

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:

**Canfield Professional Firefighters,
Local No. 4507**

and

Cardinal Joint Fire District

:
:
:
:
:
:
:

04-MED-09-0915

**FACT FINDING REPORT
FINDINGS AND
RECOMMENDATIONS**

July 16, 2007

2007 JUL 18 A 11:43

STATE EMPLOYMENT
RELATIONS BOARD

APPEARANCES

For the Union:

Dennis Haines, Attorney
Stanley J. Okusewsky III, Attorney
Michael Taylor, 3rd District Vice President
Scott M. Shaffer, Negotiating Team
Fred Marcum, Negotiating Team

For the Employer:

James P. Wilkins, Attorney
Robert Tieche, Fire Chief
Andrew Skrobola, Trustee
Dennis L. Wilde, Trustee and Personnel Committee

**Daniel G. Zeiser
Fact Finder
P.O. Box 43280
Cleveland, Ohio 44143-0280
440-449-9311**

Fax: 440-449-9311

Email: danzeiser@aol.com

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on May 23, 2007 pursuant to Ohio Revised Code Section 4117.14(C)(3). 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 Canfield Professional Firefighters Association, Local No. 4507 (Union), representing all sworn and uniformed employees of the Employer, excluding the Fire Chief, Deputy Chief, and all part time employees, and the Cardinal Joint Fire District (Employer). The Cardinal Joint Fire District is comprised of the City of Canfield and Canfield Township. The City and Township are located in central Mahoning County in northeast Ohio. Each has a population of over seven thousand (7,000).

The fact-finding involves the Fire District and its six (6) full time Firefighters/Paramedics. The unit is represented by the Canfield Professional Firefighters Association, affiliated with the Ohio Professional Fire Fighters Association. This is the first collective bargaining agreement between the parties.

II. THE HEARING

The fact-finding hearing was held on Wednesday, June 27, 2007 at the Canfield Municipal Building, 104 Lisbon Street, Canfield, Ohio. Both parties provided pre-hearing statements. The hearing began at 9:00 a.m and adjourned at approximately 4:00 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. Prior to a formal submission of evidence, the Fact Finder, acting as a mediator, made a concerted effort to bridge the differences between the parties concerning the above referenced issues. Settlement possibilities were assessed with the parties in an effort to find common ground upon which to construct a settlement. To some extent this

was achieved. However, complete agreement was not reached on all issues and so issuance of a fact-finding report became necessary. To expedite the issuance of this report, the Fact Finder will provide a summary of his rationale on all issues, followed by determinations regarding each issue.

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.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the

recommendations below are made.

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

Although this is the first contract between the parties, there was a prior bargaining relationship between the unit and the Employer. Prior to 2004, the unit was represented by the American Federation of State, County, and Municipal Employees. On August 18, 2004, SERB certified the Union as the representative of all full time firefighters/paramedics of the Employer, excluding the Chief, Deputy Chief, and all part time officers and firefighters. The parties then began bargaining for an initial agreement, while continuing to operate under the previous agreement. After a number of negotiating sessions, the parties reached impasse and fact finding resulted.

Issue: Article 20, Wages

Union Position: The Union seeks a standard hourly rate for employees of \$14.00 in the first year, \$14.25 in the second year, and \$14.50 in the third year.

Employer Position: The Employer proposes a fifty cent increase in the first year, 2% in the second year, and 2% in the third year, as well as an entry rate of \$9.90.

Findings: Many of the employees in this unit have not had a pay increase for several years. Further, comparables offered by the Union for other full time firefighters suggest the need for a significant increase in base rate of pay, though it must be consistent with Cardinal's relatively limited financial resources. Although the unit has fallen behind other

full time firefighter units, it would be too much of a financial burden to allow it to catch up all at once. The Union's proposal for a standardized base rate of pay for non-probationary employees has merit, also.

Recommendation: The Fact Finder recommends adoption of the Employer's proposed contract language on wages, subject to the following features:

Effective July 1, 2007, a base rate of \$11.76, with 3% increases in 2008 and 2009. Effective July 1, 2007, an entry rate of \$9.90, with an increase to \$11.00 after six months and an increase to the full regular rate after one year.

See Attachment 1 for the complete contract language on Wages.

Issue: Article 23, Sick Leave

Union Position: The Union seeks no limit on accumulation of sick leave.

Employer Position: The Employer proposes to increase the limit on sick leave to five hundred (500) hours.

Recommendation: The only real dispute between the parties related to the limit on accumulation of sick leave. Bargaining unit employees are currently subject to a limit of three hundred fifty (350) hours. Given that employees have operated under the previous agreement, an increase in accumulating sick leave is warranted. Allowing no limit on accumulated sick leave, however, could result in too great a financial burden on the Employer and operational constraints should one (1) or more employees accumulate and then use a large amount of sick leave. The Fact Finder recommends adoption of the Employer's proposed contract language on sick leave, but subject to a maximum accrual

of sick leave of 600 hours. See Attachment 2 for the complete contract language on Sick Leave.

Issue: Article 25, Vacation

At issue are the rate of vacation accrual based on length of service, whether total service or full time service only will count in determining vacation entitlement, and whether unused vacation can be carried over from one vacation year to the next.

Union Position: The Union seeks vacation accrual in the following manner:

<u>Length of Employment</u>	<u>Number of Tours of Duty</u>
One (1) Year	5
After Five (5) Years	7
After Ten (10) Years	10
After Fifteen (15) Years	12

It also proposes that vacation be measured from the first day of employment with the Employer, not the date of full time employment, and employees be allowed to carry over up to one hundred forty-four (144) hours of vacation.

Employer Position: Cardinal offers to pay vacation as follows:

<u>Length of Full Time Employment</u>	<u>Number of Tours of Duty</u>
One (1) Year	2
After Five (5) Years	4
After Eight (8) Years	5

Additionally, Cardinal seeks to count vacation time from the date of full time employment with the District and no carryover of vacation time.

Recommendation: Based on comparables, the current benefit provided to bargaining unit employees, and the operational needs of the Employer, an increase in the rate of accrual is justified. Prospectively, employees will not be permitted to carry over vacation earned after July 1, 2007, but will be paid for their unused vacation at the end of each vacation year. The Fact Finder also recommends an orderly way to pay down over the life of this Agreement all vacation accruals earned prior to July 1, 2007. See Attachment 3 for the complete contract language on Vacation.

Issue: Article 27, Health Insurance

Employer Position: The Employer proposes a change in employee premiums to health care coverage of fifteen percent (15%) for single coverage, twenty percent (20%) for dual coverage, and twenty-five percent (25%) for family coverage. It also proposes that spouses who are employed full time and have access to health care coverage through their employers be required to obtain primary coverage through their employers with the Employer's insurance as secondary coverage. Spouses who choose not to obtain coverage through their employer will be charged a one hundred dollar (\$100.00) per month surcharge.

Union Position: The Union offers to have employees pay ten percent (10%) of the cost of health care.

Recommendation: The only issue in dispute between the parties is the amount employees will be required to contribute toward the cost of their health insurance. At the present, employees are not required to make any contribution for single coverage. Employees electing dual or family coverage pay fifty percent (50%) of the difference

between the single rate and the dual or family rate. Cardinal proposes that employees contribute fifteen percent (15%) of the premium for single coverage, twenty percent (20%) for dual coverage, and twenty-five percent (25%) for family coverage. The Union proposes a ten percent (10%) employee contribution, regardless of the level of coverage the employee elects. The Employer also proposes a “working spouse” provision.

Employees electing dual or family coverage are currently making a far greater contribution toward the cost of health insurance than is the norm in the public sector. On the other hand, shifting the cost to the employer all at once would place a significant strain on Cardinal’s finances. Therefore, the Fact Finder recommends a transition in the allocation of medical insurance premiums over the life of this Agreement. The Fact Finder also recommends adopting the Employer’s working spouse provision to create an incentive for the working spouses of bargaining unit employees to obtain insurance coverage through their own employers. See Attachment 4 for the complete contract language on Health Insurance.

Issue: Injury on Duty

Union Position: The Union requests a new provision be added to the Agreement providing continued pay to an employee who is injured on duty. Injured duty leave would allow an employee to be paid at his current rate for up to one (1) year from the date of injury.

Employer Position: The Employer opposes injured duty pay.

Recommendation: The Union is seeking a new benefit, which essentially amounts to salary continuation for up to one (1) year if an employee is disabled due to an on-the-job injury. The Union is opposed to an employee being forced to use accrued sick leave for

an on-the-job injury, but is concerned about the lag time before an injured employee begins receiving temporary total disability benefits under workers' compensation. The Union has also requested six (6) months of hospitalization coverage while an employee is on injured on duty leave. The Employer has opposed paid injury on duty leave, pointing out that in addition to sick leave and workers' compensation benefits, it provides a long term disability benefit for employees who are injured on the job.

It appears that employees injured on the job already have sufficient income protection between statutory workers' compensation benefits and the long term disability policy provided by the Employer. Therefore, the Fact Finder recommends contract language confirming that the Employer will maintain an insured long term disability policy with benefits comparable to those currently in effect. Once an employee files a workers' compensation claim and a claim for benefits under the long term disability policy, he will be entitled to an advance from the Employer equal to the employee's ordinary net pay for up to thirty (30) days pending the employee's receipt of workers' compensation or insurance benefits or both. Upon receipt of those benefits, or if the injury is determined not to be work related, the employee will be required to promptly repay the Employer for the full amount of the advance paid by the Employer. See Attachment 5 for the complete contract language for Injury on Duty Leave

Issue: Successors

Union Position: The Union seeks a new provision assuring that the Agreement is binding upon successors and assigns.

Employer Position: The Employer opposes the provision, asserting that such issues

should be addressed through SERB's processes.

Recommendation: The Fact Finder recommends adoption of the Union's proposal. See Attachment 6 for the complete contract language on Successors.

Issue: Duration of Agreement

Employer Position: The Employer proposes a three (3) year agreement effective upon ratification by the parties.

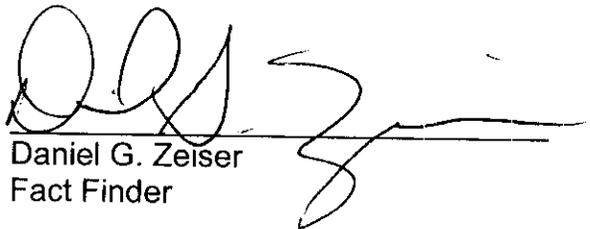
Union Position: The Union seeks a three (3) year agreement effective July 1, 2007.

Recommendation: The Fact Finder recommends a three (3) year agreement running from July 1, 2007 through June 30, 2010. See Attachment 7 for the complete contract language on Duration of Agreement.

TENTATIVE AGREEMENTS

During negotiations, the parties reached tentative agreement on several issues. All tentative agreements reached by the parties are part of the recommendations contained in this report.

Dated: July 16, 2007


Daniel G. Zeiser
Fact Finder

ARTICLE 20

WAGES

20.1 (a) Bargaining Unit Employees employed as of the effective date of this Agreement will be paid at a base rate of pay of \$11.76 effective as of July 1, 2007.

(b) Effective the first day of the pay period beginning on or after July 1, 2008, bargaining unit employees will receive a three percent (3%) increase in their base rate of pay in effect as of that date.

(c) Effective the first day of the pay period beginning on or after July 1, 2009, bargaining unit employees will receive a three percent (3%) increase in their base rate of pay in effect as of that date.

20.2 The Employer reserves the right to designate a bargaining unit employee to serve as EMS Director and an employee to serve as Training Coordinator, and to change or eliminate those designations in its sole discretion. An employee so designated will receive an additional one dollar per hour worked for the duration of such designation.

20.3 The Employer reserves the right to designate one or more bargaining unit employees to serve as Duty Crew Leader and to change or eliminate such designation in its sole discretion. An employee so designated will receive an additional fifty cents for each hour worked while designated as Duty Crew Leader.

20.4 The entry rate of pay for full-time employees shall be \$9.90 per hour. Upon completion of six months of service, a full-time employee's base rate of pay shall be increased to \$11.00. Upon completion of one year of service, a full-time employee's base rate of pay shall be increased to the same rate then being paid to bargaining unit employees pursuant to Section 20.1.

20.5. Full-time employees shall receive longevity pay in accordance with the following schedule:

Longevity Pay

4 years through 5 full years	\$.25
6 years through 9 full years	\$.40
10 years through 13 full years	\$.65
14 years through 17 full years	\$ 1.00
18 years through 20 full years	\$ 1.35
21 years +	\$ 1.60

Longevity is computed based on full-time service with the Employer. Rates are for all hours worked.

ARTICLE 23

SICK LEAVE

23.1 Each bargaining unit employee shall earn sick leave at the rate of fourteen (14) hours per month provided that the employee actually works or is in active pay status a minimum of eight (8) tours of duty during the month. Sick leave for each calendar month of service shall be earned effective the first day of the month following the month in which the eight (8) tours of duty were performed. Bargaining Unit Employees shall not earn sick leave for any month in which less than eight (8) tours of duty were completed. Sick leave will be granted in accordance with policies and procedures established by the Employer.

23.2 Unused sick leave shall accumulate up to a maximum of six hundred (600) hours.

23.3 A bargaining unit employee eligible for sick leave may use sick leave, upon approval of the Fire Chief or his designee, only for absences due to illness or injury to the employee, exposure by the employee to contagious diseases which could be communicable to other employees, or serious illness, injury or death in the employee's immediate family. "Immediate family" shall be defined as the full-time employee's mother, father, spouse, child, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren.

23.4 When the bargaining unit employee is unable to work and is utilizing sick leave, the full-time employee shall notify the Fire Chief or Deputy Fire Chief no later than eight (8) hours before the start of his scheduled duty time and provide a reason for such sick leave. Written proof of illness, injury, or other reason for sick leave in order to

substantiate the request for sick leave may be requested by the Fire Chief or Deputy Fire Chief, for absence of more than two (2) consecutive tours of duty. Proof of illness or injury, when requested, shall be in the form of a written statement by a physician certifying that the full-time employee's physical condition prevents him from performing the duties of the employee's position.

23.5 Sick leave shall be charged in minimum units of one (1) hour periods. Full-time employees shall be charged for used sick leave only for days upon which the full-time employee would otherwise have been scheduled to work.

23.6 Sick leave which exceeds two (2) consecutive tours of duty shall be extended only upon receipt of a written statement by a physician certifying the need for continued sick leave and an estimated date of return to employment for the employee. For any sick leave, the Employer may require the employee to submit to an examination by an independent physician of the Employer's choice in order to substantiate the need for sick leave.

23.7 The Employer may require an employee who has been on extended sick leave to provide a statement from the employee's treating medical provider and to be examined by a qualified, licensed medical provider to determine the employee's fitness to perform the essential functions of his position. The medical provider will be chosen by the Employer and will be at the Employer's expense. If the opinion of the Employer's medical provider differs from the employee's treating medical provider, a third opinion will be obtained by a medical provider selected by the first two medical providers. The cost of the third opinion will be shared equally by the Employer and the employee. The employee will authorize all medical providers to release information to the Employer and

the Employer will maintain the confidentiality of such information. If it is determined by the third opinion that the employee is unable to perform the essential functions of the position, with or without reasonable accommodation, the employee shall apply for disability or service retirement. The employee shall be allowed to use accrued sick leave or other accrued leave during the time it takes to process the disability application.

23.8 A full-time employee who retires with at least ten (10) years of full-time service with the Employer may elect at the time of retirement to be paid for 25% of the value of the employee's accrued but unused sick leave.

ARTICLE 25

VACATION

25.1 Bargaining Unit Employees Shall earn paid vacation in accordance with the following schedule:

<u>Length of Full-Time Employment</u>	<u>Number of Tours of Duty</u>
One (1) Year	2
After Three (3) Years	5
After Five (5) Years	7
After Ten (10) Years	10

For the purposes of vacation, "length of full-time employment" will be measured from the first date on which the Bargaining Unit Employee worked in the full-time position with the Employer only, exclusive of any prior service with the Employer or otherwise.

25.2 Effective July 1, 2007, earned vacation shall not be carried over from one vacation year to the next. Any vacation that remains unused at the end of an employee's vacation year shall be paid to the employee at the employee's current straight-time base rate of pay. However, any vacation that was earned prior to July 1, 2007 may be carried over during the term of this Agreement, subject to the requirement that each employee's pre-July 1, 2007 vacation accrual shall be paid down in one third increments on June 30, 2008, June 30, 2009 and June 30, 2010 unless such amount has been used by the employee prior to each date.

25.3 Vacation requests should be submitted in writing and submitted for approval to the Fire Chief by March 31 of each year. Approval shall be made by the Fire Chief based on operational needs and, at the sole discretion of the Fire Chief, non-

consecutive vacation days may be granted. In the case of a conflict in scheduling, the length of full-time employment will control, with overall length of service with the Employer being the tiebreaker. Vacation requests that have not been scheduled by March 31 should be submitted for approval to the Fire Chief at least one (1) month in advance. Such requests will be considered on a first come, first served basis and ordinarily will be approved or denied by the Fire Chief within ten (10) working days of the submission of the request.

25.4 Upon a Bargaining Unit Employee's resignation, retirement or termination of employment, the employee shall receive vacation pay for all unused vacation.

ARTICLE 27

HEALTH INSURANCE

27.1 For the duration of this Agreement, the Employer will provide health insurance comparable to that in effect as of June 1, 2007 to all Bargaining Unit Employees beginning on the first day of full-time employment. The Employer reserves the right to change carriers or self-insure at any time, at its sole discretion, provided such insurance coverage is comparable to the current plan.

27.2 Employees will contribute toward the cost of premiums as follows:

	<u>Eff. 7/01/07</u>	<u>Eff. 7/01/08</u>	<u>Eff. 7/01/09</u>
Single coverage:	5%	7.5%	10%
Dual coverage:	15%	15%	10%
Family coverage:	15%	15%	10%

27.3 Employee contributions will be paid by payroll reduction through a premium-only Section 125 plan adopted by the Employer in accordance with applicable laws and regulations.

27.4 Effective July 1, 2007 and for the duration of the Agreement, coordination of benefits is required for employees whose spouse is employed full-time, defined as at least 32 hours per week and has access to health insurance through his/her employer. In such cases of coordination of benefits, the health insurance of the spouse shall be the primary insurance for the spouse, with the Employer's insurance as secondary coverage. There will be a surcharge of \$100 per month for an employee whose eligible spouse chooses not to avail himself/herself of at least single coverage from his/her

employer. Eligible dependents will be covered by the insurance plan of the spouse who has the earlier birthday in the calendar year.

27.5 Nothing herein shall prevent the parties from mutually agreeing to changes in health insurance coverage in order to reduce premium costs to both the Employer and participating employees.

ARTICLE
INJURY ON DUTY LEAVE

___1 For the duration of this Agreement, the Employer will maintain a policy that pays long-term disability benefits to bargaining unit employees who are disabled due to an injury in the line of duty with the Employer, with benefits comparable to those in effect as of July 1, 2007.

___2 When a bargaining unit employee is unable to work due to an injury in the line of duty, the employee may request an advance of his/her net straight-time pay for up to thirty (30) calendar days while the employee awaits receipt of benefits under Ohio's workers' compensation laws and/or the disability policy referenced in Section 1, above. Receipt of an advance from the Employer shall be contingent upon the employee's submission of proof that he/she has filed a workers' compensation claim and a claim for disability benefits under the disability policy. An employee may also elect to use accrued sick leave in lieu of requesting an advance.

___3 A bargaining unit employee who receives an advance of his/her pay under this Article shall be obligated to re-pay the advance to the Employer immediately upon receipt of benefits from workers' compensation and/or the disability carrier or if it is determined that the disability is not due to an injury in the line of duty.

___4 A bargaining unit employee who is disabled due to an injury in the line of duty shall have his/her health insurance coverage maintained for six months from the date of injury on the same basis as if the employee was actively working.

ARTICLE ____

SUCCESSORS

This Agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, annexation, transfer, or assignment of either party hereto or by any change geographically or otherwise in the location or place of business of either party.

ARTICLE

DURATION OF AGREEMENT

This Agreement shall be effective as of July 1, 2007, and shall remain in full force and effect until June 30, 2010.