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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

Rocky River Firefighters, IAFF Local 659)	05-MED-10-1090
)	
-And-)	
City of Rocky River, OH.)	Fact-Finder: John T. Meredith

**REPORT AND RECOMMENDATIONS
ISSUED DECEMBER 15, 2005**

APPEARANCES

Present for the Union:

Thomas M. Hanculak, Attorney
George Kraus, President Local 659
Steven Golobic, Union Committee
Aaron Lenart, Union Committee
Jerome Cahill, Union Committee
Carl L Kalkbrenner, Union Committee

Present for the Employer:

Hon. William Knoble, Mayor
David Matty, Law Director
Michael Thomas, Director Finance
Sue Whitman, Human Resources Admin.
James Linden, Safety-Service Director
Sam Fiorentio, Insurance Consultant

INTRODUCTION

This fact-finding proceeding involves the City of Rocky River, Ohio (“City”) and the Rocky River Firefighters Association, IAFF Local 659. Rocky River may generally be described as an attractive, established, middle class west-side suburb of Cleveland. It is almost entirely residential. Commercial areas are limited and industrial property is minimal at most. There currently are 28 employees in the Local 659 bargaining unit, which is defined to include all employees of the Fire Division, excluding the Chief.

The current collective bargaining agreement between the parties will expire on December 31, 2005. The parties held a preliminary meeting but did not exchange proposals and conduct negotiations prior to submitting their timely fact-finding request to the State Employment Relations Board, which, by letter dated November 28, 2005, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. By agreement of the parties, the fact-finding hearing was scheduled for 10:00 a.m. December 12, 2005 at Rocky River City Hall. Per OAC Rule 4117-9-05, the parties further entered into an agreement to extend the deadline for issuance of the fact-finding report to December 15, 2005. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder.

The hearing proceeded as scheduled on December 12, 2005, and was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. With agreement of the parties, the Fact-Finder attempted to mediate the dispute. The parties engaged in meaningful discussions of all issues, but fully resolved only the issues identified in the Mediation section of this Report.

The parties then presented their evidence, and unresolved issues were submitted to the Fact-Finder at the conclusion of the hearing. These issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report. In making his recommendations, the Fact-Finder gave consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Regarding the comparability factor, both parties' presentations relied primarily on comparisons to five neighboring west-side suburban municipalities: Lakewood, Bay Village, Fairview, Westlake, and North Olmsted. These municipalities are contiguous to Rocky River, participate in the same mutual aid group, and, for the most part, have similar population density, fire department size and fire department workload. Apparently, the parties have customarily used these neighboring municipalities for comparison in past negotiations over the years.

MEDIATION

During mediation, the parties agreed: 1) Article 13 of the 2003-2005 Agreement, Other Benefits and Rights, will be deleted. 2) A Memorandum of Agreement, appended to the 2003-2005 Agreement and providing for a limited reopener in event an initiative to reduce the City income tax was passed, will be deleted.

UNRESOLVED ISSUES

1. Article 14 – Hours and Article 20 - Kelly Days

Union Position: The Union proposes revising Article 14 to replace the current “24 hours on, 48 hours off” system with a new schedule. In general, the Union proposal contemplates a 4-platoon system, with each platoon working two 10-hour day shifts and 2 14-hour evening shifts on four consecutive days, followed by 4 consecutive days off. The Union maintains that the proposed system would reduce fatigue and thus improve safety and efficiency. It would both benefit the firefighters and would be conducive to good fire department operations. The Union also notes that it would reduce the current spread between the hourly wages of patrol officer and firefighters. Implementation of the new system would eliminate the need for Article 20, which provides “Kelly Days” to deal with potential overtime problems under the present scheduling system.

City Position: The City opposes the proposed change in scheduling. It acknowledged expressing interest in an 8-hour day system at an earlier meeting with the Union, but stated that subsequent research did not support the idea. Specifically, the City stated that it found no studies supporting the proposition that a “24 on, 48 off” system created safety risks, and that no comparable west-side suburb of Cleveland used an 8-hour system like the one proposed by the Union.

RECOMMENDATION: The Fact-Finder recommends that current language of Articles 14 and 20 be retained without change in the new Agreement.

Rationale: The proffered comparability data does not support the proposed change. The Union acknowledged that only one Cleveland suburb – Pepper Pike, on the east side – now has an 8-hour shift system in its fire department. Moreover, the proposed change would constitute a fundamental change in Fire Department operations. Even if such a change was desirable in principle, (and the Fact-Finder expresses no opinion on this), it would require careful study by the supervisors and employees who would have to implement it and live with it. No doubt there would be numerous implementation and transition issues. It is not feasible or appropriate to recommend such a major change after a one-day fact-finding hearing, especially when, as here, the issues have not been thoroughly discussed in pre-hearing negotiations.

2. City Overtime Cost Proposals: Article 16B – Overtime; Article 18 – Vacations; Article 19 – Holidays; Proposed New Article – Part-Time

Although Overtime, Vacation, Holidays and Part-Time employees are not obviously related, it became apparent during the mediation and hearing that the four City proposals are primarily directed to one perceived problem: excessive overtime costs. Therefore, they are grouped here for purposes of discussion:

City Position: The City stated that its annual overtime costs are excessive both in absolute terms and relative to comparable municipalities. This overtime problem, in its view, has two root causes. The first is a high overtime rate of pay, which currently is computed by dividing the employee's biweekly salary by 80 to determine the base rate used to determine the overtime rate. The City proposes increasing the divisor to 99.6, which reflects average hours actually worked by a firefighter in each biweekly pay

period. This would have the effect of lowering the base rate and thus the overtime rate based on it. The City also would amend Article 16B to state that education and longevity allowance would no longer be included in computing the “regular rate of pay.” This too would reduce the overtime rate.

The second root cause of the overtime cost problem, the City believes, is the contractual right to excessive time off. In part because of a relatively senior workforce, many employees are entitled to substantial vacation time each year. Also, by taking compensatory time instead of money for holiday work, employees can add several days to their vacation allotment each year. All of this, in the City’s view, can translate into scheduling problems resulting in excess overtime. Specifically, The Department is divided into three platoons, each with nine employees. Six employees are needed on each shift to staff both emergency vehicles. Currently, no more than three employees per shift are permitted off on vacation or other prescheduled leave on the same day. However, with each shift frequently starting with only six employees scheduled for duty, a sick call often necessitates bringing in another employee on overtime. To address this perceived problem, the City proposes: 1) amending Article 18 to reduce the hours of vacation entitlement; 2) amending Article 19 to require employees to accept holiday compensation as a monetary payment in the pay period which includes the holiday, unless the Chief expressly authorizes compensatory time, and 3) adding a new article recognizing and defining the City’s management right to cover absences with part-time firefighters rather than by calling in current full-time firefighters on overtime. Each of these changes, the City says, would help reduce the current overtime cost problem.

Union Position: The Union opposes the City's proposals for Articles 16B, 18 and 19, and to add a new article covering part-time firefighters. The Union points out that the Fair Labor Standards Act requires including longevity and education pay in the base rate used to determine overtime payments. Apparently, the practice of dividing the biweekly salary by 80 to determine rate has been secured by successive collective bargaining agreements for many years. Whether or not it is the method most commonly used by other cities, it is an integral part of the Rocky River firefighters' negotiated pay package. It also is consistent with overtime computation for the Rocky River Police Division.

Regarding vacation, the Union maintains that the current accrual of hours may be necessary to insure that employees have sufficient hours to cover vacation in two calendar week increments. The Union expressed some flexibility on the holiday pay issue, but only if the employee, rather than the Chief, was allowed to choose whether to take compensatory time or accept pay during the holiday pay period.

RECOMMENDATION: The Fact-Finder recommends that current contract language be retained without change in Articles 16B (Overtime), 18 (Vacation) and 19 (Holidays). The Fact-Finder also recommends against adding the City's proposed Part-Time Employee article to the Agreement.

Rationale: The FLSA does generally require inclusion of nondiscretionary bonus-type payments in the rate of pay for purpose of computing overtime. The longevity pay and education allowance at issue in this case fit this description, and the Fact-Finder therefore rejects the City's proposal to delete them from the pay rate computation. The choice between using 80 or 99.6 hours to convert bi-weekly salary to an hourly rate does not pose FLSA issues. However, because the current method of computation has been in

contracts for a long time, it has become an integral part of Firefighter compensation. If long-standing benefits of this kind must be reduced, they are best modified as part of the negotiation process. Whether or not the Fact Finder would choose the current 80 hours if he were starting from scratch, he is not inclined to alter the well-established current system absent a convincing showing of necessity. The Fact-Finder likewise declines to reduce vacation benefits in this case. Senior employees do enjoy a generous vacation allowance, and resulting time off may indirectly cause increased overtime expense. However, from the employee's standpoint, vacation time has a value in itself –it is a significant bargained-for benefit, and the evidence supports reducing it at this time. Finally, the Fact-Finder is not convinced that the proposed alteration in holiday compensation would materially reduce overtime usage. There being no part-time employees in the unit, adding this proposed article would be premature.

3. Article 16A – Salary, Hourly Rates and Overtime Pay

Union Position: The Union proposes three consecutive 4.5% pay raises to be effective January 1, 2006, January 1, 2007, and January 1, 2008. In addition, the Union proposes a two-step 2.65% equity adjustment, to be implemented by increasing rates 1.32% on January 1, 2006 and 1.32% on January 1, 2007, to equalize the Firefighters' base salary with the Patrolman's base salary. Finally, the Union proposes increasing from 12% to 13% the amount by which a Lieutenant's salary exceeds a Firefighter's salary and the amount by which the Captain's salary exceeds a Lieutenant's salary. In support of its position, the Union argues that: 1) CPI for the calendar year to date is 4.3%, and the upcoming Social Security cost-of-living increase will be 4.1%. 2) The Rocky River Firefighters have one of the two heaviest work loads among neighboring

departments. (U. Ex. 6) 3) Economic development in the City will more than pay for the requested increases. 4) There is parity among police and firefighter pay in most comparable neighboring municipalities, and in prior years police and fire salaries were closer to parity than they are today. (U. Ex. 9) Generally, other Rocky River employees with comparable jobs receive similar pay. (U. Exs. 10-12) 5) The proposed 13% rank differential is needed to provide parity for ranking officers in the police and fire departments, as the police division already has a 13% rank differential.

City Position: The City proposes wage increase of 2.5% effective January 1, 2006, 2.0% effective January 1, 2007, and 2.0% effective January 1, 2008. The City states that it cannot afford more generous increases. It is a residential community, with minimal commercial and industrial tax base. Economic development, to which the Union refers, is redevelopment – there is no land to be developed for the first time, and thus no potential for significant increased revenues from that source. The City points to an aging population which is increasingly dependent on social security for income; flat income tax receipts for six consecutive years; potential job losses for over 100 citizens employed at NASA or Ford Motor Co.; potential elimination of the Ohio Estate Tax, and rising hospitalization and overtime costs. (C. Exs. 1, 9) It also notes that Fire Division wage increases for the past three years have exceeded increases in the cost of living. Finally, and of importance, it emphasizes that Firefighter compensation in Rocky River compares favorably to compensation in comparable neighboring cities, especially when potential longevity and education allowance are factored into the comparison. (C. Ex. 10)

RECOMMENDATION: The Fact-Finder recommends wage increases of 3.00% effective January 1, 2006, 3.00% effective January 1, 2007, and 3.00%

effective January 1, 2008. To narrow the disparity between police and fire salaries, the Fact-Finder further recommends an “equity adjustment” of 1.5%, based on the 2006 salary, to be effective January 1, 2007. The fact-Finder does not recommend increasing the rank differential at this time. Accordingly, Article 16A of the Agreement would be amended to provide salaries reflecting these increases, as follows:

The annual wage for employees of the bargaining unit shall be in accordance with the following schedule: The Lieutenant’s salary is calculated at 12% above the second year Firefighter’s salary in each time period. The Captain’s salary is calculated at 12% above the Lieutenant’s salary in each time period.

	<u>1-1-2006</u>	<u>1-1-2007</u>	<u>1-1-2008</u>
Captain	73,751.34	77,070.16	79,382.27
Lieutenant	65,849.41	68,812.64	70,877.02
After 2 years	58,794.12	61,439.86	63,283.06
After 1 year	51,828.27	54,160.54	55,785.36
Start	44,975.02	46,319.31	47,708.89
Fire Prev. Officer	65,849.41	68,812.64	70,877.02

These salaries shall be paid biweekly. To accurately compute bi-weekly salaries, the factor 26.0893 shall be divided into annual salary.

Rationale: The City’s 2005 salary for Firefighter (2 years) ranks in the middle of comparable neighboring communities, behind Westlake and Fairview, and ahead of Bay, Lakewood and North Olmsted. When potential for additional longevity and education pay is considered, Rocky River compensation moves to the top of the list. (C. Ex 10) This, of course, affects only those firefighters who qualify for the longevity and education allowances. It is likely that raises of 3%, 3% and 3% will enable the City to retain its current relative rankings. A 3% increase is consistent with average and median increases for Ohio public employees in 2004. (SERB Wage Report, available on the

SERB website.) Further, firefighters in two neighboring communities - Westlake and Bay – are slated to receive 3% increases in 2006. (U. Ex. 5)

Comparability, however, was not the only issue raised regarding compensation. The Union also seeks a 2.64% “equity adjustment” in two steps for all employees, and a 1% increase in rank differential, to correct perceived inequities with the police department. While police and fire employees are not always paid the same, such parity is fairly common. Three of the comparable communities – Bay, Westlake, and North Olmsted – provide almost exactly the same base salaries for patrol officers and firefighters. In Fairview, Firefighters are paid significantly more than police. In Lakewood, firefighters are paid less, but will be brought up to police wages at the end of 2006. (U. Ex. 9) In Rocky River, there is, as the Union points out, a disparity between fire and police salaries, and this disparity significantly increased with the 2003-2005 collective bargaining agreements. The union submitted a chart – not contested by the City – which indicates the firefighters were paid approximately \$200 less than police officers in 1999. This number jumped to over \$1000 less in 2003, and then to more than \$1500 less in 2005. This pattern of increasing disparity in wages is not common. For this reason, the Fact-Finder has recommended a 1.5% “equity adjustment” effective January 1, 2007, in addition to the base 3% raise. This will narrow the dollar disparity with the police, but it appears that the resulting salary will not change Rocky River’s relative ranking among neighboring communities. The timing of the equity adjustment also corresponds to the point in time when firefighters may have to assume some additional insurance premium costs, see recommendation for Article 27, below. Because ranking officers, who are most likely to benefit from the City’s education and longevity

allowances, already compare favorably to their counterparts in neighboring communities, the Fact-Finder does not see the need to increase the rank differential at this time.

4. Article 17 – Uniform Allowance

Union Position: The Union proposes increasing the uniform allowance from \$500/year to \$800/year in 2006, \$900/year in 2007, and \$1000/year in 2008. In support of its position, the Union notes that comparable fire departments pay an average of \$1100/year in uniform allowance. (U. Ex. 13.) Further, the City provides uniforms to patrol officers and pays them \$500 for uniform maintenance. The workload causes uniforms to wear out, and uniform costs are increasing.

City Position: The City proposes no increase and does not believe the increases proposed by the union are warranted. The City also notes that the current allowance stems from a 2003 conciliation award, which thoroughly assessed all pertinent cost and comparability data.

RECOMMENDATION: The Fact-Finder recommends increasing the annual uniform allowance payment from \$500 to \$800 during the term of the 2005-2006 Agreement. This would require rewriting the first paragraph of Article 17 to state:

Each employee shall receive a uniform allowance of \$1,000 in his or her first year of employment. In each year after the first year of employment, each employee shall receive \$800. All such payments shall be made biannually.

The second and third paragraphs of Article 17 should be retained without change.

Rationale: Comparability data and anticipated price increases during the term of the new collective bargaining agreement justify increasing the allowance to \$800 per year. Rocky River's current uniform allowance is lowest of any neighboring city.

(Union Ex. 13) In fact, in these cities, allowances currently range from \$900 to \$1350. At least some of these jurisdictions, like Rocky River, pay for replacement of damaged uniforms, so this practice does not fully explain the unfavorable comparisons. The Conciliation Award, to which the City refers, indicates that the Conciliator, who had to choose between City and Union offers on a “last best offer” basis, stated that the \$500 allowance was too low, but that it was closer to the mark than the unrealistically high demand made by the Union in those negotiations. The prior Award, therefore, does not mandate recommending continuation of the \$500 level.

5. Article 23 – Sick Leave

Union Position: The Union proposes to change sick leave accumulation from 1,192 hours to 2,400 hours and to allow FMLA at the discretion of the employee. The Union noted that the cap on conversion to severance would remain in effect, and stated that the main intent of the proposal is to insure that employees with a long-term health problem have sufficient paid time under the sick leave policy.

City Position: The City expressed a concern about the severance cap, and noted that, in almost all cases, employees have had sufficient sick time available under the current system. Regarding FMLA, the City maintains it is appropriate and consistent with general employer practice to require employees to take FMLA concurrently with sick leave when a condition is eligible for both types of leave.

RECOMMENDATION: The Fact-Finder rejects the union proposal. As an alternative method of providing additional leave time to employees who run out of available sick time, the Fact-Finder recommends adding a provision whereby another employee could loan sick leave to the employee who has exhausted his leave

time. To this end, the Fact-Finder recommends including the following language in the new agreement:

With approval by the Chief, an employee may transfer any unused sick leave to another employee for use by such other employee when no further sick leave is available to such other employee. Such transfer shall result in a deduction from the transferring employee's sick leave accumulation on the basis of one hour for every one hour transferred. Any such transfer shall be no less than eight (8) hours.

Rationale: The City's practice on FMLA leave use is a common employer practice and consistent with the FMLA. Discussions at the hearing indicated that the Union's primary concern was ensuring adequate sick time, not increasing severance. Both the Union and the City expressed interest in resolving the issue by permitting employees to donate sick leave to an employee who has exhausted his own sick leave allotment. The parties noted that there is a provision permitting this practice in the City's Police Agreement, and that provision is recommended herein.

6. Article 25 – Longevity

City Position: The City proposes converting the current longevity pay system, which is based on a percentage of each employee's annual salary as defined therein, with a new system establishing fixed dollar amount longevity payments. The new schedule would begin with a \$600 annual longevity payment at 6 years of service. The amount would be increased in \$100 increments for each year of service up to 25 years, so that employees with 25 years or more service would receive an annual longevity payment of \$2500. The City contends that this change would equalize longevity among "all future ranks" and among City departments.

Union Position: The Union opposes the City's proposed change.

RECOMMENDATION: The Fact-Finder recommends current language.

Rationale: The Fact-Finder is reluctant to recommend a two-tier system, differentiating among employee groups within the bargaining unit, unless there is compelling justification. There was no compelling justification in this case. Although it is interesting that the Police Department has agreed to the system proposed by the City, Firefighters and police officers in Rocky River are not paid the same salary, so the internal comparability argument here is less compelling than it otherwise might be. This also the kind of change that can best be addressed in discussions at the table, where any prospective morale concerns that might result from a two-tier system can be thoroughly discussed. Finally, it is not an immediate impact item.

7. Article 27 – Health Benefits

Union Position: The Union proposes giving employees a choice between two alternative health care plans: 1) a plan with premiums fully paid by the City but with “use based cost to the employee and maintained for the term of the collective bargaining agreement.” 2) A plan equal to the current health, dental and prescription care plan, with the City’s January 1, 2006 contribution set at \$4109 single and \$10,216 family. Increases in premium costs during the term of the collective bargaining agreement would be paid 90% by the City and 10% by the employee. The Union contends that employee premium contributions need to be capped. The Union further notes that they began paying a portion of their premium costs in 2005, whereas police officers have had their healthcare premiums fully paid by the City during the entire period of the last collective bargaining agreement.

City Position: The City proposes caps on its premium costs which are substantially the same as the caps currently in effect. It further would require new employees after January 1, 2006 to submit proof that spouses are not covered by other insurance. Just as limiting the employee's exposure to premium increases is a Union priority, so too limiting the City's exposure to premium increases is a high priority for the City. In support of its position, the City noted that it has offered employees the choice of two plan levels, and will be offering a middle level plan as a third choice in 2006. An employee who wants to avoid any premium cost can do so by opting for the lowest level plan, for which the City pays 100%. (By contract, premium costs on that plan are controlled by adjusting the specifications to ensure a premium below the cap on the City's contributions.) Moreover, the new middle level plan will offer employees an option with benefits close to the top plan but at a lower cost. This plan was developed after consultation with an employee-management committee, and the City and committee believe that it will meet most employees needs. The City, through exhibits and testimony of its insurance consultant, presented substantial supporting information regarding the terms and costs of the alternative plans offered. (C. Exs. 11-17)

RECOMMENDATION: The Fact-Finder recommends revising Article 27 to state as follows:

The employer agrees to pay a sum not to exceed \$3715 per year for single coverage premiums and \$10,035 per year for family coverage premiums commencing in January 2006. If the employee elects a plan with premiums in excess of these amounts, the employee must pay the balance of the premium costs. With respect to future increases in premiums above January 2006 rates, the employee shall be responsible for 100% of such premium increases up to \$35/month for single coverage and \$70/month for family coverage. Thereafter, the cost of additional increases will be shared, with 50% paid by the City and 50% paid by the employee. In addition, the City also will provide a health benefits package (health and dental) that does not

require employee premium contribution but instead provides a reduced coverage plan with increased copays and deductibles as an alternative to any employee participation.

Rationale: The City has been offering two health plan options: a high-level plan which, in 2005, required some employee premium contribution, and a lower level plan with 100% City-paid premiums. In 2006, the City expects to add a third plan – still “high level” according to the City’s consultant, but at a lower cost than the top plan. Benefits are configured somewhat differently than the high-end plan, and some benefits (including preventive care) may be better suited to most employees than those provided in the top plan. This plan was fully reviewed by a committee with employee representation. While not a negotiated plan and not part of any agreement, it appears to be a consensus that it will meet the needs of most employees. Because of this, the Fact-Finder agrees with the City’s argument that it is reasonable to provide cost incentives to steer employees from the top plan to the new plan.

To this end, the Fact-Finder is recommending a cap on City-paid premiums equal to the expected annual premiums for single and family coverage under the new or middle plan. Thus, an employee who opts for Plan 2 should be able to avoid contributing to premium payments during calendar year 2006, whereas employees, if any, who stay in the top plan will incur out-of-pocket premium cost for the amount above \$3715 single and \$10,035 family.

The Fact-Finder is also aware that a substantial majority of Ohio public employees are now paying at least some part of the premium for their health coverage. This also appears to be true in Rocky River’s neighboring communities. Therefore, the Fact-Finder concludes that it is reasonable for the employees to share in the burden of

premium increases if they choose to remain in either of the top two plans. To this end, the Fact-Finder has recommended that the employee pay 100% of increases up to \$35/month single and \$70/month family, after which the increases will be paid 50% by the City and 50% by the employee. Under this system, the top plan will always cost the employee more so long as it is maintained. The middle plan is likely to result in some employee cost during the second and/or third year of the agreement, but less cost than the top plan. However, for employees who do not want any part of the premium, there will continue to be a low option plan, with 100% costs paid by the City, which can adjust specifications and plan design to avoid premium increases.

8. Article 32 – Duration

City Position: The City proposes that the Agreement be effective on January 1, 2006 and remain in effect until December 31, 2008.

Union Position: Although it made no proposal on duration, the Union’s wage proposals presuppose a three-year agreement.

RECOMMENDATION: The Fact-Finder recommends a three-year Agreement, to be effective January 1, 2006 and remain in effect until December 31, 2008. Article 32 would be changed to state:

This Agreement shall be effective as of the first day of January 2006 and shall remain in full force and effect until the 31st day of December 2008.

Rationale: Proposals of both parties are based on the assumption that the Agreement will be in effect from January 1, 2006 through December 31, 2008.

9. Proposed New Article – Retroactivity

Union Position: The Union proposes adding an article to require that “any wage increase agreed in a contract succeeding this agreement shall be retroactive to January

First of the first year of the new contract” and that a SERB-appointed Conciliator shall “have authority to order retroactivity regarding wage rates to January 1 of the first year of the succeeding agreement and prospectively on other economic items for that year.” The Union states that this language is necessary because disagreement over retroactivity and time extensions have inhibited the negotiations process. It states that at least some other Cuyahoga County municipalities have similar retroactivity agreements.

City Position: The City adamantly opposes retroactivity. It maintains that municipalities need to know their financial situation in order to effectively budget in January, and that this requires adherence to deadlines for completion of negotiations.

RECOMMENDATION: The Fact-Finder recommends rejection of the proposed new language; therefore, the proposed new article would not be included in the Agreement.

Rationale: The retroactivity issue stems from a provision of Ohio law which prohibits a SERB-appointed conciliator from making a retroactive economic award. Thus, unless the negotiation and fact-finding process are completed in time for a conciliator to be appointed by SERB prior to December 31 of the year in which a contract expires, the conciliator will lack authority to make an award effective in the first year of the succeeding agreement. The Fact-Finder is aware that this deadline may have the effect of imposing unrealistic time constraints and, occasionally, even some hardship on the parties. Further, it is common for the parties to agree to waive this restriction to permit continuation of negotiation over year-end. However, the City’s concerns about the need for information at the earliest possible time are legitimate. Moreover, usually waivers of the retroactivity restriction are done on an ad hoc basis. The Fact-Finder

prefers to leave the issue out of the Agreement to permit the parties to deal with it on a case-by-case basis when future agreements are negotiated. Waiver of the retroactivity restriction may be more appropriate under some circumstances than others, and thus it is best left for determination at the time of negotiations when all relevant circumstances are known.

10. New Article – Memorandum of Understanding (Parity Reopener)

Union Position: The Union proposes a new Memorandum of Understanding which would require the parties “to meet and renegotiate any matter that another safety force union negotiates or is awarded for 2006 through 2008 that is more economically beneficial than what IAFF Local 659 receives.” The Union states that this is necessary because it has been hurt financially when the City or Conciliators have awarded better wages and health benefits to patrol officers. The Union maintains that other municipalities pay comparable benefits and wages to their police and fire employees, and further notes that the neighboring City of Lakewood has a Memorandum of Understanding similar to the one proposed by the Union herein.

City Position: The City opposes the Union proposal.

RECOMMENDATION: The Fact-Finder recommends rejection of the proposed new language; therefore, the proposed new article would not be included in the Agreement.

Rationale: Although re-openers may be appropriate under limited circumstances, the Fact-Finder starts with the belief that a three-year bargaining agreement should provided certainty and stability for both parties. Indiscriminate inclusion of reopeners in contracts is inconsistent with this objective. There does not appear to be a compelling

reason for the proposed reopener in this case. Collective bargaining agreements are packages and often represent trade-offs. One group might appear to have a better benefit of a particular kind only because it has given up some other right or benefit, economic or noneconomic. Finally, if an employer has me-too reopeners in more than one agreement, there can be an endless back and forth, as the results of negotiations under one agreement trigger the duty to bargain under another.

11. New Article – Employee Handbook

City Position: The City proposes adding a new article stating: “Employees agree to be bound by all provisions of the City’s *Employee Handbook* not in conflict with any Article in this Agreement.”

Union Position: The Union indicated it would be willing to agree to this proposal.

RECOMMENDATION: A new article entitled *Employee Handbook* will be added to the Agreement. This new article will state:

“Employees agree to be bound by all provisions of the City’s *Employee Handbook* not in conflict with any article of this Agreement.”

Rationale: Both parties indicated that adding this provision makes sense.

12. New Article – Extended Shift

City Position: The City proposes adding a new article stating as follows: “Employees required to work beyond their normal shift due to a ‘run’ that has not been completed shall be paid only for the extra time worked.” Currently, if a crew returns after the end of the shift (8:30), then it is paid for one hour, even though it may work less than the full hour. The City views this as excessive, and wants to restrict pay to time actually worked.

Union Position: The Union states that the current system is firmly established by practice. It points out that, when a crew returns before 8:30, crew members customarily do not record additional time worked for paperwork and/or clean-up, even though it may extend beyond the shift's end. The overall effect, the Union maintains, is fair to both the employee and the City.

RECOMMENDATION: The Fact-Finder recommends against adding the proposed provision to the Agreement.

Rationale: There is some logic to the rationales advanced by both parties, but the record was not fully developed as to the actual economic effect of the current practice. Accordingly, the Fact-Finder does not think it is appropriate to recommend the proposed change at this time.

13. Effective Dates

All recommendations will be effective January 1, 2006, except as otherwise provided.

SUMMARY OF RECOMMENDATIONS

- 1. The Fact-Finder recommends that current language of Articles 14 and 20 be retained without change in the new Agreement.**
- 2. The Fact-Finder recommends that current contract language be retained without change in Articles 16B (Overtime), 18 (Vacation) and 19 (Holidays). The Fact-Finder also recommends against adding the City's proposed Part-Time Employee article to the Agreement.**
- 3. The Fact-Finder recommends wage increases of 3.00% effective January 1, 2006, 3.00% effective January 1, 2007, and 3.00% effective January 1, 2008. To narrow the disparity between police and fire salaries, the Fact-Finder further recommends an "equity adjustment" of 1.5%, based on the 2006 salary, to be effective January 1, 2007. The fact-Finder does not recommend increasing the rank differential at this time., Article 16A of the Agreement to be amended accordingly, language on p. 10 of this Report.**

4 The Fact-Finder recommends increasing the annual uniform allowance payment from \$500 to \$800 during the term of the 2005-2006 Agreement. Amend Article 17 accordingly, see language p. 12.

5. The Fact-Finder rejects the union proposal to change Article 23, Sick Leave. As an alternative method of providing additional leave time to employees who run out of available sick time, the Fact-Finder recommends adding a provision whereby another employee could loan sick leave to the employee who has exhausted his leave time. Add new language accordingly, see language p. 14.

6. The Fact-Finder recommends current language without change in Article 21, Longevity.

7. The Fact-Finder recommends revising Article 27 to state as follows:

The employer agrees to pay a sum not to exceed \$3715 per year for single coverage premiums and \$10,035 per year for family coverage premiums commencing in January 2006. If the employee elects a plan with premiums in excess of these amounts, the employee must pay the balance of the premium costs. With respect to future increases in premiums above January 2006 rates, the employee shall be responsible for 100% of such premium increases up to \$35/month for single coverage and \$70/month for family coverage. Thereafter, the cost of additional increases will be shared, with 50% paid by the City and 50% paid by the employee. In addition, the City also will provide a health benefits package (health and dental) that does not require employee premium contribution but instead provides a reduced coverage plan with increased copays and deductibles as an alternative to any employee participation.

8. The Fact-Finder recommends a three-year Agreement, to be effective January 1, 2006 and remain in effect until December 31, 2008. Amended language for Article 32 on p. 18.

9. The Fact-Finder recommends rejection of the proposed new Article on Retroactivity.

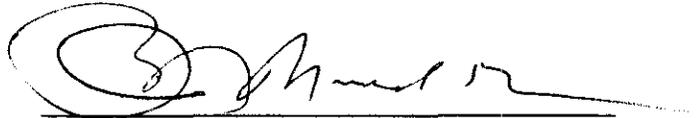
10. The Fact-Finder recommends rejection of the proposed new article for a reopener in event another employee group receives a better benefit.

11. The Fact-Finder recommends adding language to make employees subject to the Employee Handbook to the extent it is not inconsistent with the Agreement, see new language p. 21.

12. The Fact-Finder recommends against including proposed language regarding extended shifts.

SUBMISSION

This Fact-Finding Report is submitted by:



John T. Meredith, Fact-Finder

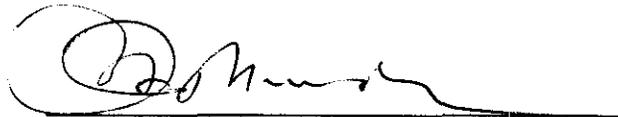
Shaker Heights, Ohio
December 15, 2005

CERTIFICATE OF SERVICE

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 15 day of December, 2005:

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John T. Meredith, Fact-Finder