit employee's compensation package and the Employer's out-of-pocket expenses. Since one cannot be considered without the other, it was not surprising that these issues remained for resolution. Employee rights and discipline became issues primarily due to a disagreement over the degree of specificity contained in new articles, but not so much in the concept of both parties recognizing employee rights and the right to due process. In recommending provisions for the parties' consideration, I have examined all of these issues with regard to their impact on each of the issues presented.

ARTICLE 6 – MANAGEMENT RIGHTS

The Employer's Position

The Employer proposes to add a waiver clause to this Article to ensure that its management rights are preserved and it is not required to seek permission to exercise those rights. The language of the waiver clause seeks an acknowledgment from the Union that it has waived the obligation and duty to bargain over the exercise of management rights. It argues that a right is not a right, if you need permission to exercise it. Without such language in a collective bargaining agreement, current law under Ohio Revised Code 4117 requires an employer to essentially seek permission to exercise its management rights. The proposed language will make it clear what management retains and what it gives up in the agreement. Absent the waiver clause as proposed by the Employer, the Union could challenge a management right and prevail. To that end, the Employer proposes the following:

Section 6.1

Unless CMHA agrees otherwise in this Collective Bargaining Agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of CMHA to:

- A. Determine matters of inherent managerial policy, which include but are not limited to areas of discretion or policy such as functions and programs of CMHA, standards of services, its overall budget, use of technology, and organizational structure,
- B. Direct, supervise, evaluate, or hire employees, and to determine when and under what circumstances a vacancy exists,
- C. Maintain and improve efficiency and effectiveness of governmental operations,
- D. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted,
- E. Suspend, discipline, demote, or discharge, for just cause, lay off, transfer, assign, schedule, promote, or retain employees,
- F. Determine the adequacy of the work force,
- G. Determine the overall mission of CMHA as a unit of government,
- H. Effectively manage the work force,
- I. Take actions to carry out the mission of CMHA as a governmental unit.

Section 6.2 Nothing in this Agreement shall operate, or be interpreted to operate, in any fashion which impairs the Employer's rights as outlined above. The Employer specifically reserves all rights and privileges not specifically identified or impaired in any Article of this Agreement. The FOP, on behalf of the employees, agrees to cooperate with CMHA to attain and maintain full efficiency and maximum productivity.

Section 6.3 In addition, unless otherwise restricted by an expressed term of the Agreement or by a letter of understanding or other document executed by the parties, all rights are exclusively reserved by CMHA. Further, the exercise of enumerated or reserved management rights shall not be subjects of negotiation during the term of this Agreement with respect to the decision(s) or the effects of such decision(s), and the FOP hereby expressly waives any right to engage in such negotiations over the exercise of such enumerated or reserved management rights as to either the decision(s) or the effects of such decision(s).

Section 6.4 Any of the rights, powers, authority and functions CMHA had prior to the negotiation of this Agreement are retained by CMHA, except as expressly abridged by a specific provision of the Agreement or by a letter of understanding or other document executed by the parties. By not exercising rights, powers, authority and functions reserved to it, or by exercising them in a particular way, CMHA shall not be deemed to waive said rights, powers, authority and functions or its rights to exercise them in some other way not in conflict with a specific provision of this Agreement or by a letter of understanding or other document executed by the parties.

The Union's Position

The Union seeks to retain current contract language. It is of the opinion that the proposal of the Employer expands the management rights. Current language is as follows:

Section 6.1 The Employer's exclusive rights include, but shall not be limited to the following, except as expressly limited by the terms and set forth in this Agreement:

- A. Determine matters of inherent managerial policy, including areas of discretion of policy such as functions and programs, standards of service, overall budget, use of technology, and organizational structure,
- B. Direct, supervise, evaluate, or hire employees,
- C. Maintain and improve efficiency and effectiveness of operations,
- D. Determine the overall methods, process, means, or personnel by which operations are to be conducted,
- E. Suspend, discipline, demote, or discharge, for just cause, lay off, transfer, assign, schedule, promote, or retain employees,
- F. Determine the adequacy of the work force,
- G. Determine the overall mission of the Department,
- H. Effectively manage the work force, and
- I. Take actions to carry out the mission of the Department as a governmental unit.

Discussion, Findings and Recommendation

The Employer is correct that a great deal of discussion by both management and union representatives has centered on the exercise of management rights under certain language contained in Ohio Revised Code §4117, particularly after the debate on HB 5. In the private sector, it is clear that management's right to manage and direct the work force is unimpaired, unless otherwise limited in a collective bargaining agreement or by law. Since an employer is obligated to bargain with the union over "terms and conditions of employment" under Ohio Revised Code §4117, it becomes unclear the extent to which "reserved rights" then become the subject of the process without a waiver from the union on this matter. While the Employer proposes to establish language in a new contract which it views as clarifying the issue, the Union sees it as broadening the rights of the Employer.

The Arbitrator does not find sufficient rationale to change the current language in the

Agreement. Under the current contract , a union generally files a grievance to challenge an employer's exercise of its rights. Under the Employer's proposal, a similar challenge would probably need to be ensnared in a procedure before SERB. The ramifications of the Employer's proposal need further examination before being incorporated in this agreement.

Recommendation: ARTICLE 6 – MANAGEMENT RIGHTS

Maintain current language.

ARTICLE 7 – EMPLOYEE RIGHTS

The Union's Position

The Union proposes to combine Article 7, Employee Rights, and Article 10, Discipline, into one Article, e.g. Article 7, Employee Rights/Discipline. In drafting this new proposed Article, it has taken language from the former Collective Bargaining Agreement, the current Police Policy, and provisions from the Employer's Administrative Order 11 and combined various provisions into one article so that employees would not need to examine several documents in order to determine their Employee Rights and Discipline. The Union also added additional language contained in a new Sections 7.11 that spells out the prescribed course of action taken in pre-disciplinary hearing. This language, it argues, is required by the Union to meet its obligation on a duty to fair representation claim should it deem a waiver of a hearing be the most prudent action at a particular time in an employee's discipline.

The Union proposes the following language to be contained in this new Article:

Section 7.1 (Formerly 10.1) Discipline action taken by C.M.H.A. shall only be for just cause.

Section 7.2 (Formerly 10.2) It is hereby agreed that C.M.H.A. shall furnish two FOP representatives with one (1) copy of the executed action for all members covered by this Agreement.

Section 7.3 (Formerly 10.3) Any member of this bargaining unit who is required to appear at any investigative hearing or interview while off duty shall be paid for actual hours of the interview.

Section 7.4 (Formerly 7.1) An employee may request an opportunity to review his personnel or departmental file, add memoranda to the file clarifying any documents contained in the file and may have a representative of the FOP present when reviewing his file. A request for copies of items included in the file shall be honored. All items in an employee's file with regard to complaints and investigations will be clearly marked with respect to final disposition.

Section 7.5 (Formerly 7.2) Records of disciplinary action that are more than one (1) year old for attendance, or two (2) years old for all others, shall upon request of the employee, be removed from his or her disciplinary personnel file and will not be used in future disciplinary action(s).

Section 7.6 (Formerly 7.4) If C.M.H.A. has reason to suspect that an employee has engaged in misconduct, the employee will be informed of the general nature of any investigation of himself prior to any questioning of the subject employee. An FOP representative may be present during any questioning. The unavailability of an FOP representative shall not delay the interrogation.

Section 7.7 (Formerly 7.3) Before an employee may be disciplined for his/her refusing to answer a question or participate in an investigation, he/she shall be advised that his/her refusal to answer such questions or participate in such investigations will be the basis of disciplinary action. An employee has the right to the presence of an FOP representative at all disciplinary interrogations. The unavailability of an FOP representative shall not delay the interrogation.

Section 7.8 (Formerly 7.5) Neither C.M.H.A. nor the FOP recognizes the polygraph, the Voice Stress Analyzer, or any similar device as the sole factor in determining guilt. If, in the course of an internal affairs investigation, the Chief of Police determines that a polygraph examination, voice stress analysis, or analysis from a similar device is necessary, the employee under investigation shall submit to same upon the order of the Chief.

There shall be no polygraph examination or voice stress analysis or analysis from a similar device given unless: (1) An employee representative and/or FOP attorney is allowed to accompany the C.M.H.A. employee before the examination/analysis; (2) the subject of the intended inquiry is specifically and narrowly related to the performance of the officer's official duties; (3) the officer's answers cannot be used against him in any subsequent criminal prosecution; and (4) the officer is advised of these rights as part of the order to be examined as well as the fact that his refusal could result in discipline.

Section 7.9 (Formerly 3rd paragraph of 7.5) Investigations shall be completed within ninety (90) business days from the date of the incident, or ninety (90) business days from the date C.M.H.A. becomes aware of the incident unless the employee's conduct involves criminal allegations, sexual harassment, drug/alcohol abuse or workplace violence. In these cases, the investigation shall be completed as soon as is practicable, or at the conclusion of the criminal case where the conduct involves a criminal allegation. C.M.H.A. shall inform the employee of the final disposition of its investigation, and whether charges will be preferred against the employee with ten (10) days of the conclusion of the investigation.

Section 7.10 (Formerly 7.6) All complaints by civilians which may on their face involve suspension or discharge of an employee, shall be in writing and signed by the complainant. C.M.H.A. will furnish to the employee whom the complaint has been filed against, a copy of the complaint when such employee is notified of the investigation. The name, address, telephone number and social security number shall be redacted. If the investigation results in suspension or termination, the Union will be entitled to the previously redacted information.

Section 7.11 Whenever the Employer determines that an employee may be disciplined for just cause that could result in suspension, reduction, or termination, a disciplinary hearing will be scheduled to give the employee an opportunity to offer explanation of the alleged misconduct. Prior to the hearing, the employee shall be given written specifications of the charges.

Disciplinary hearings will be conducted by the Employer or his Designee. The employee may choose to:

1. Appear at the hearing to present oral or written statements in his defense.
2. Appear at the hearing and have an employee or non-employee representative of the FOP present oral or written statements in his defense.
3. Elect in writing to waive the opportunity to have a disciplinary hearing. Failure to elect and pursue one of these three options will be deemed a waiver of the employee's right to a disciplinary hearing.

At the disciplinary hearing, the Employer or his Designee will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee. At the hearing, the employee may present any testimony, witnesses, or documents which he feels may be germane to the charges.

Section 7.12

1. Philosophy

- a. *Discipline may be positive or negative with the purpose of channeling individual effort into effective and productive action.*
- b. Discipline may include encouragement, remedial training, counseling, or the imposition of punitive sanctions to correct a specific deficiency.
- c. Discipline requires an assessment of actual performance compared to written directives.
- d. The methods for positive discipline may include supervisory coaching, training, tangible and intangible rewards, and supervisory counseling.
- e. Discipline shall be imposed in a fair, timely, uniform and consistent manner allowing members every opportunity to correct deficient performance.
- f. Discipline shall be consistent with the seriousness of the offense and considering a member's prior disciplinary record.
- g. Members shall not be subjected to discipline based on unjust frivolous complaints and shall be exonerated when the investigation determines that they were carrying out their duties in accordance with law or in compliance with written directives.

2. Remedial Training

- a. Remedial training is affected to correct a specific deficiency which is identified by a supervisor evaluating a member during routine job performance, or by acts requiring disciplinary actions.
- b. Remedial training may correct, mold, strengthen and allows for a professional organization.
- c. Remedial training should reinforce desirable behavior and call attention to actions which are deemed to be undesirable.
- d. Remedial training may be used to correct mistakes resulting from honest misunderstanding.
- e. Members may be assigned to remedial training upon recommendation from a supervisor and approved by the Deputy Chief.

- f. Members shall be evaluated to determine if remedial training corrected a deficiency. Results of the evaluation shall be forwarded through the chain of command to the Chief of Police.
3. Counseling
- a. Counseling is corrective or preventive in nature and involves assisting members with the process of problem identification and problem solving.
 - b. Counseling may be used to:
 - i. Change behavior or work methods
 - ii. Preparation for responsibilities and challenges that lie ahead
 - iii. Resolve an issue in a positive manner or in conjunction with other disciplinary measures.
 - c. Members may be referred to an employee assistance program if counseling does not remedy a problem.
4. Negative Discipline
- a. Negative discipline is punishment or chastisement and is imposed when positive methods fail to achieve conformity.
 - b. Negative discipline shall be progressive in nature and include:
 - i. Written warning
 - ii. Written reprimand
 - iii. Suspension or demotion
 - iv. Termination.

Section 7.13 Confidentiality

- A. All information regarding an IA investigation shall remain confidential.
 - 1. Members shall not disclose or discuss details of an investigation with anyone except:
 - a. Investigators assigned to the case.
 - b. Member's union representative or attorney.
 - c. Members' chain-of-command.
 - d. Other members designated by the Chief of Police.

Section 7.14 The interviewing of a member who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators will allow reasonable interruptions to permit members to attend to personal physical necessities.

An investigator may not threaten a member who is the subject of an investigation with punitive action. An investigator may inform a member that failure to truthfully answer reasonable questions directly related to the investigation, or failure to cooperate with IA during the investigation, shall result in disciplinary action.

The Employer's Position

The Employer proposes essentially current contract language. It does not see any benefit in combining Employee Rights with Employee Discipline. Both of these sections have worked well under previous contracts with this employee group and there is no justification for combining them or substantially changing the language contained in both of the sections. The Employer has no objection to Sections 7.1 through 7.10 of the Union's proposal, but objects to the remaining sections. The remaining Sections deal with internal investigation procedures and disciplinary philosophy, all of which are spelled out in the Employer's Policy Manuals as correctly noted by the Union, but those matters are within the province of the Employer under its management rights and should not be part of a collective bargaining agreement. Management should have the right to determine how it intends to handle disciplinary proceedings and the approach to discipline that it intends to implement. These "new" sections are considered by the Employer as diminishing its management rights and the Employer is not in agreement with such changes. It also considers the new sections to be burdensome and unnecessary. The Union's pre-disciplinary procedures would require additional staffing to administer. With that said, the Employer would propose the following language for Employee Rights:

Section 7.1 Rights of Bargaining Unit Members while Under Investigation. When a bargaining unit member is under investigation, the following minimum standards shall apply:

1. If CMHA has reason to suspect that an employee has engaged in misconduct, the employee will be informed of the general nature of any investigation of himself prior to any questioning of the subject employee. An employee has the right to the presence of FOP representative at all disciplinary interrogations. The unavailability of an FOP representative shall not delay the interrogation.
2. Questioning of the bargaining unit member shall be conducted at reasonable times and places.
3. No threat against, harassment of, or promise or reward (except an offer of immunity from prosecution) to any bargaining unit member shall be made in connection with an investigation to induce the answering of any question.
4. At the conclusion of the investigation, the person in charge of the investigation shall inform the bargaining unit member under investigation, of the investigative findings and any recommendations or disciplinary action that the person intends to make.

5. Investigations shall be completed within ninety (90) business days from the date of the incident, or ninety (90) business days from the date CMHA becomes aware of the incident unless the employee's conduct involves criminal allegations, sexual harassment, drug/alcohol abuse or workplace violence. In these cases, the investigation shall be completed as soon as is practicable, or at the conclusion of the criminal case where the conduct involves a criminal allegation. CMHA shall inform the employee of the final disposition of its investigation, and whether charges will be preferred against the employee within ten (10) days of the conclusion of the investigation.

Section 7.2 Emergency Relief from Duty

1. This section does not preclude an Employer from providing for summary punishment or emergency suspension for misconduct by a bargaining unit member.
2. An emergency relief from duty shall not affect or infringe on the health benefits of a bargaining unit member.

Section 7.3 Notice of Disciplinary Action When disciplinary action is to be taken against a bargaining unit member, the member shall be notified of the action and the reasons therefore as soon as reasonably possible giving full consideration for all the circumstances.

Section 7.4 At the time that any bargaining unit member is notified to report for an internal investigation, and upon the bargaining unit member's request, he shall be provided an opportunity within a reasonable time frame to contact a Lodge Officer or nonemployee representative for the purpose of representation.

Section 7.5 Neither CMHA nor the FOP recognizes the polygraph, the Voice Stress Analyzer, or any similar device as the sole factor in determining guilt. If, in the course of an internal affairs investigation, the Chief of Police determines that a polygraph examination, voice stress analysis, or analysis from a similar device is necessary, the employee under investigation shall submit to same upon the order of the Chief.

There shall be no polygraph examination or voice stress analysis or analysis from a similar device given unless: (1) An employee representative and/or FOP attorney is allowed to accompany the CMHA employee before the examination/analysis; (2) the subject of the intended inquiry is specifically and narrowly related to the performance of the officer's official duties; (3) the officer's answers cannot be used against him in any subsequent criminal prosecution; and (4) the officer is advised of these rights as part of the order to be examined as well as the fact that his refusal could result in discipline. Polygraph examinations shall be administered by a licensed polygraph operator.

Section 7.6 Before an employee may be disciplined for his/her refusing to answer a question or participate in an investigation, he/she shall be advised that his/her refusal to answer such questions or participate in such investigations will be the basis of disciplinary action.

Section 7.7 All complaints by civilians which may on their face involve suspension or discharge of an employee, shall be in writing and signed by the complainant. CMHA will furnish to the employee whom the complaint has been filed against, a copy of the complaint when such employee is notified of the investigation. The name, address, telephone number and social security number shall be redacted. If the investigation results in suspension or termination, the Union will be entitled to the previously redacted information.

Section 7.8 Any signed complaint received concerning alleged misconduct by a bargaining unit member who was off duty when the alleged incident occurred shall be treated the same as any complaint

made by a citizen against a bargaining unit member for misconduct while on duty.

Section 7.9 Retaliation for Exercising Rights There shall be no penalty or threat of penalty against a bargaining unit member for the exercise of the member's rights under this section.

Section 7.10 Other Remedies not Impaired

1. Nothing in this section shall be construed to impair any other legal remedy that a bargaining unit member has with respect to any rights under this section.
2. A bargaining unit member may waive any of the rights guaranteed by this article.

Section 7.11 Definitions. For the purposes of this Article:

1. The term "disciplinary action" means the suspension, demotion, reduction in pay or any other employment benefit, dismissal, transfer, or similar action taken against a bargaining unit member as punishment for misconduct.
2. The term "emergency relief from duty" means relieving a member from an on-duty status to a temporary off-duty status to address an immediate situation.
3. The term "Employer" means CMHA.
4. The term "bargaining unit member" means those persons as specified by SERB as members of the bargaining unit.

Section 7.12 An employee may request an opportunity to review his personnel or departmental file, add memoranda to the file clarifying any documents contained in the file and may have a representative of the FOP present when reviewing his file. A request for copies of items included in the file shall be honored. All items in an employee's file with regard to complaints and investigations will be clearly marked with respect to final disposition

Section 7.13 Records of disciplinary action that are more than one (1) year old for attendance, or two (2) years old for all others, shall upon request of the employee, be removed from his or her disciplinary personnel file and will not be used in future disciplinary action(s).

Discussion, Findings and Recommendation

The Union's desire to combine Articles 7 and 10 is meritorious, particularly since these sections deal with a similar subject matter. While I understand the Union's desire to incorporate sections from the Employer's Policy Manual and Administrative Order -11 (AO-11) in Article 7, the Employer makes a compelling argument that the administration of the disciplinary process is a managerial right, subject to, of course, to due process and other specific provisions contained in the Collective Bargaining Agreement. I would agree with the Employer that incorporating many of these

provisions in the Agreement is not necessary and would make the process more burdensome. As a result, the consolidation of the Articles as proposed by the Union is recommended, but the incorporation of the additional provisions already contained in the Employer's Policy Manual and AO-11 documents, i.e. Sections 11, 12, 13 and 14 is not. An employee already has notice of the Employer's handling of disciplinary proceedings through these documents and there is no compelling reason for further inclusion in the Collective Bargaining Agreement.

Recommendation: ARTICLE 7 – EMPLOYEE RIGHTS

It is recommended that Articles 7 and 10 be combined into one Article 7, Employee Rights/Discipline, as proposed by the Union. It is further recommended that only Sections 7.1 through 7.10 of the Union's proposal be adopted into the new agreement.

ARTICLE 10 – DISCIPLINE

The Union's Position

The Union proposes inclusion of Discipline in Employee Rights/Discipline as set forth above.

The Employer's Position

The Employer proposes current language.

Discussion, Findings and Recommendation

See discussion of the proposals concerning Article 7

Recommendation: ARTICLE 10 - DISCIPLINE

It is recommended that this Article be consolidated with Article 7.

ARTICLE 18 - LAYOFF AND RECALL

The Union's Position

The Union proposes language changes and additions to the current article on layoff and recall

to seek protection from an already expanded “Reserve” Officer Program of the Employer. During the life of this contract the Employer began using reserve officers. The Union has not countered with a strict bargaining unit work clause, but does seek to limit the expansion of the program should the Employer enter layoff status. In addition to the incorporation of current language, it proposes new language that reserve officers will be eliminated on a one for one basis equal to those officers laid off, that reserve officers shall then be required to work eight (8) hours per month in order to retain the reserve officers' commission and that the Reserve Officer Program will not be expanded during the term of layoff beyond outlined changes. It proposes the following language:

Section 18.1 Members of the bargaining unit may be laid off for lack of work or lack of funds. Section

18.2 In the event of a layoff situation, members of the bargaining unit will be laid off in accordance with their bargaining unit seniority in the rank of Sworn Police Officer, last hired are the first to be laid off.

Section 18.3 A member of the bargaining unit who is laid off shall be subject to recall from layoff for a period of four (4) years.

Section 18.4 A recall from layoff will be based upon their bargaining unit seniority in the rank of Sworn Police Officer (last laid off, first recalled).

Section 18.5 Before any full-time employee may be laid off, all part-time employees will be laid off and all reserve officers will be eliminated on a one for one basis equal to those officers laid off. Such laid off officers will be given the option to obtain a reserve officers' status (but shall not be required to do so). Such reserve officers shall then be required to work eight (8) hours per month in order to retain the reserve officers' commission. Such Reserve Officer Program will not be expanded during the term of layoff beyond the above outlined changes.

The Employer's Position

The Employer is comfortable with the current language. It is, however, agreeable to make some changes to the existing language in the Agreement, but not as proposed by the Union. It agrees to allow laid off officers to participate in the Reserve Officer Program in order to maintain their accreditation, but wants the Chief of Police to have the flexibility of determining the number of

reserve officers (up to current allotments) and require the reserve officer to work sixteen (16) hours per week, instead of the current eight (8) hours currently required. In the face of a fiscal crisis, CMHA cannot forfeit the flexibility of using reserve officers to the maximum extent possible to provide services as needed and consistent with the law. CMHA proposes the following language:

Section 18.1 Members of the bargaining unit may be laid off only for lack of work or lack of funds.

Section 18.2 In the event of a layoff situation, members of the bargaining unit will be laid off in accordance with their bargaining unit seniority in the rank of Sworn Police Officer, last hired are the first to be laid off.

Section 18.3 A recall from layoff will be based upon the employee's bargaining unit seniority in the rank of Sworn Police Officer (last laid off, first recalled).

Section 18.4 Before any full-time employee may be laid-off all part-time employees will be laid-off. Laid off officers will be given the option to obtain a reserve officer's status (but shall not be required to do so). Such reserve officers shall then be required to work sixteen (16) hours per month in order to retain the reserve officers' commission.

Discussion, Findings and Recommendation

The maintenance of a reserve officer's program benefits both the community and the police officers. It provides the community the opportunity to receive police protection and services at low cost as a supplement to the full time compliment of police officers serving the CMHA community and it provides any laid off police officers the opportunity to serve and retain their commission. Both the Union and the Employer are in agreement with the concept. They disagree primarily on the number of reserve officers that can be hired and the number of hours that the reserve officer must work in order to retain the reserve officers' commission.

The Fact-finder is of the opinion that limiting the discretion of the Chief of Police to hire reserve officers is not in the best interest of the public welfare, but is also not harmful to the union police officers. The Police Chief needs to retain discretion to determine what staffing requirements are necessary to serve the community adequately. That is a management function. Neither full-time

nor laid off police officers are harmed through the implementation of the program because of the requirement that a reserve officer must be accompanied by a full-time commissioned officer. This requirement acts as a self-limiting event.

I see no reason for requiring police officers to work eight (8) more hours per month than required in the past. As such, the current eight (8) hour requirement to retain the reserve officers' commission should be maintained.

Recommendation: ARTICLE 18 – LAYOFF AND RECALL

It is recommended that the Employer's proposal be accepted, with the exception that Section 18.4 shall provide that reserve officers shall be required to work eight (8) hours per month in order to retain the reserve officers' commission, as contained in current language.

ARTICLE 20 - OVERTIME PAY/COURT TIME

The Employer's Position

The Employer seeks to change current language in several respects. It proposes to only pay officers for overtime actually physically worked. The current language pays the officers overtime computed under this section whether or not the officer actually physically worked. Further, it seeks to compensate the officers a minimum of two hours of court time rather than the current four hour minimum. It also proposes the elimination of the current section regarding payment for range time, which is consistent with its position to only pay for time worked.

The Employer argues that employers should be discouraged from working employees too long (more than 40 hours per week) to ensure safety, productivity and adequate rest and recreation. Employees should be rewarded when required to work longer hours in exchange for sacrificing their personal time. CMHA endorses these goals and the long-standing practices in this regard. However, it is inconsistent with these goals and objectives to consider paid time off to be hours

worked for purposes of computing overtime. Whether sick, on holiday or on vacation, the employee is NOT WORKING. To then compound the expense to the employer by requiring it to pay premium rates for hours worked that week, which but for the paid time off would be less than 40, is unnecessary, expensive and inconsistent with the purpose and spirit of the overtime provision.

CMHA also proposes a reduction in Court Time. Currently, employees are paid to appear in court and receive a minimum of four (4) hours pay for each appearance. Often this is at overtime premium rates. However, the average police officer spends less than two (2) hours at each court appearance. Faced with shrinking revenues, and looking to control expenses, CMHA seeks to eliminate pay – often at premium rates – for work not performed. By merely cutting the minimum court appearance time to two (2) hours, still more than the current average appearance, CMHA would save \$60,000 to \$65,000 per year. Given the current fiscal challenges and that the current minimum provides a windfall to employees, the revisions should be adopted by the Fact-finder.

The Employer proposes the following language:

Section 1. All employees, for work performed in excess of forty (40) hours in the basic work week, as defined in Article XIX, when approved of or scheduled by the immediate supervisor, shall be compensated at the employee's election, either at (A) the hourly rate of one and one-half (1-1/2) times the employee's regular hourly rate for all overtime or (B) compensatory time computed at the same rate to be taken in the future as approved. For purposes of the above, work performed shall include only hours which are actually physically worked. Compensatory time must be used within the year it is earned. Once yearly, an employee shall elect to receive compensatory time or pay under this section.

Section 2. Scheduled overtime shall be distributed equally among employees on the same shift in accordance with seniority. Should an inadequate number of employees on a particular shift indicate a desire to work overtime, then CMHA shall schedule such overtime using inverse seniority. A record of overtime shall be kept by the Chief of Police for purposes of checking the equal distribution of overtime. This record shall be made available to the appropriate FOP representative upon request. Overtime work offered an employee and refused by him shall be considered as time worked for purposes of calculating the equality of distribution. Where an inequity appears, then an employee who failed to receive his/her equal share of overtime shall be granted a preference in the assignment of overtime until the inequity has been remedied. Once scheduled and assigned to work overtime, an employee failing to report as assigned shall be subject to disciplinary action in accordance with Departmental policy.

Section 3. The compensatory time options contained in this Article shall be offered only to the extent consistent with the Fair Labor Standards Act.

Section 4. Whenever approved by the immediate supervisor, employees called in to work or appearing in court on behalf of CMHA, for a time period of less than two (2) hours when the employee is not on duty, shall be

compensated not less than two (2) hours subject to the election of the method in which compensation is to be received as set forth within Section 1 of this Article. Court time prior to the start of the employee's shift shall be compensated only until the start of the employee's shift. Multiple or consecutive contiguous court time shall be considered a single event for the purposes of this Section.

Section 5. Mandatory training shall be compensated at straight time for actual time worked.

The Union's Position

The Union proposes current contract language. It argues that the CMHA Police encompass a very unique Agency that covers any property owned by the Housing Authority in Cuyahoga County. This means that an officer could appear in any Municipal Court in any city's jurisdiction in the County Common Pleas Court or Federal Court as well as civil actions in a number of housing courts. The four (4) hours compensation is not only intended for time spent in court, but the inconvenience and disturbance of an officer's life by having to attend court in what would be non-working hours. An officer may interrupt sleep, arrange child care, adjust family activities, arrange travel and many other activities to accommodate the Court's schedule, and in the incidents of the CMHA Officers, this obligation is even greater by the wide and varied jurisdiction and Courts they cover. The burden is enormous and the four (4) hours payment extremely justified for the imposition that is placed.

The Union proposes the following, which is current contract language:

Section 20.1 All employees, for work performed in excess of forty (40) hours in the basic work week, as defined in Article 19, when approved of or scheduled by the immediate supervisor, shall be compensated at the employee's election, either at (A) the hourly rate of one and one-half (1/2) times the employee's regular hourly rate for all overtime or (B) compensatory time computed at the same rate to be taken in the future as approved. For purposes of the above, work performed shall not include all hours for which an employee is compensated, whether or not such hours are actually physically worked. Compensatory time must be used within the year it is earned. Once yearly, an employee shall elect to receive compensatory time or pay under this section.

Section 20.2 Scheduled overtime shall be distributed equally among employees on the same shift in accordance with seniority. Should an inadequate number of employees on a particular shift indicate a desire to work overtime, then C.M.H.A. shall schedule such overtime using inverse seniority. A record of overtime shall be kept by the Chief of Police for purposes of checking the equal distribution of overtime. This record shall be made available to the appropriate FOP, Ohio Labor Council, Inc. representative upon request. Overtime work offered an employee and refused by him shall be considered as time worked for purposes of calculating the equality of distribution. Where an inequity

appears, then an employee who failed to receive his/her equal share of overtime shall be granted a preference in the assignment of overtime until the inequity has been remedied. Once scheduled and assigned to work overtime, an employee failing to report as assigned shall be subject to disciplinary action in accordance with Departmental policy.

Section 20.3 The compensatory time options contained in this Article shall be offered only to the extent consistent with the Fair Labor Standards Act.

Section 20.4 Whenever approved by the immediate supervisor, employees called in to work or appearing in court on behalf of C.M.H.A., for a time period of less than four (4) hours when the employee is not on duty, shall be compensated not less than four (4) hours subject to the election of the method in which compensation is to be received as set forth within Section 1 of this Article.

Section 20.5 Range Time: All employees, when required by C.M.H.A., will attend the range for target practice or annual qualifications and shall be paid for four (4) hours at either straight pay or in compensatory time, at their selection, if required to attend while off duty.

Section 20.6 Mandatory training shall be compensated at straight time for actual time worked or as overtime in accordance with Section 1 of this Article if the same is overtime.

Discussion, Findings and Recommendation

The Union provided compelling evidence to support its retention of minimum payments for court time/overtime pay. Because of the geographic territory served and required schedules to appear in court, the Union demonstrated the need for minimum payments for preparing for and appearing in court. The evidence presented by the Employer demonstrating the amount of time an officer “clocked in and clocked out” for a court appearance does not paint the entire picture of the time worked by the police officer. As was described in the testimony of one of the police officers, the Employer’s analysis did not include factors of traveling to and from or picking up and delivering evidence kept in the evidence room. The Employer’s evidence also did not take into consideration the inconvenience of the officers to appear in court when they are working other shifts, e.g., coming off a night shift to appear in court during the day shift. Additionally, the Fact-finder did not see any evidence to indicate that the police officers were abusing overtime, so there appears no reason to change the overall treatment of overtime. For these reasons, the Fact-finder sees no rational basis for changing the

existing language.

Recommendation: ARTICLE 20 - OVERTIME PAY/COURT TIME

Current language is recommended.

ARTICLE 35. UNIFORM ALLOWANCE

The Employer's Position

The Employer proposes several changes to the uniform allowance provisions. It proposes to pay the uniform allowance once each year, rather than two times each year; give the Chief of Police discretion to determine what additional items need to be purchase by the employees, which items will be reimbursed up to \$300; provide that probationary employees be required to purchase mandated items only upon completion of their probationary period; and reduce the amount of money provided for bullet-proof vests from \$600 to \$500. It proposes the following language.

Section 35.1. Effective immediately, newly hired employees shall receive the following uniform issuance:

4 long sleeve shirts	1 winter coat
4 short sleeve shirts	1 rain coat
3 pairs' trousers	1 8-point hat

An employee shall have the option of purchasing, at their own expense, a lightweight coat to be approved by the Chief of Police. Employees may have the option of purchasing a winter leather jacket of a style and quality approved by the Chief of Police at their own expense to be worn in accordance with Departmental Regulations.

Section 35.2. Effective immediately, all non-probationary employees having served at least one (1) year shall receive an annual uniform allowance in the amount of six hundred dollars (\$600.00). This amount shall be paid in November of each year.

Section 35.3. Additional approved uniform items shall be purchased by the employee, upon order of the Chief of Police. Said additional items will be purchased from the employee's uniform allowance in the manner described above.

The cost to purchase said additional items ordered to be purchased by the Chief of Police shall not exceed three hundred dollars (\$300.00) in any year. Employees shall be given at least sixty (60) days' notice prior to being required to make any purchase. Probationary employees are required to purchase mandated items upon completion of their probationary period.

All bargaining unit employees will have the option of purchasing a bullet proof vest, which will be paid for by CMHA on a reimbursed basis. Within the first month of hire, and every five (5) years following, each bargaining unit employee will be provided with up to five hundred dollars (\$500.00) for the sole purpose of purchasing a bullet proof vest. Employees will be required to submit a receipt for such purchase prior to being

reimbursed.

The Union's Position

The Union proposes current contract language with some additions. It has no objection to the Employer's proposal to provide the uniform allowance once a year rather than twice a year, but does believe that the two times per year worked well because an officer typically would "resupply" his equipment in the Spring for Summer wear and in the Fall for Winter wear. It does have a problem with the provision in those circumstances where the Chief orders new equipment in May, such as a light jacket, and it is not then reimbursed until November. Often the cost of a jacket is \$300 and the employee cannot be reimbursed until November under the Employer's proposal. To address this, the Union proposes to add language which provides that in the event of a uniform change or requirement, the Employer will provide the first issue of such items to the employee.

It proposes a minimum of \$850 for the uniform allowance and opposes the Employer's attempt to give the Chief of Police discretion to determine what additional items, above the basic uniforms and equipment, the officers must buy. It objects to reducing the amount of allowance for the bullet-proof vests because it argues that the cost of bullet proof vests have gone up, not down, as indicated by the Employer.

The Union proposes the following:

Section 35.1. Effective immediately, newly hired employees shall receive the following uniform issuance:

4 long sleeve shirts	1 winter coat
4 short sleeve shirts	1 rain coat
3 pairs' trousers	1 8-point hat

An employee shall have the option of purchasing, at their own expense, a lightweight coat to be approved by the Chief of Police. Employees may have the option of purchasing a winter leather jacket of a style and quality approved by the Chief of Police at their own expense to be worn in accordance with Departmental Regulations.

Section 35.2 Effective immediately, all non-probationary employees having served at least one (1) year shall receive an annual uniform allowance in the amount of eight hundred fifty dollars (\$850.00). This amount shall be divided in half with the first payment being made on March 1, and the second payment being made on September 1 of each year.

Section 35.3 Additional approved uniform items shall be purchased by the employee, upon order of the Chief of Police. Said additional items will be purchased from the employee's uniform allowance in the manner described above.

In the event of a uniform change or requirement, the Employer will provide the first issue of such items to the employee.

In addition to the above allowance, all Police Officers shall purchase a bullet proof vest from an approved list which will be paid for by C.M.H.A. on a reimbursed basis. Such choice of vests shall be at the discretion of the member provided the purchase does not exceed the allocation and meets required protection ratings. Police Officers are required to wear the bullet proof vest in accordance with a supervisor's direction and as set forth in C.M.H.A. Manual of Rules and Regulations for Police Officers. Within the first month of hire and every five (5) years following, each Sworn Police Officer will be provided with up to six hundred dollars (\$600.00) for the sole purpose of purchasing a bullet proof vest. The Officer will be required to submit a receipt for such purchase prior to being reimbursed.

Discussion, Findings and Recommendation

Both parties attempted to counterbalance the proposals of the other by offsetting language. As an example, the Employer seeks to pay the uniform allowance once a year for cash flow purposes, but the Union would want to add language which provides that in the event of a uniform change or item requirement, the Employer will provide the first issue of such items to the employee to offset the delay in reimbursement if the new item to be purchased occurred in May. Both have proposed language regarding reimbursement for items ordered to be purchased by the Chief of Police. The Employer argues that the price of bullet proof vests are decreasing, which the Union argues that the costs are increasing. Neither presented evidence to support its position.

It appears to the Arbitrator that current contract language, with the increases proposed by the Employer, is not only a compromise position; it seems to meet the objectives of both parties.

Providing a reimbursement twice per year makes sense in light of the arguments of the Union. The Union's proposal to offset the Employer's desire to reimburse the employee once each year with a further requirement that in the event of a uniform change or requirement, the Employer will provide the first issue of such items to the employee makes no sense and is more costly to the Employer. The

Fact-finder recommends retention of current language with the addition of an increased uniform allowance and a provision requiring probationary officers to purchase their uniforms only after their probationary period.

Recommendation: ARTICLE 35 – UNIFORM ALLOWANCE

It is recommended that current language be maintained, with the exception that the uniform allowance be increased to \$850. Article 35 shall read as follows:

Section 35.1. Effective immediately, newly hired employees shall receive the following uniform issuance:

**4 long sleeve shirts 1 winter coat
4 short sleeve shirts 1 rain coat
3 pairs' trousers 1 8-point hat**

An employee shall have the option of purchasing, at their own expense, a lightweight coat to be approved by the Chief of Police. Employees may have the option of purchasing a winter leather jacket of a style and quality approved by the Chief of Police at their own expense to be worn in accordance with Departmental Regulations.

Section 35.2 Effective immediately, all non-probationary employees having served at least one (1) year shall receive an annual uniform allowance in the amount of eight hundred fifty dollars (\$900.00). This amount shall be divided in half with the first payment being made on March 1, and the second payment being made on September 1 of each year.

Section 35.3 Additional approved uniform items shall be purchased by the employee, upon order of the Chief of Police. Said additional items will be purchased from the employee's uniform allowance in the manner described above.

In addition to the above allowance, all Police Officers shall purchase a bullet proof vest from an approved list which will be paid for by C.M.H.A. on a reimbursed basis. Such choice of vests shall be at the discretion of the member provided the purchase does not exceed the allocation and meets required protection ratings. Police Officers are required to wear the bullet proof vest in accordance with a supervisor's direction and as set forth in C.M.H.A. Manual of Rules and Regulations for Police Officers. Within the first month of hire and every five (5) years following, each Sworn Police Officer will be provided with up to six hundred dollars (\$600.00) for the sole purpose of purchasing a bullet proof vest. The Officer will be required to submit a receipt for such purchase prior to being reimbursed.

ARTICLE 36. INSURANCE

The Union's Position

The Union proposes maintaining current contract language. It argues that The Employer is seeking very widespread changes in the insurance benefits. The establishment of a committee of all bargaining units is illusory, for the Employer has the sole and only authority to implement changes. In essence, it wants to remove the bargaining process from the employee and does so by creating a committee that in the end has no authority or teeth to resist changes implemented by the Employer. The Union seeks to maintain current long standing contract language allowing bargaining in this area.

The settlement process should not be so heavily weighted to the Employer and should contain some fashion of a resolution process. The Employer rejected this process. The Union simply cannot accept any open-ended language that reduces its bargaining power.

The Union proposes retaining the cap on employee premium contributions, which is sixty-five dollars (\$65) per month for single coverage and ninety-five dollars (\$95) per month for family coverage.

The Employer's Position

The Employer proposes to continue to provide health insurance as provided under the current contract until December 31, 2012. Within sixty (60) calendar days following ratification of this Agreement, an equal number of representatives from the Employer and the unions representing its various bargaining units shall form a health care committee that has as its objective reduced health care costs and/or cost containment. The Health Care Committee (HCC) shall be an advisory body to the Chief Executive Officer of CMHA. The HCC shall meet on a schedule determined by the parties, and it shall make timely consensus recommendations to the Chief Executive Officer of CMHA prior to annual health care decision making by CMHA. Effective January 1, 2013, the Employer shall have the right to change the design of the health care plan and change providers, including the right to

choose a single provider. Effective January 1, 2013, employees shall pay ten percent (10%) of their monthly health insurance premiums. Effective January 1, 2014, employees shall pay twelve percent (12%) of their monthly health insurance premiums.

The Employer argues that in light of continually rising premium costs it is necessary to explore new options in pricing and benefits for the benefit of all employees. By including Union participation in the process, the employees will be part of the ultimate selection of an insurance package. While the Union does not like the fact that the Chief of Police has the final say in choosing the insurance package after input from the HCC, someone has to make a final decision if differing views are presented. The Employer is basically asking the Union to look at tackling the health care issues with this approach over the next two years. It believes the system will work. It is trying to restrain the increases.

Most importantly, the Employer seeks to provide the same coverage to all employees, thus maintaining the best benefit coverage while keeping the overall costs at the most affordable price. The Employer has over 900 union employees. Of the bargaining units, AFSME, the Painters Union and the Maintenance bargaining unit representing almost two thirds of the bargaining units accepted the Employer's proposal. The Employer has a long history of pattern bargaining and with these contracts finalized, it is in the best interest of the community for the Union to agree to the same terms. The proposal of the Employer has not only been adopted by settlement among the other units, it has been found to be laudable and necessary by Fact-finders.

Under the Employer's proposal the current single premium will go down 16.17% and the average family premium will only rise 2%. The proposed 10% increase in the second year of the contract and the 12% increase proposed in the third year of the contract are below those rates being paid by many other police officers throughout the state.

The Employer proposes the following language:

Section 36.1 All regular and full-time employees covered by this Agreement who have completed ninety (90) days of continuous employment with CMHA, shall be entitled to health care coverage for themselves and their family. There will also be vision, prescription drug and dental coverages.

Section 36.2 Premiums for insurance coverage under this Article shall continue to be paid for a period of time not to exceed six (6) months while the employee is on an approved leave of absence, in a paid status. The obligation then becomes that of the employee to pay any further premiums in full for continued insurance coverage.

Section 36.3 The employees covered by this agreement shall pay a monthly premium cost for continued health care coverage under this Article. Such coverage, effective through December 31, 2012, is outlined in Appendix A, attached to this Agreement. An employee's premium contribution under this section shall be sixty-five dollars (\$65.00) per month for single coverage or ninety-five dollars (\$95.00) per month for family coverage through December 31, 2012.

Within sixty (60) calendar days following ratification of this Agreement, an equal number of representatives from the Employer and the unions representing its various bargaining units shall form a health care committee that has as its objective reduced health care costs and/or cost containment. The Health Care Committee (HCC) shall be an advisory body to the Chief Executive Officer of CMHA. The HCC shall meet on a schedule determined by the parties, and it shall make timely consensus recommendations to the Chief Executive Officer of CMHA prior to annual health care decision making by CMHA.

Effective January 1, 2013, the Employer shall have the right to change the design of the health care plan and change providers, including the right to choose a single provider. Effective January 1, 2013, employees shall pay ten percent (10%) of their monthly health insurance premiums. Effective January 1, 2014, employees shall pay twelve percent (12%) of their monthly health insurance premiums.

Discussion, Findings and Recommendation

Rising healthcare costs propose a dilemma for both the Employer and Employee. It is impossible to maintain full benefits at a low cost in today's environment, yet everyone wants maximum health coverage for little premium contribution. The Employer introduced multiple documents evidencing increases in health insurance premiums, many of which were prepared by the Kaiser/HRST Survey of Employer-Sponsored Health Benefits. Anyone involved in labor-management relations over the last decade is well aware of these rising costs. No one currently has the answer to abating the continuing rise in health care premium payments. In response to these skyrocketing health insurance costs, employers have steadily increased employee cost sharing through higher deductibles, higher out-of-pocket maximums, higher office visits co-pays, higher prescription drug co-pays, and higher employee monthly premium cost sharing contributions.

Between 2001 and 2011, average premiums for family coverage have increased 113%.

One idea developed by both management and employee organizations to address this issue is the creation of health care committees to jointly tackle the problem. Such a committee is proposed by the Employer in this case. The Union does not object to the idea of a committee, but it considers a process that leaves the final decision on the selection of a health care package in the hands of management to be giving up its bargaining right to establish a health care benefit as part of a total compensation package. The Arbitrator recognizes this argument as a valid argument, but a structure requiring approval by various competing entities could also result in an impasse inimical to the interests of all of the parties involved in the process.

The adoption of the Employer's proposal appears to be sound with little down side to the Union members. The proposal has already been adopted by more than half of the employees subject to collective bargaining with CMHA and it is in the collective best interest of all members to participate in one plan rather than several. Further, under the Employer's proposal, police officers retain their current insurance program for the first year and are subject to the HCC/Management only for the ensuing two years. If the Employer does not act in the collective best interest of all parties, the Union will have the insurance benefit program back on the bargaining table after the termination of this new Agreement.

RECOMMENDATION: ARTICLE 36 – INSURANCE

The Employer's proposal is recommended.

ARTICLE 32: COMPENSATION

The Employer's Position

The Employer proposes that those police officers currently on the wage step schedule (first

five years of employment) continue to be paid the current starting rate and established step increases. Employees completing the wage step schedule during the duration of the Agreement will receive a 3% wage increase in 2012, a 2% wage increase in 2012, and a 2% wage increase in 2014 on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer. An employee not on the above step schedule as of December 31, 2011, will receive a three percent (3.0%) wage increase on his/her their current hourly rate in 2012, a two percent (2.0%) wage increase on his/her their current hourly rate in 2013 and a two percent (2.0%) wage increase on his/her their current hourly rate in 2012

The Employer argues that its proposal is fair, in parity with the other bargaining units, comparable with other police officers doing the same work in comparable jurisdictions and is in the best interest of the community, particularly in light of CMHA's financial condition. The Employer's proposal is identical to that offered to and ultimately accepted by the AFSME bargaining unit, which has historically set the pattern of collective bargaining in the CMHA organization. The wage increases as applied to the police officers are above average, particularly when viewed in light of the one percent (1%) wage increases, on average, police officers are receiving in Ohio and nationally.

CMHA has historically engaged in pattern bargaining. Because of the number of unions with which it must deal, the offering of any compensation package inconsistent with that offered to others would be pattern breaking and not in the overall best interest of the community CMHA serves. The Union's proposal is pattern busting and budget busting.

Pattern bargaining had its genesis initially with the unions, but more recently has been used by employers. Three features characterize pattern bargaining. First, the employer negotiates with the union sequentially. Second, the employer chooses the order with which it negotiates with the unions. Third, the agreement reached with the first sequence (this bargaining unit is often referred to as the *target*) sets the pattern for all subsequent negotiations. In the strictest interpretation of pattern

bargaining, the agreement with the target exactly defines the offer that the employer makes to all firms with which it subsequently negotiates.

In addition to the 56 Sworn Police Officers that comprise the bargaining unit represented by the FOP in this matter, CMHA has approximately 929 employees, approximately 566 of whom are members of eight (8) different bargaining units represented by six (6) different Unions. Specifically, CMHA has the following bargaining relationships:

- (1) 273 employees represented by AFSCME Ohio Council 8 Local 1355 (Maintenance Unit);
- (2) 117 employees represented by AFSCME Ohio Council 8 Local 1355 (Clerical Unit);
- (3) 30 employees represented by International Union of Painters and Allied Trades AFL-CIO District Council #6;
- (4) 28 employees represented by International Union of Operating Engineers, Local 18-S;
- (5) 37 employees represented by Teamsters Local Union No. 507 (Protection Officers);
- (6) 7 employees represented by The Ohio Patrolmen's Benevolent Association (Radio Communications Personnel – Dispatchers);
- (7) 18 employees represented by The Ohio Patrolmen's Benevolent Association (Sergeants, Lieutenants, Captains, Commanders, Chief Safety Officers, Safety Officers and RCC Supervisors); and
- (8) 56 employees represented by The Fraternal Order of Police/Ohio Labor Council, Inc.

Juggling these relationships requires finesse, tact, and most importantly, good faith and institutional consistency.

Historically, CMHA engages AFSCME, on behalf of the Maintenance employee and Clerical employee bargaining units, as the lead negotiations. This is a function of the fact that AFSCME represents, by far, the majority of CMHA employees. Indeed, recognizing this fact, the parties have staggered the expiration dates of the various collective bargaining agreements to afford AFSCME the

opportunity to assume the lead in negotiations. The most recent or current agreements expire as follows:

- (1) AFSCME (Maintenance and Clerical Units) – July 1, 2008 through June 31, 2011, since succeeded by new agreements effective July 1, 2011 through June 30, 2014;
- (2) International Union of Operating Engineers, Local 18-S – January 1, 2009 through December 31, 2011, since succeeded by a new agreement effective January 1, 2012 through December 31, 2014;
- (3) International Union of Painter and Allied Trades AFL-CIO District Council #6 – January 1, 2009 through December 31, 2011, since succeeded by a new agreement effective January 1, 2012 through December 31, 2014;
- (4) Teamsters Local Union No. 507 – January 1, 2009 through December 31, 2011, successor agreement currently being negotiated;
- (5) OBPA (Dispatchers and Supervisors) – January 1, 2010 through December 31, 2012; and
- (6) FOP (Sworn Police Officers) (Formerly OPBA) – January 1, 2009 through December 31, 2011, successor agreement currently being negotiated and the subject of this fact-finding.

With its complex bargaining relationships, CMHA long ago committed itself to the concept of parity as it relates to core economic terms and conditions of employment. Significantly, CMHA has an unbroken record of adhering to the concept of parity among all its employees, employee groups and unions. In so doing, CMHA has successfully negotiated the treacherous waters of multi-unit bargaining and gained the trust of its various unions – a trust essential to maintaining constructive labor relations. Nevertheless, CMHA’s new Union, the FOP, only certified for seven (7) months, seeks to upset this delicate balance and the undeniable virtue of parity with respect to core economic issues.

CMHA acknowledges and respects the Union’s statutory right to bargain over the terms and conditions of its members’ employment at CMHA. However, the Union must also acknowledge that from the limited financial resources of CMHA, CMHA must fairly and responsibly address the

bargaining demands of all its employee unions as well as the demands from its non-union employees. Although each bargaining unit represents employees with differing skills providing differing services to the CMHA constituents, core economic issues regarding increases in compensation and health insurance benefits are not unique to each unit. If CMHA is seen as favoring one unit over another in readily translatable areas such as base pay increase, hourly rates of compensation or hours of work, the “disfavored” unit will believe that it has been undermined and will demand that it also receive the benefit it believes it has been denied. From this fact of multi-unit collective bargaining the sound concept of “parity” is born.

Parity, or the establishment of patterns among a number of bargaining units that negotiate with a single employer, has long been cited as an important principle in settling negotiation disputes.

In one such case, the ruling body declared:

This Board is trapped in the “pattern” dilemma faced by the parties and by many previous Emergency Boards. The Organizations are asked to accept a general wage increase which was established at bargaining tables at which they were not represented, a wage increase agreement which is thus not of their making. The frustration of the Organizations at being locked into an established pattern is understandable, but, equally understandable is the [employers’] unwillingness to break and upset a . . . wage agreement voluntarily negotiated in good faith at an earlier date. Late settlements above a pattern earlier established penalize employees involved in the earlier voluntary negotiations. This is destructive of the broader system of collective bargaining in the industry. Until and unless the structure of bargaining is modified in the industry there can be no improved approach to this difficult problem. Under these circumstances, the Employer cannot recommend departure from the wage pattern already in effect. *National Ry. Lab. Conference*, 53 L.A. 555, 559, 560 (Seward, Howlett & Livernash 1969).

Similarly, Arbitrator Platt stated:

“In a wage dispute, a Board of Arbitration is bound to an important degree by evidence of a developing or established pattern of wage adjustments in the industry or area under consideration, especially when the adjustments have been reached through collective bargaining. For, as the Chairman has had occasion to note in previous cases, it is almost axiomatic that, if arbitration is to function successfully as a dispute settling process it must not yield substantially different results than could be obtained by the parties through bargaining.” *Arizona Pub. Serv. Co.*, 63 L.A. 1189, 1196 (Platt 1974); See Elkouri & Elkouri, *HOW ARBITRATION WORKS*, p. 1421 (6th Ed. 2003).

In 1992, Fact-finder Nels Nelson was faced with an attempt by a union to break with established pattern of wage increases with the City of Cleveland. He recognized the chaos that would result from a break with the City-wide pattern:

[S]uch an increase would not be accepted as equitable . . . [I]f the Union's demands were granted, the result would be chaos. Instead of a City-wide pattern, each union would argue that special circumstances justify a departure from the pattern. Each subsequent union would demand more than the one negotiating before it. *In Re: City of Cleveland and CARE* (Nelson, 1992).

Against the backdrop of CMHA's bargaining history and the above legal principles and precedents, CMHA's current bargaining cycle must be analyzed. In 2011, CMHA began negotiations with AFSCME. Negotiations were protracted and culminated in fact-finding in March of 2012. Recognizing and acknowledging the concept of parity, the contracts with the Operating Engineers, Painters, and Teamsters Local 507 were extended pending the completion of the AFSCME negotiations. In April 2012, Fact-finder Robert Stein issued his recommendations. CMHA accepted the recommendations, as did the employees in the Clerical Unit represented by AFSCME. The employees in the Maintenance Unit represented by AFSCME rejected the recommendations.

Meanwhile, CMHA completed its negotiations with the Operating Engineers and the Painters Union. These contracts, ratified and executed, followed Fact-finder Stein's accepted recommendations and reinforced the pattern in this cycle of negotiations. The AFSCME Maintenance Unit employees accepted the pattern in a ratification vote on August 2, 2012. Thus, as of this date, CMHA has contracts covering 448 employees, accepting the following core economic terms and conditions:

1. General Wage Increase:
 - A. First Year – 3% across-the-board wage increase
 - B. Second Year – 2% across-the-board wage increase

C. Third Year – 2% across-the-board wage increase

Notably and despite repeated efforts by the various unions to obtain additional economic increases in the way of longevity pay, wage equity adjustments, and step schedules, none of the new contracts contain such improvements. Indeed, AFSCME sought on behalf of the Maintenance Unit the creation of Step Schedules for its skilled and semi-skilled employee groups (the vast majority of employees in the Maintenance Unit) citing local prevailing wage standards and other comparables to justify the increases. AFSCME pursued these proposals through fact-finding. Notably, the fact-finder rejected the proposal citing the Authority's fiscal limits and the fairness of the general wage increases proposed by CMHA.

The Painters Union and Operating Engineers sought similar "community standard" wage equity adjustments. Nevertheless, no employee group or employee received any wage adjustments other than the general wage increases proposed by CMHA. Departure from the pattern would be an affront to all the other unions and CMHA employees who have accepted the pattern. Despite the long history of parity and the bargaining settlements in the current round of negotiations, the FOP – perhaps in an attempt to flex bargaining muscle as the "new" union at CMHA – seeks a pattern busting settlement.

The pattern applied to wages in this round of negotiations is to continue the freeze on wages set forth in the five year step schedule of employees and offer the annual percentage increases to employees employed by the Employer more than five years during the duration of the new Agreement. The Employer points out that while the Union objects to the continued step schedule freeze, the five year wage step schedule in place for the last twelve years was established through negotiated agreements and the Union glosses over the fact that those employees in the first five years of their employment get significant annual wage increases. Employees completing their first year of

employment begin to receive annual increases of 7% to 9.2% for the next four years of employment. These substantial annual increases bring their wage rates up substantially. After five years the officers have historically continued to be given annual increases.

The negotiated pattern over the years has been to freeze the five year step schedules and then provide annual increases to those employees with more than five years' experience. Essentially, the senior employees did not want to give up higher wage increases in exchange for increasing the rates contained in the step schedules. While there was an exception to the pattern in the Dispatcher's 2006-2008 Agreement, the amount of money paid by CMHA under the contract was in line with the pattern. In that Agreement, less of an increase was given to the senior police officers in order to pay for the increase in base wages in the step schedule in the first year for employees subject to the step schedule. The cost was the same for CMHA; it was just allocated differently.

The starting wage scale is not so low that CMHA is unable to attract police officers to the area. Wages received by employees subject to the wage step schedule have not resulted in significant departures from the department because of the low wages. Given the number of individuals departing the police department over the last ten years as presented by the Union (excluding employees who retired, relocated, were terminated or took a disability retirement), less than 10% of a department of 56 officers per year left the department. That is a very low number. It supports the Employer's position that the exodus is low and it can attract officers at its current rates. The Employer points out that it currently has received over 132 applications for a police officer position over the last seven months. There is no demonstration that the community is harmed in any way as a result of the wages set forth in the current step schedule.

A review of wages paid to comparable employees at comparable local employers reveals that CMHA wages are comparable. Indeed, not only is CMHA's wage increase proposal comparable, but the wage increases at public employers in the Cleveland labor market demonstrate that CMHA's

wage proposal – which increases wages by 3% in 2011 and 2% in 2012 and 2013 – is not only reasonable, but in excess of the average increases in the Cleveland labor market. No public employees receive the wage increases sought by the FOP:

Location	Year – Percent Increase
City of Cleveland (SEIU, IBAT, IBT, IUOE)	2007 – 2.0
	2008 – 2.0
	2009 – 2.0
	2010 – 0.0
	2011 – 0.0
	2012 – 3.0
Cleveland State University	2007 – 2.86
	2008 – 2.86
	2011 – Step plus one month pay
Cuyahoga Community College (SEIU)	2008 - 3.0
	2009 - 3.0
	2010 - 3.0
Greater Cleveland RTA (ATU)	2007 – 2.0
	2008 – 2.0
	2009 – 2.5
Northeast Ohio Regional Sewer District (AFSCME)	2007 – 3.0
	2008 – 3.0

The most recent report of SERB reveals that in Ohio, police received average increases of .96% in 2011 and that all public employees in the Greater Cleveland area received average increases of .68% in 2011. Using the most recent nation-wide data available, the average wage increase for public employees year-to-date in 2012 is 1.1%. As the above amply demonstrates, the CMHA wage increase proposal compares favorably when evaluated against similarly situated employees in the marketplace.

The increases proposed by the Employer, in light of CMHA’s projected economic outlook, are more than generous and as much as can be offered.

The CFO of CMHA testified about the financial condition of CMHA. While CMHA’s financial condition is stable, it has suffered losses over the last two years. Those losses were primarily driven by the loss of funding, which is expected to worsen in the next several years.

Ninety percent (90%) of CMHA's funding comes from the U.S. Housing and Urban Development Agency (HUD). HUD provides subsidy funding and capital funding. The amount of funding from HUD each year depends upon the amount of funding approved by Congress in an annual budget. Congress has cut the budget of HUD over the last several years and it is expected they will continue to do so in the future.

Audited financials show that CMHA's operating revenues for 2011 were \$236,486,411 and operating expenses were \$239,040,108 for a loss of \$2,553,697. Operating revenues for 2010 were \$226,396,606 and operating expenses were \$235,685,893 for an operating loss of \$9,289,287. Losses in 2011 were less than in 2010 primarily because of additional subsidies and grants receiving from the American Recovery and Reinvestment Act (ARRA). Funds from the ARRA stimulus package ended in 2011.

Congress has not passed a budget for fiscal year 2013, but under continuing resolution HJ Resolution 117, Congress did approve a temporary operating budget for the first six months of the fiscal year. From that budget, all of the metropolitan housing authorities in the U.S. will receive funding based upon the number of housing units served. Under this temporary budget, CMHA's subsidy funding was cut 22% and CMHA can expect only 78% of the subsidy funding, which it has historically received. In order to keep the housing authorities operating, HUD increased the funding for the first three months of the fiscal year so that the authorities would receive 90% of anticipated funding. Unfortunately, if the final budget remains at 78% of full funding, operating revenues over the last six months of the year will be less than the 78% and compound the budget problems. To demonstrate this point, CMHA received 95% of its full subsidy funding in 2012 and still lost money as indicated above.

Receipt of a full subsidy from HUD would be around \$85M. Based upon current funding

levels, CMHA could expect up to \$70M.

In addition to the subsidy funding, CMHA also receives capital funds from HUD to upgrade properties. It is anticipated that capital funds will be reduced by 25%. Receipt of a full capital fund payment would be around \$20M. Based upon current funding levels, CMHA could expect up to \$15M in capital funding.

The expected receipt of total funding from HUD is at \$90M, down from historical funding levels of \$110M.

The CMHA Police are paid out of these HUD subsidies, capital funds and a very small voucher program. For the year ending 2011, the Police Department operating revenues (from the overall budget) was \$9,673,799 and salary and benefits alone were \$8,572,410. CMHA projected a budget of \$9.62M revenue allocation in 2012 with expenditures of \$8.6M.

It is anticipated that funds for 2013 will be decreased as a result of the above analysis. Regardless of the outcome of the national elections this November, it is predictable that Congress will cut the budget further, thus resulting in fewer revenues to CMHA. The \$20M projected loss in revenues in 2013, in light of already sustained losses, requires CMHA to cut its own budgets. In spite of these cuts, CMHA believes it can juggle the budget to meet the increases it proposes for the Police Officers, but it cannot increase wages as proposed by the Union.

There is no credible dispute that CMHA is facing belt tightening. The current payroll for this bargaining unit is approximately \$2.3M. The proposal of the Employer will increase that by approximately \$265,000 over the life of this new agreement. This increase is in addition to the increases to be factored in for the other 900 employees of the other bargaining units that will receive a 3%, 2%, and 2% wage increase under the pattern bargaining approach of the

Employer. The dramatic increase in wages sought by the Union in the five year wage step schedule (with the off schedule employees accepting the 3,2,2) would cost the Employer in excess of \$380,000 over the term of the Agreement, in addition to the increases proposed by the Employer. This is a \$650,000 increase over the life of this Agreement.

The Union's Position

The Union is seeking a wage adjustment to the current wage step schedule; a new rate with adjustment for officers in the scale with more than five (5) years of service and a general wage increase to those officers who are not on the wage schedule in the amount of a 3% wage increase in 2012, a 2% wage increase in 2012, and a 2% wage increase in 2014 on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer.

The Union argues that the Wage Step Scale in the existing Agreement reflects the lowest wages paid to officers in Cuyahoga County. This Wage Step Scale is a result of the Employer's bargaining strategy in past contracts to offer general wage increases, but freeze the wage step scales. The Employer has asserted that they did this in previous years under pattern negotiating with other C.M.H.A. units. Regardless of the method by which the step schedule has evolved over the years, that method has caused a gapping of the wage scales, a severely low entry wage rate and a large disparity in the wage rates of officers. The Union submits that the Employer has changed wage step schedules in the past when they were out of line with internal and external wage rates and an equity adjustment was needed, even under pattern bargaining. It should do so here.

An entry level CMHA police officer makes only \$26,701.35 annually or \$12.83 per hour. While wages in the wage step schedule do increase 7% to 9.2% a year, wages thereunder do not rise to the level of adequate pay for the police officers. Those rates do not even more to a

journeyman rate. The current wage schedule is so broken and out of line that a five (5) year police officer only makes \$16.90 per hour compared to a five (5) year dispatcher who makes \$19.24 per hour, a \$2.34 per hour wage gap. The FOP could not locate another similar situation at any police agency in the state. It makes no logical sense that the jobs are so disparately treated and so out of line. There is no top rate listed for the these police officers. The only remedy is to adjust/add the new step to fix the problem.

The Employer argues that this wage rate schedule was the result of pattern bargaining and changing it would break the pattern; other units have continued to maintain a wage step schedule. That is not true. In 2006-2008 Wage Agreement of the Dispatchers, their rates did increase, even though the step schedule of the police remained the same. The pattern has been broken in the past where necessary. In the 2004-2008 Wage Agreements of the Protection Officers, their wages contained in the rate schedule increased, even though the rates of the Deputies did not increase.

The frozen step schedule is not the only problem. The second problem is that the Police Officers do not have a top rate. There are currently some police officers earning \$26.90 per hour in the department, but officers progressing through the step wage increases cannot attain that level, because their wage scales have been frozen for the last twelve years. In order to solve the problem, the Union has looked at what a fair rate would be for a five year officer and applied percentages to the wage rate schedule for all officers in its proposal.

The Employer would contend that even with its broken wage scales, it is not affecting the Department. This is not the case. In an approximately sixty (60) man agency, CMHA has turned over 86 sworn positions in the last ten (10) years. Of the 86, members of our bargaining committee are aware of thirteen (13) officers who have left for other police departments paying

better wages and offering a better package. This turnover situation is an unheard of turnover rate in a public sector police job. Losing this much experience has to have a very detrimental effect on services. Even giving consideration to the Employer's arguments about relocation and retirements, there are over 55 sworn police officers that have left for reasons related to low wages.

The Employer can afford the increases proposed by the Union. In thirteen (13) prior negotiation sessions for this contract, the Employer did not stress or demonstrate an inability to pay argument, it simply held that a general wage increase of 3%, 2% and 2% was the only pattern it was offering, and again freezing the steps. As the final stages of bargaining and a hearing have ensued, the all too familiar chirp of the ability to pay becomes an argument once again. This argument falls flat in light of recent facts. In the last two months, the Employer has hired at least eight (8) new officers. It makes no logical sense that an Agency that now claims budget problems and an inability to pay would hire eight (8) new people and then have the need to lay them off as they have now contended.

While the Employer argues that the Union's proposal will cost too much money, it overlooks the fact that it has received an economic benefit by freezing these wages for the last twelve years. This is not an inability to pay issue, but an unwillingness to pay issue.

It cannot go without noting that this Agency pays its top officers well above the medium scales in the area. The Chief of C.M.H.A. Police Department makes \$116,208.00 per year, a Commander makes \$85,009.00 per year, a Lieutenant makes \$73,421.00 per year, and a Sergeant makes \$66,125.00 per year.

In light of this information, the Union believes the following proposal is justified:

Officers with less than six (6) years' experience shall be compensated at a rate in accordance with the following step schedule:

Years of Service	2012	2013	2014
0-1	13.98	14.26	14.55
1-2	15.05	15.35	15.66
2-3	16.18	16.50	16.83
3-4	17.30	17.65	18.00
4-5	18.94	19.32	19.71
5+	21.00	21.42	21.85

During years 2012, 2013, and 2014, employees on the wage step schedule shall receive their step increase on their anniversary date of hire as a Sworn Police Officer.

Police officers completing the wage step schedule during the term of this Agreement shall:

During year 2012, upon completion of the last step in the above step schedule, the employee will receive a three percent (3%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer.

During year 2013, upon completion of the last step in the above step schedule, the employee will receive a two percent (2%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer.

During year 2014, upon completion of the last step in the above step schedule, the employee will receive a two percent (2%) wage increase on his/her current hourly rate on the employee's anniversary date of hire as a Sworn Police Officer.

Discussion, Findings and Recommendation

The Employer makes a compelling argument regarding the need for pattern bargaining and seeking parity among the various bargaining units. This concept is recognized by the Factfinder as creating equitable treatment of employees, which results in overall better labor relationships. The wage increases proposed by the Employer are indeed generous in light of the cuts anticipated in funding and increases that have been received by law enforcement agencies over the last several years. CMHA operates a large organization and with over \$236,000,000

operating revenues. The police department was allocated \$9.6M in 2011, with \$8.5M being spent on salaries and benefits. The 2012 budget is approximately the same, with slightly higher projections for salaries and benefits (\$8.6M).

At the same time, the Union makes a compelling argument that the freeze in step schedules over the last twelve years has resulted in stagnation of police officer salaries in the first five years of employment with the department. It is unusual that dispatchers with five years of employment would earn substantially more than a police officer. While the current top wage for a sworn police officer is comparable to other jurisdictions,¹ officers moving from the last year of the current step schedule will take more than twenty years to reach that same top rate.² The Employer argues that the increases given to the police officers are comparable or better than those of comparable jurisdictions, which is true, but the rates of the police officers in the first five years of employment are not.

The Employer does not deny that the entry level rate is low, but indicates that the low rate has not caused a mass exodus of police officers and has not prevented CMHA from attracting new applicants. The Union obviously disputed that fact. If these rates continue at their current rate, which will continue to be low, if not lower, in comparison to rates of police officers in other jurisdictions, one would suspect that the quality of the officers attracted would eventually impact the CMHA community, which portends to be an area in utmost need of experienced and well trained police officers.

¹ Data provided by the Employer

² Based upon a calculation of the current 5th anniversary step wage compounded at 2% each year. The Employer indicated that the current top rate is \$54,932. This also does not take into consideration that this “top rate” will

The parties tried to reach a compromise on their respective positions, but in the end the Employer did not want to “bust the pattern or budget” and the Union would not retreat from demanding the achievement of what it deemed to be comparable and fair wages for entry level police officers and those in the first five years of their employment. Resolving the positions of the parties is fraught with problems because of the nature of step schedules. In fact, the very concept of a step schedule has been attacked as being inconsistent with the cost effective delivery of public services.

The Fact-finder believes that some adjustment to the step schedule, along with the increases proposed, can be achieved without varying from the pattern, busting the budget or denying the Union the increases sought on a fair basis.

The Fact-finder recommends increasing the step schedules for the next three years in an amount consistent with the increases proposed for police officers completing the wage step schedule during the term of this Agreement. This will result in moving the wage scale up gradually during the term of the Agreement and move the officers subject to the step schedule closer to comparable wages of police officers doing similar work; it will provide increases consistent with those given to other bargaining units and will result in substantially less impact to the budget than that proposed by the Union. While the Union has sought much larger increases, those increases are beyond what the CMHA can afford, based upon the economic information provided. While it took twelve years to get to this point, corrections to the system cannot be made in one contract term.

continue to rise with any further increases.

The Fact-finder is mindful of the percentage increases that the Employer will consider as relatively high for each year of experience of the police officers, but there is no other way to reach a fairer and more comparable wage. Employees in other bargaining units with step schedules could argue that these increases should apply to their schedules but they are already substantially higher than those of the patrol officers, having achieved increases to their schedules in prior years, even under the Employer’s consistent method of pattern bargaining.

In this Fact-finding hearing the Employer often presented evidence and cited its changing financial condition, yet it is offering generous increase to its employees. When one considers the high crime rates and need for protection in metropolitan housing complexes, it is important to pay wages sufficient to attract good police officers for the protection of the public. This was taken into consideration by the Fact-finder in fashioning this recommendation.

RECOMMENDATION: ARTICLE 32 - WAGES

The Fact-finder recommends that Officers with less than five (5) years’ experience shall be compensated at a rate in accordance with the following step schedule (reflects a 3%, 2% and 2% increase):

2012	2013	2014
27502.39	28052.44	28613.49
29598.78	30190.76	30794.57
31805.5	32441.61	33090.45
34012.23	34692.47	35386.32
37247.28	37992.23	38752.07

Employees completing the wage step schedule during the duration of the Agreement will receive a 3% wage increase in 2012, a 2% wage increase in 2012, and a 2% wage increase in 2014 on his/her current hourly rate on the employee’s anniversary date of hire as a Sworn Police Officer. An employee not on the above step schedule as of December 31, 2011, will receive a three percent (3.0%) wage increase on his/her their current hourly rate in

2012, a two percent (2.0%) wage increase on his/her their current hourly rate in 2013 and a two percent (2.0%) wage increase on his/her their current hourly rate in 2012

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendation on the outstanding issues presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

October 3, 2012



JERRY B. SELLMAN, FACT- FINDER

CERTIFICATE OF SERVICE

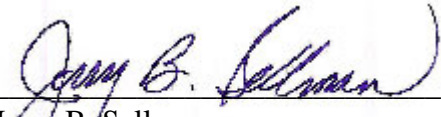
The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail on October 3, 2012 to:

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