

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF:**

**CASE NO. 05-MED-10-1069**

**INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 1057,**

**"Employee Organization"**

**and**

**CITY OF FAIRVIEW PARK,**

**"Employer"**

2007 APR 12 P 2:23  
STATE EMPLOYMENT  
RELATIONS BOARD

**REPORT OF FACT-FINDER  
AND RECOMMENDATIONS**

**DATE OF REPORT AND DATE OF MAILING: April 11, 2007**

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## **I. INTRODUCTION.**

This matter comes before the Fact-Finder as a result of a referral by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between Local 1057 of the International Association of Firefighters (hereinafter referred to as "Local 1057"), as the collective bargaining representative for approximately twenty (20) full-time firefighters, three (3) full-time fire lieutenants and three (3) full-time fire captains employed by the City of Fairview Park, Ohio (hereinafter referred to as the "City"). Excluded from the bargaining unit is the Fire Chief and all full and part-time employees.

By correspondence dated December 21, 2005, the parties had mutually agreed to an extension of time to engage in further negotiations. On May 24, 2006, the Fact-Finder was advised that the parties had reached an impasse and that it was necessary to proceed with fact-finding.

By correspondence dated May 30, 2006 from Local 1057, it was indicated that, at approximately the same time that the firefighters were engaged in negotiations, so also the City and the police officers were similarly engaged and that there was an understanding that the police would "take the lead" in the negotiation process involving the safety forces.<sup>1</sup> That view was also echoed by counsel for the City, who advised the Fact-Finder on June 6, 2006 that the City was willing to hold the firefighters' negotiations in abeyance until completion of the fact-finding protocol with the police officers. In fact, ultimately, a Fact-Finding Report was issued on November 2, 2006 in the matter captioned "City of Fairview Park and Ohio Patrolmen's Benevolent Association," SERB Case Nos. 05-MED-10-1118 and 05-MED-10-1119.

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<sup>1</sup> Local 1057 was not accepting the police contract as a "me too" agreement but, rather, having the police be the first safety force to engage in negotiations. To the extent that there were identical or similar issues, the time and expense saved was a benefit to both the City and Local 1057.

Ultimately, a fact-finding hearing was held on March 27, 2007 but, prior to that hearing, the Fact-Finder had engaged in mediation with the parties on January 23, 2007.

In addition to the representatives identified on the face sheet of this Report, also in attendance, and/or testifying, were the following:

On behalf of the Union:

Carl Bort, Secretary, Local 1057  
Mike Fink, President, Local 1057  
Don Reis, Staff Representative, Northern Ohio Firefighters

On behalf of the City:

Eileen Patton, Mayor  
Lisa N. Rocco, Director of Finance

The Fact-Finder received and has taken into consideration numerous exhibits and materials presented by both parties, including the parties' respective pre-hearing position statements, and the current Collective Bargaining Agreement between the parties effective January 1, 2003 through December 31, 2005.

In addition to the material presented, testimony of the witnesses and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

## **II. BACKGROUND.**

The City of Fairview Park, Ohio is a home rule, charter city of approximately 17,000 residents located in the northwestern portion of Cuyahoga County, Ohio. The City indicated that according to 2005 estimate by the U.S. Bureau of the Census, the population of Fairview Park was

projected to be approximately 16,500. The City is primarily a "bedroom" suburb of Cleveland, however, it includes a mixture of residential neighborhoods, retail and light industry. The three largest employers in the City are the National Aeronautics & Space Administration, Glenn Research Center, Westgate Mall and the Fairview Park City School District.

Local 1057 has been a party to a series of collective bargaining agreements with the City and, as previously noted, the most recent Agreement expired on December 31, 2005 but, as stated by counsel for the City in correspondence dated December 21, 2005 to the Fact-Finder, the parties had mutually agreed to extend their most recent Collective Bargaining Agreement for an indefinite period pending the conclusion of negotiations.

At the same time that negotiations were underway with the firefighters, the City was also bargaining with its two other employee units, to wit, the Ohio Patrolmen's Benevolent Association (OPBA) (representing police patrolmen, sergeants and lieutenants) and the Association of Federal, State, Municipal and County Employees (AFSMCE) (representing the City Service Department and administrative employees). In that context, ultimately, a Collective Bargaining Agreement was entered into between the OPBA and the City for the period January 1, 2006 through December 31, 2008 and an Agreement was entered into between AFSMCE, Ohio Council 8, Local 2681, and the City for the same period from January 1, 2006 through December 31, 2008.

### **III. RECOMMENDATIONS.**

During the course of the fact-finding on March 27, 2007, the Fact-Finder also engaged in mediation conferences with the parties, having originally undertaken same on January 23, 2007 with a view of resolving the issue or in delineating the essential differences. As a result of those proceedings and discussions, except as otherwise noted herein, the Fact-Finder considers it sufficient to summarize the issues and the recommended proposals pertaining to them.

### **Article 30 - Sick Leave**

The issue here pertained to Subsection 30.12 wherein the Union has sought to "bank" sick leave in that under contract language, an employee who does not use sick leave is entitled to 2-1/2 hours off for each month in which no sick leave is used. The City had proposed current contract language. The Fact-Finder recommends that Section 30.12 provide as follows:

"(a) Employees who do not use sick leave during each calendar month shall be entitled to two and one-half (2-1/2) hours off for each month in which no sick leave is used. The day(s) off granted to employees shall be taken only with the approval of the Chief or his designee. The day(s) off shall be taken within one (1) year from the time they are granted.

(b) Notwithstanding the provisions of Section 30.12(a), Employees may bank up to one hundred twenty (120) hours of total sick leave incentive earned. When one hundred twenty (120) hours are in the bank, all subsequent hours earned must be used within one year of the date on which they are earned or they are lost."

### **Article 34 - Workweek**

Section 34.01 presently provides for an average workweek of 49.8 hours, consisting of 24 hours on duty followed by 48 hours off duty. The Union has proposed a revision of that clause, reducing the average workweek from 49.8 hours to a 48 hour workweek. The City has proposed current contract language. In light of other provisions set forth herein, the Fact-Finder recommends that current contract language be retained.

### **Article 35 - Overtime**

The key issue as to this article deals with Section 35.03 dealing with the banking of compensatory time.<sup>2</sup> The present Agreement permits compensatory time banking up to ninety-six

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<sup>2</sup> Compensatory time is a creature of the Fair Labor Standards Act (FLSA) enacted to assist states and their political subdivisions in addressing financial hardships imposed under FLSA. For a good review of compensatory time, the reader is cited to *Beck v. City of Cleveland*, 390 F.3d 912 (CA6, 2004).

(96) hours, and the Union has proposed increasing that to one hundred forty-four (144) hours. The City had originally proposed maintaining current contract language. Again, based on other provisions set forth herein, the Fact-Finder recommends that Section 35.03 be amended to read as follows:

"Each member of the bargaining unit has the option of receiving pay, or compensatory time not to exceed one hundred twenty (120) hours, for hours of overtime worked. The employee may choose whether to be paid or bank overtime hours. If an employee's "comp bank" reaches one hundred twenty (120) hours, all overtime thereafter shall be paid. The Employer will update the "comp bank" records on a quarterly basis. Compensatory time may be taken off at such times approved by the Fire Chief or his designee and not causing further overtime for replacement provided nine (9) firefighters are assigned to the shift."

#### **Article 37 - Hospitalization / Life Insurance**

Without going into detail, the current contract provides hospitalization based on a "Low Option" availability and a "High Option" availability, the latter providing for employee contributions based on single coverage or family coverage. The Union had proposed that the current contract language be retained, whereas the City had proposed a modification consistent with the premium adjustments negotiated with the other unions.

The Fact-Finder recommends that Article 37.01(a) pertaining to "Low Option" be retained in current contract language. The Fact-Finder further recommends that Section 37.01(b) pertaining to "High Option" be amended to read as follows:

- "(1) Effective upon ratification, the plan shall be implemented.
- (2) Effective upon ratification, employee contributions shall be made pursuant to Internal Revenue Code Section 125 as described more fully below.

Single – \$50.00 per month  
Family – \$100.00 per month

- (3) Effective January 1, 2008, employee contributions shall be made pursuant to Internal Revenue Code Section 125 as described more fully below.

Single – \$67.50 per month  
Family – \$135.00 per month"

**Article 38 - Rates of Pay**

The Union and the Employer had both agreed that an increase in wages was justified but disagreed as to the percentages or the amounts to be included. At this juncture, nothing would be gained to engage in an extensive review or debate of the varying proposals and, again based on other dispositions provided in this Report, the Fact-Finder recommends that Section 38.01 be amended to read as follows:

"All bargaining unit employees' basic wage rates shall be increased as follows:

Effective July 1, 2006 through December 31, 2006 – 2% base increase  
Effective January 1, 2007 through December 31, 2007 – 3% base increase  
Effective January 1, 2008 through December 31, 2008 – 2.5% base increase"

As to Section 38.04, the Fact-Finder recommends that this provision be deleted inasmuch as the matters set forth therein pertained to the present Agreement and are moot as relates to the proposed new Agreement.

The Fact-Finder further recommends that Section 38.05 be amended to read as follows:

"(a) Hazardous Material Operation Pay. All certified employees (not otherwise receiving hazardous material technician pay under Section 38.05(b), shall receive a Two Hundred Fifty Dollar (\$250.00) annual bonus.

(b) Hazardous Material Technician Pay. All certified employees (no more than six (6)) shall receive a Five Hundred Dollar (\$500.00) annual bonus."

Because of the deletion of Section 38.04, the Agreement should be renumbered so that Section 38.05 becomes Section 38.04, and Section 38.06 becomes Section 38.05.

### **Article 39 - Tuition Reimbursement**

The City provides a tuition reimbursement program. In order to provide clarification as to the nature of the course studies and be eligible for tuition reimbursement, the Fact-Finder recommends that Section 39.01 be amended to read as follows:

"The City will reimburse tuition, or registration, on a course basis for a work-related course of study in fire science, medical, or other approved course to an employee who receives a grade of "B" or better, or a certificate of completion, in the course. This reimbursement is limited to a lifetime maximum per employee of Five Thousand Dollars (\$5,000.00).

### **Article 45 - Uniform Allowance**

The present Section 45.01 provides for a uniform allowance for each of the three years under the prior contract. Again, based on discussions with the parties and in light of other provisions set forth in this Report, the Fact-Finder recommends an amendment to Section 45.01 to read as follows:

"The Employer will pay all employees a uniform allowance annually, in two equal payments according to the following schedule:

Effective 2006 – \$1,450.00  
Effective 2007 – \$1,550.00  
Effective 2008 – \$1,650.00"

### **Article 53 - Duration**

The Fact-Finder recommends that current Section 53.01 be amended to read as follows:

"This Agreement shall become effective on January 1, 2006, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2008."

### **Staffing**

During the course of the fact-finding, there were discussions and a proposal to establish "minimum staffing." In lieu of proposing a new article to be set forth in the Collective Bargaining Agreement, and consistent with the parties' discussions, the Fact-Finder recommends that the issue

of staffing be resolved through the adoption of a "Memorandum of Understanding," said "Memorandum" to be appended to the new Collective Bargaining Agreement. The Fact-Finder recommends that the following language be included in the "Memorandum of Understanding":

"The City agrees to assign nine (9) firefighters to each of the three (3) shifts. When an individual shift has nine (9) firefighters assigned, up to three (3) firefighters may be granted paid time off in accordance with the Collective Bargaining Agreement. If a fourth firefighter is off because of an appropriate use of paid sick leave or injury leave, the City will not be required to call in firefighters on an overtime basis to replace that firefighter and, in such event, that shift will operate with five (5) firefighters for that particular shift.

If there are eight or fewer firefighters assigned to a shift and, due to a combination of paid time off and paid sick leave use, fewer than six (6) firefighters report to work for that particular shift, the City is required to authorize overtime in order to ensure that there are six (6) firefighters working for that particular shift.

If, due to the departure of a firefighter from the employment of the City for any reason, a shift falls below nine (9) firefighters assigned, the City will have up to sixty (60) days to fill the position and return assigned shift strength to nine (9) firefighters before the requirement applies to call in overtime as described above. A firefighter who is terminating his or her employment with the City must inform the Fire Chief and Safety Director in writing not less than ninety (90) days in advance of his or her last day of work."

**Miscellaneous**

Except as otherwise provided in this Report and Recommendation, or as otherwise mutually agreed upon in writing by the parties, the Fact-Finder recommends that present contract language be retained.

\* \* \* \* \*

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 11<sup>th</sup> day of April, 2007.

Respectfully submitted,

  
DONALD N. JAFFE  
Fact-Finder

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via FedEx, this 11<sup>th</sup> day of April, 2007, to the following:

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