

**IN THE MATTER  
OF  
INTEREST ARBITRATION  
FACT FINDING  
AWARD**

STATE EMPLOYMENT  
RELATIONS BOARD  
  
2003 OCT -2 A 10: 45

<b>BETWEEN</b> <b>The</b> <b>International Association of Fire Fighters</b> <b>Local 3480</b>  <b>And</b>  <b>The City of Westerville, Ohio</b>	<b>CASE NO: SERB 03-MED-02-0128</b>  <b>FACT FINDER: JOHN S. WEISHEIT</b>  <b>HEARING DATE(S): August 26, 2003</b>  <b>AWARD ISSUED: October 1, 2003</b>
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**REPRESENTATION  
by**

<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
Ronald Linville, Esq. Mile Wasylik, Ass't City Manager Bernie Ingles, Deputy Fire Chief Ann Lund, HR Coordinator Tom Paterson, Accounting Ass't	William Moul, Esq. Thomas C. Ullom, Pres. IAFF Local 3480 Charles Brown, Member Neg. Team Jack Kallay, Member, Neg. Team

**AUTHORITY**

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

## **BACKGROUND**

The City of Westerville, hereinafter called the “Employer” and/or the “City”, recognizes the International Association of Fire Fighters, Local 3480, hereinafter called the “Union” and/or “IAFF”, for all full-time firemen employed by the Employer. The bargaining unit is composed of approximately 70 Firefighters, Firefighter/Medics, Inspectors and Lieutenants.

The parties have a long and for the most part amiable positive history in the collective bargaining process. Their current bargaining is to attain a successor Agreement to the one expiring June 30, 2003. In the course of good faith bargaining, the majority of issues have been resolved by tentative agreement, withdrawal, or otherwise resolved the issues. Articles tentatively agreed to are identified in a later section of this Report.

The Fact Finder was called upon, as provided in ORC 4117, to render an opinion regarding the unresolved issues still on the bargaining table. The issues are also identified and addressed in more detail later in this Report. Such unresolved matters, for the most part, are addressed in a Section or two of the noted Article, with the rest of the Article agreed to.

A Hearing was convened by the Fact Finder on August 26, 2003, at the Westerville City Building. Prior to the Hearing, the parties timely submitted pre-hearing briefs to the Fact Finder in keeping with provisions set forth in ORC 4117. At the Hearing, the respective representatives presented additional testimony and documentation regarding the respective positions on matters yet to be resolved. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their bargaining position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 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;
4. The lawful authority of the public Employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that the Hearing and in keeping with statutory consideration cited above.

### **ISSUES OF TENTATIVE AGREEMENT**

The following Articles were resolved in negotiations and tentatively agreed to prior to the Fact

Finding Hearing:

Article I	Contract
Article II	Recognition
Article III	Lodge Security
Article IV	Non-Discrimination
Article V	Grievance Procedure
Article VI	Arbitration
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Article VIII	Management Rights
Article IX	No Strike/No Lock-out
Article X	Internal Review Process
Article XI	Corrective Action & Records
Article XII	Work Rules & Directives
Article XIII	Safety & Health
Article XIV	Substance Abuse & Testing
Article XV	Labor Relations Meetings
Article XVI	Layoff/Job Abolishment
Article XVII	Miscellaneous Non-Economic
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Article XIX	Regular Work Periods & Overtime
Article XX	Equipment & Allowance
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Article XXII	Holidays
Article XXIII	Insurance
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Article XXV	Injury Leave
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Article XXVII	Family & Medical Leave Act Leave
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Article XXIX	Certifications Required for Employment & Tuition
Article XXX	Signatures

**ISSUES AT IMPASSE**

The following Articles were at impasse, in part or whole, at time of the Fact Finding Hearing:

- Article VII            Local Representation
- Article XVIII        Rates of Pay/Wages
- Article XXI            Vacation & Personal Leave
- Article XXIV         Sick Leave
- Article XXVI         Special Leaves
- Article XXVIII      Miscellaneous Economic -
  - 1)     Shift Differential
  - 2)     Longevity Pay

**SUMMARY OF PARTY POSITIONS ON**

**ISSUES AT IMPASSE**

The following unresolved issues at Fact Finding are listed with a summary position of the respective parties. Only issues at impasse are set forth. Remaining terms of the Article have been resolved, though not necessarily signed off as a tentative agreement.

<b>Employer</b>	<b>Issue</b>	<b>Union</b>
The City has proposed to increase use of such time to 72 hours.	<b>Article VII Local Representation Sec. 7.3</b>	The Union proposes to change of paid time such leave from 48 hours to an unlimited amount.

<b>Employer</b>	<b>Issue</b>	<b>Union</b>
<p>The City has proposed base rate pay be increased:            Eff. 7-1-03 an increase of 2%            Eff. 7-1-04 an increase of 3%            Eff. 7-1-05 an increase of 3%</p> <p>The City's position is to maintain current language on this matter.</p>	<p><b>Article XVIII</b>  <b>Rates of</b>  <b>Pay/Wages</b>  <b>Sec.18.1</b>  <b>Sec.18.2</b></p>	<p>The Union has proposed base rate pay be increased:            Eff. 7-1-03 an increase of 4.5%            Eff. 7-1-04 an increase of 4.0%            Eff. 7-1-05 an increase of 4.0%</p> <p>The Union proposes to delete the second sentence of Subsection f.</p>
<p>The City's position is to maintain current language on this matter.</p>	<p><b>Article XXI</b>  <b>Vacation &amp;</b>  <b>Personal Leave</b>  <b>Sec. 21.1</b></p>	<p>The Union proposes to increase the rate of accrual for employees with 13 or more years of service.</p>
<p>The City proposes to the Union \$500.00 cap contingent on deleting use of sick leave for routine dental and vision examinations.</p>	<p><b>Article XXIV</b>  <b>Sick Leave</b>  <b>Sec. 24.1 (C)</b>  <b>Sec. 24.8 (B)</b></p>	<p>The Union proposes to retain current language in Sec. 24.1 (C). It further proposes to increase sick leave buy-out cap by \$500.00, after 10+ years of service to the City.</p>
<p>The City's position is to maintain current language on this matter.</p>	<p><b>Article XXVI</b>  <b>Special Leaves</b>  <b>(Military Leave)</b></p>	<p>The Union proposes to increase the amount of paid leave granted for military duty.</p>
<p>The City's position is to maintain current language on this matter.</p> <p>The City proposes increases using the current length of service criteria, but an amount less than that proposed by the Union.</p>	<p><b>Article XXVIII</b>  <b>Miscellaneous</b>  <b>Economic</b>  <b>Sec.28.2</b>  <b>Sec.28.3</b></p>	<p>The Union proposes out of class work assignments be paid at the regular rate for the higher rank.</p> <p>It further proposes an increase in longevity pay.</p>

## DISCUSSION & DETERMINATION

### General

The economic issues at impasse are first considered collectively. The economic impact is reviewed in context of the cost estimates as introduced at the Hearing. While the economic recommendations are made issue by issue, the total projected cost of any recommended increase is in totality of the economic issues before the Fact Finder . This is a generally accepted standard in findings and recommendations in interest arbitration (Fact Finding).

No issue is raised regarding ability to pay. The City is the largest suburban community in the greater Columbus, Franklin County, Ohio, metropolitan area. It is an affluent community and continues to grow in population and tax base. With such growth is the related increase in demands on public services of which fire protection and related health and safety matters have been understandably a part. Additional related rationale related to the recommendations in this Report will be set forth in addressing the rationale included in the following issue by issue findings.

**Fact Finder's Determination**

**Issue by Issue**

<b>Issue</b>	<b>Discussion/Determination</b>
<p><b>Article VII Local Representation Sec. 7.3</b></p> <p><b>Recommendation</b></p>	<p>All matters set forth in this Article are agreed to by the parties except for the issue of the amount of paid time the IAFF will be given to conduct Union business. Per the expiring contract, 48 hours is provided. The IAFF proposes a change of an unlimited amount of time be allowed for Union business. The City has countered the amount be increased to 72 hours.</p> <p>The Union is not persuasive in its argument to attain a recommendation in line with its demand. It is understandable that there may be need for additional released time for local officers. The City's counter is considered more reasonable, based on the supporting facts introduced.</p> <p><b>It is determined that Article VII be included in the Agreement as it is set forth in the expiring agreement, with Section 7.3 reflecting the following to read "...utilize 72 hours per year to attend to Local business..." instead of 48 hours per year.</b></p>
<p><b>Article XVIII Rates of Pay/Wages Sec. 18.1 Sec. 18.2</b></p>	

Issue	Discussion/Determination
<p><b>Article XVIII</b>  <b>Rates of</b>  <b>Pay/Wages</b>  <b>Sec. 18.1</b>  <b>Sec. 18.2</b></p>	<p>It is noted the parties have agreed to the Agreement to have a 3-year duration. They also have both proposed base wage increases on the expiring schedule in a percentage amount. Comparables submitted by the parties include many of the public agencies in the immediate geographical area. Obviously, emphasis is given by the respective party to those jurisdictions that most favor the rationale to the respective party's argument.</p> <p>As indicated in the general section, this issue is one of several economic issues considered in arriving at an issue by issue determination. Pattern settlements within the same Employer's jurisdiction is given the greater weight, in this particular case. This includes a review of the Fact Finder's recommendation resulting in the recent contract settlement between the City and the Police Union. A review of that Report indicates not only issues considered similar to those raised in this instant matter, but also those relevant topics addressed that are found considerably different. The Union is persuasive that an above cost of living increase is appropriate at this time. The details in the City/Police impasse, while similar, are clearly not the same as in this instant case. The totality of the economic recommendations are considered appropriate in this instant case.</p>
<p><b>Article XVIII</b>  <b>Rates of</b>  <b>Pay/Wages</b>  <b>cont'd</b>  <b>Sec. 18.1</b>  <b>Sec.18.2</b></p>	<p>The following recommendation is made regarding wage increase after giving due consideration to the matters addressed in the preceding.</p> <p>The Union seeks to delete the last sentence in Section 18.2(F) of this Article. The City argues it should be retained in the Agreement as previously agreed.</p> <p>The language in question was agreed to by the parties in the prior expiring contract. In that preceding 3-year period operating under terms of the expiring agreement, no adverse employee implementation of the terms occurred. The language is clear. It extends a specific management right, and work rules for the employees. No argument is found that is persuasive to recommend the deletion as sought by the Union. The rationale offered by the Union is limited to "What if" scenario. Such is not found sufficient to attain a recommendation to delete the term so recently accepted.</p>

Issue	Discussion/Determination
<p><b>Article XVIII</b>  <b>Rates of</b>  <b>Pay/Wages</b>  <b>cont'd</b>  <b>Sec. 18.1</b>  <b>Sec.18.2</b>  <b>Recommendation</b></p>	<p><b>It is determined that Article XVII be included in the Agreement as it is set forth in the expiring agreement, with Section 18.1 reflecting the following change to the wage schedule:</b>  <b>Effective 7-1-03 an increase of 4.0%</b>  <b>Effective 7-1-04 an increase of 4.0%</b>  <b>Effective 7-1-05 an increase of 4.0%</b></p> <p><b>It is further determined that Article XVII, Section 18.2(F) remain as currently stated.</b></p>
<p><b>Article XXI</b>  <b>Vacation &amp;</b>  <b>Personal Leave</b>  <b>Sec. 21.1</b>  <b>Sec. 21.5</b></p>	<p>The IAFF proposes to increase the rate of vacation accrual for those employees having 13 years or more of service. It further seeks to amend Section 21.5 to provide that employees with 6 or more years of service up to 3 weeks pay in lieu of vacation. The City's has countered with a proposal to accept the proposed changes in Section 21.5 contingent upon the Union's withdrawal of its proposal to increase the rate of vacation accrual in Section 21.1.</p>
<p><b>Article XXI</b>  <b>Vacation &amp;</b>  <b>Personal Leave</b>  <b>Sec. 21.1</b>  <b>Sec. 21.5</b>  <b>Cont'd</b>    <b>Recommendation</b></p>	<p>Considering the proposed changes in this Article together, such would result in a notable cost increase to wage and benefits for term of the Contract. Such consideration is given to the terms in this Article in totality with other economic issues addressed in this Award.</p> <p><b>It is determined that Article XXI be included in the Agreement as it is set forth in the expiring agreement inclusive of terms set forth in Sections 21.1. Section 21.5 shall reflect language granting the employ, with 6 or more years service to receive up to 3 weeks pay in lieu of vacation.</b></p>
<p><b>Article XXIV</b>  <b>Sick Leave</b>  <b>Sec. 24.1 (C)</b>  <b>Sec. 24.8 (B)</b></p>	<p>The IAFF proposes to modify Sec. 24.8(B) to increase the maximum payout for unused sick leave accrued, for employees terminating employment with 10 or more years service, by \$500.00. The City has countered by offering to accept the IAFF proposal contingent upon the Union agreeing to modify Section 21. ( C ) for routine dental, orthodontia, and vision examinations.</p>

Issue	Discussion/Determination
<p><b>Article XXIV Sick Leave Sec. 24.1 (C) Sec. 24.8 (B) cont'd</b></p> <p><b>Recommendation</b></p>	<p>The Union proposed increase is not found excessive and in line with comparables. Such limit has not been increased in the past 6 years. To increase this maximum does have a cost factor but such cost is limited as it is limited to employees that terminate employment with 10 years or more service to the City.</p> <p>Routine medical examinations, inclusive of dental and vision is a long established recognized basis for the use of sick leave. No claim of excessive use or misuse of this benefit has been introduced into this record. While the City's proposal does reflect a rationale contingency, such is not persuasive to attain the recommendation proposed.</p> <p><b>It is determined that Article XXIV be included in the Agreement as it is set forth in the expiring agreement inclusive of Section 24.1. Section 24.8 is recommended to include changing the maximum cap on the payout to be increased from \$17,500.00 to \$18,000.00.</b></p>
<p><b>Article XXVI Special Leaves (Military Leave)</b></p> <p><b>Recommendation</b></p>	<p>The IAFF seeks to increase the number of paid military leave. The City proposes to retain the current benefit level.</p> <p>The benefit level sought by the Union is the exception, rather than the rule. The Union argument is not persuasive in light of the total economic recommendations found in this Award.</p> <p><b>It is determined that Article XXVI be included in the Agreement as it is set forth in the expiring agreement.</b></p>
<p><b>Article XXVIII Miscellaneous Economic Sec. 28.2 Sec. 28.3</b></p>	<p>The Union proposes (Sec. 28.2) that employees temporarily assigned to out of class work at a higher rank should be paid at that rank for the time so worked. It further proposes (Sec. 23) to increase longevity pay with the insertion of a 25+ step on the schedule.</p> <p>The City proposes status quo on Section 28.2 and a dollar amount increase on the current schedule as of the anniversary date of the third year of the Contract.</p>

Issue	Discussion/Determination																				
<b>Article XXVIII</b> <b>Miscellaneous</b> <b>Economic</b> <b>Sec. 28.2</b> <b>Sec. 28.3</b> <b>Cont'd</b>	<p>Short term out of class work and the pay grade rate normally assigned that rank are normally unrelated. The evidence and testimony is persuasive that such provision should remain unchanged in the Agreement.</p> <p>Longevity pay, when part of a pay plan, is generally considered a part of the regular pay. The vast majority of the effected work force benefit from such a provision. The evidence and testimony is lacking to justify the proposed 25+ step. The recommendation on this issue is considered appropriate in keeping with a total economic package.</p>																				
<b>Recommendation</b>	<p><b>It is determined that Article XXVI be included in the Agreement as it is set forth in the expiring agreement with the inclusion of following:.</b></p> <table border="1" data-bbox="553 793 1365 982"> <thead> <tr> <th data-bbox="553 793 812 825">Length of Service</th> <th data-bbox="812 793 1015 825">2003</th> <th data-bbox="1015 793 1218 825">2004</th> <th data-bbox="1218 793 1365 825">2005</th> </tr> </thead> <tbody> <tr> <td data-bbox="553 825 812 863">5- 9 Years</td> <td data-bbox="812 825 1015 863">\$ 650.00</td> <td data-bbox="1015 825 1218 863">\$ 700.00</td> <td data-bbox="1218 825 1365 863">\$ 750.00</td> </tr> <tr> <td data-bbox="553 863 812 900">10-14 Years</td> <td data-bbox="812 863 1015 900">875.00</td> <td data-bbox="1015 863 1218 900">925.00</td> <td data-bbox="1218 863 1365 900">975.00</td> </tr> <tr> <td data-bbox="553 900 812 938">15-19 Years</td> <td data-bbox="812 900 1015 938">1,100.00</td> <td data-bbox="1015 900 1218 938">1,175.00</td> <td data-bbox="1218 900 1365 938">1,250.00</td> </tr> <tr> <td data-bbox="553 938 812 976">20 or more Years</td> <td data-bbox="812 938 1015 976">1,275.00</td> <td data-bbox="1015 938 1218 976">1,350.00</td> <td data-bbox="1218 938 1365 976">1,425.00</td> </tr> </tbody> </table>	Length of Service	2003	2004	2005	5- 9 Years	\$ 650.00	\$ 700.00	\$ 750.00	10-14 Years	875.00	925.00	975.00	15-19 Years	1,100.00	1,175.00	1,250.00	20 or more Years	1,275.00	1,350.00	1,425.00
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**SUMMATION**

**DETERMINATIONS & RECOMMENDATIONS**

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### TOTALITY OF AGREEMENT

- It is recommended that all items of tentative agreement prior to Fact Finding be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Fact Finder in the Award.
- This will affirm the foregoing report, consisting of **14 pages**, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.
- \* Any matter presented before the Fact Finder and not specifically addressed in this Determination and Award were given consideration but are not recommended for inclusion in the Agreement.
- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of **October 1, 2003**.

  
John S. Weisheit, Fact Finder

# CERTIFICATE OF SERVICE

STATE EMPLOYMENT  
RELATIONS BOARD

2003 OCT -2 A 10:45

*This will affirm that the Fact finding Report in the Matter of Fact finding between*

<b>BETWEEN</b> <b>Westerville Firefighters</b> <b>International Association of Firefighters</b> <b>Local 3480</b> <b>v</b> <b>City of Westerville, OH</b>	<b>CASE NO: SERB 03-MED-02-0128</b>
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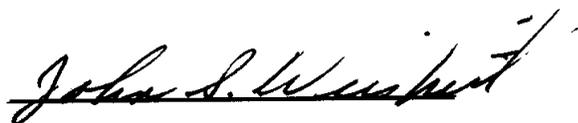
*was served to the below named parties at the stated addresses*

<b>William Moul, Esq.</b> <b>Thompson Hine LLP</b> <b>10 West Broad St.</b> <b>Columbus, OH 43215-3435</b>	<b>Ronald Linville, Esq.</b> <b>Baker &amp; Hostetler LLP</b> <b>Capitol Square, Suite 2100</b> <b>65 East State St.</b> <b>Columbus, OH</b> <b>43215-4260</b>
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by U.S. Postal Service mailed, overnight express, on  
**October 1, 2003.**

Copy of this Award was submitted U. S. Postal Service by First Class Mail to  
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on  
**October 1, 2003.**

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC  
4117 and related SERB Rules and Regulations.



**John S. Weisheit, Fact Finder**

**Date October 1, 2003**