

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT
FACT-FINDING REPORT RELATIONS BOARD

2006 JUL 18 A 11: 21

Montgomery Professionals Fire Fighters

IAFF Local 4391

and

City of Montgomery, Ohio

SERB CASE NO: 05-MED-09-0863

Fact-Finding Hearing: June 16, 2006

Fact-Finding Report: July 17, 2006

Employer Representative: Donald Crain – Frost Brown Todd LLC,
300 North Main Street, Suite 200, Middletown, Ohio 45042

Union Representative: Ben Shapiro – IAFF Local 4391, 5331 Wheatmore Court, Mason
Ohio 45040

Fact-finder: Ann C. Wendt, Ph.D., SPHR

STIPULATION 1

The parties stipulated that all SERB reporting requirements have been fulfilled.

CRITERIA

Pursuant to 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Fact-finding Report are based on reliable information relevant to the issues before the Fact-finder.

BACKGROUND

According to the 2000 Census, the City of Montgomery, Ohio, is home to approximately 10,163 residents. The City is comprised of 5.2 square miles within Hamilton County, in the vicinity of Interstates 71, 75, 275, and State Route 126. The City was founded in 1795, and it was known as a stopping point along the old "3-C" Highway (Cincinnati-Columbus-Cleveland).

The City developed the Montgomery Fire Department in October 1993. Prior to that time, the City's fire safety needs were served by a private company that also served a portion of Sycamore Township. The Fire Department is responsible for fire suppression, emergency medical services, and fire prevention programs.

The International Association of Professional Firefighters was certified as the exclusive bargaining agent for the City's Firefighters/Paramedics and Fire Lieutenants on October 28, 2004. The City and the Union are currently involved in negotiation for their first Collective Bargaining Agreement. The City also has a collective bargaining agreement with the FOP for separate units of police

officers and officers in the rank of sergeant. This contract has been in place since 1988. The City's services department and other support personnel are not represented by unions.

FINANCIAL CONDITIONS

The Montgomery Fire Department is funded through a fire levy that was approved in 1999 and promised to the community that the department would not approach the taxpayers for a ten year period. This 1999 fire levy provided for additional staffing by the hiring of two firefighters/paramedics whose primary responsibilities were in the area of fire inspections. Additionally, the fire levy increased the on-station manning from four personnel to five personnel twenty-four hours daily.

Currently, the work schedule for the department has the Fire Lieutenants working a 24/48 shift in order to maintain shift supervisor and consistency within the department. The firefighters/paramedics work a 24/12/12 shift that is defined as a continuous 24-hour shift and two twelve-hour shifts that are during the day shift of 0630 hours until 1830 hours. This allows for efficient operations of the daytime business of the department in regards to details, inspections, incidents and conducting general business.

In addition to the Fire Chief and Assistant Fire Chief, the Fire Department is currently staffed by 37 fire safety personnel, including 2 full-time Firefighters/Paramedics, 3 full-time Fire Lieutenants, 1 part-time Fire Marshall, and 30 part-time Firefighter/Paramedics/EMTs. Currently, two full-time firefighter/paramedic positions have remained vacant. A part-time administrative assistant has been budgeted for the fire department starting in 2005. This position has never been filled. The 24-hour Fire Station houses 2 Medic Ambulances, 1 Rescue Pumper, 1 Fire Engine, 1 Quint Fire Truck, and 1 Support/Hydrant Maintenance Vehicle. As of 2005, the Fire Department received 1,328 emergency calls per year. It is now estimated that the Fire Department makes approximately 4.5 emergency runs per day.

ISSUES

Article 11 – Hours of Work and Overtime – Sections 11.1, 11.2, 11.3

UNION'S POSITION:

There are distinct disadvantages to any occupation where the employees must provide services 24/7. Being away from ones' family at night, on weekends and holidays is a hardship, but one the Union recognizes is necessary. Therefore, the Union is asking that the City treat all members of the fire department equally and fairly and similar to the majority of departments in America. The only schedules the Union is asking to be recognized is a 24/48 hour week and a typical 40 hour work week (whether it be five 8 hour days or four 10 hour days).

When the national trend in the fire service industry shows a reduction in hours per week (neighboring department recently reduces hours from 48 to 42). The City after 13 years of a 48 hour work week has proposed to increase hours anywhere from 52 to 56 hours a week.

CITY'S POSITION:

The concession of all employees working on a 24/48 shift was offered in negotiations by the City as a package deal conditioned upon the implementation of a fifty-two hour work week with the agreement that one of the positions would transfer into a forty-hour fire inspector position. Additionally, the career staff would not have the every-three-week "Kelly Day" (results in a 48 hour work week) in a compromise of having the career staff available during more of the daytime hours.

Adjusting the schedule to the Union's proposal that all employees work a 24/48 within a forty-hour work week will negatively impact the fire inspection program and will further move away

from the original intent of the fire levy campaign. The ultimate consideration is to provide adequate service to the community and benefit to the City and the employee.

Assigning the seven career employees of the Union to a schedule with six employees on a 24/48 schedule (and a forty-eight hour work week) and one employees on a forty-hour work week (fire inspector) presents an operational issue every weekday, when the fire inspector's start and finish time is not consistent with the twelve-hour shift. This creates a staffing problem five days a week from 0630 – 0800 hours and 1630 – 1830 hours where the crew staffing would be reduced to four on duty. The only solution to the proposed schedule problem is to bring in a part-time employee for 1.5 hours in the morning and 2 hours in the afternoon. This would be unnecessarily costly.

While it would appear that the inspector working forty hours per week would only need to be covered for eight hours, since he/she has a shorter work period, the reality of the proposed schedule is that during 17.4 hours of the day shift each week, staffing levels would actually be reduced to 4 staff on duty. This reduction occurs at a time when the City's calls for emergency response are the highest and is totally unacceptable from a service standpoint to the community.

Under the Tentative Agreement of February 9, 2006, the fire inspector is not considered part of the initial response crew allowing for a five person response on an initial alarm or EMS incident. This proposal would allow the inspector to respond to additional fire or EMS details in extenuating circumstances while the initial crew is unavailable due to their response to an initial emergency incident. This would provide an improvement in services over existing levels and was agreed upon under the Tentative Agreement as being a positive argument when considering the firefighter's staffing level, from a safety standpoint, as well as providing an expanded level of service to the community.

ANALYSIS:

The City of Montgomery must provide its citizens with emergency response 24/7. The FLSA recognizes the City's needs and makes adjustments to fit the demands placed on a firefighter. Therefore, a work schedule allowing up to 212 hours of work in a 28 day period, prior to mandating overtime pay has been set by the FLSA. This boundary allows for a firefighter to be on duty 24 hours a day followed by a 48 hour off duty schedule.

According to the Staffing Analysis for Montgomery Fire Division performed by the Montgomery Emergency Management Association,

“...the rate of fire fighter injuries expressed as total hours of disability per hours of fireground exposure were 54% greater for engine companies staffed with 3 personnel when compared to those staffed with 4 fire fighters. Companies staffed with 5 personnel has an injury rate that was only one-third that associated with 4 persons. “

In the same document the NFPA 1401 states,

“It is recommended that a minimum acceptable fire company staffing level consist of four members responding on each engine or aerial ladder responding to any type of fire. These recommendations are based on experience from actual fires and in-depth fire simulating, critically and objectively evaluating fire company effectiveness. These studies indicate significant reductions in performance and safety when crews have fewer members than the above recommendations. Overall, five-member crews were found to provide more coordinated approach for search and rescue and fire suppression tasks.”

It is clear, that the larger the emergency response team, the more beneficial it is to the community and the overall safety of the firefighter.

In 1999, the City of Montgomery approached its citizens to approve a Fire/EMS Levy with the promise of increasing on duty personnel levels to five, 24-hours a day, seven days a week. This approval came with a promise that the City would not return to the polls for at least 10 years.

The brochure endorsed by The Montgomery Fire Levy Committee states, "The additional personnel would increase the on-duty staff around the clock to a minimum of five thus enabling the Fire Department to respond to and handle more of the emergencies in the city." Therefore, it is the City's responsibility to uphold the promise of greater safety to the community within the budget provide by the Levy.

When the Union presented the City with the Ratification and Implementation of Agreement in response to the Tentative Agreement that was dated February 16, 2006 and redrafted on February 23, 2006. They stated "The undersigned members of Local 4391, IAFF hereby accept the attached agreement...between the Local and the City of Montgomery with the following understandings with regard to the implementation of the Wage Article." This clearly shows acceptance by the Union in regards to Article 11 sections 11.1, 11.2 and 11.3.

RECOMMENDATION:

Contract Language shall remain the same as agreed to in the Tentative Agreement dated February 16, 2006 redrafted on February 23, 2006.

Article 11 – Hours of Work and Overtime – Section 11.12, C

UNION'S POSITION:

The Union wishes to be treated like all other non-exempt employees in the City and be paid for all time in excess of normally scheduled hours at an overtime rate. The hourly overtime rate earned by a firefighter is less than an equally compensated 40 hour a week employee. This is due to the weekly firefighter salary being divided by 48 hours rather than 40. The Union requests that overtime be calculated by dividing weekly salaries by 40 and then multiplied by 1.5.

The City has refused to pay the minimum call in hours (3 hours at 1.5 rate of pay) as dictated by the employee handbook. Thus, when the Union members are asked to attend meetings or other functions by the City, compensation is made at a 20% lower hourly rate and without a minimum call in. Therefore, current practice allows for individuals making the same weekly salary as a firefighter to make as much as 500% more pay for attending the same off duty meeting. The City's proposal is for a minimum 2 hour call in, but even that shows a difference of 300%.

CITY'S POSITION:

Since there is no explanation of the City's position regarding Section 11.2, C except that the City must stay within the budget set forth by the Levy. It is implied that the City's position is set forth in the language presented in the Tentative Agreement dated February 16, 2006 redrafted on February 23, 2006. The language is as follows:

"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 shall receive no less than three (3) hours pay at the according rate of pay as set forth in this Article. Call-Outs for Employees must be approved by the Fire Chief or an Assistant Fire Chief. Attendance at required meetings and/or special events of the City of Montgomery do not qualify as a "Call-Out" and will be paid at the rate of actual time incurred."

ANALYSIS:

The City of Montgomery Employee Handbook (MEH) states under Call Back Pay,

"Occasionally, an employee may be asked to return to work after they have left the premises for the day, to respond to an emergency or unplanned work situation. If this occurs, a "non-exempt" employee will be guaranteed a minimum of three (3) hours of

pay, which begin when the employee arrives back at work. If the call-in work is longer than three (3) hours, the employee will be paid for the time actually worked. "

According to the MEH, Overtime Pay will be reimbursed at one and one half (1.5) times an employee's hourly wage for any time worked over two hundred twelve (212) hours within a twenty-eight (28) day period.

In regards to Compensatory Time the MEH states that,

"With approval by the employee's department head, a non-exempt employee may be granted compensatory time off from the work in lieu of overtime compensation. Compensatory time shall be accumulated at a rate of one and one-half (1.5) hours for each hour of overtime worked.

An employee may accumulate up to forty (40) hours of unused compensatory time in a compensatory time "bank". Once this limit is reached, the employee must be paid for any additional overtime hours worked, or must use a portion of accumulated compensatory time before any additional compensatory time may be accumulated."

The Fact-finder in conjunction with her analysis requested comparables from SERB. The findings show that the average minimum of compensation regarding a call in are two hours. The findings also conclude that comparable cities offer compensatory time banks to firefighters in lieu of overtime compensation. The average rate of compensation for all time worked over the scheduled time was calculated at one and one-half (1.5) hours. A firefighter's hourly pay was determined by dividing the salary by the scheduled work hours.

RECOMMENDATION:

The Fact-finder recommends that Call-Out Pay, and Overtime and Compensatory Time become individual sections within Article 11 – Hours of Work and Overtime. The recommendation language follows:

Section 11.16 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 shall receive no less than two (2) hours pay at the according rate of pay as set forth in this Article. Call-Outs for Employees must be approved by the Fire Chief or an Assistant Fire Chief. Attendance at required meetings and/or special events of the City of Montgomery qualify as a "Call-Out" and will be paid accordingly.

11.17 Overtime Pay and Compensatory Time:

Employees who perform overtime work will be paid one and one-half (1.5) times their regular hourly wage for any time worked over two hundred twelve (212) hours with a twenty-eight (28) day period. The method of calculating overtime compensation, for each twenty-eight (28) day period will be done in accordance with 29 cfr 778.114 and shall be paid through Compensatory time.

Assignment, approval, documentation, compensation and other matters regarding overtime, or hours worked beyond the regular work schedule, except as specifically provided in this Agreement, will be subject to rules and regulation, general orders, procedures and regulations as determined by the Employer, except as may otherwise be required by federal wage and hour law, rules and regulations.

- A. Compensatory time off from work in lieu of overtime compensation will be granted for all hours worked over two hundred twelve (212) in a twenty-eight (28) day period. Compensatory time shall be accumulated at a rate of one and one-half (1.5) hours for each hour of overtime worked. An employee may accumulate up to forty (40) hours of unused compensatory time in a compensatory time "bank". Once this limit is reached, the

employee must be paid for any additional overtime hours worked, or must use a portion of accumulated compensatory time before any additional compensatory time may be accumulated. Compensatory time is to be used in compliance with Article 16 – Vacations, section 16.2.

When an individual leaves the employ of the City, the employee will be fully compensated for unused compensatory time held in their “bank”. The rate of compensation shall be at the regular rate of pay earned at the time of termination.

Article 11 – Hours of Work and Overtime – Officer In Charge Compensation

UNION'S POSITION:

The Union is asking for OIC or out-of rank pay for a senior firefighter working as a Lieutenant, in their absence. With the responsibility should go the pay.

CITY'S POSITION:

The position of the City with respect to the Officer In Charge compensation was not specifically stated during the Fact-finding.

ANALYSIS:

The City's Pre-Hearing Statements, Exhibit 3 – Union's Proposal in Fact-Finding, Section 9.11 Miscellaneous, G states,

“The Fire Chief may assign a Firefighter/Paramedic to serve as Officer in Charge (OIC) in the absence of a Lieutenant. After four (4) hours, the Firefighter, Paramedic assigned as OIC will receive \$1.00 per hour pay increase for all hours worked in that capacity. These assignments are not permanent. The selection and duration of OIC assignments are made at the discretion of the Fire Chief. Assignment of a Firefighter/Paramedic to the position of OIC will only be considered if the Firefighter/Paramedic has completed his/her probationary period and has attained a passing evaluation rating during their most recent evaluation period.”

The Fact-finder in conjunction with her analysis requested comparables from SERB. The research shows that when an employee is assigned as the Office in Charge a pay differential is granted for the entire time worked in this capacity. The pay differential varied between an additional sixty cents (\$.60) per hour to the lowest assigned rate of pay for a Fire Chief's pay range (when acting as OIC for more than 14 days).

RECOMMENDATION:

The Fact-finder recommends that Officer In Charge Compensation become an individual section within Article 11 – Hours of Work and Overtime. The recommendation language follows:

11.18 Officer In Charge Compensation:

The Fire Chief may assign a Firefighter/Paramedic to serve as Officer in Charge (OIC) in the absence of a Lieutenant. After four (4) hours, the Firefighter, Paramedic assigned as OIC will receive \$1.00 per hour pay increase for all hours worked in that capacity. These assignments are not permanent. The selection and duration of OIC assignments are made at the discretion of the Fire Chief. Assignment of a Firefighter/Paramedic to the position of OIC will only be considered if the Firefighter/Paramedic has completed his/her probationary period and has attained a passing evaluation rating during their most recent evaluation period.

Article 13 – Wages and Compensation

UNION'S POSITION:

Since the early years of the City's fire department, firefighters have enjoyed basically the same pay as the police department. During the late nineties, the "leader" in pay fluctuated based upon the department's pay raise date of January or July. Beginning in 2000, the police department's salary slowly pulled away until the present disparity. Again, however, this disparity doesn't exist with the administrative positions in the two departments, only in the rank and file of positions.

The Union is requesting to be brought back to parity with police counterparts in the City of Montgomery.

CITY'S POSITION:

The Tentative Agreement of February 9, 2006 was made possible because the City assessed a significant equity adjustment of \$4,400 to the yearly salary of Lieutenants. This was in addition to a wage increase of 3.75% for 2006. This was done based on a survey of area communities and also in consideration of the fact that the current Lieutenants were already on a 24/48 schedule and would be moving from a 48 hour work week to a 52 hour work week. Thus, the additional \$4,400 was to compensate for both reasons.

The City requests that the Fact-finder approve the Tentative Agreement as it related to Wages, provided that the City receives the benefit of its bargain with respect to the 52 hour work week

ANALYSIS:

The Tentative Agreement sets Minimum and Maximum ranges that imply the City will comply with the City of Montgomery and IAFF Final Agreement on all Open Items in Mediation dated February 9, 2006. These mediation notes were signed by C.H., City Manager, P.W., Fire Chief, T.W., Assistant Fire Chief, and D.C., Special Labor Counsel. The notes state:

- 3.75% on 4/1/06
- 3.0% on 4/1/07
- 3.0% on 4/1/08
- \$4,400 equity adjustment: Lieutenants will receive half on 4/1/06 and half on 4/1/07.
- \$750 equity adjustment: Firefighters and Medics will receive \$750 on 4/1/06 and \$750 on 4/1/07.
- Maximum range for M.S. will be increased by these amounts even though he is outside current maximum.

The Ratification and Implementation of Agreement proposed to the City of Montgomery in response to the Tentative Agreement dated February 16, 2006 bullet points the above agreement made during mediation. The Union should be aware that a Collective Bargaining Agreement is written with current and future bargaining unit members in mind. Therefore, it is not customary to state individual names in a collective bargaining contract.

RECOMMENDATION:

Contract Language shall remain the same as agreed to in the February 16, 2006 Tentative Agreement that was redrafted on February 23, 2006.

However, the City shall comply with the Ratification and Implementation of the Agreement set forth by the Union as follows:

1. Wages and Compensation will be implemented to recognize that the new rates include equity adjustments of \$4,400 for Lieutenants and \$1,500 for Firefighter Paramedics.
2. Such equity adjustments will be recognized and implemented on a non-precedent setting basis as follows:
 - a. In the first full pay period following April 1, 2006 (Retroactive pay will be given the first full pay period following August 1, 2006) Lieutenants G.B., P.M., and B.S. will receive a \$2,200 equity adjustment increase in their yearly rates if within the given range set forth in Article 13.
 - b. In the first full pay period following April 1, 2007 Lieutenants G.B., P.M., and B.S. will receive a \$2,200 equity adjustment increase in their yearly rates if within the given range set forth in Article 13.
 - c. In the first full pay period following April 1, 2006 (Retroactive pay will be given the first full pay period following August 1, 2006), the annual wage rate of Firefighter/Paramedic D.W. will be increased by \$750 as an equity increase in his annual wage if within the given range set forth in Article 13.
 - d. In the first full pay period following April 1, 2007, the annual wage rate of Firefighter/Paramedic D.W. will be increased by \$750 as an equity increase in his annual wage if within the given range set forth in Article 13.
 - e. Firefighter/Paramedic M.S. will not receive equity adjustments specified above as he is grandfathered at a rate of pay outside the range of Firefighter/Paramedic. His rate of pay will be adjusted as follows: 4/1/06 3.75% (Retroactive adjustment will be made on 8/1/06), 4/1/07 – 3.0%, 4/1/08 – 3.0%.

Article 15 – Holidays/Personal Time

UNION'S POSITION:

The Union's position is that their contract language should be that similar to the FOP. However, since Union members work longer shifts, each personal holiday should be equal to 12 hours whereas the police receive 8 hours. Union members are currently paid for up to 24 hours of unused personal time and wish to continue this practice.

The Union would like to continue to receive 72 hours of holiday pay annually since, like the FOP they do not receive time off for holidays. However, the time should be compensated at the 40 hour rate to achieve parity with the FOP. In addition, the Union is requesting double (2) time and double time and a half (2.5) for all hours worked on Thanksgiving and Christmas. The eight hour holiday pay will be subtracted, in proportion to hours worked, from the annual 72 hour holiday pay for each holiday worked by an employee.

CITY'S POSITION

The City proposes 42 hours Personal Time as opposed to the 36 hours currently received by 48 hour personnel, while the Union proposes only 36 hours. The additional Personal Time that the City agreed to was in consideration for the 52 hour work week.

When one considered that the 42 hours of personal time was designed as floating holiday time to provide additional flexibility to employees, it should be apparent to the Fact-finder that the City's position, proposal and language on this issue should be accepted.

ANALYSIS:

The Fact-finder in her analysis reviewed the City's pre-hearing statement Exhibit 12-Holidays/Personal Time Seven City Comparison and the Union's pre-hearing statement Exhibit 12-Benefit Comparison. The demands of a Police Officer versus the demands of a firefighter vary significantly. Therefore, no comparisons should be made between these two bargaining units in regards to Holiday and Personal Time. However, a comparison of other Fire Departments is appropriate.

The majority of cities used in the comparable report regarding Holidays/Personal Time by the City in their pre-hearing statement were used in the pre-hearing statement by the Union in Exhibit 3 - SERB Benchmark Report. This shows that even though the same items were not being compared, these cities are overall used by both parties when comparing items to the City of Montgomery. The average holiday time given by these cities equals 9.83 days.

RECOMMENDATION:

Contract Language shall remain the same as agreed to in the February 16, 2006 Tentative Agreement that was redrafted on February 23, 2006.

Article 16 – Vacations

UNION'S POSITION:

The Union is not asking for any change in this article. This is current practice and has been for the past twelve (12) years.

The City's proposal would have the Union working a 53 hour work week, but accruing vacation time at a 48 hour work week rate. All other city employees have the same week's vacation allotted to them, only their hours match their work week.

Examples based on 1-5 years of service:

- Police officers that work a 40 hour work week get 80 hours off for 2 weeks.
- Service Department workers that work a 40 hour work week get 80 hours off for 2 weeks.
- Administrative workers that work a 40 hour work week get 80 hours off for 2 weeks.

In the City's proposal, they are trying to increase the hours of work per week, but only want to compensate us at our current accrual rate. This accrual rate is one of the only hour based benefits that is proportional to our current schedule of 48 hours of work per week.

CITY'S POSITION:

The City is proposing more hours than the Union, which reflects the concession made for the 52 hour work week. The City believes that if the Union is going to work a 52 hour work week, they should be entitled to additional time off.

ANALYSIS:

The Fact-finder has reviewed the February 16, 2006 Tentative Agreement redrafted on February 23, 2006. Her findings have shown that the Union will be treated equally to all other employees within the City.

Based on 1-5 years of service:

- Vacation hours entitled to a 24 hour shift employee for the completion of one pay period = 52 hours worked/104 hours entitled for vacation time.
- Vacation hours entitled to an 8 hour employee for the completion of one pay period = 40 hours worked/80 hours entitled for vacation time.

RECOMMENDATION:

Contract Language shall remain the same as agreed to in the February 16, 2006 Tentative Agreement that was redrafted on February 23, 2006.

Article 17 – Sick Leave

UNION'S POSITION:

The Union and the City had discussed this, and agreed to change the accrual rate to 4.43 hours. By increasing this accrual rate it would bring the Union up to parity with all other City employees.

CITY'S POSITION:

The City's proposal on Sick Leave and the language agreed to by the parties in the Tentative Agreement of 2/9/06 should be adopted and recommended by the Fact-finder because the parties in the Tentative Agreement adopted language very similar to what the FOP represented employees enjoy and that which is reflected in City policy for unrepresented individuals.

ANALYSIS:

The demands of a Police Officer versus the demands of a firefighter vary significantly; therefore, no comparisons should be made among these two bargaining units in regards to Sick Leave. A Firefighter is required to work a 52 hour work week, 24/48 shift. This should be reflected in the Collective Bargaining Agreement when refereeing to Sick Leave.

RECOMMENDATION:

The Fact-finder recommends contract language shall remain the same as agreed to in the February 16, 2006 Tentative Agreement that was redrafted on February 23, 2006 except where noted below:

Section 17.1

Full time bargaining unit employees shall accrue sick leave at the rate of 4.43 hours for each fourteen (14) day pay period to a maximum accrual of one hundred sixteen (116) hours in any calendar year. Sick leave shall accrue while an Employee is on duty and on vacation leave, but shall only accrue during the first three hundred thirty-six (336) consecutive hours while an employee is on sick leave. Sick leave accrual shall cease for any sick leave exceeding three hundred thirty-six (336) hours. Sick leave shall not accrue while an employee is on any unpaid leave, on layoff, on disciplinary suspensions, or in overtime status.

Section 17.2

- B. Illness or injury of a member of the Employee's immediate family where the Employee's presence is reasonably necessary for the health and welfare of the affected family member. Sick leave usage for this purpose shall be limited to seventy-two (72) hours per incident.

- C. Death of a member of the Employee's immediate family. Such usage shall be limited to seventy-two (72) hours, including the date of the funeral.
- D. Exposure of the Employee...

Immediate family as used...In the case of death, mother-in-law, father-in-law, brother-in-law, sister-in-law or a spouse's sibling spouse, sick leave usage is permitted for a maximum of seventy-two (72) hours. In addition....

Section 17.5

Sick leave usage, when approved....

All accrued but unused sick leave for each bargaining unit employee as of the execution date of the Agreement that was One thousand forty-eight (1248) hours or less, plus all sick leave hours accrued after the effective date of this agreement shall be known as "the sick leave bank".

The provisions of the Family Medical Leave Act, as amended, any applicable policies of the City, shall apply to unpaid leave under this section.

Section 17.6

The policies concerning the sick leave bank shall be as follows:

- A. The maximum number of hours that any employee can accrue in the sick leave bank is one thousand two hundred forty-eight (1248) hours. All sick leave earned in excess of one thousand two hundred forty-eight (1248) hours shall not be accumulated in the sick leave bank and shall be lost.
- B. When the number of accrued but unused sick leave hours in the sick leave bank reaches one thousand two hundred forty-eight (1248) hours, the employee may request to receive a cash conversion of all hours in excess of one thousand eighty (1080) hours at a rate of one (1) hour pay for each one and one-half (1.5) hours in excess of one thousand eighty (1080) hours. Failure of an Employee to exercise this option shall result in all hours earned in excess of one thousand two hundred forty-eight (1248) hours to be lost.

Administrative Assistant

The positions' of both parties with respect to the hiring of an administrative assistant was not specifically stated during the Fact-finding.

ANALYSIS:

According to the Union's pre-hearing statement a part-time administrative assistant has been budgeted since the beginning of 2005. However, the hiring process for this position has never taken place.

Exhibit 4 – U.S. DOL Directory of Occupational Titles presented in the Union's pre-hearing statement explains, "It is interesting to note that even the job of police patrolman, which is most often compared in the public mind with that of firefighter differs in a considerable degree from that of the firefighter, particularly in terms of physical demands and working conditions." The hiring of an administrative assistant could reduce the overwhelming amount of work duties demanded of the Union members.

RECOMMENDATION:

The Fact-finder recommends that the budgeted part-time administrative assistant be hired within thirty (30) days of this fact-finding report (9/16/06).

CONCLUSION

The Fact-finder has attempted to resolve the difficult issues presented with a thorough review of interrelated contract provisions and with careful attention to all the evidence and argument presented. If the parties find any substantive error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report {O.A.C. Rule 41179-05(L)}.

Ann C. Wendt
Fact-finder

Date