

**ROBERT M. LUSTIG**  
**Attorney - Arbitrator**  
615 Leader Building  
526 Superior Avenue, East  
Cleveland, Ohio 44114-1964

STATE EMPLOYMENT  
RELATIONS BOARD

(216) 241-5735

2007 MAY 21 P 12: 08

FAX: (216) 241-4037

Email: [rlustig@ex100.com](mailto:rlustig@ex100.com)

ARTHUR F. LUSTIG  
ROBERT M. LUSTIG  
MATTHEW F. LUCAS  
SUSAN M. EVANS

PHILIP LUSTIG (1897-1983)

May 9, 2007

Littler Mendelson  
Erievew Tower, 20<sup>th</sup> Floor  
1301 East 9<sup>th</sup> Street  
Cleveland, Ohio 44114

Northern Ohio Fire Fighters  
3100 East 45<sup>th</sup> Street  
Suite 214  
Cleveland, Ohio 44127

Attn: Jon M. Dileno

Attn: James P. Astorino

Via Email: [jdileno@littler.com](mailto:jdileno@littler.com)  
Hard Copy By Mail

Via Email: [jastorino@noff.org](mailto:jastorino@noff.org)  
Hard Copy by Mail

**Re: Wickliffe Firefighters, IAFF Local 1536 and City of Wickliffe  
SERB Case No. 06-MED-08-0842**

Dear Messrs. Dileno and Astorino:

Attached is the Fact Finding Report in this matter and memorandum.

**NO ENCLOSURES**

Very truly yours,

Robert M. Lustig

RML:aer  
Enclosures

CC SERB  
Attn: Mony  
5/13/07

STATE OF OHIO

2007 MAY 21 P 12: 08

STATE EMPLOYMENT RELATIONS BOARD

MAY 9, 2007

WICKLIFFE FIREFIGHTERS  
IAFF LOCAL 1536

CASE # 06-MED-09-0842

and

FACT FINDING REPORT

CITY OF WICKLIFFE

APPEARANCES

For the Union

James Astorino, President, Northern Ohio Firefighters  
Ken Stout, President, Local 1536  
Chris Grossman, Local Secretary

For the City

Jon M. Dileo, Attorney  
Dan Helsel, Fire Chief

ROBERT M. LUSTIG  
Fact Finder  
615 Leader Building  
526 Superior Avenue, E.  
Cleveland, Ohio 44114-1964

## Introduction

This fact finding involves the full-time firefighters (“Firefighters”) of the Wickliffe Fire Department represented by the International Association of Firefighters (“IAFF”) and the City of Wickliffe (the “City”). The Agreement between the IAFF and the City expired December 31, 2006.

The undersigned was duly appointed Fact Finder. The fact finding hearing was set, by agreement of the parties, for April 17, 2007. The hearing commenced at 9:30 AM and was closed at 4:15 PM.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, Union Exhibits 1 - 18 and City Exhibits A, B and 1 - 11. The Fact Finder thanks both parties for their professionalism and courtesy.

In considering the recommendations made in this report, the Fact Finder considered the criteria set forth in Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- 4) The lawful authority of the public employer.
- 5) Any stipulations of the parties.
- 6) Such other factors, not confined to those listed above which are normally or

traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or private employment.

### **Facts**

The parties entered in an agreement covering the period 1/1/04 through 12/31/06 which has expired. Joint Exhibit 1. The parties agree wages will be retroactive to January 1, 2007.

As to economic issues, the City does not assert an inability to pay as a basis for any of the economic issues but does assert that its positions are based on sound, conservative financial management of the City's finances.

Further, the City says it has entered into agreements with all bargaining units other than firefighters that includes increases as follows: first year - 3%, second year - 3.25%, and third year - 3.5%. City administrative employees have been told they too will receive the same percentage raises in each of 2007, 2008 and 2009.

With that as background, we turn to the issues that were presented at the fact finding hearing, bearing in mind that the burden of proof is on the party advocating a change.

### **Issue No. 1** **Work Week**

**Union Position:** Reduce the work week from the current 52 hours to 49.8 hours.

Prior to 1990 the standard work week was 56 hours. The Fair Labor Standards Act reduced the maximum to 53 hours for firefighters and 43 hours for police. Since 1990, 23 cities in the Cleveland area have reduced hours for firefighters. Currently, 27 cities in the Cleveland area work 49.8 or 50.4 hour weeks.

A 49.8 hour week works with a 27 day work cycle. Wickliffe Firefighters have had a 52 hour work week for over 20 years.

**City Position:** No change.

The effect of reducing the work week to 49.8 hours will be that full-time Firefighters will get an additional five days off per year. If the City covers these additional days off with overtime, it will cost the city \$38,000 per year. While covering this additional time off with part-time Firefighters is less costly, it would change the ratio of full-time to part-time Firefighters. The department currently works six-man shifts; four full-time Firefighters and two part-time Firefighters. In a small department, it is undesirable to use more part-timers.

Further, while admittedly, the average work week for Firefighters in Lake County is 50.4 hours, the additional hours are more than made up by the fact that Wickliffe Firefighters have generous vacation, holiday, personal and Kelly days off.

**Discussion**

Of the nine departments the City cites as being Lake County and adjacent cities in Cuyahoga County, four work 50 hours or more a week, five work either 48 or 49.8 hour weeks.

**Finding**

The comparables favor a 49.8 hour work week.

**Contract Language**

Adjust Section 18.01 to reflect a 27 day 192 hour work cycle.

Adjust Section 18.02 to provide one 24 hour off each 27 day period.

Adjust Section 27.05 to provide that hourly pay be determined by dividing annual salary, as presently calculated, by 2590 hours.

**Issue No. 2**  
**Educational Pay**

**Union Position:** Increase payment for an Associate's Degree from \$50 to \$75, for a Bachelor's Degree from \$85 to \$120 and for a State of Ohio Fire Inspector Certificate, a payment of \$250.

The increases sought for the Associate's Degree and Bachelor's Degree would match increases granted to the police.

**City Position:** No objection to increases for Associate and Bachelor Degrees.

Payment for a State of Ohio Fire Inspector Certification has been agreed to by the parties.

**Discussion**

This issue is resolved by agreement.

**Contract Language**

Adjust Section 25.01 from \$50 to \$75.

Adjust Section 25.02 from \$85 to \$120.

The parties have agreed to the changes in Section 25.04.

**Issue No. 3**  
**Rank Differential**

**Union Position:** Make the position of Officer in Charge (OIC) a Lieutenant and make a Lieutenant a Captain. Increase the pay differential of the OICs over that of Firefighters from 5% to 6% for 2007, 7% for 2008 and 8% for 2009. Increase the pay differential of what are currently Lieutenants over OICs from 6.67% to 8% for 2007, 9% for 2008 and 10% for 2009.

The first promoted position in a fire department is to Lieutenant. Some departments have just the one promoted position; some have a second promoted position, that of Captain. No other department has an OIC.

The work of an OIC involves general supervision of both men and equipment and sole supervisory responsibility in the absence of a Lieutenant and the Lieutenant is not on duty 25% of the time. Essentially, the OIC is doing a job that is the equivalent of that of a Police Sergeant.

The work of a Fire Lieutenant in Wickliffe is both supervisory and administrative. It is equivalent to a police Lieutenant.

The pay differentials being sought would bring the department in line with the pay differentials in surrounding communities.

**City Position:** Opposes change in job titles and opposes any change in existing differentials.

The rank of OIC was created in 2003 as part of a settlement of two lawsuits. Also, as part of that settlement, the position of Assistant Fire Chief was eliminated. The pay differentials for these positions were also agreed to as part of that settlement - 12% above Firefighters for Lieutenants and 5% for OICs.

The police chief testified as to the organization of the police and the duties of the Police Sergeants and Lieutenants.

There are 19 full-time Firefighters in Wickliffe, seven of whom are either OICs or Lieutenants. The cost of the Union's proposal would be \$56,000 per year.

### **Discussion**

It is clear that the position of OIC has some supervisory duties but, from the testimony of Lieutenant Blackburn, OIC Grossman and the Police Chief, there are significant differences in the

roles of OIC and Fire Lieutenants versus Police Sergeants and Lieutenants. The lawsuit settlement that created the OICs was a unique and creative way to deal with a supervisory problem in a small department. The differentials provided for at that time appear adequate to recognize the difference among Firefighters, OICs and Lieutenants.

Equating OICs to Police Sergeants and Fire Lieutenants to Police Captains is not appropriate.

**Recommendation**

No change.

**Issue No. 4**  
**Salary**

**Union Position:**      2007 - increase of 3.25%  
   2008 - increase of 3.25%  
   2009 - increase of 3.5%

This is in line with the current settlements in nearby communities and in line with the raises agreed to by the City with Service and Police Departments.

**City Position:**      2007 - wage freeze  
   2008 - increase of 3%  
   2009 - increase of 3%

While conceding its proposal is not comparable to the increases granted other city employees, the City argues it is necessary to severely limit wage increases in light of other Union proposals. Otherwise, the complete cost of wages and benefits would exceed that granted other employees and would have a deleterious impact on the City's overall financial health.

**Discussion**

The Finance Director testified as to his five year projections, which show the City's current \$5.5 million cash reserves being exhausted by 2010. The Director also conceded his five year projection was conservative. For example, the revenue from real estate taxes is flat for 2008 through 2011, though there will be a mandatory reappraisal by the County that will change values for 2009. Further, it is noted that these conservative projections have wage increases of 3% built in for 2007 through 2009.

The City has already agreed to wage increases for police, service department and non-union employees for 2007 through 2009 of 3%, 3.25% and 3.5%. Internal comparability requires the same increases be granted to the Firefighters.

**Recommendation**

Wages increase as follows:

2007	3%
2008	3.25%
2009	3.5%

**Contract Language**

Article 27, Section 27.01 be adjusted accordingly.

**Issue No. 5**  
**Safety and Health**

**Union Position:** Institute a minimum manning of four full-time Firefighters to be assigned to fire supervision or that the ratio between full-time and part-time Firefighters be maintained at 2:1.

Nine departments in the Cleveland area have a minimum manning requirement. Reliance on less costly part-timers will impede the effectiveness of a work unit. This is especially true in small departments. The Union's alternate proposal will assure continuance of the status quo.

**City Position:** No change.

The vast majority of departments in Lake County do not have such a requirement. The City has not indicated any intent to change its current practice of maintaining a 2:1 ratio.

Most importantly, a manning clause infringes on the Management Rights Clause.

### **Discussion**

The Union demonstrated that nine municipalities in the Cleveland area have agreements that have a minimum manning provision. It is noted that the party's agreement calls for a minimum squad of three to respond to EMS calls in Article 24.

However, while the Union position may be reasonable, we are faced with Ohio Revised Code Section 4117.08 (C), which allows the City to “determine the adequacy of its workforce.” We also have the Management Rights Clause of the agreement, which says:

5.01 Except as specifically limited by the explicit provisions of this Agreement, the Employer retains full right and responsibility to make all decisions in regard to all aspects of its operations, employment, and employees, as specifically authorized in the Management Rights Section of the Ohio Revised Code, Section 4117.08, as same may be amended from time to time, or modified by court decisions.

The City is within its rights to deny this request.

### **Recommendation**

No change.

**Issue No. 6**  
**Residency**

**Union Position:** Increase the limit from 20 to 25 miles.

Municipally imposed residency restrictions may be unlawful under a recently enacted statute which was upheld in City of Cleveland vs. State of Ohio, Cuyahoga County Common Pleas Case Number 06-590463.

**City Position:** Increase the limit it 22 miles.

**Discussion**

Currently, Firefighters are required to live within 20 statute miles “ of any Wickliffe city limits.” This has led to some confusion as to how to measure the distance. The parties were agreeable to setting a 25 mile limit from a defined point.

**Recommendation**

25 miles from the Wickliffe Fire Station.

**Contract Language**

Alter Section 42.01 accordingly.

**Issue No. 7**  
**Health Insurance**

- City Position:**
- 1) Allow the City to offer one plan, either a PPO or an HMO.
  - 2) Maintain insurance limits substantially equivalent to those currently provided.
  - 3) Set co-pay at 8% of premiums, not to exceed \$60 per month for an employee, \$100 for an employee with one child, \$110 for an employee and a spouse and \$125 for a family plan.

4) Any changes in the plan require prior consultation with the Healthcare Cost Containment Committee.

The City wants to go with a single plan in accord with the advice of an outside healthcare consultant. They intend to offer a PPO but want to keep their options open. What is being proposed is in line with SERB's 2005 survey and is consistent with what the Service and Police Departments have accepted.

**Union Position:** Objects to additional costs caused by increase in the caps if pay is not otherwise adjusted. The Union seriously objects to the City offering an HMO due to the geographic spread of its membership with the resulting distances members and their families would have to travel to obtain healthcare services from an HMO.

**Discussion**

The City should be allowed to offer one plan. The objections to an HMO are reasonable.

**Recommendation**

Adopt the City's proposals with the sole exception that the single plan is to be a PPO.

**Contract Language**

Adopt the City's proposed changes for Article 23.

**Issue No. 8**  
**Sick Leave**

**City Position:** Delete grant of 160 hours of sick leave upon beginning of employment.

Employees accrue 4.6 hours of sick leave for every 80 hours they are paid. However, new employees are given 160 hours sick leave immediately upon being hired but then do not accrue any

additional sick leave until after the first year.

The police had five years sick leave in the bank upon being hired. They have agreed to give this up and simply accumulate sick leave as they work.

**Union Position:** No change.

There is no allegation first year sick leave has been abused. There is no reason for this change. If a new hire becomes ill in the first few months of employment, they will need this sick leave.

**Discussion**

One of the criteria a Fact Finder is mandated to consider is how this issue is resolved in other public and private employment situations. OAC§4117-9-05(2).

Providing a sick leave bank immediately upon beginning employment is rare in the private sector. I am unaware of it being common in the public sector.

**Recommendation**

Eliminate the sick pay bank upon hiring.

**Contract Language**

Eliminate Section 11.03.

**Issue No. 9**  
**Random Drug Testing**

**City Position:** Alter the present drug and alcohol testing to allow random drug testing.

As Service Department employees have CDLs, they are subject to random drug testing. The police have accepted random drug testing. The City of Cleveland Firefighters have random drug testing as do many other departments.

**Union Position:** Opposes the change.

The current drug and alcohol testing provides for pre-employment testing, testing at the voluntary annual physical and testing upon reasonable suspicion.

The City offers no underlying reason for this change. There is and has been no drug or alcohol problem in the Wickliffe Fire Department. The City's real reason for seeking this change is that it would have an affect on the City's workers comp premiums.

**Discussion**

No evidence was offered as to any economic benefit the City would gain by imposing random drug testing.

Service Department employees, due to their CDLs, must submit to random drug testing. Police spend most of their eight hour shifts driving. One can see some rational basis to require them to submit to random drug testing.

No rational basis is offered as to why Firefighters should be subject to random drug testing.

**Recommendation**

No change. Retain the current drug and alcohol testing provisions with the change that “voluntary annual physical” in Section 29.01 will be changed to “mandatory annual physical.”

**Issue No. 10**  
**Physical**

The parties have agreed to a mandatory annual physical and have adopted new language for Sections 28.01 and 28.02.

**Issue No. 11**  
**Duration**

The parties have agreed the duration of the new agreement is January 1, 2007 through December 31, 2008 and have adopted new language for Sections 39.01 and 39.02.

---

Robert M. Lustig  
Cleveland, Ohio  
May 9, 2007

**CERTIFICATE OF SERVICE**

A copy of the foregoing document was sent, by agreement of the parties, by email and by regular U.S. Mail, postage prepaid, May 9, 2007 to:

Littler Mendelson  
Erievue Tower, 20<sup>th</sup> Floor  
1301 East 9<sup>th</sup> Street  
Cleveland, Ohio 44114

Attn: Jon M. Dileno

Via Email: [jdileno@littler.com](mailto:jdileno@littler.com)

Northern Ohio Fire Fighters  
3100 East 45<sup>th</sup> Street  
Suite 214  
Cleveland, Ohio 44127

Attn: James P. Astorino

Via Email: [jastorino@noff.org](mailto:jastorino@noff.org)

---

Robert M. Lustig