

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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2005 NOV -2 A 11: 45

October 31, 2005

In the Matter of Fact-Finding Between

THE CITY OF MENTOR )

and )

MENTOR PROFESSIONAL FIREFIGHTERS )  
ASSOCIATION, IAFF, LOCAL 1845 )

Case No. 04-MED-12-1310

APPEARANCES

For the City:

Stephen Zashin, Esq.	Attorney
Robert Hartman, Esq.	Attorney
Dan Graybill	Asst City Manager
David Malinowski	Acting Finance Director
Roseanne Graham	Personnel Analyst
Richard Harvey	Fire Chief
Pete Grendze	Deputy Chief, Administration, Fire Dept.
Tom Talcott	Deputy Chief, Operations, Fire Dept.
Robert Searles	Deputy Chief, Fire Dept.

For the Union:

Tom Hanculak, Esq.	Attorney
Charlie Takacs	President
David Zalba	Vice-President
Brent C. Luthanen	Treasurer
Ken Winters	Secretary
Erik Mirossay	Trustee

Fact-Finder:

Virginia Wallace-Curry

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## INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Mentor (the “City”) and the Mentor Professional Firefighters Association, IAFF, Local 1845 (the “Union”), which represents approximately seventy (70) full-time Firefighters. The terms of the parties’ collective bargaining agreement expired on April 3, 2005.

Prior to expiration of their Agreement, the parties conducted negotiations for a new agreement and reached tentative agreements on several provisions, which are incorporated into this fact-finding report and adopted as agreed. Impasse was declared for the remaining issues, and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed fact-finder in this matter by the State Employment Relations Board (“SERB”). The parties agreed to the fact-finder’s offer to mediate the issues, and two days of mediation were held on June 14 and June 27, 2005. Not all issues were resolved at mediation, and a fact-finding hearing was held on August 31, 2005, at which time the parties were given full opportunity to present their respective positions on the issues.

The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **UNRESOLVED ISSUES**

The parties presented evidence and testimony on the following provisions:

1. Article 7, Section 7.2 - Minimum Manning
2. Article 8, Section 8.1 - Wages
3. Article 8, Section 8.11 - Longevity
4. Article 8, Section 8.13 - Paramedic Wages
5. Article 8, Section 8.15 - Special Teams
6. Article 9, Section 9.6 - Compensatory Time
7. Article 12, Section 12.1 - Uniforms
8. Article 13, Section 13.9 - Sick Leave
9. Article 16, Section 16.1 - Vacation Leave
10. Article 20, Section 20.1 - Group Insurance
11. Article 22, Section 22.1 & 3 - Promotional Procedure
12. Article 25, Section J/K/L - Employee Rights

#### **1. Article 7 - Section 7.2 Fire Master Plan (new title)**

##### **Union's Proposal**

The Union proposes language which would implement NFPA 1710 safe minimum staffing levels no later than April 1, 2008, because, in past contracts, the City promised to address staffing levels and failed to do so.

In the 1999-2002 contract, the parties agreed to form a joint committee to address staffing

levels, but the City held no meetings. In the 2002-2005 contract, the City agreed to review and update the Fire Master Plan no later than June 30, 2004. The contract called for the formation of a committee composed of residents, business owners, City Administrator and at least three union members. The Committee was not formed until summer 2005, in anticipation of contract negotiations. The City is overly represented on the committee and the Union is under-represented.

The Union argues that there are safety concerns with the current manning levels on each shift. Currently, there is a four man minimum per shift. EMS runs require two men, which leaves only two men behind. With only two men remaining, the firefighters cannot enter a burning building without violating the 2 in/2 out standard, which requires two firefighters to be outside the building when two men enter the building. Because of safety concerns and the City's inability to follow through on developing a new Fire Master Plan for staffing, the Union seeks to have the NFPA 1710 standard of a six man shift implemented by 2008.

#### City's Proposal

The City argues that the Management Rights clause imbues the City with the authority to determine the size of the workforce and the number of employees assigned to any particular job, assignment or operation. Therefore, the City retains the flexibility to determine the staffing levels of the Fire Department, balancing the need to provide the best service possible with the maximum efficient use of taxpayer money. The wholesale adoption of the NFPA standards deprives the City of its operational agility in favor of a rigid staffing aspiration.

None of the City's comparators have adopted the NFPA standards as part of their collective bargaining agreement. The rigid standard would require the City to hire firefighters without regard to

the City's particular operational needs. Furthermore, the City cannot afford to finance such a standard, which would result in a minimum annual cost of \$1,800,000. Because the proposal attempts to strip the City of its legitimate power to manage its fire protection services and places a huge financial burden on the City, it should be rejected.

### Recommendation

The Union's proposal that the NFPA standard be implemented by 2008 cannot be recommended. The NFPA standard is too costly and too rigid a plan for the City. The City needs to base its minimum manning requirements on the operational needs of the City and on the finances available. The City presented evidence that the plan would cost between \$1,800,000 and \$6,000,000 annually. No other comparable jurisdictions have implemented the NFPA standard.

The City agrees that it must update the Fire Master Plan that was developed in 1985. Although later than promised in the prior contract, the City has finally begun the review process by forming a committee composed of residents, business owners, City administrators and Union members. Now that it has been formed, the Committee must be permitted to complete the review process and recommend a new Fire Master Plan. However, because not all of the members of the Committee are parties to this Agreement, and because they serve in a volunteer capacity, definite time limits for completion cannot be imposed.

However, as a guide to the Committee, some time limits must be suggested and the City must encourage the steady progress of the Committee. Therefore, the following language is recommended:

## Recommended Contract Language

### **Section 7.2 - Fire Master Plan**

**The City agrees to encourage and facilitate the review and updating of the Fire Master Plan by the committee of residents, business owners, City Administrators and Union members which was formed in 2005. The City will make all reasonable efforts to have the Committee complete the Master Plan on or before June 1, 2007 and to present the Master Plan as a group product to City Council on or before June 30, 2007. These dates are subject to revision by the Committee.**

### **2. Article 8, Section 8.1 Wages**

#### Union's Proposal

The Union proposes a 4% wage increase for each year of the three year contract. This increase is necessary because, as of April 2005, the annual cost of living was about 4.3%. With rising oil and gas prices, the cost of living will go even higher. Even at a 4% wage increase, employees are going backwards and will not keep up with inflation.

Presently, the City's patrol and ranking officers in the Police Department earn more than their counterparts in the Fire Department. A police lieutenant makes \$1496 more than the battalion chief. The police sergeant makes \$907 more than the fire lieutenant, and the police patrolman makes \$423 more than the firefighter/paramedic. In the last contract, the fire department wage increase was 0.75% less than the police wage increase.

The Union claims that the City cannot assert an inability to pay these wage increases. The City's annual report shows that the City's revenues grew by 3% in 2004 and expenditures have decreased. The report states that the City is optimistic about future economic growth, boasting diverse manufacturing activity in the area and a proliferation of small businesses. In addition, the City has the

ability to increase revenues without going to the voters for a tax increase.

### City's Proposal

The City argues that a 2% increase in wages for each year of the contract is prudent, given the financial condition of the City. Revenues are outstripping expenditures, and the City has been forced to dip into its reserves to cover its expenses each year since 2001. The carry-over balance of the City has fallen from \$15.8 million in 2000 to \$11.3 million in 2004.

The wage increase proposed by the Union would cost \$0.5 million over three years -- without fringe benefits. The pension contribution of the City alone is 24%. With increased costs in health care benefits, the City cannot afford the Union's wage proposal.

Mentor firefighters are already well paid and among the highest paid in the state. They enjoy the highest minimum and second highest maximum rate of pay in Lake County. Even with a 2% wage increase, Mentor firefighters will remain one of the highest paid in the area.

### Recommendation

It is recommended that the firefighters receive increases of 3% for each year of the contract. Given the nominal increases in health care insurance costs that are recommended in this report, a 3% a year increase is reasonable. The Mentor firefighters are among the better paid in the area and in the State. The average wage increase for this area and State is about 3%; therefore, the recommendation of 3% each year of the contract will likely maintain their relative wage standing. The modest increase in health care insurance will not eat away at the wage increase, as in some jurisdictions.

The City argues that it does not have the ability to fund the Union's wage proposal. However, if the 2005 actual budget numbers are like the 2004 actual budget numbers, the gap between the

proposed budget and the actual budget will not be anything close to what the City is projecting. The 2004 budget anticipated a net loss of \$5,015,113. The actual loss was \$797,508. Even though revenues are relatively flat, the 2005 budget shows an anticipated increase in property tax and income tax collections. The biggest hit in the revenue side is an unexplained decrease of over \$6 million from “intergovernmental funds” and an unexplained significant decrease in “other revenue” from previous years. In 2004, “other revenue” yielded \$1.7 million; in 2003, it yielded \$699,689; and in 2000, it yielded \$272,915. However, in 2005, the City anticipates “other revenue” to be only \$23,000. On the expenditure side, the City’s 2004 proposed budget was \$54.7 million and the actual 2004 expenditures were only \$49.1 million. While the 2005 budget anticipates expenditures to be less than the actual 2004 expenditures, the gap between revenues and expenditures will again not likely be as catastrophic as the City projects.

### **3. Article 8, Section 8.11 Longevity Compensation**

#### **Union’s Proposal**

The Union proposes increasing the current longevity compensation by \$100 annually. The Union asserts that longevity pay has only been increased once since its inception in the contract. Longevity is set at \$350 for a five-year Mentor Firefighter compared to an average of \$643 for five comparable cities. Longevity is set at \$950 for a ten year Mentor firefighter compared to an average of \$1006 for seven comparable cities.

This is a minor increase to the City with only 60 members eligible for this compensation in the first two years and 61 members eligible in the final third year. Cost for the City would be an increase of approximately \$6,000 for the first 2 years and \$6,100 for the final contract year.

### City's Proposal

The City proposes maintaining the current contract language. Longevity was changed in the last contract in two ways. The actual dollar amount of longevity pay was increased and yearly step increases were added in lieu of the former single dollar amount for each year in a range of years. With the budgetary increases due to rising labor costs, increased health care costs and well as the need to maintain equipment and services at an acceptable level, the City cannot afford increasing the longevity pay of the firefighters. Such an increase would have a ripple effect throughout the City, because all employees receive longevity pay and all employees would seek such an increase.

### Recommendation

It is recommended that the parties maintain the current contract language. The longevity pay was increased in the last contract, which significantly boosted employees within the former range categories. The evidence presented does not show that there is a great disparity between the longevity pay of the Mentor firefighters and that of other comparable firefighters. According to the Union's statistics, Mentor firefighters' longevity pay is \$56 less than other comparable jurisdictions. However, the City's firefighters have higher base rate of pay than most jurisdictions and rank fifth out of the fourteen jurisdictions cited.

#### **4. Article 8, Section 8.13 Paramedic Assignments**

### Union's Proposal

The Union seeks to reinstate paramedic pay at the current contract levels for all employees who have paramedic certification and to allow for the termination of paramedic certification after 20 years of service. The majority of fire departments operating combined fire/EMS service receive medic pay or

squad pay. All current part-time personnel in Mentor Fire Department receive medic pay with medic certification. The forty medics not receiving medic pay are required to have the same education and the same continuing education as the other medics per Ohio law.

Also, the call volume has increased significantly from 4335 calls in 1993 to just fewer than 6000 calls in 2004. The majority of these calls are EMS related.

### City's Proposal

The City proposes maintaining current contract language. Prior to May 1, 1993, firefighters were not required to have paramedic certification. After that date, when paramedic certification became a requirement, the parties agreed to the current provision regarding paramedic pay to provide an incentive for veteran employees to obtain paramedic certification. Because all firefighters hired after May 1, 1993 were required to possess paramedic certification prior to hire, no incentive was necessary. Consequently, the parties agreed to limit the bonus incentive to employees hired before this date.

The Union's proposal, in effect, constitutes a raise for all employees. Each firefighter with at least two years of experience would receive a \$1,200.16 raise per year. This does not comport with the intention of the provision reached over 12 years ago. Furthermore, other northern Ohio municipalities that require paramedic certification prior to employment do not grant employees an additional bonus for meeting this prerequisite for employment.

Also, the Union's focus on call volume misses the mark. Although the volume of EMS calls has increased, the number of full-time firefighters has increased from 55 to 69, including battalion chiefs, lieutenants and fire prevention officers. The number of firefighters with paramedic certification has

increased from 35 to 63, including lieutenants and battalion chiefs. The number of calls per firefighter has actually decreased.

Recommendation

It is recommended that the parties maintain the current contract language. The purpose of this proposal was to encourage already hired firefighters to get paramedic certification. The intent of the provision does not apply to firefighters hired after May 1, 1993, who must already have the certification to be employed as a firefighter for the City. The Union was unable to provide sufficient justification for extending this incentive to those already hired, except that employees working side by side receive unequal benefits for the same certification. As the City points out, over the years, there was a decrease in the number of calls per certified paramedic.

All two tier systems inevitably cause resentment and hard feelings among employees and perhaps should be avoided. However, once negotiated, the parties must live with the consequences or negotiate an alternative. The City should not be required to give the balance of the employees a significant raise in pay without getting something in return. This kind of outcome is best left to the parties to negotiate and should not be recommended by a neutral.

**5. Article 8, Section 8.15 Special Teams (new)**

Union's Proposal

The Union proposes a new Section 8.15 regarding special teams, such as the dive team, technical rescue team and haz mat team. The Union seeks language in the contract that will ensure safety and proper minimum training levels for all special teams, by guaranteeing eight hours of overtime pay per month for training and overtime pay for any required training to maintain or advance their

certification as required by Ohio Revised Code Chapter 4765, dated 4/11/05.

The Union believes that any employee accepting the extra responsibility and duty as well as the added risk that only Special Team members face should be guaranteed proper continual training. The City has canceled Special Team drills the last three months of the year for the last three years due to lack of funds from improper budgeting. Furthermore, on duty attendance is rarely authorized due to inadequate manning.

### City's Proposal

The City rejects this proposal. The City maintains control over the timing of all firefighter training. This discretion is necessary to ensure that the Fire Department can meet its staffing needs. The Union's proposal dictates to the Fire Department that it will have eight hours of training each month for special teams. It creates an impossible strain on the Department's ability to control its operations and impinges on the City's management rights.

Furthermore, it also requires overtime pay where none may be necessary. It is possible for a firefighter to complete the required training without exceeding the threshold for overtime contained in the Fair Labor Standards Act. Thus, the employee is not entitled to overtime, but the provision mandates it. In effect, this provision acts as another hidden raise, granting an additional 96 hours a year of overtime for each employee.

### Recommendation

The Union's proposal is not recommended. The Union argues that training is the goal of the proposal and that the guarantee of overtime pay is merely a strong incentive for the City to provide the necessary training to the special teams. However, the City also claims that, in the past, it has scheduled

training sessions and many on the teams do not attend the training. Mandating overtime pay for training would place a significant financial burden on the City, with at least three special teams composed of 13 to 22 members each needing an average of 8 hours of training per month per team. The mandatory scheduling of such would impinge on the City's right to determine the operating needs of the Fire Department. Furthermore, some training may require more or less than 8 hours at one time.

On the other hand, the City boasts of having a well trained fire department. In order to ensure the safety of the firefighters and the public in performing these special duties, the teams must be adequately trained. Therefore, a provision that encourages participation by the team and the City is recommended.

### **Recommended Contract Language**

#### **Section 8.15 Special Teams**

**The City acknowledges the importance of training for its Special Teams. To that end, it agrees to make reasonable efforts to schedule an average of 8 hours a month or 96 hours a year training for each team. At least once a year, the Team commander shall set the goals and proposed schedule of training for the team and present them to the Fire Chief for approval and implementation.**

#### **6. Article 9, Section 9.6 Compensatory Time**

##### **Union's Proposal**

The Union proposes to amend Section 9.6 to increase the maximum accrued compensatory time from 144 hours to 200 hours for line employees. It also proposes that a maximum of 48 hours per workday be allowed for compensatory time, thereby allowing two firefighters to be off in any 24 hour period. The Union also seeks a guarantee that the creation of overtime not be grounds for denial of a compensatory time request. The incurrence of overtime expenditures is not considered unduly

disruptive and a basis for denying the use of compensatory time.

The Union alleges that its proposal would bring the firefighters more in line with the police as far as compensatory time. Currently, the police can accrue more compensatory time and use it in bigger blocks of time.

### City's Proposal

The City proposes maintaining current contract language. The Agreement current permits firefighters to accumulate compensatory time in lieu of overtime payments to a maximum of 144 hours for line duty employees and 100 hours for staff duty employees. The Union's proposal to increase the maximum number for line duty employees to 200 hours ignores the financial impact of such an increase. Increasing the amount of compensatory time increases the overtime that must be paid to cover the missing hours.

Firefighters already receive a significant amount of time off in addition to compensatory time in the form of Kelly days. Kelly days are predictable and can be traded to create blocks of time off when coupled with the 48 hours off after working 24 hours.

### Recommendation

The Union has failed to convince the fact-finder that an increase in 144 hour maximum accrual of compensatory time would result in a benefit to the firefighter. The Union complains of not being able to use compensatory time because of staffing levels. The proposal to increase the number hours of compensatory time to 48 hours (2 firefighters) in a 24 hour period and the proposal that overtime creation not be an excuse to deny overtime are on point to the problem. But the accrual of more time does not address usage.

As to the issue of denying the use of compensatory time, the Sixth Circuit's decision in *Beck v. City of Cleveland, Ohio*, 390 F. 3d 912 (2004) states that an employer may not deny the use of compensatory time merely because it causes overtime, *unless the parties agree otherwise*. The current Agreement does not contain any agreement by the parties to curtail the use of compensatory time if it would create overtime. The Union's proposal to allow the limited use of compensatory time regardless of the creation of overtime is consistent with the *Beck* decision and is recommended.

### **Recommended Contract Language**

#### **Section 9.6**

**Add: A maximum of forty-eight (48) hours of compensatory time per workday will be allowed. The creation of overtime will not be grounds for denial of compensatory time.**

#### **7. Article 12, Section 12.1 Uniforms and Uniform Allowance**

##### **Union's Proposal**

The Union proposes to amend Article 12 to remove Section 12.5 which allows the City to operate a quartermaster system for replacement of uniforms. The City has tried for years to make the quartermaster system work but has been unsuccessful. In a true quartermaster system, the employee exchanges a worn or damaged piece of clothing for a new one. However, the City does not have a full inventory that allows an employee to immediately receive a new item. Instead, employees must wait a long time to receive a replacement. The Union has tried to be patient, but the problems have gotten worse not better. By changing back to a clothing allowance, the problems will be corrected, and it will bring the Union back into line with the Police Department. A clothing allowance is the accepted norm for fire services in other jurisdictions.

### City's Proposal

The City proposes maintaining current contract language. It argues that the quartermaster system has been in place for 12 years and has been very successful. Although the Union complains about the system, it is unable to identify any specific problems. The quartermaster system works just as efficiently as the uniform allowance system and at a lower cost. The Union's proposal of \$1,000 per year for maintenance would cost the City \$73,000 in uniforms alone. This cost is in addition to the significant sum the City spends on protective gear for firefighters. By contrast, the City spent a mere \$56,000 last year on uniforms and uniform-related clothing items through the quartermaster system. The quartermaster system saves money that can be used for other purposes.

### Recommendation

The Union's proposal is recommended. Although the evidence was anecdotal, the firefighters complained of numerous problems with the quartermaster system, because it does not work as a true quartermaster system should. Employees rarely, if ever, are handed a new item of clothing when an old or damaged one is proffered. Employees must wait a long time for items to come in. For example, items ordered in August for Fall came in March.

Furthermore, the cost of the quartermaster system appears to be less than the clothing allowance because the City has failed to add the administrative costs to the program. The \$56,000 figure does not include the hours of secretarial/administrative work that is necessary to run the quartermaster system.

The City of Mentor has the only quartermaster system for firefighters in the area. In fact, the City's own Police Department does not operate a quartermaster system. If it was so efficient and

effective, the Police Department would be run the same way. The uniform allowance proposed by the Union, although at the high end of the range seen in other Lake County fire departments, is still within reason, given the rising inflation rates, and is below that of the Police Department which is \$1050.00.

### **Recommended Contract Language**

#### **Section 12.1**

**Add: c. For newly hired full-time employees, at the completion of six (6) months, the City shall provide \$250.00 for maintenance of uniforms. For each non-probation, full-time employee, the City shall provide \$1,000.00 annually, payable in two (2) semi-annual payments of \$500.00 each for the maintenance of uniforms. Payments shall be separate from payroll and shall be made the first pay in January and the first pay in July.**

**Delete: Section 12.5**

#### **8. Article 13, Section 13.9 Sick Leave**

##### **Union's Proposal**

The Union proposes to amend Section 13.9 to compensate retiring full-time employees with ten years or more of service to the City by paying them 100% of the value of their accrued unused sick leave time. Sick leave is an accrued benefit to the employee and benefits the City when an employee does not use or abuse it. Other comparable jurisdictions have greater sick leave buy out plans with either a greater percentage buy out or high caps on accrual of sick leave time.

##### **City's Proposal**

The City proposes to maintain the current contract benefit which allows employees retiring after 10 or more years of service to cash out one-third (1/3) of their accumulated sick leave up to a maximum of 2700 hours. Thus a firefighter may receive up to 900 hours of sick leave upon retirement

from the City. As written, this provision provides an incentive to use sick leave judiciously without imposing an undue financial burden on the City.

The Union's proposal would wreak financial havoc on the City, because it poses a significant financial penalty on the City every time a firefighter retires. At present, the City has seven firefighters on the active roster with more than 3,000 hours of accumulated sick leave. One firefighter has more than 5,000 hours of accumulated sick leave. Under the Union's proposal, this firefighter would receive \$120,000 in accumulated sick leave benefits upon retirement. Several retirements in the same year could push the City's liability close to \$1 million. In light of the City's declining revenues, the City is not in a position to enrich employees as they exit municipal service.

Furthermore, this proposal is unnecessary because the City's firefighters already receive a significant portion of their accrued sick leave at retirement or death. None of the City's comparators provide for the payout of a firefighter's entire sick leave accumulation at retirement. In fact, most cities' provisions contain a percentage limitation, as well as a cap on the number of hours considered, when disbursing a sick leave payout.

### Recommendation

The Union's proposal is not recommended. The City's sick leave conversion program does not appear to be grossly out of line from other jurisdictions. The evidence presented by both parties shows that some municipalities provide a greater maximum number of hours of sick leave conversion upon retirement<sup>1</sup> and some municipalities provide a lesser amount<sup>2</sup>. All have some kind of cap on the

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<sup>1</sup>Cuyahoga Falls - 1262 hours; Cleveland Heights - 1000 hours; Eastlake - 1344 hours; Willoughby - 1195.2 hours plus a percentage of total after 15 years service; Euclid - 1200 hours (150

number of hours an employee may accumulate. Strongsville is the only jurisdiction that provides retiring employees one-third (1/3) of all accumulated sick leave. The City of Mentor's sick leave conversion, at a maximum of 900 hours, is about in the middle of the jurisdictions cited. The sick leave buyout language for firefighters is the same as that for other City employees. Consequently, the Union failed to show a compelling reason to impose such a tremendous financial burden on the City. The City's proposal to change the language while retaining the current benefit level is also not recommended. The City failed to show any reason to change the existing language.

## **9. Article 16, Section 16.1 Vacation Leave**

### Union's Proposal

The Union proposes to amend Section 16.1 to correct language that was changed but never negotiated. The Union members currently do not receive the appropriate amount of vacation time. Two contracts ago, the work week was lowered, and the vacation time accrual was lowered as well. The current accrual rate is less than any other Union in the City. This also includes a disparity between line duty firefighters and those in our staff positions. The Union presents a schedule of corrected accrual rates.

### City's Position

The City opposes the Union's proposal. The amount of vacation time currently received by the line duty firefighters was adjusted two contracts ago to reflect changes in the average work week. Thus, when the parties agreed to lower the average work week from 53 hours to 51.2 hours in 1997,

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days) plus \$20 per day over 150 days

<sup>2</sup>Lakewood - 450 hours; Painesville -500 hours; Parma - 720 hours; Concord - 445.2 hours

vacation accrual rates also decreased in lockstep with the work week.

The City's firefighters accumulate vacation at a greater rate than their comparators and accrue more vacation time than any of the City's other bargaining units and more than firefighter staff employees. An increase in vacation time further complicates the City's staffing issues and will require the City to pay more overtime to cover the shifts. Such increases in overtime increase the City's financial burden and pose a threat to the City's ability to provide fire protection services to the City's residents.

### Recommendation

The Union's proposal is not recommended. The current language regarding the rate of earned vacation first appeared in the 1996-1999 Agreement. It set out a reduction in the rate of earned vacation starting in 1998 to coincide with the reduction in the work week from an average of 53 hours to 51.2 hours. This reduced rate of earned vacation was carried over into the next two contracts. In the Agreement that expired in April 2005, the work week was reduced again, effective January 2003, from 51.2 to 49.8. The rate of earned vacation remained the same and was not reduced. It is difficult to understand why at this juncture, nine years after the current rate first appeared in the contract, the Union is claiming this was a non-negotiated change.

The Union offered no evidence that the change was non-negotiated or any explanation why it appeared in the succeeding two contracts. The reason for the reduction in the accrual rate of vacation is explained by the reduction in the work week. It seems logical that vacation away from work should be linked to the number of hours worked. Because the Union was unable to present any evidence to show that the Union did not agree to the original change or why the Union was unable to have the rate

changed in the two succeeding contracts, its is recommended that the parties maintain the current contract language.

#### **10. Article 20, Sections 20.1& 20.3 Employee Group Insurance**

##### Union's Proposal

The Union is proposes three changes to the current health insurance coverage. First, the Union proposes changes to the prescription drug plan. It proposes a co-payment of \$10.00 for generic drugs and \$20.00 for name brand drugs. It proposes that all prescriptions be filled as written. If a generic drug is not available, the name brand drug will be used, and the employee will pay the \$10.00 co-payment. The Union argues that the insurance company does not currently cover prescriptions as written, and employees have had to return to their doctor several times to find a medication covered by the plan. The Union opposes the City's proposal to increase co-payments to \$20.00 for generic and \$30.00 for name brand drugs. Comparable cities have co-pays that are much less, ranging from \$0-\$15 for generic and \$8-\$25 for name brand. They also have provisions by which the employee pays the generic co-pay when no generic exists and the brand name drug must be used.

Second, the Union proposes an optical plan that covers eye exams, frames, lenses, contact lenses, etc. up to a \$500 maximum. The current plan provides for one eye exam per year and a discount on eyewear at local eyewear locations.

Third, the Union proposes a 80/20 dental plan for all procedures (80% coverage by the City and 20% coverage by the employee) with a cap of \$2,000. Currently, the dental plan is capped at \$1,000 and not all procedures are covered at 100%. The Union proposes to retain the two cleanings per year per person which is provided in the current plan. The maximum economic impact of this

proposal would be an increase of \$72,000, if all 72 Union members reached the maximum cap.

The Union opposes the City's proposal to increase the employee's contribution to premiums. Currently, there is a \$50.00 cap on the co-pay for family coverage. The City has not charged employees up to this cap. There is no justification to raising the employee's contribution if the current cap has not been reached.

#### City's Proposal

The City opposes the Union's proposal because it adds additional health care benefits at the City's cost. It also fails to account for increases in the cost of prescription drugs and the rising premiums paid by the City merely to provide health care for its employee.

The City proposes to amend Section 20.1 (a) to give the City the discretion to purchase a group plan or adopt a self-funded plan. At present, the Agreement limits the City's ability to shop for the most efficient health insurance plan available. Section 20.1 (a) requires the City to offer a plan "as it presently exists" thus anchoring the City to certain benefits and denying the City the opportunity to bargain with insurance companies to provide the best health insurance at the most reasonable cost. The City's amendment increases the City's flexibility. The specific benefits available are already protected by Section 20.2.

The City opposes the Union's proposal to add a "dispense as written" element to the prescription drug plan. The limitation of "dispense as written" limits the bargaining power of the City and increases the health care costs by 5%. Moreover, the City does not control the prescriptions covered under each plan. Insurance company obtains discounts on specific drugs from manufacturers (formulary drugs) and dispensed as written negates those discounts and cost the City and employees

more. The cost of prescription drugs is the primary contributing factor in the ever-increasing cost of the City's health plan. It is the City's proposal to increase the co-payment for prescription drugs to \$20.00 for generic drugs and \$30.00 for formulary name brand drugs.

The City proposes maintaining the current dental plan. The current plan is self-funded and provides for a sliding scale of premium splits, with a maximum benefit of \$1,000 per year. The cost of this program jumped 25 % in 2004 to \$227,000. The Union's proposal would immediately double the benefits, then provide a flat 80/20 split on all procedures. Under this proposal, the City's estimated expense, based on current usage patterns, would increase to \$520,000 – a 180% increase. Such an increase is impractical and financially harmful.

Likewise, the Union's proposal for vision care is financially cost prohibitive. Presently, employees receive an annual routine vision examination for a \$10.00 co-payment and offers a discount program for frames and hardware, lenses, glasses, contacts, etc. The Union's proposal would shift the entire burden to the City to establish and operate a plan with \$500.00 benefits each year. This proposal merely seeks to ensure that the City bears the burden for all optical benefits received by firefighters and should be rejected.

The Union's proposal attempts to defray the entire burden of rising health care premiums onto the City and its taxpayers. To alleviate this burden, the City proposes that the Union pay 10% of the monthly premium costs and to eliminate the cap imposed. This proposal imposes very little added burden to the Union employees. At present firefighters pay the lesser of 5% or \$50.00 for family coverage. Under the City's proposal employees will pay, at most, an additional \$36.09 a month for health insurance. This slight burden on the Union will result in significant savings for the City.

## Recommendation

The Union' wish list of prescription, dental and optical benefits is unrealistic. The cost to the City would be astounding. At a time when employers are routinely seeking relief from the ever increasing cost of providing health insurance for employees, these kinds of benefits cannot be awarded and are not being awarded to unions, at least not by neutrals. On the other hand, the City's characterizing a doubling of premium costs as a *slight* increase is insulting. A 100% increase is by no means slight.

The bulk of the evidence that the City presented focused on the problems that the City has had in getting quotes for health insurance, because of the restrictive language in Section 20.1 (a) which requires that the City provide a health insurance plan as it *presently exists* in the contract. This keeps the City from getting the best possible plan for the lowest cost. Consequently, it is recommended that this restrictive language be removed from that provision. Section 20.2 should be sufficient to limit the City to providing a plan with benefits comparable to those presently provided, without requiring an exact match. The City's proposal also eliminates the language which sets the amount of deductibles for single and family plans and the maximum out-of-pocket expenses. It must be presumed that these factors would be covered by the language in 20.2 requiring comparable benefits.

The City did not present evidence about how much the costs are rising for the current health care coverage. It only presented the data for the change from 2003 to 2004. The greatest increase was in prescription drug costs, at 29%. The increase in other coverage was only 5.4% for a total increase of 9%. The City is seeking to increase the employee's contribution from 5% to 10% of the

cost of the premiums with no cap and a doubling of the co-pays for prescription drugs. The City's proposal seems to be asking to the employee to contribute twice to the rising prescription costs, once in the premiums and once in the co-pays. The City did not present any justification for this kind of increase.

By agreeing in the last contract to a cap of \$50, the City must have anticipated that it could absorb 95% of the cost up to a \$1,000/month premium. The premium costs are only \$689.00, not \$1,000/month. Because employees pay a percentage of their premium costs (not a fixed number), they share in any increase in premiums up to \$1,000. Perhaps an increase in the prescription drug co-pays, coupled with the flexibility to shop for other plans, would allow the City to hold down the cost of premiums. Therefore, it is recommended that co-pays for prescription drugs be increased to \$15.00 for generic drugs and \$25.00 for name brand drugs and that the current 5% contribution with a cap of \$50.00 remain the same.

### **Recommended Contract Language**

#### **Section 20.1**

**Employees are eligible to subscribe to the following employee group insurance plans upon appointment:**

- a) Hospitalization and medical benefits with the schedule of benefits, conditions and limitations in accordance with the terms of the group plan purchases (or plan adopted, if self-funded) at the sole discretion of the City.**
- b) The City shall provide a prescription drug plan that has a co-pay of fifteen dollars (\$15.00) for generic drugs and twenty five dollars (\$25.00) for name brand drugs.**

(c) through (f) - Maintain current language.

Section 2.2 - Maintain current language.

**Section 20.3**

**The City reserves the right to institute an employee contribution (co-pay) to monthly health insurance premium costs. Effective upon execution of the agreement, the Employer shall pay ninety-five percent (95%) and the employee shall pay five percent (5%) of the monthly health care premium cost.**

**11. Article 22, Sections 22.1 and 22.3**

City's Position

The City proposes amending the existing language in Section 22.1 regarding promotions. Currently, Section 22.1 provides that the procedure contained in the Agreement determines the procedure for promotions within the Department. Notwithstanding this statement, the Agreement does not define the method for determining when a vacancy exists. To fill this vacuum, the City proposes adding the following sentence: "The City retains the sole discretion to determine whether any vacancy exists and whether it chooses to fill such vacancy."

In Section 22.1, the Union and the City explicitly agreed that "[a]ll promotions...shall be made in accordance with the following provisions, notwithstanding any Civil Service Laws or Regulations that may be inconsistent herewith." Thus, the parties clearly intended for the Agreement to provide the framework for determining promotions and vacancies. Furthermore, the parties clearly intended to resolve all disputes concerning promotions through the grievance-arbitration procedure. Despite intending to preempt state and local ordinance through the Agreement, the Agreement provides no guidance as to when a vacancy exists.

The City's proposal would remedy this oversight. By specifically stating that the City has the sole discretion to determine when a vacancy exists, it restates the rights reserved to the City in Section

5.1(j), which permits the City “[t]o transfer, promote and demote employees from one classification or shift to another within the department.” It reaffirms the parties’ commitment to establishing the entire promotional procedure in the Agreement, and ensure that the parties will resolve disputes on promotion through the grievance-arbitration procedure.

Relatedly, also within Article 22, Section 22.3 is ambiguous. At present, Section 22.3 states: “Following the establishment of a certified Civil Service list, whenever a vacancy exists, a promotional committee shall be established.” The clause “when a vacancy exists” not only fails to define when a vacancy exists, but also serves to complicate Section 22.3. To clarify this provision, the City proposes the elimination of the clause “whenever a vacancy exists,” since vacancy will be defined by Section 22.1. The proposed Section 22.3 will then provide the steps taken in the promotion process: “Following the establishment of a certified Civil Service list, a promotional committee shall be established. . . .”

#### Union’s Position

The Union proposes maintaining existing contract language. The Union argues that State law and the courts have ruled that a vacancy exists when the individual holding a promoted position leaves that position for any reason. Civil Service laws limit management rights. The Collective Bargaining Agreement only kicks in when there is a candidate for a promotional position. The City’s proposal attempts to destroy the Civil Service Laws.

#### Recommendation

The City’s position is not recommended. The City contends that the parties intended that all issues regarding promotion be governed by the Agreement and not the Civil Service laws. It cites the management rights clause and the other provisions of Article 22 as support. It argues that there is

merely a void in the language stating who determines when a vacancy exists, and the City's proposal seeks to fill that gap. The City cited cases in which the courts have held that where there is a collective bargaining agreement which addresses an issue, it is the agreement and not State law which prevails, and conflicts regarding that issue must be resolved through the grievance-arbitration procedure not the courts.

However, it is not "clear" that the parties intended the Agreement, not the Civil Service Laws, to govern **all** issues of promotion, including when a vacancy exists. In Section 22.2, the parties agreed to have the Civil Service exam serve to determine eligibility and to have the Civil Service Commission give the City a list of certified successful candidates. Section 22.1 only states: "All promotions. . . shall be made in accordance with the following provisions, notwithstanding any Civil Service Laws or Regulations that may be inconsistent herein." This implies that, in the absence of a provision in that Agreement covering a specific issue, Civil Service Laws or Regulations that may very well apply. If the City's proposed language were included, it may very well govern the issue of when a vacancy exists and supercede Civil Service Laws. But the Fact-finder cannot agree that it was "clearly intended by the parties' Agreement" to give the City that authority, as the City contends. Furthermore, language that usurps public employees' rights under the laws of the State should not be added to an agreement by a neutral. Such language should be added as a result of bargaining between the parties. Therefore, it is recommended that the parties maintain the current contract language.

## **12. Article 25, Sections 25 J, K, L**

### Union's Position

The Union proposes to amend Article 25 to protect full-time Union employees employment

rights. It proposes to add subsection (j) which states that “No part-time employee will be in charge over a full-time employee,” and subsection (k) which states that “All part-time fire department employees must be laid off before a full-time employee can be laid off.” The Union argues that the qualifications and examination/screening process for full-time employees far exceed the standards for part-time employees. The part-time employees currently working for the City are not held to the same training standards and certification levels as all full-time employees are. The majority of our part-time employees do not even meet the minimum standards to apply for full-time employment. The Union states that this raises very serious safety concerns.

The Union also proposes adding subsection (l) which states that “No non-Union employee shall fill the position of a full-time employee for a temporary fill.” The Union has great safety concerns over the use of Deputy Chiefs occasionally being used to temporarily fill Battalion Chief vacancies. Although the Deputies have had the proper training, their lack of practical experience causes frequent errors in judgment, which could lead to unsafe conditions.

#### City’s Position

The City opposes the Union’s proposed contract language. The proposals serve no legitimate purpose and severely inhibit the City’s ability to direct its workforce. Mentor Fire Department originated as a part-time, volunteer unit and did not hire any full-time firefighter until 1968. The City now employs part-time and full-time firefighters, both of whom are unionized. Prior to 1993, part-time firefighters exclusively manned three of the City’s stations, and a combination of part-time and full-time firefighters manned the remaining two stations. To provide full-time firefighters at each station, the City decided to blend staffing. Thus, a certain number of full-time and part-time firefighters man each station

during all shifts. Currently, there are not enough part-time firefighters to fill the positions reserved for part-time firefighters, and the City must pay full-time firefighters to cover their vacant shifts and full-time firefighters' vacation, sick and Kelly days. Full-time firefighters worked approximately 14,5000 hours of overtime last year to maintain necessary staffing levels.

The Agreement recognizes and authorizes the City's use of part-time firefighters. The Union seeks to destroy the City's ability to direct its workforce and provide effective fire protection services. Its proposal also encroaches on the existing part-time firefighters union's ability to represent the interests of those employees.

With respect to subsection ( j), a number of part-time firefighters have been on the force and have significantly more experience than current full-time firefighters. Under the Union's proposal, an experienced part-time firefighter could not supervise even the greenest full-time firefighter. With respect to subsection (k) , the City would be forced to lay-off experienced part-time firefighters in favor of tender-footed full-time firefighters. This should be left to the discretion of the Fire Department.

The Union's proposed subsection (l) is also in reaction to an illusory problem. The Union's proposal asserts that the City's deputy chiefs are not competent to serve as battalion chiefs. The Union identifies no situation in which a deputy chief has created a serious safety concern. It also presents no reason to assume that a person who performed this job in the past becomes unqualified by operation of a promotion. Furthermore, it creates a hardship for the City and many battalion chiefs. The City uses deputy chiefs primarily to cover battalion chief slots only in cases of emergency. Thus, should a battalion chief have to leave during a shift, a deputy chief would fill in until either the end of the shift or until a replacement can be found, if required. If the battalion chief position needs to be filled for a

significant period, someone will be called in to fill the position. The practice permits battalion chiefs to take small periods of time off for personal emergencies without forcing the City to call in another battalion chief, for a minimum of two hours at one and one-half times rate of pay. The Union not only fails to present any real safety concern about deputy chiefs filling battalion chief positions, this practice is beneficial to both the Union and the City.

### Recommendation

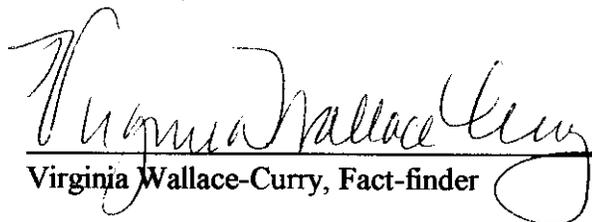
The Union's proposed contract language is not recommended. The Union failed to present any real evidence of a safety problem caused by part-time employees being in charge of full-time employees. Because of the long tenure of some of the part-time employees, it would not be in the interest of the firefighters or the public to have a rookie in charge instead of a more experienced firefighter. In fact, the safety concerns voiced by the Union as justification for all these subsections of Article 25 appear to be unfounded and perhaps the opposite of the Union's contention. It is more likely that the experience of the part-time firefighters is an asset to the Department. Finally, the City's argument for allowing deputy chiefs to fill in for battalion chief is persuasive, and the Union failed to demonstrate any evidence of real problems caused by the deputy chiefs being used as a temporary fill.

### Tentative Agreements

All Tentative Agreements reached by the parties during these negotiations are incorporated and adopted by this fact-finding report.

October 31, 2005  
Cuyahoga County, OH

Submitted by:

  
Virginia Wallace-Curry, Fact-finder

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Fact-Finding Report for the City of Mentor and the Mentor Professional Firefighters Association, IAFF Local 1845 was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, October 31, 2005  
The Fact-Finding Report was served upon:

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