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STATE EMPLOYMENT
RELATIONS BOARD

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FACT FINDING REPORT

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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 IN THE MATTER OF:))
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 CITY OF NORWOOD, OHIO))
))
 and))
))
 LOCAL UNION #445, INTERNATIONAL))
 ASSOCIATION OF FIREFIGHTERS))
))
 _____))

CASE NO. 00-MED-05-0573

DATE OF HEARING:
SEPTEMBER 7, 2000

M. James Abernathy
as Fact Finder (Neutral)
1119 Sunnyslope Drive
Cincinnati, OH 45229
(513) 242-7172

Date of Report: October 16, 2000

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I. INTRODUCTION

The enclosed document and language will serve as an introductory statement of appointment, jurisdictional basis, identity of parties, representatives, date, time, statutory references and relevant procedural material. [See Insert 1, Page 2A.]

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05 (J) & (K1) - (K6) of the Ohio Revised Code:

Factors To Be Considered By Fact-Finding Panel:

- 4117-9-05(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- 4117-9-05(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:
- 4117-9-05(K)(1) Past collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3) The interests 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;
- 4117-9-05(K)(4) The lawful authority of the public employer,
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Therefore, in making findings of fact, the Neutral took into consideration all reliable information relevant to the issues before the Neutral. All reports, oral and written, and exhibits were scrutinized and weighed heavily in the Neutral's final report.

II. FACTUAL BACKGROUND

The Fact Finding Hearing was held on September 7, 2000 at the City Hall in Norwood, Ohio.

The parties were represented as follows:

1. For the City of Norwood:

Jack Cameron
City of Norwood
4645 Montgomery Road
Norwood, Ohio 45212
Project Coordinator

Cliff Miller
City of Norwood
4645 Montgomery Road
Norwood, Ohio 45212
Safety Director

2. For the Union:

Rickie Paul, President 731-5967
4725 Montgomery Road
Norwood, Ohio 45212

George A. Schneider, Vice President Local #445 731-0855
2545 Sheridan Drive
Norwood, Ohio 45212

The City of Norwood Fire Department provides emergency medical and fire suppression duties to the community. The medical unit also dispenses and stores various kinds of drugs (legal) in their line of duty. The bargaining unit consists of approximately fifty (50) employees. The Fire Chief is not a member of the bargaining unit.

The City of Norwood, Ohio is a very small city, occupying a land area of just over three square miles. It is uniquely in the center of the Greater Cincinnati, Ohio population base. Two-third (2/3) of Greater Cincinnati's 1.4 million residents live within ten (10) miles of Norwood. Norwood was initially settled in 1888 as a northern suburb of Cincinnati. As Cincinnati's border expanded through growth and annexation, Norwood opted to retain its independence and self-governance. As a result, Norwood became an enclave city, totally surrounded by the City of Cincinnati. The population is approximately 24,000. All figures are from the 1990 U. S. Census.

The parties are at impasse over several aspects of a Substance Abuse Program.

To the credit of both sides, there was a willingness to sit, talk, negotiate and compromise.

The Fact Finding Hearing commenced at 10:00 A.M. and was adjourned at 4:15 P.M. The Neutral wishes to state that he appreciates the courtesy with which he was treated by both parties. The hearing was conducted with the rule 4117 - greatest professionalism by both parties.

Article IV of the current Labor Agreement by and between the City of Norwood, Ohio and Local Union #445, International Association of Firefighters mandates the formulation of a Substance Abuse Program. The parties have met on several occasions in the past few months but are at impasse on several issues within the program.

Public concern to the issue of drug and alcohol abuse has had a profound effect on the employment relationship in conflicts over testing for the presence of drugs and alcohol. On the one hand, employers have concerns about limiting their liability and ensuring productivity, while on the other hand, employees object to invasions of privacy, suspect testing instruments, test results, misuse of test results and defamation of reputation. The Fourth Amendment to the U. S. Constitution states:

“Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

¹In one major case, the Court held that an employee has an expectation of privacy in his body fluids, making the taking of urine specimen a seizure within the meaning of the Fourth Amendment and, therefore, under constitutional scrutiny as to the reasonableness of the search.

¹ McDonald v. Hunter, 612 F Supp. 1122, 1127 (S. D. Iowa 1985) Aff'd as modified 809 F.20, 1302 (8th Cir. 1987)

²However, the Supreme Court has upheld mandatory testing of employees by management or government based on compelling social or governmental interests in health and safety or in law enforcement.

³Ohio courts have upheld Random Drug Testing in the workplace as an acceptable method of drug testing as long as it is included in the employer's drug testing policy and is reasonable as compared to the employee's right to privacy.

Labor bargaining units have, under the National Labor Relations Act, the right to negotiate and bargain on an employer's Substance Abuse Policy and what will be in it.

Article IV of the Joint Labor Contract between the two parties dated year 2000 reads:

“ARTICLE IV

SUBSTANCE ABUSE PROGRAM

The IAFF and the City shall form a committee consisting of two (2) members of the IAFF and two (2) city officials for the purpose of formulating a substance abuse policy, including random drug and alcohol testing, for use in the Norwood Fire Department. It is the intention of the city and the IAFF to reach a mutually acceptable agreement during calendar year 2000. Either party may submit the matter to arbitration if negotiations fail to produce an agreement.”

² Skinner v. Railway Labor Executives Assn., 109 S. CT 1402 (1989) and National Treasury Employees v. Von Raab, 649 F. Supp. 380 (E.D. LA), stay denied, 808 F.2D 1057 (5th Cir)

³ Oliver-Coogler v. Toledo Edison Cr., 611 N.E. 2d 474, Ohio Ct. App (1992)

Prior to the Fact Finding Hearing, there was a mediation session. After the mediation session, there were seven issues remaining at impasse:

1. The Purpose Statement;
2. The Prohibition Section;
3. Random Testing;
4. Post-Accident Testing;
5. Unannounced Intermittent, Return to Duty and Follow-up Testing;
6. Scheduled Appointments for Testing; and
7. Positive Test Results.

The issue that appeared to be of utmost importance to both sides was Random Testing. The City wants to institute it for all employees. It is in effect in the Commercial Driver License ("CDL") policy but not the Police Department. Firefighters do not possess a CDL, hence they do not come under U. S. Department of Transportation laws and guidelines for drug and alcohol abuse testing. The firefighters are not opposed to testing in general, but insist it be for probable cause and not, in their words, a "witch hunt." The firefighters believe Random Testing is unconstitutional and therefore a violation of their Fourth Amendment Constitutional rights. The Neutral appreciates the argument of constitutional rights and the Fourth Amendment to the U. S. Constitution raised by the firefighters. However, matters of the Bill of Rights and constitutional law are settled in a court of law and not properly addressed at a fact finding hearing. Therefore, the Neutral will not be passing judgment as to whether or not random drug testing is unconstitutional.

III. ISSUES OF IMPASSE

Article IV: Substance Abuse Policy

1. Purpose Statement
2. Prohibitions
3. Random Testing
4. Post-Accident Testing
5. Unannounced Intermittent, Return to Duty and Follow-up Testing
6. Scheduled Appointment for Testing
7. Positive Test Results

ISSUE 1: PURPOSE STATEMENT - ARTICLE IV

This substance abuse policy applies to all full time City employees, regardless of title or classification, and to individuals seeking full time employment with the City. CDL holders please refer to CDL Alcohol and Drug Policy.

Further, it is the policy of the City of Norwood to maintain a Drug-Free Work Place. Henceforth, employees are notified that the manufacture, distribution, dispensing, possession, use or being under the influence of any illegal drug or controlled substance not prescribed by a physician is strictly prohibited during working hours at any location.

Alcohol and drugs in employees' systems may impair their ability to perform their duties in a safe and efficient manner. The purpose of this administrative policy is:

1. To deter alcohol and drug abuse.
2. To provide a consistent and fair policy to deal with City employees whose abuse alcohol and drugs.

Union Proposal:

The Union wants to insert after Paragraph 2, the following wording or language: "It is the goal of this policy to eliminate illegal drug use through education and rehabilitation of effected personnel."

City Proposal:

The City wants language unchanged.

DISCUSSION

City proposal is comprehensive as the policy statement is to “maintain a Drug-Free Work Place” and covers illegal drug use or activity. It also has education and treatment components.

FACT FINDER’S DECISION

CITY LANGUAGE

It is questionable whether any policy or program can “eliminate illegal drug use.”

However, “to maintain a drug-free workplace” is achievable.

ISSUE 2: PROHIBITIONS - ARTICLE IV

1. City employees shall not report to work or remain on duty while under the influence of or with a prohibited concentration of illegal drugs or alcohol. An employee is under the influence if a drug and/or alcohol screen results in a positive test.
2. Employees shall not possess, store, or use drugs or alcohol during work hours.
3. Employees shall not sell or provide drugs or alcohol to any person while on duty..
4. Any employee who is arrested for a drug-related or alcohol-related statute violation shall notify his/her supervisor at the start of the employee’s next working day. Employee may self identify prior to being notified of testing.
5. All employees are responsible for the consistent enforcement of this policy. Any supervisor who knowingly permits a violation of this policy shall be subject to disciplinary action. Any employee who observes a supervisor in violation of this policy should report their suspicions to the next higher level of supervision.
6. No city employee shall refuse to take any of the following **required tests**:

Random Testing
Post-Accident Testing
Reasonable-Suspicion Testing
Intermittent Testing
Return-to-Duty Testing

Follow-up Testing

7. Any employee who attempts to alter or adversely affect a drug/alcohol test shall be deemed to have refused to submit to the test.

Union Position:

The Union has agreed to this section with the exception of wording to reflect types of testing. The testing the Union has agreed to is: Reasonable Suspicion Testing and some parts of Post Accident Testing. It wants to modify Intermittent, Return to Duty and Follow-up Testing. It rejects Random Testing because it is void of reasonable cause/suspicion.

City Position:

The City wants Random Testing, Post Accident Testing, Reasonable Suspicion Testing, Intermittent Testing, Return to Duty Testing, and Follow-up Testing as the required tests.

DISCUSSION

In this section the Neutral will confine his remarks to Random Drug Testing and select a list of drug tests required. The rationale for the selection of the required drug tests list will be addressed later on in the report. The City is wanting to institute "random drug testing" throughout the City. Currently random drug testing is in the policy for workers who hold commercial driver's licenses. Clerical workers and dispatchers do not have it. The police bargaining unit does not have it. The fire chief is not a part of a bargaining unit and is not covered by it either. Most firefighting units in the state do not have it. The City is concerned about liability because firefighters drive heavy trucks and handle and store drugs. The City stated that the fire department is the only City department in which the City has a history of substance abuse problems. However, the City offered no proof to back this up. The firefighters were quite incensed at this statement and quickly repudiated it as totally untrue in its 100 plus year history/

It asked the City to identify and come forth with specifics. The City did not respond. The firefighters entered as evidence a letter from Curtis E. Goodman, Fire Chief, who is not a member of the bargaining unit. He termed the statement as extremely offensive and a personal affront to his 17 years of service to the City. He stated that during his tenure he has never heard of a proven substance abuse problem within the department. He concluded by asking if there is a substance abuse problem within the Norwood Fire Department of which he should be made aware. He termed the City's statement as "reckless."

DECISION

A Random Drug Testing Policy not be instituted at this time based on a lack of evidence put forth that shows there is a need to randomly test workers without just cause.

However, a well-run Substance Abuse Program must have a comprehensive testing component. No City employee shall refuse to take any of the following required tests:

1. Post-Accident Testing
2. Reasonable Suspicion Testing
3. Intermittent Testing
4. Return to Duty Testing; and
5. Follow-up Testing.

The Neutral believes the City has put forth a basic and sound program for testing that will ensure and carry out the goals and objectives of its Substance Abuse Program.

ISSUE 3: RANDOM TESTING - ARTICLE IV

[Previously Discussed.]

Union Position:

Opposes Random Testing.

City Position:

Wants Random Testing for all personnel.

DISCUSSION

Previously discussed.

DECISION

Random Testing is not warranted at this time based on the evidence presented.

The Neutral feels that the Reasonable Suspicion part of the program gives the City much leeway in running its Substance Abuse Program.

ISSUE 4: POST-ACCIDENT TESTING - ARTICLE IV

As soon as practical following an accident involving a City employee, while in the course and scope of his/her duty and/or who was operating a City vehicle, the employee *shall* be tested for drugs and alcohol if the accident involved any of the following: a fatality, bodily injury to a person who receives medical attention or one or more motor vehicles which are disabled and need to be transported from the scene.

A driver who is subject to post-accident testing shall remain readily available up to eight hours for such testing or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care. Personnel held readily available will be compensated per FLSA and personnel demonstratively financially inconvenienced will be reimbursed (i.e.; missed reservations, etc.). The City will make every effort to expedite testing.

The results of blood or breath tests for alcohol detection or urine tests for drug detection which are conducted by federal, state, or local officials having independent authority for the test shall be considered to meet the requirements of this section, provided such tests conform to applicable federal, state, or local requirements, and meet or exceed all requirements set forth herein and the results are obtained by the City. Blood alcohol tests will be expressed as grams per 100 ml if whole blood.

A. Alcohol Tests

Any employee required to take a post-accident alcohol test shall not use alcohol for eight hours following the accident or until the employee undergoes a post-accident test, whichever comes first.

If at all possible, an alcohol test shall be administered within two hours following the accident. However, the employee may be tested up to eight hours following the accident.

If an alcohol test is not administered within eight hours following the accident, attempts to administer an alcohol test shall cease, and the supervisors shall prepare a written record stating the reasons the test was not administered.

B. Drug Tests

If a drug test is not administered to the City employee within 32 hours following the accident, attempts to administer a drug test shall cease, and the supervisor shall prepare and maintain on file a written record stating the reasons the test was not administered.

Union Position:

Agrees with this section, but would like to modify Paragraph 1, last sentence, to read: "A fatality, bodily injury to a person who receives medical transport or if fire officer feels it is warranted."

City Position:

The City is opposed to this modification.

DISCUSSION

The Union wants testing to be confined to an accident that requires medical transport or the discretion of the supervisor. The City feels that accidents can happen that do not require medical transport and it is not wise to leave this matter up to a supervisor. The City feels that the Substance Abuse Policy should be as clear as possible leaving no room for interpretation as to when a test is to be administered.

DECISION

CITY LANGUAGE

Paragraph 1, last sentence, to remain; “a fatality, bodily injury to a person who receives medical attention or one or more motor vehicles which are disabled and need to be transported from the scene.” This leads to fairer administration of policy

ISSUE 5: ARTICLE IV - (A) UNANNOUNCED INTERMITTENT, (B) RETURN TO DUTY AND (C) FOLLOW-UP TESTING

Unannounced Intermittent Testing

If the employee is not discharged, following an employee’s positive drug/alcohol test, as a result of a post-accident or reasonable suspicion test, the employee will be subject to unannounced, intermittent tests as a condition of the employee’s return to work, performed according to the following guidelines:

Alcohol:

When an alcohol test reveals an alcohol concentration of .04 or above, the employee will be subject to 12 unannounced, intermittent tests for a period not to exceed 12 months.

Drugs:

When a positive drug test is reported, the employee will be subject to 8 unannounced, intermittent tests for a period not to exceed 12 months.

UNANNOUNCED INTERMITTENT TESTING is in addition to all of the other tests. Discovery of a second positive result for either drugs or alcohol may result in disciplinary action absent any extenuating circumstances. A pre-disciplinary hearing shall be held within five working days of the appropriate division representative’s receipt of a positive test result.

RETURN TO DUTY TESTING

If an employee is not discharged, prior to returning to duty after testing positive for drugs/alcohol following a post-accident or reasonable suspicion test:

- A. The appropriate division representative shall refer the employee to PEAP.
- B. If an employee is not discharged, failure to comply with the evaluation and/or treatment recommendations until successful completion, as determined by the substance abuse

professional, may result in dismissal absent any extenuating circumstances. Prior to dismissal, a pre-disciplinary hearing shall be held within five working days.

- C. The employee shall submit to a drug or an alcohol test 24 hours before returning to work or as determined by the substance abuse professional.

If a positive test result is reported, the City contracted provider (PEAP) will determine if the amount of substance in the employee's system has decreased, has remained constant, or has increased since the original reported positive test. If the amount has increased, this may result in disciplinary action absent any extenuating circumstances. Prior to dismissal, a pre-disciplinary hearing shall be held within five working days.

If an employee has a CDL license, the employee must comply with the CDL Policy of the City of Norwood.

- D. The department/division shall obtain a recommendation from PEAP that the employee is capable of returning to duty.

FOLLOW-UP TESTING

Following the substance abuse professional's determination that an employee needs assistance in drug/alcohol abuse, the employee who is not discharged shall be subject to unannounced intermittent follow-up alcohol/drug testing after the employee has returned to duty.

The substance abuse professional shall determine the number and frequency of the follow-up tests. However, there shall be a minimum of six tests in the 12-month period following the employee's return to work.

The substance abuse professional may terminate follow-up testing at any time after the first six tests have been administered if testing is no longer deemed necessary by the substance abuse professional.

Union Position:

The Union feels that these tests are redundant and they are put there for harassment. The Union says these tests are all the same stated very subtly in order to allow the City to interfere with the lives and livelihood of their members. The Union proposed a consolidation of these three tests under the following:

"Union Proposal for consolidation of 4, 5, 6

Follow up Testing

Follow up testing shall be used after an employee test is positive under reasonable suspicion or post accident testing. Employees will be ordered rehabilitation and will not receive discipline for a first offense of this policy if all conditions of this section are met, absent extenuating circumstances (property damage, bodily injury, etc.).

Follow up testing will be used as a tool by the City of Norwood and PEAP to gauge an employees progress during rehab, and to assure fitness to return to work. Employees will be given the opportunity to be rehabilitated for a first offense of this policy. Failure to comply with the evaluation and/or treatment recommendations until successful completion, as determined by the substance abuse professional, may result in dismissal absent any extenuating circumstances.

Employees who test positive for drugs or alcohol during post accident or reasonable suspicion testing will be subject to unannounced testing for a period of 24 months, not to exceed 12 tests, these tests may be requested by City or PEAP for any of the above stated reasons. Drug testing may occur at work or PEAP. Alcohol testing will be done at work. The City may test employees after released by PEAP if within the 24 month period.

Personnel undergoing rehabilitation shall be returned to work as soon as is medically prudent. The department/division shall obtain a recommendation from PEAP that the employee is capable of returning to duty.

If a second positive test result for either drugs or alcohol is reported, the City provider (PEAP) will determine if the amount of substance in the employee's system has decreased, has remained constant, or has increased since the original, reported positive test. If the amount has increased, this may result in disciplinary action absent any extenuating circumstances. Prior to dismissal, pre-disciplinary hearing shall be held within five working days. “

City Position:

The City feels that these three sections are very clear and function in three separate ways. The City says to restructure these sections would take away from the rehabilitation professional's care-giving and would make the testing policy for positive test persons different than any other union in the city.

DISCUSSION

The Union wants a guarantee that no disciplinary action occurs after a first offense of this policy. It also basically wants to lump all three tests under the heading of “Follow-up Testing” even though they are triggered by different acts/actions. The Union stated that these

tests may be used for harassment of its members. However no testimony or evidence was put forth to show that City workers currently under this policy have been harassed. The Union says that these three sections are redundant. The Neutral finds they are triggered for three different reasons. Intermittent Testing is triggered when an employee is not discharged following an employee's positive drug/alcohol test as a result of a post accident or reasonable suspicion test. The condition for return to work is that the employee will be subject to unannounced intermittent tests. Return to Duty Testing is triggered when an employee is undergoing evaluation and/or treatment and is tested prior to the employee returning to work. Follow-up Testing is triggered after the employee has been permitted to return to work following a determination that the employee needs assistance in drug/alcohol abuse. Therefore, the three tests are not redundant but serve three distinct and separate functions and should not be consolidated or lumped under one heading.

FACT FINDER'S DECISION

City Language. Unannounced, Intermittent, Return to Duty and Follow-up Testing be incorporated into the Substance Abuse Program. There is no rationale for the firefighters to have a different testing program than other City employees.

ISSUE 6: SCHEDULED APPOINTMENTS FOR TESTING - ARTICLE IV

Employees who are scheduled for drug/alcohol test appointments with the laboratory must keep the scheduled appointments when directed by the City to report to the laboratory to submit to drug and/or alcohol testing.

The City will pay for drug and alcohol testing for the following: preemployment, reasonable-suspicion, post-accident, unannounced intermittent testing, return to duty testing and follow up testing.

Union Position:

That “Unannounced, Intermittent Testing, Return to Duty Testing and Follow-up Testing” be omitted from this section.

City Position:

That Unannounced, Intermittent Testing, Return to Duty Testing and Follow-up Testing” be left intact in this section.

DISCUSSION

Previously discussed.

FACT FINDER’S DECISION

Scheduled Appointments for Testing, last paragraph, to read: “The City will pay for drug and alcohol testing for the following: preemployment, reasonable suspicion, post-accident, unannounced intermittent testing, return to duty testing, and follow-up testing.

ISSUE 7: POSITIVE TEST RESULTS - ARTICLE IV

Alcohol - a reported test result .02 BAC to .039 BAC is considered positive to the extent that the employee must be removed from work for a minimum of 24 hours, and a voluntary referral to PEAP must be made. A reported test result of .04 BAC or more is considered positive and must be acted upon in accordance with the guidelines in this policy.

Union Position:

First Paragraph to read: “A reported test result .03 BAC to .049 BAC is considered positive to the extent that the employee must be removed from work for a minimum of 24 hours, and a voluntary referral to PEAP must be made. A reported test result of .05 BAC or more is considered positive and must be acted upon in accordance with the guidelines in this policy.”

City Position:

First Paragraph to read: "A reported test result .02 BAC to .039 BAC is considered positive to the extent that the employee must be removed from work for a minimum of 24 hours, and a voluntary referral to PEAP must be made. A reported test result of .04 BAC or more is considered positive and must be acted upon in accordance with the guidelines in this policy."

DISCUSSION

The Union feels that the City's levels for blood alcohol content are too low and, if used, may compromise the safety of the public. They cite that often they have to call in firefighters on emergency (approximately 73 times in 1999) and if these levels are used, or if a person has had one beer in the last couple of hours, he cannot respond and be in non-violation of the policy. The Union proposes letting the officer in charge assess each member's fitness for duty. The City responds that the Federal Government has determined that mental impairment is seen at a level of 0.02 and physical impairment is evidenced at a level of 0.04. The City points out that the Federal Transit Administration ("FTA") and Federal Aviation Administration ("FAA") have adopted these levels for truck drivers, bus drivers, train conductors and pilots as well as CDL licenses. The City feels that these levels are proper given the safety sensitive nature of the firefighter job.

Under the State of Ohio's Commercial Drivers License Law, it is illegal to operate a commercial vehicle with any alcohol in your system. Lastly, the City is concerned about liability. For example, if a fireman were to have an accident while driving and it causes property damage or bodily harm and the firefighter was found to have a blood alcohol level above federally accepted norms, the city's exposure to liability lawsuits could be greater. Federal regulations

prohibit an employee from performing sensitive functions when test results indicate a BAC of .02% or more. The labor agreement between the City of Norwood and the Norwood Police Department provides for .02 BAC to .034 BAC for being removed from work and .04 BAC or more fore being tested.

The prudent question now becomes, should firefighters be held to a lower standard. They operate heavy motor vehicles at high speeds, carry and dispense medical drugs and are entrusted and depended upon to save property and lives (animal and human). Every run they make incorporates high speed driving, the saving of property and life and an environment where they have to work together and make quick on-the-scene decisions under the most stressful and hazardous of conditions.

The Neutral concludes that firefighters, among all public servants, should be held to the highest standards.

FACT FINDER'S DECISION

Positive Test Results, first paragraph to read: "Alcohol - a reported test result .02 BAC to .039 BAC is considered positive to the extent that the employee must be removed from work for a minimum of 24 hours, and a voluntary referral to PEAP must be made. A reported test result of .04 BAC or more is considered positive and must be acted upon in accordance with guidelines in this policy."

IMPLEMENTATION

The Substance Abuse Program jointly agreed upon between the City of Norwood, Ohio and Local 445 of the International Association of Firefighters shall be implemented thirty (30) days after its adoption.

Two components of the program shall be:

1. **Employee Education**

This should include, but not be limited to the following:

- A. Requirements of the Substance Abuse Program and the consequences for violating it.
- B. The rationale for the policy addressing what the law requires and why the program is important to all employees.
- C. The availability of help and counseling for employee rehabilitation and counseling.

2. **Supervisor Training**

Supervisors should be given training that will enable them to do the following:

- A. Explain the program to employees in clear and simple language.
- B. Be well versed on the program content.
- C. Know where and when to refer employees for help.
- D. Follow up on employee's progress.
- E. Maintain an employee's confidence.
- F. Training in detecting alcohol and drug abuse behavior.

It must be noted that supervisors are not to be expected to diagnose alcohol and drug abuse problems.

CLOSING REMARKS

Historically, alcohol and drug abusers have been looked upon as having a defect in character and, therefore, a permanent condition that would forever negatively affect one's self, family, friends and job security. However, modern science and medicine has proven that alcoholism and drug abuse is first of all a disease like any other disease and is treatable. Through modern medicine and counseling much headway has been made in helping abusers to come to grips with their problems and, therefore, become productive again. That is why it is important for employers to encourage employees who believe that they may be drug/alcohol abusers to seek professional/medical help or treatment. Employees who do come forth should do so with the assurance that his/her job security will not be in jeopardy. Congruently, the employer cannot be expected to guarantee job security to employees who exhibit misconduct, poor work performance or any other unacceptable behavior absent a substance abuse program. In other words, having the disease of alcohol/drug abuse is no excuse for excessive absenteeism, poor job performance or breaking city rules and regulations. Of course where there is a difference between city rules and regulations and the joint city union collective bargaining agreement, then the collective bargaining agreement between the two parties takes precedence.

It is hopeful that the recommendations in this report will be agreed upon by both parties in a spirit of joint cooperation and upon implementation, the individual's right to confidentiality and privacy will be a hallmark of the Substance Abuse Program.

SUMMARY

The Neutral is satisfied that the issues have been addressed and, therefore, it is unnecessary to discuss or treat any other matter or events which may be immaterial or insignificant. Further, it must be emphasized that the absence of any treatment or discussion related to any matters or arguments presented must not be construed to be a lack of attention thereto, since all matters were considered.