

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
September 13, 2002

In the Matter of:)
)
The City of Stow)
)
and) 02-MED-01-0073
)
Stow Firefighters Association)
IAFF Local 1662)
)

APPEARANCES

For Local 1662:

Anthony Rorrer, Bargaining Committee
Thomas Brahler Jr., Bargaining Committee
Russell M. Pry, Attorney for IAFF Local 1662

For the City of Stow:

The Honorable Leeann Schaefer, Mayor the City of Stow
Steven Groves, Stow Fire Chief
Claudia Amhrein, Stow Personnel Director
Gary Johnson, Attorney for the City of Stow

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the members of the Stow Fire Department represented by the International Association of Firefighters (IAFF) Local 1662 and the City of Stow. Prior to the Fact Finding Hearing, the parties were involved in numerous negotiating sessions, and the Fact Finder conducted two separate mediation sessions. A number of issues were settled; however, the parties were unable to come to a final agreement, and eight (8) issues remain on the table. These issues are recognition, hours of work, overtime rates of pay, wages, rank differential, vacations, holiday accrual and pay, and drug testing.

During the mediation effort(s) prior to the hearing the parties had a frank discussion of the areas that separated them. The major problems all relate to the level of compensation. The Union membership believes that it is paid less than other firefighters in comparable jurisdictions within the Summit/Portage County area. In addition, the membership wants to be paid time and one-half for all hours worked on holidays.

On the other hand, the City argues that the firefighters earn an excessive amount of paid time off and, consequently, proposed a change in the amount of holiday time off the firefighters can accrue and a change in the vacation schedule. The City also contends that it pays too much overtime to the firefighters and wants to change the overtime payment schema. (A full discussion of the issues will be given in the body of the report.) These three issues; wages, holiday pay, and overtime compensation proved to be intractable,

and while there was some movement toward an agreement on the other issues, the parties were unable to completely bridge their differences.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

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

The Fact Finder has been involved in hundreds of cases in the years since the passage of ORC 4117. In this particular negotiation the conduct of the parties toward each other and the Fact Finder deserves some comment. The negotiators for both the Union and the City presented their arguments in a forceful and convincing manner and the respective parties' interests were well represented by their spokesmen. Moreover, there was none of the theatrics that often surround negotiations. The Fact Finder wishes to state that he appreciates the level of professionalism shown by both sides during many hours of mediation and fact finding.

The report is attached, and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Introduction:

In the early days of collective negotiations, the prevailing wisdom was that the union made demands and management (City) simply responded. The idea was that the union would achieve certain goals in every negotiation. Over the last twenty years that dynamic has changed. As economic times have changed, management negotiators have begun to make demands on unions. These demands are often characterized as “give backs” or “takeaways.” Regardless of the nomenclature, the idea that companies and cities can use collective negotiations as a way to advance their aims is now well accepted.

When a city examines a contract, it finds clauses, etc, that it would like to change. In order to cause some changes in existing contract language, cities must prove the validity of their arguments using the same kinds of proof that unions use when making their points. In Ohio one of the main sources of evidence is the use of data from comparable jurisdictions. In this particular situation, the city is demanding some relief from what it perceives as unreasonable contract language relating to overtime and paid time off. Of course, there must be some quid pro quo for any change in current language,

and the City must offer the union membership something of value for the changes it desires. That is, the City cannot expect to get something for nothing.

The Union does not agree that the data show that there are problems with the holiday and overtime clauses. Moreover, the Union believes that the City has the financial resources to meet its demands and does not believe that there is any reason for it to be asked for a "give back."

In terms of the specific demands, the union membership believes that they are not equitably treated with respect to both wages and holiday pay. According to the arguments put forth by the union negotiating committee, the firefighters are paid less than firefighters in comparable jurisdictions throughout the area. Therefore, the firefighters are demanding a thirteen percent (13%) wage adjustment. In addition, the firefighters contend that the standard practice in the surrounding area and within the City is that all time worked on holidays is paid at time and one half, while they are paid their straight time rate. As a result, the Union contends that its members are not being compensated equitably in this regard.

For its part the City argues that the firefighters are not paid less than firefighters in other jurisdictions. Consequently, the City believes that the pattern wage settlement in the City, i.e., ten percent (10%) over three years is reasonable.

In addition, the City pointed out that the firefighters' demand for parity with respect to holiday pay can be viewed from a number of angles. The City agrees that all other employees are paid a premium for time worked on holidays.

However, because these employees work eight hour shifts, they earn eight hours of premium pay per shift. On the other hand, because the firefighters work twenty-four hour shifts, they would earn twenty-four (24) hours of premium pay if their demand is met. Therefore, the City argues that the firefighters want a benefit that far exceeds the benefit enjoyed by other City employees, and are not demanding parity in any meaningful sense.

Furthermore, the City argues that the amount of paid time off enjoyed by the members of Local 1662 is excessive. Currently, the union membership receives 13 days off per year, consisting of twelve (12) holidays and one (1) personal day. That means that each firefighter receives three hundred and twelve hours off (i.e., 13 x 24) per year. The City contends that this amount of time off is substantially greater than the time off earned by other firefighters in comparable jurisdictions and by any other Stow City employee.

The Union agrees that the membership enjoys more time off than other firefighters and other City employees, but stated that the time off was the way that the City compensated them for the fact that they are underpaid compared to other departments. The firefighters stated that they had accepted substandard wage increases over the years, but in return, they negotiated for paid time off. Therefore, the Union negotiating committee forcefully argued that the membership deserved the paid time off for the holidays enumerated in the contract, and it rejected the City's contention that the firefighters are "over compensated" with respect to holiday time off.

The other main area of disagreement concerns overtime pay. The City repeatedly pointed out that it is paying approximately \$500,000.00 in overtime per year; an amount the City argues is excessive. In order to reduce the amount of overtime payments, the City wants to change the way that the overtime pay rate is calculated. Currently, overtime is paid on a two thousand and eighty (2080) hour yearly rate. That is, the City takes the yearly earnings of a firefighter and divides that figure by two thousand and eighty (2080) hours and arrives at a base wage rate for the overtime calculation. However, firefighters work approximately twenty-seven hundred (2700) hours per year because of their unique schedules. The City wants to change the overtime rate to reflect the fact that firefighters work twenty-seven hundred (2700) hours. If the City's position is accepted, the overtime rate will be calculated by dividing yearly income by twenty-seven hundred (2700) hours. This would effectively reduce the payment for each hour worked. The membership would still receive time and one-half for each hour of overtime worked, but in reality the firefighters would be paid less.

The Union vehemently rejects the City's arguments. The union negotiators pointed out that the amount of overtime paid is in some ways controlled by the City, and they do not believe that the membership should be penalized for management decisions over which they have no control. In addition, the Union presented numerous old contracts, all of which state that overtime should be paid based on a two thousand and eighty (2080) hour rate. The Union believes that this evidence points out that the way that overtime is paid is a long standing practice that should not be changed. Finally, the Union

argues that staffing changes within the department should alleviate the overtime payment problem in the coming months.

The issues with respect to both wages and paid time off have been cast by both parties as issues of comparability. Each side argues that the data from within the City and from surrounding jurisdictions supports its position. In some ways this makes the Fact Finder's job easier. The data will support one or the other side's positions, and the Fact Finder's recommendations will follow the facts of the situation. The main reason that the parties could not reach an agreement is because both believe that the facts support their respective positions.

The other five issues that divide the parties are all important, however if the two sides had been able to reach agreement on wages, earned time on holidays and vacations, and overtime pay, then they probably would have been able to reach agreement on a new contract without resort to the dispute resolution procedures of ORC 4117. The preceding paragraphs give an overview to the parties' positions; the discussion can now turn to an analysis of the specific contract clauses in dispute.

Issue: Article II: Recognition

Union Position: The Union rejects the City's demand that the Division Chiefs should be separated out of the bargaining unit.

City Position: The City demands that the position of Division Chief be taken out of the bargaining unit.

Discussion: When the parties originally negotiated their agreement, the following language was inserted into Article II:

“other full-time fire fighting positions and/or full-time promoted positions (See Article XIV) including division chief.” [Sic; shall be members of the bargaining unit]

That is, all members of the department were included in the bargaining unit; the only exception listed in Article II was that any position filled by a person acting in place of the chief was to be excluded. The City is now asking that this language be modified to exclude the Division Chief from the bargaining unit.

The Stow fire department is undergoing a transformation and expansion. The City has opened two new fire stations and is in the process of hiring new firefighters. The City contends that the growth and ongoing modernization of the department requires an expanded command structure. Therefore, the City is creating a new job classification, i.e., lieutenants. The lieutenants will be located between the firefighters and Captains on the organization chart.

One consequence of the changed management structure is that the rank immediately under the Chief, the Division Chiefs, may have more overall command responsibility. In other words, the City argues that the Division Chief rank will now have different duties and responsibilities than was the case under the old management structure. The City stated that it was possible that a Division Chief would sometimes act for the Chief. The Union responded that Division Chiefs had historically been part of the unit and that there was no reason to change that arrangement.

The Fact Finder believes that the City made a cogent argument on this issue. The department is expanding and as part of its expansion it is adding another layer of management. As the department expands the Division Chiefs will be called upon to play a central role in the day to day operation and management of the department. Consequently, the Fact Finder believes that it well within the realm of possibility that the Division Chief(s) will be called upon to act in place of the Chief, or act in a strictly management function in the coming years. Therefore, according to organizational theory, the Division Chiefs should not be included in the same unit as firefighters.

Finding of Fact: The increased size of the department and the changed management structure currently being put in place imply that the Division Chiefs will assume a more central management role within the department, and it is reasonable to expect that a Division Chief will act in place of the Chief. Consequently, the Division Chief position should be separated from the bargaining unit.

Suggested Language:

The words "including Division Chief" shall be deleted from Article II (1),(3).

Issue: Article XIV: Rank Differential

Union Position: The Union is demanding that the new Lieutenants receive a rank differential of 6% in 2002, 9% in 2003, and 12% in 2004.

City Position: The City is offering a rank differential of 5% for the Lieutenants.

Discussion: The increased size and complexity of operations within the department has necessitated the creation of the lieutenant rank. Historically, both within Stow and throughout the nation, members of a fire department who are above the rank of firefighter receive a rank differential to compensate them for the added management functions they perform. Currently the rank differential is 11.45% for all ranks. The City has decided to institute the new command structure, but the question that remains is what to pay these new officers. The Union demand is that the existing rank differential be maintained by the end of the current contract. The City agrees that the lieutenants should be paid more than the firefighters but it wants the rank differential between firefighters and lieutenants to be less than the 11.45% differential specified in the current contract, at least for the duration of the prospective contract.

The City stated that the new lieutenants will not be hired until at least the end of this year or the beginning of next year based on the time lines currently being discussed. Moreover, because the lieutenant rank is new to the department, there are no trained personnel available to fill the positions. The City believes that the current department administration will be forced to provide training and supervision to the new lieutenants for some (extended) period of time. Consequently, the City contended the new lieutenants do not deserve the existing differential until they are fully conversant with their new positions.

The Union pointed out that the contract was written in such a way that the current captains might possibly see their rank differential fall from 11.75% to 10.00% under the City's proposal. The City responded to this concern by

indicating that the current captains would be “grandfathered” into the wage schedule with an 11.75% differential. In other words, the City agreed that there was no intention to lower the differential currently enjoyed by the existing officer corps.

During the mediation sessions prior to the hearing, the parties agreed to consider a step increase in the differential. That is, the City offered to increase the differential from 5% in 2002, to 6% in 2003, and to 7% in 2004. This would lead to higher compensation for the lieutenants as they gain greater seniority, i.e., greater efficiency, in the performance of their duties. The Union indicated willingness to consider such a plan. The differences then devolved to a disagreement over the size of the original differential and the amount of each step increase.

At this point it should be noted that the City testified that if the lieutenant differential was more than 5%, each higher rank would see an increase in its pay under existing contract language. The City argued that this was unwarranted because after the lieutenants are hired, trained, and fully operational on their new jobs, the existing ranks, especially the captains, may see some diminution of their work load.

The City also made a presentation about the state of its finances. The City never made an argument that it could not meet the economic demands of the firefighters, and it acknowledged that the union membership had been instrumental in helping to pass a fire levy. However, the Mayor did state that the general fund still continued to help pay for the fire department. She went on to

say, that the City's employment picture was somewhat murky because of the closing of the Goodyear mold plant and uncertainty surrounding MacTac because of its sale to a Finnish firm. The result is that the City believes that its financial condition is somewhat uncertain and that it must be prudent when making long term commitments to its employees.

Based on all of the testimony presented at the hearing, the Fact Finder believes that the City's offer to start the differential at 5% and increase it each year of the contract (this proposal was discussed at the mediation) is reasonable. There are two reasons for this conclusion. First, the contract between the IAFF and the City expired in April. Based on the current hiring projections, the Fact Finder believes that it is possible that the lieutenants will not be promoted until after the start of 2003. At that time the current contract will have approximately two years to run. After two years the parties will, most likely, revisit this issue; and there is some probability that the differential may be increased.

Second, the Fact Finder is convinced that the lieutenants will need some training time until they are fully conversant with the duties of their new positions. While a two year training period seems unlikely, a slightly lower wage during a "training/probationary period" is an accepted fact of life in many industrial agreements. Consequently, the Fact Finder believes that the new lieutenants are not being treated unfairly by receiving a smaller differential than the 11.75% current officers enjoy.

Finally, the Fact Finder is cognizant of the City's arguments regarding both its finances and the fact that the creation of the lieutenant rank and the

need to pay the lieutenants a rank differential will lead to a windfall for the current officers. In some ways the rank differential paid to the lieutenants is more costly than it appears on the surface. The combination of the uncertainty about the state of the City's industrial base coupled with the windfall that accrues to the current officers implies that the City should proceed cautiously with respect to this payment.

Finding of Fact: The new Lieutenant rank shall be paid a rank differential.

Because of 1) the training necessary to bring the lieutenants up to full efficiency, 2) the financial impact that the lieutenants' differential will have on the existing officers, and 3) the uncertainty surrounding the employment picture within the City, the rank differential should be less than the current differential paid to the existing officer corps.

Suggested Language: The wage schedule in Article XIV shall be amended to include the rank of lieutenant. The rank differential for 2002 shall be 5%, for 2003 the differential shall be 6%, and for 2004 the differential shall be 7%.

Issue: Article XIII: Hours of Work

Union Position: The Union desires to maintain the status quo, i.e., a fifty-two (52) hour work week.

City Position: The City wishes to reduce the work week to fifty-one and seven tenths (51.7) hours per week.

Discussion: The City argues that its proposed workweek will lead to greater efficiency for the department. The City also testified that the slight reduction in

the workweek will, over the course of a year, lead to a situation where the employees will work approximately two-thirds of a tour less than they currently work. The City stated that the move to a fifty-one and seven tenths (51.7) hour schedule was a win/win proposition. In addition, the City testified that the current fifty-two (52) hour schedule leads to occasions when the department is in violation of the Fair Labor Standards Act (FLSA), which causes the City to pay the employees for time worked over the FLSA maximum.

The Union demand for the status quo seems to be based on a desire by the employees to know precisely what their earned days off would be. The Union stated that under the proposed work schedule days off would change. The City countered this argument with the fact that days off would be scheduled according to seniority. The more senior employees would be able to schedule the days off of their choice. Less senior employees would, of course, have less choice.

The Fact Finder does not understand the Union's stance on this issue. The City is proposing a schedule that benefits the employees. While it is true that some employees will see their days off change under the proposed system, days off will be bid by seniority. In modern industrial relations, bidding for time off or other benefits by seniority is the standard. In addition, the City's desire to change the workweek to come into compliance with the FLSA is reasonable. Consequently, the Fact Finder believes that the City's position on this issue is reasonable.

Finding of Fact: The City is proposing a change in the workweek that benefits both parties.

Suggested Language: The language in Article XIII shall be amended to specify the new workweek of fifty-one and seven tenths (51.7) hours with a thirteen or twenty-six day cycle. Note: due to the difficulties involved with changing work schedules some lead time is needed for the change. That Fact Finder recommends that the change take place at the beginning of 2003. That is, the change should take place as close to January 1, 2003 as is practical.

Issue: Article XIII: Overtime Rate of Pay

Union Position: The Union demand is for the status quo, that is, overtime continues to be paid at the two thousand and eighty (2080) hour rate.

City Position: The City demands that the overtime rate paid for shift fill be calculated on a twenty-six hundred and eighty eight (2688) hour rate. The City argues that it should pay for overtime at the two thousand and eighty (2080) hour rate only when employees are called in for emergency situations.

Discussion: The City's argument is based on the fact that it is currently paying between \$400,000.00 and \$500,000.00 in overtime per year. The City stated that this is an exorbitant sum and that it can not afford overtime payments of this size. The City argues that when a firefighter is called in for shift fill, he/she often spends almost the entire shift at the station and sometimes does not respond to a fire, etc. In these circumstances, the City believes that overtime pay based on

the fifty-one and seven tenths (51.7) hour workweek is reasonable. The City believes that this change would save the department a significant amount.

The Union strongly objects to the City's demand. The Union presented numerous contracts from prior negotiations to illustrate that overtime has always been paid at the two thousand and eighty (2080) hour rate. In addition, the Union stressed the fact that the City to a large extent controls the overtime usage. For example, the Union pointed out that a significant portion of the total overtime payments go to the captains because they must work extra hours since the department is understaffed at the senior ranks. The Union argued that 1) it was not responsible for the overtime caused by staffing problems, and 2) these problems should be alleviated when the new rank of lieutenant is staffed. Consequently, the Union argues that its membership is being asked to pay for problems over which it has no control.

The Union's arguments on this issue are convincing. The data shows that the captains are paid a large percentage of the total overtime. The City also admits that some of these payments are the result of staffing problems, and it agrees that the addition of the lieutenants will ameliorate this problem. Overtime is a fact of life in fire departments. In this instance the City did not present any evidence that the overtime payments are the result of any actions of the Union membership. For example, there was no testimony that overtime is caused by an abuse of sick leave, etc. Consequently, the Fact Finder does not believe that the Union has control over the amount of overtime hours used in the department.

The City's suggested changes in overtime payment would work to the detriment of the firefighters and change a long standing practice. For the Fact Finder to recommend such a change, the City must present convincing evidence that the Union membership is somehow responsible for the overtime problems, or that the City has some inability to continue paying for overtime at the two thousand and eighty (2080) hour rate. The City did not meet its burden of proof in this case, and the Fact Finder cannot recommend the change sought by the City.

Finding of Fact: The City did not prove a need for changing the long standing practice to pay for overtime at the 2080 hour rate.

Suggested Language: The language in Article XIII, Section E, is unusual. In order to streamline the article, the Fact Finder recommends that the following language be inserted into the contract.

Article XIII, Section E. Overtime

Overtime, when authorized in advance by he department head or designated person, shall be compensated at one and one-half time (1 ½) the employee's hourly rate, including longevity pay, then in effect as contained in Article XIV and XV of this agreement. The hourly base overtime rate shall be calculated on the forty (40) hour week or 2080 hour work year basis as specified in articles XIV and XV. (Note: The Fact Finder is recommending that the sections of FLSA overtime should be stricken from the agreement.)

Issue: Article XV; D: Holidays

Union Position: The Union demands that all hours worked on a holiday be paid at time and one-half. The Union also rejects the City's demand to reduce the number of holiday hours earned by the firefighters.

City Position: The City wishes to reduce the amount of holiday hours earned by the firefighters. As a quid pro quo, the City offered to pay time and one half for all hours actually worked on a holiday.

Discussion: It must be noted at the outset that the proposed changes to the holiday article led to the most contentious discussion(s) during both the mediation sessions and the fact finding hearing. The Union contended that its membership has been accepting substandard wage increases for a number of years; and as payment for these raises, the firefighters accepted paid time off in the form of holidays, a personal day, and vacation time. Furthermore, the Union stressed that the firefighters are paid their straight time rate for working on holidays while all other City workers receive time and one-half. Therefore, as a matter of equity, the Union demands that all holiday hours worked by the firefighters be paid at time and one half.

The City disagrees with this analysis. The City argued that the Union's contention the Stow firefighters are paid less than firefighters in comparable jurisdictions is not correct. Therefore, the City rejects the Union's statement that the amount of holiday and vacation time off contained in the collective bargaining agreement is the result of trades of time for smaller than average wage increases. The City believes that the amount of paid time off is excessive and,

consequently, it put forth proposals to change both the holiday and vacation schedules found in the contract. The City recognizes that there must be a quid pro quo for these proposed changes; and as a result, it offered to pay for any hours worked on holidays at time and one-half.

Both parties presented the issues surrounding wages and paid time off as issues of comparability. While a complete discussion of the wage comparables must wait until wages are discussed, the Fact Finder believes that the data do not support a conclusion that the Stow firefighters are underpaid with respect to other jurisdictions. Furthermore, the data show that the amount of paid time off, especially holiday hours earned by the firefighters is excessive when compared to other departments.

The current contract provides that the firefighters receive three hundred and twelve (312) hours of holiday paid time off. That is, the firefighters receive twelve (12) tours off per year for holidays and a personal day. The City presented data from comparable jurisdictions including Cuyahoga Falls, Green, Barberton, Akron, Kent, Twinsburg, Fairlawn, and Tallmadge. The average number of holiday hours earned by these units is one hundred and sixty-four (164). These data show that the Stow contract is extremely generous in the provision of paid time off compared to other jurisdictions. The Stow firefighters earn almost double the average hours for holidays when compared to other jurisdictions.

The Union presented data from Macedonia, Cuyahoga Falls, Tallmadge, Kent, Twinsburg and Green in an effort to prove that the City's arguments are

overstated. Trying to portray the data in a more favorable light, the Union lumped holiday time off with Earned Days Off (Kelly Days) to show that the Stow firefighters are not out of line with respect to earned time off compared to other fire departments in the area. Metaphorically, this is mixing apples and oranges, and the Fact Finder believes the data show that the amount of holiday time off received by the firefighters is (much) more than the amount of paid time off received by any other firefighters in the area, regardless of what jurisdictions are used as the comparison group.

The firefighters recognize that their earned holiday time off is at the top of any comparables list. But, again, they argue that this is the result of a tradeoff for lower than average wage increases in prior years. The problem with this argument is that the data presented at the hearing do not support the conclusion that the firefighters are underpaid with respect to other departments.

The second question is, "What is the tradeoff for any recommended change in the amount of paid holiday time off earned by the firefighters?" The City offered to pay time and one-half for any hours actually worked on a holiday using the fifty-one and seven tenths (51.7) hour rate as the base wage. This would, according to the City figures, add approximately \$1,000.00 to the firefighters' wages. This works out to be an increase of between two (2) and three (3) percent to the firefighters' base wage. These figures are based on the City's assumption that the average firefighter works three or four holidays during the course of a year.

It is the Fact Finder's belief the City proved its contentions with regard to holiday earned time off. The data show that the firefighters are at the top of any comparables list, and in fact, are significantly higher than any unit in surrounding jurisdictions with respect to this benefit. However, the same data show that almost all other departments pay either a bonus or time and one-half for hours worked on holidays; the Stow firefighters do not receive any extra pay for hours worked on holidays. Therefore, in regard to pay for holiday hours worked they are at the bottom of any comparables list. Consequently, the Fact Finder recommends that the unit should receive time and one-half (based on the 51.7 hour rate) for any time actually worked, but receive less paid time off.

The remaining question concerns the number of hours earned per holiday. The data submitted by both parties show that the average number of hours earned on a holiday is twelve. The Fact Finder is recommending that for each holiday enumerated in the contract, the firefighters earn twelve (12) hours off. In addition, the Fact Finder is recommending that the personal day continue to be paid at twenty-four (24) hours. The result is that the firefighters will earn one hundred and sixty-eight (168) hours off for holidays. This is slightly greater than the average earned in comparable jurisdictions, but reasonable given the evidence presented at the hearing.

Finding of Fact: The Stow firefighters are currently earning an excessive amount of holiday hours compared to any other comparable jurisdiction. At the same time, the firefighters are paid less than comparable jurisdictions for hours actually worked on a holiday.

Suggested Language: Article XV, Section D.

Full-time fire fighting employees shall receive the following paid holidays to be paid at one and one-half times the employee's normal rate of pay for all hours actually worked on the holiday. For any holidays not worked the employees shall receive twelve (12) hours of earned time off paid at the employee's normal rate of pay. The employees shall receive twenty-four hours of earned time off for their personal holiday paid at their normal rate of pay. The normal rate of pay referenced above shall be based on the employees' standard fifty one and seven tenths (51.7) hour workweek. (Note: The Fact Finder recommends some analysis of the remaining language in Article XV, Section D to insure that it conforms to the recommendation put forth above.)

Issue: Article XIV; Wages

Union Position: The Union is demanding a thirteen percent (13%) wage increase over the three year term of the contract.

City Position: The City is offering ten percent (10%) over three years.

Discussion: The City has reached agreements with a number of its bargaining units for wage increases totaling ten percent (10%) over three years. The City believes that ten percent (10%) is reasonable based on 1) SERB data and 2) surveys of surrounding jurisdictions. That is, the City believes that a ten percent (10%) raise over three years is normal for unions throughout Ohio.

The Union is demanding thirteen percent (13%) over the life of the contract. The Union believes that its membership is paid less than other

comparable jurisdictions, and, therefore, is asking for raises greater than ten percent (10%) in an attempt to catch up to these other jurisdictions and overcome the lingering effects of substandard raises negotiated in the past.

The parties, therefore, base their wage demands on a comparison with other jurisdictions and with other bargaining units within the City. The question of what the data show about other comparable jurisdictions then becomes crucial. A Fact Finder is required to look at 1) external comparability, i.e., other jurisdictions that provide the same or similar services and 2) internal comparability, i.e., comparisons with other City bargaining units when formulating wage recommendations. In practice this means that neutrals always look at 1) percentage increases in the base rate negotiated by bargaining units in comparable jurisdictions, and 2) the size of wage increases granted to non-bargaining unit personnel and the raises negotiated by other bargaining units within a jurisdiction as a guide when formulating wage recommendations. After the data on raises is examined most neutrals will also look at the income earned by employees in other jurisdictions to determine if an equity adjustment is warranted in a particular situation. Therefore, the data from comparable jurisdictions is central to a neutral's decision making process.

Usually the parties debate over what constitutes a comparable jurisdiction and often each side attempts to handpick municipalities that provide support for their positions whether or not the jurisdictions in question really are comparable in any meaningful sense. Then, it is up to the neutral to decide what jurisdictions are indeed comparable. In this negotiation the situation is somewhat different.

The Union presented data from Macedonia, Cuyahoga Falls, Tallmadge, Kent, Twinsburg, and Green. The City presented evidence from Twinsburg, Fairlawn, Tallmadge, Akron, Kent, Barberton, Green, and Cuyahoga Falls. There was some discussion over the City's inclusion of Akron, but in general there is a remarkable similarity in the jurisdictions on the parties' lists.

The Fact Finder analyzed the data presented by the parties using a core list of comparable jurisdictions including Cuyahoga Falls, Tallmadge, Kent, Twinsburg, and Green, and does not believe that the data support the Union's contention that its membership is underpaid when compared to other external jurisdictions. The data do not show that Stow is the highest paying jurisdiction, but the numbers show that Stow is usually in the top two or three jurisdictions in terms of pay. This result is unchanged if the comparables list is expanded to include any or all of the other jurisdictions on either of the parties' lists.

Therefore, since 1) other Stow bargaining units have settled for ten percent (10%), 2) the data show that a ten percent (10%) increase is standard throughout Ohio, and 3) the parties' list of external comparables indicate that ten percent (10%) is in line with increases negotiated by unions in other jurisdictions in the surrounding area; the Fact Finder believes that the evidence dictates that a ten percent (10%) wage increase is reasonable.

However, in this case, the Fact Finder is recommending a slightly larger increase. The recommendation on holidays requires the Union membership to accept less earned time off than they previously enjoyed. The tradeoff is time and one-half for all hours worked. The Fact Finder is recommending an extra

.5% in the base rate as a further quid pro quo for the recommendation on holiday earned time. Therefore, the wage recommendation is for 10.5% over three years. It must be stressed that the Fact Finder believes that the ten percent (10%) offered by the City is reasonable; and absent the recommendation on holiday time worked, the Fact Finder would recommend ten percent (10%). However, given the fact that the recommendation on holiday time includes a decrease in earned hours, the Fact Finder is recommending a .5% addition wage increase.

Finding of Fact: The data show that the Stow firefighters are not underpaid when compared to either other Stow City employees or firefighters in comparable jurisdictions.

Suggested Language: Article XIV Wages

The wage scales shown in Article XIV shall be increased by 3.5% per year for each year of the proposed contract.

Issue: Article XV, Section C; Vacation Accrual

Union Position: The Union demand is to maintain the status quo in terms of vacation accrual rates.

City Position: The City desires to reduce the number of tours off for vacation time at the sixteen (16) and twenty-one (21) year levels from twelve (12) to eleven (11) and fourteen (14) to thirteen (13) tours respectively.

Discussion: The City contends that the current vacation schedule was put into effect when the employees were working fifty-six (56) hours a week. According

to the City's analysis, when employees are working fifty-six (56) hours per week, they should receive fifty-six (56) hours of vacation. Currently, the firefighters work fifty-two (52) hours per week, but they continue to accrue vacation time at a fifty-six (56) hour rate. The City claims that this accrual rate is excessive and, in some ways, unfair to other city employees.

The City is demanding that the vacation schedule for sixteen (16) and twenty-one (21) years be reduced by one (1) tour. The City argues that the reduced accrual rate is still above the rate at which other city employees accrue vacation time, but the City believes that the reduction it proposes will go a long way toward correcting the problem.

The Union for its part rejects this analysis. The Union claims that the vacation accrual rate was negotiated into the contract and that tradeoffs were made to get the present vacation schedule. In addition, the Union presented evidence that it claims shows that the Stow firefighters are not out of line with regard to this benefit when compared to other comparable jurisdictions.

The Fact Finder understands the City's position on this issue. However, the evidence presented at the hearing shows that firefighters with fifteen (15) years seniority earn between nine (9) and fourteen (14) vacation tours per year. The median number of tours earned is twelve (12), which is the number earned by the Stow firefighters.

The evidence also illustrates that firefighters with twenty (20) years seniority earn between eleven (11) and sixteen (16) tours per year. With twenty years seniority, a Stow firefighter earns fourteen (14) tours. Consequently, the

data do not support a conclusion that the members of the Stow Fire Department earn vacation time at a rate that is so out of line that the Fact Finder should recommend a change in the current practice.

Finding of Fact: The more senior members of the Stow Fire Department do accrue vacation hours at a somewhat higher rate than other city employees and some firefighters in comparable jurisdictions. However, the discrepancy is not large enough that the Fact Finder believes that there is a necessity to recommend a change in current vacation accrual rate.

Suggested Language: No change.

Issue: Article New: Drug Testing

Union Position: The Union rejects random drug testing language and believes that an employee should be tested for drug use only when the employer has probable cause to suspect an employee is using drugs.

City Position: The City demand is for the inclusion of random drug testing language into the contract.

Discussion: The City argued that random drug testing is standard in many contracts between municipalities and their employees. This is especially true in the case of public safety workers. In addition, the City stated that its citizens demand that public safety workers remain drug and alcohol free and that a drug testing provision in police and fire contracts helps assure the citizenry that both police officers and firefighters are not working while under the influence of controlled substances. Finally, the City stated that its Worker's Compensation

Insurance rates would be lower if there was a drug testing procedure in place throughout the City.

The Union objects to this provision based on a number of concerns. First, the Union argued that false positives often occur when employees are tested for drugs and that this information would stigmatize an employee until he/she is retested. Furthermore, the Union stated that currently there is a procedure in place that requires drug testing if the City can show probable cause for a suspicion that an employee is using alcohol or drugs. Next, the Union mentioned the embarrassment that employees who are being tested feel and stated that there was no reason to subject employees to this discomfiture. Finally, the Union stated that there is not currently nor has there ever been a drug problem in the fire department and, therefore, testing is unnecessary.

Drug testing is becoming the norm in public employment, especially in contracts between municipalities and safety forces. The prevalence of drug use in modern American society and the problems that can arise if a police officer or firefighter report to work under the influence have led most municipalities to include a drug testing procedure in their contracts. The presence of drug testing language, at a minimum, helps to reassure the taxpayers that they are not placing their safety in the hands of individuals who are performing at less than peak efficiency.

Furthermore, there is research showing that individuals who are under the influence of alcohol or drugs are more likely to be involved in on the job accidents, suffer injuries, etc.; consequently, insurance companies and/or

Workers Compensation Bureaus are demanding that drug testing provisions be included in labor agreements. The Fact Finder believes that the potential problems that might occur under a drug testing provision enumerated by the Union do not outweigh the benefits of the proposal.

Finding of Fact: Drug testing provisions are becoming the norm in labor agreements in Northeastern Ohio and throughout the nation.

Suggested Language: The parties discussed specific drug testing language during negotiations. Both sides agree that the proposed language is unobjectionable. The Fact Finder recommends that the agreed upon language be placed into the contract.

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this _____ day of September 2002 at Munroe Falls, Ohio.

Dennis M. Byrne,
Fact Finder