



**I. BACKGROUND**

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 9, 2001, pursuant to Ohio Administrative Code Rule 4117-9-05(D). The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the International Association of Fire Fighters, Local 2388 (Union), and the City of Beachwood (City).

The fact-finding involves the City and its Fire Department, consisting of all fire fighters employed by the Department, including Captains and Lieutenants. Only the Fire Chief and Deputy Fire Chief are excluded from the unit. The unit is represented by the International Association of Fire Fighters, Local 2388. The parties have had a collective bargaining relationship for a number of years, covering the terms of several agreements.

Prior to the fact-finding, the parties engaged in minimal bargaining, exchanging proposals and having a few bargaining sessions. This was a direct result of the City's bargaining with its other units. The City has two collective bargaining agreements with its Police Officers, a third with its Police Dispatchers, and another with its service workers. All of these agreements expired at or near the end of 2001 and the City has already reached agreements with these other units. Consequently, the City spent much of 2002 engaged in bargaining, fact-finding, and conciliation with these other units. Additionally, the City negotiated a safety force pay parity, or "me too," provision with the Police Officers. This provision permits the Police Officers to reopen their agreement with the City should any safety force union enter into an agreement with the City that is economically more beneficial than the police contract. As a result, the City offered the fire fighters essentially

the same agreement as that entered into with the Police Officers. On those issues where the Union requested something different from the police contract, the City argued it could not meet the demand because of the "me too" provision. Consequently, the parties did not engage in extended bargaining.

**I. THE HEARING**

The fact-finding hearing was held on December 2, 2002 at the Beachwood City Hall. The parties provided their positions statements by November 27, 2002. The hearing began at 10:00 a.m. and adjourned at 1:30 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues as impasse. The parties introduced the following exhibits into evidence:

City Exhibits

1. Agreement between City of Beachwood and International Association of Fire Fighters. Local 2388, Effective December 1, 1998 through November 30, 2001.
2. Report of Conciliator Alan Mile Ruben in City of Beachwood and Fraternal Order of Police, Lodge No. 86, Case Nos. 01-MED-09-0827 and 01-MED-09-0828.
3. Findings and Recommendations of Fact Finder Gregory P. Szuter in City of Beachwood and Fraternal Order of Police, Lodge No. 86, Case Nos. 01-MED-09-0827 and 01-MED-09-0828.
4. Extension and Retroactivity Agreement between the City and Union dated November 30, 2001.
5. Letter dated August 12, 2002 from Marc J. Bloch to Greg Schneider re negotiations.
6. 2002 Eastern Cities 10 Year Fire Fighter Comparison.
7. Agreement between City of Beachwood and Fraternal Order of Police Beachwood Lodge 86 (Patrolmen), Effective December 1, 2001 through November 30, 2004.

8. Agreement between City of Beachwood, Ohio and National Production Workers Union, Local No. 707, Effective January 1, 2002 through December 31, 2004.
9. Rank Differential for Fire Personnel in Eastern Cuyahoga County, 2002.
10. 29 USCS § 207 (2002).
11. 1999 Fire Payouts.
12. City of Beachwood Benefit Comparison, Effective August 1, 2002.
13. Fire Department Clothing Allowance History.
14. Fire Department Sick Bonuses.
15. Findings and Recommendations of Fact Finder Charles Z. Adamson in Ohio Patrolmen's Benevolent Association and City of Beachwood, Case No. 01-MED-09-0854.

#### Union Exhibits

1. Award of Conciliator Marvin J. Feldman in City of Beachwood and Beachwood Professional Fire Fighters Association, IAFF Local No. 2388 in Case No. 93-MED-04-0373.
2. Interoffice Memorandum to All Fire Department Personnel from William S. Kaselak, Fire Chief, dated June 2, 2002 re Department Uniforms and attachments re uniform costs.

The issues remaining at impasse for fact-finding included:

1. Retroactivity;
2. Article 3, Wages and Overtime, salary increase;
3. Article 3, Wages and Overtime, one percent (1%) wage differential;
4. Article 5, Leave, Vacations and Holidays;
5. Article 6, Medical Benefits;
6. Article 8, Uniforms and Equipment;
7. Article 9, Leave of Absence, sick leave bonus;
8. Article 9, Leave of Absence, injury leave.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set

forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, 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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

## **II. ISSUES AND RECOMMENDATIONS**

### ***Issue: Retroactivity***

**Union Position:** Any settlement or agreement should be retroactive to November 30, 2001, the termination date of the prior agreement.

**City Position:** There should be no retroactivity to any settlement or agreement after November 30, 2002.

**Findings:** The parties entered into an Extension and Retroactivity Agreement on November 30, 2001. The Agreement provides:

The parties have agreed that the current collective bargaining agreement effective December 1, 1998 through November 30, 2001, shall be extended indefinitely, pending the completion of negotiations. Further, the City agrees that the first year wage increases, if any, may be retroactive to December 1, 2001, unless otherwise agreed.

The Union argues that it is common for negotiations to take an extended time. Extension and retroactivity are common, the Ohio Collective Bargaining Act time lines are frequently not followed, and SERB rules provide for extending the time line. Here, the parties agreed to extend the agreement indefinitely and provided for retroactivity with no time limit. The City claims that the language of the agreement is not mandatory. It argues that Revised Code Section 4117.14(G)(11) does not permit retroactivity in this case. Further, the unusual delay in these negotiations warrants a finding that the agreement is void. At most, the agreement was valid for only one year and should not be enforced after November 30, 2002.

The parties clearly attempted to extend the agreement and provided for retroactivity. The agreement placed no time limit on retroactivity. Indeed, the agreement simply states any first year wage increases may be retroactive to December 1, 2001, unless otherwise agreed. The parties have not otherwise agreed there will be no retroactivity. Had the City intended to limit retroactivity, it could have done so. It did not. The City also argues that the language "first year wage increases" in the agreement is clear and means that only

increases negotiated in the first year can be retroactive. The Fact Finder disagrees. He concludes that the language is ambiguous. It can have the meaning argued by the City or can refer to those increases that are negotiated to take effect in the first year of the new agreement. The Fact Finder concludes that the parties agreed to make any increases retroactive to December 1, 2001 without regard to when the increases were negotiated or otherwise put in place. Revised Code Section 4117.14(G)(11) states that a conciliator may award compensation only at the start of the next fiscal year. This provision does not apply in this case.

**Recommendation:** The Fact Finder recommends that any increase effective for the first year of the agreement be made retroactive to December 1, 2001.

***Issue: Article 3, Wages and Overtime, salary increase***

**Findings and Recommendation:** The parties agreed to a four percent (4%) increase in each year of the agreement, effective on December 1, 2001, December 1, 2002, and December 3, 2003. The Fact Finder recommends that Article 3 be amended to show the effective dates of 12/1/01, 12/1/02, and 12/1/03 with a four percent (4%) increase on each date, with the corresponding salary levels listed for Captains, Lieutenants, and Fire Fighters.

***Issue: Article 3, Wages and Overtime, one percent (1%) wage differential***

**Union Position:** The one percent (1%) differential should be spread among the entire bargaining unit. The Union proposes the differential be put into the longevity formula found in Article 4. In essence, it would amount to an increase of one hundred fifty dollars (\$150).

**City Position:** The City agrees to pay the differential. It prefers to use the one percent (1%) to increase the rank differential between Lieutenants and Captains. It disagrees that it should be put into the longevity formula. Doing so may implicate the “me too” provision of the police agreement. In the alternative, the City proposes that it paid as a bonus.

**Findings:** The Union prefers that the differential be shared by the entire unit. The City desires that it be given to officers. Since the only disagreement involves to whom the differential is paid, the Fact Finder believes the Union should be given deference as to how the differential should be paid, unless the City can show some overriding factor necessitating another method of distribution. The City is concerned that, if the rank differential is not increased, it may be forced to pay more in the future. However, the evidence submitted by the City shows that the ten percent (10%) differential it pays is less than only two communities in eastern Cuyahoga County. Increasing it to eleven percent (11%) to avoid potential problems in the future is not sufficient justification to override the Union’s proposal that it be shared among the entire unit. There is merit, though, to the City’s concern about the “me too” provision in the police contract. The Fact Finder concludes that the differential should be paid in the form of a bonus so as not to cause a reopening of the other agreement.

**Recommendations:** Article 3 of the agreement should be amended to include a new paragraph providing that, in lieu of a one percent (1%) rank differential, the one percent (1%) shall be divided among each member of the bargaining unit in the form of a bonus commencing in the first year of the agreement.

**Issue: Article 5, Leave, Vacation and Holidays**

**Union Position:** All members of the bargaining unit are to receive an additional holiday per year.

**City Position:** No change should be made in the current vacation and holiday schedule.

**Findings:** The parties agree that the bargaining unit should be compared to those of other cities in eastern Cuyahoga County. This shows the City is at the bottom of those communities in terms of holiday/personal leave hours.

<b>City</b>	<b>Holiday/Personal Leave Hours</b>
Bedford Heights	264
<b>Beachwood</b>	<b>120</b>
Highland Heights	168
Lyndhurst	144
Mayfield Heights	168
Richmond Heights	144
Shaker Heights (through 3/02, in negs)	144
Solon	264
South Euclid	140
University Heights	144

The next lowest community is South Euclid, which provides its fire fighters with one hundred forty (140) hours of holiday and personal leave hours. Two cities provide more than double the amount Beachwood provides. The City takes pride in its ability to provide first class service. As a result, it has always been near the top in terms of salary and benefits compared to the above communities. Based on the above data, though, the City

falls significantly short in terms of holiday and personal leave hours.

The Union claims that the stress of fighting fires necessitates additional time off. Adding one holiday per year will increase the number of hours to one hundred forty four (144), which still will be at the low end of the comparables. Additionally, if the City is concerned about future liability, which it raised as to the rank differential, this is another area where it should be concerned.

The City contends that the contract provides for adequate time off. Indeed, fire fighters currently receive more vacation time than any other safety or service department in the City. Adding any time off will only increase the gap and may implicate the “me too” provision of the police contract. The Union’s contention that additional time off is needed due to job related stress is belied by the failure of the fire fighters in using their vacation time. This is simply another attempt to obtain additional income from the City.

While the fire fighters receive adequate vacation pay, the data clearly show the fire fighters are lowest in terms of holiday and personal leave hours. An additional holiday places the fire fighters at the low end of the scale rather than at the bottom. The Fact Finder determines there is a need for an additional holiday. The City produced evidence that not all fire fighters used all of their vacation. The flip side of this is that approximately half of the force used all of their time. This evidence fails to refute a need for an additional holiday. As to the City’s contention that the “me too” provision of the police agreement may be implicated, the Fact Finder concludes that this, too, is an insufficient basis to override the need.

**Recommendation:** The Fact Finder recommends that the first sentence of Article 5,

Leave, Section 2(A) be amended to read:

Effective with the first payroll period of 2002, each full-time member of the Bargaining Unit shall be entitled to and receive compensation for all annual holidays on the following basis: six (6) tours of duty at the existing rate of compensation and paid in the bi-weekly pay period in which said holiday is used.

***Issue: Article 6, Medical Benefits***

**Union Position:** No change in medical benefits.

**City Position:** Revise to comply with the medical benefits given to other bargaining units in the City. The fire fighters will be given a choice between two plans. (See Exhibit 1 attached.)

**Findings:** The current coverage provided by the City, the Traditional plan provided by Medical Mutual of Ohio, is very generous. It is a fee for service or indemnity plan paying one hundred percent (100%) of hospitalization or eighty percent (80%) of medical service. The City proposes to replace this coverage with the choice of coverage under Medical Mutual's SuperMed Select or SuperMed Plus plans. Both plans are preferred provider plans that pay based upon whether the provider is in the plan's network. Both are self referring plans, allowing the employee to select the choice of a specialist rather than having his or her primary physician make the referral.

Under one plan, the City's responsibility for premiums will be limited to one thousand dollars (\$1,000.00) per month effective August 1, 2002, one thousand one hundred dollars (\$1,100.00) per month effective August 1, 2003, and one thousand two hundred dollars (\$1,200.00) per month effective August 1, 2004 for family coverage. Single coverage will be limited to four hundred dollars (\$400.00), four hundred fifty dollars

(\$450.00), and five hundred dollars (\$500.00) per month effective the same dates. Prescriptions would be covered at no charge for generic drugs, a five dollar (\$5.00) co-payment where there is only a brand name drug available, and a ten dollar (\$10.00) co-payment for a brand name drug when a generic equivalent is available.

Should this coverage become too expensive, the fire fighters can choose to stay on this plan or switch to another plan. This plan is a basic contract hospitalization plan, including dental, vision care, and prescription drugs, providing one hundred percent (100%) coverage in network, ninety percent (90%) out of network, with a ten dollar (\$10.00) physician co-payment. Prescription drugs are provided at the same costs under the other plan (\$0 generic/\$5 single source/\$10 multi-source).

The City argues that the change in coverage is not extensive as to the benefits provided. The City will, though, realize a substantial cost in savings. This change is necessary for the City to control costs. In the recent past, it has had several years of serious double digit inflation, even though it expects only a fifteen percent (15%) to twenty percent (20%) increase in premiums this year. These increases are expected to continue, compelling the City to search for alternatives to lessen the burden. The other collective bargaining agreements included such changes. Besides the police contract, the service department contract contains a "me too" provision as to benefits, allowing service employees the option to adopt any hospitalization plan that any other bargaining unit obtains. If the medical coverage the fire fighters enjoy is not changed to conform with the other units, these "me too" provisions will kick in, costing the City even more. More employees than ever are contributing for their medical coverage. The Union cannot ignore

this reality and argue that such caps and co-pays are unfair.

The Union opposes any change to the current medical benefits. It bases this opposition on the City's excellent financial position, enabling it to continue to afford the current coverage. The Union wonders why the City is seeking concessions from its employees when there is no need. The Union sees the change in coverage as a concession because it will require the fire fighters to pay money out of pocket that they currently do not pay. The Union concedes that many employers are facing financial difficulty regarding medical costs. It claims that Beachwood is not one of them and there is no need to change the current benefits.

The Union's opposition to changing coverage is without merit for several reasons. First, the change in coverage is minimal. The SuperMed Plus plan is almost identical to the current Traditional plan. In fact, when an employee stays within the network, the costs to the employee appear to be equal. Second, the Union's ability to pay argument is putting the cart before the horse. The City has not contended it cannot afford to continue the current coverage, rather it seeks to control costs. Thus, ability to pay is somewhat irrelevant. Third, the City has a legitimate interest in controlling costs. It is certainly well known that medical insurance costs have increased far more than other costs in recent years. The City would be doing an injustice to its residents if it did not try to control them. Fourth, the City has crafted a proposal to control costs while endeavoring to limit the costs imposed on the fire fighters. Should the costs to employees become too great, the City will permit employees the option to choose another plan. Finally, the City has gone to great lengths to standardize coverage of all of its employees. Only thirteen (13) of the one

hundred eighty-six (186) employees with health care coverage are currently covered by the Traditional plan, eleven of them are fire fighters. Continuing the traditional plan is a significant cost to the City, but would only have a limited impact on a small minority of the unit. The “me too” provisions of the other contracts could also be implicated, costing the City even more. Given this evidence, the Fact Finder concludes that the balance of the equities is to adopt the City’s proposal.

**Recommendation:** The Fact Finder recommends that Article 6, Medical Benefits, be amended to read as set forth in Exhibit 1, which is attached to and made a part of this Report.

***Issue: Article 8, Uniforms and Equipment, uniform allowance***

**Union Position:** Increase the clothing allowance to one thousand two hundred dollars (\$1,200.00).

**City Position:** Uniform allowance to remain the same. In the alternative, increase the allowance to a maximum of one thousand two hundred dollars (\$1,200.00) per year on a reimbursement basis.

**Findings:** The uniform must be changed because the manufacturer will no longer produce the current style uniform. Fire fighter uniforms are costly. Based on current costs, a dress uniform costs just under seven hundred fifty dollars (\$750.00), while a duty uniform costs approximately one thousand two hundred dollars (\$1,200.00).<sup>1</sup> There have been several uniform changes over the years, requiring the fire fighters to purchase new uniforms each

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<sup>1</sup> This includes two or three pairs of some items.

time. Additionally, new uniforms need to be purchased from time to time as certain items become worn, ruined, or the individual fire fighter changes sizes.

The Union claims that the current allowance does not adequately cover the cost of uniforms. While a new uniform need not be purchased every year, shirts and other items must be replaced when these items become worn or ruined. For instance, shirts wear out after a number of washings and some of the chemicals used by the Department ruin the uniforms. The uniform changes over the years have forced fire fighters to purchase entirely new sets of uniforms at greater than the allowance amount. Given the cost of new uniforms, the allowance should be increased.

The City contends that the current allowance is adequate and an increase is not warranted. It suggests that the total cost of the complete summer and winter uniforms is only one thousand eight dollars (\$1,008.00), although it did not introduce any evidence to support this. The new uniforms can be purchased for even less. Again, however, it submitted no evidence to support this cost. In the City's view, fire fighters will have plenty of money left over from the allowance in the last two years of the agreement. Any increase is simply another attempt to obtain added, unearned income from the City. Moreover, the fire fighters played a role in selecting new uniforms. Additionally, the City furnishes the fire fighters with their fire gear and provides for maintenance of the uniforms.

The Fact Finder concludes that the Union has established a need to increase the clothing allowance. The cost of new dress and duty uniforms is almost two thousand dollars (\$2,000.00). Replacement of a few shirts and other items each year can easily reach several hundred dollars. The Union introduced evidence that shirts wear out after

a number of washings and are easily ruined by chemicals the Department uses. Thus, replacing several items a year is foreseeable. While the Fact Finder is mindful that a new uniform is only necessary every once in a while, based on the costs introduced into evidence, a thousand dollars a year may not cover all of the needs of a fire fighter. Although the City claims the uniform costs are not so great, it introduced no evidence to support it.

The City proposed an alternative. It would pay up to the one thousand two hundred dollars (\$1,200.00) per year, but only on a reimbursement basis. That is, after purchasing uniform items, an employee would submit a receipt for the items and the City would reimburse the employee up to the twelve hundred dollar yearly maximum. If the employee only spends two hundred dollars (\$200.00) in a year, the City would only reimburse the employee that amount. (The parties had a similar method several years ago before changing to the current method.) The Union objects to this proposal because employees purchasing a new uniform could easily spend more than the maximum in one year. Under the current method, the employee could save the yearly payment and use it all in one year to pay for new uniforms. The employee can more easily budget his or her needs. While this approach has merit, the Fact Finder is hesitant to revert to the old method when one party is so unwilling.

However, an increase of two hundred dollars (\$200.00) per year seems unreasonable. Two hundred dollars (\$200.00) alone would cover the replacement of several shirts, as well as a pair of duty pants. Based on the evidence, these are the items most often needing to be replaced. An additional two hundred dollars (\$200.00) per year

would provide each fire fighter with three thousand six hundred dollars (\$3,600.00) over the life of the contract. This is more than enough. The Fact Finder concludes an increase of one hundred dollars (\$100.00) is sufficient to cover the cost of uniforms and replacements.

**Recommendation:** The Fact Finder recommends that Article 8, Uniforms and Equipment be amended to read:

Members of the Fire Department shall wear such uniforms as directed by the Chief of the Fire Department, and approved by the Mayor, and shall be entitled to a clothing allowance of one thousand one hundred dollars (\$1,100.00) per year, payable \$275 in January, \$275 in April, \$275 in July, and \$275 in October.

Turn-out gear, i.e., bunker coat, bunker pants, helmet and all accessories required shall be furnished by employer.

**Issue: Article 9, Leave of Absence, Section 1, Sick leave**

**Union Position:** Retain the sick leave bonus and pay it out on a semi-annual basis.

**City Position:** Eliminate the sick leave bonus entirely.

**Findings:** The sick leave bonus was placed into the agreement in 1994 following conciliation. The Union contends that the City and the Union agreed on the concept, disagreeing only on the amount of the bonus. Since it was awarded through conciliation, it should not now be discarded. The City's claim that the bonus endangers lives is completely unsupported. It serves a purpose in preventing an employee from abusing sick time. Paying the bonus costs only one day, while an employee calling in sick could cost the City more in overtime. Making the bonus payable on a semi-annual basis would allow more employees to use it, saving the City more money.

The City believes the sick leave bonus is a concept that has exceeded its useful life. While it may have been helpful in the past, it is no longer. Employees should attend work when able and should stay at home when they are sick. It makes no sense to pay a bonus to employees who are able to come to work and create an incentive for sick employees to work, possibly making other employees sick. Additionally, it may be dangerous to have a sick fire fighter working. Sick days fulfill a need and their use should not be discouraged. This provision has largely been unused. Only one person received it in 1999, four in 2000, and six in 2001. Moreover, similar provisions have been removed from the police and service union contracts. Retaining it here makes no sense and implicates the “me too” provision.

The Fact Finder finds the City’s argument to be well taken. It is the duty of an employee to work when able. The employee is compensated for working and should not receive a bonus for reporting to work when able. Sick days fulfill a need and not using them should not be encouraged. Paying the bonus sends the message that there is something wrong about using a sick day.

**Recommendation:** The Fact Finder recommends that Section 1(A) of Article 9 be eliminated in its entirety.

***Issue: Article 9, Leave of Absence, Section 2, Injury leave***

**Union Position:** Injury leave should be increased to ninety (90) calendar days per injury.

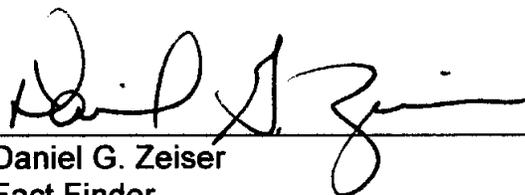
**City Position:** Injury leave should remain the same.

**Findings:** During the hearing, the parties agreed to alter the wording of the provision to accomplish two goals. First, it would change the method of calculation from calendar time

to working time, essentially keeping the amount of leave time the same. Second, it would match what was provided under the police contract.

**Recommendation:** The Fact Finder recommends that Article 9, Section 2 be amended to read as follows:

Injury leave shall be granted to any fire fighter who is injured in the course and scope of his employment with the City and shall not exceed twenty-five (25) tours, or six hundred (600) hours, per injury(s), and must be used within nine (9) months of the date of the injury(s). Injury leave shall not be deducted from sick leave.

A handwritten signature in black ink, appearing to read "Daniel G. Zeiser", is written over a horizontal line.

Daniel G. Zeiser  
Fact Finder

Dated: December 9, 2002