

STATE OF OHIO

2005 SEP 30 A 11: 26

STATE EMPLOYMENT RELATIONS BOARD

SEPTEMBER 27, 2005

BEDFORD HEIGHTS FIREFIGHTERS  
IAFF LOCAL 1492

CASE # 04-MED-09-0976

and

FACT FINDING REPORT

CITY OF BEDFORD HEIGHTS

APPEARANCES

For the Union

James Astorino, President, Northern Ohio Firefighters  
Steve Wloszek, President, Local 1492  
Larry Genova, Local Secretary  
Bill Astalos, Bargaining Committee Member  
Tim Hullisy, Bargaining Committee Member

For the City

Kenneth Schuman, Attorney  
Ross Circincione, Attorney  
Mark Cegelka, Director of Finance  
Ken Ledford, Fire Chief

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## **Introduction**

This Fact Finding involves the firefighters (“Firefighters”) represented by the International Association of Firefighters (“IAFF”) and the City of Bedford Heights (the “City”). The Agreement between the IAFF and the City expired December 31, 2004. There are 15 issues in this fact finding.

The undersigned was duly appointed fact finder. Following an all day mediation on May 25, 2005, the fact finding hearing was set by agreement of the parties for September 15, 2005. The hearing commenced at 10:00 AM and was closed at 4:30 PM.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, Union Exhibits 1 - 23 and City Exhibits A-K. The Fact Finder thanks both parties for their professionalism and courtesy.

In considering the recommendations made in this report, the fact finder considered the criteria set forth in Rule 4117-9-05 which are:

- 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 the issues proposed, and the effect of the adjustments on the 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 agree upon dispute settlement procedures in the public service or private employment.

### **Facts**

The parties entered in an agreement covering the period 1/1/02 through 12/31/04 which has expired. Joint Exhibit 1. The parties did not enter into a retroactivity agreement.

As to economic issues, the City does not assert an inability to pay as a basis for any of the economic issues but does assert that its positions are based on sound, conservative financial management of the City's finances.

Further, the City says it has entered into agreements with all bargaining units other than patrolmen and firefighters that includes a three percent per year wage package and that City administrative employees have been told they too will receive three percent raises in each of 2005, 2006 and 2007.

With that as background, we turn to the 15 issues that were presented at the Fact Finding hearing.

### **Issue No. 1**

#### **Wages**

**Union Position:** Four percent increase for each of 2005, 2006 and 2007.

Settlements in the Greater Cleveland area are in the range of three to five percent. Base pay is 20<sup>th</sup> out of 50 fire departments in Greater Cleveland. The requested raise keeps the firefighters pay comparable with other firefighters.

**City Position:** Three percent for 2006 and 2007.

As there is no retroactivity agreement, there can be no award for 2005. Taking total pay and benefits into account, the City's proposal is fair, particularly in light of the fact increases in the CPI

have been 1.3 % for 2002, 2.3 % for 2003 and 2.4 % for 2004.

While the City does not assert inability to pay, prudent financial management requires a conservative approach to City finances in view of anticipated slowing of property tax values, the loss of three major employers with the resulting loss of income tax revenues, and the need to maintain adequate reserves in the general fund.

### **Discussion**

The fact that the City has entered into agreements with other unions is a factor to be considered. However, internal party among different bargaining units cannot be the only consideration, particularly here, where it was shown that the agreement with the police sergeants and lieutenants has a “me to” clause that will increase their raises to the level achieved by the patrolmen.

The City has recently enacted an ordinance requiring that the general fund balance be maintained at a minimum of \$1,500,000. The City also has a contingency fund. The combined balance at year end is projected at \$2,000,000 by the City and \$2,700,000 by the Union's financial consultant. In either event, reserves appear adequate and inability to pay is not claimed.

It is obvious the City planned to pay three percent increases over the three year period.

### **Finding**

Firefighters pay be increased four and one-half percent in 2006 and four and one-half percent in 2007.

### **Contract Language**

Adjust Article VII Section 1, Annual Base Pay to reflect no increase for 2005 and four and one-half percent increase for each of 2006 and 2007.

## **Issue No. 2**

### **Health Insurance**

**Union Position:** No changes.

The Union claims the health insurance coverage now being provided by the City provides lesser coverage in at least two areas; durable medical equipment and duration of sub-acute care (reduced from 180 to 60 days). Further, maintaining co-pays is necessary to keep the healthcare plan comparable to surrounding communities.

**City Position:** Raise prescription co-pays to \$10 for generic, \$20 for brand name, and \$30 for off the formulary.

Raise office co-pay from \$10 to \$15; emergency room co-pay from \$50 to \$75; urgent co-pay from \$25 to \$35; hospital co-pay from \$0 to \$250 per stay.

Out of Pocket maximum from \$500 to \$1,500 for an individual.

No increase in monthly contribution.

Healthcare costs are rising. Generally, in society at large and in the public sector, employees are bearing part of these increases. The other city employees, except patrolmen, have agreed to these changes.

### **Discussion**

Rising healthcare costs are a fact. Increases in the amounts employees are bearing are a fact in both the public and private sectors. Permitting some employees to bear costs at a rate different from other employees will create discord.

However, the coverage appears to have changed because the insurance company changed its policy form effective 1/1/05. The coverage should be equivalent to that provided under the old form.

Further, the agreement (Article IX Section 2) already provides for a Labor Management Committee to review healthcare insurance and coverage. Both parties expressed interest in activating this presently moribund committee. It is suggested they do so without delay and that such a committee include representatives from all bargaining units and from the administrative employees.

**Finding**

The co-pay increases are reasonable. The City should guarantee that coverage will be equivalent to the former plan.

The parties should activate and expand the Labor Management Committee.

**Contract Language**

Adjust the dollar amounts in Article IX Section 1 to reflect the increase in the co-pays.

Add new subsection (E):

Coverage for the period 1/1/05 - 12/31/07 shall be equivalent to the coverage provided during 2004.

**Issue No. 3**

**Remove Captains from the Bargaining Unit**

**Union Position:** No change.

SERB certified the bargaining unit and only SERB can decertify it, in whole or in part. Further, Captains in Bedford Heights do not have the independence and discretion that would make them management level employees.

**City Position**

Captains should be removed from the bargaining unit on the authority of Twinsburg Firefighters IAFF Local 3630 v. City of Twinsburg, SERB Case No. 00-REP-02-0035. Their work

is as management level employees.

**Discussion**

Captains have been members of the bargaining unit for many years. They have actively participated as members of the Union and its bargaining committee. There is insufficient reason to change their status.

**Finding**

The captains should remain members of the bargaining unit.

**Issue No. 4**

**Acting Captain Pay**

**Squad Pay**

**EMT Pay**

**Union Position:** Squad pay increase from \$30 to \$50 per day; EMT pay increase from \$300 to \$500.

The Union focused on the fact that, due to the overall reduction in staff, only two men now go on an ambulance rather than the three that formerly staffed an ambulance (squad) run. The \$30 for squad pay has remained unchanged since 1999 when it was increased from \$20 to the present \$30. The total costs of increasing squad and EMT pay and retaining acting captains pay are minor.

**City Position:** Eliminate Acting Captain Pay, Squad Pay, and replace with paramedic premium; maintain EMT pay.

Staffing the ambulance is part of a firefighter's job. Whether a paramedic or an EMT, they should not be paid extra for this work. Similarly, lieutenants are expected to fill in for captains when necessary.

**Discussion**

Pay for these items represents a longstanding bargaining history. Out of the 25 firefighters, 21 are qualified paramedics. The City did not propose an amount for a paramedic premium. The “extra” pay for squad and EMT should be increased but the 67 % requested appears excessive.

**Recommendation**

Increase squad pay from \$30 to \$40.

Increase EMT pay from \$300 to \$400.

No change regarding pay for acting captain.

**Contract Language**

Adjust the language of Article VII Sections 6 and 7 accordingly.

**Issue No. 5**

**High Risk Sick Leave**

**Union Position:** Broaden use.

Article X Section 5 provides for “high risk” sick leave for injuries incurred “...during lawful performance of assigned duties, including training...”. A firefighter who suffered a hernia pulling a dummy in a training exercise was denied high risk sick leave.

The sergeants and lieutenants have it in their contracts. Parity demands the Firefighters have it too.

**City Position**

Regular sick leave should cover all sick leave. There is no reason for high risk sick leave.

**Discussion**

Both the Firefighters agreement and the sergeants and lieutenants agreements contain language that makes it clear that to qualify for high risk sick leave, the injury must be the result of

something that happened while responding to a call or actually fighting a working fire - an active duty incident. See Article X Section 5(c)(1). The reference to “training” in Article X Section 5(a) is meaningless in light of Section 5(c)(1).

**Recommendation**

High Risk Sick Leave should remain unchanged. Contract language should be changed to clarify its application.

**Contract Language**

Eliminate the phrase “including training” from Article X Section 5(a).

**Issue No. 6**

**Holidays in a Retirement Year and Total Number of Holidays**

**Union Position:** Holidays effective January 1 of every year and firefighters request an increase of two holidays.

Other unions have 13 holidays; Firefighters have 11. Allow holidays to accrue at January 1 of a year in which the firefighter retires. Otherwise, someone retiring will stay on the job for three to four months to use up holiday time. This benefits no one.

**City Position:** Holidays accrued as earned and City maintain 11 holidays for Firefighters.

Firefighters get paid for 264 hours of holiday time for the 11 holidays as they work 24 hour shifts. Other City employees get paid for 104 hours for their 13 holidays.

The City withdrew its objection to accrual.

**Discussion**

The present arrangements for holidays and for accrual are consistent with the bargaining history.

**Recommendation**

No change.

**Issue No. 7**

**Longevity**

The Union accepted the City position.

**Contract Language**

Adjust Article VII Section 2 to reflect that the maximum amount for longevity will be \$3,700 for 2005, 2006 and 2007.

**Issue No. 8**

**Hours of Work**

The City accepted the Union Position

**Recommendation**

Article VI Section 4 (B) shall now read:

A member may use compensatory time for personal or emergency time off, provided such time off does not cause overtime. Members will follow standard procedure, including an affidavit, for such time off.

**Issue No. 9**

**Call Back Pay and Holdover Pay**

**Union Position:** Call back pay calculated at a 40 hour pay rate; minimum one hour with overtime if a firefighter is held over on a shift.

The Union asks why should fireman and policeman called back to duty be paid different rates. If held over, they should be paid a minimum of one hour to compensate for the inconvenience.

**City Position:** No change.

Firefighters are paid and always have been paid on the basis of their regular pay for the actual time worked.

**Discussion**

The bargaining history and practice of the parties supports the present arrangements.

**Recommendation**

No change.

**Issue No. 10**

**Vacation - Holiday Pay**

The Union withdraws this proposal.

**Issue No. 11**

**Clothing Allowance**

The City accepts the elimination of certain items as being equipment, not clothing, and agrees to a \$50 increase in the maintenance allowance for 2006 and 2007. The Union withdraws its request for an increase in the clothing allowance.

**Language**

Eliminate “and turnout” and eliminate “and fire boots, turnout coats, helmets” from the first sentence of Article XI Section 1 so that sentence will read as follows:

Each member of the Division of Fire, regardless of rank, shall receive, in addition to his regular compensation, an annual allowance toward the purchase of regularly prescribed uniform clothing, including blouse, trousers, cap, shirts to which insignia required by regulation are permanently attached and cannot be ordinarily worn in

civilian use as a result thereof, dress uniform shoes, work shoes, sweatshirts, work trousers and coveralls.

Further, amend Article XI Section 1 to reflect the following schedule for maintenance:

Effective January 1, 2005 maintenance allowance shall be \$525.

Effective January 1, 2006 maintenance allowance shall be \$575.

Effective January 1, 2007 maintenance allowance shall be \$625.

### Issue No. 12

#### Safety Manning

**Union Position:** Minimum staff of six firefighters.

This is a proper subject for bargaining. Other cities have incorporated minimum manning provisions in their agreements. The City has a choice. To cover their manning requirements with additional people or by overtime. City has chosen overtime. The department trained as a six man crew; now they are working with a five man crew. This violates standard safety practices. Mutual aid agreements, while helpful, are not the answer because of the delay between calling for aid and the aid being dispatched.

**City Position:** No change.

This is an area that falls under Management Rights and should not even be a subject for bargaining. All City departments ask for additional personnel. The employees should not be able to dictate force requirements.

#### **Discussion**

This is the most emotional issue presented. To the Union, it is a matter that affects the safety of its members. To the City, it goes to the very basic issue of who is in charge. The City makes it clear it will not voluntarily give up its exclusive right to control its workforce.

The Union demonstrated that eight municipalities in the Cleveland area have agreements that have a minimum manning provision. It is noted that the party's agreement has a minimum manning requirement for paramedics in Article XVI: one paramedic on every shift.

However, while the Union position may be reasonable, we are faced with Ohio Revised Code Section 4117.08 (C) which allows the City to “determine the adequacy of its workforce.” We also have the Management Rights clause of the agreement which provides that the City:

...reserves and retains, solely, exclusively and without recourse to negotiations, all rights, powers and authority, including the right to determine and fulfill the mission of the Division of Fire of the Department of Public Safety, determine staffing policy...

Such exclusive rights include, but are not limited to, the following:

- C: To determine the size, composition and adequacy of the workforce;

The City is within its rights to deny this request.

**Recommendation**

No change.

**Issue No. 13**

**Watch Office**

The Union withdraws this request.

**Issue No. 14**

**Light Duty**

The City accepts the Union position.

**Recommendation**

Article XIX Section 10 shall be amended by adding a new final sentence as follows:

Requests for light duty shall not be denied arbitrarily.

**Issue No. 15**

**Seniority**

The City accepts the Union position.

**Recommendation**

The last sentence of Article 12 Section 3 (a) shall be deleted.

A handwritten signature in black ink, appearing to read "Robert M. Lustig", written over a horizontal line.

Robert M. Lustig  
Cleveland, Ohio  
September 27, 2005

# MASTER AGREEMENT

between the

**Ohio Association of Public School Employees  
AFSCME/AFL-CIO  
LOCAL 276**

and the

**North Ridgeville City Board of Education**

**July 1, 2001 to June 30, 2004**



**North Ridgeville City Schools**

*We Build Success - One Individual at a Time!*

the option of participating. Any classified employee not enrolling must sign a waiver if he/she does not wish to receive this benefit.

- C. Effective January 1, 1998, the board will provide the following coverage through a Joint Insurance Health Trust, at no expense to the bargaining unit members for the first year of the Trust. Any additional cost or expense of the Trust shall be governed by the section of this agreement titled Joint Insurance Health Plan Trust (E-Operating Reserves). The level of coverage presently in effect will be used to determine the actual plan.

Hospitalization

Extended care

Major medical without \$50.00 deductible drugs

Prescription drug

Dental plan with orthodontist

Optical coverage

1. Joint Insurance Health Plan Trust

A Joint Insurance Health Plan Trust (JIHPT) composed of 10 designated representatives of the unions and board is hereby created. The union (NREA) shall appoint four (4) people, the union (Local #276) shall appoint two (2) people, and the Superintendent shall appoint four people. The NREA bargaining unit shall be assigned one vote plus one additional vote for each block of 100 members beyond the first 100. Local #276 shall be assigned one vote plus one additional vote for each block of 100 members beyond the first 100. The Board representatives shall exercise a number of votes equal to the total of employee bargaining unit's votes. Decisions will be made by a three-fourths majority of the votes.

2. Health Plan Trust Agreement

This Health Plan Trust Agreement shall be composed of such terms and conditions as agreed to by a three-fourths majority of the trustees. The initial terms shall be for four years, commencing on January 1, 1998, and shall continue thereafter unless modified by collective bargaining.

3. Reserve

At the commencement of the Health Trust Plan Agreement, the Board of Education shall make a one-time payment into an Insurance Reserve held by the Health Plan Trustees an amount equal to 20% of the projected 125% cost, as determined in Reserve below:

There shall be transferred to the Joint Insurance Health Plan Trust from the Board an Insurance Reserve to be vested at the difference between FY 96 annual health care benefits cost according to the present schedule as determined by an actuarial study and the attachment point (125% of annual insurance cost) for aggregate stop loss insurance. The Board will charge all Board funds on a per participant basis to establish this reserve. This Insurance Reserve and interest accruing thereto may be used only for the purposes described in this section and that portion initially funded by the Board shall revert to the Board in the event of the termination of the Trust. It shall be the responsibility of the Trustees to maintain this reserve after the initial set-up by the Board.

4. Run Out Reserve

A Run Out Reserve shall be established by adding to the premium rate for coverages (which will be charged to all other Board funds on a per participant basis) an amount calculated to achieve a reserve with sufficient dollars to pay for a three month run out should the trustees decide to opt for fully insured coverage in lieu of self funded coverage. This fund may be increased or decreased annually in order to maintain sufficient funding for its stated purpose. Overages shall be distributed by the Trustees as described below. This fund will be fully vested prior to January 1, 2001.

5. Operating Reserve

The Board of Education shall be responsible for the funding of the Self Insurance Trust Plan which shall be by monthly payments in advance of 1/12 of the annual funding level determined by an independent actuary based upon experience and administrative costs, stop loss insurance costs, Third Party Administrator costs, and Managed Care Administrator costs. All such costs are to be determined by like manner for each year of the plan but shall in no event be less than the projections in the first year. The totality of this contribution shall be known as the Operating Reserve. After the first year, the Board's annual increased cost will be limited to 50% of medical inflation increase or the cost of living increase both as determined by the U.S. Department of Labor Consumer Price Index effective for the Greater Cleveland Metropolitan Area, which ever is greater.

6. Additional Year Funding

- a. The funding for each additional year shall be in twelve (12) equal installments and shall be as follows:

- (1) An amount equal to the first year funding shall be paid 100% by the Board of Education.
- (2) All increases in funding for each additional year in excess of the first year funding level shall be paid as follows:

All such increased costs of stop loss insurance shall be borne 50% by the Board of Education and 50% by plan participants.

All such increased costs attributed to increased management and administration costs shall be borne 50% by the Board of Education and 50% by the plan participants.

Any costs to be borne by the plan participants shall be paid as determined by the Trustees through enactment of cost containment changes in the plan or coverages which will result in savings determined by the independent actuary to be not less than the amount to be borne by the participants.

7. Trustee Authority

- A. The plan shall provide benefits for hospitalization, medical, dental, vision, and prescription drugs, as provided by present policies in accordance with terms and provisions as agreed to by the Plan Trustees, including a per person \$1,000,000 lifetime limit, with enrollment periods as provided in this Trust agreement. The purpose of the Trustees shall be to administer the Health Plan Trust Fund. The trustees shall contract for coverages solely for medical/hospitalization, dental, vision and prescription drugs. They shall examine the viability of continuing with self-insured programs and shall determine which, if any, coverages will be self-insured. The Third Part Administrator, Comprehensive Managed Care Administrator, Legal Counsel, and Independent Actuary shall be determined by the Trustees and shall be funded by the Trust.
- B. At the end of each plan year the Independent Actuary, in addition to determining the cost basis for the next ensuing year, shall certify the unexpended trust fund monies as of the 120<sup>th</sup> day following the end of the plan year. Thereafter, not more than 30 days following the end of the plan year. Thereafter, not more than 30 days following the Actuary's report, all monies paid into the plan trust but

unexpended for costs and claims incurred and paid for the previous year shall be paid 50% to the plan participants and 50% to the Board of Education. The 50% payment to the participants shall be made by pro-rata distribution to all plan Participants employed at the end of the plan year, by individual checks issued by the Third Party Administrator to each such participant.

8. Termination

- A. In the event of termination of the Health Plan Trust, the Trust shall be wound up with all of the remaining funds including any accumulated interest thereto in the operating reserve distributed to the plan participants and the board, 50% to each, with participants getting a pro-rata basis to all plan participants employed upon termination of the plan.
- B. A summary "Schedule of Benefits" description shall be prepared by the Third Party Administrator and distributed to each plan participant. A decision by a 3/4<sup>th</sup> majority of the votes of the Plan Trustees shall be final and binding upon all parties.

14.2 Life Insurance

	<u>Life</u>	<u>Accidental Death</u>
A. Class 1 "Classified employees working less than 40 hours per week"	\$40,000	\$40,000
B. Class 2 "Classified employees working at least 40 hours per week"	\$50,000	\$50,000
C. The employees shall have the option of purchasing additional insurance, payroll deductible, at the same group rate and subject to the requirements of insurability and the carrier and in an amount not to exceed that allowable by the carrier.		

14.3 Retirement Option

Employees planning on retiring should contact the Treasurer at least two (2) months in advance of anticipated retirement day. The notice of said retirement will be kept confidential if so requested. Board of Education action will take place when the employee releases said confidence. The administration, local chapter of OAPSE and the Treasurer should assist retirees in understanding procedures.