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STATE EMPLOYMENT
RELATIONS BOARD

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IN FACTFINDING PROCEEDINGS PURSUANT TO

OHIO REVISED CODE SECTION 4117.14

In the Matter of

**ASSOCIATION OF CLEVELAND
FIRE FIGHTERS, IAFF LOCAL 93**

and

THE CITY OF CLEVELAND

SERB CASE NO. 02-MED-12-1346

02-MED

FACTFINDER'S

REPORT

This Factfinding arises pursuant to Ohio Revised Code Section 4117.14 between ASSOCIATION OF CLEVELAND FIRE FIGHTERS, IAFF LOCAL 93, the "Union," and THE CITY OF CLEVELAND, the "City," under which SUSAN GRODY RUBEN was selected to serve as sole, impartial Factfinder, whose Report is issued below.

Hearing was held on September 13, 2002 in Cleveland, Ohio. The parties were afforded full opportunity for the presentation of positions and evidence. Pre-hearing briefs were timely received from both parties.

APPEARANCES:

On behalf of the Union:

**THOMAS M. HANCULAK, Esq., Law
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On behalf of the City:

**JON M. DILENO, Esq., Duvin, Cahn &
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Statutory Criteria

Pursuant to Ohio Revised Code Section 4117.14(C)(4)(E), the criteria upon which this Factfinder's Report is based are as follows:

- 1. Past collective bargaining agreements;**
- 2. Comparisons;**
- 3. The interest and welfare of the public and the ability of the employer to finance the settlement;**

4. **The lawful authority of the employer;**
5. **Any stipulations of the parties; and**
6. **Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.**

The Bargaining Unit

The bargaining unit consists of 9 fire fighters who are the Airport Safety Supervisors for the Aircraft Rescue Firefighting Department (“ARFF”) which protects Hopkins International Airport (“Hopkins”) and Burke Lakefront Airport (“Burke”) (collectively, the “Airports”).

Previous Collective Bargaining Agreement

The previous Agreement was the first contract between the parties. Its term was from April 1, 1998 through March 31, 2001.

ISSUES

1. Recognition – Article 1

Previous Contract

The previous contract recognizes the Union as the representative of the Airport Safety Supervisors.

Union Proposal

The Union proposes the job be retitled Airport Fire Lieutenants . The Union’s rationale is that these employees perform similar duties to a Cleveland Fire Department (“CFD”) Fire Lieutenant, and the contract should reflect this.

City Proposal

Status quo. The City is opposed to the Union proposal because the two jobs are distinct.

Finding

Status quo. The City’s Civil Service Rule 2.10 defines a “classification” as:

One or more positions so similar with respect to duties, responsibilities and qualifications that the same descriptive title may be used to designate each of them, and each may be equitably compensated within the same salary scale;

-or-

shall mean a position or group of positions, having similar duties and responsibilities, requiring similar qualifications, which can be properly designated by one title indicative of the nature of the work and which carry the same salary scale.

Thus, the question is whether the currently-titled Airport Safety Supervisors (“Safety Supervisors”) have “similar duties and responsibilities” to the CFD Fire Lieutenants. With all due and proper respect to the Safety Supervisors, the Factfinder finds that while the two jobs have similar duties, the daily responsibilities of the two jobs are distinct in magnitude by means of various measurements. For example:

-In 2000, the CFD responded to approximately 56, 136 alarms; the ARFF responded to approximately 1,669 requests for service at the Airports.

-In 2000, the CFD responded to approximately 1,467 structure fires; the ARFF responded to approximately 7 structure fires.

-In 2000, the CFD had 148 firefighter injuries; the ARFF had 0 injuries.

While the Factfinder understands the potential for a serious fuel fire at the Airports is constant, thereby requiring the on-call skills of highly-trained and dedicated Safety Supervisors, this historically infrequent event, measured against the actual statistics of the CFD, shows the daily responsibilities and activities of the two positions differ.

2. Workweek/Hours of Duty -- Article 6

Previous Contract

The previous contract provides for a 48-hour workweek consisting of 2 24-hour shifts (24 on/48 off/Kelly Day (extra 24 off) every 3 weeks).

Union Proposal

The Union proposes an additional 24 hours off every 9 weeks, reducing the workweek to an average of 45 hours. The Union's rationale is that the employees currently are paid on the basis of a 40-hour workweek – 2080 hours annually, rather than the 48 hours per week/2496 hours per year they actually work. An additional 6 days off per year would reduce the Safety Supervisor's annual hours by only 144 hours, and would bring their schedules more in line with their pay. The CFD/Local 93 contract contains this language.

City Proposal

Status quo. The City is opposed to the Union's proposal because it will increase overtime costs. Because each 24-hour shift needs to be staffed by at least a Shift Commander or a Safety Supervisor, reducing the regular schedule of Safety Supervisors would result in the need to fill certain shifts with Safety Supervisors on overtime. The language in the CFD/Local 93 contract was inserted in the 1980s as a result of bargaining. The Airport Safetymen ("Safetymen") – the employees the Safety Supervisors supervise – work an average of 48 hours; the Safety Supervisors' schedules should stay aligned with that. Moreover, a 48-hour workweek keeps the Safety Supervisors roughly in the middle of the pack of first-level fire supervisors' workweeks at U.S. airports.

Finding

Status quo. The Safety Supervisors' direct reports work a 48-hour week, a 45-hour week would increase overtime costs, and a 48-hour week is in line with external comparables. The CFD/Local 93 contract has had this item since the 1980s; there is no compelling reason to add the language to this contract now.

3. Overtime/Daily Vacancies – Article 7

Previous Contract

The previous contract is silent.

Union Proposal

The Union proposes that "All daily vacancies for the purpose of overtime will be filled by the same rank individuals." When the City fills a daily supervisor vacancy with a Safetyman, this reduces supervisory presence, thereby creating a serious safety issue. Textbook span of control recommends 1 supervisor for every 3-7 subordinates, with the optimum ratio being 1:5. By not filling a daily supervisor vacancy with a supervisor, the ratio is sometimes as high as 1:11.

City Proposal

Status quo. The Union is attempting to establish minimum manning requirements, which would increase overtime costs. The general staffing pattern at Hopkins is 2 supervisors (Shift Commander and Safety Supervisor) and 6 Safetymen. When 1 supervisor is not available due to sick leave or vacation, the City wants to retain the discretion to fill the vacancy with a Safetyman; i.e., operate the shift with 1 supervisor and 7 Safetymen.

Finding

Adopt Union proposal. If when making the schedule there originally was thought to be a need for a certain number of supervisors, a supervisor's unavailability does not change that need. Though the Union proposal will cause increased overtime costs, the increase will be small and in the interest of safety.

4. Grievance Procedure – Article 8

Previous Contract

The previous contract provided for a Grievance Procedure different from the CFD/Local 93 Grievance Procedure. Certain issues in the previous contract's Grievance Procedure were not addressed, such as no mention of the effect a withdrawn grievance has on a future grievance, and no mention of the arbitrator's jurisdiction nor the time period by which the arbitrator should render an award.

Union Proposal

The Union proposes the adoption of the CFD/Local 93 Grievance Procedure. That Grievance Procedure is more familiar to the parties, more clear and comprehensive, and more streamlined.

City Proposal

The City proposes to maintain status quo, though was willing to consider modifying the language if the Union had articulated a reasonable

basis for doing so.

Finding

Adopt Union proposal, with the following modifications and clarifications to adapt the CFD/Local 93 Grievance Procedure to this bargaining unit:

- Step 1 designee is the Chief or his designee**
- Step 2 designee is the employee's Director or his designee**
- Step 3 designee is the Labor Relations Director or his designee**

This will enable the parties to have a familiar, time-tested Grievance Procedure.

5. Holidays – Article 13

Previous Contract

The previous contract provides 5 paid holidays and 2 paid personal days.

Union Proposal

Each member assigned to twenty-four (24) hour shifts shall receive an annual payment equal to nine (9) holidays divided by the manning factor (4.26) times twelve (12) hours pay at two (2) times the member's regular straight-time hourly rate of pay. This Holiday Pay shall be divided into nine (9) equal parts and one (1) part shall be paid in each pay period containing one of the following holidays – New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day – in addition to his/her regular salary.

This proposal would bring the Safety Supervisors in line with what many Safety Department employees receive.

City Proposal

The Union cannot establish a reasonable justification for this benefit, particularly in light of their generous vacation benefit. Though the 40-hour workweek City employees receive 9 paid holidays and 2 paid personal days, those are based on 8-hour days, while the employees in this unit receive their holidays and personal days based on their 24-hour shifts. The CFD/Local 93 contract has the language the Union is seeking, but it was unclear during bargaining whether the Union was willing to relinquish their 5 paid holidays in exchange for this formula as the CFD fire fighters did.

Finding

Adopt Union proposal with the modification/clarification that the 5 paid holidays in the previous contract are eliminated:

delete: " in addition to his/her regular salary"

replace with: "this Holiday Pay shall be in lieu of any other type of paid time off for holidays"

Given that these employees work 24-hour shifts as do the CFD fire fighters, the formula in the CFD/Local 93 contract is well-suited to this unit. Eliminating the 5 paid holidays in the previous contract minimizes, if not eliminates, any increased costs caused by adoption of the formula.

6. Promotions/Short Term Temporary Assignments – Article 14

Previous Contract

Silent on this issue.

Union Proposal

"Establish ARFF 20 as a Commander's Vehicle and ARFF 12 and ARFF 18 as a Fire Supervisor's position.

Any Supervisor required to ride in ARFF 20 will receive acting pay equal to the Commander's highest rate for the actual time served in that capacity."

When a Commander is off duty and there is no Commander to fill that vacancy, the City has mandated a Safety Supervisor fill that role. Currently, the Safety Supervisor is not compensated for that added responsibility and duties. The CFD/Local 93 contract provides Acting Pay in such circumstances.

City Proposal

Status quo. This is an effort to get minimum manning requirements into the contract. ARFF 12 is the ladder truck and ARFF 18 is the EMS squad. These 2 vehicles respond to nearly every call. These 2-person vehicles sometimes have a Safety Supervisor and a Safetyman assigned, but sometimes have 2 Safetyman assigned. There is no need for a requirement that a Safety Supervisor always be assigned to ARFF 12 and ARFF 18. Cleveland's Division of EMS responds to its runs with 2 paramedics and no supervisor.

The Union's efforts to get additional pay for being assigned to ARFF 20 should also be rejected. Shift Commanders are responsible for scheduling, assigning, and other administrative tasks. A Safety Supervisor performing a "spot" fill-in for a Shift Commander would not be performing these administrative tasks; accordingly no enhanced compensation is warranted.

Finding

Adopt Union proposal with modifications; 7 consecutive calendar days triggers the Acting Pay, Commanders' average rate is used, and do not establish ARFF 12 and ARFF 18 as a Fire Supervisor's position:

"Establish ARFF 20 as a Commander's Vehicle. Any Supervisor required to serve in that capacity for at least 7 consecutive calendar days up to and including 45 consecutive calendar days will receive a 5% premium for the actual hours worked served in that capacity."

The 7 consecutive calendar day minimum activates Acting Pay in circumstances when presumably the Safety Supervisor will actually be taking on some of the Commander's administrative duties. The 45 consecutive calendar day maximum provides a dividing line between short-term temporary assignments and ongoing temporary assignments. The 5% premium is a simple compensation method that currently is used for Safety Supervisors who receive an ongoing temporary assignment to Commander. Not establishing ARFF 12 and ARFF 18 as Fire Supervisor positions eliminates the City's minimum manning concern, which is a reasonable concern, given that it does not appear a Safety Supervisor needs to be regularly assigned to ARFF 12 and ARFF 18.

7. Promotions/Ongoing Temporary Assignments – Article 14

Previous Contract

Silent on this issue.

Union Proposal

“Any temporary assignment to Airport Safety Supervisor or Commander will be a maximum of forty-five (45) days and will include the member receiving Acting Pay equal to the highest grade in that rank. The City agrees to keep an eligibility list for promotions current with testing every two (2) years.”

Currently, there are 2 members who have been placed as long-term Acting Commanders. There should be a limit on how long individuals can serve in a temporary position.

City Proposal

Status quo. The Civil Service Commission has a heavy workload and cannot process promotions as quickly as the Union would like. Safety Supervisors who are temporarily assigned as Commanders receive a 5% increase, which more than adequately compensates them for their changed duties.

Finding

Adopt Union proposal with modifications:

Any temporary assignment to Airport Safety Supervisor or Commander that exceeds 45 consecutive calendar days will include the member receiving Acting Pay equal to the lowest grade in that rank, effective on Day 46 of the assignment.

This recognizes the current situation where members are serving in long-term temporary assignments. Acting pay at the lowest grade in that rank, rather than the highest grade, is an equitable choice. When a member is actually promoted, appropriate grade in rank will be established. Eligibility lists were not addressed by the parties at the Factfinding Hearing, and accordingly, will not be addressed by the Factfinder.

8. Promotions/Vacancies - Article 14

Previous Contract

Silent on this issue.

Union Proposal

All Promotions shall be made within the time limits of the Ohio Revised Code.

The City should comply with State Law.

City Proposal

Status quo. Under Ohio law, in conjunction with the City's charter, only promotions made within the Fire Department and Police Department must be made within a designated time frame. To impose a time restriction where none is required by law would impose a hardship upon the Civil Service Commission.

Finding

Status quo. The City is obligated to comply with the Ohio Revised Code. There is no need for additional contract language.

9. Wages – Article 17

Previous Contract

The previous contract provides a salary scale that places the Safety Supervisors below CFD Fire Lieutenants.

Union Proposal

The Union proposes a series of raises that will bring the Safety Supervisors to parity with the CFD Fire Lieutenants:

- 3% wage increase retroactive to April 1, 2001**
- 3.5% wage increase retroactive to April 1, 2002**
- 4% wage increase for 1 year effective April 1, 2003**
- plus-**
- \$2,478.00 wage increase on April 15, 2003**
- \$2,478.00 wage increase on September 15, 2003**
- \$2,480.00 wage increase (or the figure that would place Safety Supervisors the same as CFD Fire Lieutenants, whichever figure is higher) on February 15, 2004.**

The wage adjustments to bring the Safety Supervisors into parity with the CFD Fire Lieutenants would cost the City only \$66,914.19 per year, and that is only when the Safety Supervisors are at the top level with the Fire Lieutenants. This is a very minor portion of the Landing Fees realized by the City each year from the Airports. In 2000, the City realized \$90,205,000.00 in revenue from the Airports.

Currently, the City compensates the Safety Supervisors as if they were non-Fire personnel. Yet the National Fire Protection Association (“NFPA”) classifies the Airport Safety Division as a Fire Department:

Fire Department – An organization providing rescue, fire suppression, and related activities. The term “fire department” shall include any public, governmental, private, industrial, or military organization engaging in this type of activity.

NFPA 1003 Standard for Airport Fire Fighter Professional Qualifications, Chapter 1-4. And Chapter 3-1.1 states:

For qualification as an airport fire fighter, the candidate shall meet each of the job performance requirements defined in this chapter. These requirements are divided into four major duties: response, fire suppression, rescue, and post-emergency operations. The primary function of the airport fire fighter shall be to execute fire suppression and rescue activities.

The City cannot deny the Airport Fire Department meets these guidelines by responding to these types of emergencies. Moreover, NFPA 1003 mandates airport fire fighters meet minimum training requirements:

For certification as an airport fire fighter, the candidate shall meet the requirements for Fire Fighter I defined in Chapter 3 of NFPA 1001, Standard for Professional Fire Fighters; first responder operational defined in Chapter 3 of NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents; and the job performance requirements for airport fire fighter defined in Chapter 3 of this Standard. Airport fire fighters who drive aircraft rescue and fire fighting vehicles shall meet the requirements of Chapter 7 of NFPA 1002, Standard for Fire Department Vehicle Drive/Operator Professional Qualifications.

Additionally, NFPA 1003 recognizes the increased risk airport fire fighters face:

Due to the improvements in the design and construction of modern aircraft, resulting in increased structural integrity, the potential exists for significant interior fire that cannot be extinguished using external aircraft fire-fighting tactics. This is one of the primary reasons for the FFI requirement in this document. The basic fire fighting skills and knowledge required for Fire Fighter I in NFPA 1001, Standard for Fire Fighter Professional Qualifications, are essential to the airport fire fighter.

The requirement for first responder at the operational level was included based on the airport fire fighter's potential for frequent exposure to a wide variety of hazardous materials. The potential exposure frequency is significantly greater than anticipated for Fire Fighter I.

Safety Supervisors face significantly increased risks compared to a CFD Fire Fighter I, yet they receive no significant increase in pay. For example, if the Safety Supervisors receive only the across-the-board increases (3%/3.5%/4%) as of April 1, 2003, and not the parity increases to CFD Fire Lieutenant, as of April 1, 2003, Safety Supervisors will receive \$48,630.38; CFD Fire Fighter I's will receive at that time \$48,332.14, and CFD Fire Lieutenants will receive at that time \$56,065.29. I.e., Safety Supervisors will receive \$7,434.91 less than CFD Fire Lieutenants, and only \$298.24 more than CFD Fire Fighter I's.

The financial package the Union is seeking is only a minuscule portion of the revenue generated by Hopkins. Though the City wants to hold the line with this unit and continue the City's pattern bargaining, the City itself broke its pattern with the Cleveland Police Patrolman's Association by giving it a "Wage Parity Adjustment." That is what this unit is seeking.

Though the City states it cannot afford to pay the Safety Supervisors on par with the CFD Fire Lieutenants, it must be kept in mind this unit is made up of only 9 individuals. Moreover, this unit has unique resources because it is paid from Airports revenue. The City's own projections include a large increase in air travel through Hopkins, which will produce increased revenue.

Finally, though the City states it is in fiscal crisis, according to the Federal Reserve, the national economy is showing signs of recovery. With a resurrected economy will come business and leisure travel increases. And during the most recent CFD/Local 93 contract negotiations, the economist Dr. Kenneth Mayland stated the recession we are in will be a soft-landing recession, which will lead to an economy on the road to recovery.

Local 93 agrees with the City that the growth of the region is largely dependent on the growth of Hopkins. The City has both the obligation and the ability to compensate the 9 Safety Supervisors for their increased role and responsibility in relation to this growth in the past and for the future.

City Proposal

The City proposes the across-the-board raises other City employees have received:

- 3% wage increase retroactive to April 1, 2001**
- 3.5% wage increase retroactive to April 1, 2002**
- 4% wage increase for 1 year effective April 1, 2003**

The City's proposal to provide a 10.5% wage increase represents a reasonable increase under the statutory factors.

In this unit's first contract, the City agreed to incorporate a step schedule for Safety Supervisors. This provided substantial wage increases to most of the Safety Supervisors. For example, 7 of the Safety Supervisors who in 1998 earned \$35,131.40 in base salary will earn \$48,630.79 by April 1, 2003. These step increases, along with the 10.5% proposed by the City, provides the majority of this unit with wage increases totaling over 38% in 5 years.

The City is in a fiscal crisis. Moreover, Cleveland fiscal condition ranks poorly among Ohio's major cities. Two other safety force units unsuccessfully attempted to secure compensation increases beyond the fair increases proposed by the City. In both instances – FOP/ranking police officers, and Local 93/fire fighters and ranking fire fighters – the arbitrators rejected the unions' proposals. Specifically, the arbitrators in both cases held the City's fiscal condition did not warrant economic benefits above

those offered by the City. And indeed, both those decisions were issued before September 11, 2001. The situation has gotten undeniably worse since then.

The Union attempts to compare the Safety Supervisors to CFD Fire Lieutenants. But the two positions are not the same. The CFD Fire Lieutenants work out of the City's firehouses – in the City's neighborhoods and streets. The CFD responds to significantly more calls than does the Airports – both in terms of total calls, serious calls involving structural fires and trauma, calls resulting in injury and death to citizens, and calls resulting in employee injury. A telling fact regarding the less hazardous work environment afforded Safety Supervisors at the Airports is that that there has been only one serious injury among Safety Supervisors in the last 20 years (Safetyman injured his back from fall during training). A Safety Supervisors' average day is spent responding to an occasional false alarm or to a passenger at a gate experiencing shortness of breath. Safety Supervisors do not, except on extremely rare occasions, battle fires, they do not respond to gunshot wound victims, and they do not respond to vehicle crashes on interstates. The Safety Supervisor position is not equal to the CFD Fire Lieutenant position.

Finding

Adopt City's proposal. There are two distinct issues – 1) across-the-board raises; and 2) parity with CFD Fire Lieutenants.

Across-the-Board Raises

All signs point to the City being in fiscal crisis. Though the Safety Supervisors' source of funding is the Port Control Fund, that Fund too is suffering from high debt, decreasing revenues, and dwindling interest income. All signs point to the County, the region, the State, and the nation being at best in a recession, and at worst, in fiscal crisis. Under these circumstances, the City's proposed 10.5% increase over 3 years is the best the Union can obtain at this time.

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Parity with CFD Fire Lieutenants

The Factfinder is aware of the importance of this item to the Safety Supervisors. The Safety Supervisors do an exceedingly important job, one which makes it possible for hundreds of thousands of Greater Cleveland's citizens, as well as all other travelers, to safely use the Airports. No one discounts the dedication and training the Safety Supervisors bring to their important task.

That said, however, the daily duties and responsibilities of the Safety Supervisors are sufficiently different from that of the CFD Fire Lieutenants to justify a difference in compensation. The Safety Supervisor's compensation made great strides in the previous contract. Now is not the appropriate time for another leap forward.

10. Paramedic Pay – Article 18

Previous Contract

<u>License</u>	<u>Incentive</u>
EMT	\$.40/hr.
EMT-A	\$.50/hr.
PARAMEDIC	\$1.00/hr.

Union Proposal

<u>License</u>	<u>Incentive</u>
EMT	\$1.50
EMT-A	\$2.00
PARAMEDIC	\$3.00

The Safety Supervisors have not had a raise in incentive pay since 1984. Yet the demands placed on paramedics have increased greatly since then. This proposal would cost the City only an additional \$37,440.00 per year. This increase could be funded by the fees the City charges individuals for use of these services.

City Proposal

Status quo. Safety Supervisors already receive over \$2,000.00 annually for Paramedic Pay, bringing their wages to over \$2,500.00 more than CFD Fire Fighters. The CFD/Local 93 contract does not provide Paramedic Pay.

Finding

Status quo. No compelling reason for a change at this time.

11. Clothing – Article 23

Previous Contract

City provides initial and replacement uniforms, plus \$150 annual maintenance allowance.

Union Proposal

The Department of Port Control together with Local 93's Safety and Clothing Committee, shall determine requirements and provide the following:

- a. The City shall provide each member with an annual cash payment, or a pre-determined use credit card, of \$350.00 for the purpose of purchasing the required uniform clothing, not including safety equipment, which shall still be provided by the City. This payment shall be made by July 1st of each year.**
- b. The City shall provide each member an annual clothing maintenance payment of \$400.00 on March 1st of each year. This payment shall be in the form of a check. This clothing maintenance shall be prorated for retirees.**

- c. Members promoted to the rank of Airport Safety Supervisor shall receive an additional one time clothing allowance of \$150.00 for each promotion. This payment shall be in the form of a check and issued within three (3) days of said promotion.**

These amounts reflect the City's practice in 2001. The proposal would cost the City the same, but would provide much-needed flexibility to the Safety Supervisors. The City's voucher system is slow; shoes are available only on a certain date each year; individuals can be limited to purchasing from a City-approved list of items; individuals still will be responsible for being in proper uniform.

Item (c) is based on the CFD/Local 93 contract. When an individual is promoted, he/she is responsible for being dressed immediately in the new uniform. The \$150.00 payment will cover a portion of these out-of-pocket costs.

City Proposal

Status quo. The current system is sufficient.

Finding

Adopt Union's proposal. The Union has shown a compelling need for a more streamlined system. Items (a) and (b) would not cost the City more than it has been paying. Item (c) is an added cost, but a justified, negligible one.

12. No Loss of Pay on Day of Injury (new)

Union Proposal

An employee who suffers a compensable injury on the job shall be paid at the straight time base rate for any absence from work during his regular shift on the day of the injury that is authorized in writing by the Safety Division Medical Officer.

Currently, employees injured at work are forced to use their own sick time. While workers' compensation benefits will be available in some situations, bureaucratic delay can cause employees to be out-of-pocket. This reasonable and justified benefit exists in the CFD/Local 93 contract.

City Proposal

Status quo. The employees already enjoy generous sick leave benefits. They can use their sick leave in these situations.

Finding

Adopt Union proposal. On-the-job injuries causing time away from work generally are treated differently from regular illness. The Union's proposal is modest and will cause the City only negligible cost.

13. Hazardous Duty Injury Pay (New)

Union Proposal

Days lost because of a hazardous duty injury to an Airport Safety Supervisor, as determined by the Safety Department Medical Officer and approved by the Safety Director, shall not effect accumulated sick time, holidays, accumulated overtime, and vacation days; nor shall an Airport Safety Supervisor be deprived of any other benefit because of hazardous duty injury in accordance with existing procedures of the Cleveland Fire Department. Effective January 1, 2003, any time lost because of hazardous duty injury incurred while responding to, or returning from, emergency alarms or on emergency drills, or any exposure to hazards peculiar to the job, shall not be deducted from accumulated sick time at time of retirement.

However, a Safety Supervisor off work longer than thirteen (13) weeks due to hazardous duty injury shall not continue to accumulate additional sick time

or the right to holiday pay while off work for this reason, nor shall he accrue any vacation payment rights which would result in eligibility for more than fifty-two (52) weeks of pay for any fifty-two (52) week period and there shall be a complete medical diagnosis after three (3) months and a report made to the Medical Director as to whether the employee can return to normal duty and when. If the employee will never return to normal duty, then an application shall be made for a disability retirement pension.

An employee must file an accident report with the Safety Director within seven (7) days of the incident or within seven (7) days from the discovery of an illness or injury arising out of an incident for determination as to whether said employee qualifies for hazardous duty injury eligibility.

An employee on this injury status is prohibited from engaging in any other employment during any period of time that he/she is receiving hazardous duty injury pay.

The City may require periodic examinations to determine the continued extent of incapacity and when an employee may be returned to normal duty. While both the City and the Union acknowledge that there are no permanent restricted duty assignments available, the Safety Department may, at its option, designate certain assignments as temporary restricted duty assignments from time to time to which an eligible employee may be assigned. The assignment of said employees is the sole responsibility of the Employer based upon the Medical Bureau's examination results.

Injuries which are incurred by Supervisors while they are engaged in supportive duties or work, which is incidental to active fire fighter duty, are

compensable through the Ohio Bureau of Worker's Compensation.

After an employee has been on Hazardous Duty Injury status for two (2) years, the employee shall apply for a permanent disability retirement pension under the laws of the State of Ohio or return to normal duty within the Department. The employee shall remain on Hazardous Duty Injury status until the disability pension is effective.

This benefit is provided in the CFD/Local 93 contract. Safety Supervisors deserve the peace of mind this proposal would bring them. Fire fighting is one of the most dangerous occupations in the United States. The Ohio Bureau of Worker's Compensation system sometimes involves unreasonable delays in providing benefits. The proposal has the necessary safeguards to prevent abuse.

City Proposal

Status quo. The Union cannot demonstrate the Safety Supervisor position is replete with risk of injury as is the case at the CFD. The CFD has experienced a number of serious injuries in the last 5 years. In contrast, in this unit during the last 20 years, there has been only 1 workplace injury resulting in any meaningful loss of time. The Ohio Worker's Compensation system provides adequate protection for employees injured on the job. The Union's proposal would leave the City open to fraudulent claims (e.g., a strained back) because an employee could receive full compensation for years with no incentive to return to work.

Finding

Status quo. There does not appear to be a compelling need for this change at this time.

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14. Impasse Arbitration (new)

Union Proposal

Ninety (90) days before the expiration of this Agreement, the City and the Union shall begin negotiations and shall negotiate for a period of at least sixty (60) days. After sixty (60) days, either party can demand final and binding arbitration by written notice to the other, of all issues on which they are at impasse in accordance with the following procedures:

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

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

-The arbitration panel may hold hearings, receive evidence of documentation, and call witnesses in accordance with the arbitration rules of the American Arbitration Association.

-After receiving whatever evidence the parties wish to submit, the arbitration panel may select the final offer of one of the parties on each of the impasse issues and shall issue an award incorporating all of these selected final

offers, without modification.

-In reaching its decision, the arbitration panel shall give weight to the following factors:

- i. Past collective bargaining agreements, if any between the parties;**
- ii. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;**
- iii. 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 standards of public service;**
- iv. The lawful authority of the public employer;**
- v. The stipulations of the parties;**
- vi. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

This unit is willing to subject itself to binding interest arbitration in order to reach a resolution in a shorter time frame during future negotiations. The CFD/Local 93 contract contains binding interest arbitration.

City Proposal

Status quo. The inclusion of an interest arbitration mechanism in a collective bargaining agreement is a permissive subject of bargaining. The Union's decision to bargain this issue to impasse constitutes an unfair labor practice.

Finding

Status quo. No compelling reason for this change at this time.

DATED: October 16, 2002



Susan Grody Ruben, Esq.
Factfinder