

STATE EMPLOYMENT  
RELATIONS BOARD

2005 SEP -2 A 11: 08

IN THE MATTER OF FACT-FINDING  
BETWEEN

CITY OF EASTLAKE	)	CASE NO. 04-MED-09-0983
	)	
AND	)	<u>FINDINGS</u>
	)	AND
	)	<u>RECOMMENDATIONS</u>
EASTLAKE FIRE FIGHTERS	)	
IAFF LOCAL 2860	)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

Kenneth R. Adams

FOR THE CITY

Jack L. Petronelli, Esq.

## **SUBMISSION**

This matter concerns fact-finding proceedings between the City of Eastlake (hereinafter referred to as the City or Employer) and the Eastlake Fire Fighters, IAFF Local 2860 (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were conducted on May 17 and June 17, 2005.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse with several issues being tentatively agreed upon by the parties. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit involved consists of all full-time Firefighters, Lieutenants, Captains and Battalion Chiefs employed by the City. There are approximately twenty-nine employees in the bargaining unit.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

## **1. WAGES**

The Union proposes a pay schedule consisting of five steps with increases to all steps and ranks of 5%, 0% and 3%, with the first year increase being retroactive to January 1, 2005. The City proposes increases in wages of 1% effective upon execution of the Contract, and additional 1% increases in each of the final two years of the Agreement.

The City contends that it does not have the ability to fund any wage increase for the bargaining unit beyond the 1% increases which it has proposed. The City's Finance Director, Michael Slocum, stated that the City is facing a fiscal emergency and is under the watch of a state oversight committee. He noted that the City ended calendar year 2003 with a 3.2 million dollar deficit in its General Fund. There were no cash reserves. In 2004, the year-end General Fund deficit was 2.5 million dollars. For the current year, the Finance Director projects that there will be about a 1.1 million dollar deficit in the General Fund. This will be greater than that which the state approved recovery plan had projected for a deficit reduction in the current year.

Moreover, the Finance Director indicated that the City will be facing even greater expenditures in 2006 and 2007 due to the stadium debt. He indicated that in order to pay the amount due on the stadium bonds in 2006, approximately \$300,000 will have to be taken out of the General Fund. In 2007, an even greater amount will be needed from the General Fund to satisfy the stadium bond debt payable for that year. At the current time, the total stadium debt totals approximately 26 million dollars.

The City further points out that it has taken some severe measures to reduce expenditures. Over one-half of the service department employees were laid off last year. In the fire department, there have been no direct layoffs but through attrition there are fewer employees in the department now than in previous years. The Finance Director also noted that during the past five years, General Fund receipts have remained relatively flat with tax evaluation actually declining during that period of time. In the past year, voters rejected a proposed fire-safety levy which would have helped to reduce the deficit. The Finance Director acknowledged that the City will be collecting about 1 million dollars in 2005 from a newly implemented fee on garbage collection.

The Union has proposed a new five step wage schedule which it maintains will actually save the City some money in the long run. Currently, there are three steps to the firefighters' wage schedule. The Union estimates that the change in the steps in the wage schedule will achieve savings for the City as members retire from the department.

The Union further argues that the firefighters are entitled to a significant wage increase this year because in 2004 they agreed to a wage freeze. In addition, last year the firefighters agreed to a new insurance contribution of approximately 6%. These factors should be taken into consideration in determining the appropriate wage increase which should be given to the firefighters in this case.

The Union also cites comparables which indicate that the wages for firefighters in Eastlake fall below that provided to others in the immediate area. When one includes the workweeks and hours of work per year in these other districts, it becomes clear that

the Eastlake Fire Fighters' yearly as well as per hour rate fall well below that in the neighboring jurisdictions of Mentor, Wickliffe, Willoughby and Willoughby Hills. The Union further notes that the Eastlake Fire Fighters earn approximately seven dollars less per hour than the City's patrolmen. Finally, the Union points out that the average wage increase for firefighters in northeast Ohio is about 3.5%. Therefore, the comparable evidence according to the Union clearly supports its wage proposal for firefighters over the next three years.

ANALYSIS – Based upon a careful review of the evidence, this fact-finder would recommend that there be 2% wage increases in each year of a three year Agreement. The initial 2% increase would be retroactive to January 1, 2005. In making this wage recommendation, this fact-finder has taken into consideration both the City's financial crisis as well as the fact that the firefighters took a wage freeze and agreed to pay about 6% towards healthcare premiums during the past year. When all the factors are taken into consideration, this fact-finder believes that the above referred to wage increase recommendation is reasonable.

It must be recognized in this case that the City of Eastlake is currently facing a fiscal emergency. During the past several years, the City has had significant deficits in its General Fund. At the end of last year, 2004, the General Fund had a deficit of approximately 2.5 million dollars. This year as indicated by the Finance Director, the General Fund is projected to have approximately a 1.1 million dollar deficit. Because the City is currently in a crisis mode, it must take steps to reduce its General Fund deficits. It

is for this reason that this fact-finder finds that it is appropriate to recommend relatively modest wage increases for the bargaining unit.

Moreover, it is important to point out that in 2006, the City plans to pay about 1.6 million dollars on stadium debt with 1.3 million dollars coming from the stadium fund and about \$300,000 coming from the General Fund. The stadium fund is comprised of stadium related revenue and used to payoff stadium debt. Most significantly though in 2007, based upon current projections for revenues and expenditures, the City will need to spend about 1 million dollars from the General Fund to cover stadium debt. Such evidence supports the finding that any wage increases in the final two years of the Agreement should also be held to a modest level for the bargaining unit here.

However, the City has budgeted for 2% wage increases in its recovery plan which was approved by the state oversight committee. In other words, it appears to this fact-finder that the 2005 budget and those for the following two years under the recovery plan allow for wage increases of 2% for City employees. It is mainly for this reason that this fact-finder has concluded that the City has the ability to fund the recommended wage increases for firefighters in this case. It should be noted though that any further increase beyond the 2% recommended herein could as the City indicated result in possible layoffs. In order to avoid such a ramification, the Union's proposal for greater wage increases or a modification in a number of steps in the wage schedule cannot be recommended.

This fact-finder has also given consideration to the fact that the firefighters during 2004 agreed to a wage freeze. In addition, the firefighters agreed to begin to

contribute about 6% towards health insurance premiums. Therefore, it is apparent that the firefighters clearly made an effort to assist the City in reducing its expenditures over the past year. It is for that reason that an additional increase beyond that which the City recommended herein of 1% in each year of the Contract is appropriate for the bargaining unit here. This fact-finder recognizes that the Eastlake Fire Fighters at least on an hourly basis based upon their workweek are paid less than some of the other firefighters in jurisdictions in the area. However once again due to the City's severe financial crisis, any average wage increase at this time would be inappropriate.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be 2% general wage increases in each year of a three year Agreement.

#### **WAGES**

Effective January 1, 2005 – Two Percent (2%) wage increase.

Effective January 1, 2006 – Two Percent (2%) wage increase.

Effective January 1, 2007 – Two Percent (2%) wage increase.

## **2. HOURS OF WORK**

The Union seeks a reduction in the workweek from the current fifty-two hours to forty-eight hours effective on January 1, 2006. The City opposes any reduction in the workweek for the firefighters.

The Union points to workweek comparables for firefighters in the region. The Union noted that the firefighters in several of the neighboring jurisdictions work fewer hours per week as compared to the Eastlake Fire Fighters. The Union submits that lowering the workweek would bring the firefighters here into line with the other communities. The Union maintains that the hours reduction would not effect current staffing levels which allow for not more than two firefighters off per shift.

The City argues that any reduction in the hours for the firefighters in this unit would be totally inappropriate at the present time. The City cites the fact that it is going through severe economic times and that any reduction could substantially increase the overtime costs for the department. Furthermore, a reduction in the workweek to forty-eight hours represents a significant wage increase for the firefighters. According to the City, the reduction in hours could also impact the department by creating scheduling difficulties.

ANALYSIS – This fact-finder finds that it would be appropriate to reduce the workweek hours for the firefighters effective on January 1, 2007. At that time, it would be reasonable to reduce the firefighters' workweek to 51.7 hours. The reduction in hours

recommended would mean that firefighters would work 2,688 hours per year as compared to the current 2,704 hours. Therefore, the reduction in the number of hours worked per week would provide firefighters with an additional 16 hours off per year.

In making the recommendation to reduce the hours of work, this fact-finder has taken into consideration several factors. The evidence shows that the Eastlake Fire Fighters' weekly work hours are relatively high compared to most others in the area. Firefighters in comparable cities such as Mentor, Willoughby and Willoughby Hills all work fewer hours than the Eastlake Fire Fighters. For that reason, there was justification established for reducing the hours of work for the bargaining unit here.

However, this fact-finder has also taken into consideration the City's concern about the impact which any reduction in hours will have on the fire department. As a result, a more significant reduction in workweek hours cannot be recommended at the current time due to staffing constraints. Moreover, obvious budgetary concerns facing the City must also be taken into consideration with respect to possible cost implications involved if a further reduction in workweek hours were to be implemented. As a result, this fact-finder has determined that a more reasonable reduction in hours than that proposed by the Union would be one which will reduce the number of hours worked per week to 51.7 hours.

### **RECOMMENDATION**

With respect to Hours of Work, this fact-finder recommends that the number of hours worked per week be reduced from 52 to 51.7 hours on January 1, 2007.

### **HOURS OF WORK**

Effective January 1, 2007, reduce the number of hours worked per week to 51.7 hours.

### **3. HEALTH INSURANCE**

The Employer is proposing to have employees pay 10% of the cost of medical, hospitalization and dental coverage for the insurance plan which was recently implemented. The City further proposes that it no longer reimburse employees for any co-pays or deductibles.

The City is also proposing language to provide for an insurance committee to review healthcare plans and to provide input as to what benefit levels would be provided in the second and third years of the Contract. Under the Employer's proposal, if amicable agreement cannot be reached between the parties, the City would be able to change the benefit to a level that is at least equal to or better than the highest level of benefits plan provided to state employees who are subject to collective bargaining in the State of Ohio

The Union's proposal is that the practice of reimbursement for co-pays and deductibles be continued. The Union also proposes to increase the employees' contribution by \$10 each year of the Contract. Finally, the Union as part of its proposal submits an Opt-Out Program which would provide \$200 per month for families and \$150 per month for a spouse and children if they elect not to be covered by the City's healthcare plan.

The City contends that its proposal is appropriate due to the significant increases in the cost for providing healthcare to its employees. In prior years, such increases have been borne solely by the Employer. The City maintains that its proposal is consistent

with the practice that is being utilized for employee contributions in other area communities.

The Union argues that it would be totally unreasonable to expect bargaining unit members to contribute up to 10% towards the health insurance premiums. It points out that currently firefighters contribute approximately 6% towards monthly healthcare costs which is in line with the kind of employee contributions found in other fire departments in the area. Currently, an employee with family coverage contributes approximately \$68 per month whereas under the City's proposal with a 10% contribution that would increase to \$111 per month.

The Union further maintains that it is only proper that the City continue to pay the deductibles and co-pays for the employees. The City has in the past paid for such costs including the expenses incurred for office visits. Considering that the bargaining unit's wages are relatively low in comparison to others in the region, the Union submits that the City should continue to pay deductibles and co-pays for bargaining unit members.

ANALYSIS – This fact-finder would recommend that effective on January 1, 2006, employees contribute 8% of the monthly healthcare premium with a cap of \$90 for family coverage. Effective in the last year of the Agreement, the employee contribution cap for family coverage should be increased to \$110. Also effective on January 1, 2006, the City shall no longer be responsible for reimbursing employees for co-pays and

deductibles including expenses incurred for office visits. This fact-finder would also recommend that an insurance committee be established to review any proposed changes in healthcare plans. In addition in order to resolve any dispute which may occur when the Employer attempts to renew or enter into a new health insurance contract, a new mid-term bargaining article should also be included in the parties' Agreement. This will allow the parties to bargain over any proposed change in healthcare plans during the term of the Agreement.

It was clearly established that healthcare costs have risen dramatically for the City as it has done for other public sector employers throughout the region. The recommended changes would to a certain extent allow the City to attempt to control healthcare costs. Currently, employees contribute approximately 6% towards healthcare premiums for family coverage. The recommendation that employees begin to pay 8% of the total monthly premiums effective January 1, 2006 would be consistent with that which other firefighters in the area currently contribute towards their healthcare costs. For example in the City of Willoughby, the firefighters will be contributing 8% towards healthcare costs beginning with their new contract.

Moreover, this fact-finder finds that it would be appropriate to provide for a cap on the amount of employee contribution towards healthcare premiums. This will serve to limit the exposure which the firefighters would have if healthcare costs were to rise dramatically over the next two years. An 8% contribution with a cap of \$90 beginning

next year which would increase to \$110 for family coverage in the year 2007 appears to be reasonable under the circumstances. Caps for other coverages should likewise be proportionally provided.

This fact-finder also finds that it would be appropriate considering the City's financial difficulties that it discontinue its practice of reimbursing employees for any co-pays or deductibles. It was established that no other jurisdiction in the area reimburses its employees for any deductibles or co-pays. It should also be noted that the healthcare plan currently in effect is an excellent one for employees with relatively low co-pays and deductibles.

Finally, this fact-finder as indicated recommends that an insurance committee be established to review healthcare plans and to provide input into which plan should be selected for the second and third years of the Agreement. During the past year, the City was compelled to implement a new insurance contract during the term of the parties' Agreement. This fact-finder finds that in such instances a mid-term contractual provision would be useful. That is, a procedure should be set forth in the parties' Agreement whereby any mid-contract term dispute arising between the firefighters and the City of Eastlake concerning proposed changes in health insurance contracts could be resolved in accordance with Section 4117.14 of the Ohio Revised Code. Appropriate mid-term bargaining language which can be used by the parties in such instances is attached hereto and included in this fact-finder's recommendation herein.

Finally, the parties appear to be in agreement on the modification which is to be made to the so-called Opt-Out Provision of the Insurance Article. This fact-finder would incorporate that agreement which provides that employees who obtain healthcare from a difference source are to receive \$200 per month if they are eligible for the family plan and \$100 per month for those eligible for the single plan. In addition, \$150 per month would be provided to those employees eligible for employee and spouse or children coverage who do not elect health coverage under the City plan.

### **RECOMMENDATION**

With respect to Health Insurance, this fact-finder recommends the following modification:

#### **HEALTH INSURANCE**

Effective January 1, 2006, the employee contribution shall be increased to 8% with a cap of Ninety Dollars (\$90) for family coverage, with caps for other coverages likewise being proportionately provided.

Effective January 1, 2007, the monthly insurance cap shall be increased to One Hundred Ten Dollars (\$110) for family coverage with caps for other coverages being likewise increase.

Effective January 1, 2006, the City shall discontinue its practice of reimbursing employees for any co-pays or deductibles.

Effective upon execution of the Agreement, an Insurance Committee shall be formed to review any proposed changes in the Healthcare Plan. Any dispute arising between the firefighters' Union and the City of Eastlake regarding proposed changes in the healthcare plan shall be subject to the resolution procedure set forth in the new mid-term bargaining article which is attached hereto and incorporated into this recommendation. (See Attachment 1)

Effective upon execution of the Agreement, any employee who elects to obtain healthcare coverage through another source other than the City of Eastlake, shall receive \$200 per month payment for those eligible for the family plan and \$100 per month for those eligible for the single plan, and \$150 per month for those eligible for employee and spouse or children coverages.

(Also See ATTACHMENT 1)

ATTACHMENT 1

**MID-TERM BARGAINING ARTICLE (New)**

**Section 1:** The procedures contained in this article shall govern mid-contract term disputes arising between the F.O.P. and the City of Eastlake concerning proposed changes in terms and conditions of employment.

A. In the event the Employer makes or proposes to make any changes in wages, hours or terms and conditions of employment before the expiration of this agreement, either party may serve notice upon the other of its desire to negotiate such a change.

B. The parties shall continue in full force and effect all terms and conditions of this existing agreement unless and until a new or modified agreement is agreed upon or established by operation of this Article.

**Section 2:** At any time after the commencement these mid-term negotiations, if either party believes that negotiations have reached an impasse, the parties shall submit their dispute to an agreed upon fact-finder by selecting from the permanent panel of arbitrators contained in the arbitration procedure article, and submit the dispute to fact-finding.

A. The fact-finder shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to fact-finding procedures. These rules shall apply except as modified by this Article.

B. Each party shall submit a written statement outlining its position on each of the unresolved issues and the language for insertion in the contract by which it proposes to resolve the impasse.

C. The fact-finder shall make a final recommendation as to all of the unresolved issues.

D. The following guidelines shall be applied by the fact-finder:

1. The fact-finder shall establish times and place of the hearing.

2. The fact-finder shall take into consideration the factors listed in Section 3(H) below.

3. The fact-finder may attempt mediation of the dispute at any time until a final recommendation is made.

4. The fact-finder shall transmit his/her recommendations to the Employer and the Union at the same time via U.S. Mail or by FAX.

5. Each party shall pay one-half the cost of the fact-finding procedure.

F. Not less than fourteen (14) days after the recommendations of the fact-finder are received by the parties, the legislative body by a three-fifths vote of its total membership and, in the case of the Union, the membership by a three-fifths vote of the total Membership may reject the recommendations. If neither party rejects the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted. The existing collective bargaining agreement shall be deemed to be modified by incorporating the recommendations of the fact-finder, and all other issues tentatively agreed upon before the disputed issues were submitted to the fact-finder.

Section 3: If either the legislative body or the membership of the Union rejects the recommendations, the parties may again attempt to reach a settlement of the issues still in dispute by further negotiations. Within fourteen (14) days of the vote by either party to reject the recommendations of the fact-finder, the parties shall submit any issues still in dispute to a final offer settlement procedure, binding conciliation in accordance with the procedures provided in this section.

A. The parties shall select a conciliator from the permanent panel of arbitrators contained in the arbitration procedure article.

B. The parties shall submit all unresolved issues to conciliation.

C. The conciliator may attempt mediation at any time until he/she issues his/her report.

D. The conciliator shall establish a time and place for the hearing.

E. Not later than five (5) days before the hearing, each of the parties shall submit to the conciliator and to the opposing party a written report summarizing the unresolved issues, and the language by which that party proposes to resolve the dispute as of each issue.

F. The conciliator shall be an arbitrator and shall have the power of an arbitrator under O.R.C. Section 2511 to issue subpoenas for the hearing. The conciliator shall take all the evidence and either party may make a record at its own expense.

G. The conciliator shall proceed to hold a hearing to resolve the impasse in accordance with the rules of the Ohio State Employment Relations Board applied to conciliation procedures. These rules shall apply except as modified by this Article.

H. After the hearing the conciliator shall resolve the unresolved issues by selecting on an issue-by-issue basis from between each of the final settlement offers made by the parties taking into consideration the following:

1. Past collectively bargained agreements between the parties.
2. Comparison of the issues submitted to conciliation relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work.
3. The interests and welfare of the public; the ability of the public Employer to finance and administer the resolution of 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. The stipulations of the parties.

I. The Conciliator shall make written findings of fact and publish a written opinion and order deciding the issues presented to him/her. He/she shall deliver a copy to each of the parties, at the same time via US. Mail or by FAX.

J. The parties shall each pay one-half the cost of the conciliation procedure.

Section 4: The issuance of a final offer settlement award constitutes a binding mandate to the Employer and the Union to take whatever action may be necessary to implement the award. Both parties agree to be bound by the award and order on all issues resolved by the conciliator and all issues previously resolved by agreement of the parties during negotiations. This award, order and all previously negotiated agreements, shall constitute amendments to the collective bargaining agreement without the necessity of either party taking any further action. However, the parties may, if they desire to do so by agreement execute an amended collective bargaining agreement including the award and order of the conciliator and all tentatively agreed upon issues not submitted to the conciliator for resolution.

#### **4. SICK LEAVE**

The Employer is proposing a change in the current Sick Leave Conversion Provision so that after fifteen years of full-time service, employees would be entitled to one-half of the first 1,344 hours of accumulated sick leave and 20% of any hours in excess of 1,344 hours. The City also seeks to delete “resignation” as a reason for being able to convert sick time into a cash payout. Finally, the City proposes a new payout provision whereby no more than 40% would be paid in the first year, 30% paid out in the second year, and 30% paid out in the third year. Moreover should an employee request a longer period of payout, the City and the employee could agree to a longer payout period.

The Union proposes to retain the current language. Currently, an employee who has sixteen or more years of service can cash in 1,344 hours of sick time at a payout of 100%. All hours of sick time that an employee earns over 1,344 hours are paid at the rate of 20%.

The City argues that its proposal is consistent with that found in surrounding communities where employees receive far less in the way of sick leave conversion upon retirement. Moreover, the other departments do not include “resignation” as a reason to convert sick leave. The potential amount of payout under the current language creates an excessive amount of liability for the City which is facing a financial crisis. The City further believes that it would be reasonable to provide that it be allowed to pay out the sick leave conversion over a period of time so that there is no major disruptive force in the budget process.

The Union argues that the current provision was mutually agreed to by the parties during the last negotiations. The purpose of course is to provide an incentive for employees not to use their sick leave while they are employed by the City. The Union submits that the change in sick leave conversion which the City seeks would have a significant impact on those employees who have already accumulated 1,344 hours during their service with the fire department. The Union disputes the City's contention that it has established a basis for making the change which it proposes in the sick leave conversion payout.

ANALYSIS – This fact-finder would not recommend any change in the amount of sick leave conversion payout upon retirement. However, it is recommended that “resignation” be deleted as a reason for being able to convert sick leave time into a cash payout. This fact-finder would also recommend that the payout be made over three years rather than at one time as currently provided.

This fact-finder has determined that there was insufficient basis established for making the rather dramatic changes to the sick leave conversion payout as suggested by the Employer. The parties agreed to the current provision which was intended to serve as an incentive for employees not to use their sick leave during their service with the fire department. As a result, firefighters have in some instances accumulated large amounts of unused sick leave for purposes of converting that time into a cash payout upon retirement. Although there was no clear indication as to how many firefighters may be retiring during the next three years, it does not appear that there will be any significant

payout by the City for this bargaining unit during the term of the new Agreement. This fact-finder would suggest that this issue be revisited during the next round of negotiations.

This fact-finder would further recommend that “resignation” be deleted as a reason for being able to convert sick leave time into a cash payout. There are not many other contracts which contain a sick leave payout upon an employee’s resignation. As a result, this fact-finder finds that an employee’s resignation should not be used as a reason to convert sick leave.

This fact-finder further finds that there is merit to the City’s proposal to have the sick leave conversion paid out over a period of time so that there is not a major disruptive force in the budget process. This would allow any tax owed by the employee to also be spread out over a period of three years. However, language should be included which would allow the employee and City to agree to a longer payout period.

### **RECOMMENDATION**

It is the recommendation of this fact-finder with respect to the Sick Leave Conversion Provision that the only change is that “resignation” be deleted as a reason for being able to convert sick time into a cash payout and that the payout be made over a minimum of three years.

### **SICK LEAVE CONVERSION**

No change except “resignation” shall be deleted as a reason for being able to convert sick time into a cash payout.

(Add):

The payment shall be over a minimum of three (3) years as follows:

Forty Percent (40%) payable in the first year of retirement or death, and Thirty Percent (30%) per year for the second and third year. Nothing precludes an employee from requesting a longer payout period.

## **5. INJURY LEAVE**

The City proposes to modify Sections 14.01 and 14.05 to provide that an employee on injury leave would not be able to receive reimbursement for sick leave or earn any benefits provided under the Contract during the time the employee is on injury leave. The Union proposes to modify the provision so that an employee would stop accumulating time after one year of being on injury leave and that they may be reinstated to the department for up to three years.

The City requests the modification to the Injury Leave Provision because it has a member of the bargaining unit who has been on injury leave for an excessive amount of time and with the current language, the employee has been seeking reimbursement of his sick leave so that he can obtain full pay from the City. As a result, the City has an employee on the payroll who is unable to perform any of the duties of his firefighter position but who the Employer cannot replace at the current time.

The Union argues that it has proposed a reasonable compromise concerning the issue of the employee who has been on injury leave for a considerable amount of time. The Union submits that there is no need for any further modification as proposed by the City concerning this provision.

ANALYSIS – This fact-finder would recommend some modification to the current Injury Leave Provision. It is recommended that any employee on injury leave shall not earn sick leave during this leave period. However an employee shall continue to earn seniority provided the duration of the injury leave is less than one year. This

modification will serve to address the City's concern with respect to the firefighter who has been on injury leave for a considerable amount of time.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the Injury Leave Provision be modified as more fully set forth below:

#### **ARTICLE XIV                      INJURY LEAVE**

14.01            When an employee is injured in the line of duty while actually working for the Employer, he shall be eligible for a paid leave not to exceed forty-five (45) calendar days from injury date, providing he files for Workers' Compensation and signs a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this Article. Employee shall then utilize his sick leave, vacation, etc. until he returns to full duty. Sick leave, etc. will be fully reimbursed, if any workers' compensation is received for such days by the Employer for employees injured on duty for a maximum of one (1) year from the date of the injury. All injuries must be reported on the shift of occurrence, or within one (1) calendar week, to be eligible for payments under this Article.

14.02            The Employer shall have the right to require the employee to have a physical exam by a physician appointed and paid by the Employer, resulting in the physician's certification that the employee is unable to work due to the injury as a condition precedent to the employee receiving any benefits under this Article. The designated physician's opinion shall govern whether the employee is actually disabled or not, but shall not govern whether the Employer shall extend the period of leave.

14.03            An off-duty Fire Fighter shall be considered to be acting in the line of duty if he responds to any emergency requesting he render assistance as Fire Fighter or EMT.

14.04            Any time an employee submits an on-the-job injury/accident report, the Employer has the right, with reasonable cause, to send the employee for an examination for "fitness for duty." Cost of such examination will be borne by the Employer. Physician shall be selected by the Employer.

14.05 In the event of an extended Injury Leave, should the member take extended injury leave of more than one (1) year, the employee will be deemed separated from employment and Management may replace his position with a new hire. After separation from service, the injured member may exercise his right to immediate recall, upon meeting fitness for duty requirements listed in Article 13.09 and 13.10. The Local will not hold Management responsible for any lay-off that this recall may cause. As a new position becomes available, laid-off members will be offered recall rights for one (1) year following their separation from service.

## **6. UNIFORM MAINTENANCE ALLOWANCE**

The Employer is proposing to change Section 26.05 to eliminate those items normally provided in the Uniform Allowance from being repaired or replaced at the expense of the City. The Union proposes to retain the current language.

The City argues that in as much as it is providing uniform allowance, there is no need for it to repair or replace uniforms damaged on duty. Currently when turnout gear or special equipment is damaged on duty, through no negligence of the employee, it is repaired or replaced at the expense of the City.

The Union takes the position that the current provision is reasonable in that the City should replace or repair any equipment or turnout gear which is damaged while the firefighters are on duty. The Union submits that this has never been an issue in the past.

**ANALYSIS** – This fact-finder would not recommend any change in the current Uniform Allowance Provision as sought by the City. The current provision appears to be reasonable in that it becomes the Employer’s responsibility to repair or replace any turnout gear or equipment which is damaged while the firefighters are on duty. There simply was no basis established for making a change in the current provision.

### **RECOMMENDATION**

This fact-finder does not recommend any change in the current Uniform Allowance Provision with respect to the City’s obligation to repair or replace turnout gear or special equipment damaged while the firefighters are on duty.

**UNIFORM MAINTENANCE ALLOWANCE** – No change, current provision.

## **7. EDUCATIONAL PAY**

The Union proposes a new provision whereby the City would be required to compensate all fire or EMS instructors at a rate of \$75 per month. The City opposes any new provision for educational pay.

The Union contends that its educational pay proposal is warranted because the workload of fire and EMS instructors has increased during recent years. The Union points out that just about everyday instructors provide about two hours of training.

The City maintains that the education pay provision proposed by the Union would result in additional costs for the fire department. Considering the City's financial difficulties, there should be no additional costs imposed upon the City.

ANALYSIS – This fact-finder does not recommend the Union's new Educational Pay Provision. Such a provision would have obvious cost implications for the City. As previously discussed, the City is facing a financial crisis and as a result it would be inappropriate to provide for new additional expenditures at this time for the fire department.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be no new Educational Pay Provision as sought by the Union.

**EDUCATIONAL PAY – No new provision.**

## **8. GRIEVANCE PROCEDURE**

The City proposes a change in Section 39.04, Step 2 which provides that the Union and not the aggrieved employee would have the right to determine whether or not the matter will be pursued to arbitration. The Union proposes to retain current language.

The City submits that the change it proposes is needed because the City of Eastlake and the Union are parties to the Agreement and they are the ones who should make the decision as to whether or not the grievance is going to be pursued through the arbitration process. Currently, an individual employee can make that decision.

The Union argues that it is reasonable to allow an individual employee the right to make the decision as to whether or not their grievance should be processed through the arbitration procedure. The Union does not believe that there is any justification for changing the current provision.

**ANALYSIS** – This fact-finder has determined that there should be no change in Section 39.04, Step 2 of the Grievance Procedure. This arbitrator finds that it is reasonable to allow an aggrieved party who is not satisfied with the decision at Step 2 to make the decision to proceed to arbitration pursuant to the Arbitration Procedure. There simply was insufficient basis established for the City’s proposal to remove the language in question.

### **RECOMMENDATION**

This fact-finder does not recommend any change to Section 39.04, Step 2 of the Grievance procedure.

**GRIEVANCE PROCEDURE** – Current language, no change.

## **9. RESIDENCY**

The Union proposes to increase the residency requirement from ten to twenty miles. The City is opposed to any new provision being included in the parties' Agreement regarding the residency requirement. Currently according to departmental policy, a firefighter must reside within a ten mile radius of the City.

The parties indicated that they have basically agreed to provide for a fifteen mile residency requirement. This fact-finder adopts as his recommendation herein that the departmental policy be amended to provide that an employee must maintain residency within a fifteen mile radius of the City.

### **RECOMMENDATION**

This fact-finder does not recommend a new provision as proposed by the Union regarding the residency requirement. However, he does recommend herein that the current policy regarding residency be amended as follows:

#### **RESIDENCY REQUIREMENT**

No new contract provision. However policy to be amended to provide that an employee is to reside within a fifteen (15) mile radius of the City.

## **10. DURATION**

The parties indicated that they are in agreement as to the language which is to be set forth in the Duration Provision. This fact-finder recommends the adoption of the Duration Provision agreed to by the parties.

### **RECOMMENDATION**

This fact-finder recommends the following Duration Provision:

#### **DURATION**

The Agreement shall become effective at 12:01 a.m. on January 1, 2005 and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight December 31, 2007.

**CONCLUSION**

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

**AUGUST 19, 2005**

*James M. Mancini*  
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**JAMES M. MANCINI, FACT-FINDER**