

IN THE MATTER OF FACT-FINDING PROCEEDING

STATE EMPLOYMENT  
RELATIONS BOARD

BETWEEN

2002 AUG 14 A 10: 22

CITY OF WOOSTER

( Case No.: 01-MED-10-0995

And

(  
( Hearing Date: July 2, 2002

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS LOCAL 764

(  
( Findings and Recommendations:  
( August 14, 2002

Representing the Employer:

Joseph F. Lencewicz, Consultant

Representing the Union:

Thomas M. Hanculak, Attorney

William J. Miller, Jr.  
Fact Finder

## SUBMISSION

This matter concerns fact-finding proceedings between the City of Wooster (hereafter referred to as the "Employer) and the International Association of Firefighters, Local 764 (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed William J. Miller Jr. as Fact Finder in this matter. The parties agreed to extend the submission of this report until August 14, 2002.

The Fact Finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. The Employer and Union previously engaged in the collective bargaining process before the appointment of a Fact Finder. This Fact Finder had conducted mediation with the parties on February 25, 2002. Such mediation was unsuccessful, consequently fact-finding occurred on July 2, 2002.

The parties, during the course of their extensive negotiations, agreed to the following tentative agreements:

### TENTATIVE AGREEMENTS

#### ARTICLE XXXVII EXECUTION

Section 1. IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

#### ARTICLE VII (COMMITTEES) Employee-Management Committee

Section 1. No change.  
A. No change.  
B. No change.  
C. No change.  
D. No change.  
E. **Delete.**

Section 2. No change.

#### ARTICLE XXXV TOTAL AGREEMENT (new)

Section 1. This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this

Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modification or discontinuance being subject to any grievance or appeal procedure herein contained.

## ARTICLE VIII PROBATIONARY PERIOD

Section 1. The initial probationary period for any employee shall be **one hundred five (105) regularly scheduled work days, exclusive of any paid or unpaid leaves of absence.** During this period, discipline, suspension or discharge by the Employer shall not be subject to the grievance procedure.

Section 2. Promotional probationary period shall be **fifty two (52) regularly scheduled workdays, exclusive of any paid or unpaid leaves of absence.**

## ARTICLE XII PERSONNEL FILES

Section 1. An employee may request an opportunity to review his/her **official** personnel file **which is maintained in the Human Resources Department** and may have a Union representative present when reviewing his/her file. A request for copies shall be honored **consistent with City Policy.** All items in an employee's file with regard to complaints and investigations will be clearly marked with respect to final disposition.

## ARTICLE XX ACTING PAY

Section 1. In the event any employee set forth in this Agreement is **assigned** by management to assume responsibilities in a higher classification, such employee shall receive the rate of pay of the designated higher classification.

Example: If a Fire Fighter is designated as having responsibilities of a Lieutenant, said Fire Fighter shall receive the rate of pay of a Lieutenant during such period of time of increased responsibilities.

C. **Delete.**

D. **Delete.**

Section 2. An Employee **assigned and performing work at the higher classification** must act in the higher classification for a consecutive period exceeding eight (8) hours to receive compensation at higher rate for all such time worked.

Section 3. In the event that employee acts in a higher classification on his/her normal scheduled day off, the employee shall be paid at the overtime rate of that classification.

**ARTICLE XV PARAMEDIC PAY**

Section 1. Fire Fighters possessing or attaining certification as Paramedics or EMT-I's will receive a stipend over and above their hourly rate, in the following amounts:

- A. Employees currently possessing EMT-I certification shall be compensated on a semi-annual schedule at the following rates:
  - 1. First Pay Period ending in January, and each January thereafter - \$375.00 stipend.
  - 2. First Pay Period ending in July and each July thereafter - \$375.00 stipend.
  
- B. Employees possessing or achieving EMT-P certification shall be compensated on a semi-annual schedule at the following rates:
  - 1. First Pay Period ending in January and each January thereafter - \$775.00 stipend.
  - 2. First Pay Period in July and each July thereafter - \$775.00 stipend.  
Employees achieving EMT-P or EMT-I status will receive their initial stipend on the above stated dates based upon a monthly prorated amount beginning from the time the Employee is certified at least five (5) days in the month of certification after receiving such certification. Additionally, Employees separating from City service **or failing to perform EMT-P or EMT-I duties** will receive a monthly pro-rated amount at the time the Employee is separated from or terminates such service, provided that he/she will have worked at least five (5) days of that month prior to such separation or termination.

**EMT-P and EMT-I** stipends shall be considered separate from the base hourly / annual rates. Any future across the board increases shall be calculated solely on the base hourly/annual rates.

Employees of the Fire Inspection Bureau will not be eligible for Paramedic Pay.

C. **Delete.**

- D. **In order to maintain adequate paramedic staffing levels, current Employees, who have achieved EMT-P certification prior to January 1,2002 will make a good faith effort to maintain such certification for no less than ten (10) years from the date of this Agreement provided a minimum of twenty (20) EMT-P qualified employees are maintained at all times. Those hired after January 1, 2002 will be required to maintain such certification for the duration of their employment and failure to do so may, at the discretion of the Employer, be considered just cause for dismissal.**

**ARTICLE XXI TRAINING & TESTING**

Section 1. No change.

Section 2. Upon the attainment of a passing score of eighty (80) or more on any Employer promotional exam, a testing employee will be reimbursed up to **two hundred fifty dollars (\$250.00)** for any instructional books he/she may have purchased related to the involved test **provided the employee provides proof of purchase.**

Section 3. **Delete.**

**ARTICLE XXV VACATIONS**

Section 1. Employees covered by this Agreement, except Fire Inspector(s), shall be entitled to vacation leave as follows:

<u>Years of Service</u>		<u>Vacation Hours Earned</u>
<u>At Least</u>	<u>But Less Than</u>	
0 years	5 years	.03875 hrs. per hrs. worked
6 years	12 years	.080345 hrs. per hrs. worked
12 or more years		.1071269 hrs. per hrs. worked

Fire Inspectors(s) shall be entitled to vacation leave as follows:

<u>Years of Service</u>		<u>Vacation Hours Earned</u>
<u>At Least</u>	<u>But Less Than</u>	
0 years	5 years	.03875 hrs. per hrs. worked
5 years	15 years	.0775 hrs. per hrs. worked
15 or more years		.09625 hrs. per hrs. worked

Section 2. No change.

Section 3. No change.

Section 4. No change.

Section 5. **A minimum of two (2) employees per shift will be permitted off consistent with operating requirements and with prior approval of the Chief.**

Section 6. **Employees hired on or after January 1, 2002 shall not be permitted to transfer service time accrued from any other employer or governmental agency for purposes of determining vacation eligibility.**

Section 7. No change.

Section 8. No change.

Section 9. Each employee shall give a fifteen (15) day notice when requesting vacation, which may be waived by the Chief. **Such request must be given approval by the Chief consistent with operating requirements.**

Section 10. No change.

Section 11. No change.

Section 12. No change.

Section 13. Upon separation from municipal service, an employee is entitled to compensation for any unused vacation leave to his/her credit at the time of separation. No payment shall be made to employees who have not completed his/her probationary year. The maximum amount of vacation that may be paid upon separation is that accumulated vacation time not in excess of the accrual from **two years (2)** of employment.

Section 14. No change.

### **ARTICLE XXX SICK LEAVE INCENTIVE**

Section 1. All employees, except Fire Inspector(s) who have a minimum of nine hundred seventy-four and four tenths (974.4) hours of accumulated sick leave on the first day of the last pay period of the preceding year and who take no more than ninety-six (96) hours sick leave from the first day of the last pay period paid **during the preceding year through the end of the pay period prior to the last pay period paid of the current year** shall qualify for sick leave incentive payment.

Section 2. Fire Inspector(s) who have a minimum of three hundred twenty five (325) hours of accumulated sick leave on the first day of the last pay period paid of the preceding year and who take no more than thirty-two (32) hours of

sick leave from the first day of the last pay period paid **during** the preceding year **through the end of the pay period prior to the last pay period paid of the current year** shall qualify for sick leave incentive payment.

Section 3. Employees meeting the above requirements shall receive in their last pay of the year an amount equal to twenty-five and eight tenths (25.8) sick time hours (except Fire Inspector(s) who shall receive twenty (20) sick time hours accumulated during the preceding pay periods defined in Section 1. and Section 2. times the employee's hourly rate of pay in effect on that date. At that time, the Mayor or his/her designee is authorized to deduct the number of hours paid as sick leave incentive from the employee's sick leave balance on the last pay period paid of the year.

Section 4. No change except **Human Resource Manager.**

Section 5. No change.

#### **ARTICLE XXXVI DURATION**

Section 1. This Agreement shall be effective as of January 1, 2002, and shall remain in full force and effect through December 31, 2004.

Section 2. If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt.

Section 3. This Agreement may only be amended or modified during the term of the Agreement by the express mutual written consent of both parties.

This will confirm our documents during the 2001-2002 years that the parties mutually agreed that upon conclusion of the negotiations, a separate retroactivity check would be issued consistent with the terms of the new Labor Agreement.

#### **ARTICLE XXXI MEDICAL INSURANCE**

Section 1. The Employer will provide the health insurance coverage in effect as of December 31, 2001 or comparable coverage during the terms of the Agreement. If any employee group, bargaining and/or non-bargaining, is required to contribute to the cost of such coverage, the employees covered by this agreement shall also be required to contribute the same amounts. Prior to implementation, the Employer and the Union shall meet to discuss the details of the contribution implementation.

Section 2. Each year at the time the medical insurance rates are revised, the Employer and the Union will meet to review them.

Section 3. Delete.

## ARTICLE XXXII DENTAL/OPTICAL ALLOWANCE

### **No Change**

Notwithstanding the tentative agreements entered into by the parties, there were a number of unresolved issues which have been considered in fact finding.

### **Issue No. 1. UNION RIGHTS**

#### **UNION POSITION**

It is the position of the Union that it proposes to add "including negotiations" to mutually set meetings referenced in Section 9 of Article V of the Agreement. The purpose of this language, according to the Union, is to permit members to attend negotiating meetings. It is contended by the Union that it is imperative to allow two members from the "on duty" shift to attend negotiating meetings to provide adequate representation and diversity of opinion during the negotiation process. It is pointed out by the Union that the language implies that negotiations are covered, and the Union would propose that such language include the words "including negotiations" for the purpose of appropriate clarification.

#### **EMPLOYER POSITION**

It is the position of the Employer that the parties have known the intent of the language of Article V, Section 9 for a considerable period of time. There has never been an intention by the Employer to make problems with this language. The Employer would propose, however, that the language in Section 9 be amended to provide that elected officials must obtain prior approval from the Chief before attending meetings involving Union/Management business. The Employer also proposes that Section 11 should be amended so that meetings of Union members on the Employer's premises after 7:00 p.m. can be held, but subject to the approval of the Chief prior to the commencement of such meetings. The Employer contents its intent is to insure that time spent for non-employment related issues is known and approved by management, and that benefits provided are consistent with maximizing obligations arising from the performance of their official duties as City employees.

The Employer also requests that Section 10 be amended to clarify that counsel and general liability insurance will be provided to bargaining unit members for conduct arising from the performance of their official duties.

## **FINDINGS AND RECOMMENDATIONS**

I have carefully considered the contentions of the parties related to this specific issue. Undoubtedly, there has been no apparent dispute between the parties as to the meaning of Section 9 regarding elected officials attending meetings. It is my belief that the meetings mentioned would certainly include negotiations, and in the interest of clarity, I would recommend that the words "including negotiations" be added to the language of Section 9. I have also considered the concerns raised by the Employer. It is not unusual when employees go to meetings which are not related to their usual work functions that permission be requested from appropriate supervision. Therefore, it is also my recommendation that the proposals of the Employer to provide some sort of supervisory monitoring would be appropriate in this circumstance. I would propose that language be provided that whenever elected officials are going to meet pursuant to Section 9 or Section 11 that permission be requested from the Chief and that such permission not be unreasonably withheld. Finally, regarding the request of the Employer to clarify Section 10, it is my considered opinion that no such clarification is needed as the Counsel and Professional Liability Insurance for all employees would obviously be within the scope of the performance of their official duties.

### **Issue No. 2.**            **HOURS AND SCHEDULES**

#### **UNION POSITION**

It is the position of the Union that a minor reduction in the hours of work is being proposed with this issue. The Union proposes that the weekly hour schedule be reduced from 51.7 to 51.38 hours which would result in an annual reduction of 16 hours. It is requested by the Union that the hours be reduced for the purpose of facilitating more efficient scheduling for department administrators. This reduction in hours would provide for 10 "Kelly Days" off per year contrasted to the 9 1/3 days currently earned.

#### **EMPLOYER POSITION**

It is the position of the Employer that any additional nonproductive time would be improper. The Employer contends, during the last Agreement, the hours were reduced to 51.7. The Employer contends that there is more than adequate nonproductive time, and any attempt by the Union to further increase nonproductive time would be improper.

## **FINDINGS AND RECOMMENDATIONS**

Upon reviewing the contentions of the parties related to this issue, it has become readily apparent that the impact of this issue would be to increase nonproductive time. I have carefully considered all of the issues presented in these negotiations, and it becomes readily apparent that the Employer has submitted a number of reasons for not further increasing nonproductive time.

These reasons appear to have validity. Consequently, it would not be in the interest of the parties to add further nonproductive time, and based upon the evidence and documentation which has been provided, it is my recommendation that there be no change in the hours that are scheduled pursuant to Article XVIII, Section B of the Agreement.

**Issue No. 3.**            **PROTECTIVE CLOTHING**

**UNION POSITION**

The Union proposes to increase the clothing allowance to \$600.00 annually for the replacement of consumable uniforms, and to specify a designated time each year that items will be ordered. According to the Union, the clothing allowance being requested is in addition to the mandatory protective equipment supplied for structural fire fighting as mandated by the National Fire Protection Agency, Article 1500. The Union would point out that the cost for clothing has increased, and there have also been matters where personal property has been ruined. The Union contends the administrative problems related to the issuing of clothing have been significant, and it requests that a better procedure be utilized in addition to the request for an additional allowance.

**EMPLOYER POSITION**

The Employer would agree with the Union position related to the manner in which the clothing allowance has been administered. Specifically, it is the position of the Employer that there needs to be improvement in the way which the clothing allowance is to be administered. However, the Employer contends there is no basis to increasing the clothing allowance to \$600.00 on an annual basis, as it believes the \$400.00 per year is consistent with what has been needed to provide the appropriate clothing allowance.

**FINDINGS AND RECOMMENDATIONS**

Upon carefully reviewing the evidence and documentation submitted by the parties, it is my opinion that there need not be a benefit provided for personal clothing. The record reflects that protective clothing has been provided, and it continues to need to be provided for members of the bargaining unit. The record also has established that there has been no consistent method of administering the clothing plan, and it is my recommendation that the parties immediately proceed to arrange for a program which will provide for the fair administration of such clothing allowance program. Regarding the Union's request to increase the allowance to \$600.00, it is my belief that once the program is properly administered there will be adequate dollars to be used to provide for an adequate clothing allowance. Therefore, it is my recommendation that administratively the Employer needs to have significant improvement, but there is no need at this time to provide for an increase in the existing clothing allowance.

**UNION POSITION**

It is the position of the Union that a true retirement incentive has been agreed upon by the parties, but the contention of the Union is that the language proposed by the Employer excludes certain individuals. This is due to the fact that some individuals may have worked at other locations before they came to work for the City and accumulated certain years of service. The Union proposes that the language should define each employee's retirement date of eligibility as defined by the Police and Fire Disability and Pension Fund of Ohio, and pay an amount of \$2,000. in each of the three years proceeding eligibility. The Union does not agree with the Employers concept that service with the City be the determining factor.

**EMPLOYER POSITION**

It is the position of the Employer that it was its understanding that the concept of City service would be used to define when employees would be eligible for the retirement incentive benefit. There is no doubt in the Employer's mind that City service was intended to be the determining factor. It is the position of the Employer that City service is applicable and needs to be considered in this situation.

**FINDINGS AND RECOMMENDATIONS**

I have reviewed the contentions of the parties and the proposals which they have submitted. Obviously, there is a greater opportunity for additional employees to receive a retirement incentive benefit under the proposal submitted by the Union as opposed to the proposal submitted by the Employer. However, when the previous Agreement language is reviewed, undoubtedly, the Employer used City service as the determining factor. It is my belief that this was certainly the intention of the Employer during the retirement incentive negotiations. It is interesting to note that the amount of the benefit has doubled, and it does provide a specific benefit for employees based upon their years of service with the City. In my considered opinion, part of the incentive for employees to receive a retirement benefit is based upon long service with a specific employer. While I understand that other individuals may come into the City and have previous experience, it is my opinion that it would be better to utilize City service as the basis for providing a long-term retirement incentive. It is my recommendation that the proposal being submitted by the Employer regarding service with the City be utilized in the applicable contractual provision.

**Issue No. 5.            WAGES**

**UNION POSITION**

It is the position of the Union that it is requesting an economic wage increase for a three-year period. The Union requests wages be increased 3% for 2002, 4% for 2003, and 4% for

2004. It is the contention of the Union that this is representative with internal awards as well as external state averages. The Union argues further that the wages it is requesting have been applied to the other bargaining units, and it would be fair for this wage increase to be provided in this instance.

**EMPLOYER POSITION**

It is the position of the Employer that employees hired prior to January 1, 2002 should receive a 3% increase in 2002, 3% increase in 2003, and 4% increase in 2004 for Fire Fighter, Fire Lieutenant, and Fire Captain. The Employer proposes that the Fire Inspector increase would be the same amount as the Fire Lieutenant. With respect to employees hired on or after January 1, 2002, the Employer proposes that there be an additional step in the Fire Fighter classification which would be established. The Employer proposes that the top rate (Step D) Fire Fighter would be the same as that established for employees hired prior to January 1, 2002, as well as the Lieutenant, Fire Inspector, and Captain classifications. It is contended by the Employer that its proposal is comparable to similarly situated employees with and outside the City particularly when this proposal is viewed conjunctively with other economic enhancements that are being proposed by the City.

**FINDINGS AND RECOMMENDATIONS**

I have carefully considered all of the extensive evidence and documentation submitted by the parties. On the basis of my review, it is my recommendation that the wages be increased for the bargaining unit as follows:

2002	3%
2003	4%
2004	4%

The wage increases would reflect favorably with external and internal wage comparisons. Therefore, such recommendation is made to the parties.

**ISSUE NO. 6**

**OVERTIME**

**EMPLOYER POSITION**

It is the position of the Employer that it proposes to revise Article XVIII, Section 2 to define the overtime rate from 1.78 x hourly rate to 1.5 x hourly rate, and include paramedic pay in the hourly rate for overtime compensation purposes. It is the position of the Employer that this proposal accurately reflects the normally accepted overtime definition rate in both the private and public sectors including the specific requirements of the Fair Labor Standards Act. It is argued by the Employer that to continue the current overtime rate of 1.78 is not only extravagant, but it is inconsistent with the "real world". The Employer points out that had the rate been calculated on the basis of 1.5 for the year 2001, the City would have saved approximately \$41,300.

**UNION POSITION**

It is the position of the Union that this City is different than other cities because the wage rate was lower than others during the 1980's, and as a result of such low wages the overtime rate was brought up to two times the wage. It is also noted by the Union that during the last Agreement, the overtime rate was reduced from 2.0 to 1.78. The Union also alleges that its overtime rate is still behind the rate of the other bargaining units because of the fact that such bargaining units work a 40-hour week. It is noted by the Union that overtime costs have increased because of the inability of the City to fill certain positions. The Union, therefore, requests that the overtime rate be maintained as it currently is stated, but that if the Employer goes to 1.5 that this be done on the basis of a 40 hour week.

**FINDINGS AND RECOMMENDATIONS**

Upon considering the contentions of the parties related to this specific issue, it becomes readily apparent that it is difficult to make comparisons between the different bargaining units. Obviously, one bargaining unit works in a different manner than the other bargaining unit. However, when days off and hours worked are considered, it becomes obvious that there are differences which really are not comparable regarding the question of overtime analysis.

What appears to have happened in this circumstance was through collective bargaining in the past, the rate was increased to something higher than what is usual. This was done for reasons, according to the Union, to provide equitability because of differences in wage rates. The record reflects that during the last collective bargaining there was a change in the overtime rate which did, in fact, reduce the overtime rate from 2.0 to 1.78. Obviously, the parties did this on the basis of a certain quid pro quo. The record does not reflect any such bargaining in this specific case. It is my opinion that part of the overtime problem is caused because of the fact that positions are vacant for whatever reason. If, in fact, certain positions are vacant and are not filled this could provide some of the reason for excessive overtime. It is, therefore, important that the Employer make sure that adequate manpower is present so that adequate staffing will

occur, and in effect will reduce the amount of overtime that is required. While I recognize there are other reasons for overtime, this consideration would certainly go to the heart of the Employer's concern for its overtime cost. In any event, based upon all of the submissions and evidence presented by the parties, it is my recommendation that the overtime rate remain as has been bargained for in the prior contract, that being 1.78.

## **ISSUE NO. 7      **HOLIDAYS****

### **EMPLOYER POSITION**

The Employer contends there are two aspects to its proposal related to holidays. In the first instance, it suggests that Article XXIV, Section 2 be revised to reflect holiday pay based on the predicate of hours worked. The current holiday rate of pay is 11.2 hours which was based upon the 56-hour workweek. The Employer contends when the workweek was reduced to 51.7 hours per week, the consequent reduction in holiday hours should have occurred. Therefore, the Employer is proposing the holiday be defined as 10.34 hours, and the Employer also proposes that employees receive payment for current holidays and personal days at the 10.34-hour rate.

The Employer also proposes that Section 3 of Article XXIV be deleted. Currently, this provision permits an employee to take holidays and/or personal days off and be paid at the rate of 24 hours times the hourly rate. The Employer contends this is an excessive economic burden to the Employer and the impact on staffing levels. Furthermore, the Employer contends this proposal is more consistent with the level of benefits received by Fire Fighters in similarly situated fire departments and should be established.

### **UNION POSITION**

It is the position of the Union that the current contract language be maintained. The Union contends this was a bargained for benefit, and wages were given up for the purpose of obtaining this benefit. The Union position is that the ability to take time off in lieu of monetary compensation was realized through labor negotiations and occurred as a result of the members accepting a reduction in wage increases.

It is the Union's position that should the fact finder believe it to be necessary and appropriate to retract the ability to take time off in lieu of monetary compensation that hours and schedule, Article XVIII, be changed to reflect a 48 hour work week. This change would effectively reduce the additional time off from a potential 10 compensated days to 8 scheduled compensated days, a concession of 2 days from the Fire Fighters Union.

## **FINDINGS AND RECOMMENDATIONS**

Upon considering the issues presented in this case, it is obvious that the parties did bargain over the applicable contractual language. With respect to the first aspect where the rate should have been changed when the hours went from 56 to 51.7, it is my considered opinion that it would be appropriate to make the adjustment accordingly to conform to what had been changed by the parties. Therefore, it is my recommendation that the hours to be used under Article XXIV, Section 2 should reflect 10.34 as opposed to 11.2. However, with respect to the second request of the Employer, it is my opinion that even though the end result may not be what the Employer wants, this was an issue that was bargained for by the Employer and there has been no persuasive evidence to show why such contractual language should be changed. Therefore, it is my recommendation that the language found in Article XXIV, Section 3 remain as stated.

### **ISSUE NO. 8          INJURY LEAVE**

#### **EMPLOYER POSITION**

It is the position of the Employer that new language should be added to Article XXVI of the Agreement which will require an employee to submit to an examination if the Employer deems it necessary in order for the employee to continue receiving such injury leave benefits. The Employer would point out that the times for scheduled examinations would be reasonable, and the Employer would assume any additional costs for the examination.

#### **UNION POSITION**

It is the position of the Union that the language found in Article XXVI of the Agreement already provides that there needs to be medical authorization. When the employee is injured or contracts illness while performing assigned duties and is unable to work, the Union believes that the language, which is presently in effect, provides for the appropriate certification by a physician. It, therefore, requests that there not be any change in the present agreement language.

## **FINDINGS AND RECOMMENDATIONS**

I have carefully reviewed the positions of the parties, and I have determined that the Employer is seeking to review the certification of a licensed physician when it deems it necessary in order for the employee to receive benefits. The proper way that an employee receives benefits as a result of being injured or contracting an illness while performing assigned duties is established in Article XXVI of the Agreement. As is the case in most situations, it is necessary for the injury or illness to be certified by an appropriate physician. This is what the language clearly provides for in this instance. What the Employer is seeking to do in this circumstance is to make a determination to review or possibly challenge a medical determination

that has been made. Such determination would be made based upon the Employer deciding that the licensed physician did not provide a report which was appropriate. In my considered opinion, this is not the way to make medical determinations. Rather, the Agreement provides that a licensed physician will make the appropriate certification for an employee who is off work as a result of an injury or illness contracted while at work. The medical determination is the appropriate way to make such determinations and confirmations. For the Employer to then intervene and challenge such medical determination would not be consistent with the proper way of deciding whether an employee cannot perform the duties of the employees assigned position because of a medical issue. Rather, this is a determination which needs to be made by a medical person. The language, in its present form provides that this will occur. In my opinion, it is recommended that the present language remain intact, and that there not be a change in the language as has been suggested by the Employer.

## **ISSUE NO. 9.      SICK LEAVE**

### **EMPLOYER POSITION**

The Employer proposes certain changes to the existing sick leave language. These changes are the following:

- A. The Employer proposes to revise Section 1 of Article XXVIII to more accurately reflect sick leave accrual based on the hours of work predicate. Currently, an employee who works 2688.4 hours per year accumulates sick leave at the rate of .1236 hours for each hours of regularly scheduled work which is approximately 15 days x 24 hours or 360 hours per year. The Employer proposes that employees earn sick leave hours based on a rate of .0577 hours for each regularly scheduled hours of work per year up to a maximum of 155 hours per year which is based on their normal annual hours scheduled. The Employer contends the current sick leave accrual by the Fire Fighters is excessive when compared internally and externally, and such system invites excessive use and abuse which is economically burdensome to the City.
- B. The Employer proposes to revise Section 3 to provide for sick leave usage for a serious illness or injury in the employee's immediate family, but only with the requirement that the family member be residing in the employee's house hold requiring the employee's personal care and attention. The Employer contends there have been cases where unwarranted use of sick leave has occurred, and it is trying to correct this situation.
- C. In Section 4, the Employer proposes to change the term "Employee's Division Manager" to "Employer" for the sick leave approval process.
- D. In Section 5 the Employer proposes to replace "Chief" with "Employer" wherever the reference is made. Additionally, the Employer proposes to add a sentence that in the event the employee fails to submit adequate proof for the use of sick leave, as determined by the Employer, that the leave will be considered unauthorized.

- E. The Employer proposes to revise Section 7 to ensure that newly hired employees shall not be permitted to retain or transfer accumulated sick leave from any other public service employment outside the City of Wooster. The Employer contends while this is economic in nature from the standpoint of the Employer/employee relationship, it is incomprehensible that an Employer should be burdened with the costs of providing employee benefits that resulted from service to other public employers.

### **UNION POSITION**

The Union's position regarding this issue is that the employer's proposal would decrease sick leave accrual from 15 days to 6 days annually. The Union considers this to be unacceptable and requests that the current contract language remain in effect. Furthermore, the Union contends the maintenance of 15 days per year continues to express parity with other bargaining units as well as management within the City of Wooster. It is further contended by the Union that because of the hazardous work performed by Fire Fighters that the sick leave requested is appropriate and necessary. The Union, therefore, requests that there be no change related to sick leave.

### **FINDINGS AND RECOMMENDATIONS**

I have reviewed the extensive documentation and arguments made by the parties concerning this specific issue. Basically what the Employer is proffering is a reduction in the amount of sick benefits which are available for Fire Fighters. The basic problem with the position of the City is that there appears to be an attempt to simply reduce its sick leave cost for Fire Fighters while disregarding such cost for the other bargaining units and management within the City of Wooster. In my considered opinion, this approach does not seem reasonable in light of the fact that all bargaining units and management employees within the City are able to receive benefits which have not been adjusted as is requested in this situation. While I recognize that this is a separate bargaining unit and the issue presented relates to this bargaining unit, practicality would need to be considered as to how other employees are considered related to this specific issue. Therefore, it is my recommendation that the changes being requested by the City to reduce sick leave benefits should not be considered. Regarding the administrative changes requested by the Employer as to changing "Employee Division Manager" to "Employer" and replacing the word "Chief" with "Employer" would be appropriate. It is my recommendation that such changes be implemented.

## **ISSUE NO. 10.      GRIEVANCE PROCEDURE**

### **EMPLOYER POSITION**

It is the position of the Employer that there are numerous changes, which should be made to the grievance procedure for the purpose of facilitating the processing of grievances, and eliminating issues that may arise. A number of specific proposals have been made related to the grievance process which include among other things defining a grievance, limiting a grievance to the four corners of the Agreement, and providing specific procedures for processing any grievance that may arise. The Employer believes that its proposals will facilitate the resolution of issue between the Employer and the Union. It, therefore, requests that its proposals be accepted.

### **UNION POSITION**

It is the position of the Union that there does not need to be any changes made in the grievance procedure. The Union believes that the grievance procedure has operated efficiently, and that problems have been resolved. Furthermore, it is contended by the Union that there have been no issues which have arisen which would necessitate the grievance procedure to be revised as has been suggested by the Employer. The Union believes that since nothing is working improperly that the grievance procedure should continue to be used in the same manner that it has been used in the past.

### **FINDINGS AND RECOMMENDATIONS**

Obviously, the Employer has suggested a number of changes to the grievance procedure for the purpose of providing a more efficient and a more defined grievance procedure. A close review of the record indicates that the parties have negotiated language related to the grievance procedure during the course of collective bargaining, and the parties on a regular basis have implemented such language. A review of the history of grievance procedure experience has shown that there have been no specific problems between the parties related to the administration of grievances. In fact, the record reveals the grievance procedure has worked well, and any issue that has arisen has been resolved during the grievance procedure. In my considered opinion, because there are no specific problems present, it would be unwise to change the existing grievance procedure language. This language has been in effect for a period of time and appears to have worked well concerning the resolution of specific problems that have arisen between the parties. It is my recommendation that there is no need to alter something where there have been no problems. I would, therefore, recommend that the existing grievance procedure remain in effect.

**ISSUE NO. 11.      EMPLOYEE HEALTH AND PHYSICAL STANDARDS**

**EMPLOYER POSITION**

The Employer has proposed certain language related to health and physical standards. The purpose of such language is to assure that the employees are in physical condition so as to be able to perform their assigned duties without any specific problem. The City, therefore, recommends that this language be implemented.

**UNION POSITION**

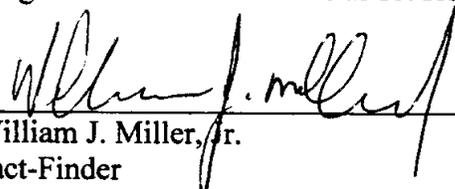
The Union has no problem with employee health and physical standard language except for the fact that such language needs to be implemented on a mutual basis as opposed to the language being implemented unilaterally by the Employer. The Union would, therefore, request that such language be implemented, but with the proviso that the language be put in place on a mutually agreeable basis.

**FINDINGS AND RECOMMENDATIONS**

I have considered the positions of the parties regarding the language in question. I would agree with the parties that it is appropriate to have standards for Fire Fighters, particularly because Fire Fighters are required to perform physical work on a regular basis. Obviously, the need to have Fire Fighters in good physical shape goes without saying. I am also of the opinion that language of this nature needs to be implemented on a mutual basis. Because of the potential implications with physical standards being utilized, it makes good sense to assure that both the Employer and the Union are in agreement with changes which occur, and are also in agreement with the standards which need to be implemented. It is, therefore, my recommendation that standards be utilized as suggested by the Employer, but that standards be mutually agreed upon and implemented by the parties.

**CONCLUSION**

In conclusion this Fact-Finder submits his findings and recommendations as set forth herein.

  
\_\_\_\_\_  
William J. Miller, Jr.  
Fact-Finder  
August 14, 2002