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STATE EMPLOYMENT
RELATIONS BOARD

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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between)	<u>FINDINGS AND RECOMMENDATIONS</u>
Local 3646, INTERNATIONAL)	
ASSOCIATION OF FIREFIGHTERS)	CASE NO. 01-MED-08-0706
)	
and)	JULY 17, 2002
)	
CITY OF BROADVIEW HEIGHTS)	Charles Z. Adamson, Fact-Finder

For Local 3646, International Association of Firefighters:

James P. Astorino, President
Northern Ohio Firefighters
17703 Grovewood Avenue
Cleveland, Ohio 44119-3100

For the City of Willoughby:

Mr. Joseph F. Lencewicz
J. F. Lencewicz and Associates
Suite 303, 45 East Washington Street
Chagrin Falls, Ohio 44022

The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on November 3, 2001 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of firefighters employed in the Fire Department of the Employer, Broadview Heights, Ohio. The applicable collective bargaining agreement expired December 31, 2001 but has been extended in accordance with the agreement of the parties.

I. HEARING

After mediation the case proceeded to hearing on May 22, 2002 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

- | | |
|---------------------------|-----------------------------------|
| 1. Hours of Work/Overtime | 4. Paramedic and Advanced EMT Pay |
| 2. Holidays | 5. Duration |
| 3. Compensation | 6. Sick Leave |

II. CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (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 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) Any 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 the private employment.

ISSUES AND RECOMMENDATIONS

Hours of Work/Overtime

After considerable discussion and mediation between the parties, I hereby recommend the following:

ARTICLE XXIV (HOURS OF WORK/OVERTIME)

Section 1. Members of the fire department assigned to fire suppression shall work a schedule of 24 hours on and 48 hours off duty. Effective January 1, 2002 through December 31, 2002, work schedules may include 40 hours/week or 144 hours in a 19-day cycle (53 hours per week). The normal work schedule for employees assigned to forty (40) hours per week shall be eight (8) hours per day within a seven (7) day period starting at 12:01 am Sunday to midnight Saturday. Consistent with the provisions of Article XXIII (Management Rights) the City expressly reserves the right to maintain its continuing position that the determination of the work schedule of the Fire Department is an inherent management right. Each regular employee shall be available for duty each day during the year. Effective January 1, 2001 and thereafter, work schedules may include 40 hours/week or 168 hours in a 23-day cycle (51.2 hours per week).

Section 2. Effective January 1, 2002 through December 31, 2002, overtime shall be defined as hours of work in excess of forty (40) hours in a week or one hundred forty four (144) hours during a nineteen (19) day work period consistent with FLSA requirements. All other hours paid but not worked for any reason, except holidays, vacation days and funeral leave, shall be excluded in determining the total hours worked. Effective January 1, 2002 and thereafter, overtime shall be defined as hours of work in excess of forty (40) hours in a week or one hundred sixty eight (168) hours during a twenty three (23) day work period consistent with FLSA requirements. All other hours paid but not worked for any reason, except holidays, vacation days and funeral leave, shall be excluded in determining the total hours worked.

Section 3. No change.

Section 4. Effective January 1, 2002 through December 31, 2002, if an employee requests, the Fire Chief may approve an equal amount of compensatory time off in lieu of overtime pay up to a maximum accumulation of one hundred six (106) hours which includes the straight time and one half (1/2) time hours. Accumulated compensatory time must be taken and/or paid prior to December 31st of each calendar year. Employees may carryover fifty three (53) hours of compensatory time to the next calendar year. Effective January 1, 2002 and thereafter, if an employee requests, the Fire Chief may approve an equal amount of compensatory time off in lieu of overtime pay up to a maximum accumulation of one hundred two (102) hours which includes the straight time and one half (1/2) time hours. Accumulated compensatory time must be taken and/or paid prior to December 31st of each calendar year. Employees may carryover fifty one (51) hours of compensatory time to the next calendar year.

ARTICLE XXXV (HOLIDAYS)

After considerable discussion and mediation between the parties, I hereby recommend the following:

Section 1. a) Employees assigned to work 144 hours in a 19 day cycle or 168 hours in a 23 day cycle shall be entitled to one-hundred forty four (144) hours of holiday pay per year. For these employees, holiday time off shall be taken in twelve (12) or twenty-four (24) hour increments.

b) Employees assigned to work forty (40) hours per week shall be entitled to one-hundred eight (108) hours of holiday pay per year. For these employees, holiday time off shall be taken in four (4) or eight (8) hour increments.

c) Employees hired after January 1 or whose work schedule is changed after January 1 shall have their holiday hours prorated to the nearest whole hour.

Section 2. No change.

Section 3. No change.

Section 4. Employees assigned to work 144 hours in a 19 day cycle or 168 hours in a 23 day cycle shall be entitled to one (1) additional personal day of twelve (12) hours in a calendar year period. Employees assigned to work forty (40) hours per week shall be entitled to one (1) additional personal holiday of four (4) hours in a calendar year period. To be eligible for the personal day, the employee must have worked as scheduled during six (6) of the twelve (12) months of the preceding calendar year. Employees whose work schedule changes during the year that establishes eligibility shall have their additional personal holiday hours prorated to the nearest

whole hour. Holiday time off for the personal day may be taken at any time during the year after meeting the eligibility requirements and with prior approval by the Chief. If the time is not taken off, the eligibility lapses without pay.

**ARTICLE XXXVI
(COMPENSATION SCHEDULE)**

After considerable discussion and mediation between the parties, I hereby recommend the following:

Section 1. Fire fighters shall be compensated as follows:

	(3 1/2 %) 01/01/02- <u>12/31/02</u>	(2%) 01/01/03- <u>12/31/03</u>	(3%) 01/01/04 <u>12/31/04</u>
<u>Firefighter</u>			
First year of service	\$37,685.00	\$38,439.00	\$39,592.00
Second year of service	\$40,226.00	\$41,031.00	\$42,262.00
Third year of service	\$46,166.00	\$47,089.00	\$48,502.00
Fourth year of service	\$50,124.00	\$51,126.00	\$52,660.00
Lieutenants	\$54,638.00	\$55,731.00	\$57,403.00
Captains	\$57,143.00	\$58,286.00	\$60,035.00

NOTE: Depending upon prior experience and qualifications, an employee may be hired at any of the above steps.

Section 2. No change.

Section 3. When an employee is assigned to the Fire Inspection Bureau on a forty (40) hour per week schedule, such employee shall be paid an additional seventy-five dollars (\$75.00) per month. To be eligible for payment the employee shall have worked a minimum of eighty (80) hours in a month so assigned to the Fire Inspection Bureau.

**ARTICLE XXXVII
(PARAMEDIC & ADVANCED EMT PAY)**

After considerable discussion and mediation between the parties, I hereby recommend the following:

Section 1. Effective January 1, 2002 through December 31, 2002, employees qualified as a

“Paramedic” shall be paid an additional two thousand two hundred dollars (\$2,200.00) per year to be paid consistent with the employee’s work schedule as part of regular pay. Effective January 1, 2004 employees qualified as a “Paramedic” shall be paid an additional two thousand three hundred (\$2,300.00) per year to be paid consistent with the employee’s work schedule as part of regular pay. As used in this section, qualified “Paramedic” shall mean an employee of the Fire Department who has successfully completed a “Paramedic” course, certified by the State of Ohio under the standards established by the State of Ohio, and who maintains a current “Paramedic” certification under all laws of the State of Ohio that govern said certifications, including any continuing education requirements and is approved by the City’s Medical Control Physician. If the employee performs or is available to perform duties as a “Qualified Paramedic” for only part of the year, or remains with the Fire Department for only part of the year, the pay shall be paid pro-rata and consistent with the employee’s work schedule. There shall be no lump sum payment of “Paramedic Pay.”

Section 2. Effective January 1, 2002 through December 31, 2003, employees qualified as an “Advanced EMT” shall be paid an additional three hundred fifty dollars (\$350.00) per year to be paid consistent with the employee’s work schedule as part of regular pay. Effective January 1, 2004 employees qualified as an “Advanced EMT” shall be paid an additional four hundred dollars (\$400.00) per year to be paid consistent with the employee’s work schedule as part of regular pay. As used in this section, qualified “Advanced EMT” shall mean an employee of the Fire Department who has successfully completed an “Advanced EMT” course, certified by the State of Ohio under the standards established by the State of Ohio, and who maintains a current “Advanced EMT” certification under all laws of the State of Ohio that govern said certifications, including any continuing education requirements and is approved by the City’s Medical Control Physician. If the employee performs or is available to perform duties as a “Qualified Advanced EMT” for only part of the year, or remains with the Fire Department for only part of the year, the pay shall be paid pro-rata and consistent with the employee’s work schedule. There shall be no lump sum payment of “Advanced EMT Pay.”

ARTICLE XXXVIII (DURATION)

After considerable discussion and mediation between the parties, I hereby recommend the following:

Section 1. a. This Agreement shall be effective January 1, 2002 and shall remain in full force and effect through December 31, 2004 unless otherwise terminated as provided herein.

b. If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent not less than sixty (60) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt.

c. The written provisions of this Agreement constitute the entire Agreement between the Employer and the Union.

SICK LEAVE

The Union's Position

The Union proposes that this Article, Article XXXII, remain the same as the current contract. It wishes to bring the new contract up to date by substituting appropriate dates. The Union's proposal is as follows:

**ARTICLE XXXII
(SICK LEAVE)**

Section 1. Effective January 1, 2002 through December 31, 2002 employees assigned to work 144 hours in a 19-day cycle shall be entitled to accumulate fourteen (14) hours of sick leave per month of service. Employees assigned to work 40 hours per week shall be entitled to accumulate ten (10) hours of sick leave per month of service. Such employees actually disabled by sickness or physical injury shall be allowed the same compensation on sick leave as if actually employed.

Effective January 1, 2003 and thereafter, employees assigned to work 168 hours in a 23-day cycle shall be entitled to accumulate fourteen (14) hours of sick leave per month of service. Employees assigned to work 40 hours per week shall be entitled to accumulate ten (10) hours of sick leave per month of service. Such employees actually disabled by sickness or physical injury shall be allowed the same compensation on sick leave as if actually employed.

- Section 2. No change.
- Section 3. No change.
- Section 4. No change.
- Section 5. No change.
- Section 6. No change.
- Section 7. No change.
- Section 8. No change.

The Union takes the position that the Employer's proposal to reduce sick leave from fourteen (14) hours per month to thirteen (13) hours per month should be rejected. It points out that other employee units covered by collective bargaining agreements with the Employer accumulated 1.25 days per month. Since the firefighters involved herein are on a twenty-four (24)

hour schedule they only accumulate .5833 days per month according to the Union. Further, it notes that municipalities that are comparable to the Employer have firefighter units that work fewer hours per week than the Employer's firefighters. This results in these units receiving either the same amount of sick leave as the Employer's firefighters or more sick leave than the employees involved herein.

The Employer's Position

The Employer proposes to reduce the amount of sick leave an employee may accumulate in a month in the second year of the contract from fourteen (14) hours of sick leave per month to thirteen (13) hours of sick leave per month. It asserts that since the employees will be working less in the second year of the agreement they should accumulate less sick leave consistent with their hours worked. The Employer also emphasizes that the rest of its employees work a forty (40) hour week so that no comparison can be reasonably made with the firefighters' work schedule.

The Employer submitted evidence in respect to sick leave accumulated in 2002 for firefighters in Brook Park, Garfield Heights, Independence, Maple Heights, North Royalton and Parma Heights. The Brook Park unit accumulated 13 hours per month while the other units accumulated 4.6 hours per 80 hours worked; this resulted in 12.75 hours of sick leave a month being accumulated.

Findings and Recommendations

The parties could not agree on the amount of sick leave per month for the second year of the contract. The Employer proposed thirteen (13) hours while the Union proposed fourteen (14) hours. The accrual of the thirteen (13) hours sick leave per month results in a total of one

hundred fifty-six (156) hours per year. This is a reasonable amount of sick leave accrual, particularly when the unit will be working fewer hours after the first year of the contract. In addition, it is significant that Article XXXII, Section 3, provides for sick leave to be cumulative, i.e., sick leave can be accumulated without limit by employees while they work for the Employer. This is important since it protects employees if they suffer serious illness.

Further, the data in respect to comparable communities should not be overlooked. It indicates that the Employer's proposal of thirteen (13) hours is in line with neighboring and comparable municipalities.

Accordingly, in view of the above and the record as a whole, the undersigned recommends that the Employer's proposal for thirteen (13) hours sick leave in the second year of the agreement be adopted.

Fire Prevention Bureau

The parties reached a temporary agreement set forth below in the letter of understanding dated January 1, 2002. I recommend that this agreement be adopted and included in the collective bargaining agreement involved herein.

LETTER of UNDERSTANDING

This letter will confirm our understanding during the 2001 - 2002 negotiations that absent compelling reasons which an employee(s) must substantiate, employees assigned to the Fire Prevention Bureau will be for a period of six (6) months or less as determined by the City.

Dated this 1st day of January, 2002.

FOR THE UNION:

James P. Astorino

FOR THE CITY:

Joseph F. Lencewicz



Charles Z. Adamson, Fact-Finder

July 17, 2002