

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2002 DEC 19 A 10: 25

In the Matter of:

International Association of
Fire Fighters, Local 659

and

City of Rocky River

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02-MED-10-1019

FACT FINDING REPORT
FINDINGS AND RECOMMENDATIONS

December 16, 2002

APPEARANCES

For the Union:

Kenneth R. Adams, Vice President, International Association of Fire Fighters
George Kraus, President, Local 659
Stephen D. Golobic, Executive Board
Aaron Lenart, Executive Board
Frank J. Schaefer, Executive Board
Kevin Bednarski, Executive Board Alternate

For the City:

William F. Knoble, Mayor
David Matty, Director of Law
James Linden, Safety-Service Director

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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 29, 2002, pursuant to Ohio Administrative Code Rule 4117-9-05(D). At the fact-finding hearing, the parties mutually agreed in writing to extend the fact-finding period to December 16, 2002, as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the International Association of Fire Fighters, Local 659 (Union), and the City of Rocky River (City).

The fact-finding involves the City and its Fire Division. The bargaining unit consists of all full-time fire fighters employed by the Department, including Captains and Lieutenants, a total of twenty-nine (29) individuals. Only the Fire Chief is excluded from the unit. The unit is represented by the International Association of Fire Fighters, Local 659. The parties have had a collective bargaining relationship for a number of years, covering the terms of several agreements.

Rocky River is a city of approximately twenty thousand (20,000) residents on the west side of Cuyahoga County covering approximately one square mile.

II. THE HEARING

The fact-finding hearing was held on December 11, 2002 at the Rocky River City Hall. The parties provided their positions statements on December 10, 2002. The hearing began at 11:00 a.m. and adjourned at 5:00 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues as impasse. The parties introduced the following exhibits into evidence:

Union Exhibits

1. Proposed language for Article 16(D), Fire Division Mechanic.
2. Light duty comparables.
3. Year to date fund report for City of Rocky River for the month of October 2002 and year to date, real estate sales information, and article from December 4, 2002 in West Life about Issue II funding.
4. Uniform allowance comparables.
5. Holidays comparables.
6. Work week comparables.
7. Sick time comparables.
8. Longevity comparables.
9. Health insurance comparables.
10. Rocky River Fire Department runs per man vs neighboring westside departments.
11. Salary comparables for 2002.
12. Salary comparables for 2003.

City Exhibits

1. September 27, 2002 letter to Sue Wollenzier, Rocky River Director of Finance and Petition for submission of proposed amendment to charter.
2. August 26, 2002 Plain Dealer article regarding estate tax revenue.
3. Summary of the Rocky River court jurisdiction yearly report of the court costs.
4. November 6, 2002 letter from Compensation Analysis, Inc to Jim Linden, Safety-Service Director regarding outlook for the 2002-2003 liability and property insurance program.
5. Letter from Sam Fiorentino & Associates to Mayor William Knoble regarding

employee benefits costs for 2003.

7.¹ October 30, 2002 email from Tom Buescher, Labor Market Analyst with the Ohio Department of Jobs and Family Services, regarding unemployment in Rocky River.

8. Rocky River real estate sales information.

9. Newspaper articles regarding municipal finances.

10. Dismissal order in *Abdelnour v. Rocky River Civil Service Commission*.

11. 2001 salary information regarding Rocky River fire fighters.

12. 2002 salary information regarding Rocky River fire fighters.

13. Information regarding Social Security benefits increase for 2003.

14. 2002 Rocky River fire fighter education credits.

15. IAFF agreements with Fairview Park, Bay Village, North Olmsted, and Westlake.

16. Various fire fighters collective bargaining agreements.

17. Health insurance information from Medical Mutual of Ohio.

The issues remaining at impasse for fact-finding included:

1. Part time employees.
2. Union business and activities.
3. Personnel reductions.
4. Discipline and discharge.
5. Grievance procedure.
6. Salary, hourly, and overtime.
7. Mechanic.
8. Uniform allowance.
9. Holidays.
10. Kelly days.
11. Sick leave.
12. Military leave.
13. Education differential.
14. Longevity.

¹ There was no City Exhibit 6.

15. Health benefits.
16. Duration of agreement.
17. Outstanding dispute settlement.
18. Job related medical leave of absence.
19. Light duty.
20. Funeral leave.
21. Minimum work force.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

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

The Fact Finder hopes the discussion of the issues is sufficiently clear to the

parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Resolved Issues

During the hearing, the parties agreed to the following issues. The Fact Finder recommends that the following amendments be made to the collective bargaining agreement.

1. Article 6(A), Union Business and Activities. The following sentence is to be added to Article 6(A):

The Union will be credited with seventy-two (72) hours annually of Union business time, with such time not to be carried over into succeeding years.

2. Article 8(B), Personnel Reductions. The first sentence of Article 8(B) is to be deleted.

3. Article 10, Discipline and Discharge. The sixth sentence, beginning on line 8, of Article 10 is to read "Such order shall be filed with the Civil Service Commission."

4. Article 11(B), Grievance Procedure. The fourth sentence of Step 4, beginning on line 6, is to read:

The fees and expenses of the arbitrator shall be borne by the losing party, unless the parties agree otherwise.

5. Article 16(D), Fire Division Mechanic. The language of Article 16(D) is to be changed to the following:

Any employee of the Fire Division assigned the additional duties of mechanic shall work off duty for his regular overtime rate. In an emergency, if the mechanic is required to perform mechanic's duties while working his

regular shift, he shall be paid half (½) time for hours worked performing mechanic's duties in addition to his normal pay.

6. Article 23(A), Military Leave. The second last sentence of Article 23(A) is to read:

Said policy shall be in compliance with ORC Sections 5903.01 and 5923.05 and any amendments thereto.

7. Article 37, Outstanding Dispute Settlement. Article 37 is to be deleted in its entirety.

8. A new Article 37, entitled Funeral Leave, is to be added to the Agreement. It is to read:

An employee shall be entitled to one (1) tour of duty off with pay, not to be deducted from sick leave, for the purpose of attending the funeral of a member of the employee's immediate family. The employee shall be entitled to the time from the date of death through the date of the funeral off duty for each death in his immediate family. For the purposes of this article, "immediate family" shall be defined as to include only the employee's spouse, children, parents, stepparents, siblings, or grandchildren. Provided that, if the death occurs while the employee is on duty, the employee will be entitled to take off the remainder of the tour with pay. The employee shall be granted the day of the funeral or memorial service, if scheduled to work, in the event of the death of the employee's current in-laws, grandparents, aunt, or uncle.

9. Article 35, Minimum Work Force. During the fact-finding, the Union withdrew this issue.

Unresolved Issues

Issue: Article 32, Duration of Agreement

Union Position: The Union seeks a three year agreement.

City Position: The City seeks a one year agreement.

Findings: A community activist has launched a campaign to reduce the City income tax

by one-third ($\frac{1}{3}$). This activist has been successful in placing two other issues on the ballot in recent years, although neither one has passed. Recent changes in Ohio law regarding the taxing of estates has resulted in lesser tax revenues for the City. In recent years, the Rocky River Municipal Court has had surpluses, amounting to almost one half million dollars in 2000 and 2001. The court case load has recently reduced, however, and costs have increased. The City has been informed that its liability and casualty insurance premium will increase approximately thirty-five percent (35%) and its health insurance costs increase approximately eighteen percent (18%). Further, as a result of a recent employment discrimination lawsuit, the City has been advised to hire an additional employee to perform human resource functions. Unemployment rates county wide are rising. The Ohio Department of Jobs and Family Services does not maintain unemployment rates for cities under twenty five thousand (25,000) residents. However, unemployment rates for western Cuyahoga County communities over twenty five thousand (25,000) have increased approximately thirty percent (30%). Finally, there are more than one hundred (100) residences in the City that are for sale. This is the highest number in recent years.

The City argues that all of these factors cause great financial uncertainty. Although the activist has not been successful in two previous attempts, this is the first pocketbook issue that he has pursued. The Cuyahoga County Auditor has estimated that the City will see a thirty to forty-five percent (30-45%) decrease in receipts from estate taxes. The City expects its court will simply break even in 2002. Further, while the reason for the large number of residences for sale is unclear, the City is concerned about the number and the

potential loss of residents. While the reason may be unclear, what is clear is that the length of time a residence is for sale has increased, suggesting fewer people are buying Rocky River houses. Finally, municipalities in general are struggling financially. The City has not been in this climate before, and needs to be able to determine what its costs are. For these reasons, the City proposes a one year agreement. At the end of 2003, the City will have a better understanding of its financial position. At that time, it will better be able to enter into an multi-year agreement with the Union.

The Union contends that such potential uncertainty is no reason to change the duration of the Agreement. The parties have historically agreed to three year contracts and the potential for lost revenue does not justify changing that history. The surrounding communities, known as the Westshore communities,² have three year agreements. Additionally, it claims that the activist has not been successful in getting his ballot proposals passed and there is no reason to believe he will be successful this time. The City has a balance of over four million dollars (\$4 million) in its general fund and has seventeen million dollars (\$17 million) overall. The Union also is unable to ascertain why so many residences are for sale. Housing values in the City, however, have increased by seven percent (7%). Given the value of housing in Rocky River, the Union believes that any purchasers would have to earn good wages, adding tax receipts to the City coffers. As a result, there is no need for only a one year agreement.

Recommendation: The Fact Finder agrees with the City that it is in uncertain financial

² Bay Village, Fairview Park, North Olmsted, and Westlake, in addition to Rocky River.

times. However, there is nothing unusual with most of the factors that place the City in these uncertain times. The economy periodically experiences tough times that require municipalities to cut costs and watch expenses. Generally speaking, such times do not justify one year contracts. Negotiating collective bargaining agreements take a great deal of time. Moreover, it distracts the attention of the parties from the issues at hand, i.e., running the City and fighting fires.

The one factor that is somewhat unusual is the community activist seeking to reduce the tax rate by one-third ($\frac{1}{3}$). If he succeeds, this would cause a drastic change in the City's finances. The Fact Finder does not believe, though, that this justifies changing the parties' past practice of entering three year agreements. There are additional methods of dealing with such a possibility. Therefore, the Fact Finder recommends that the length of the Agreement be three years. However, to deal with the possibility of the City's income being drastically reduced, the Fact Finder recommends that a supplemental Memorandum of Agreement allowing the parties to reopen the Agreement as to economic items be attached to the Agreement in the event the electorate passes the ballot proposal being advocated by the community activist to reduce the income tax.

Recommendation: The Fact Finder recommends that the following supplemental Memorandum of Agreement be added to the Agreement.

Memorandum of Agreement

This agreement supplements the collective bargaining agreement (Agreement) between the City of Rocky River and the Rocky River Fire Fighters Association effective as of the first day of January, 2003 through the 31st day of December, 2005 and is the complete and final agreement on the subject covered without any reference to any other agreement.

1. The parties acknowledge that a community activist is attempting to have a proposal placed on the ballot in 2003 to reduce the City income tax by one-third ($\frac{1}{3}$).

2. In the event that the proposal is placed on the ballot and passes, the parties may reopen the Agreement as to economic items only. The City shall make its demand to reopen on each economic subject to which it believes this agreement applies no later than thirty (30) days following the election date on which the proposal passes.

3. This Memorandum of Agreement shall become effective from the adoption of the Agreement and terminate at 11:59 p.m. of the thirtieth day following the election date on which the proposal passes.

Issue: Article 16(A), Salaries, Hourly Rates and Overtime

Union Position: The Union seeks increases of seven percent (7%) in the first year, six percent (6%) in the second year, and five percent (5%) in the third year of the Agreement for all salary levels.

City Position: The City offers a two percent (2%) increase across the board for one year for all levels except the Start level.

Findings: The City argues that, because of the economic certainty it faces, a two percent (2%) increase to current employees is justified. Additionally, it proposes to keep the Start level wages at the current level. The City argues that the Start level is adequate, as it has been successful in hiring new employees recently. If the Start level were not adequate, it would be unable to attract new employees. Furthermore, given the current economic and political climate, the City certainly cannot justify the increases sought by the Union. The federal government proposes a one and four-tenths percent (1.4%) increase in Social Security benefits. Approximately thirty-four percent (34%) of City residents are senior citizens eligible for Social Security. It would be difficult to permit increases of seven, six,

and five percent when many of its residents will only see a 1.4% increase. The City's proposal is in line with the offers of many other cities. Finally, the City introduced comparables of cities with similar populations. Based on these, City fire fighters are adequately paid and are not the lowest paid.

The Union believes that what a fire fighter earns before he joins the Division is irrelevant. What is relevant is how much he or she earns compared to fire fighters in other communities. The Union introduced comparable information showing the Rocky River Fire Division is currently the lowest of the surrounding communities. City fire fighters also earn slightly less than City police officers. The Union objects that the comparables used by the City are not the surrounding Westshore communities, which are the appropriate comparison. The seven percent (7%) increase it seeks would place the fire fighters equal with its surrounding communities and City police officers.

The Fact Finder believes that the appropriate comparable communities are the surrounding Westshore communities. While there is merit in using similar sized communities as a comparison in certain situations, the Fact Finder does not believe this is one. Several of the communities used by the City are eastern Cuyahoga County municipalities. It is unlikely a fire fighter would live on the east side of the county and work on the west side. It is much more likely for a fire fighter to live in the same city or a nearby one. As a tool for attracting employees, then, the Fact Finder concludes that the surrounding Westshore communities are the appropriate comparison. Using these, it is clear the City is at the bottom of these communities.

While the City faces economic uncertainty, it still must maintain a fire fighting force.

This force must be adequately compensated. The City's offer is not adequate. It would result in the Fire Division falling further behind the Westshore communities, making it more difficult to hire fire fighters. A two percent (2%) increase would leave a City fire fighter with two years of service more than a thousand dollars (\$1,000.00) below the surrounding communities.

The increase sought by the Union, however, is excessive. Giving a seven percent (7%) increase would place City fire fighters at the top of the scale, even higher than Westlake. The Fact Finder is mindful that Westlake, even though it is a Westshore community, is not an exact comparable. Westlake is a much larger community and has a larger tax base. Simply put, it has resources the City cannot match. A City fire fighter also can make up some of the difference through other contract provisions, such as the educational differential.

Given these facts, the Fact Finder concludes that the fire fighters should receive an increase of four and one-half percent (4½%) in the first year, four percent (4%) in the second year, and three and one-half percent (3½%) in the third. Four and one-half percent (4½%) in the first year will place a fire fighter with two years of service at the lower end of the Westshore communities, but not at the bottom. Of course, in the event the income tax proposal is passed, the City can reopen the Agreement to negotiate new wage rates.

Recommendation: The Fact Finder recommends that Article 16(A) be amended to reflect a four and one-half percent (4½%) increase in all salaries effective January 1, 2003, a four percent (4%) increase effective January 1, 2004, and a three and one-half percent (3½%)

increase effective January 1, 2005.

Issue: Article 17, Uniform Allowance

Union Position: The Union seeks an increase in the allowance from seven hundred dollars (\$700.00) to one thousand dollars (\$1,000.00).

City Position: The City proposes to change the allowance so that each employee receives seven hundred dollars (\$700.00) in the first year of employment and five hundred dollars (\$500.00) for each year of employment thereafter.

Findings: The Union seeks the increase because uniforms costs are rising and it has been three years since the last increase. Employees are required to purchase their own uniforms, which are costly. There is a Class A, or dress, uniform, and the duty, or everyday, uniform. Among the Westshore communities, the City provides the smallest allowance:

City	Allowance Amount
Bay Village	\$1000
Fairview Park	\$1050
Lakewood	\$1000
North Olmsted	\$1200
Rocky River	\$700
Westlake	\$750

Additionally, City police officers receive a five hundred dollar (\$500.00) allowance, but the City provides the uniforms. Fire fighters receive only two hundred dollars (\$200.00) more, but must buy their uniforms.

The City wants to decrease the allowance after the first year of employment. It sees

the provision as an economic issue that must be seen as part of the whole. An increase of three hundred dollars (\$300.00) per employee per year equates to almost nine thousand dollars (\$9,000.00) per year. The City provides all turn-out gear and replaces damaged uniform items. Fire fighters only replace what is worn out and five hundred dollars (\$500.00) per year is adequate.

While both Bay Village and North Olmsted pay more than the City, neither replace damaged items. North Olmsted does, though, initially provide some of the uniforms required.

The initial cost of purchasing a uniform is the greatest cost. There is no question a dress uniform and duty uniform can easily cost over one thousand dollars (\$1,000.00). Since the City replaces any damaged items, a fire fighter must only replace what is worn out. While individual items may be rather costly, replacement costs for normal wear are not great. The Fact Finder is not unmindful of the economic costs to the City and its need to control costs. The Fact Finder concludes that, since the initial cost is the greatest, the allowance should be increased to one thousand dollars in the first year of employment. To be fair to current employees, this amount should be paid to all current employees in 2003. After 2003, it will be paid to any new employee in the first year of employment. Thereafter, five hundred dollars (\$500.00) per year should be sufficient to cover replacement for normal wear.

Recommendation: Article 17 should be amended to read:

In 2003, each employee shall be paid a uniform allowance of one thousand dollars (\$1,000.00). Thereafter, each employee shall receive a uniform allowance of one thousand dollars (\$1,000.00) in his or her first year of

employment. In each year after the first year of employment, each employee shall receive five hundred dollars (\$500.00). All such payments shall be made biannually.

Issue: Article 19, Holidays

Union Position: No change in holidays.

City Position: The City proposes to eliminate Easter as the twelfth holiday.

Findings: A comparison of the five Westshore communities (Bay Village, Fairview Park, North Olmsted, Rocky River, and Westlake) shows that only one other community besides Rocky River receives Easter as a holiday.³ The number of holidays and holiday hours for each municipality is as follows:

City	Holidays	Holiday Hours
Bay Village	11	144
Fairview Park	7	168
North Olmsted	7	168
Rocky River	12	144
Westlake	10	120
Rocky River Police Dept.	12	288

The City contends that Easter as a twelfth holiday is unwarranted. Only one other Westshore community has Easter as a holiday and none offer twelve holidays. While other city workers receive Easter as a holiday, City Hall closes. The Fire Division cannot

³ North Olmsted is the other community.

close and fire fighters must be paid for the holiday, so there is an economic cost to the City. The City has also proposed to the Police Department to eliminate Easter as a holiday.

The Union argues that the issue is not Easter, but the total number of holiday hours. While the other Westshore communities may not have Easter as a holiday, all but Westlake offer the same or more holiday hours. Currently, the City police officers receive more holiday hours than fire fighters, a total of two hundred eighty-eight (288).

The Fact Finder finds the City's argument to reduce holiday hours not well taken. The fire fighters receive fewer holiday hours than any comparable except Westlake. They receive one-half ($\frac{1}{2}$) the hours of police officers. Even eliminating Easter as a holiday for police officers will leave them with more hours than fire fighters. While the City may be facing tough economic times, this does not justify cutting holidays when the fire fighters already are near the bottom.

Recommendation: The Fact Finder recommends no change in Article 19.

Issue: Article 20, Kelly Days

Union Position: The Union seeks no change in Article 20.

City Position: The City wants to change the normal average work week from forty-nine and eight-tenths (49.8) to fifty-three (53), with each employee not exceeding two hundred twelve (212) hours in a twenty-eight (28) day work period.

Findings: The City wants to return to the normal average work week specified in the previous two contracts. This provision was changed in the current Agreement to accommodate the Union's wage demands. Of the Westshore communities, Bay Village

and Fairview Park have an average work week of forty-nine and eight-tenths (49.8), Westlake uses a forty-eight (48) hours, and North Olmsted uses fifty-one and seven-tenths (51.7).

The Union claims that the hours of work are in line with other cities and increasing the work week to the amount proposed by the City would result in a pay cut. The Union calculates that increasing the work week would result in a six and forty-two hundredths percent (6.42%) decrease in pay, at an annual cost of three thousand two hundred sixty one dollars (\$3,261) for a fire fighter. In essence, the City wants the fire fighters to pay for their increase in pay.

The City's request to change the average work week is not justified. The City is equal to Bay Village and Fairview Park in the number of hours in the work week. The highest of the cities is North Olmsted at fifty-one and seven-tenths (51.7). Increasing the City's work week to fifty-three hours would place it at the highest average work week. Further, doing so would decrease fire fighter pay, more than offsetting any pay increase. The City's uncertain financial future does not warrant such a change. Additionally, the economic reopener allows the City to obtain relief should its income tax be decreased.

Recommendation: The Fact Finder recommends no change in Article 20.

Issue: Article 22, Sick Leave

Union Position: The Union proposes to eliminate the cap on sick leave accrual and the annual sick time buy back. It also wants to create a quarterly perfect attendance bonus.

City Position: The City proposes its own change. It seeks to recalculate the number of hours of sick leave earned for working a specified number of hours of service. This would

correspond to the changes it proposed in the number of Kelly days. The City also wishes to add a provision allowing it to contract with a nurse or medical service to verify the health of an employee requesting sick leave. Finally, it proposes reducing by fifty percent (50%) the amount of sick leave an employee hired after January 1, 2003 can accumulate.

Findings: The Union's proposal concerns the issue of a fire fighter who is injured and seeks to return to work. Because of the nature of the job, the Union believes it is more difficult for a fire fighter to return to work from injury than many, if not most, jobs. Its proposal seeks to protect the fire fighters in such an instance. Eliminating the cap on sick leave would allow fire fighters to accumulate even more sick leave, permitting them as much time off as needed when injured. For those fire fighters who use no sick leave in a quarter, the Union proposes a bonus to be paid quarterly, thereby discouraging the use of sick leave unless necessary. The Union introduced information regarding the other Westshore communities. Rocky River has the lowest amount of sick time. Three of the communities provide a sick leave bonus.

The City opposes eliminating the sick leave cap. The cap is in place for all City employees, union and non-union. Eliminating the cap for this unit would be a first and would affect other collective bargaining agreements the City has with its other bargaining units. This would increase costs. Further, no City employees have a sick leave bonus. Instituting one would increase costs for those employees who come to work, which is expected of any employee unless sick. The City's proposal to change the sick leave hours a fire fighter earns as related to the hours of service corresponds to its proposal on Kelly days. The City also wants the ability to have a nurse or medical service verify an

employee's request for sick leave. Finally, to reduce costs, the City seeks to decrease by half the amount of sick leave a new employee can accumulate.

The Fact Finder finds neither argument to be well taken. As to eliminating the cap, it has been in place for some time. All City employees have such a cap and eliminating it for the fire fighters would set a precedent. Eliminating the cap would undoubtedly be sought by the other bargaining units, dramatically increasing the amount of sick leave provided to City employees. While the Fact Finder understands the nature of a fire fighter's job and empathizes with a fire fighter trying to return from injury, the Union has not established a need for increased sick leave. For 2003, fire fighters can accumulate one thousand three hundred seventy-nine (1,379) hours of sick leave. This equals over fifty-seven tours of duty and slightly more than one hundred seventy-two (172) eight hour days of pay. The Union has not proved a need for more.

As to the sick leave bonus, it is the duty of an employee to work when able. The employee is compensated for working and should not receive a bonus for reporting to work when able. Sick days fulfill a need and not using them should not be encouraged. Paying the bonus sends the message that there is something wrong about using a sick day.

Turning to the City's proposal, the amount of sick leave earned based on hours of service should not change, since the City's proposal on Kelly days is not recommended. As to the City's claimed need to verify sick leave, Article 22 already requires approval of the Director of Public Safety-Service or the Mayor. The City can require a written statement justifying the need for leave and, when medical attention is needed, a certificate from a licensed physician. The need for a nurse or medical services agency would seem

redundant. The City did not prove the need for additional medical review.

Finally, the City's proposal to reduce sick leave for new employees by fifty percent (50%) would create two tiers of benefit levels among fire fighters. The Fact Finder does not believe creating a two-tiered work force benefits either the City or the Union. Fire fighters would not receive the same benefits for doing the same job, creating tension among the work force and diverting attention from other needs. If the City seeks a reduction in costs, the Fact Finder believes it would be more appropriate to propose an across the board cut.

Recommendation: The Fact Finder recommends no change in Article 22.

Issue: Article 21, Job Related Medical Leave of Absence

Union Position: Increase leave of absence from thirty (30) tours or ninety (90) days to sixty (60) tours or one hundred eighty (180) days and change the language to include all on the job injuries.

City Position: There should be no change.

Findings: The Union seeks an increase to the same number of days provided City police officers. It also wants the language to cover any on the job injury, not just those resulting from hazardous duty.

The City offered the other Westshore communities as comparables. Of these, Westlake does not have such a provision. Bay Village, North Olmsted, and Fairview Park have a similar provision as the City. Their contracts provide for ninety (90) days of leave and restrict coverage to injuries incurred in the line of duty. Additionally, the provision at issue is secondary coverage, since any on the job injury is covered by workers'

compensation. This is also an economic issue that must be seen in terms of dollars.

The Fact Finder concludes that the Union has not established the need for additional time off. While the City police officers may receive more time, the Fact Finder believes that comparing police officers and fire fighters in such matters is not the most appropriate comparison. There are sufficient differences in the jobs of a police officer and fire fighter that it is difficult to compare such items as time off. The more appropriate comparison is other fire departments. Of the other Westshore communities, three have similar provisions. Each offers ninety (90) days of leave. Of the three, two define coverage as an injury incurred "in the line of duty, while actually working for the Employer." The Fact Finder believes this definition is very close to the definition in this Agreement. North Olmsted limits coverage to an injury occurring "while engaged in an emergency response," less broad than the City in the Fact Finder's opinion. Increasing leave to sixty (60) tours or one hundred eighty (180) days, would place the City far outside the norm of the comparables. Finally, the Fact Finder concludes there is no need to change the definition of "hazardous duty" to include all on the job injuries. Workers' compensation exists for that purpose. This provision serves as secondary coverage when a fire fighter is injured while performing hazardous duty.

Recommendation: The Fact Finder recommends no change in Article 21.

Issue: Article 24(A), Educational Differential

Union Position: The Union opposes any change.

City Position: Eliminate the educational differential for all fire fighters hired after January 1, 2003.

Findings: The City pays fire fighters a percentage increase in their base pay for various educational levels. An ambulance Emergency Medical Technician receives an additional one percent (1%), a Paramedic receives up to two and one-half percent (2½ %), and a fire fighter with college credits receives additional percentages, depending on the number of credits. The percentages max out at seven percent (7%). Of the twenty-nine fire fighters, twenty-one receive the seven percent (7%) maximum. No fire fighter receives less than three percent (3%).

The City wants to create a two-tiered system. It seeks to cut costs without affecting current employees. Since the differential pays on top of salary, it is in essence part of the wage package. No other Westshore communities have such a provision. The City currently pays for training; the differential is an additional cost apart from training. The differential has no relationship to job performance or advancement.

The Union opposes any change. Creating a two-tiered system will only create tension between current employees and new hires. Everyone should be paid the same for doing the same job. While the City may be the only Westshore community with this differential, it is the only City where every fire fighter is also a paramedic. The Union believes paying for college credits is a benefit to the City. The City receives a higher educated, better quality employee. Comparable cities do pay extra to fire fighters who are paramedics. Additionally, any college credits must be job related before the City will pay the differential.

The Fact Finder believes that creating a two-tiered system will be of no benefit to the City or the Union. Doing so will only establish differences in an otherwise homogenous

work force, creating a source of tension that will distract employees, the City, and the Union. The Fact Finder also believes eliminating this will harm the City. Currently, the system encourages fire fighters to be more educated and take more training. This can only benefit the City in the long run with a better work force. The Fact Finder is not unmindful of the City's need to control costs. Given the wage increases recommended by the Fact Finder, paying the differential on top of the increases creates a second hit on the City's budget. Therefore, the Fact Finder concludes that the maximum payout in the differential should be reduced by one percent (1%), to a maximum of six percent (6%).

Recommendation: The Fact Finder recommends that Article 24(A) be amended and the City amend its codified ordinances to reflect a maximum six percent (6%) payout in the educational differential.

Issue: Article 25, Longevity

Union Position: No change in longevity pay.

City Position: Amend the schedule for longevity pay from a percentage based system to paying specified dollar amounts. The amendment would apply only to employees hired after January 1, 2003.

Findings: The current scale pays a fire fighter a percentage of his or her salary for various years of service.

Years of Service	Percentage
6-7	1%
8-9	1.5%
10-11	2%

12-13	2.5%
14-15	3%
16-17	3.5%
18-19	4%
20 to retirement	5%

The City needs to control costs, but does not want to affect current employees. It has proposed this change to the police officers. Three of the other four Westshore communities have longevity benefits. All three pay on a dollar basis, not a percentage. Paying on a percentage basis makes this part of the wage package. It is an increase on top of wages. Every increase in the wage scale increases the longevity benefit as well.

The Union sees no need to change. The reason the parties have negotiated a percentage system is to eliminate the need to negotiate the amounts whenever the parties bargain for a new contract. The Union opposes any two-tiered system and the tension it would create. Additionally, five fire fighters have left in recent years and the Union is concerned that any decrease in longevity pay would make it harder to retain employees.

The Fact Finder concludes that the current system should be changed. However, both parties make valid points. For the same reasons stated above, the Fact Finder does not believe a two-tiered system will be a benefit. Yet the City has established a need to keep costs in line. Its liability and casualty insurance premiums will increase dramatically in 2003, as will its medical coverage costs. The municipal court will not continue to have the surpluses it has had in recent years. Paying a percentage in longevity pay increases costs doubly. Whenever wages are increased, there is a concomitant increase in the

longevity pay. Paying a certain amount per year eliminates this double payment. Three of the Westshore communities pay in hundred dollar increments per year of service, beginning with the fifth year of service. Therefore, the Fact Finder concludes that the system should be changed from a percentage base to a dollar amount. It should also be applied to all fire fighters, not only new hires.

Recommendation: The Fact Finder recommends that Article 25 be amended to reflect the following longevity payments.

Years of Service	Amount
5 years	\$500
6 years	\$600
7 years	\$700
8 years	\$800
9 years	\$900
10 years	\$1,000
11 years	\$1,100
12 years	\$1,200
13 years	\$1,300
14 years	\$1,400
15 years	\$1,500
16 years	\$1,600
17 years	\$1,700
18 years	\$1,800
19 years	\$1,900
20 years	\$2,000
21 years	\$2,100

22 years	\$2,200
23 years	\$2,300
24 years	\$2,400
25 year	\$2,500

Issue: Article 27, Health Benefits

Union Position: No change in current benefits.

City Position: Delete the current section and substitute a provision allowing the City to provide two alternatives. One will allow the City to pay a specified amount for the year for single and family coverage. The other will allow the City to provide a package as an alternative to any employee monetary participation in premium payments.

Findings: Currently, the City provides a high grade Blue Cross plan for medical benefits. In addition, the City pays four hundred fifty dollars (\$450.00) per year for dental coverage. This plan costs the City approximately eight thousand seven hundred dollars (\$8,700.00) per year for family coverage. The plan runs through April of 2003.

The City seeks to provide coverage in one of two ways. One option is for the City to pay eight thousand seven hundred dollars (\$8,700.00) for the year for family coverage and three thousand five hundred dollars (\$3,500.00) for single coverage. Any costs over that amount shall be borne by the employee. As an alternative, the City proposes a health benefits package, including dental and vision, that does not require the employees to contribute. The plan would provide the coverages outlined in Exhibit 1, which is attached to and made a part of this Report. It is a preferred provider plan, allowing employees to choose network doctors at one level of coverage, or out of network doctors at a lesser

level. This plan would require employee's to pay no premium. The only costs would be the co-pays and deductibles outlined in Exhibit 1. Employees would remain in the current plan until it expires at the end of April. On May 1, 2003, employees can choose to stay in the current plan and pay anything over the amounts specified above, or choose the plan outlined in Exhibit 1.

According to the Union, the City is not asking employees to share costs, but to incur them. Based on the alternatives provided, the Union cannot be certain what those costs are. While the City presents a perceived choice, it is really no choice. The Union provided comparables for the Westshore communities and Lakewood. This showed the coverages are generally similar. The major difference between the City's proposal and the comparables is that the City's plan requires a ten dollar (\$10) co-pay for office visits. (Only Westlake's benefits require co-pays in two of its three plans.) The City's current plan requires a five dollar (\$5) co-pay.

The Union's opposition to changing coverage is without merit for several reasons. First, the City offers two options. The employee can choose which option better suits his or her needs. One of these options is to continue the current plan, but limit its obligation. It offers Medical Mutual's SuperMed Plus plan as an alternative. The coverages are similar to the current plan, with slightly greater co-pays and out of network costs. Second, the City has shown there will be a sharp increase in its health benefits costs as well as a decrease in its income. This causes a concomitant need to control costs. Third, the City has a legitimate interest in controlling costs. It is certainly well known that medical insurance costs have increased far more than other costs in recent years. The City would

be doing an injustice to its residents if it did not try to control them. Fourth, the City has crafted a proposal to control costs while endeavoring to limit the costs imposed on the fire fighters. The City will permit employees the option to choose between the alternatives depending on the employee's needs. Given this evidence, the Fact Finder concludes that the balance of the equities is to adopt the City's proposal.

Recommendation: The Fact Finder recommends that Article 27 be amended. The current language should be deleted and the following language added in its place.

The Employer agrees to pay a sum not to exceed \$3,500.00 for single and \$8,700.00 for family for the year for health, dental, and/or eye care for each employee in the Union. In addition, the City also will provide a health benefits package (health and dental) that does not require employee contribution but instead provides a reduced coverage plan with increased co-pays and deductibles as an alternative to any employee monetary participation in premium payments.

Issue: New Article, Part-time Employment

Union Position: No new article should be added.

City Position: Add a new article to the Agreement reserving to the City the right to hire part-time employees when necessary.

Findings: Chapter 4117 governs the collective bargaining relationship between a public employer and its employees. Section 4117.08(C) provides:

Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of each public employer to:

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

(6) Determine the adequacy of the work force...

The City proposes to add a new article to the Agreement reserving to it the right to hire part-time employees when needed. This proposal is the direct result of a lawsuit filed by one of its fire fighters against the City alleging employment discrimination. The City was not certain if the employee would remain in the Fire Division and had to fill in for this employee through overtime. It would have preferred to hire an employee, but could not. In its recent hiring experience, the City has learned there are individuals in the job pool who have paid for fire fighting training who could be used to fill in on a temporary basis when needed.

The Union argues that the provision requested by the City is a management right reserved to the City by Chapter 4117. There is no need for such a provision in the Agreement, the Union cannot agree to give the City the right to hire employees, and the Fact Finder does not have the authority to give the City this right. Additionally, the Union opposes the hiring of part-time employees because of safety concerns. Part-timers do not have the same amount of training as full-time employees and do not know the community as well.

The Fact Finder agrees with the Union. Chapter 4117 sets forth the rights a public employer has. These include the right to hire employees and determine the personnel by which governmental operations are conducted. While the employer may limit these rights, by law they are reserved to the employer. Here, the City does not propose to limit its right.

Rather, it proposes that the Union agree that the City reserves this right. Since the City already has this right by law, there is no need for the article.

Recommendation: The Fact Finder recommends that the article regarding part-time employment should not be added to the Agreement.

Issue: New Article, Light Duty

Union Position: Add an article allowing injured employees to return to work in a light duty status.

City Position: The City objects to light duty status.

Findings: The Union proposes to allow injured fire fighters, who can return to duty in a reduced capacity, be permitted to do so in light duty status. Light duty status will be at the discretion of the City and be supported by the employee's personal physician. This will help injured fire fighters return to work more quickly. Additionally, the other Westshore communities provide for light duty.

The City opposes light duty status. The Fire Division is not large. There simply is no opportunity to for light duty work. The only possibility involves certain dispatch duties and the City and the other Westshore communities are working toward having joint dispatching, eliminating this as an opportunity. It makes little sense to add a light duty article when there is no opportunity, much less a need, for light duty work.

The Fact Finder finds the City's position to be well taken. Given the lack of need an opportunity for light duty work, the Fact Finder concludes there is no need for the article.



Daniel G. Zeiser
Fact Finder

Dated: December 16, 2002.



**City of Rocky River
SuperMed Plus**



Benefits	Network	Non-Network
Benefit Period	January 1 st through December 31 st	
Dependent Age Limit	19 Dependont / 23 Student Removal upon End of Month	
Lifetime Maximum	\$1,000,000	
Benefit Period Deductible - Single/Family ¹	\$100 / \$200	\$200 / \$400
Coinsurance	90%	70%
Coinsurance Out-of-Pocket Maximum (Excluding Deductible) - Single/Family	\$500 / \$1,000	\$1,000 / \$2,000
Physician/Office Services		
Office Visit (Illness/Injury) ²	\$10 copay, then 100%	70% after deductible
Urgent Care Facility Services ²	\$10 copay, then 100%	70% after deductible
Voluntary Second Surgical Opinion	90%	70% after deductible
Immunizations (tetanus toxoid, rabies vaccine, and meningococcal polysaccharide vaccine are covered services)	90%	70% after deductible
Preventative Services		
Office Visit/Routine Physical Exam (One exam per benefit period for employee and spouse only) ²	\$10 copay, then 100%	Not Covered
Well Child Care Services including Exam and Immunizations (To age nine, limited to a \$500 maximum per benefit period) ²	\$10 copay, then 100%	70% after deductible
Well Child Care Laboratory Tests (To age nine)	100%	70% after deductible
Routine Mammogram (One, limited to an \$85 maximum per benefit period)	90%	70% after deductible
Routine Pap Test (One per benefit period)	90%	70% after deductible
Routine EKG, Chest X-ray, Complete Blood Count, Comprehensive Metabolic Panel, Urinalysis (One each per benefit period)	Not Covered	Not Covered
Outpatient Services		
Surgical Services	90%	70% after deductible
Diagnostic Services	90%	70% after deductible
Physical Therapy - Facility and Professional (40 visits per benefit period)	90%	70% after deductible
Occupational Therapy Facility and Professional	Not Covered	Not Covered
Chiropractic Therapy - Professional Only (12 visits per benefit period)	90%	70% after deductible
Speech Therapy - Facility and Professional (20 visits per benefit period)	90%	70% after deductible
Cardiac Rehabilitation	Not Covered	Not Covered
Supplemental Accident Care (Limited to the first \$300 of services received within 90 days after an accident)	100%	
Emergency use of an Emergency Room	90%	
Non-Emergency use of an Emergency Room	90%	70% after deductible