

STATE OF OHIO

**STATE EMPLOYMENT
RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD

2002 MAR 19 P 12: 13

IN THE MATTER OF:

CASE NO. 01-MED-12-1152

**INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 434,**

"Employee Organization"

and

CITY OF PAINESVILLE,

"Employer"

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

DATE OF REPORT AND DATE OF MAILING: MARCH 18, 2002

APPEARANCES:

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I. INTRODUCTION

This matter comes before the Fact-Finder as a result of a referral on March 1, 2002 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the International Association of Firefighters, Local 434 (hereinafter referred to as "Union" or "Employee Organization") and the City of Painesville (hereinafter referred to as "City" or "Employer").

The fact-finding hearing was conducted for the taking of evidence, submission of issues and presentation of the parties' respective positions on Wednesday, March 13, 2002, with the hearing being conducted at the City of Painesville City Hall, Painesville, Ohio. No post-hearing briefs were submitted, and the hearing was considered closed as of March 13, 2002.

The Notice of Fact-Finding dated March 1, 2002 from SERB to the parties indicated, in part, that the Fact-Finder was to serve the parties with a written report and recommendations no later than March 15, 2002. At the hearing on March 13, 2002, the parties mutually agreed to extend the period of submission of the Fact-Finder's Report to March 18, 2002, pursuant to Ohio Administrative Code 4117-9-05(G).

The Fact-Finder received and has taken into consideration numerous exhibits and extensive material presented by both parties.

Included in the material presented and received by the Fact-Finder was the parties' current Collective Bargaining Agreement dated August 30, 1999 but effective as of April 1, 1999 through March 31, 2002. Some of the exhibits and documents submitted by the parties will be referenced in more detail, *infra*, as they relate to the specific issues under review.

In addition, the Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code

§§4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

Appearing on behalf of the parties, in addition to the respective representatives designated on the face sheet of this Report, were the following:

On Behalf of the Union

Carl A. Marine, Member, IAFF Local 434 Negotiation Team
Thomas Sever, Member, IAFF Local 434 Negotiation Team

On Behalf of the City

James Onello, Assistant City Manager
Harlita Robinson, Director of Finance

II. BACKGROUND

The City of Painesville is the principal city and the county seat in Lake County, Ohio. The Bargaining Unit consists of 25 members having the following classifications: 4 captains, 3 lieutenants, and 18 firefighters. The Union is the present exclusive bargaining representative of the Bargaining Unit.

The Fact-Finder commends the representatives of both the Union and the City for presenting their respective positions in an articulate and highly professional manner. In preparing this Report and Recommendations, the Fact-Finder has attempted to summarize the salient aspects involved, however, any brevity therein should not be construed as an attempt to diminish the significance of each report or the nature of material presented in support. Additionally, the Fact-Finder is cognizant of the caveat expressed by Justice Douglas in *Johnson v. University Hosp. of Cleveland* (1989), 44 Ohio St.3d 49, 58, wherein he stated: "Our occupational duty continuously requires us to balance rights and responsibilities of persons regardless of their color, sex, position

or station in life. We accomplish that balancing in this case while recognizing that our decision will be something less than universally accepted.”

III. RECOMMENDATIONS

Preliminarily, the Fact-Finder notes that the Union has proposed that the following articles of the present Contract remain unchanged. Based on the discussions which ensued during the fact-finding, the Fact-Finder therefore recommends that the following articles addressing the following subjects be adopted as set forth in the present Contract:

- Article I - Preamble
- Article II - Recognition
- Article III - Management Rights
- Article IV - Non-Discrimination
- Article V - Check-Off
- Article VI - Union Representation and Visitation
- Article VII - Probationary Period
- Article VIII - Labor Management Committee
- Article X - Seniority
- Article XI - Layoff and Recall
- Article XII - General Provisions
- Article XIII - Work Week
- Article XVII - Bereavement Leave
- Article XVIII - Special Leave
- Article XIX - Military Leave
- Article XXII - Overtime Work and Pay Types
- Article XXIV - Straight Time Pay for Meetings During Regular Working Hours
- Article XXVII - Requirements as to Continuity of Service
- Article XXVIII - Workers' Compensation
- Article XXIX - Termination Pay
- Article XXX - Conformity to Law
- Article XXXI - Gender and Plural
- Article XXXII - Headings
- Article XXXIII - Obligation to Negotiate
- Article XXXIV - Disciplinary Procedure
- Article XXXV - Grievance Procedure
- Article XXXVI - Arbitration Procedure

The Fact-Finder also notes that the Union has proposed date changes pertaining to Article XXXVII (Duration of Agreement) and Article XXXVIII (Execution) which are form and

not substantive matters. Again, based on discussions during fact-finding, the Fact-Finder recommends that Article XXXVII of the present Contract remain unchanged except to the extent that the language shall be changed to read that the Agreement “shall be effective as of April 1, 2002 and shall remain in full force and effect until and including the 31st day of March, 2005.”

Further, as to Article XXXVIII dealing with execution, the Fact-Finder recommends that the Agreement be executed on the 19th day of March, 2002 or such other date as mutually agreed between the parties when the parties have, in fact, executed the Collective Bargaining Agreement.

Article IX (Health and Welfare)

Section 9.07 of the current Collective Bargaining Agreement provides that the physical examination, required under Section 9.06, is to consist of certain designated and specific healthcare aspects, such as a complete blood count, a physical assessment, a stress EKG and pulmonary function test. The Union has proposed that the items set forth in Section 9.07 should not constitute the exclusive list but, rather, such tests should be made subject to the determination of the examining physician which should not be limited solely to the items set forth in Section 9.07. The City is not opposed to that concept in spirit but has suggested slightly different language dealing with the physical examination to be handled on the basis of the employee’s age on the theory that the older an employee becomes, a more frequent need for a physical examination exists.

The Fact-Finder recommends that the present Section 9.07 be deleted and the following be inserted in lieu thereof:

“The above-referenced physical, Section 9.06, shall be conducted yearly for those employees above age 40, bi-annually for employees 30-39 years of age and once every three years for employees age 29 and under. The physical examination shall consist of blood work and testing consistent with current medical standards for medical examinations, which is recommended by the mutually agreed upon physician, to include: cardiac stress test; hearing examination; and vision testing.”

Article XIV (Holidays)

Under the current Contract, Section 14.01 provides that all Fire Division employees who are assigned to a 40 hour work week shall receive their regular compensation for a number of holidays, including the follow: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. Section 14.02, however, provides that in lieu of the designated holidays set forth in Section 14.01, a fire fighter who work a 48 hour week is entitled to 168 holiday hours which must be taken in 24 hour increments. Section 14.03 provides that those employees who are assigned to a 48 hour per week workweek and who are regularly scheduled to work on New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day shall receive an additional one-half time pay rate for that holiday work. Section 14.03, however, does not allow any additional one-half time pay if the holiday happens to be Martin Luther King, Jr. Day and/or Presidents' Day. The Union has proposed that those two holidays be added to the list of holidays. The City has contended that the present contract language under Section 14.03 is reasonable and that there are differences between 40 hour work week employees in the Fire Division as opposed to those working 48 hour work weeks.

The Fact-Finder recognizes that there are differences between 40 hour employees and the 48 hour employees but is of the view that it is reasonable, if not logical, that the same major holidays set forth in Section 14.01 should be applied with equal force to Section 14.03. There is no compelling reason why Martin Luther King, Jr. Day and Presidents' Day should be singularly excluded from the list of holidays for which an employee who is regularly scheduled to work on a particular holiday would receive the additional one-half time pay rate for the holiday work.

Accordingly, the Fact-Finder recommends that Sections 14.02 and 14.03 of the current Contract be deleted and, in lieu thereof, the following should be inserted:

“14.02 In lieu of the above designated holiday days, the employee working forty-eight (48) hours per week will be entitled to two hundred sixteen (216) holiday hours. These holiday hours must be taken in twenty-four (24) hour increments.

14.03 Employees assigned to a forty-eight (48) hour work week, regularly scheduled to work on New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, and Christmas Day shall receive an additional one-half time pay rate for that holiday work (there will be no duplication or pyramiding of overtime). Regularly scheduled shall in this context mean the employees scheduled to come in at 7:30 a.m. on that specific day. Said payment of the one-half pay shall be for the entire twenty-four (24) hour period. Any employee granted the use of compensatory time will not receive an additional one-half time pay rate for those hours.”

Article XV (Vacation Leave)

Section 15.10 of the current Collective Bargaining Agreement provides in essence that when an employee retires at age 65 or has 10 or more years of service with the City, State of Ohio, or other political subdivisions, and terminates employment with the City of Painesville at any age, the employee may elect to receive unused current year’s vacation and current year’s accrued but unused vacation not to exceed seven (7) weeks as termination pay. In that same context, Section 15.11 provides that with the approval of the Fire Chief and the City Manager, an employee may carry forward from one year to the next unused vacation not to exceed two weeks. During the course of the fact-finding, it was indicated that although the Contract language states that unused vacation time is not to exceed seven (7) weeks, the past practice between the parties has allowed up to twelve (12) weeks. The Union now proposes that a thirteenth (13th) week be added. Also, consistent with the additional thirteenth (13th) week, it is proposed that Section 15.11 be modified to provide that unused vacations can be carried forward but not to exceed three (3) weeks.

The Fact-Finder does not find that the request is unreasonable or would create some type of excessive cost for the City in that the employee is simply exercising or utilizing something that he already has, i.e., unused vacation time. Accordingly, the Fact-Finder recommends that Section 15.10 be retained in its present language except for that portion of the provision which reads “and current years accrued but unused vacation, not to exceed seven (7) weeks” be changed to read “and current years accrued but unused vacation, not to exceed thirteen (13) weeks.”

Additionally, the Fact-Finder recommends that Section 15.11 be deleted and the following inserted in lieu thereof: “With the approval of the Fire Chief and the City Manager, an employee may carry forward from one year to the next, unused vacation not to exceed three (3) weeks.”

Article XVI (Sick Leave)

Under Section 16.11 of the present Contract, it is provided that when an employee retires, either because of age or disability, and the employee has completed at least 10 years of service, the employee is entitled to receive a cash payment equal to his base rate of pay at the time of retirement multiplied by 30% of the total number of the accumulated unused sick hours earned up to 1,500 hours and 33-1/3% for all accumulated and unused sick hours in excess of 1,500 hours. The Union has proposed that the percentages be increased to provide that at the time of retirement, the employee would receive a cash payment equal to his base rate of pay multiplied by 100% of the total number of accumulated unused sick leave hours. The Union has argued, in part, that by increasing the cash payment, an incentive is provided to the employees not to use sick leave during employment, reserving it for the cash payout at the time of retirement. It is thus suggested that such an incentive would save the City considerable present dollars for the reason that if an employee does not use sick leave, then the City is not required to utilize other personnel and having to pay overtime.

Although not dispositive of this issue, the parties are cited to the case of *Andreyko v. City of Cincinnati* (2001), 145 Ohio App.3d 365, where the Court reviewed a situation in which Andreyko, a retiree from the city's finance department, sought to purchase retirement credits in the same manner and under the same terms as afforded to the city's fire and police employees. The Court of Appeals rejected Andreyko's claims, applying a "rational-basis test." The Court stated at 368:

"According to the rational basis test, lawmakers may create distinctions that bear a rational relationship to a legitimate state interest. The burden of proving that the law is unconstitutional would rest upon Andreyko. And he may only satisfy this burden by showing that the distinctions 'are based solely on reasons totally unrelated to the pursuit of the [City's] goals and only if no grounds can be conceived to justify them.'" [Citations omitted.]

The Fact-Finder appreciates the arguments suggested by the proposal, however, the Fact-Finder is of the view that there is not an overriding or compelling reason to digress from the present contract language. The parties previously negotiated the distinctions set forth in Section 16.11. The City is certainly cognizant of its costs sustained by virtue of employees using their present sick leave and having other personnel working overtime, as opposed to letting their sick leave accumulate. Nevertheless, the City is willing to live with the consequences of the current policy. On balance, therefore, the Fact-Finder recommends that the current contract language be retained.

Article XX (Compensation)

As is not uncommon, the most significant issue presented during fact-finding was that dealing with the matter of compensation. The Union indicated that during the three year period covered by the present Contract, the Union had received wage increases of 5%, 4% and 3%, or, in other words, an average of 4% over the contract's three year life. Similarly, the Union has again

requested a wage increase of 4% for each year of the three year bargaining agreement. The Union contends that this requested increase is consistent with state-wide comparables.

The City has countered with a proposal of a flat increase of 2% annually. The City contends that the wage proposal is reasonable although it recognizes that it is at variance with the wage increases granted during the three year period under the present Contract. However, the City asserts that economic conditions have changed since the last Contract. Most particularly, the City contends that it is faced with an increase in its hospitalization insurance premium of approximately \$500,000 going from \$1,347,746 to a renewal premium of \$1,981,327. The City further cites that the hospitalization premium cost per bargaining unit fire department employee in 2001 was \$6,500 and is projected to increase to \$8,000 for 2002. Secondly, the City asserts that there is a needed reduction of \$335,888 in the 2002 budget applicable to the Fire Department in order for the City to balance its overall budget for the year 2002. Further, the City contends that by adopting the City proposal of a flat increase of 2% annually, the City would still have a projected cost of \$83,769 for the three year contract term, whereas, if the 4% proposal by the Union were adopted, the City would face a cost of \$326,130 over the three year term.

The Fact-Finder recognizes that arguments could be made, *ad infinitum*, for and against various aspects of wage proposals. On balance, the Fact-Finder is of the view that an annual increase of 3%, 3% and 3%, commencing April 1, 2002, is appropriate.

Article XXIII (Compensatory Time)

Under Section 23.03 of the present Contract, a request for compensatory time may be made at any time when the shift manning is 6 men or more. The Union has proposed to amend that section to the extent that the shift manning would be increased to seven men before there would be a request for compensatory time. This proposed change is made to reflect an increase in

minimum manning from five to six men. The Fact-Finder considers that the request is reasonable and consistent with other personnel manning aspects. The City did not object to this proposed change.

The Fact-Finder therefore recommends that the first sentence of Section 23.03 be amended to read as follows: "Request for compensatory time may be made when shift manning is seven (7) men or more."

Article XXV (Educational Reimbursement)

Section 25.01 of the present Contract provides for an educational reimbursement to an employee to a maximum amount of \$700 per calendar year. The Union has proposed increasing that amount to \$1,500 per year. Based on discussions which ensued between the parties during the fact-finding, the Fact-Finder recommends that the last sentence of Section 25.01 be amended to read as follows: "Such reimbursement shall not exceed \$1,000 per calendar year."

Article XXVI (Uniforms and Equipment)

Sections 26.01 and 26.02 presently provide for the City to provide newly appointed fire fighters with certain designated uniform and personal equipment with the further provision that those items become the property of the employee after he has completed one year of service. Based on discussions that ensued during the fact-finding process between the parties, the Fact-Finder recommends that the present Sections 26.01 and 26.02 be deleted in their entirety and the following be substituted in lieu thereof:

"26.01 The employer shall furnish each newly appointed fire fighter with adequate items of uniform and personal equipment as outlined by a committee established with members of the Union and Fire Department administration. Said items shall be worn according to the dress code of the Fire Division.

26.02 All items agreed to in Section 26.01 shall become the property of the employee after he has completed one (1) year of

service, with the exception of the turnout gear, which shall remain the property of the employer. In the event the employee is terminated for any reason within the first year, the employee shall return the initial uniform as set forth in Section 26.01 herein to the Fire Chief.”

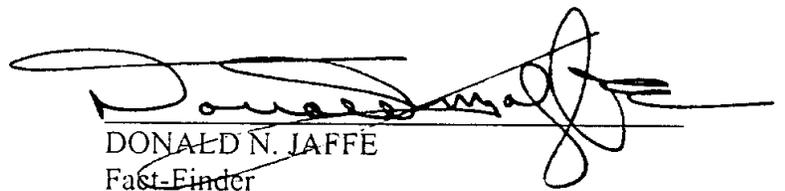
Section 26.04 of the current Contract provides an annual clothing allowance of \$750, \$800 and \$850 for the fire prevention officer during the three year term of the present Contract. For fire fighters, lieutenants and captains, the allowance was \$700 the first year, \$750 the second year and \$800 the third year. The Union has proposed that the allowance for the fire prevention officer be increased to \$900, \$950 and \$1,000 over the three year term of the new Contract, and for fire fighters, lieutenants and captains, an allowance of \$850, \$900 and \$950.

Again, based on discussions which ensued during the course of the fact-finding, the Fact-Finder recommends that Section 26.04 dealing with the uniform allowance be amended to read as follows:

“Fire prevention officer - an allowance of \$900.00 annually in 2002 (\$75.00 monthly), \$900.00 annually in 2003 (\$75.00 monthly), and \$950.00 annually in 2004 (\$79.17 monthly).

Fire fighters, lieutenants, captains - an allowance of \$850.00 annually in 2002 (\$70.83 monthly), \$850.00 annually in 2003 (\$70.83 monthly), and \$900.00 annually in 2004 (\$75.00 monthly).”

Respectfully submitted,


DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded to the Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Thomas C. Hummel, Jr., President, IAFF Local 434, P.O. Box 1545, Painesville, Ohio 44077; and Robert C. Baetzel, Esq., Human Resources Director, City of Painesville, 7 Richmond Street, P.O. Box 601, Painesville, Ohio 44077, via telecopier and U.S. overnight (Express) mail, postage prepaid, this 18th day of March, 2002.


DONALD N. JAFFE
Fact-Finder