

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD 2003 SEP 12 A 10: 16

In Regard to the Matter of the Fact-Finding Between:

THE CITY OF TWINSBURG                    )  
  ) 02-MED-09-0954  
      -AND-                                    )  
  )  
INTERNATIONAL ASSOCIATION                )  
OF FIREFIGHTERS, LOCAL 3630            )

APPEARANCES:

For The City:

Richard Gortz                            Representative  
Richard Racwe                            Fire Chief  
James Hartung                            Assistant Fire Chief  
Kolette Woloszynek                      Director of Human Resources

For The Union:

Jim Astorino                            President N.O.F.F.  
Walter Jack Lewis, Jr.                 President, Local 3630  
John Knaus                                Lieutenant, Local 3630  
Kevin Luskiv                             Paramedic/Firefighter  
Mark J. Miller                            Paramedic/Firefighter

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BEFORE ALAN MILES RUBEN, FACT-FINDER

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**BACKGROUND:**

The Employer, the City of Twinsburg, exercises statutory and charter authority and responsibility, inter alia, for the provision of fire prevention and fire suppression services for its 17,000 residents and, under reciprocal assistance arrangements, for those in nearby communities as needed.

The Fire Department's eighteen Firefighter/Paramedics, four Lieutenants and two Fire Inspectors form a Bargaining Unit exclusively represented by the International Association of Firefighters, Local 3630. However, the Department's promoted Officers in the rank of Captain are excluded from the Bargaining Unit.

Prior to 1993 the Department was manned by part-time Firefighters. In that year the Department reorganized as a full-time Fire Department, and will approach "maturity" during the term of the pending successor Agreement.

The City and the I.A.F.F. are parties to a Collective Bargaining Agreement entered into as of January 1, 2000 for an initial term which expired on December 31, 2002.

Pursuant to the Contractual requirements, timely notices were given of the intent to modify or amend the Agreement, and negotiations proceeded looking towards the execution of a successor Agreement. The parties tentatively agreed on the provisions of the following Articles or Sections of Articles:

- Article 3 - Union Membership, Meetings and Dues;
- Article 10 - Printing and Supplying Agreement;
- Article 19, Section 19.01 - (Officer In Charge of  
Emergency Call Pay);
- Article 19 - (New Section)  
(Step 4 Lt. Pay for Firefighters Performing  
Duties of Fire Prevention Captain);
- Article 23 - Compassionate Leave;
- Article 27 - Protective Clothing and Safety;
- Article 37 - Longevity, and
- Article 38 - (Appendix A) Wages

The parties also tentatively agreed upon a three year term for the successor Contract (Article 41), and to carry forward and incorporate into the new Agreement, mutatis mutandis, all Articles and Sections of Articles from the 2000 Contract except for those set forth below.

The parties further tentatively agreed that the economic benefits of the new Contract would be retroactively effective to January 1, 2003.

Remaining unresolved were issues relating to the following Articles and Sections of Articles of the successor Agreement:

- Article 5 - Work Week;
- Article 7 - Seniority;
- Article 8 - Compensatory Time;
- Article 13 - Prevailing Rights;
- Article 16 - Citizen's Complaint Procedure;
- Article 18 - Arbitration;
- Article 19 - Working Out of Classification  
(Lieutenants Serving as Acting Captains);
- Article 20 - Tuition Reimbursement (Supplemental  
Paramedic Payment);
- Article 22 - Sick Leave;
- Article 26 - Health Benefits;
- Article 28 - Firefighter Safety and Health Training;
- Article 32 - Residency, and

## Article 42 - Holidays

The parties declared impasse in their negotiations, and the undersigned was appointed Fact-Finder by the State Employment Relations Board on November 29, 2002.

At the direction of the parties mediation sessions were held on June 10, 2003 and July 2, 2003 at the Twinsburg City Hall. The Fact-Finder was successful in resolving some, but not all, of the issues in dispute. As a result of mediation tentative agreements were reached with respect to issues involving Articles relating to mandatory overtime: Exclusion of Sick Leave from Overtime Calculations, (Article 5); Seniority, (Article 7); Compensation Time Bank, (Article 8); Prevailing Rights, (Article 13); Arbitration, (Article 18); Sick Leave, (Article 22), Health Benefits, (Article 26) and Safety and Health, (Article 28).

Consequently, there still remained unresolved proposals relating to:

Article 5 - (Trading of Times);  
Article 19 - (Working Out of Classification);  
Article 20 - (Paramedic Supplement Pay);  
Article 32 - (Residency Requirement), and  
Article 42 - (Holidays)

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

The parties' other proposals to add new provisions and to amend other Articles and Sections of the Articles of the 2000 Contract were withdrawn. Consequently, all Articles and Sections of Articles which have not specifically referred to above, and which are not discussed below are to be carried forward and incorporated without substantive change in the new Agreement, and all proposals for Contractual amendments and the addition of new Sections or Articles that have not been so referred to or discussed are to be deemed as having been abandoned.

The parties directed the holding of an evidentiary hearing on the remaining unresolved issues on July 20, 2003.

Timely in advance of this evidentiary hearing the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code Section 4117.14(C)(3)(a).

In making his recommendations upon all of the unresolved issues the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable

work, giving consideration to factors peculiar to the area and classification involved;

"(c). the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). the lawful authority of the public employer;

"(e). the stipulations of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

#### CONTRACT PROVISIONS AT ISSUE:

##### **I. Article 5, Section 5.04 - (Trade Times)**

##### The 2000 Contract:

Article 5, Section 5.04 of the expired Agreement provided:

"Trade times are limited to four (4) hour increments. Trade times must be completed by 12:00 a.m.

"No trade can result in more than forty-eight (48) hours of scheduled shift time to be worked by any individual involved in the trade time.

"All requests for trade time are subject to operational needs and must specify the reason for the trade time. Failure to establish a reasonable need for a trade time will be grounds for rejection. Trade time to permit an employee solely to work another job or perform duties related to outside employment (volunteer or paid) shall automatically be denied.

"A firefighter may not be involved in more than twelve (12) trades per year."

**The Union's Proposal:**

The Union proposes to eliminate the requirements that trades be for a minimum of four hours, that they be completed by 12:00 a.m. and that the reasons for the trades be given. Further it seeks to add a new provision giving employees "the right to work their scheduled Kelly Day and use another day within the twenty-one day cycle as their Kelly Day."

The Union insists that Fire Departments in comparable communities - Middleburg Heights, Macedonia, Bedford, Bedford Heights, Solon, Fairview Park, Bay Village, and Aurora - have no such restrictions.

The Union asserts that there is no reason to limit shift exchanges to increments of four hours, and therefore proposes that Article 5, Section 5.03 be amended to read "employees shall have the right to exchange shifts in hour for hour increments provided the City incurs no cost as a result of the trade."

**The City's Proposal:**

The City proposes to allow the Shift Captain to approve trades "subject to review by the Chief or the Assistant Chief".

In support, the City urges that the Captain is in the best position to determine whether a proposed trade allows the shift affected to maintain needed levels of experience and skills.

The City opposes the Union's proposals on the grounds that any increase in the number of trades would be disruptive of

shift operations, and the exchange may result in a replacement not being able to perform the work of the Firefighter being relieved.

As to the midnight trade deadline, the City's concern is that were Firefighters to enter the Station after that time to effect a trade the sleep of fellow Firefighters would be disrupted.

**The Fact-Finder's Analysis and Findings:**

Requests to participate in a trade of time should be subject to Managerial approval in order to assure that every shift complement possesses all necessary skills and experience. The requirement for approval of trade requests was first introduced in the expired Contract. There is no evidence that there has been a problem obtaining approval for trade requests, and delegating the approval function to the shift Captain, who is in the best position to determine shift needs, makes good sense.

Accordingly, the Fact-Finder will recommend adoption of an addition to the last paragraph of Article 5, Section 5.04 to read as follows: "The shift Captain may approve the trade subject to review by the Chief or Assistant Chief", but the Fact-Finder will also recommend adoption of the additional language that such approvals shall not be unreasonably withheld.

Turning to the Union's request to allow employees to exchange shifts in hourly increments so long as no overtime costs are generated, the Fact-Finder notes that a minimum hours requirement for time trades is not found in Contracts entered into by community Fire Departments said by the Union to be comparable to that of Twinsburg.

So long as trades are subject to approval of the shift Captain the City is protected against unnecessary disruption and confusion over manning complements. Accordingly, the Fact-Finder will recommend that the Union's proposal to allow trades in minimum one hour increments be adopted.

Coming to the Union's request to eliminate the requirement that trades must be completed by 12:00 a.m. in order not to interrupt the sleep of fellow Firefighters on the shift, the Fact-Finder believes that this concern is well within the control of the members of the Bargaining Unit, and is quite properly addressed internally as an appropriate matter of self-policing. The Fact-Finder perceives that certain "group dynamics" will take place as will assure that such annoyances do not occur.

For this reason the Fact-Finder will recommend elimination of the existing limitation that trade times be completed by midnight.

The Fact-Finder finds appropriate and recommends that Article 5, Sections 5.03 and 5.04 be amended to read as follows:

"Section 5.03: Employee shall have the right to exchange shifts in increments of one hour provided the City incurs no cost as a result of the trade.

"Section 5.04: Trades must be made in increments of one hour, with a one hour minimum.

"No trade can result in more than forty-eight (48) hours of scheduled shift time to be worked by any individual involved in the trade time.

"All requests for trade time are subject to operational needs. The shift Captain may approve the trade subject to review by the Chief or Assistant Chief, but no approval shall be unreasonably withheld."

## **II. Article 19 - New Section 19.03 - Acting Captain's Pay**

### **The 2000 Contract:**

Article 19 - "Working Out of Classification" as it appeared in the expired Contract provided:

"19.01. An Employee assigned and performing the duties of an Officer-In-Charge of an emergency call shall be reimbursed at the pay rate of \$1.25 per hour, [to be increased to \$1.50 per hour in the 2003 Contract] in addition to his regular pay, for each hour that person works while in charge of that call until return to the station.

"19.02. Whenever a non-probationary bargaining unit firefighter is assigned to perform the duties of a Shift Lieutenant, that firefighter will be paid at the current Step 4 Lieutenant pay rate in effect at that time for all hours worked while in that position.

"19.02.1. The firefighter in the acting Lieutenant position will be responsible for the normal day to day functions of a Shift Lieutenant."

**The Union's Proposal:**

The Union proposes that a New Section 19.03 be added to provide that "the Lt. working out of classification in the shift Captain position shall receive the Captain's rate of pay."

The Union argues that employees who are required to work in a higher rank should receive the rate associated with the higher rank, hour for hour.

**The City's Proposal:**

The City proposes to add a New Sections 19.03 to read as follows:

"Whenever a Lieutenant is assigned out of classification in the shift Captain for more than thirty (30) consecutive calendar days, the Lieutenant will be paid at the Step 4 of the Captain's pay for all hours so assigned."

The City proposes to add a corresponding new Section 19.03.1 as follows:

"The Lieutenant working out of classification in the shift position will be responsible for the normal day-to-day functions of a Shift Captain, except for adjustment of grievances."

The City contends that Lieutenants are trained to perform all of the operational duties of a Captain, and, the only additional duty that they would be required to perform in the

absence of a Captain would be the scheduling of shifts which takes place on a monthly basis.

The City then seeks to limit "Officer-in-Charge" pay to "Firefighters" rather than to all "employees".

**The Fact-Finder's Analysis and Findings:**

The job description for a Lieutenant Firefighter II, Paramedic is summarized in part as follows:

"To perform responsible management, technical and administrative work in commanding and coordinating the Fire Suppression, EMS and Training activities, to provide responsible and technical staff assistance, and to perform related duties as assigned. Directly supervises EMS shift personnel and takes charge at the scene of Fire and EMS Calls by performing the following duties:

"Essential duties and responsibilities include the following. Other duties may be assigned.

"Serve as an assistant to the Shift Commander, to manage and to direct a combination of the following programs as assigned: maintenance of equipment, inventories, training, radio systems, Standard Operating procedures and Standard Operating Guidelines, physical fitness, public education, pre-incident planning, safety, disaster planning, mapping, computer applications, community relations, Emergency Medical Services (EMS).

"Directly supervise shift staff assigned to EMS duties in all areas of personnel including, providing technical support, conducting multi-Company drills, developing and implementing policies and procedures, conducting performance evaluations for shift firefighters, overseeing employee training, and investigating shift accidents and complaints.

..."

The position description for a Captain Firefighter II contains, inter alia, this summary:

"To perform responsible management, technical and administrative work in commanding and coordinating the Fire Suppression, Inspection, Prevention and Training activities, to provide responsible and technical staff assistance, and to perform related duties as assigned. Directly supervises shift personnel and takes charge at the scene of Fire and EMS Calls by performing the following duties:

"Essential duties and responsibilities include the following:

"Serve as a Shift Commander, to manage and to direct a combination of the following programs as assigned: maintenance of facilities, equipment, and fire hydrants, inventories, vehicle specifications, training, assist with promotional examinations, radio systems, Standard Operating Procedures and Standard Operating Guidelines, physical fitness, public education, pre-incident planning, recruiting, safety, disaster planning, mapping, computer applications, community relations, Emergency Medical Services (EMS).

"Supervise shift staff in all areas of personnel including, providing technical support, conducting multi-Company drills, developing and implementing policies and procedures, conducting performance evaluations for shift lieutenants, overseeing employee training, and investigating accidents and complaints.

...."

The City argues that Lieutenants are trained to perform all of the Captains' day-to-day operational duties. Thus, the "Float Lieutenant" serves as Acting Captain as part of his regular duties as well as filling-in for a Shift Lieutenant who is off-duty on a Kelly Day. The Captain, however, is not a

member of the Bargaining Unit, and it is only the Captain's "Managerial" duties that Lieutenants do not perform. These Managerial duties include the making of budgets, the scheduling and supervising of shifts, the evaluation of the performance of Lieutenants, the recruiting of personnel, the verifying that standard operating procedures are up-to-date and the chairing or participating in committee meetings concerned with the purchasing of supplies and the setting-up of training schedules.

According to the City, Lieutenants regularly perform supervisory duties, but it is only when the Captain is absent at the time when the monthly shift schedules must be made-up, that the Lieutenants actually perform any of the Captain's Managerial functions.

Since schedules are made a month in advance, the City concludes that it is only when a Lieutenant serves as Acting Captain for a period exceeding thirty days that the Lieutenant would be required to step-in and assume responsibility for making shift schedules, and it is, therefore, only at that point a Lieutenant should be eligible to receive the Captain's pay.

Furthermore, the City contends that even when Lieutenants act as Captains in multi-alarm fire situations, they are merely following procedures already set-up by the Captain, and have studied the procedure in connection with promotional tests.

The Union counters with a list of differences between the two ranks. Thus, at a fire scene, it notes that while a Captain is responsible for all personnel and the placement of all apparatus, a Lieutenant is responsible for his immediate crew or, if serving as the Sector Officer, for relaying orders to other crews, and the placement, as ordered, of one vehicle. With respect to all other responsibilities, the Lieutenant may offer assistance, but the decisions remain the prerogative of the Captain.

Further, the Union observes that in each instance when an employee performs work of a higher classification the employee receives an upgrade in compensation for all time spent acting in the higher rank. So it is that when a Firefighter performs the duties of an Officer-In-Charge of an emergency call, he receives (under the 2000 Contract) an additional \$1.25 for each hour spent while in charge of the call. Whenever a Firefighter performs the duties of a Shift Lieutenant he is paid at the Step 4 Lieutenant pay rate in effect at the time. (Firefighters serve as Acting Lieutenants so that there are always two Officers on duty on a given shift). And, when (under the 2003 Contract) a Firefighter is assigned to perform the duties of a Fire Prevention Captain, the Firefighter is paid at Step 4 of the Lieutenants pay rate for all hours he is assigned.

The City's proposal to allow Lieutenants to receive Captain's pay after thirty days of service as an Acting Captain is meaningless, the Union states, because there has never been an occasion where a Captain has been on leave for that length of time. The Union concedes, however, that as the longevity of the Captains increases, so will their vacation allowance, and it is likely that, in the future, Captains will be on leave for thirty days or longer.

The Fact-Finder notes that in most cases where other City employees work out of classification, they receive a pay differential. Thus, the Contract between the City and the Ohio Patrolmen's Benevolent Association offer Patrol Officers who perform the duties of an Officer-In-Charge an additional \$2.00 per hour - the equivalent of the Sergeant's rate - for each hour worked. (But, Lieutenants do not receive additional compensation when they serve as Acting Captains).

Maintenance employees under the Agreement between the City and AFSCME, Ohio Council 8, Local 1313, who are assigned to work in a higher classification for twenty or more hours in a workweek are paid at the higher rate for the entire week.

The norm, both in public and private sector employment, when employees are called upon to do the work of a higher classification, is to pay the employee at the rate of the higher compensated classification. So in the present case, in each

other situation where a Firefighter is called upon to perform the duties of a higher classification, he receives enhanced wages.

The Fact-Finder sees no reason not to follow the same policy when Lieutenants carry-out the functions of the non-Bargaining Unit Managerial classification of Captain.

The difficulty, as the City points out, is that the operational responsibilities of the two classifications overlap significantly. Thus, when a Lieutenant serves as Acting Shift Captain, he is typically performing those duties which he is already trained to perform. It is only when he called upon to perform those Managerial duties peculiar to the Captain's rank - which on the record before the Fact-Finder, appear to be limited to preparation of the monthly shift schedule - that the Lieutenant should be paid at the Captain's rate.

But, the City's proposal would allow Captain's pay only when a Lieutenant serves for a period longer than thirty days, in which case the responsibility for making-up the schedule is certain to vest.

Since schedules are made at least two weeks in advance of the month to which they relate, it would appear, following the City's logic, that Lieutenants who serve as Acting Captain for a continuous period of more than fourteen calendar days before the last day of any month will be responsible for scheduling, and

therefore entitled to the additional compensation. The Fact-Finder therefore finds that Lieutenants who serve as Acting Captain for more than two weeks prior to the last day of any month should be entitled to receive Captain's pay.

Furthermore, the Fact-Finder believes that some tribute must be paid to the additional operational responsibilities assumed by a Lieutenant who serves as Acting Captain or "Officer-In-Charge" in the case of an emergency call-out. Thus, the Fact-Finder will recommend that Lieutenants receive the Captain's rate of pay, as fixed from time-to-time by the City, for each hour the Lieutenant serves in this capacity.

**THE FACT-FINDER'S RECOMMENDATIONS:**

The Fact-Finder finds appropriate and recommends that Article 19 be revised and incorporated into the successor Agreement as follows:

"19.01. A Firefighter assigned and performing the duties of an Officer-In-Charge of an emergency call shall be reimbursed at the pay rate of One dollar and fifty cents (\$1.50) per hour, in addition to his regular pay, for each hour that person works while in charge of that call until return to the Station.

"19.02. Whenever a non-probationary Bargaining Unit Firefighter is assigned to perform the duties of an Shift Lieutenant, that Firefighter will be paid at the Step 4 Lieutenant pay rate in effect at that time for all hours worked while in that position.

"19.02.1. The Firefighter in the Acting Lieutenant position will be responsible for the normal day-to-day functions of a Shift Lieutenant.

"19.03. Whenever a Lieutenant is assigned out of classification in the Shift Captain position for fourteen (14) or more consecutive calendar days immediately preceding the last day of any month, the Lieutenant will be paid at the Step 4 Captain pay rate in effect at that time for all hours so assigned.

"19.03.1. The Lieutenant working out of classification in the Shift Captain position will be responsible for the normal day-to-day functions of a Shift Captain, except for adjustment of grievances.

"19.04. Whenever a Lieutenant is assigned to, and performs, the duties of a Captain or Officer-in-Charge in an emergency call-out the Lieutenant will be paid at the Step 4 Captain pay rate in effect at that time for all hours the Lieutenant works as Captain in charge of the call-out until return to the Station.

"19.05. Whenever a non-probationary Bargaining Unit Firefighter is assigned to perform the duties of a Fire Prevention Captain, the Firefighter will be paid at Step 4 of the Lieutenant's pay in effect at that time for all hours so assigned."

### **III. Article 32 - Residency**

#### **The 2000 Contract:**

Article 32, Section 32.01 of the expired Contract provides:

"Employees must reside within a twenty-five (25) mile radius extending from the City limits of Twinsburg, Ohio."

#### **The Union's Proposal:**

The Union seeks to extend the radius to thirty (30) miles in order to expand the housing stock opportunities for Firefighters.

#### **The City's Proposal:**

The City insists upon maintenance of the twenty-five (25) mile limitation in order to minimize the report time for off-duty Firefighters in the case of emergency call-ins.

**The Fact-Finder's Analysis and Findings:**

The evidence of record does not indicate the extent of difficulty, if indeed any exists, in finding suitable housing within the radius of twenty-five miles from the City limits.

The City contests the extension of that radius because of the difficulty in reaching off-duty Firefighters and Lieutenants in call back situations. During the first six months of 2003, the City points out, there were ten general alarms when every member of the Department was subject to call-in, and twenty-two district call-backs when all off-duty Firefighters and Lieutenants living in the City or the surrounding Township were subject to call-in.

The Union rejoins that, if needed, the resources of other communities might be tapped under the reciprocal automatic assistance system in effect, and that increasing the distance from home to the Station by five miles, or approximately five minutes, would not make a material difference because those who live twenty-five miles away would normally take at least twenty-five minutes to respond and would ordinarily arrive on the scene too late to be of effective assistance.

The City's point is that as the residency limits expand, and Firefighters move further from the City, the pool of Firefighters immediately available for call-backs shrinks, and an undue burden is placed upon those who are within the City or close thereto to respond to such calls. Indeed, the City points out that the pagers with which Firefighters are equipped have a limited range, and cannot be depended upon to reach those who may be thirty miles distant.

The Union also argues that Patrol Officers are allowed to reside within a thirty-five mile radius from the City limits, and Firefighters should be given equal treatment. However, the City asserts that in contrast to the frequency of Firefighter call-outs, there has been only one general call-out of Police Officers as far as the memory of the City witnesses extended. Consequently, the need for Firefighters to respond to call-backs is much greater.

The Fact-Finder finds no persuasive reason to expand the geographic area within which Firefighters may reside. Allowing Firefighters to move further from the City effectively burdens those who live within the City or adjacent thereto to respond to call-ins. Indeed, as the City has noted, the existing communication system may not even be able to reach members who live at greater distances in the event of a call-out emergency.

**THE FACT-FINDER'S RECOMMENDATIONS:**

The Fact-Finder finds appropriate and recommends that Article 32 be retained without change and incorporated into the successor Agreement.

**IV. Article 42 - Holidays**

**The 2000 Contract:**

Article 42, Section 42.01 of the expired Contract provides:

"42.01. In lieu of all City holidays, all members assigned to Fire Suppression shall be granted five (5) tours of duty off with pay. All holidays shall be taken in accordance with existing Departmental standards. All employees who actually work the full shift (i.e. 24 hours) on one of the following holidays, New Year's Day, Thanksgiving, Day after Thanksgiving, Christmas Eve, Christmas Day, shall be paid time and one-half for twelve (12) of those hours."

**The Union's Proposal:**

The Union proposes to expand the number of holidays for which premium pay is available to employees who have been scheduled to work. It would add Independence Day and Labor Day to the list effective in 2003, Memorial Day and Veteran's Day in 2004 and Presidents Day and Martin Luther King Day in 2005 thereby increasing the number of holidays carrying premium pay for work performed from five to eleven over the term of the successor Contract. The Union proposes that the premium pay for all of eleven of those assigned holidays be set at time and one-half for all hours worked.

The Union also seeks to allow Bargaining Unit members to take holidays time-off in twelve hour or twenty-four hour increments.

In support of its proposal the Union asserts that all of the other City employees receive premium pay for all hours worked on designated holidays, and the number of designated holidays sought matches that already accorded the Patrol Officers by the City.

Further, the Union observes that Firefighters in what it terms as "surrounding communities", (with the exception of Broadview Heights), receive one and one-half times the straight time rate of pay, for all hours worked on designated holidays.

**The City's Proposal:**

The City is amenable to awarding Bargaining Unit members the same eleven premium pay holidays on the same phase-in timetable as it has made available to Patrol Officers.

The City also proposes to provide for the scheduling of holiday time-off as follows:

"42.02. A minimum of four (4) holidays for the year must be scheduled in the previous December, at the time Vacation is scheduled. Employees who have unscheduled holidays by December 1 of the year in which the holiday falls, shall not take such holidays at any time which causes overtime. Holidays not used by the end of the year are forfeited."

However, it denies that all of its employees receive time and one-half for all holiday hours worked. Thus, Police Officers work who twelve hour shifts receive time and one-half pay only for eight hours. With the exception of members of the Police and Fire Departments, City employees are not scheduled to work on holidays. Accordingly, the City is willing to offer time and one-half pay on the additional designated holidays only for eight hours.

**The Fact-Finder's Analysis and Findings:**

The Union proffers Aurora, Bedford, Bedford Heights, and Solon as comparable "surrounding communities" for purposes of comparing the holiday benefits enjoyed by Twinsburg Firefighters.

Aurora does compensate employees working on designated holidays at one and one-half times the regular rate of pay for all hours worked. However, there are only five such designated holidays.

Similarly, although Solon offers time and one-half the base rate of pay for all hours, worked, this premium rate is available only for three holidays.

On the other hand, Bedford Heights provides one and one-half times the regular rate of pay for all hours worked on eleven recognized holidays. Bedford does so for all hours worked on fifteen holidays, and Macedonia offers the time and

one-half rate for all hours worked on twelve designated holidays.

Twinsburg's agreed upon schedule of eleven premium pay holidays which at present provide time and one-half pay for only twelve hours worked falls midway between the other four communities.

The City opposes paying Firefighters at the time and one-half rate for all hours worked because the Firefighters schedule calls for a twenty-four hour work day, rather than the twelve hour shift schedule applicable to Patrol Officers or the eight hour day established for all other employees. Paying time and one-half for all hours worked on the eleven designated holidays would generate, so the City calculates, a 450% increase in Firefighters' holiday pay.

The City does not argue "inability to pay", and did not introduce comprehensive financial reports. It did supply piecemeal data indicating a slight decrease in revenues during 2002, and a budget predicated on the expectation of a \$1.5 million decline in 2003.

The Fact-Finder is not persuaded that it is necessary to provide Firefighters, in light of the current economic circumstances and the demands upon Twinsburg's presently stagnant revenue stream, with twenty-four hours of premium pay. On the other hand, the City's offer of premium pay for only the

first eight hours of holiday work on the six additional designated holidays is too meager to reach a comparative fairness level.

The purpose behind awarding premium pay to employees who are scheduled to work on designated holidays, particularly those traditional family holidays such as Thanksgiving and Christmas where special events are normally planned, is to compensate employees for loss of the opportunity to share in these special occasions, and discourage absenteeism.

The Fact-Finder believes that it is sufficient for purposes of the successor Contract, in light of the other economic benefits agreed to by the parties or recommended by the Fact-Finder, to provide for twelve hours of premium pay to Firefighters who work a shift on any of the designated holidays.

The payment of time and one-half for twelve of a twenty-four hour holiday shift seems fair compensation for the lost opportunity, and should provide an adequate incentive for employees to report for work as scheduled.

As to the Union's request that all holiday time-off be taken in either twelve hour or twenty-four hour increments, neither party addressed the issue with an evidentiary presentation. Nonetheless, the Fact-Finder observes that taking holidays in less than twenty-four increments complicates scheduling problems. These, however, may be minimized if not

avoided, by providing that twelve hour increments may be taken only with the approval of the Captain subject to review by the Assistant Chief or Chief.

The Union made no opposing presentation on the City's proposal for holiday scheduling. The Fact-Finder will therefore recommend its adoption.

**THE FACT-FINDER'S RECOMMENDATION:**

The Fact-Finder finds appropriate and recommends that Article 42 be amended and incorporated into the successor Agreement as follows:

"42.01. In lieu of all City holidays, all members assigned to Fire Suppression shall be granted five (5) tours of duty off with pay. All holidays may be taken in increments of twenty-four (24) hours, or in increments of twelve (12) hours with the approval of the member's Shift Captain subject to review by the Chief or Assistant Chief and otherwise in accordance with Departmental standards. All employees who actually work the full shift (i.e. 24 hours) on one of the following holidays - New Year's Day, Thanksgiving, the Day after Thanksgiving, Christmas Eve and Christmas Day - shall be paid time and one-half for twelve (12) of those hours. In addition to the above, starting in July, 2003, employees who work a full shift on either or both of the Independence Day and Labor Day holidays shall also be paid time and one-half for twelve (12) of those hours. In Calendar Year 2004 in addition to all of the above, employees who work a full shift on either or both of the Memorial Day and Veteran's Day holidays shall be paid time and one-half for twelve (12) of those hours. In Calendar Year 2005, in addition to all of the above, employees who work a full shift on either or both of the Martin Luther King Day and President's Day holidays shall be paid time and one-half for twelve (12) of those hours.

"42.02. A minimum of four (4) holidays for the year must be scheduled in the previous December, at the time Vacation is scheduled. Employees who have unscheduled holidays by December 1<sup>st</sup> of the year in which the holiday falls, shall not take such holidays at any time which causes overtime. Holidays not used by the end of the year are forfeited."

## **V. Article 20 - Tuition Reimbursement**

### **The 2000 Contract:**

Article 20 of the expired Contract provided as follows:

"20.01. The Employer will reimburse all Employees for any costs incurred for books, fees, and tuition upon successful completion of courses related to the fire service area and for all courses necessary to complete degrees in fire service areas with advanced approval of the City. Such reimbursement shall not exceed \$1,000.00 per year. An Employee shall only be reimbursed if he obtains a grade of "C" or better.

"20.02. Employees must follow the rules established by the City for reimbursement of expenses. Expenses without a receipt, submitted in an untimely manner, or that do not comply with City procedures shall not be paid."

The Union proposes to eliminate the requirement in Section 20.02 for submission of receipts in order to obtain approval for tuition reimbursement, and to substitute a new Section 20.02 as follows:

"The Employer will compensate all employees annually with \$750.00 for maintaining Paramedic Certification. Employees shall not be required to submit receipts for any tuition for approval."

The Union asserts that its proposal is justified (1) because Firefighters who are certified as Paramedics in many jurisdictions receive special "Paramedic Certification pay", and (2) in order to equilibrate Firefighter total compensation with that of the Police Patrol Officers, and obviate a disparity which arose because of a 2% increase in the "Step 6" compensation provided in the 2000 Police Contract.

**The City's Proposal:**

The City rejects any additional payment to Firefighters for maintaining their Paramedic Certification. It notes that all Firefighters have to maintain their Certification in order to keep their employment. Just as Police Officers do not receive firearm proficiency pay for renewing their firearm certifications, the City is unwilling to pay extra for the license which a Firefighter must have in order to keep his job.

The Union's proposal, the City concludes, is nothing more than a disguised demand for a 5.5% pay raise, 1.5% more than tentatively agreed upon.

**The Fact-Finder's Analysis and Findings:**

At the evidentiary hearing, the Union candidly acknowledged that its request for a Paramedic pay supplement was designed to achieve parity with a 2% base wage increase granted in 2000 to Patrol Officers with five years of service. Article 21, Section 2 of the City's 2000 Contract with the Ohio Patrolmen's

Benevolent Association covering Patrol Officers and Sergeants provided:

"Section 2. Effective January 1, 2000, employees with sixty (60) months of service or who otherwise are at the top step of the pay range, shall receive a longevity step increase of two percent (2%) of the employee's base wage. This longevity step increase shall be in addition to the across-the-board wage increase and is reflected in the pay rates of Step 6 in Article 22. Such longevity step increase shall be added prior to the across-the-board increase."

The upshot of this is that the top rate for Patrol Officers, reached after five years of service, was effectively increased by 6% in 2000. No such comparable adjustment to the top step for Firefighters was negotiated in their 2000 Contract.

The difficulty with the Union's position is that the evidence fails to support any history of "parity" between the base salaries of Firefighters and Police Officers. Thus, under the 1997 Contract the Firefighter's base wage rate yielded in the first year, annual compensation of \$40,909.00, or some \$196.00 more than that paid to Police Officers. The differential increased in 1998 to \$203.00 and further increased in 1999 to \$210.00.

The pay differential swung in favor of the Patrol Officers in 2000 because they were successful in negotiating a Contract containing the additional 2000 top step pay increase. Patrol Officers annual base salary exceeded that of Firefighters by

\$689.00 in 2000, and the differential increased to \$738.00 in 2002.

Not only is there no history of base wage rate parity, but neither is there a history of equivalence of longevity schedules between the two services. Here, Firefighters have had and still retain an advantage. Whereas after six years of service Police Officers are scheduled to receive an annual lump sum allowance of \$584.00, Firefighters receive \$594.00, \$10.00 more. The longevity payment schedule for both services increases each year through twenty years of service, and the disparity in favor of the Firefighters increases in each of those years. Thus, after twelve years of service Police Officers receive an annual supplement of \$1,167.00, while the Firefighters receive a total of \$1,242.00 or \$75.00 more. After twenty years of service Police Officers annual longevity allowance reaches \$1,944.00 while that of the Firefighters amounts to \$2,106.00, or \$162.00 more. Over the twenty year period of the longevity schedules, the aggregate payments made to Police Officers amount to \$18,959.00, compared to \$20,250.00 for the Firefighters, representing an overall differential in favor of Firefighters of \$1,291.00.

The fact of the matter is that the labor market for Police Officers differs from that for Firefighters. Their respective qualifications, training and duties, are, of course, dissimilar.

In consequence, there does not have to be any necessary correspondence between the wage rates offered to these two occupations.

As the City points out, although a number of communities pay Police Officers a firearm proficiency allowance, Twinsburg does not because holding a firearm license is a condition of Police Patrol Officers employment. Similarly, the City argues, Firefighters should not be given a premium for maintaining the Paramedic Certification they must hold in order to keep their jobs.

The Union nevertheless contends that the Fire Departments in cities it deems comparable offer Paramedic pay in addition to regular wages.

At this point in its evidentiary presentation the Union proffered a group of forty-one allegedly comparable communities,<sup>1</sup> all of which offer Paramedic pay ranging from a low of \$650.00 a year to \$3,000.00, with a median annual supplement of \$1,500.00. Thirty-one of the forty-one communities mentioned are located within Cuyahoga County. Seven of the forty-one are from Lake County, and one each are from Geauga, Summit and Wayne Counties.

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<sup>1</sup>The Fact-Finder observes that the identity of the communities the Union deems comparable to Twinsburg varies depending upon which of its proposals the Union wishes the Fact-Finder to recommend.

Other than the fact that all of these communities offer Paramedic pay, there does not appear to be any similarity. Consequently, the Fact-Finder is unable to reach the conclusion that they are comparable to Twinsburg in any relevant characteristic - labor market identity, number of residents, size of Fire Department, amount of revenue, sources of tax base and other indicia of ability to pay. Nor is there any evidence as to how many require maintenance of a Paramedic license as a condition of employment, and how many do not require their Firefighters to hold Paramedic Certifications.

The Union also compiled a "total pay" comparison of fifty-two communities, (adding another eleven to the previous compilation of cities offering supplemental Paramedic pay) which listed Twinsburg's rank as fortieth in the grouping. The "total pay" statistics were based on 2002 data, and included the top base rate, Paramedic pay, "other pay" and "average" longevity payment. But the addition of the seven new communities from Cuyahoga County - Shaker Heights, Bedford Heights, Westlake, Euclid, Parma, Cleveland and East Cleveland and one each for Lake County (Willoughby); Medina County (Brunswick); Portage County (Aurora) and Ashtabula County (Geneva) does not validate the comparability of the cities selected. If anything, it heightens the internal dissimilarities.

A Benchmark Report of September 5, 2003 compiled by the State Employment Relations Board Clearinghouse provided Firefighter compensation information on cities with populations comparable to Twinsburg, ranging between 10,000 and 35,000, and located in Summit and the adjacent Counties of Cuyahoga, Geauga and Portage. These parameters yielded four communities - Barberton, (Summit County), Bay Village (EMT or Paramedic) and Berea, (Cuyahoga County) and Ravenna, (EMT or Paramedic) (Portage County) - whose Firefighters are required to hold EMT Certifications, and eight Cities - Bay Village, Lyndhurst, Rocky River, University Heights and Westlake, (Cuyahoga County); Greene and Tallmadge (Summit County), and Ravenna (Portage County) who require Firefighters to have Paramedic Certifications. The top step 2003 base wage rate ranged from a low in Ravenna of \$43,935.00 and increased to \$46,316.00 in Greene, \$48,447.00 in Baberton, \$50,260.00 in Tallmadge, \$51,475.00 in Berea, \$52,942.00 in Bay Village \$54,625.00 in Westlake, \$54,863.00 in University Heights, and to a high of \$56,841.00 in Lyndhurst.

Outside of Cuyahoga County, Twinsburg's agreed upon 2003 top step base wage rate of \$50,775.00 not only appears comparable to those of communities in Portage and Summit Counties, it is higher.

The same Benchmark Report shows the 2003 top step base wage rate of Firefighters not holding EMT or Paramedic Certification in cities in Portage and Summit Counties to be significantly lower than that available in Twinsburg, viz. \$45,687.00 in Aurora (Portage County), \$48,670.00 in Kent (Portage County), \$43,626.00 in Streetsboro (Portage County) and \$46,176.00 in Stow (Summit County).

It appears, therefore, that a premium or supplement for Paramedic Certification has been built into the Twinsburg top step base wage rate and, based upon the evidence available to the Fact-Finder, no additional recognition appears appropriate at this time.

The enhancement of economic benefits made available to the Firefighters in the 2003 Contract, as tentatively agreed to or recommended by the Fact-Finder, are substantial. The 11% (uncompounded) increase in base wage rates, the additions to longevity pay and the virtually doubling of premium pay holidays along with other improvements won by the Union must be considered in light of a local economy which is not only stagnant but whose income tax revenues in 2002 actually declined by some \$75,000.00, and whose budget estimate in 2003, although admittedly conservative, is predicated upon a further decline of

\$1.5 million in fiscal 2003.<sup>2</sup> Under these circumstances caution in increasing further the City's financial commitments seems prudent.

On the evidentiary record presented, the Fact-Finder finds no principled basis for recommending that Firefighters receive an additional \$750.00 in Paramedic Certification pay.

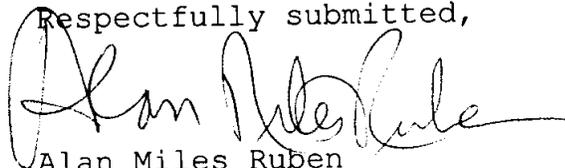
Finally, considering the absence of evidence to support the Union's request to eliminate the provision of receipts to obtain reimbursement for educational expense, the Fact-Finder will not recommend its adoption.

**THE FACT-FINDER'S RECOMMENDATIONS:**

The Fact-Finder find appropriate and recommends that Article 42 be carried forward and incorporated into the successor Agreement without change.

Fact-Finder's Report signed, dated and issued at Cleveland, Ohio this 9<sup>th</sup> day of September.

Respectfully submitted,



Alan Miles Ruben  
Fact-Finder

AMR:ljj

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<sup>2</sup>The recently instituted billing of insurance companies for emergency medical services rendered to residents may

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increase revenues by as much as \$250,000.00,

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