

**STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD

**In the Matter of:**

**City of Willowick  
The Employer**

**03-MED-10-1302**

**2004 SEP 20 A 11: 22**

**and**

**Willowick Firefighters  
Association  
The Union**

**FACT FINDING REPORT  
FINDINGS AND RECOMMENDATIONS**

**September 17, 2004**

**APPEARANCES**

**For the Employer:**

Tom Grabarczyk  
Joseph P. Busher  
Cheryl Killen

Labor Relations Management, Inc.  
Fire Chief  
Finance Director

**For the Union:**

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**I. BACKGROUND**

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 28, 2003 pursuant to Ohio Revised Code Section 4117.14. The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Willowick Firefighters Association (Union) and the City of Willowick (Employer or City). The City is located in northeastern Ohio in the northwestern corner of Lake County on the shore of Lake Erie. As it borders on Cuyahoga County and other eastern suburbs of Cleveland, it can be described as a bedroom community. It has little industry.

The fact-finding involves the City and its firefighters, excluding the Chief and the Assistant Chief. The bargaining unit is somewhat different. Except for the Chief, it is composed entirely of part-time firefighters, most of whom have full-time firefighting jobs elsewhere. While there are communities that supplement a small full-time firefighting force with part-timers, the City has no full-time firefighters and fills its needs entirely through part-time employees. The unit was first organized in 1989 and the first contract was negotiated in 1990. For the most part, the parties have had a cordial bargaining relationship, although they have always required the fact finding and conciliation process to negotiate their agreements.

**II. THE HEARING**

The fact-finding hearing was held on August 30, 2004 at the Willowick City Hall. The parties provided their position statements by August 27, 2004. The hearing began at 10:00 a.m and adjourned at 4:30 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties introduced the

following exhibits into evidence:

Union Exhibits

- A. City of Willowick Basic Financial Statements, December 31, 2003.
- B. City of Willowick General Purpose Financial Statements, December 31, 2002.
- C. City of Willowick General Purpose Financial Statements, December 31, 2001.
- D. Memo re Emergency Medical Services Funds, January 26, 2004.
- E. Research Bulletin re Unreserved Fund Balance and Local Government Finance, September 1990.
- F. SERB Clearinghouse Benchmark Report, Lake County, August 19, 2004.
- G. SERB Wage Increase Report, Lake County, August 19, 2004.
- H. SERB Wage Settlement Breakdown (1994-2003).
- I. Wage and longevity provisions of Agreement between the City of Willowick and Fraternal Order of Police, Willowick Lodge No. 116, Police Officers, Effective January 1, 2001 to December 31, 2003.
- J. Wage and longevity provisions of Agreement between the City of Willowick and Ohio Patrolmen's Benevolent Association, Dispatchers, January 1, 2001 to December 31, 2003.
- K. SERB Benefits Report, Lake County, August 19, 2004.
- L. Newspaper articles re 2004 economy.
- M. City of Willowick Administrative Code Section 155.02.1.
- N. Longevity provision of Agreement between the City of Willowick and Service Department, effective January 1, 2001 to December 31, 2003.
- O. Contract Pricing/Specs List from Shuttler's Uniforms, August 30, 2004.
- P. All Seasons Uniforms, Inc. description of WeatherTech EMS

Protective Jacket.

- Q. Willowick Fire Department, Watch Commander's Station Duty Functions, Procedure 308, Effective September 12, 1989.
- R. Memo re Increase in Rate-of-Pay for Week-end, Day-time Shift/Fire Dept., June 2, 2004.
- S. Graph of Total Hours Short 2002-2004 and Total Weekend Hours Short 2002-2004.
- T. Ohio Administrative Code Section 123:1-33-01.

Employer Exhibits

- 1. Rates of Taxation for 2003, Lake County.
- 2. Amended Certificates of Estimated Resources for Lake County Cities in 2004.
- 3. Willowick Finance Department Memorandum re General Fund Revenues, dated October 28, 2002.
- 4. City of Willowick General Fund Summary.
- 5. City of Willowick General Fund cost reductions in 2003 and 2004.
- 6. 2004 Projected Cost for 1% Increases for Union employees.
- 7. Willowick Fire Department, 2003, Total Hours Worked.
- 8. City of Willowick, City Wide Impact of Proposed 1%, 1½%, 2% (General Fund).
- 9. Cost of City Proposal for Fire Department, Three Year cost for 1% for Fire Department only, Cost of Union Proposal for Fire Department only.
- 10. Fact Finding Opinion of Marvin J. Feldman, City of Willowick and Fraternal Order of Police, Willowick, August 11, 2004.
- 11. Fact Finding Opinion of Dr. John Babel, City of Willowick and Ohio Patrolmen's Benevolent Association, Case No. 03-MED-09-0912, August 11, 2004.

12. Graph of various pay and benefits of Lake County Part-time Fire Fighters.
13. Excerpts of Fact Finding Opinion of Gregory James Van Pelt, City of Willowick and Willowick Firefighters Association, Case No. 00-MED-10-1262, April 6, 2001.
- 13A. Fact Finding Opinion of Gregory James Van Pelt, City of Willowick and Willowick Firefighters Association, Case No. 00-MED-10-1262, April 6, 2001.
14. Excerpts of Fact Finding Opinion of Robert G. Stein, City of Willowick and Willowick Firefighters Association, Case No. 97-MED-10-1188, December 15, 1997.
- 14A. Fact Finding Opinion of Robert G. Stein, City of Willowick and Willowick Firefighters Association, Case No. 97-MED-10-1188, December 15, 1997.
15. Cost of Union proposal re Paramedic Pay.
16. Estimated Cost of Proposed Longevity – Fire Department, 4.5% increase.
17. Cost of Union Proposal re Uniforms.
18. Willowick Fire Department Memo re Shift Commander Hours, 2003, dated August 20, 2004.
19. Excerpts of Fact Finding Opinion of Virginia Wallace-Curry, City of Willowick and Willowick Fire Fighters Association, Case No. 00-MED-10-1162, July 11, 2001.
20. City of Willowick Memo re Temporary Modification of Scheduling and Compensation on Designated Holidays During Specified Times, May 18, 2000.
21. Ohio Revised Code Section 124.34.
22. Fitness for Duty provisions of Agreements between the City of Wickliffe and FOP Lodge No. 116 (Patrolmen); the Lake County Sheriff's Department and the Ohio Patrolmen's Benevolent Association, Deputized Deputy Sheriffs and Court Officers; the City of Willoughby and International Association of Firefighters; the Township of Concord, Lake County, Ohio and the International

Association of Professional Firefighters Local 3329; City of Bedford Heights and International Association of Fire Fighters Local 1497; and the City of Eastlake, Ohio and The International Association of Fire Fighters Local 2860.

The issues remaining at impasse for fact-finding included:

1. Uniforms
2. Discipline
3. Grievance Procedure
4. Personal Service Records
5. Wages and Compensation
6. Fitness for Duty
7. Duration

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**

The Fact Finder recommends that all tentative agreements and current contract language not modified by my recommendations shall remain in the successor agreement.

The parties waived the requirements of Ohio Revised Code Section 4117.14(G)(11).

#### Issues Resolved During the Hearing

During the hearing, the parties agreed upon the duration of the new Agreement. The Fact Finder recommends that Article 26 be amended to reflect the Agreement will be in effect from January 1, 2004 to December 31, 2006.

#### Unresolved Issues

Underlying each of the economic issues in the fact finding is the ability to pay. The Employer has raised its ability to pay throughout the negotiations and in its position statement. The City is a bedroom community of approximately fourteen thousand three hundred (14,300) residents. It has little manufacturing or industry. Most of its residents work outside the City limits and very few non-residents come into the City for work, so it does not benefit greatly from income tax. It has the highest effective tax rate on residential property in Lake County, excluding school districts.

The City's financial condition is deteriorating. It currently is deficit spending. Revenues have remained flat while expenses have increased by over one million dollars

(\$1,000,000.00). It has reduced capital expenditures significantly in the last two (2) years and has eliminated or decreased operational expenditures. However, the Finance Director projects that, at the current spending rate, the City will have a five hundred thousand dollar (\$500,000.00) deficit in 2005 and a deficit of over one million dollars (\$1,000,000.00) in 2006. Its general fund budget is over seven million dollars (\$7,000,000.00). For 2004, it is projected at slightly more than seven million five hundred thousand dollars (\$7,500,000.00).

As is the case statewide, the City has four (4) main sources of revenue, estate tax, income tax, local government funds, and property tax. Several years ago, Ohio increased the exemption for taxes on estates. Consequently, all municipalities receive less estate tax income than in prior years. Income tax constitutes approximately thirty-five percent (35%) of the City's funds. This source of revenue has remained flat for the last several years and is projected to remain flat. Local government equals about twenty-four percent (24%) of the City's budget. Ohio has frozen the amount of funds the state provides to local governments at 2001 levels. In fact, the amounts received by the City have decreased over the last several years. Property tax is the fourth source of revenue. The City currently has the highest effective residential property tax rate in Lake County. The City has charter millage, which allows property taxes to increase. However, those increases only occur when the County performs its triennial or sexennial, the most complete, reviews. The County did its sexennial review in 2004, when property tax revenues increased by approximately four hundred thousand dollars (\$400,000.00). Tax values will not increase again until 2007. Since this is not the most complete review, property tax revenues are not likely to increase significantly.

The Employer has four (4) other bargaining units besides the firefighters. All of these contracts terminated at the end of 2003 and the City is negotiating or in fact finding with each of them. Fire Services are generally funded with one-half (½) of resources from the general fund and one-half (½) from a fire levy. The Employer has also recently begun to collect fees for ambulance transport to raises additional resources.

Given the evidence, the Fact Finder concludes that the Employer has established that there is a question as to its ability to pay. The City, though, does not claim that it cannot afford any increases. Rather, it argues that it can only afford small increases during the next bargaining agreement. The Union does not really contest that the City has limited resources. It does, however, argue that there is enough money to provide some increases to the bargaining unit. Particularly, it points to the City's Fire Rescue fund, which the City estimated at just under four hundred thousand dollars (\$400,000.00) for 2004, and the revenues earned by collecting fees for ambulance transport. Added to the funding from the general budget, the Union contends, there is sufficient resources. While the City may have to make some difficult choices, those choices are a necessary evil to enable the City to provide some increases to its most valuable assets, its employees.

***Issue: Article 9, Uniforms***

**Union Position:** Add language to Section 1 mandating that all uniforms and safety clothing will be National Fire Protection Association (NFPA) 1971 and/or NFPA 1999 compliant. Increase the shoe allowance in Section 2 to one hundred fifty dollars (\$150.00).

**Employer Position:** Maintain current language.

**Findings:** The NFPA is a nonprofit organization whose mission is to reduce the worldwide

burden of fire and other hazards on the quality of life by providing and advocating scientifically-based consensus codes and standards. It currently has over three hundred (300) codes and standards. NFPA 1971 is the Standard on Protective Ensemble for Structural Fire Fighting and 1999 is the Standard on Protective Clothing for Emergency Medical Operations. These standards provide guidelines relating to the original design, function, use, and replacement life for fire fighting clothing. For instance, NFPA 1999 specifies minimum documentation, design, performance, testing, and certification requirements for new single-use and new multiple-use emergency medical clothing used by fire and emergency services personnel during EMS operations to protect first responders from contact with blood and body fluid borne pathogens when providing victim or patient care.

The Union contends that new gear purchased by the Fire Department for new employees will be compliant. Therefore, current employees should be provided with the same clothing. The Employer claims that NFPA standards are only guidelines that change from time to time. Requiring it to provide compliant clothing will be expensive. When the standards change, it will be expensive to replace all clothing for all of the firefighters.

Sections 4 and 5 of Article 9 require the Employer to replace clothing when it is damaged or worn. It is reasonable to believe that any damaged or worn items will be replaced with NFPA compliant clothing. Over time, then, current gear will be replaced with NFPA compliant issue. Given the Employer's limited ability to pay, the Fact Finder concludes that this is the more reasonable approach.

The Union also asks for an increase in the shoe allowance from seventy-five dollars (\$75.00) to one hundred fifty dollars (\$150.00). The Employer opposes this request. The

contract calls for black, uniform type shoes. The Employer contends these can be purchased for seventy-five dollars (\$75.00).

The Union did not substantiate the need for the increase. The contract does not require special shoes, such as safety or steel-toed shoes, that are quite expensive. The Union introduced no evidence that it is difficult or impossible to purchase shoes for the current contractual amount. While seventy-five dollars (\$75.00) may not purchase the best black, uniform type shoe, the Fact Finder concludes it is sufficient to purchase what is required.

**Recommendation:** Maintain the current language.

**Issue:** *Article 12, Disciplinary Action, Article 13, Grievance Procedure, Article 15 Personal Service Records*

**Employer Position:** Add to Article 12, Section 2C the words "Levy of Fines" as a step in discipline to give the Employer the ability to fine employees as part of discipline. Add the word "fines" to the last sentence of Article 13, Section 1 to specify that any fines are subject to the grievance procedure. Change the first line of Article 15, Section 1B to "Suspensions/or fines" and the first line of Section 1C to "A suspension/or fines" to clarify that records of such discipline will be removed in accordance with the Article.

**Union Position:** The Union opposes any change. It seeks to maintain the current language of Articles 12, 13, and 15.

**Findings:** The City claims that the addition of fines is necessary to effectively discipline employees. Currently, it has no effective means of discipline. Since employees are only required to work forty-eight (48) hours of station duty each month and employees are

permitted to pick shifts, any employee who is suspended can simply pick additional shifts to serve as the suspension. Fining employees would be consistent with Ohio law as found in ORC 124.34. It seeks to levy fines by deducting a twelve (12) hour shift for each day of suspension.

The Union believes the problem with the current methods of discipline is the lack of consistency. The Union introduced evidence that, since Chief Busher has been hired, disciplinary problems have lessened. There have been no grievances as to discipline for some time. The Union also raised several concerns as to levying fines. There is no case law interpreting ORC 124.34. In fact, the Union believes the manner of discipline the City proposes is unconstitutional, as it would require employees to forfeit money already earned. Additionally, there is nothing in the City's language that provides guidance as to levying fines. There is no limit to the fines that could be imposed and the only remedy employees would have is to grieve the amount.

The Fact Finder concludes that the Employer did not justify the need to levy fines. Suspensions may not be entirely effective, given the part-time nature of employment. Fines are a new tool given to public employers by the legislature and, on the surface, may seem to solve the problem. However, there is little guidance as to how employers can levy fines, amounts that would be permitted under the law, etc. The Employer has not provided sufficient guidance or safeguards in the language proposed. Making fines subject to the grievance procedure is not sufficient. Further, suspensions are simply one step in progressive discipline. While no Employer wants to discharge employees, those who continue to be a problem can be dealt with by demotion and discharge in accordance with the contract language. Even though that may put the Employer into a temporary bind as

to staffing, it is better than keeping problem employees. Once employees know that the Employer will follow the disciplinary progression, the problems may cease.

**Issue: Article 17, Wages and Other Compensation**

**Union Position:** The Union seeks a seven percent (7%) increase in each year of the agreement and an increase of twenty-five cents (\$0.25) per hour for any employee certified as a paramedic. It also requests a new Section 3 be added to Article 17 to provide employees additional compensation based on an employee's longevity as follows:

<b>Years of Service</b>	<b>Amount per hour</b>
After completion of five (5) years of service	\$0.24 per hour
After completion of ten (10) years of service	\$0.48 per hour
After completion of fifteen (15) years of service	\$0.72 per hour
After completion of twenty (20) years of service	\$0.96 per hour
After completion of twenty-five (25) years of service	\$1.20 per hour

The Union proposes an increase in the lump sum uniform maintenance clothing payment from three hundred fifty dollars (\$350.00) to five hundred dollars (\$500.00). It also propounds that any employee who assumes a Shift Commander position in the absence of an officer be paid at the Lieutenant's rate, rather than the current one dollar (\$1.00) per hour. Finally, the Union submits a new Section 10 as follows:

Beginning May 1 of each calendar year and continuing through September 30 annually, each Bargaining Unit Employee who schedules himself or is assigned a weekend day shift, base on Article 22, will be eligible for additional weekend compensation. A weekend day shift is defined as either 6:00 a.m to Noon or Noon to 6:00 p.m shift on a Saturday or Sunday.

An additional six dollars (\$6.00) per hour will be paid for each hour of scheduled station duty worked between the hours of 6:00 a.m and

6:00 p.m on a Saturday or Sunday.

Members responding from home on a call-out basis will receive the same compensation for the hours worked but not less than two hours based on Article 17, Section 4.

**Employer Position:** The Employer opposes each of the Union's proposals. It proposes increases of one percent (1%) in the first year, one and one-half percent (1½%) in the second year, and two percent (2%) in the third year.

**Findings:** The Union asserts that the employees in the bargaining unit are in essence full-time employees, yet the Employer is only paying part-time pay. Employees do not receive health care coverage. SERB has disallowed the employees from being in PERS, so the employees contribute to Social Security. Nor do the employees receive longevity pay. One (1) of the factors under Rule 4117-9-05(K) is the services employees in other jurisdictions perform and what they are paid. Using this factor, the bargaining unit is underpaid.

The City maintains that it has a limited ability to pay. There is only so much money it can afford to pay and the Union's proposals vastly exceed what it can pay. The City is currently deficit spending and projects a deficit for 2004. It has severely cut capital expenditures. It must hold down costs as much as possible.

1. Wages. According to the Union, when the City's finances are examined closely, there is money for a reasonable wage increase. The Fire Rescue levy is expected to generate six hundred sixty thousand dollars (\$660,000.00) in 2004, which is to be used to supplement wages and purchase equipment. The City has collected just under two hundred thousand dollars (\$200,000.00) through July 31, 2004 in fees for ambulance

services. It also has a two hundred fifty thousand dollar (\$250,000.00) capital expenditure fund for police and fire services. The Fire Department is the only department that brings in money to fund its services. Together, these generate sufficient resources to pay a reasonable wage.

The Employer maintains that the cost of its wage proposal for the Fire Department alone equals almost eighty-five thousand dollars (\$85,000.00) over the three (3) years, while the Union's proposal equals over four hundred forty thousand dollars (\$440,000.00). The City wide impact of its proposed one percent (1%), one and one-half percent (1½%), and two percent (2%) increases is two hundred seventy thousand dollars (\$270,000.00). Given the Finance Director's cost projections, the City can afford no more.

As is her job, Finance Director Kellen has conservatively estimated 2004 revenues and expenses. However, for the last three (3) years, revenues have been greater and expenses less than budgeted, sometimes by several hundred thousand dollars. It is reasonable to believe that the City's forecast will conservatively underestimate revenues and overestimate expenses for 2004 and beyond. In short, it is reasonable that the City will have more money than projected. The Fact Finder notes that the City's independent auditors, in their 2003 Basic Financial Statements, noted that the City is strong financially. This report is dated June 15, 2004. Notwithstanding the Employer's protestations to the contrary, the Fact Finder concludes that it can afford larger increases than it proposes. However, the seven percent (7%) increases suggested by the Union are too large based on this record. While the Union has made valid points as to what the Employer can afford, it has not shown that its proposals are feasible. The Fact Finder recommends a two percent (2%) increase for each of the three (3) years of the contract.

2. Paramedic Pay. The Union claims that the increase of twenty-five cents (\$0.25) per hour is a matter of fairness. One of the quid pro quos for the fee for service was to hire some full-time firefighters. The City is not going to do so at this time. Paramedics should get some of the fees the City is collecting. Employees receive training through their full-time employers, so the City does not bear the cost of training. Further, since most employees are employed elsewhere and are paramedics, they receive their paramedic certification at no cost to the City.

The Employer argues that firefighters already receive the highest paramedic pay of comparable Lake County communities. A twenty-five cent (\$0.25) increase would cost nine thousand seven hundred fifty-nine dollars and seventy-nine cents (\$9,759.79). This equates to a one and twenty-seven hundredths percent (1.27%) increase. The fees collected are not tied to the paramedics because, even if no paramedics were on duty, the City would still take residents to the hospital and be paid for it.

Based on this record, the Union has not justified the increase. The bargaining unit currently receives the highest paramedic rate paid by Lake County communities. That the City has begun to charge for services does not, without more, justify an increase in the rate. Especially in light of the Employer's financial situation, the evidence does not support an increase.

3. Longevity. The Union believes that firefighters should be rewarded for their years of service. In the last three (3) years, the firefighters received three and three-quarters percent (3.75%) increases, while police officers and dispatchers received higher increases and longevity pay during this period. Since all other City employees receive longevity pay, the Union seeks internal parity. Looking to Lake County comparables the Union introduced

as evidence, five (5) of the nine (9) communities receive longevity pay. The Union seeks parity with those communities. Finally, the Union asks for longevity pay such as the City's police officers receive.

The Employer points out that the other bargaining units do not receive the same amount of longevity pay. For instance, the dispatchers receive less than the police officers, although they asked for the same amount. Additionally, the Employer notes that the firefighters are the only employees who receive incentive pay. Non-bargaining unit employees of the City began to receive longevity pay in 2002. The other bargaining units received it in 2001. No part-time employees, except for one (1) clerical employee, receive longevity pay, and the City seeks to maintain this. The City believes that part-time employees should be paid for services rendered, not time served. Finally, the Union's proposal on longevity is an expensive one. Paying all firefighters at the level proposed would cost thirty-four thousand five hundred sixty two dollars and four cents (\$34,562.04) in 2004 alone. This equates to a four and one-half percent (4½%) increase.

The Union has not persuaded the Fact Finder of the reasonableness of its proposal. First, while the firefighters are the only unit not receiving longevity pay, they are also the only unit that receives incentive pay. If the firefighters were the only unit not receiving additional pay, the Fact Finder would be inclined to grant this proposal. That is not the case. Second, only a bare majority of Lake County comparables receive longevity pay. It is not so common that the unit here is one of the only ones not receiving it. Third, given the Employer's current financial condition, adding a four and one-half percent (4½%) cost on top of wages would be unreasonable.

4. Uniform Maintenance Clothing Payment. The Union desires an increase of one

hundred fifty dollars (\$150.00) in the uniform maintenance allowance. Uniform items are costly. The jacket alone that is recommended costs over three hundred dollars (\$300.00). A set of basic items, including a golf shirt, T-shirt, pair of pants, job shirt, and shoes, costs one hundred twenty dollars (\$120.00). Additionally, of the Lake County comparables, all but one (1) receive more than five hundred dollars (\$500.00). Most are eight hundred dollars (\$800.00) or more.

The Employer asserts that it purchases the initial set of uniforms for employees and they are given seventy five dollars (\$75.00) for shoes. The jacket mentioned by the Union is not mandated, only recommended. The City will purchase it as part of the allowance. Further, this proposal must be taken in the context of the entire package. This increase would cost the City nine thousand dollars (\$9,000.00) or one and eighteen hundredths percent (1.18%). Finally, the comparables are full-time employees and wear their uniforms much more than do the City's firefighters, necessitating a higher allowance.

The Union has substantiated the need for the increase. Uniform items are expensive. Besides the basic items, the Union's evidence showed that a number of uniform items are over one hundred dollars (\$100.00), some are several hundred dollars apiece. While the Employer provides an initial set consisting of a belt, shirt, pants, sleepwear, two (2) name tags, two (2) badges, one (1) glove pouch, and one (1) jacket of the season, and pays money toward shoes, these items are hardly enough for an employee to keep clean and maintained during a typical week. Employees have to purchase anything beyond the initial set and may have to replace various items. They also have to keep them clean and in proper condition to wear. The increase is warranted.

5. Shift Commander Pay. When an employee works as a Shift Commander in the

absence of an officer, the Union proposes the employee should receive the pay of a Lieutenant. Currently, employees receive an additional one dollar (\$1.00) per hour. The employee should receive Lieutenant's pay since he or she assumes the responsibility and authority of an officer. The employee could be disciplined for not doing the officer's duties and should be paid equally for that time.

The Employer responds that employees do not assume the same duties as a Lieutenant or Captain. Each Lieutenant or Captain has specific responsibilities, e.g., EMS. An employee assuming the Shift Commander duties does not assume all of an officer's duties and only assumes duties for that shift. Additionally, other units receive the same one dollar (\$1.00) per hour as officer in charge. Parity should be maintained. Lastly, this is another economic issue. Based on 2003 hours paid as Shift Commander, it would cost the City five thousand eight hundred forty-eight dollars and forty cents (\$5,848.40) or eight tenths percent (.8%).

The Fact Finder concludes that the Union has not justified this increase. Shift Commanders do not assume the same responsibilities as the officer who is absent. Moreover, they only assume those duties for that shift. Employees are already compensated for the additional duties. Since the Employer has established its limited ability to pay economic increases, the additional increase here, even though small, is not warranted.

6. Summer Weekend Compensation. The Union seeks to memorialize the practice that has existed for the last two (2) or three (3) years, when it has been difficult to staff firefighters on summer weekends. During that time, the City has paid firefighters an additional four dollars (\$4.00) per hour for summer weekend day shifts. This has helped

to solve the staffing shortage. The Union desires to have the practice written into the Agreement and increase the compensation to six (\$6.00) per hour.

The Employer contends that this is one (1) of a number of attempts to adequately staff fire fighting force year round. The additional compensation for summer weekends has been a temporary fix to increase staffing levels during the summer. The City has put other methods in place to solve staffing issues, including hiring new employees who can be scheduled up to ten (10) shifts per month and raising the minimum hours per month from thirty-six (36) to forty-eight (48). Some of the solutions tried have created other problems. The City now has several tools to use to increase staffing. It does not want to make what it sees as a temporary solution a permanent one.

The Union has not substantiated the need for placing this provision in the contract. Paying employees additional compensation for summer weekends has been a temporary fix to the staffing shortage for the last two (2) or three (3) years. While it has helped to solve the shortage, the parties have also negotiated several other means to address the problem. It may be that paying extra for summer weekends will not be necessary in the next year or two (2). Making it a permanent provision will take away some flexibility in resolving the issue. Further, given the Employer's financial situation over the next year or two (2), it may not be able to afford to continue this or may need to eliminate this as a cost cutting measure. Overall, the Fact Finder concludes it is more reasonable to give the Employer the flexibility to continue or discontinue this practice, as the situation warrants, than making this part of the contract.

**Recommendation:** The Fact Finder recommends the following as to Wages and Other Compensation:

1. Wages - A two percent (2%) increase in each year of the contract effective January 1, 2004, January 1, 2005, and January 1, 2006.
2. Paramedic Pay - No increase in paramedic pay.
3. Longevity Pay - No longevity pay.
4. Uniform Maintenance Clothing Payment - An increase to five hundred dollars (\$500.00).
5. Shift Commander Pay - No increase in Shift Commander pay.
6. Summer Weekend Compensation - A provision on summer weekend compensation should not be added to the Agreement.

***Issue: New Article, Fitness For Duty***

**Employer Position:** Add a new article providing that an employee may be removed from employment in a non-disciplinary manner when he or she is no longer fit for duty.

**Union Position:** The Union does not oppose the concept of a fitness for duty article. It does, though, oppose the Employer's proposal because it does not provide adequate safeguards.

**Findings:** The Employer seeks to add this provision to set forth its ability to remove an employee who is found medically unfit for duty. This has been considered a management right. However, the law has changed so that the parties must negotiate anything that affects wages or conditions of employment. A number of northeast Ohio jurisdictions have such a provision. The Employer desires the ability to remove employees when necessary.

The Union opposes the Employer's proposed language. There are provisions set forth in the Ohio Administrative Code that allow for removing employees. It provides

adequate safeguards for employees, including allowing the employee to use all of his or her disability leave prior to being removed, providing the employee the right to a hearing and appeal from that hearing, allowing an employee to voluntarily separate based on disability, and the right to reinstatement.

The parties do not disagree that a provision on fitness for duty should be made part of the Agreement. They disagree on the particular language and method for removing an employee. The Union's position as to providing adequate safeguards for employees is well taken. Any such provision should include safeguards to prevent an employee from being removed unnecessarily. The Employer's language does not include adequate protections. The Ohio Administrative Code language introduced by the Union provides the preferred model for removing employees. Any such provision should incorporate this language and its protections.

**Recommendation:** The Fact Finder concludes that a new article, entitled Fitness For Duty, should be made part of the Agreement. The article should adopt the language of Ohio Administrative Code Sections 123:1-33-01, 123:1-33-02, 123:1-33-03, and 123:1-33-04 or, at the very least, should reference these sections and make clear that any attempt to remove an employee must conform to the requirements set forth in those sections.

Dated: September 17, 2004

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Daniel G. Zeiser  
Fact Finder