

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2005 JAN 10 A 11: 39

CITY OF MONROE, OHIO,)
)
 Public Employer,)
)
and)
)
MONROE PROFESSIONAL)
FIREFIGHTERS, IAFF LOCAL 3824,)
)
 Employee Organization.)

Case No. 04-MED-09-1003

FACT FINDING REPORT

Date of Award:
January 7, 2005

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Employer:

Donald L. Crain, Esq.
Frost Brown Todd LLC
300 North Main St. – Suite 200
Middletown, OH 45042

For the Union:

Kenny Ellis
4906 Peak Dr.
Hamilton, OH 45011

I. Introduction and Background.

SERB appointed the undersigned, Mitchell B. Goldberg, as the Fact Finder of this public employment dispute on December 2, 2004. The parties agreed to extend the fact-finding period and a hearing date was scheduled for December 20. The parties submitted position statements in accordance with SERB rules. The parties further agreed to the date of January 10, 2005 for the issuance of the Fact Finding Report.

The bargaining unit consists of 27 positions within the Monroe Fire Department. This is the second collective bargaining agreement negotiated by the parties. The positions consist of three Lieutenant/Paramedics, fifteen Firefighter/Paramedics, seven Firefighter/EMT-Basics, and two Firefighter/EMT-Intermediates. The parties have engaged in multiple negotiating sessions since October 27. The Union, prior to the hearing, dropped eight issues from their proposals, leaving the following unresolved issues for fact finding: (1) Article 11-Hours of Work and Overtime, (2) Article 12-Allotted Days Off, (3) Article 23- Safety and Health, (4) Article 24-Holidays, (5) Article 25-Vacations, (6) Article 26-Sick Leave, (7) Article 27-Bereavement, (8) Article 28-Injury Leave, (9) Article 29-Insurance, (10) Article 31-Clothing Allowance, (11) Article 32-Wages, (12) Article 33-Duration of Agreement, and (13) Longevity Pay. The Fact Finder spent considerable time attempting to mediate these issues. Progress was made in bringing the parties closer on these economic issues, but their final positions remained the same when a global or package agreement could not be reached on all of the above issues.

For purposes of this Report, all articles or provisions tentatively agreed upon between the parties are hereby adopted, included, and incorporated herein and made a part of this Report. The following recommendations take into consideration all of the criteria set forth in SERB Rule 4117-9-05 (J).

II. Economic Evidence.

The parties submitted extensive testimony and voluminous exhibits relative to the City's past and present financial condition. The following represents a summary of that evidence.

In late 2002, it was discovered that substantial financial, budgetary, and accounting mismanagement occurred, leaving the City with an estimated deficit of \$5 million in its annual operating budget of \$10.5 million. The mismanagement led to the resignations of the City Manager and the Finance Director. In June 2003, Acting City Manager Brock stated to Council that the City would face a \$1.2 million deficit in the 2004 budget based upon current revenue projections. The police and fire fund was projected to have a shortfall of \$857,000 and the City was expecting a 27% increase in its health insurance premiums in 2005. Substantial budget cuts were mandated to cut expenditures that were budgeted based upon inaccurate statements of positive fund balances.

One attempted remedy was the raising of additional revenues by proposed tax increases. However, the residents soundly defeated these proposed levies, rejecting any

increases in their taxes to remedy what they believed were mistakes made by their governmental officials and the inability to control expenditures. The Administration then embarked upon a plan to address the \$1.2 million operating deficit by strictly controlling the budget, using existing positive fund balances, shifting expenditures to Enterprise Funds, and stopping principal payments on short term notes. It was projected that all positive fund balances would be depleted by the end of the year, that operating cuts would be implemented, that Enterprise Fund monies would be used for non Enterprise purposes in 2004, and that there would be a halt to all capital improvements.

City Council approved a Two-Year Financial Plan in August 2003. It included layoffs of personnel and the non-filling of vacancies. All capital improvements were stopped and the bond debt was restructured to eliminate principal payments and to pay interest only at higher interest rates. Nevertheless, the failure to obtain any tax increases resulted in the City being placed in Fiscal Emergency status by the State Auditor. This was due to the deficit in eleven city funds totaling over \$6 million. A state commission was appointed to oversee the City's finances and to assist in the development of a workable recovery plan to balance the budget.

The State Fiscal Emergency Analysis as of December 31, 2003 and April 30, 2004 found that the City met two of the six criteria for declaring an emergency, the negative treasury balances and deficit fund balances. The state commission or Financial Planning Review Committee is to prepare and present a Fiscal Recovery Plan by February 18, 2005, the goal of which is to present a balanced budget. The Plan will

undoubtedly call for an across the board wage freeze for all employees, except for those under existing collective bargaining agreements that provide for wage and benefit increases. The police contract expires on May 30, 2005 and the Teamster contract expires at the end of 2005.

The City further faces the elimination from its revenue the state local government funds money, amounting to a loss of approximately \$300,000 per year. Its positive fund balance of \$408,000 for the new fire house raised by a five-year tax levy will be used up, notwithstanding that payments will still be due on the long term debt related to the capital improvement. The commission may possibly bring a safety service levy proposal to the voters, but history shows that it is unlikely that the voters will accept any proposed tax increase. The most recent statement as of December 20 shows a negative cash position of \$6 million. This is a dramatic improvement over the negative figure of \$1.6 million a year ago. The City's goal is to carryover \$500,000 to the next year in the general fund.

The IAFF conducted its own analysis of the financial condition of the City in a Report issued to Local President Ellis on November 22. Its findings and conclusions are somewhat more optimistic than the City's presentation at the hearing, but the operative facts are the same. The Report finds that the City's fiscal health has declined in numerous areas; however, the City met and exceeded the Moody's 5% guideline for fiscal year 2003 in the total fund balance as a percentage of expenditures "by over six-fold." The City's Auditor has pointed out that the City has not been managing its long-term debt in an efficient manner, by making several large cash purchases for items that

could have been financed with long-term debt. By changing these methods for purchases, the City could improve its liquidity and better meet its current obligations.

The Moody's analysis puts the City's financial problems into a more realistic perspective. Mismanagement was recognized and quickly addressed by the City. Municipal income tax revenues have grown in a strong local economy with substantial residential development. Assessed property valuations have increased dramatically and are growing at a 10% annual rate. There are many new housing starts and increased commercial development. Moody concludes that the City's debt is manageable and only downgraded the bond rating from A2 to A3, notwithstanding the past financial mismanagement.

The conclusion in the Fiscal Emergency Analysis finds that an emergency exists because of only two conditions out of six criteria, any one of which constitutes an emergency finding. The only reasons for the emergency status are the deficit fund balances and the deficient treasury balances. The City is adequately addressing both conditions. The Mayor stated in August: "We're going in the right direction." City Manager Brock has repeatedly stated that the City had an auditing problem, not a cash problem. The City improperly spent money from restricted funds for other than authorized purposes and it must repay those moneys to the proper accounts. The deficits were the result of construction debts for the new city hall, two firehouses and a city garage. Brock further stated that the City was paying its bills on time and built up a \$3

million cash reserve. “We just need more cash reserves to make up for the negative fund balances.”

The City, however, wants to address certain issues agreed upon in the first contract, which it now believes must be adjusted in order to improve its operating efficiencies. The issues were agreed upon based upon erroneous financial assumptions as to its available funds. It can no longer afford these working conditions in light of its fiscal emergency situation. The Union opposes any concessions in working conditions achieved through collective bargaining. It is willing to assist the City in its recovery plan by accepting certain monetary concessions, but it does not see a need to remove certain working conditions that it bargained for, and which brought the unit closer to standards already obtained by its contemporaries working in neighboring counties and cities.

III. Issues.

A. Article 11 – Hours of Work and Overtime.

The Union proposes to change the existing formula for computing overtime compensation. The present formula provides that platoon employees receive overtime pay for hours worked in excess of 212 per 28-day work period exclusive of trade time in a year. The normal hourly rate is determined by dividing the annual salary by 2,912 hours. The employee receives overtime pay at 1/2 times the normal hourly rate for hours worked between 212 and 224 because those hours have already been compensated at the normal hourly rate as part of the employee’s regular bi-weekly pay. Hours worked beyond 224 are paid at time and one-half. Hours worked are defined by FLSA.

The Union proposes that flex time not be counted toward hours worked when calculating overtime. It proposes that platoon overtime be paid for hours worked in excess of those worked in the employee's regularly scheduled shift. The normal hourly rate shall be determined by dividing the annual salary by 2624 hours. Hours worked shall include vacation time, EDO (earned day off) time, sick time, union time, bereavement leave, injury leave, and jury leave. Any overtime worked shall be paid no later than the pay period following the period in which the overtime hours were worked.

The City has been trying to control its overtime expenses. It thought it was making headway in the present language when it agreed to an ADO (allotted day off) system. It expected that an employee would evenly distribute ADOs throughout the year; instead, employees generally requested ADOs in work periods when their overtime hours were low, or during periods when their paid time off was not used. The ADOs did not produce the intended result that ADOs would offset scheduled shift work in excess of 212 hours in a given work period. As a result, the overtime expenses remained high and the City did not receive any material cost savings.

The City now proposes a traditional EDO (earned day off) system. It proposes to offer the platoon employees seven EDOs to insure that they will offset hours worked in excess of 212 in a period. The Union is willing to change from ADOs to an EDO system, but employees should receive 12 EDOs because many of the members now receive 9 ADOs and others receive five or seven depending upon the length of their service. The

Union believes that a change to EDOs will result in the loss of 6.5 overtime days. If members receive 12 EDOs, the loss in overtime days will be split between the parties.

The parties, through mediation, negotiated the above details of the City's proposed EDO system. The difference in the number of available EDOs affects the length of the workweek. For example, the workweek is 56 hours for shift employees when there are six EDOs. The workweek is 51.84 hours when EDOs are at nine. When EDOs are at ten, the workweek is 51.4 hours. This is the primary area of dispute between the parties. The City is willing to provide overtime compensation for all hours worked beyond or outside a regularly scheduled work shift, and it is willing to apply FLSA standards.

Recommendation. Article 11 shall be revised and amended in accordance with the "Draft Article 11" attached hereto, marked "Exhibit A" and incorporated herein, except that the following changes shall be made to Draft Article 11 as part of this recommendation: Section 3 (a) shall be amended to read "nine (9) earned days off (EDOs) instead of "six (6) earned days off (EDOs)." The workweek shall be an average of "51.84" hours for shift employees instead of "56" hours. The second sentence in Section 5 (a) shall be amended to read: The hourly rate will be determined by dividing the Employee's annual salary by "2696" instead of "by 2912."

B. Article 12 – Allotted Days Off.

Recommendation. The ADO system in Article 12 shall be replaced with the EDO system in accordance with the recommendation in Section A above.

C. Article 23 – Safety and Health.

The Union proposes to change the language in Article 23 that provides for two members of the Fire Department to be appointed to the citywide Safety Committee. Presently, one member of the department is the Fire Chief and one member is someone designated by the Union President. The Union proposes that the two members be from the Union, both of which shall be appointed by the Union President.

There was little if any discussion of this issue at the hearing. Accordingly, the Fact Finder was not presented with any persuasive reason to institute a change in the language. There was no evidence that the present procedure is inadequate, or that there is a compelling reason to change the status quo.

The Union also proposes new language requiring the City to provide and pay for TB testing and annual flu vaccinations. There was little discussion of this issue at the hearing. Because of the existing financial circumstances of the City, these additional costs should not be considered at this time.

Recommendation. No change.

D. Article 24 – Holidays.

The Union proposes a change in the language that provides for the payment of holiday pay and the wage rate used for the calculation of the pay. It proposes that the 44-hour payment be multiplied by the employee's 40-hour rate. This appears to be an additional cost for the City, which is not justified at this time.

The second proposed change by the Union is another cost increase item. Presently, employees called to work on a holiday when they are not scheduled to work receive time and one-half their normal hourly rate. The Union wants to change this to time and one-half of the employee's premium hourly rate. This additional cost also is inappropriate for the above stated reasons.

Recommendation. No change.

E. Article 25 – Vacations.

The Union proposes substantial increases in vacation time, changes in the selection procedure and in the use of vacation time, increases in vacation accrual limits, payments of accrual benefits to a surviving spouse or to the employee's estate, changes of vacation use if an employee is hospitalized, and substitution of bereavement leave for vacation leave if a family member dies when an employee is on vacation.

These proposals involve cost increases and potential cost increases of a substantial magnitude. They are not justified considering the present financial condition of the City.

Recommendation. No change.

Article F - Sick Leave.

The Union proposes language changes that require sick leave hours to count toward hours worked for overtime. This change is recommended above as part of the changes recommended for overtime compensation, hours of work, and the change to the EDO system.

The Union further proposes a more liberal application of the use of sick leave to include a broad definition of the employee's immediate family, for the convalescence of a permanent resident living in the employee's house, and for emergency medical and dental care for an employee's immediate family. It further proposes payment of accrued sick leave when an employee dies to the employee's spouse or estate. This expands the payment already provided for an employee who dies in the line of duty. These changes are rejected because of the substantial cost increases that would be imposed upon the City.

The City also proposes substantial changes in the sick leave policy. It provides evidence that sick leave usage among the members has increased dramatically over the past years. There were 1,654.5 hours used in 2002. In 2003, the hours increased to

1,962.5. The hours rose to 2,524.50 in 2004. Unless these figures can be brought under control, the City will be forced to operate with insufficient staff, or operate with increased overtime costs to cover for the absent employees. After analyzing the usage, the City proposes to eliminate the use of sick leave for the care of family members. It found that 44% of the usage is in this category. Because of the financial constraints, the City reduced overtime costs by decreasing the number of overtime hours for filling vacant shifts. The employees, however, in the City's opinion, decided to make up for the lost overtime by using more paid sick leave time.

The City further proposes to use an "occurrence-based" system that omits sick pay on the first day of an employee's fourth occurrence and subsequent occurrences. The City believes that if this system were in place employees would more likely call off when they are truly sick. The Union proposed a deterrent as part of a more comprehensive package that would provide pay only at 85% on the first day of the fourth and later occurrences for sick hours beyond 72 in a twelve-month period.

The City further proposes a reduction of sick leave hours earned per month from twelve to ten hours. The City believes that employees take the sick time because they have earned it regardless of whether they are sick and need the time off. They have too much paid time off.

The Union believes that the City's proposals are unjustified. The increase in sick time was the result of unusual circumstances that are unlikely to be repeated. The Chief

granted the sick leaves when they were requested and he did not question the legitimacy of the requests.

Recommendation. The dramatic increase in sick leave usage is a matter of concern for the City. However, this Fact Finder is reluctant to recommend the substantial changes proposed by the City at a time when the employees are being requested to make other material economic concessions in their wages, and contributions for the first time to their health insurance premiums. Before any of the City's proposed changes are imposed, the City should make a greater effort to monitor and police the use of sick leave time to make sure that the usage is for legitimate purposes. The employees must recognize that unless the sick leave usage is reduced they will be met with changes in policy similar to that proposed by the City. Future fact finders and conciliators will address unacceptable levels of usage. For purposes of this collective bargaining round, considering all of the economic ramifications herein, no changes shall be recommended to the existing language. The proposals of both parties are rejected.

G. Article 27 – Bereavement.

The Union proposes to double the number of paid hours from 24 to 48 and broaden the usage to include the death of additional persons and relatives. These proposals are rejected because of the additional costs to the City during a time when it is attempting to gain control over its budget.

Recommendation. The language shall remain unchanged except that both paid bereavement leave and paid jury duty leave count as hours worked when computing overtime compensation as stated above in the overtime discussion.

H. Article 28 – Injury Leave.

The Union proposes mandatory language requiring the City to purchase and maintain the existing insurance coverage to compensate injured employees for an amount representing the difference between workers compensation benefits received and lost wages. Presently, the City may purchase the policy at its discretion. The Union merely proposes that the existing policy be maintained during the term of the contract.

Recommendation. The Union’s language change should be adopted to the extent that the existing gap coverage is maintained during the term of this contract. There was no evidence presented that suggests that the cost of the premium is excessive. The cost item is presumably accounted for in the budget. Injury leave shall also count toward hours worked for overtime calculations as stated above.

I. Article 29 – Insurance.

The City, like virtually all public and private employers, is experiencing uncontrollable cost increases in the medical insurance premiums provided to employees. This reflects the present crisis in the so-called health insurance system that depends upon employer provided insurance. Employers have few weapons at their disposal to control costs. They can provide less coverage, higher deductibles and co-pays, or more

contributions from employees. Presently, the existing premiums for available plans are fully paid by the City. The City plans to obtain 10% contributions from all of its employees under a new plan. The plan and contributions apply to non-bargaining unit employees including administrative and management personnel. The City plans to require 10% contributions from the police in July when the existing contract expires. The Teamsters are already committed to the change.

The Union would prefer to have the choice between a more expensive and less expensive plan, and they are willing to pay for the difference in premiums between the plans while keeping the lower cost plan at a 100% employer paid premium. The evidence, however, supports a finding that all employees should be under the same plan to keep the costs under control with more participants. All employees should contribute 10% toward the premiums. This is a figure well in line with the premium contributions paid by other firefighters in surrounding counties and municipalities.

Recommendation. The City's proposal shall be implemented. The new plan shall apply to the firefighters on January 1, 2005; however, they shall not be required to make their 10% monthly contributions to the premiums until June 1, 2005.

J. Article 31 – Clothing Allowance.

Evidence was not presented on the need for the language change proposed by the Union in this article. Accordingly, no change is recommended.

Recommendation. No change.

K. Article 32- Wages.

The Union proposes changes in the language providing for additional compensation for employees who are required to work out of classification, and in the incentive pay rates. Both parties agree that because of economic circumstances, no increases shall be provided for the first year of the contract. The City proposes conditional across the board increases of 2% and 3% in years two and three if it makes certain financial improvements. The Union proposes re-openers instead when the conditions are met. The Union is concerned that it will run the risk of no increases over the life of the agreement if the City does not work its way out of the financial trouble.

I find that the City has made considerable strides toward removing itself from state regulation. I believe it will continue to do whatever is necessary to remove itself from the stigma of financial irresponsibility associated with its fiscal emergency status. It must remove itself from emergency status and fiscal watch status in order to regain the confidence of its citizens. I, therefore, believe that the employees will receive increases during a three-year contract when these conditions are removed.

Recommendation. There shall be no wage increase in year one of the agreement. There shall be a 2% across the board increase after January 1, 2006 within thirty days after the issuance by the State Auditor's office of official notice that the City is removed from fiscal emergency status and placed in fiscal watch status. There shall be an across

the board increase of 3% for all members after January 1, 2007 within thirty days after an official notification is issued by the State Auditor that the City has been removed from fiscal watch status.

L. Duration of Agreement.

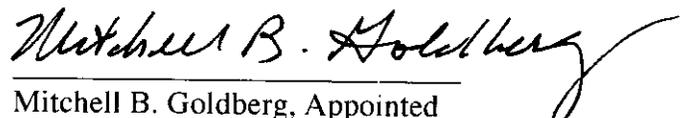
Recommendation. The agreement shall become effective on January 1, 2005 and continue until December 31, 2007. The contract shall be retroactive to January 1, 2005. All step increases shall remain in place and shall be frozen until the State Auditor issues official notice that the City has been removed from fiscal emergency status. Upon such event, step increases shall be implemented within thirty days of such notice.

M. Longevity Pay.

The Union proposes longevity payments for employees who reach five years of service. The payments are to be in the amount of \$250 on the fifth year and \$50 for each additional year of service, payable each year to the employees. The City opposes the proposal for financial reasons.

Recommendation. The Union's proposal is not accepted at this time because of the City's financial circumstances.

Date of Report: January 7, 2005



Mitchell B. Goldberg, Appointed
Fact Finder

**DRAFT
ARTICLE 11**

Hours of Work and Overtime

1. HOURS OF WORK:

- (a) So long as the overtime provisions of the Fair Labor Standards Act (FLSA), as amended, are applicable to state and local government fire department Employees, the Employer shall pay overtime in accordance with existing rules and regulations applicable to the FLSA. At the time of this agreement, the biweekly standard applicable to local government fire departments is one hundred six (106) hours. The Employer reserves the right to adjust its pay periods and overtime periods up to twenty-eight (28) days and two hundred twelve (212) hours or the maximum allowable by the United States Department of Labor.
- (b) For purposes of this agreement, a standard workday or tour-of-duty for a fifty-six (56) Hour Employee shall be defined as a twenty-four (24) continuous hour period beginning with the starting time of the Employee. A work period of twenty-eight (28) days is herewith adopted pursuant to section 207(k) of the Fair Labor Standards Act.

The normal work schedule for a fifty-six (56) hour Employee shall be twenty-four (24) hours continuous standard workday or tour-of-duty followed by forty-eight (48) hours of continuous off time.
- (c) The standard workday for a forty (40) hour Employee will consist of eight continuous hours, which includes one-half (1/2) hour for lunch.
- (d) Employees are subject to make emergency responses during meal periods.
- (e) Scheduled shifts and hours of work shall remain flexible depending upon the needs of the Employer. The Employer will post changes in advance, and will make every effort to notify Employees of the changes in the posted schedule. The schedule shall be fixed, and will not be changed without the agreement of the scheduled Employee twenty-eight (28) days prior to the change.
- (f) When there is a change from eastern standard time to eastern daylight time, or vice-versa, the starting and stopping times of the shifts shall not change, and the resultant change in hours worked by the regular duty shift shall not result in a reduction of paid hours nor the addition of overtime hours.

2. OVERTIME:

- (a) Management will maintain two rotating overtime lists, one for Firefighters and another for Lieutenants. Such list shall be based upon the length of full-time employment with the Monroe Fire Department, by classification, from which such individuals will be selected to work scheduled overtime on a rotating basis. This list will renew based upon seniority at 0001 hours on January 1 of each year.

When firefighters are hired after the first of each year and become eligible for overtime, they will initially be given the highest number of hours currently held by a firefighter and will start at the end of the overtime list. Likewise, a newly promoted lieutenant will initially be given the highest number of hours currently held by a lieutenant and will start at the end of the overtime list.

- (b) An Employee who is assigned to a platoon will receive overtime compensation for all hours worked in excess of the Employee's regularly scheduled workday. The overtime rate shall be one and one-half times (1) the Employee's normal hourly rate of pay.
- (c) With respect to the Employees assigned to an eight (8) hour workday, hours worked in excess of forty (40) hours per week shall be paid at a rate of one and one-half (1) times their regular hourly rate of pay.
- (d) Any Employee recalled to duty after time disconnected from their normal and prescheduled hours of work shall be compensated at one and one-half (1) times the Employee's normal hourly rate.

3. EARNED DAYS OFF:

- (a) Each Employee will receive ~~3~~ earned days off (EDOs) to adjust their weekly average. If an Employee does not work all of his scheduled shifts, his earned days off will be reduced accordingly. The workweek shall be an average of ~~40~~ hours for shift employees.
- (b) All EDO's will be chosen by the Employee at the beginning of each year, subject to the approval of the Chief, in the order of seniority before the time of vacation selections. Greatest seniority first, throughout the EDO selection process. Each Employee shall select (1) one EDO per round. At no time shall the scheduling of EDO's and/or vacations cause the staffing level to drop below the minimum established by the Fire Chief. EDO's selected at the beginning of the year may be reduced proportionately if an Employee does not work all of his scheduled shifts.
- (c) Trading of EDO's shall be permitted by Employees on the same shift. Written notification of EDO trade requests will be provided to the shift supervisors as

required for time trading shifts. Seven (7) days notice is required for trading EDO's.

- (d) EDO's shall only be taken in twenty-four (24) hour increments, unless an Employee's EDO balance is less than 24 hours.
- (e) An Employee transferred from one shift to another shall meet with the Fire Chief, once the transfer has been announced to select his or her EDO's, subject to the approval of the Chief. EDO selection shall be based on available open days only.
- (f) Employees who are sick on their EDO cannot take sick leave for that day in order to bank or save EDO hours.
- (g) Employees are not permitted to work on a scheduled EDO and collect pay for the hours worked.
- (h) There will be no reimbursement for EDO's not taken, nor may EDO's be carried over to the following year. EDO time not taken is lost as of December 31st of each year.

4. NO PYRAMIDING:

- (a) There shall be no duplication or pyramiding in the computation of overtime or other premium wages. Nothing in this Agreement shall be construed to require the payment of overtime and other premium pay more than once for the same hours worked.
- (b) Any Employee recalled to duty after time disconnected from their normal and prescheduled hours of work shall be compensated at one and one-half (1) times the Employee's normal hourly rate.

5. MISCELLANEOUS:

- (a) An Employee assigned on twenty-four (24) hour shifts is to be paid on an annual salary basis with an equal amount of base pay each pay period based on the annual salary. The hourly rate will be determined by dividing the Employee's annual salary by ~~2080~~. The parties recognize that hours of work under the normal tours-of-duty shall fluctuate from week to week, and the fixed amount of salary paid each two weeks represents straight pay for whatever hours the Employee is called upon to work in a two-week period. The fixed salary is compensation for the normally scheduled hours worked each two weeks, whatever their number. Since straight time is already compensated in the salary, the half-time (1/2) method of calculating overtime compensation, for each twenty-eight (28) day work period, in accordance with 29 CFR 778.114, shall be used and paid to each Employee through the compensatory time off policy described above.

- (b) The Employer shall have the right to adopt a tour system or work schedule, which provides improved service to the community provided that the Union is given prior notice and an opportunity to meet and confer regarding the proposed changes.
- (c) Assignment, approval, documentation, compensation and other matters regarding overtime, or hours worked beyond the regular work week, except as specifically provided in this Agreement, will be subject to rules and regulations, general orders, procedures and regulations as determined by the Employer, concerning the contents of said overtime rules, regulations, general orders, procedures and regulations, except as such changes may be required by federal wage and hour law, rules and regulations.
- (d) Call-Out Pay: Notwithstanding the provisions of any other paragraph in this Article, an Employee who works call-out time shall be paid for actual hours worked at the applicable rate from the time of reporting, but in no event shall receive no less than three (3) hour pay at the according rate of pay as set forth in this Article.
- (e) Exchange of shifts. Employees shall have the right to temporarily exchange shifts when the exchange does not interfere with the operation of the Fire Department, subject to approval by the Chief, and provided that the exchange does not result in the payment of overtime to the parties involved. There shall be no limit to the number of exchanges per year. An exchange request shall be authorized at least three (3) days prior to the first exchanged date. Exchanges will occur within the two (2) classifications of personnel. Supervisory Employees (Lieutenants) may only exchange with supervisory Employees (Lieutenants) and non-supervisory Employees may only exchange with non-supervisory Employees, unless otherwise approved by the Fire Chief. The Fire Chief or his designee may refuse an exchange request if the request would affect services to the City. After an exchange is approved by the Fire Chief, that exchange is final and shall not be changed without written approval of the Fire Chief. Any exchange made on or before October 1 must be repaid by December 1 or a later date as may be approved by the Chief. Any exchange made after October 1 to December 31 must have a payback date and be approved by the Fire Chief. Any exchange that has not been repaid by December 1 or a date approved by the Fire Chief shall be deducted from the Employee's first paycheck after December 1 or after the date approved by the Chief and added to the Employee's check that worked the exchange at that Employee's overtime rate.