

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

2000 DEC 19 A 10:36

IN THE MATTER OF:

CASE NO. 00-MED-09-0913

**SANDUSKY FIRE FIGHTERS,
IAFF LOCAL 327,**

"Employee Organization"

and

CITY OF SANDUSKY,

"Employer"

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

DATE OF REPORT AND DATE OF MAILING: DECEMBER 15, 2000

APPEARANCES:

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Employee Organization:**

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I. INTRODUCTION

This matter comes before the Fact-Finder as a result of a referral on December 1, 2000 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the Sandusky Fire Fighters, International Association of Fire Fighters, ALF-CIO-CLC, Local No. 327 (hereinafter referred to as "Fire Fighters" or "Employee Organization") and the City of Sandusky (hereinafter referred to as "Employer" or "City").

The parties were unable to mutually agree to either a continuance or an established date for purposes of fact-finding and, because one of the issues involved dealt with the matter of wages for the year 2001, it was thus necessary that fact-finding be conducted and the Report and Recommendations be issued by December 15, 2000.

A fact-finding hearing was conducted for the taking of evidence, submission of issues and presentation of the parties' respective positions on Sunday, December 10, 2000, with the hearing being conducted at the Sandusky City Hall, Sandusky, Ohio. No post-hearing briefs were submitted and the hearing was considered closed as of December 10, 2000.

The Fact-Finder received and has taken into consideration numerous exhibits and extensive material presented by both parties, including the parties' respective pre-hearing position statements.

Included in the material presented and received by the Fact-Finder was the parties' current Collective Bargaining Agreement covering the period from January 1, 1998 through December 31, 2000. Some of the exhibits and documents submitted by the parties will be referenced in more detail, *infra*, as they relate to the specific issues under review. Included in the submission of documents and which the Fact-Finder has considered are the Fact-Finder's Report in the matter

of *City of Sandusky and Sandusky Fire Fighters, IAFF, Local 327*, SERB Case No. 91-MED-09-0899, and the arbitration decision dated February 25, 2000 in the arbitration matter between *City of Sandusky and IAFF Local 327* in Federal Mediation and Conciliation Service Case No. 99-17526.

In addition, the Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §§4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

Appearing on behalf of the parties, in addition to the respective representatives designated on the face sheet of this Report, were the following:

On Behalf of the Fire Fighters

Brian C. Crandall, President, IAFF, Local 327
Larry S. Wright, Vice President, IAFF, Local 327
James Snyder, Sergeant at Arms, IAFF, Local 327
Tamie Myers, Member, IAFF, Local 327

On Behalf of the City

Robert W. Schultz, Director, Department of Administrative Services,
City of Sandusky
Ed Widman, Director of Finance, City of Sandusky
Ken Gilliam, Chief, Division of Fire, City of Sandusky

II. BACKGROUND

The City of Sandusky has a population of approximately 30,000, which increases to approximately 100,000 persons during the summer months because of the increased tourist business generated by Cedar Point Amusement Park which is located within the City of Sandusky and is a large and popular amusement park for the northwest Ohio area, as well as the general mid-west area.

Fire Fighters Local 327, being the bargaining unit in issue, has 55 members, consisting of assistant chiefs, captains, lieutenants and fire fighters, all of whom are certified EMT (Emergency Medical Technicians) with various degrees of proficiency. A workweek for the Unit consists of one member working a 40 hour week and 54 members working a 52 hour week of alternating 24 hour days with three shifts.

A significant and substantial amount of material has been presented to the Fact-Finder and he would be remiss if he did not commend the representatives of both the Fire Fighters and the City for presenting their respective positions in an articulate, detailed and highly professional manner, particularly considering the short and rapid time table which was placed before the parties. In preparing this Report and Recommendations, the Fact-Finder has attempted to summarize the salient aspects involved, however, any brevity therein should not be construed as an attempt to diminish the significance of each report or the volume of material presented in support. This Report and Recommendation would be of considerable size if all of the arguments, pro and con, and all of the material were discussed at length. Additionally, the Fact-Finder is cognizant of the caveat expressed by Justice Douglas in *Johnson v. University Hospital of Cleveland* (1989), 44 Ohio St.3d 49, 58, wherein he stated: "Our occupational duty continuously requires us to balance rights and responsibilities of persons regardless of their color, sex, position or station in life. We accomplish that balancing in this case while recognizing that our decision will be something less than universally accepted."

III. RECOMMENDATIONS

Article 18 (Corrective Action, Discharge or Suspension)

Section 18.2(A) provides: "Except in cases of serious misconduct, discipline will be progressive." The Fire Fighters had proposed that the City clarify or specifically define what constitutes serious misconduct. In an effort to address that issue, the City had proposed a number of examples, such as drunkenness, dishonesty, use of illegal drugs or alcohol as potentially coming within the definition of "serious misconduct." Based on the discussions that ensued during the course of the fact-finding and the fact that general discipline is subject to a four step Grievance Procedure, whereas in cases of discharge or suspension, Steps 2 and 3 of the Grievance Procedure can be "jumped," the Fact-Finder recommends that current contract language be retained.

The Union had also raised an issue pertaining to the last sentence of Section 18.2(D) which currently states: "If appealed, a discharge or suspension without pay shall not be put in effect until the final disposition of the grievance." The City had proposed that sentence be deleted, whereas the Fire Fighters wanted retention of current contract language. In part, the issue arose in light of the arbitration decision of February 25, 2000 previously referred to herein wherein a fire fighter was discharged but had his pay withheld which action the arbitrator held was contrary to the language of the Contract. During the course of the fact-finding, it was indicated that if a suspension with pay was instituted and the suspension was upheld, the City would most likely be able to recoup the money owed by simply making a payroll withholding. The problem became somewhat more complex in the case of a discharge. If the City continued to pay the discharged employee during the Grievance Procedure and the discharge was upheld, the City might be faced with difficulties in obtaining recoupment of the monies which it had paid to the employee. The Fact-Finder, based on

discussions occurring during the course of the fact-finding, recommends a slight modification of the sentence in question and recommends that the last sentence of Section 18.2(D) be amended to read as follows: "If appealed, a suspension without pay shall not be put in effect until the final disposition of the grievance."

Article 38 (Health and Life Insurance Plan)

The City indicated that it presently maintains a "city-wide" medical/hospitalization program and that as of January 1, 2001, it is changing to a new insurer. It was also indicated that in addition to the instant Fire Fighters Union, the members of the Police Department are covered under a Collective Bargaining Agreement and members of the Service Department are covered under a Collective Bargaining Agreement. The City indicated that the Collective Bargaining Agreements with those two units likewise are for the period January 1, 1998 through December 31, 2000 and that the City is currently in the process of negotiations with those two bargaining units. In that context, the Fire Fighters indicated that they do not essentially quarrel with the City's present or proposed medical/hospitalization program but propose that an optical plan also be included. The Union contends that the additional cost is relatively minor, well within the monies budgeted for this general category of benefit by the City and is not an unreasonable request. The City indicated that although it maintains a city-wide medical/hospitalization program that is applicable to all employees, there are portions which can be tailored to one particular unit to the exclusion of the others, i.e., vision care could be provided for just the Fire Fighters but not made applicable to any other employees. On balance, the Fact-Finder does not recommend inclusion of vision care coverage as part of the present medical/hospitalization coverage, however, in the event that vision care should be negotiated and included in either of the other Collective Bargaining Agreements or

otherwise provided for non-Union employees, then the Fire Fighters shall be entitled to the same or equivalent vision care coverage provided to the other employees or employee group.

Under the provisions of Section 38.1, the Collective Bargaining Agreement provides for life insurance coverage equal to an employee's base salary up to a maximum amount of \$50,000 per year which the Union was proposing be increased to \$100,000 per year. Based on the discussions which ensued during the course of the fact-finding, and in light of a further modification being made to the matter of life insurance coverage to be discussed hereinafter, the Fact-Finder does not recommend the requested increase from the present maximum of \$50,000 per year to \$100,000 per year per employee.

The Union had also requested that additional language be inserted in Section 38.1 to provide that the City would offer its group rate life insurance to both active and retired employees so that they could purchase, on a voluntary and individual basis, additional or supplemental life insurance.

City Ordinance No. 98-264, Section 10(F) provides: "The City Manager and the Finance Director are authorized to provide life insurance coverage in an amount equal to an employee's base salary as part of the health benefit package. Additional insurance may be obtained by individual employees with the total cost paid by the employee." Notwithstanding the existence of such a provision as of November 23, 1998, that clause was apparently never actually instituted. In light of this ordinance provision, the Fact-Finder is of the view that additional insurance coverage should be made available to active employees on a voluntary purchase basis. Accordingly, the Fact-Finder recommends that Section 38.1, 38.2 and 38.3 be deleted and, in substitution thereof, the following is recommended:

“38.1 Effective January 1, 2001, the City will fund a health and life insurance benefit plan as set forth in the attached medical benefit plan summary [see attached Exhibit A] for each covered employee. This plan shall consist of out of pocket expenses for usage of the health benefit plan with a co-pay cap of \$1,000 per person, \$2,000 per family, per year, at an 80%/20% ratio of non network covered expenses. Dental coverage will continue at current levels. Effective January 1, 2001, the prescription card will be modified to reflect a \$5.00 deductible for generic drug purchases and a \$15.00 deductible for all name brand drug purchases without exception. The plan will provide life insurance coverage equal to the employee’s base salary up to an amount not to exceed \$50,000 per year. The City will offer its group rate life insurance to active employees so that they may voluntarily purchase, on an individual basis, additional and/or supplemental life insurance. Accidental death and dismemberment shall be provided at an amount equal to the basic life insurance amount. Effective January 1, 2001, in addition to the benefits set forth in the attached exhibit, the City will also provide as a covered expense one prostate exam per year, and will establish a flexible spending 125 plan [see attached Exhibit B].

38.2 Effective January 1, 2001, the City will continue to be a member of a Preferred Provider Organization. The net impact on covered employees will be that the out-of-pocket expenses will be eliminated provided the employee uses the approved network of medical providers, excepting the Ten Dollar (\$10.00) doctor visit co-pay as set forth in the medical benefits summary attached hereto.

38.3 The Employee Health Benefit Committee will continue to be an advisory committee. The PPO selected by the Committee/City will include at least one local hospital facility.

38.4 The health benefits for covered family and dependents of an employee who has been killed in the line of duty shall continue for a period of one (1) year from the date of death of the employee without premium contribution from the employee’s family and/or dependents.”

Article 39 (Wages)

As is not uncommon, this issue was the major issue of contention between the parties. In essence, the Union proposed a wage increase, effective January 1, 2001, of \$1,876 to be added to the base salary, and after addition to that amount to the base, a 4% increase, which, as a total

adjustment, is equivalent to a 9% increase; effective January 1, 2002, a proposal for a 4% increase; and effective January 1, 2003, a proposal for another 4% increase. The Union argued that the current base wage for the top level Fire Fighter for the year 2000 is \$37,524 which is approximately \$4,600 less than the comparable wage rates based on various statistical data, including a November 30, 2000 "Benchmark Report" of the State Employment Relations Board for cities of comparable size to that of Sandusky. The statistical data submitted by the Union and compiled by the State Employment Relations Board does indicate that, generally, the Fire Fighters were compensated in the high \$30,000s or low \$40,000s. The Fact-Finder appreciates that the average was noted at approximately \$42,000 but the average included compensation paid by certain cities within population approximately the size of Sandusky but paying in the high \$40,000s or \$50,000s for a top level fire fighter. The City, on the other hand, relies on certain other studies indicating that the average base wage for a top level fire fighter is more closely approximated to that of \$40,000 and that the present proposal by the City is consistent with that wage range. The City proposed a base wage increase of \$1,876 for a top level fire fighter in the first year of the Contract. As noted previously, this amount of \$1,876 represents a 5% increase. The City has also offered a wage increase of 4% in the second year and 4% in the third year of the Contract.

It should be noted that no specific wage increase adjustment is referenced in connection with the compensation to be paid to lieutenants, captains and assistant fire chiefs for the reason that under the provisions of Section 39.4 of the Collective Bargaining Agreement, there is an automatic 13% pay differential between the rank of fire fighter and lieutenant, a 13% pay differential between lieutenant and captain, and a 13% pay differential between captain and assistant fire chief. Thus, once the base wage rate is set for a top level fire fighter, it is simply a matter of

multiplication, applying the 13% differential rule to determine the compensation to be paid to lieutenants, captains and assistant fire chiefs.

The Fact-Finder is acutely aware of the delicacy of this particular issue and also recognizes that the compensation of the top level fire fighter is slightly less than a general average. However, such a difference cannot be classified as extreme or such that calls for extensive remediation. Accordingly, the Fact-Finder recommends that Section 39.1 be deleted and, in lieu thereof, to read: "Effective January 1, 2001, 5% increase."; Section 39.2 be deleted and, in lieu thereof, to read: "Effective January 1, 2002, 4.5% increase."; and Section 39.3 be deleted and, in lieu thereof, to read: "Effective January 1, 2003, 4.5% increase."

The Union has also proposed a modification to the last sentence of Section 39.3 which provides, as currently written, that employees were entitled to a "signing bonus" of \$200 which was paid in January 1998, the first year of the existing Collective Bargaining Agreement. The Union has proposed that sentence be amended to provide for a "signing bonus" of \$500. In light of other comments and consideration of the various components of wages and benefits previously discussed herein, the Fact-Finder does not recommend adoption of the language as proposed by the Fire Fighters, however, the Fact-Finder does recommend that the last sentence of Section 39.3 of the present Contract be deleted and, in lieu thereof, the following be inserted: "Each member of the Unit shall be entitled to a bonus of \$300 to be paid during the second payroll in January 2001."

The Union has also proposed that the starting wage for new hirees be no more than \$6,000 less than the Class A or top level fire fighter compensation. The Fact Finder notes that under the terms of the current contract, under Appendix D, there is a classification for a new hiree with no training to be paid at a level of compensation known as Salary Range 19A, a different wage rate for a new hiree who has fire fighter or paramedic certification receives compensation at Fire Fighter

Classification 19B, and then a third classification for a new hiree who has fire fighter and paramedic certification who is placed in a salary Classification 20A. The Fact-Finder believes that there is a reasonable nexus and justification for differentiating between a new hiree who has absolutely no prior experience or training as opposed to a new hiree who has fire fighter or paramedic certification and/or both. Accordingly, the Fact-Finder does not recommend adoption of the Fire Fighters' proposed Section 39.6 and recommends retention of the current Fire Fighter Classifications 19A, 19B and 20A as reflected in Appendix D of the Contract.

Respectfully submitted,



DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded to George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Andy Drwal, 2nd District Vice President, Ohio Association of Professional Fire Fighters, 205 Louisiana Avenue, Lorain, Ohio 44052; and Duffield E. Milkie, Esq., Buckingham, Lucal, McGookey & Zeiher Co., L.P.A., 414 Wayne Street, Sandusky, Ohio 44870, via FedEx, this 15th day of December, 2000.


DONALD N. JAFFE
Fact-Finder

**CITY OF SANDUSKY
MEDICAL BENEFIT PLAN SUMMARY**

Plan Benefit	Current Plan	Proposed Plan
100% Benefit (No Deductible)	Home Health Care Diagnostic Lab & X-ray Surgical/Anesthesiology Inpatient Physician Services Supplement Accident (to \$300)	Home Health Care Diagnostic Lab & X-ray Surgical/Anesthesiology Inpatient Physician Services Supplement Accident (to \$300)
Deductible	\$100/individual \$300 /family	\$100/individual \$300 /family
Inpatient Hospital Expenses	Network 100%, no deductible Non-Network 80%, after deductible	Network 100%, no deductible Non-Network 80%, after deductible
Outpatient Hospital Expenses	100%, no deductible	100%, no deductible
Doctor Visits	80%, after deductible	\$10 copay per visit 100%, no deductible
All Other Covered Expenses	80%, after deductible	80%, after deductible
Out-of-Pocket (Including Deductible)	\$1,000/individual \$2,000/family	\$1,000/individual \$2,000/family
Wellness Benefits	Mammograms/Pap Tests: 100%, 1 per calendar year Child Immunizations: 100% to age one	Mammograms/Pap Tests: 100%, 1 per calendar year Child Immunizations: 100% to age one
Routine Physicals (1 per year, Employees only)	N/A	N/A
Psych/Substance Abuse: Inpatient Expenses Outpatient Expenses	Same as other illness Same as other illness	Same as other illness Same as other illness
Prescriptions: Retail (30-day supply) Mail-Order (90-day supply)	\$2 generic/\$15 brand \$0	\$5 generic/\$15 brand \$10 generic/\$25 brand
Lifetime Maximum	\$1,000,000/individual	\$1,000,000/individual

EXHIBIT A

This is only a summary of benefits. Please refer to the Summary Plan Description for complete details.

Flexible Spending Accounts

What is a Flexible Spending Account?

A flexible spending account (FSA) is a special account for money you set aside each pay period to cover qualifying individual or family expenses that occur during the plan year. The annual amount you elect to set aside is prorated for each pay period and deducted from your earnings before your taxes are calculated. The most frequently used types of flexible spending accounts are Medical Reimbursement and Dependent Care Reimbursement.

Medical Reimbursement Account Question & Answers

How does a Medical Reimbursement Account work?

The Medical Reimbursement Account is used to pay out-of-pocket medical, dental, and vision care expenses for you or your family members. These expenses are those not typically covered by your group health plan, such as your deductibles, copayments, dental, and vision care.

A list of examples of eligible expenses is included in the packet.

How do I benefit?

Money! Remember that the money you elect to set aside is deducted from your earnings before your taxes are calculated. This means that by setting up a reimbursement account, you can actually reduce the taxes you pay and keep more of what you earn.

For example, let's say that you need a new pair of glasses that will cost \$195. Without a reimbursement account, you would have to earn \$250 to cover both the cost of the glasses and the tax on that income. The reimbursement account allows you to set aside \$195 for the glasses and avoid the additional \$55 tax bite.

How much can I put into my Medical Reimbursement Account?

The maximum amount which you can put into your Medical Reimbursement Account is \$5,000 per plan year.

How much should I put into my Medical Reimbursement Account?

Because every situation is different, there is no single "correct" amount. Think carefully about what you spent last year and what you expect to spend this year on medical, dental, and vision care expenses that are not covered by your or your spouse's group medical plan.

What else do I need to know?

Once you understand the tax advantage of a reimbursement account (FSA), you should keep four basic rules in mind:

1. Money put into one FSA cannot be transferred to another FSA.
2. Money in your FSA can only be used for expenses incurred during the plan year.
3. Money left in your FSA at the end of the plan year is forfeited.
4. Generally, the contribution to your FSA cannot be changed after the plan year has begun. There are, however, some special circumstances involving changes in your family situation that may allow a change in your FSA contribution.

Health Care Expenses Eligible for Reimbursement

The following is a partial list of expenses that are for eligible health care reimbursement:

- Medical and Dental deductibles, copayments, and coinsurance
- Charges in excess of Reasonable and Customary
- Optical Services not covered by vision plan
- Hearing exams, hearing aids and other special equipment for the deaf
- Physical exams and mammograms in excess of one per year
- Medical expenses of a dependent who is not covered by the health plan (e.g. dependent parent)
- Special schooling for a child with mental or physical disabilities
- Infertility treatment
- Most "private duty" nursing
- Chiropractic expenses beyond active treatment of injury
- Special equipment or modification of home or car
- Alcohol/Drug treatment in excess of plan maximum
- Weight-Loss or smoking cessation programs prescribed by your doctor
- Acupuncture
- Child birth classes devoted to the delivery of the baby

If you have questions about whether a particular expense will be covered, contact the Office of Management and Budget.

Dependent Care Reimbursement Account Questions & Answers

How does a Dependent Care Reimbursement Account work?

The Dependent Care Reimbursement Account allows you to reduce your overall tax bill by setting aside a portion of your income to pay work-related dependent care cost. Some examples are as follows:

1. Day Care Fees
2. After-School Expenses
3. Babysitter's Fees
4. Elderly Dependent Care

If you are married, you can use this account provided both you and your spouse work, or in some situations, if your spouse goes to school full-time or is disabled. You can also use the account if you are single with dependents.

How much can I put into my Dependent Care Reimbursement Account?

If you are single or married and filing a joint income tax return, you can contribute up to \$5,000 each plan year. If you are married and filing separate returns, the limit is \$2,500.

How much should I put into my Dependent Care Reimbursement Account?

Because every situation is different, there is no single "correct" amount. You should make your decision after carefully considering what you spent last year and what you expect to spend this year for child/dependent care services.

Keep in mind that you are not paying taxes on the money you put into your child/dependent care FSA, so you cannot take the federal child care tax credit when determining your income tax. In most situations, you will save more by using the child/dependent care FSA because you save state and social security taxes as well as the federal income tax.

What else do I need to know?

Once you understand the tax advantage of a reimbursement account(FSA), you should keep four basic rules in mind:

1. Money put into one FSA cannot be transferred to another FSA.
2. Money in your FSA can only be used for expenses incurred during the plan year.
3. Money left in your FSA at the end of the plan year is forfeited.
4. Generally, the contribution to your FSA cannot be changed after the plan year has begun. There are, however, some special circumstances involving changes in your family situation that may allow a change in your FSA contribution.