

**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

April 9, 2004

In the Matter of:	)	
	)	
The International Association of Firefighters, Local 1144, AFL-CIO	)	SERB Case No: 03-MED-09-1019
	)	
and	)	<u>Bernadette Marczely, Fact-Finder</u>
	)	
The City of Bay Village	)	

---

**FACT FINDER'S REPORT**

---

**HEARING:**  
March 17, 2004  
Bay Village City Hall

**APPEARANCES**

**FOR THE UNION:**

Christopher Lyons.....Negotiating Committee Member  
James Walts.....President, IAFF Local 1144  
S. Randall Weltman.....Attorney, IAFF Local 1144

**FOR THE CITY OF BAY VILLAGE:**

Gary A. Ebert.....Director of Law  
Gregory Jackson.....Fire Chief  
Gary C. Johnson.....Attorney

Steven J. Presley.....Director of Finance

**EXHIBITS PRESENTED AT THE HEARING**

**JOINT EXHIBITS**

**An Agreement between the City of Bay Village and Fire Fighters, Local 1144, AFL-CIO  
January 1, 2001 through December 31, 2003**

**UNION EXHIBITS**

- Exhibit 1.....Comparables: OT Holidays, Total Holidays, Compensation  
[By Population, West Side, Top 15, Cuyahoga Cty., Solon Rept.]**
- Exhibit 2.....Solon Fact Finding Report**
- Exhibit 3.....Bay Village News [Fiscal state of the City]**
- Exhibit 4.....State Auditor’s Report for the year ending December 31, 2002**
- Exhibit 5.....Union Selection of Comparables by Income and Population  
[By Population, West Side, Top 15, Cuyahoga Cty., Solon Rept.]**
- Exhibit 6.....2003 Compensation, Paramedic Pay, Longevity, Bonus, Median  
Income Comparisons [By Population, West Side, Top 15,  
Cuyahoga Cty., Solon Rept.]**
- Exhibit 7.....Raises 2004 and Beyond  
[By Population, West Side, Top 15, Cuyahoga Cty., Solon Rept.]**
- Exhibit 8.....Pay Raises for Non Bargaining Unit Bay Village Employees**
- Exhibit 9.....Actual Health Care Increase Proposed by City**
- Exhibit 10.....Parma Heights Fire Fighters Arbitration, Nov. 5, 2003**
- Exhibit 11.....SERB Annual Ten-Year Wage Settlement Data [1993-2002]**
- Exhibit 12.....The 27th Period and the Missing Pay**
- Exhibit 13.....City of Tiffin Arbitration [Comment on Pattern Bargaining]**
- Exhibit 14.....Acting Lieutenant’s Pay Study [Squad Leader Pay Issue]  
[By Population, West Side, Top 15, Cuyahoga Cty., Solon Rept.]**
- Exhibit 15.....Pre-Hearing Statement of the Union**

**CITY EXHIBITS**

- Exhibit 1.....Holidays, Holiday Overtime in Comparable Contracts**
- Exhibit 2.....Actual Squad Pay for 2001, 2002, and 2003.**
- Exhibit 3.....City’s Pre-Hearing Brief on Pattern Bargaining, Mar. 17, 2004.**
- Exhibit 4.....Bay Village & Fire Fighters Local 1144 Conciliation Award, 1999.**
- Exhibit 5.....City of Stow and OPBA Fact Finding Report, 2002.**

- Exhibit 6.....State of Ohio and Ohio State Troopers Fact Finding Report, 1997.
- Exhibit 7.....Bay Village & Fire Fighters Fact Finding Report, 1998.
- Exhibit 8.....Fire Fighters Top Step/Patrolmen's Top Step Comparable Analysis
- Exhibit 9.....Comparable Analysis [Fire Fighter/Patrolmen Top Step]
- Exhibit 10.....Compilation of Individual Salaries & Earnings to Date
- Exhibit 11.....Plain Dealer Article "...Inflation under Control."
- Exhibit 12.....Crain's Report "Recession's Toll on Area Nearly \$500M."
- Exhibit 13.....Bay Village 2003 Fire Department Runs
- Exhibit 14.....Bay Village General Fund-Cash Basis [1999-2003].
- Exhibit 15.....Rocky River Fire Fighters 2003-2005 Contract.
- Exhibit 16.....North Olmsted Fire Fighters 2002-2003 Contract.
- Exhibit 17.....North Ridgeville Fire Fighters 2001-2003 Contract.
- Exhibit 18.....Westlake Fire Fighters 2001-2004 Contract.
- Exhibit 19.....Lakewood Fire Fighters 2001-2003 Contract.
- Exhibit 20.....Avon Lake Fire Fighters 2003-2005 Contract.
- Exhibit 21.....Fairview Park Fire Fighters 2003-2005 Contract.
- Exhibit 22.....Bay Village Clerk-Secretaries Contract 2004-2006.
- Exhibit 23.....Bay Village Police [Sergeants & Lieutenants] Contract 2004-2006.
- Exhibit 24.....Bay Village Police [Patrolmen] Contract 2001-2003.
- Exhibit 25.....Bay Village Police [Patrolmen] Contract 2004-2006.
- Exhibit 26.....Bay Village AFSCME Contract 2004-2006.
- Exhibit 27.....Comparable Analysis [Fire Fighter/Patrolman Uniform Allowance]

## BACKGROUND

This fact-finding report is submitted pursuant to the collective bargaining procedures agreed to by the City of Bay Village and the International Association of Fire Fighters, Local 1144, AFL-CIO. The present contract between the parties covers the term of January 1, 2001 through December 31, 2003, and the terms of the present Agreement continue to govern the terms and conditions of work for bargaining unit members.

The bargaining unit consists of all full time employees including Fire Fighters, Lieutenant and Captain in the City's Fire Department. There are approximately twenty-five (25) members in the bargaining unit. The City is a suburb of Cleveland located on the Lake Erie shoreline in western Cuyahoga County with a population of 16,087 having a median family income of \$81,686, and a per capita income of \$35,318 [Union Exh. 5]. In 2002, property tax accounted for 35% of total revenues, and municipal income tax accounted for 33% [Union Exh. 4]. The City's municipal income tax rate of 1.5% has remained unchanged since 1983 [Union Exh. 4]. Grants and entitlements revenue totaling \$3,413,950, accounts for 22% of total governmental activity revenue [Union Exh. 4]. These funds are comprised of distributions from the State and County, the majority of which are estate taxes [Union Exh. 4]. For the year ending December 31, 2002, the City's revenues exceeded expenditures by \$1,459,313 [Union Exh. 4].

The fact-finding hearing was conducted on Wednesday, March 17, 2004, in Bay Village City Hall from 10:00 a.m. to 5:00 p.m. The fact-finder wishes to commend both parties for their preparation, informed participation, and exemplary professionalism and courtesy.

In keeping with Rule 4117-9-05 of Ohio's Public Sector Collective Bargaining Law, the Fact Finder relied on the following criteria in making the recommendations included in this report:

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

In this report, the fact-finder will summarize respective positions on each item remaining in dispute at the time of the hearing, and will discuss the rationale for each side's proposal. Settlement on a given item before or during the hearing will be noted. The arbitrator will then discuss the relative strengths and weaknesses of the positions presented, and choose between the proposals made.

---

***ISSUE 1: PATTERN BARGAINING***

---

**The Union's Position:**

The Union objects to the City's position that "pattern bargaining" should override every other factor presented during negotiations, including consideration of comparables. The Union disagrees with the City's argument that the outcome of collective bargaining with Fire Fighters Local 1144 should be tied to and determined by the City's contracts with the Police (FOP) and City's Service Union (AFSCME).

**Rationale:**

In support of its position on role of pattern bargaining in its negotiations with the City, the Union refutes the City's contention that Fact-Finder Colman Lalka, in 1998, supported the concept of "pattern bargaining" by the City [City Exh. 7], noting that in actually Fact-Finder Lalka refused to rule that pattern bargaining should be afforded any special or extra weight. The Union further contends that Fact-Finder Lalka determined that comparability was the most important consideration in negotiations, a factor that should override the City's alleged pattern in the 1998 negotiations, and Fact-Finder Lalka actually recommended wage increases in excess of the City's pattern for each of the three years of the successor agreement [City Exh. 7, p. 8, 16].

While the Union's wage proposal was rejected in the subsequent 1999 Conciliation [City Exh. 4], the Union notes that the Conciliator's decision to select the City's final wage offer in 1999 was not based on deference to pattern bargaining, but rather on the fact that the Union had ignored the Fact-Finder's recommendations and submitted final offers in excess of the Fact-Finder's award [Union Brief, 5].

The Union argues that its proposals are intended to improve Local 1144's ranking with respect to contracts and economic packages bargained by Fire Fighters in comparable districts. The Union views pattern bargaining as the City's attempt to preclude the right of Local 1144 to bargain for anything beyond what the City has negotiated with the Police and Service Unions, thereby ignoring the accepted practice of considering comparables in determining equitable labor settlements. The Union maintains that by excluding consideration of comparables the City's offers, based on pattern bargaining alone, contain below average increases in wages and overall compensation, and substantial employee concessions on health care.

The Union maintains that the Fire Fighters employed by the City should be compensated at a level that reflects the City's healthy financial standing relative to comparable jurisdictions, and the pay packages afforded Fire Fighting units in comparable jurisdictions. Compensation packages for Local 1144 should not be predetermined by the bargaining of other, perhaps weaker, unions within the City.

**The City's Position:**

The City maintains the position that it is untenable and administratively impractical for it to participate in traditional one-union and one-employer negotiations. "Administrative ease" is cited as a primary reason for the use of pattern bargaining, and it is the City's position that a Union must bear the burden of justifying a deviation from the pattern on key items [City Exh. 3, p. 5].

**Rationale:**

The City defines pattern bargaining [City Exh. 3] as "a procedure in collective bargaining whereby a union seeks to obtain equal or identical terms from a group of employers in a particular industry based on an agreement already obtained from an important company. The particular agreement or the particular terms serve as a model for imitation by other employers and unions."

"The pattern may be established at the request of an international union for a model contract for a particular group of employees in an industry. This standard contract then is considered the pattern to be followed by local unions and companies throughout the country [*Robert's Dictionary of Industrial Relations (BNA 1986)*]."

The City then proceeds to distinguish between *Bell Cow* bargaining in which one union in a multiple union situation sets the pattern for other unions at a given facility, and *Joint Negotiations* in which all unions in a multiple union situation sit at the table and work toward a uniform settlement. The City asserts that it has participated in *Bell Cow* negotiations since 1985, and cites collective bargaining agreements from 1985-1995 supporting its position that these agreements show a pattern of standardization on key issues [City Exh. 3, p. 3].

The City further argues that Section 4117.14 of the Ohio Revised Code requires the Fact-Finder to take patterns into consideration. Specifically Section 4117.14(C)(3)(e) requires consideration of the factors listed in divisions (G)(7)(a) to (f):

- (a) Past collectively bargained agreements, if any.
- (b) 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.
- (c) The interests and welfare of the public, and the ability of the public employer to finance and administer issues proposed, and the effect of the adjustments on normal standards of public service.
- (d) The lawful authority of the public employer.
- (e) Any stipulations of the parties.
- (f) 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 the public sector or private employment.

The City asserts that Local 1144 has traditionally incorporated pattern issues into its ratified contracts. The City also maintains that the ability of the City employer to administer its Union contracts will be adversely affected if pattern bargaining is not allowed to continue in Bay Village.

It is also the City's position that "the validity of the pattern grows as more and more unions voluntarily adopt it [City Exh. 3, p. 6]."

The City further argues that pattern bargaining is a tool "to minimize its strike exposure," and a method of assuring that unions with fewer employees and, therefore, less bargaining power, receive the same or similar contractual provisions on key issues as do larger unions. Pattern bargaining, the City asserts, "recognizes that City employees do not differ, and should not receive benefits based on their ability to successfully 'strike' [City Exh. 3, p. 8]."

Finally, the City states that "the pattern recognizes the strength of the various exclusive representatives." If the other unions seek a deviation in the pattern, they must present a compelling reason for such deviation. The Union must establish a compelling reason before any deviation to the pattern shall be granted [City Exh. 3, p. 10].

---

**Fact Finder Opinion:**

The validity of Pattern Bargaining is a central issue in this case. However, to accept the City's arguments for Pattern Bargaining as valid is to subvert the purpose and procedures inherent in Ohio's Public Sector Collective Bargaining Law. If the City's assertion that "City employees do not differ, [City Exh. 3, p. 8]," were accepted as truth, there would not be three distinct employee bargaining groups in the City, i.e., the Police (FOP), the Fire Fighters (Local 1144, AFL-CIO) and AFSCME. Bargaining units are groupings of employees with a "community of interests [RC 4117.14(G)(7)]," who are included together for the purpose of designating a representative to bargain with the employer. The appropriateness of the unit is the statutory responsibility of SERB [RC Section 4117.06(A)], and the statute precludes SERB from including both professional and non-professional employees in the same unit unless a majority of each group has voted to be included in a single unit [RC Section 4117.06(B)]. SERB determines the appropriateness of each bargaining unit by considering such relevant factors as the desires of the employees; the community of interests; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining [RC 4117.06(B)]. The bargaining units in Bay Village have been designated by SERB as separate and distinct employee groups for the purpose of collective bargaining, and should not now be denied their right to collectively bargain as separate and distinct units.

The City defines pattern bargaining [City Exh. 3] as "a procedure in collective bargaining whereby a union seeks to obtain equal or identical terms from a group of employers in a particular industry based on an agreement already obtained from an important company." The City also notes that: "The pattern may be established at the request of an international union for a model contract for a particular group of employees in an industry. This standard contract then is considered the pattern to be followed by local unions and companies throughout the country [Robert's Dictionary of Industrial Relations (BNA 1986)]. " Thus, Pattern Bargaining, as defined in the City's own citations, is the prerogative of the Union, not the Employer. That is, pattern bargaining is initiated at the request of the Union, not mandated by the Employer.

Ohio's Collective Bargaining Law permits multi-unit bargaining by a public employer: "*This section shall not be deemed to prohibit multiunit bargaining [RC 4117.06].*" The statute *permits* the employer to engage in pattern bargaining if requested or agreed to by a group of unions. It does not, however, give the Employer the right to force unions into pattern bargaining. The Fire Fighters have clearly rejected the concept of Pattern Bargaining, and to insist that they must justify any deviation from the Pattern is to deprive them of their rights to collectively bargain as a distinct unit, recognized by SERB, under Ohio's Public Sector Collective Bargaining Law. It is facetious for the City to state that "the validity of the pattern grows as more and more unions *voluntarily* adopt it [City Exh. 3, p. 6]," when the Fire Fighters have clearly *not voluntarily* adopted the concept of pattern bargaining.

The City distinguishes between *Bell Cow* bargaining in which one union in a multiple union situation sets the pattern for other unions at a given facility, and *Joint Negotiations* in which all unions in a multiple union situation sit at the table and work toward a uniform settlement, and asserts that it has participated in *Bell Cow* negotiations since 1985, citing collective bargaining agreements from 1985-1995 to support its position that these agreements show a pattern of standardization on key issues [City Exh. 3, p. 3]. However, the City has offered no formal agreement with its unions to pattern bargain to counter the Fire Fighters' position that they do not want to participate in pattern bargaining. In fact, the Union argues that it is essentially being forced to accept wages, hours, terms and conditions of employment negotiated by weaker unions thereby foregoing its own distinct right to bargain. While there will always be a degree of standardization in many of the issues addressed in collective bargaining contracts, particularly regarding group health care benefits, such standardization, without evidence of a planned and voluntary participation in multi-group pattern bargaining, cannot be taken as an ascent to pattern bargaining on all issues.

The City's argument that pattern bargaining is a tool "to minimize its strike exposure," and a method of assuring that unions with fewer employees and, therefore, less bargaining power, receive the same or similar contractual provisions on key issues as do larger unions is also without merit. Pattern bargaining, the City asserts, "recognizes that City employees do not differ, and should not receive benefits based on their ability to successfully 'strike' [City Exh. 3, p. 8]." Police and Fire Fighters are statutorily prohibited from striking, and their exposure to threats to their health and safety in the performance of their duties does distinguish them from other City employees. Ohio's Public Sector Collective Bargaining Law, recognizing these distinctions, has given them the right to organize and collectively bargain as distinct employee units, substituting conciliation for the right to strike.

In response to the City's argument that "*administrative ease is a primary reason for placing a heavy burden on a Union to justify a deviation from the pattern on key items,*" the Fact Finder notes that this concern for administrative ease, taken to the extreme, would preclude any significant change in an existing contract, and would again defeat the very purpose of Ohio's Public Sector Collective Bargaining Law. Concern for administrative efficiency should indeed be a factor in the negotiating process, however, it should be one of many factors considered at the bargaining table, not the controlling factor. Therefore, the Fact-Finder will review proposals regarding each item remaining in dispute without reference to the Pattern Bargaining conducted by the City prior to this hearing.

**ARTICLE V. - RESIDENCY REQUIREMENT**

This item was settled during the Fact-Finding hearing. The Fire Fighters Residency Requirement will be the same as that appearing in the 2004-2006 Police contract.

*All Fire Fighters shall reside within the City of Bay Village or within a twenty (20) mile radius from the center of Bay Village. If the twenty (20) mile radius enters any city or township, the entire city or township shall be included in the residency requirement.*

**ARTICLE XI. - SICK LEAVE**

The parties agreed to retain the current language.

**ARTICLE XII. - VACATIONS**

This item was settled during the Fact-Finding hearing. The language adopted follows:

*12.10 The City will buy back vacation time in excess of seven tours of the current year's vacation time at the option of the employee. Any employee willing to sell back any portion in excess of seven tours must notify the department head by August 1 of the current year how many tours the individual is cashing in. The vacation buy-back will be paid in a separate check the Friday following the first pay in November.*

**ARTICLE XIII. - HOLIDAYS**

**The Union's Position:**

Section 13.01 The Union proposes to add Martin Luther King Day as one of the City's paid holidays. Section 13.03 The Union proposes adding Labor Day and Veteran's Day as holidays paying time and one-half if worked.

**Rationale:**

Comparable cities designate Martin Luther King Day as a paid holiday. Currently, Fire Fighters are paid time and one-half for only five (5) premium holidays. Comparable cities pay time and one-half for more than five (5) premium holidays [Union Exh. 1].

**The City's Position:**

The City wishes to continue its present practice of paying time and one-half only to employees who work on New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day and Christmas Day.

**Rationale:**

The City is opposed to any change because no other safety force employee receives this benefit, and payment of this benefit would be prohibitively expensive.

**Fact-Finders' Opinion:**

The Union's proposal to add Martin Luther King Day as one of the City's paid holidays is denied. The Union's proposal to add Labor Day and Veteran's Day as holidays paying time and one-half is granted.

**Rationale:**

While the Union contends that virtually all the comparable jurisdictions it uses designate Martin Luther King Day as a paid holiday, it has offered no study to substantiate that assertion.

In contrast, the Union has presented a strong case for including Labor Day and Veteran's Day as holidays paying time and one-half to employees required to work on those days. Bay Village is a West Side Suburb, and in the Union's study delineating the number of holidays for which Fire Fighters were paid overtime in the West Side Suburbs, Bay's five (5) ranked far below overtime holidays recognized by six of the eight West Side Suburbs in the Union's study. In addition, the City provided no cost study to justify its statement that payment of this benefit would be prohibitively expensive.

---

**ARTICLE XVI. - INJURY LEAVE**


---

**The Union's Position:**

16.04: The Employer may assign an employee on injury or sick leave to light duty as permitted by his/her attending physician. An employee on sick leave may request and shall be granted light duty as permitted by his/her attending physician. At least one light duty position per shift for either injured or sick will be guaranteed.

16.05: The Union accepts the City's proposal.

16.06: The Union accepts the City's proposal.

16.07: Once an employee receives approval to return to full duty as a Fire Fighter/Paramedic by his/her attending physician no paid injury leave will be permitted for further time off unless the employee re-injures himself/herself pursuant to Article 16.01

**Rationale:**

The Union has stated its position on this issue, but has offered no rationale or comparable study supporting its stance.

---

**The City's Position:**

16.04: The Employer may assign an employee on injury or sick leave to light duty as permitted by his/her attending physician.

16.05: The City may require medical confirmation for all work-related injuries.

16.06: The City may require medical confirmation for all return to work situations.

16.07: Employees may not use injury leave to cover absences due to therapy or doctor's visits related to duty injuries.

**Rationale:**

The City is opposed to guaranteeing one (1) light duty position per shift for either injured or sick employees. The City argues that in a department of only fifty (50) employees, this would mean that a significant percentage of the workforce could be on light duty and therefore not able to fulfill their work requirements. Such under staffing would create a safety issue for co-workers and the public. The City also contends that no other contract in the area makes such a guarantee.

**The Fact Finder's Opinion:**

*16.04: The Employer may assign an employee on injury or sick leave to light duty as permitted by his/her attending physician.*

However, the Fact Finder rejects the provision that at least one light duty position per shift be guaranteed for either injured or sick employees. The Fact Finder also rejects the Union's proposal that an employee on sick leave may request and shall be granted light duty as permitted by his/her attending physician.

**Rationale:**

The Fact Finder agrees with the City that to guarantee one light duty per shift would undercut the effectiveness of the workforce and create safety issues for co-workers and the public. While the Fact Finder agrees that an employee on sick leave may request light duty as permitted by his/her attending physician, the decision to grant or deny light duty should remain a management right based on workforce needs. To do otherwise is tantamount to guaranteeing at least one light duty position per shift, a guarantee that would undercut the efficiency of the workforce.

*16.05: The City may require medical confirmation for all work-related injuries.*

*16.06: The City may require medical confirmation for all return to work situations.*

**Rationale:**

The Union accepted the City's position on these points.

*16.07: Once an employee receives approval to return to full duty as a Firefighter/Paramedic by his/her attending physician, no paid injury leave will be permitted for further time off unless the employee re-injures himself/herself pursuant to Article 16.01.*

**Rationale:**

This language, proposed by the Union, was discussed and accepted by the City.

**ARTICLE XVII. - OVERTIME**

The Union proposed to retain current contract language. The City offered no objection to this proposal to retain current contract language.

---

**ARTICLE XVIII. - UNIFORM MAINTENANCE ALLOWANCE**


---

**The Union's Position:**

18.04: The Union proposes that the Uniform Allowance for Firefighters be increased as follows:

2004: \$1100.00

2005: \$1100.00

2006: \$1100.00

An increase of \$100.00.

**Rationale:**

The Union notes that on December 9, 2003, the City proposed to increase the current uniform allowance by \$100.00 beginning in 2005. The Union argues that it is merely accepting the City's earlier offer with the provision that the increase begin in 2004. In response to the City's argument that the Firefighters should not receive a Uniform Allowance that is greater than that negotiated with the Police [City Exh. 25, p. 11], the Union maintains that by statute their Uniform Allowance should not be based on the substandard settlement reached with the Police on this issue. The Union argues that its proposal is an attempt to make-up for inflationary losses.

18.09: The Union proposes that employees assigned to take charge of any squad vehicle shall receive the Lieutenant's pay at an hourly rate for all such hours worked.

**Rationale:**

The Union argues that a Firefighter who steps up to the position of Squad Leader should be compensated on an hourly basis for assuming the liability and responsibility inherent in squad leadership. Under the present agreement employees assuming responsibility for squad leadership receive twenty dollars (\$20.00) for each twelve (12) hours worked in such a position. In support of its position, the Union submitted on March 22, 2004, a post-hearing study of the existence of Acting Lieutenant's Pay in the comparable cities it has referred to throughout this hearing. Of the eight (8) West Side Suburbs in this study, five had provisions for Acting Lieutenant's Pay more favorable than that in Bay's contract, with three (3) providing hourly compensation equal to the Lieutenant's pay, and two (2) providing four (4) and six (6) hour minimums for compensation at the Lieutenant's rate. Only three (3) of the eight (8) West Side Suburbs provided no extra compensation for Firefighters acting in this position.

---



---

**The City's Position:**

18.04: At the hearing, the City proposed that the Uniform Allowance for the Firefighters should be the same as that bargained with the Police in their January 1, 2004, through December 31, 2006, contract:

2004: \$1000.00

2005: \$1100.00

2006: \$1100.00

**Rationale:**

The City argued that Firefighters should not receive a Uniform Allowance that exceeds that given to the Police because Police uniforms cost more, wear out more quickly, and are more likely to need repair or replacement. A Firefighters turnout gear protects a Firefighters uniform in adverse circumstances. In support of its position, the City submitted on March 26, 2004, a post-hearing study [City Exh. 27] comparing the Uniform Allowance for Firefighters and Patrolmen in comparable suburbs. This study indicated that in each of the comparable suburbs the Firefighters received a Uniform allowance equal to or less than that accorded Patrolmen.

18.09: The City proposes retaining current language concerning compensation for the assumption of squad leadership:

*Employees assigned to fill in for an absent officer on a "squad," shall receive twenty (\$20.00) dollars for each twelve (12) hours worked in such a position.*

**Rationale:**

It is the City's position that no other contract has a provision for compensating Firefighters who assume squad leadership. The City further argued at the hearing that assumption of squad leadership is a rare occurrence. During the hearing, the City generated a compilation of Squad Leadership Pay awarded in 2001, 2002, and 2003 [City Exh. 2].

---



---

**The Fact-Finder's Opinion:**

18.04: The City's proposed Uniform Allowance is that recommended by the Fact-Finder.

2004: \$1,000.00

2005: \$1,100.00

2006: \$1,100.00

**Rationale:**

The City's study comparing the Uniform Allowance for Firefighters and Police in comparable suburbs [City Exh. 27] shows that in all cases the Uniform Allowance for Firefighters was less than or equal to that allotted Patrolmen in these comparable cities. This data would appear to support the City's arguments that Firefighters should not receive a Uniform Allowance in excess of that allotted to Police for the reasons cited by the City.

18.09: The Union's proposal on the issue of Squad Leader Pay is recommended by the Fact-Finder.

*Employees assigned to take charge of any squad vehicle shall receive the Lieutenant's pay at an hourly rate for all such hours worked.*

**Rationale:**

Employees who accept additional responsibility and liability should be compensated in accordance with the demands of the position assumed from the moment they accept this additional responsibility

and liability. City Exh. 2, produced at the hearing, indicates the *Number of Times* individual Firefighters were asked to assume squad leadership and the resulting amount each earned. Contrary to the City's assertion, the assumption of squad leadership is not an uncommon event. It occurred 358 times in 2001, 458 in 2002, and 337 in 2003 [City Exh. 2]. In addition, Union Exh. 14 sustains the Union's position that most West Side Suburbs, the comparables used in this report, compensate Firefighter's who assume leadership more generously than Bay.

---

## ARTICLE XIX. - INSURANCE

---

### **The Union's Position:**

The Union accepts the health care terms that the City entered into with AFSCME, Exhibit attached to Union's Pre-Hearing Statement:

#### *Health Coverage*

<u>Prescriptions:</u>	2004	\$10/\$20/\$30 w/generic incentive
	2005	\$10/\$20/\$30 w/generic incentive
	2006	\$10/\$20/\$30 w/generic incentive

*Mail order only for maintenance prescriptions @ 2x co-pay for 90 day supply.*

<u>Medical Deductibles:</u>	2004	\$250/\$500
	2005	\$250/\$500
	2006	\$250/\$500

#### Co-Insurance: 90/10 In-network after deductibles

*With MAXIMUM out-of-pocket INCLUDING deductibles*

	2004	\$500/\$1000
	2005	\$500/\$1000
	2006	\$500/\$1000

*70/30 Out-of-Network with 2x In-Network Maximum Out-of-Pocket  
\$750/\$1500*

Dental - *Substitution of Ohio AFSCME Care Plan Dental Benefits Level 3*

Vision - *Medical Mutual SuperMed Vision Plan E [Attached to Statement]*

### **Rationale:**

The Union agrees to accept the health care concessions noted in exchange for an increase in Firefighters Rates of Pay commensurate with those received by the Fire Chief and other department heads.

---

### **The City's Position:**

Change the deductible to two hundred fifty dollars (\$250), individual and five hundred dollars (\$500) family per year. Change to a PPO wherein network is covered at ninety (90%) percent and out-of-network covered at seventy (70%) percent with the employee paying either ten (10%) percent or thirty (30%) percent. Maximum out-of-pocket cost of two hundred fifty dollars (\$250), individual

and five hundred dollars (\$500) family in-network and five hundred dollars (\$500)/one thousand dollars (\$1000) out-of-network. Add new dental plan. Add new vision plan. Mail order maintenance prescriptions required.

The City rejects the request for a thirty (30%) percent premium rebate, and argues that no other city surveyed has such a provision. Fairview employees receive one hundred dollars (\$100)/two hundred dollars (\$200), but pay fifty dollars (\$50) in premium contributions. If wage increases are retroactive to January 1, 2003, the City requests that this provision also be retroactive to January 1, 2003. The request for a thirty (30%) percent premium rebate is rejected as preposterous and available in no other city.

**Rationale:**

This coverage has been agreed to by all other employee groups and represents a mainstream plan with the comparable cities. The plan includes a new dental plan and a new vision plan.

**The Fact-Finder’s Opinion:**

The Union indicates a willingness to accept the health care terms that the City entered into with AFSCME [Union Pre-Hearing Statement Attachment 1] despite the fact that this health care package represents “substantial employee concessions and a potentially injurious reduction in the employee’s pay package [Union Pre-Hearing Statement, p. 12]. Therefore the Fact-Finder recommends that the Union receive the same health care package as that accorded AFSCME [Union Pre-Hearing Statement Attachment 1].

**Rationale:**

The negotiation of health care benefits is the one area in which both Union and Employer benefit from pattern bargaining. Overall benefits, administrative efficiency, and costs for coverage are enhanced when the employer is free to develop health plans covering more than one collective bargaining unit.

**Note:**

For the record, a comparison of the Union’s present healthcare plan and the AFSCME plan recommended by the Fact-Finder shows the following reductions/changes in benefits:

	<u><b>2003</b></u>	<u><b>\$5 /\$10/15*****</b></u>	
<u>Prescriptions:</u>	2004	<i>\$10/\$20/\$30 w/generic incentive</i>	
		2005	<i>\$10/\$20/\$30 w/generic incentive</i>
		2006	<i>\$10/\$20/\$30 w/generic incentive</i>
			<i>Mail order only for maintenance prescriptions @ 2x co-pay for 90 day supply.</i>
<u>Medical Deductibles:</u>	2004	\$250/\$500	<u><b>2003 100% Kaiser Permanente</b></u>
	2005	\$250/\$500	<u><b>or Bay Self-Funded Plan*****</b></u>
	2006	\$250/\$500	
<u>Co-Insurance:</u>	2004	<i>90/10 In-network after deductibles</i>	

*With MAXIMUM out-of-pocket INCLUDING deductibles*

2004 \$500/\$1000

2005 \$500/\$1000

2006 \$500/\$1000

*70/30 Out-of-Network with 2x In-Network Maximum Out-of-Pocket 2003 - Same  
\$750/\$1500*

**NEW\***      *Dental - Substitution of Ohio AFSCME Care Plan Dental Benefits Level 3  
Vision - Medical Mutual SuperMed Vision Plan E [Attached to Statement]*

---

## **ARTICLE XX. - RATES OF PAY**

---

### **The Union's Position:**

The Union proposes to increase the current wage scale by 3.75% for each of the three (3) years of the new contract. Specifically,

Effective January 1, 2004 - 3.75%

Effective January 1, 2005 - 3.75%

Effective January 1, 2006 - 3.75%

### **Rationale:**

In support of its proposal, the Union first discusses the ability of the City of Bay Village to fund its proposal citing the City's healthy state of economic development as reported in the March 2004 *Bay Village News* [Union Exh. 3], and Bay's State Audit for the year ending December 31, 2002 [Union Exh. 4]. The Union then offers an analysis based on income and population size establishing its choice of comparables cities to be used in comparing salaries and establishing the reasonableness of its proposal [Union Exh. 5]. Using the comparables selected, the Union maintains that Bay Firefighters' salaries are below average when compared to Cities of Similar Size, West Side Suburbs, Top 15 Suburbs, Cuyahoga County Suburbs, and Solon Fact-Finding Cities [Union Exh. 6]. Using the same comparables, the Union compares settlement percentages reached by these cities in 2004 [Union Exh. 7] and argues that Bay's proposed percentage increases fall below the average in all cases. The Union also notes that the Fire Chief, the Police Chief, and other administrative officials have been given 3.75% pay increases for 2004, 2005, and 2006 [Union Exh. 8].

In further support of its position on salary, the Union refers back to the City's proposal on health insurance, which the Union has conditionally accepted, and analyzes potential and real losses acceptance of this plan entails [Union Exh. 9]. The Union further cites Parma Heights Firefighters' July 29, 2003, Arbitration Award, in which the arbitrator acknowledges potential costs to the Parma Heights Firefighters in receiving a similar health package [Union Exh. 10]. The arbitrator in this case notes that employees with a benefit period deductible as well as co-insurance obligations for certain benefits are essentially having health care costs shifted to them. Since Parma Heights in this case, like Bay, is self-insured, the Union argues that similarly the entire amount of any savings realized by the City would essentially result from a shift in costs to the bargaining unit members. The Parma Heights

arbitrator found such cost shifting, together with a change in prescription drug coverage, to be equivalent to an actual reduction in wages [Union Exh. 10, p. 13].

Finally, the Union offers SERB's *Annual Ten-Year Wage Settlement Data for 1993-2002* [Union Exh. 11] as evidence that the City's current proposal is less than any during the 1993-2002 period reported by SERB. The Union also uses this data [Union Exh. 11] to refute the City's contention that pattern bargaining is a common practice among public sector bargaining units. The Union notes that reported salary percentages for police, firefighters, and teachers during this period are distinctly different [Union Exh. 11, Unit Type].

---

---

**The City's Position:**

The City proposes the following percentage raises over the three years of the contract:

2004 - 3 1/4%

2005 - 3%

2006 - 3%

**Rationale:**

The City submitted an adjusted *General Fund-Cash Basis Statement* [City Exh. 14] during the hearing to counter the financial records presented by the Union supporting the ability of the City to pay for proposed raises. The City contends that the Union's proposed raises are excessive in light of the fact that the Consumer Price Index (CPI) increased only 1.9% in 2003 [City Exh. 11]. The City also cites *Crain's Cleveland Business, September 29-October 5, 2003*, as evidence of a recessionary toll felt in Cleveland and surrounding cities as residents lose jobs in a failing economy, and quarterly pay decreases by 3.7% [City Exh. 12]. It is the City's position that Bay Firefighters are paid a competitive wage rate with respect to cities comparable to Bay Village in size [City Exhs. 8 and 9]. It should be noted that the City's comparables were selected on the basis of geography rather than size or income, and the City defended its choice of comparables noting that Bay Village is a truly unique community.

In addition, the City argued that the workload for Bay firefighters in this small residential community without any major industries is minimal, and as evidence offered a compilation of the number of Service, Fire, and Squad Runs required during 2003 [City Exh. 13]. At the hearing, the City contended that a minimal workload and good working conditions precluded the need for raises in excess of those it offered.

Finally, the City argued that since all other labor contracts within Bay Village have been settled and the wage rate increases are three and one-quarter percent (3 1/4%) for each bargaining unit for the first year, and three (3%) percent for each of the last two years, by virtue of pattern bargaining, the firefighters should receive the same rate increases over the three years of the proposed contract [City Pre-Hearing Statement, p. 3].

## PARAMEDIC PAY

---

### **The Union's Position:**

The Union proposes to increase the current Paramedic Pay incrementally during each year of the successor contract as follows:

2004 - \$1450  
 2005 - \$1850  
 2006 - \$2250

### **Rationale:**

In the Fire "Industry" Paramedic Pay is viewed as an economic component unique to the job description of a firefighter and separate from any existing city-wide patterns in wage bargaining. The Union refers to its study of Paramedic Pay in comparable districts to show that Bay is below average in this area [Union Exh. 6]. In particular, the Union notes that in its study of towns with similar population sizes and incomes, fourteen of the cities represented had paramedic pay greater than Bay's, while only three of the cities represented were wealthier than Bay.

---



---

### **The City's Position:**

Presently, all Firefighters who are Paramedic-Trained receive fifty-three thousand one hundred seventy-seven dollars (\$53,177.00). A Firefighter that is EMT-Trained receives fifty-two thousand one hundred fifty-two dollars (\$52,152.00). At present all Firefighters are Paramedics.

### **Rationale:**

The City gave no rationale for its position, which appears to be a statement of the status quo, as opposed to a counter to the Union's proposal.

---



---

### **The Fact-Finder's Opinion:**

As noted in the Fact-Finder's earlier remarks, pattern bargaining cannot be superimposed on a given bargaining unit by an employer. To do so is to defeat the very purpose the Public Sector Collective Bargaining Law which allows employees with common interests to join together for the purpose of negotiating the wages, hours, terms and conditions of their employment. Pattern bargaining ignores the differences between bargaining units protected by the law, and in so doing, undermines the purpose of the law. The administrative ease of the employer should never be allowed to override the rights of SERB recognized bargaining units to collectively bargain as distinct labor groups.

That being said, it is the recommendation of the Fact-Finder that Firefighters be given the following percentage increases:

2004 - 3.5%  
 2005 - 3.5%  
 2006 - 3.5%

**Rationale:**

While the sides could not agree on the comparables to be used throughout this hearing, the Fact-Finder believes that the West Side Suburbs cited in Union Exhibit 6 are most comparable to Bay Village with respect to location, population, median family income, and status as suburban residential communities. In fact, five of these cities do appear on the City's own list of seven comparables [City Exh. 9], i.e., North Olmstead, Rocky River, Lakewood, Westlake, and Fairview Park. In light of the salary study comparing Firefighter compensation in these Cities [Union Exh. 6], and the Raises for 2004 and Beyond [Union Exh. 7], the recommended percentages reflect a valid compromise between the City's and the Union's proposals. The Union proposed 11.25% over three years; the Board proposed 9.25% over three years. The Fact-Finder is recommending 10.5% over three years.

---

**PARAMEDIC PAY**


---

**The Fact-Finder's Opinion:**

Once again using the West Side Suburb Study [Union Exh. 6] as a guide, the Fact-Finder recommends the following schedule of incremental increases to Paramedic Pay:

2004 - \$1,250

2005 - \$1,450

2006 - \$1,650

**Rationale:**

The requirement for Paramedic Training is unique to the job of a Firefighter, and should be a separate element of economic bargaining.

---

**ARTICLE XXI. - LONGEVITY**


---

This item was taken off the table at the hearing.

---

**THE 27TH PERIOD AND THE MISSING PAY**


---

This issue was presented for the first time at the Fact-Finding Hearing. The City registered a procedural objection to its presentation at this time. The Arbitrator agreed with the City, and the Parties mutually agreed to table the matter and refer it to the Labor/Management Committee for further discussion.