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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

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In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
INTERNATIONAL ASSOCIATION	*	AND
OF FIRE FIGHTERS LOCAL 639	*	RECOMMENDATIONS
	*	
	*	01-MED-02-0108
	*	
and	*	Anna DuVal Smith
	*	Fact Finder
CITY OF PARMA	*	
	*	

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Appearances

For the International Association of Fire Fighters Local 639:

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Northern Ohio Fire Fighters  
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For the City of Parma:

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## I. SUBMISSION

The International Association of Fire Fighters Local 639 (Parma Professional Fire Fighters) represents approximately 107 full-time firefighters, fire lieutenants, fire inspectors and fire captains employed by the City of Parma. Their current collective bargaining agreement expires on March 31, 2002, but contains the following re-opener:

42.01 Effective sixty (60) calendar days prior to April 1, 2001, the parties agree to re-open negotiations for the issue of wages, health care coverage, and the inclusion of a substance abuse testing provision.

42.02 The re-opened negotiation shall be conducted in accordance with those procedures contained in R.C. 4117.01, et. seq. governing collective bargaining.

The undersigned was appointed fact-finder pursuant to Chapter 4117 O.R.C. on March 22, 2001. The parties met on several occasions during the spring and summer of 2001, but were unable to resolve their differences. Accordingly, the Fact-Finder met with the parties on October 9 in an attempt to mediate the dispute. At that meeting, the parties agreed to a City-wide joint committee on insurance and that the Fire Fighters would be the first to go to fact-finding should the committee be unable to provide the seed of a settlement on all issues. After several meetings of this committee, differences remained. Therefore, a hearing for the purpose of fact-finding was scheduled for 10:00 a.m., December 10 at Parma City Hall. Pre-hearing statements were timely filed. Prior to convening the hearing, the parties attempted once again to resolve their dispute with the assistance of the Fact-Finder, but this effort, too was unsuccessful. A hearing was therefore convened on six (6) issues: longevity, uniform maintenance allowance, insurance, salary schedule, educational and occupational wage supplements, and substance testing and assistance. However, the City challenged the authority of the Fact-Finder to make findings and recommendations on any issue but salary schedule, insurance and substance testing and assistance. The Fact-Finder held her ruling on this issue in abeyance and took evidence on all issues in the event she ruled for the Fire Fighters on the scope of the re-opener. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to

argue their respective positions. Present for the Parma Professional Fire Fighters (“Union”) in addition to advocates were Nick Kashi, President, Local 639; Albert S. Gatka, Secretary; Lewis G. Davis, Vice President; Barbary Varanese; President, Ohio Governmental Financial Management, Inc.; and Brian Flanagan, Lonnie Chupa and Dales E. Weidman, Fire Fighters. Giving evidence for the City of Parma (“City”) were Dennis Kish, City Auditor; and Gerianne Varek, Personnel Director. The oral hearing concluded at 5:00 p.m. on December 10, whereupon the record was closed. Thereafter the Fact-Finder was granted extensions in rendering her report.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## II. SCOPE OF RE-OPENER

The City claims that the Fact-Finder should not address any form of compensation other than salaries because when the parties negotiated the re-opener, the only issues unresolved for the term of the Agreement were salaries (which were increased retroactively to January 1, 2000), insurance (for which the parties lack sufficient information) and substance abuse (which had been on the table for several negotiations without resolution). It further argues that the wage re-opener language of the 1991-1994 Agreement supports its position because its specific inclusion of Article 27.01 (Educational and Occupational Supplements) shows the parties did not intend “wages” to mean all forms of compensation.

The Union takes the opposite view, arguing that the Fact-Finder has the authority to address longevity, uniform maintenance allowance and educational and occupational supplements because “wages” means “all forms of compensation” and that this was specifically stated at the time the current re-opener language was negotiated. In support, it offers *Black’s Law Dictionary* and the wage re-opener provision from the 1991-1994 Agreement which reopened “wages and Article 27.01 only.” It argues that the 1991-1994 Agreement shows the parties know how to limit themselves to a particular article and since the current Agreement contains no such specific limitation, this shows they agreed not to do so.

Ordinarily “wages” should be read expansively to encompass any form of compensation. However, the history of bargaining supports the City’s claim that the parties did not mean it to include anything other than base salary. First, a chief negotiator’s testimony must be given greater weight than the testimony of others present at the table. But even if that were not the case, the 1991-94 re-opener makes it clear that “wages” has a more limited meaning here. Since that language specifically adds Article 27.01 to wages, “wages” as used by the parties does not encompass Educational and Occupational Supplement or, by extension, other forms of compensation such as longevity. Had the parties intended to re-open on these other forms, they would have listed the articles as they did in 1991 or used a word other than “wages.” Therefore, since the present re-opener neither uses a term such as “compensation” nor lists longevity, uniform allowance and educational and occupational supplements nor references them by article number, this re-opener must be limited to base salary, insurance and substance testing.

### III. IMPASSE ITEMS

#### Article 24 - Insurance

##### Current Provision

The Fire Fighters presently enjoy City self-insured, fully employer-paid coverage for medical, dental, drug and vision insurance on plans specified in the Agreement. The current plan has \$5 co-pays for medical office visits and prescription name-brand drugs.

##### Positions of the Parties

The City complains that claims alone have increased the City's liability by \$1.3 million to \$3.6 million in 2002, a 55.2 percent increase. The total cost of health insurance, including margin and fixed costs, will be 52.9 percent higher in 2002 than in 2001 (\$4.9 million vs. \$3.2 million in 2001, a difference of \$1.7 million). Per employee, this amounts to \$6,689 in 2001, \$9,750 in 2002. This is reflected in the monthly COBRA rates it uses for budgeting purposes. In 2001, the COBRA rates were \$207 (single)/ \$558 (family). In 2002, they will be \$315 (single)/\$851 (family). The City submits that it needs relief, and so proposes a package of changes to the insurance provision:<sup>1</sup>

1. Employee contribution to insurance coverage in the amount of \$25/month single, \$50/month family. It estimates this will save the City \$268,200 per year.
2. Increase in drug co-pay to \$5/\$10 and an incentive to use mail-order. The former would save \$74,595. The latter would save \$240,800 if 70 percent of prescriptions were purchased by mail order.
3. Implementation of annual deductibles of \$100/\$200 (single/family) which would save \$89,400.
4. Increase medical office co-pays to \$10 and implement preventative dental visit co-pays of \$10, saving \$37,310.

These changes taken together would save the City \$710,000, leaving the City shouldering \$1 million of the increased liability. The City also wants the freedom to change carriers or to modify coverage. It submits that all these changes are warranted by the explosive growth in

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<sup>1</sup>The City's proposal is set forth at length in Appendix A.

insurance costs and the City's dire financial position. It offers SERB data to show that its plan is comparable to what other public employers and unions are doing and points out that the impact on employees will be moderated by the City's cafeteria plan which permits payment with pretax dollars.

The Union is willing to accept co-pay increases but is opposed to deductibles and insurance cost-sharing. Specifically, it proposes \$10 office co-pays, prescription mail-order incentive, and prescription co-pays of \$5 generic/\$10 name brand/\$15 name brand when generic is available. It also proposes a joint committee for reviewing the plan for additional revisions. The Fire Fighters say the City's proposal, which it saw only a few days before the fact-finding hearing, places a heavy burden on employees. It costs out scenarios for a 4-member family and a single which demonstrate this point. Under the family scenario, the employee's annual cost of health care would be \$1,300, more than seven times the current \$180; under the single scenario it would be \$570, 9½ times the present \$60. The Union objects to the use of statewide data for comparison, saying it has always used contiguous cities. It also doubts the necessity for such a draconian change. Data from the City's consultant show large claims doubled between 2000 and 2001 and that the number of large claims in 2001 was double the average of the previous three years. When the parties met in October, this same consultant opined that 2001 was an aberration. In the Union's view, the City has not substantiated its projection for 2002. What is more, it has not tried other ways of reducing costs, such as by seeking bids. The Union is willing to do its part, but can go only so far.

#### Findings and Recommendation

The dramatic increase in the cost of health care coverage for the City's employees cannot be denied. But it remains to be seen how much of this represents a new permanent level and how much is attributable to a temporary spike. The large-claims data suggest that at least a portion is non-recurring, but the dollar amount of claims for June-December in 2001 was close to the amount for the same period in 2000 (\$1.4-\$1.5 million), which is indicative of a new permanent

level. In any event, the City still has to fund its insurance account at the higher level while it waits to see how the situation will play out. In the meantime its solution for doing so is to multiply by several times over (7-9½ under the Union's scenarios) its employees' costs of medical care even though it has not tried other solutions, it did not involve its unions until late in the process, and there are other factors contributing to the dangerously low carryforward. Despite this, the Fire Fighters are not indifferent to the City's predicament. Though they are not among the immediate area's better paid departments, they are willing to share some of the increased cost in the form of co-pays for office visits and drugs, and to work with the City to find other solutions. The mail-order incentive alone could save the City nearly a quarter of a million dollars if extended to other bargaining units. Without knowing what the firefighters' insurance burden is in neighboring cities is, it is impossible to say to what extent Parma's firefighters have been accepting lower wages in return for the City's assumption of risk, but since that possibility does exist, it is difficult to recommend premium sharing.

*Recommendation:* Prescription co-pays of \$5/\$10/\$15 as proposed by the Union plus the mail-order incentive proposed by the City. Medical and preventative dental office visit co-pays of \$10 per visit as proposed by the City. Joint committee as proposed by the Union.

#### Article 25 - Salary Schedule

##### Positions of the Parties

The Union seeks a 4 percent increase to the salary schedule effective January 1, 2001. It offers six cities contiguous to Parma for the purpose of comparison, five of whose firefighters are better paid than Parma's.<sup>2</sup> Expanding the field of comparison to northeast Ohio, Parma ranks 34 of 51 cities. The Union submits data from sixteen northeast Ohio cities to show that most, even East Cleveland which is in fiscal emergency, received 4 percent increases in 2001 despite rising

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<sup>2</sup>In terms of first-class salary, paramedic pay, longevity and other pay, compensation in these cities are \$52,901 (Brooklyn), \$52,878 (Strongsville), \$51,925 (Broadview Heights), \$51,847 (Brook Park), \$51,202 (Middleburg Heights), \$50,918 (North Royalton), and \$48,771 (Parma Heights). Parma's total pay is \$49,305.

health care costs. Even if the City mismanaged itself into fiscal difficulty, the burden should not fall on City employees to balance the budget. In fact, the Union believes the City has the ability to fund this and other increases. Its growing tax base and diversifying economy (relying less on manufacturing than formerly) are reflected in its bond rating of A+. Its unencumbered fund balances grew from \$4.4 million at the beginning of 1995 until 2000 when it began the year with \$13.2 million, but finished with \$8 million. The general fund's balance mirrored this trend, growing from \$870,000 at the beginning of 1995 to \$2.2 million at the beginning of 2000, but falling to \$357,000 at the end of the year. The Union attributes this drop primarily to unanticipated costs of construction and operation of the new Justice Center which opened in 2000. The Union says the City has several ways to pay for rising health care costs and other expenses. Although the paramedic levy will not be in effect after 2001, the City will be charging ambulance fees, which are estimated to bring in \$2 million in additional revenue after the 7 percent collection fee is deducted. This \$1.6 million of new money will go into a special account but will free up general fund monies for other expenses such as health insurance. Other sources could include trash collection fees, service charges for sewer maintenance calls, fees for trapping nuisance animals and reducing the city income tax credit from 100 percent to 50 or 75 percent. Moreover, the Union estimates the City will collect \$1.2 million more in general fund revenues than the City Auditor's revised estimate of \$32.9 million. This, by itself would grow the General Fund's beginning cash balance for 2002 by \$242,597. The Union concludes that the City has the ability to pay the 4 percent wage increase requested for 2001, which it estimates costs \$231,028, including a 28.3% roll-up, but no overtime.

The City seeks a wage freeze for 2001, saying its finances are such that any increase may result in layoffs. The reason the City is in this position is the cost of the new Justice Center (which was fully felt in 2001) and the growth in the cost of health insurance. General fund revenues were fairly flat between 1999 and 2000 at a little over \$33 million and are expected to remain so through 2002. The City has had a couple of windfalls, such as the no longer needed

library bond and workers' compensation refund, which it has been using to partially offset increased expenses, but these are nonrecurring sources of funds. The carryforward is down to 1 percent of revenue when it has been running at 4 percent and really should be at 5 percent. Since July of 2000 the City Auditor has recommended revising the health care program and renews that recommendation now. The City needs three months of health expenses in reserve, but it does not and cannot meet that requirement. It is true elected officials received 4 percent pay increases, but those were passed before the election and cannot be rescinded. The City is also required by law to fund the municipal court's payroll which it cannot control. Additional concerns for the immediate future are layoffs at the City's major employer, General Motors, and the rising inheritance tax exemption.

Looking at the Union's figures for wages in other cities, the City says the annual base salary is not an appropriate basis for comparison because the work schedules vary from jurisdiction to jurisdiction. When weekly hours are taken into account, Parma's relative wage position rises to sixth of twelve (in terms of hourly rate at the top of the base wage scale) since its 48-hour schedule is among the lowest. What is more, because the City is willing to absorb most of the increased cost in insurance, employees really are not being asked to take a pay freeze. It is just that their increase in compensation is being totally eaten up by employer-paid health care.

#### Findings and Recommendation

Whichever party's figures are used, Parma's firefighters are not among the highest paid in the area. To maintain their relative position, they will need about 4 percent for 2001. The Union believes the City will have finished 2001 with about \$1.2 million more than the City Auditor thinks, and that this can fund the Fire Fighter's request. The problem with this is that it overlooks the City's need to grow its dangerously low carryforward and the claims other bargaining units are likely to make. What's more, it does not take into account the expense side. On the other hand, except for the matter of health insurance and some general references to the unexpectedly high costs of the Justice Center, the Fact-Finder is completely in the dark with

respect to Parma's expenses in 2001 since neither party submitted estimates for 2001. Since the Fact-Finder cannot estimate the 2001 closing balance of the General Fund on the basis of insurance costs alone, she has to deal with insurance separately and look to the revenue side for the wherewithal for wage increases. First, the parties agree 2001 revenue will come in over mid-year projections. Secondly, by late 2001 the City was beginning to receive a stream of new money from ambulance fees. Even if one uses the Auditor's more conservative estimate of \$700,000 for the 103 fund, this is a source of money that should be used to pay the employees who provide the labor that generates the fees, namely the Fire Fighters. The Fire Fighters are not responsible for the Justice Center's over-runs nor have they benefitted from the overtime that project generated. Since it is their efforts that generate a stream of revenue, they should not have to bear the burden of belt-tightening to the degree that others do. However, inasmuch as this revenue stream did not begin until late in the year and because the insurance recommendation, if accepted, will not be retroactive, the wage increase should be phased in, with 2 percent retroactive to January 1, 2001 and an additional 2 percent retroactive to July 1, 2001.

*Recommendation:*     2% effective January 1, 2001  
                              2% effective July 1, 2001.

#### New Articles - Substance Testing and Assistance

##### Positions of the Parties

The City proposes two new articles on the subject of drug and alcohol testing and employee assistance. This proposal (which is set forth at length as Appendix B) makes provision for reasonable suspicion and post-incident testing (both of which are specifically defined), testing by a laboratory licensed by the State of Ohio, optional second confirmatory test at the employee's expense, referral to EAP or detoxification on a first positive for illegal drugs, post-rehabilitation testing not to exceed twelve tests per year for three years, and provides, amongst else, that employees would not normally be disciplined or discharged without first being offered rehabilitation. The City agrees that there has been no formal discussion of its proposal, but asserts the subject is a matter of joint concern as an employee under the influence impacts the

safety of all. Including such a provision would also make an important statement to the community. The City has had a proposal on the table at least twice before and the Union has always wanted time to review it. The City fears the issue will never get off the back burner without a fact-finder recommendation, so asks for one now.

The Union says it is not opposed to the principle of substance testing and assistance, but there has been little discussion of the issue. The I.A.F.F. has a policy on drug testing which contains provisions less punitive than some the City proposes. The City might even like some of these provisions, but the issue should be put off until the next negotiations when it can be discussed more fully and in the context of a complete contract that does not include a wage freeze and an unfavorable insurance provision. It wonders how the City can pursue a new program that has costs at a time it claims to have no money. In short, the Union proposes no provision at this time.

#### Findings and Recommendation

The City has significantly modified its position, amongst else removing random testing and its associated costs. However, it still has no idea how much its present proposal will cost, yet is crying poor. It also has nothing to offer the Union as a *quid pro quo* for those features of the proposal the Union finds onerous. In light of this and the fact that the parties are shortly returning to the bargaining table for a new agreement, the Fact-Finder recommends no provision at this time in the belief that despite the little real bargaining that has occurred on this issue thus far, the parties' positions are near enough that they will reach a mutually acceptable provision themselves or at least come close.

*Recommendation:* No provision at this time.

#### IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Insurance	Prescription co-pays of \$5/\$10/\$15 Prescription mail-order incentive \$10 medical/dental office visit co-pays Joint committee
Salary Schedule	2% effective 1/1/01 2% effective 7/1/01
Substance Testing & Assistance	No provision

Respectfully submitted,



Anna DuVal Smith, Ph.D.  
Fact Finder

February 11, 2002  
Cuyahoga County, Ohio

## APPENDIX A

### ARTICLE 24

### INSURANCE

24.01 The City shall continue to provide medical insurance benefits excluding vision eye care in accordance with the provisions set forth below. Further, the Employer shall make available to the members alternative health-care coverage under an H.M.O. pursuant to the provisions set forth below. Union Eye Care shall provide vision coverage. New hires shall receive Medical Insurance coverage from the first day of hire.

- A. Employees shall pay through automatic payroll deduction the sum of fifty-five (\$50.00) dollars per month for family coverage and twenty-five (\$25.00) dollars per month for single coverage.
- B. There shall be a ten (\$10.00) dollar co-pay for all name brand prescriptions and a five (\$5.00) dollar co-pay for all generic prescriptions.
- C. An employee on a maintenance prescription shall only be eligible for up to two (2) months of prescription coverage outlined in Subsection B. after the first two (2) months, an employee must utilize the mail order prescription program. Failure to utilize the mail order prescription coverage will result in no prescription coverage and the employee will be responsible for the full cost of the prescription.
- D. The annual deductibles for family coverage will be two hundred (\$200.00) dollars per year and one hundred (\$100.00) dollars per year for single coverage.
- E. The co-pay for general medical office visits shall be ten (\$10.00) dollars per visit.
- F. The co-pay for preventative dental care shall be ten (\$10.00) dollars per visit.

24.02 The Employer reserves the right to continue to self insure or utilize an insurance carrier, at its discretion, to provide such coverage.

If the cost of medical insurance coverage increases over the course of this agreement, the parties agree to meet for the purpose of discussing alternatives to maintain cost control, including, but not limited to alternative coverage, alternate means of providing coverage and/or possible employee contributions to the cost. The Union recognizes the right of the Employer to secure alternative insurance carriers and to thereby modify insurance coverage provided the coverage contains similar benefits, which measures may be used to maintain or lessen costs.

24.03 A Committee consisting of the Safety Director or designee, Third Party Administrator, Benefits Administrator and two (2) Union Representatives shall be established to review regulations and policy decisions regarding the self-insurance plan.

24.04 The Employer shall provide and pay the cost of the existing twenty-five thousand (\$25,000.00) dollar Life Insurance Policy.

24.05 For those members of the Division of Fire rank who are owners of insurance contracts which are not paid through payroll deductions, the City shall pay that portion of the premium which is equal to the sum the City pays for Life Insurance and Accidental Death and dismemberment contracts of employees whose compensation is set forth in City Ordinance 173.19.

## APPENDIX B

### ARTICLE SUBSTANCE TESTING AND ASSISTANCE

.01 Drug and alcohol screening/testing shall be conducted at reasonable suspicion and post incident. Drug and/or alcohol screening/testing shall be conducted solely for administrative purposes and the results obtained shall not be used in any criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party, other than the Union. The following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the test results.

.02 Reasonable Suspicion Testing.

1. Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not limited to:
  - a) Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence or withdrawal of a drug or alcohol;
  - b) A pattern of abnormal conduct or erratic behavior;
  - c) Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use or trafficking;
  - d) Information provided by reliable and/or credible sources;
  - e) Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.

.03 Post-Incident Testing.

1. An "incident" is defined as an occurrence
  - a) Involving a city-owned vehicle or a privately owned vehicle operated while conducting city business, which results in:
    - i. A fatality; or

- ii. Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - iii. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle or where damage to any property, real or personal, exceeds \$500.00.
- b) Involving any act(s) of an act of violence committed by an employee against another person. An "act of violence" is an assault, as defined in Ohio Revised Code 2903.13.

.04 All drug and alcohol screening tests shall be conducted by medical laboratories licensed by the State of Ohio. The procedure utilized by the test lab shall include a chain of custody procedure and mass spectroscopy confirmation of any positive initial screening.

.05 Drug screening tests shall be given to employees to detect the illegal use of a controlled substances as defined by the Ohio Revised Code. If the screening is positive, the employee shall be ordered to undergo a confirmatory test of blood by the gas chromatography-mass spectrophotometry method which shall be administered by a medical laboratory licensed by the State of Ohio. The employee may have a second confirmatory test done at a medical laboratory licensed by the State of Ohio of his choosing, at his expense. This test shall be given the same evidentiary value as the two previous tests. If at any point the results of the drug testing procedures conducted by the City specified in this article are negative, (employee confirmatory tests not applicable) all further testing and administrative actions related to drug/alcohol testing shall be discontinued. Negative test results shall not be used against an employee in any future disciplinary action or in any employment consideration decision.

.06 Upon the findings of positive for a controlled substance by the chemical tests, the Employer shall conduct an internal investigation to determine if facts exist to support the conclusion that the employee knowingly used an illegal controlled substance. Upon the conclusion of such investigation, an employee who has tested positive for the presence of illegal drugs pursuant to this section shall be referred to an employee assistance program or detoxification program at the employee's expense, as determined by appropriate medical personnel unless the employee has previously tested positive for the use of drugs, refuses to participate in the EAP or counseling, or some other unusual and/or exceptional facts exist so as to bypass the EAP, in which case the Employer shall have the right to disciplinary action, including termination. An employee who participates in a rehabilitation or detoxification program shall be allowed to use accrued paid leave for the period of the detoxification program. If no such leave credits are available, such employee shall be placed on a family and medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon

completion of such program and a retest that demonstrates the employee is no longer using a controlled substance, the employee shall be returned to his position. Such employee may be subject to periodic retesting at the sole discretion of the Employer upon his return to his position. Any employee in the above-mentioned rehabilitation or detoxification programs will not lose any seniority or benefits should it be necessary that he be required to take a family and medical leave of absence without pay for a period not to exceed 84 calendar days.

.07 If the employee refuses to undergo rehabilitation or detoxification, or if he fails to complete a program of rehabilitation, or if he tests positive at any time within three (3) years after his return to work upon completion of the program of rehabilitation, such employee shall be subject to disciplinary action, including termination. Except as otherwise provided herein, costs of all drug screening tests and confirmatory tests shall be borne by the Employer. For the purpose of this article, "periodic" shall mean not more than twelve (12) times per year, except that drug tests may be performed at any time upon "reasonable suspicion" of drug use.

.08 No drug testing shall be conducted without the authorization of the Safety Director or his designee. If the Safety Director orders, the employee shall submit to a toxicology test in accordance with the procedure set forth above. Refusal to submit to toxicology testing after being ordered to do so may result in disciplinary action, including termination. Records of drug and alcohol testing shall be kept in the office of the Director of Personnel and shall be kept confidential except as provided by the Ohio Public Records laws, however, test results and records may be used in future disciplinary actions as set forth in the article.

.09 The employee and the Union shall be given a copy of the laboratory report of both specimens before any discipline is imposed.

.10 Employees that purposely make false accusations pursuant to this section shall be subject to discipline including but not limited to termination. Records of disciplinary action or rehabilitation resulting from positive test results may be used in subsequent disciplinary actions for a period of four (4) years.

**ARTICLE**

**EMPLOYEE ASSISTANCE PROGRAM (EAP)**

.01 The Employer agrees to attempt to rehabilitate employees who are first time drug or alcohol abusers, only if reasonably practical. Employees will not normally be disciplined or discharged without first being offered the opportunity of receiving treatment for such abuse. If the employee fails to properly and fully participate in and complete a treatment program approved by the Employer or after the completion of such program the employee is still abusing or resumes abusing such substances, the employee shall be disciplined or discharged.

.02 Employees may voluntarily utilize this program with or without referral. Such voluntary use shall not be the sole basis for adverse disciplinary action. Leaves of absence without pay may, at the Employer's sole discretion, be granted in coordination with the EAP where appropriate. All employee dealings with the EAP shall be strictly confidential.

.03 This Article shall not operate to limit the Employer's right to discipline or discharge an employee for actions committed by the employee as a result of substance abuse or otherwise. Participation in the EAP shall not limit the Employer's right to impose such disciplinary (or discharge) actions. An employee's participation in the EAP does not operate to waive any other rights granted by this Agreement.

CERTIFICATE OF SERVICE

I certify that on the 11<sup>th</sup> day of February, 2002, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

James Astorino  
Northern Ohio Fire Fighters  
17703 Grovewood Avenue  
Cleveland, Ohio 44119

Jack L. Petronelli, Esq.  
Johnson & Angelo  
1001 Lakeside Avenue, Ste. 1700  
Cleveland, Ohio 44114

I further certify that on the 11<sup>th</sup> day of February, 2002, I submitted this Report by mailing it to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.

  
Anna DuVal Smith, Ph.D.  
Fact Finder