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STATE EMPLOYMENT
RELATIONS BOARD

FACT FINDING REPORT

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2001 AUG 13 A 10: 33

IN THE MATTER OF:

CITY OF SPRINGDALE)

and)

LOCAL UNION #4027,)
INTERNATIONAL)
ASSOCIATION OF FIREFIGHTERS)

CASE NO. 00-MED-07-0781

DATE OF HEARING:

JULY 13, 2001

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

Date of Report: August 12, 2001

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ATTENDEES – MEDIATION
June 1 and June 25, 2001

1. For the City of Springdale:

Paul R. Berninger, Attorney-at-Law
Attorney for the City of Springdale
Wood & Lamping
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202-2409

Derrick Parham, Assistant City Administrator
City of Springdale
11700 Springfield Pike
Springdale, Ohio 45246

Robert Posega, Fire Chief
12147 Lawnview Avenue
Springdale, Ohio 45246
(513) 346-5580

2. For the Union:

Melvin R. Pomfrey, President
Springdale Professional Fire Fighters
IAFF Local 4027
P. O. Box 18006
Cincinnati, Ohio 45218-0006
513-825-8678

11607 Greenridge Dr.
Cincinnati, OH 45251

James Skirvin III, Treasurer
IAFF 4027
6137 Primrose Lane
Fairfield, OH 45014

Leonard French, Vice President
V.P. IAFF 4027
3423 Brotherton Road
Cincinnati, OH 45209

Mark S. Pelfrey, Secretary
501 Southwick Place
Trenton, OH 45067-1169

Kevin Rader
1380 Dublin Road, Suite 104
Columbus, OH 45215

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JULY 13, 2001

1. For the City of Springdale:

Paul R. Berninger, Attorney-at-Law
Attorney for the City of Springdale
Wood & Lamping
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202-2409

Derrick Parham, Assistant City Administrator
City of Springdale
11700 Springfield Pike
Springdale, Ohio 45246

Dan Shroyer
Fire Department Administration

2. For the Union:

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Springdale Professional Fire Fighters
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Cincinnati, Ohio 45218-0006
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501 Southwick Place
Trenton, OH 45067-1169

Kevin Rader
1380 Dublin Road, Suite 104
Columbus, OH 43215

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.

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 July 13, 2001 at the City Administration Building in Springdale, Ohio.

The parties were represented as follows:

1. For the City of Springdale:

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Attorney for the City of Springdale
Wood & Lamping
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202-2409

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The City of Springdale is located in Hamilton County approximately twenty (20) miles north of Cincinnati, Ohio. It is bisected by I-275 (I = Interstate) and bordered by I-75. It is inhabited by stable, well-maintained residential neighborhoods and is the home of a highly developed commercial/industrial community.

The complement of the Springdale Fire Department is made up of the Chief, the Assistant Chief, three captains, one Chief Fire Inspector, fifteen full-time Firefighters, twenty-one part-time firefighters and one full-time Secretary. The Chief and Assistant Chief serve as the command staff; the Chief Fire Inspector and the Secretary are the administrative staff and the three Captains, fifteen full-time Firefighters and twenty-one part-time Firefighters make up the line staff. Part-timers are excluded from the bargaining unit.

Emergency Medical Service

The line staff is the element of the department who respond to fire and EMS calls. The department works a twenty-four hour on/forty-eight hour off schedule. They are divided into three crews. Each crew has nine slots made up of the captain, five full-time firefighters, and three slots staffed by part-time personnel.

The City in its 2001 budget report stated that as a result of recent growth in full-time professional fire departments in Southwest Ohio, the pool of qualified part-time personnel has been dramatically reduced. As a result, full-time personnel have been

called upon to fill the void when vacancies occur in the part-time ranks. This has two consequences: the full-time personnel must work excessive overtime hours, and vacation and holidays have been severely restricted as to use. To allay this situation, the 2001 Budget Report recommended the hiring of three full-time firefighters in order to increase the three fire crews to ten personnel each. While this would not eliminate overtime, it would allow overtime to be reduced and provide flexibility in scheduling vacation and holiday hours. It is believed that these additions also will provide more assurance of maintaining the department's minimum staffing level of eight personnel for each of the three crews.

The Springdale Professional Fire Fighters IAFF Local 4027 hereinafter referred to as "Union" was, on July 13, 2000, certified as sole bargaining agent for the firefighters. If all parties agree, this will be the first contract between the Union and the City of Springdale. This being a first contract, the parties are at impasse on eight issues, most of them economic.

Both sides however exhibited a willingness to sit, talk, negotiate and compromise.

The Fact Finding Hearing commenced at 10:00 A.M. and adjourned about 4:00 P.M. The Fact Finder 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). The Union stated that the parties have been meeting

since August 23, 2000. Negotiations resolved most issues. The Fact Finder met in mediation with both parties on June 1, 2001 and June 25, 2001 as well as July 13, 2001. As a result of mediation, four (4) issues were resolved: Physical Fitness, Layoff & Recall, Duration of Contract and Overtime.

The main difference in the way the issues were presented at the Hearing is based on divergent philosophical perspectives about bargaining. The Union felt that in a number of areas it should have parity with what the police officers were able to bargain for in its contract with the City. The City on the other hand had several items it wanted to keep at the status quo.

There were eight issues remaining at impasse:

1. Grievance Procedure
2. Discipline
3. Personnel Files
4. Union Security
5. Wages
6. Hours of Work
7. Vacation
8. Holidays

Issues 5, 6, 7 and 8 were termed economic issues and appeared to be of most importance to both sides. The Union wants to modify procedures for Grievance Procedures, Discipline and Personnel Files. It seeks a fair share deduction from non-union employees. The Union believes it is underpaid and works excessive hours and therefore wants an increase in pay and a reduction in hours worked. It wants more vacation time and an increase in the holiday benefit. The City in general wants to keep the status quo but did offer to hire three (3) more full-time firefighters, it offered to look into changing payroll procedures to make all pays even in the future. Currently there is a big check/little check phenomenon. The City stated that the Union had turned down a general wage offer earlier in the year.

From both sides there was much discussion about accuracy, reliability and germaness of comparables submitted by each side. Comparables were submitted from SERB and other quarters. While coomparables oft times are not perfect, the Fact-Finder found comparables submitted to be useful in support or non-support of the arguments proffered.

III. ISSUES AT IMPASSE

1. GRIEVANCE PROCEDURE
2. DISCIPLINE
3. PERSONNEL FILE
4. UNION SECURITY
5. WAGES
6. HOURS OF WORK
7. VACATION
8. HOLIDAYS

ISSUE 1: GRIEVANCE PROCEDURE - ARTICLE 9, SECTION 9.14

Union's Proposal:

The Union is proposing that the fee of the arbitrator and the rent, if any, for the arbitration hearing be paid by the party losing the grievance. This would prevent the successful party from being monetarily damaged; a 50/50 split would have the effect of a party not pursuing an unjust finding due to monetary concerns.

City's Proposal:

The only issue to be resolved is whether the cost of arbitration should be split between the parties or paid by the losing party. The Union seeks "loser pays" while the City holds for splitting the fees. The City contends that the grievance procedure is a mutually agreed upon resolution procedure. The procedure itself should not carry with it a punitive component if a party enters the procedure in good faith. A party can have a good faith belief in the correctness of his position and feel compelled to maintain that position. A party should be able to do so without fear of the punitive aspect of not only being found to be incorrect in his position, but also having to sustain the cost of the arbitration process as well.

DISCUSSION

Research shows that “loser pays” is pretty much standard in this municipal area.

FACT FINDER’S DECISION

Appropriate language to reflect that the fee of the arbitrator and the rent, if any, for arbitration hearings be paid by the party losing the grievance. Appropriate language in Article 9, Section 9.14.

ISSUE 2: DISCIPLINE PROCEDURES – ARTICLE 10, SECTION 10.6

Union’s Proposal:

The Union feels that it is imperative that any discipline that is deemed to be unjust be allowed to proceed through the grievance procedure. By allowing an unbiased neutral to review the facts, the due process that these matters require would be assured. The Union does not enjoy the relationship with the Civil Service Commission that the City enjoys nor do we have input of the makeup of this Commission.

City's Proposal:

The issue here is whether suspensions and terminations can be appealed through arbitration or must they be appealed through the local civil service process. The Union seeks arbitration; the City wants to keep civil service procedures as the exclusive remedy for suspension and termination.

For almost 100 years the termination of a public safety officer (police and fire) has been reviewable by a civil service commission. The Ohio Revised Code and its predecessors have carried language similar to the current provisions of R.C. 124.34. State, county, city, and school district employees have been governed by the civil service laws. In each case a local commission (or review board) is empowered by statute, or local law to hear discipline cases. The commission members are residents of the community they serve. These appointed citizens are the best judges of the appropriate standards of discipline in their respective communities. To avoid potential error or bias, the commission or board decision is subject to appeal to the courts.

An arbitrator more likely will not be a citizen of the community and may not even be from the same state. Lacking any knowledge of local standards, an arbitrator ultimately applies his or her own sense of workplace justice. Neither party is well served when an arbitrator imposes a disciplinary standard that does not reflect the community standard. Furthermore, there is almost no appeal from an arbitrator's award.

DISCUSSION

The Union seeks arbitration because it feels because the City picks the members who serve on the Civil Service Commission that its decisions can be bias against the Union. The City wants the status quo. The Union offered no proof of a pattern of bias against its members. Also Commission decisions are appealable through the court system.

FACT-FINDER'S DECISION

Appeals to Discipline, including suspensions and terminations, be appealed through the local civil service process as already in place. Appropriate language in Article 10, Section 10.6.

ISSUE 3: PERSONNEL FILES - ARTICLE 11, SECTION 11.4

Union's Proposal:

The Union is asking for same benefits currently enjoyed by the Springdale FOP lodge. We believe that records of disciplinary action of a twenty-four hour suspension or less cease to have force and effect after two years and records of disciplinary action of suspension more than twenty-four hours cease to have force and effect after five years. This is the current practice for our patrol officers and we feel that it is fair and just.

City's Proposal:

The parties were unable to agree on how long a record of discipline remains in an employee's personnel file. The City contends that any expungement of disciplinary matters from a personnel file distorts the true picture of the employee. An employee who has never been disciplined in twenty-five years would look no different than an employee who has been suspended on several occasions, but never within the same expungement period. An employee who has been suspended should not be able to hold himself as having a clean record. Old disciplinary records may become stale and may carry little weight in a subsequent disciplinary proceeding, but they should not be removed from an employee's personnel file. While the City may have offered to compromise on this issue to get resolution of this and other items, as a stand-alone issue, the City seeks to have no expungement of any disciplinary records before five years, and only records of minor discipline should be removed.

DISCUSSION

The City seeks to keep employee records of discipline indefinitely and the Union wants limits on how long a record can be kept and how long it can have force and affect. The Union seeks similar language as the Fraternal Order of Police.

The City is concerned about deleting records and therefore not having complete accurate records. The Union is concerned about old and outdated records

having force and effect on current disciplinary actions. The City says serious misconduct should stay in the files. It should be noted that issue three speaks to personnel files only.

FACT FINDER'S DECISION

Union Language – Article 11, Personnel File, Section 11.4

“Records of oral reprimands, written reprimands and suspensions of 24 hours or less shall cease to have force and effect or be considered in future discipline matters two years after their effective date, providing that no intervening discipline actions of a similar nature are taken during that time. Records of disciplinary action of a suspension of more than 24 hours shall cease to have force and effect or be considered in future discipline five years after their effective date, providing that no intervening disciplinary actions of a similar nature are taken during that time. Upon written request of the employee, outdated disciplinary records shall be removed from the personnel file.”

ISSUE 4: UNION SECURITY - ARTICLE 30, SECTION 30-1-5

Union's Proposal:

The Union feels that it is important to have the ability to charge a fair share fee to the members of the collective bargaining unit who are represented and benefit by the

Union and its affiliations with State and International organizations but do not choose to join the local. This fair share fee can be vital in the operations of a union our size.

City's Proposal:

The Union seeks an agency shop/fair share fee provision in the agreement. The City opposes any form of mandatory payments imposed upon employees. The right to support, or refuse to support, the Union should be recognized as an inherent right of public employees. The City cannot legally interfere with the Union or its members. It should not be made to be an unwilling partner of the Union in extracting money from an employee to support the economic and political interests of the Union. It should be a matter of choice. Fair share fees should not be imposed.

DISCUSSION

The Union seeks to get the City to deduct a "fair share fee" from employees in the Union but who are not members of the Union. The City takes the stance that this is a Union affair and the City must remain neutral. The City bases its stance on political and philosophical grounds. However, Ohio Law ORC 4117.09(C) permits the inclusion of "Fair Share" Union Security clauses in the collective bargaining agreement. Startup Unions often entail expenditure of much time and money. The services of lawyers, negotiators, research staff and general administrative personnel may

be required. These provisions ensure that all employees in a unit, even non-members, contribute to the financial support of the bargaining representative.

FACT FINDER'S DECISION

UNION LANGUAGE – ARTICLE 3:

- 30.1 Each employee in the bargaining union who is not a member of the Union shall pay to the Union a fair share fee after sixty (60) days of employment.
- 30.2 The Fair share fee shall be made in the same manner and subject to the same conditions as apply to the deduction of dues under this agreement.
- 30.3 Fair share fee deductions shall be automatic and do not require the written authorization of the employee.
- 30.4 The Local Treasurer of the Union shall certify the amount of the fair share fee to the Employer. Such fair share fee shall not exceed the amount of regular monthly union dues nor shall a fair share fee or a portion of it be certified for collection for activities that the Union is not legally entitled to finance with fair share (agency) fees. Once fair share fees are deducted, they become property of the Union and the Employee assumes no liability for the amount certified or deducted.
- 30.5 The Union shall indemnify and hold the Employer, its officials, representatives, and agents harmless from any claims, actions, or liabilities arising out of or resulting from deductions of fair share fees.

ISSUE 5: WAGES – ARTICLE 14

Union's Proposal:

The firefighters are currently paid hour for hour on a twenty-eight day cycle. This causes the “big check/little check” problem not encountered by other city employees. We are asking to be changed to an even bi-weekly check based on our average workweek hours and receiving overtime pay in the pay period in which it was worked (as already agreed upon in Article 17 – Call In Pay) Overtime is to be defined as any hours worked outside the employee’s regular schedule hours. We are also asking for a 5% pay increase for each of the three years of the contact with the increase for the year 2001 being retroactive to December 17, 2000. (The first pay cycle of 2001.)

City's Proposal:

The City proposes a 3% wage increase effective upon ratification, or acceptance of a fact-finder’s report and an additional 3% increase effective January 1, 2002 and a 3% increase effective January 1, 2003.

This being a first contract there is no reason to consider a retroactive adjustment. Wage surveys of local communities reveal that the current wage of bargaining unit employees is above the local average, for example, Springdale Firefighter Paramedics salary ranges from \$37,748 to \$45,910 while the SERB Benchmark data surveying local

communities shows an average salary range from \$34,890 to \$43,104. Other bargaining unit salaries are similarly favorable. The City also contends that current hourly rates should be maintained should any consideration be given to a reduction in scheduled hours.

DISCUSSION

The Union currently is paid hour for hour on a twenty-eight (28) day cycle. This causes their checks to be uneven. The Union is asking that they change to an even bi-weekly check based on their average workweek hours and receiving overtime pay in the pay period in which it was worked. The Union is also asking for a 5% pay increase for years 2001, 2002 and 2003. Year 2001 pay increase would be retroactive to December 17, 2000. (The first pay cycle of 2001). The FOP and all other employees are paid on a bi-weekly cycle. The Union believes it is overworked and underpaid.

The City is very amenable to changing the pay cycle to bi-weekly but appeared to need a little time to do so. The City says it offered the Union a pay raise earlier in the year when it offered a general raise to employees. The Union refused. Currently the City is offering a 3% increase effective upon ratification, or acceptance of the Fact Finder's Report and 3%, January 1, 2002 and 3%, January 1, 2003. The City believes that since this is a first contract there is no reason to consider a retroactive adjustment.

No evidence was submitted that proved that the firefighters were underpaid compared to their peers in the area. They were not the top paid or the lowest paid but well entrenched in the mid-range of comparables submitted.

THE FACT FINDER'S DECISION

The City be given a grace period of two months from the signing of the Fact Finder's report to change the firefighters' pay to an even bi-weekly check based on their average workweek hours and receiving overtime pay in the pay period in which it was worked. Definition of overtime is to be as per Fair Labor Standards Act. In this case overtime is to be paid on all hours over 212 in a 28-day work cycle.

Wages – a 5% per wage increase is exhorbant. However, the firefighters without question deserve a decent and fair increase.

Wages will be retroactive only to the signing of the Fact Finder's report and shall be:

Year 2001	3.5
Year 2002	3.5
Year 2003	3.5

Effective immediately.

ISSUE 6: HOURS OF WORK – ARTICLE 13

Union's Proposal:

The bargaining unit members currently work a 54-hour workweek. We are asking for a reduction of two hours per week for the second and third year of the contract. This would bring the average workweek more in line with the other surrounding communities and help to bring parity within the City itself.

City's Proposal:

The union seeks to reduce the work schedule of the bargaining unit. Members working the tour system (on 24 – off 48) are scheduled to be on duty an average of 54 hours per week. Unlike some communities, Springdale pays a member for all on-duty hours, including the hours of sleep. As addressed in the Pre-Hearing Statement, the light run experience of the Springdale Firefighter does not support a demand for fewer hours.

A reduction in hours also has a dire economic impact on the employer. The firehouse does not close down. Each of the twenty-four hours of the day has to be manned by an adequate work force. Additional personnel will have to be employed to fill all hours left unfilled by a reduction in the schedule.

Members currently are paid overtime in accordance with the Fair Labor Standards Act. The union seeks a reduction in schedule hours to accomplish an increase in overtime pay. Members currently receive four hours of overtime each 28-day work cycle. Overtime is paid on all hours over 212 in a 28-day work cycle. The 54-hour workweek results in 216 hours. Of these 212 are straight time and four (4) are overtime. Reducing the workweek just two (2) hours doubles the overtime cost to the City.

DISCUSSION

The Union seeks a reduction in its workweek of 54 hours to 50 hours. This would be done incrementally by a reduction of two hours per week for the second and third year of the contract. The City counters that this is just a ploy to increase the overtime availability. Overtime is paid in accordance with the Fair Labor Standards Act. Overtime is paid on all hours within a 28-day work cycle over 212 hours. The 54-hour workweek results in 216 hours. Reducing the workweek two (2) hours doubles the overtime cost to the City. Union members are also paid for all on-duty hours, including the hours of sleep.

FACT FINDER'S DECISION

Hours will currently remain at an average of 54 hours per week. The City's agreement in good faith to hire three (3) new full-time firefighters will reduce some of the overtime and free up time for some of the duties firefighters say they are

pressed to get accomplished. It would not be good economics to hire three employees to help alleviate overtime and then reduce the average workweek to 50 hours that guarantees to increase overtime.

ISSUE 7: VACATION – ARTICLE 33

Union’s Proposal:

The firefighters are not asking for any change in the allotted weeks of vacation time off each year. We are however, asking that a week’s vacation accurately reflect the workweek that has been set forth to us. We currently work a 54-hour workweek but only receive our vacation time based on a 48-hour workweek. (96 hours for two weeks.) We acknowledge and agree that as our workweek is reduced, our vacation time will be reduced to match it.

City’s Proposal:

The average member reports for duty on only 111 days each year. Working every third day makes every workday like a “Friday” followed by two days off. Each quarter a member is off one scheduled workday allowing five unscheduled days in a row. Four times a year a member has five free days in a row as part of their regular schedule. Some members currently have so much time off, they were granted the right to sell back up to

two weeks of vacation. There is no need to grant more vacation. Employees currently receive from 96 hours to 240 hours vacation annually.

DISCUSSION

The Union wants the calculation of vacation time off each year to reflect the number of hours worked in the workweek. They currently work a 54-hour workweek but only accrue 48 hours of vacation time or 96 hours for two weeks. The Union wants 108 hours for two weeks. The City wants to keep the status quo. The Union wants an increase of 12 hours for two weeks.

FACT FINDER'S DECISION

There is no change in the way vacation credits are calculated. A jump from 96 hours to 120 hours would be excessive.

ISSUE 8: HOLIDAYS – ARTICLE 32

Union's Proposal:

The firefighters currently receive annually, eight (8) hours of pay for ten (10) recognized holidays. This is the same holiday benefit enjoyed by all the 40-hour employees throughout the City. However, since we currently work 35% more hours than

the 40-hour employees do, we believe that our holiday benefit should also reflect that. In addition, the firefighters who are required to work on recognized holidays do not receive any additional compensation than that of the employees who do not work. With that in mind, in addition to the holiday pay received by all city employees, we are asking for an additional ½ time be added to our regular pay for all hours worked on recognized holidays.

City's Proposal:

Members currently receive 64 hours of holiday pay each year corresponding to 8 holidays, and a birthday holiday and a floating holiday of eight hours. Most other City employees receive all these days off. Members receive the same holiday benefit as most other employees. An increase in the holiday benefit will be nothing more than another form of a pay increase. Once again, there is no reason to increase the holiday benefit.

DISCUSSION

The Union is seeking holiday benefits over and above what 40-hour employees receive which is eight (8) hours of pay for ten (10) recognized holidays. The Union also wants one-half (1/2) pay added to regular pay for all hours worked on recognized holidays. The Neutral sees no merit in increasing the number of holidays. However, it is common practice in Ohio to grant premium pay for hours worked on a holiday.

FACT FINDER'S DECISION

Employees required to work on a designated holiday shall receive pay at a rate of one and one-half (1-1/2) times their regular rate of pay for actual hours worked.

IV. CLOSING REMARKS

The Fact-Finder wishes to commend both the Union and the City for a high level of professionalism, cooperation, patience and knowledge of labor law displayed at the Hearing. For the Union it was very hard over many months assembling a team of knowledgeable professionals to present its proposals. It is not easy to decide what proposals to put forth, especially on a first contract and also which ones to emphasize. Meeting over many months, the negotiating process can lead to frustration. The Fact Finder detected none of this from the Union side. The City, likewise, is to be cited for its willingness to negotiate. Even though the City was status quo on practically every item at impasse, it still showed a resolve to talk things out, make changes, cooperate and listen to the Union. This is a great start for both sides. A spirit of give and take.

It is hopeful that the recommendations in this report will be agreed upon by both parties in the spirit of cooperation exhibited by each at the Fact Finder's hearing.

V. SUMMARY

The Fact Finder 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.