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January 1, 2009

Mr. Edward Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 E. State Street
12th Floor
Columbus, Ohio 43215-4213

2009 JAN - 2 A 11: 39
STATE EMPLOYMENT
RELATIONS BOARD

Re: 06-MED-09-1060

Dear Mr. Turner:

I have enclosed the report for the East Cleveland v. IAFF Local 500 Fact Finding. I am not at all sanguine that the report will help settle the matter. The City believes that the Firefighters did not pitch in and help when the City was in fiscal emergency, mainly because of the manning clause in the contract, and in some ways the City wants to punish the firefighters. This factor coupled with all of the issues listed in the report makes this a very difficult situation. The City's well known financial problems just make everything worse. If you have any questions, please contact me.

Sincerely,

Dennis M. Byrne
Arbitrator

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STATE EMPLOYMENT
RELATIONS BOARD

2009 JAN -2 A 11: 39

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 29, 2008

In the Matter of:)
)
The City of East Cleveland)
)
)
and)
)
International Association of)
Firefighters Local 500)

SERB Case No.
~~07-MED-01-0046~~
06-MED-09-1060

APPEARANCES

For the Union:

Jim Astorino, President NOFF
Michael Celiga, President Local 500
Richard Razek, Vice President Local 500

For the City:

Kenneth Adams, City of East Cleveland Senior Service Director
Almeta A. Johnson, City of East Cleveland Law Director
Michael Esposito, Senior Consultant Clemons, Nelson and Associates

Fact Finder: Dennis M. Byrne

Background

The fact finding involves the members of the East Cleveland Fire Department represented by the International Association of Fire Fighters (IAFF) Local 500 and the City of East Cleveland (Employer). Prior to the Fact Finding Hearing, the parties engaged in numerous negotiating sessions; but they were unable to come to an agreement. The Fact Finder conducted two mediation sessions before the hearing, but the parties still were unable to reach agreement on a new contract and fifteen (15) issues remain on the table: 1) Recognition, 2) Hours of Work, 3) Overtime/Comp Time, 4) Manning, 5) Wages, 6) Uniform/Shoe Allowance, 7) Longevity Payments, 8) Life Insurance, 9) Sick Leave, 10) Duty Exemption & Light Duty, 11) Vacation & Holiday Time, 12) Residency, 13) Miscellaneous Provisions, 14) Part Time Employees, and 15) Discipline.

During the mediation sessions the parties were able to reach closure on a number of issues, but the two sides did not sign TA's on these items because they could not negotiate a final agreement. These issues are 1) Health and Dental Insurance, 2) Definition of Illness, 3) Acting Officer Pay/Promotions, 4) Team Leader, 5) Superintendent Assignments, 6) Training and Safety, 7) Term of the Agreement, 8) Application of Existing Law, 9) Layoff and Recall, and 10) Educational Bonus. In addition, the parties agreed on numerous other issues; and all of these issues are included in the Fact Finder's recommendations by reference.

The City's economic condition is the overarching factor affecting these negotiation. The firefighters wages and benefits are the lowest in the relevant labor market and less than the wages and benefits enjoyed by other East Cleveland employees.

The City contends that it must find savings in the operation of the Fire Department and that it will use some of these savings to fund wage and benefit increases. The major area where savings could be realized is in personnel costs, and the City contends that the current manning clause is the main impediment to achieving operational efficiencies. Therefore, the manning issue is the main issue separating the parties.

A Fact Finding Hearing was held on December 16, 2008. A final mediation effort started at 10:00 A.M. in the East Cleveland City Hall. The formal hearing commenced at approximately 4:00 P.M. and ended at 8:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria 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.

Introduction;

The parties face a number of problems in their attempt to reach a new agreement. The City of East Cleveland is one of the poorest communities in Ohio. Therefore, its ability to raise revenue through taxes is limited. Consequently, the City is attempting to revitalize itself through an economic development campaign. Unfortunately, the problems facing both the national and state economies are affecting municipalities, and East Cleveland is also suffering from the effects of the national recession. Therefore, the City believes that its ability to raise new revenues is constrained by the overall economy, at least in the short run; and the City argues that it must find operating economies within each of its departments in order to make its general fund revenues stretch further to pay for the services that it provides to its citizens.

The City believes that its employees must be part of the budgetary solution and wants to structure its labor contracts to help it meet its operating targets. In some ways the City wants its employees to help fund their raises. For example, the police patrolmen received a four and one-half (4 ½%) wage increase because the parties believed that new technology would increase the operating efficiency of the department and lead to both lower costs and increased revenues. The expectation of the promised efficiencies and higher revenue allowed the City to negotiate a four and one-half (4 ½%) percent general wage increase with the patrolmen.

In a similar way the City wants the firefighters to agree to changes in their contract that will allow the department to operate more efficiently, i.e., at lower cost. Unfortunately, there is no technological panacea available to the fire department; and the City believes that the only way that it can operate more efficiently is by utilizing part

time employees. Therefore, the City made a demand during negotiations that the firefighters change the wording of their contract to allow the City to schedule part time employees to shifts where a full time firefighter was scheduled to work but was unable to report (shift fill).

Under the current scheduling system, when a full time firefighter calls off, another full time employee is usually called into work; and that creates an overtime situation. The City argues that its overtime payments are excessive and need to be reduced. In return for changes in the contract's manning provision, the City agreed to use some of the money not used to pay overtime to increase the firefighters' base wage.

The firefighters rejected the City's position and pointed out that the City had threatened layoffs in 2006, and they (the firefighters) agreed to change the manning provision. Prior to 2006 the contract called for fourteen (14) full time firefighters to be present for each shift. In light of the prospective layoffs, the parties agreed to change the manning provision so that twelve (12) full time and two part time firefighters would be scheduled for each shift. There is some disagreement over the qualifications of the part-time employees, but the parties agree that the system worked fairly well.

In February 2008, the City hired eight new employees from the part-time ranks. However, at the same time the City stopped scheduling part-time firefighters. That is, for approximately one year the complement of firefighters on each shift has been twelve full time firefighters. The union membership believes that the result of their agreement to change the manning article is that there are now two fewer employees scheduled per shift. The firefighters argue that this raises safety concerns and that it has damaged morale; and the Union believes that the City's desire to schedule more part time

employees is simply a ruse to lower the number of firefighters scheduled on each shift. The City disagrees with this contention and states that it desires to raise the complement of firefighters on a shift from twelve to thirteen.

This leads to the second problem facing the parties; there is a complete lack of trust between the Union membership and the City. A labor agreement codifies the agreements between the parties; and the document is the understanding of the parties on the way that they will manage their affairs. In this instance the City, citing financial problems, has unilaterally changed or ignored some parts of the contract. This has led the Union to file numerous grievances and poisoned the atmosphere between the parties.

Furthermore, the City's Senior Service's Director used to work for the Union, and the Director actually negotiated the last contract between the City and Local 500. The union membership knows that the Director understands the contract; and when the document is ignored, the firefighters react negatively. This personal twist on the negotiations has added an unwelcome element to the negotiations. The Director believes that the City Administration is trying to do the best that it can under difficult circumstances. He admits that some of the contract clauses have been ignored, but he argues that the City is trying to serve the public and that all members of every City department must bear part of the burden.

The Fact Finder believes that at least some of the problems with the relationship between the City and the firefighters have arisen because the contract between the parties has not been followed. If there are problems with the agreement, then future negotiations are the place to solve those problems. When the current contract is signed, the Fact Finder urges the parties to live with it to the best of their ability.

The financial and morale problems have taken a toll on the Department and the City. The City hires new firefighters and trains them at substantial expense. Often after the firefighters are fully trained, they leave East Cleveland and go to work for another fire department. There are two reasons for this. First, other departments pay more for the same work. Second, the morale in the department is so low that the firefighters believe that the grass is always greener somewhere else. The City's does not have the ability to raise the pay of the firefighters to the level paid in other fire departments. However, both parties can constructively address the morale problems that plague the relationship.

There is another problem that needs to be addressed. For reasons that are not clear, the parties have developed a pattern of not filling vacancies in the officer ranks of the Department. Instead, the practice seems to be that firefighters and lower ranked officers fill the more senior ranks on a rotating basis. Therefore, there is a lack of continuity in the leadership in the Department. However, the current process does allow individuals throughout the Department to supplement their income by performing the duties of another position and receiving pay for those duties.

The parties recognize that this system is not optimal, and the City has tried to address the problem by proposing a rank-restructuring plan. The plan would lead to fewer ranks, but the City has argued that it would actually increase the promotional opportunities within the Department and stop the revolving door in the officer ranks. In addition, the City argues that the plan would save money and increase efficiency. The Union objected to the restructuring because the City was unwilling to use the savings from the plan to supplement the wages of its membership. That is, the Union believes that a major change in the way the Department is run should be beneficial to both parties.

The Fact Finder urges the City and the Union to find a way to find the most qualified person available to fill the position of Fire Chief. The person who becomes Chief fills a boundary position. He/she must be the chief advocate for the Department in its dealings with the City Administration. The Chief is the person who leads. At the same time, the Chief is also a member of the City Administration and must work with other Department heads and the Mayor. It is a difficult position, but the firefighters and the City must find a capable person to lead the Department during the coming years. This is especially true when the City faces trying times.

Finally, the parties must take stock of their relationship. Because of the problems mentioned above and perhaps other issues, the parties have developed an “us v. them” attitude. This is a kind of dry rot that is eating away at the fabric of the Department. Both sides must find a way to realize that they are in the same boat together. The City does not benefit by training firefighters for other jurisdictions, and the firefighters do not gain by maintaining a status quo that is defined by the number of grievances that it files against the City.

Issue 1: Article 3: Recognition

City Position: The City desires to change the verbiage of Article 3, but leave the meaning the same.

Union Position: The Union wishes to maintain the status quo.

Discussion: There was little discussion of the issue. The City desires to “clean up” the language of Article 3 because it believes that the current language is unwieldy and not grammatically correct. The Fact Finder believes that the language proposed by the City is unobjectionable.

Finding of Fact: The City's proposed language clarifies the meaning of Article 3.

Suggested Language: The City's suggested language shall replace the current language in Article 3.

Note: The City proposed a restructuring of the department's officer ranks to make the officers more responsive to the needs of both the firefighters that they supervise and the City. This restructuring was discussed at great length and is a reasonable response to the revolving door of acting officers that is currently in place in the Department. Without going into a long discussion of the issue (it was discussed for hours during the mediation sessions), the Fact Finder is recommending that the restructuring be put in place according to the discussions between the parties. That is, there will be four (4) Captains, nine (9) Lieutenants, and then the firefighter ranks. The Fact Finder is not recommending any of the possible scenarios where newly hired employees are either paid less than current employees or take longer to progress to the rank of First Grade Firefighter.

Issue 2: Article 7: Hours of Work/Work Assignments

City Position: The City's demand is for changes in Sections 4 and 5 of the Article. These changes would allow the City to reschedule firefighters to other duties with minimal input from the Union. The City is also proposing language changes to other sections of the Article. The City contends that these language changes are minor and would not change the meaning of the sections in question.

Union Position: The Union is demanding that Sections 2 and 3 of Article 7 be deleted from the contract.

Note: Both parties reject the other side's proposals on this Article.

Discussion: The substantive changes in the Article consist of the Union's demand that Sections 2 and 3 be deleted from the contract. These sections concern scheduling of fire department personnel to the Fire Prevention Office and reassignment of personnel from the Fire Prevention Office to fire suppression duties. The testimony on this issue was contradictory. The Union claims that the two sections relate to an experiment about staffing the fire prevention position and that the experiment did not work. The City claims that the system in place works fine and that it has not had problems with either section. The record does not show that the sections in question are so onerous to either side that the current language should be changed.

With regard to Section 4, the Union claimed that the membership did not want to be assigned to a "Rover" position. However, the City stated that the Captain assigned to the "Rover" position often preferred the reassignment to his regularly scheduled position. The City also testified that the "Rover" position allowed it to utilize the fourth captain's slot in the department. That is, acting as a "Rover" gives the fourth Captain a reasonable work load and allowed the City to somewhat manage overtime use by assigning the Captain to fill in for other firefighters whenever and wherever an extra person was needed within the Department.

The City's proposed changes to Section 5 are more problematic. The City is proposing changes that according to its logic give it the flexibility it needs to run the fire department in an economical manner. These changes are designed to allow the City to move firefighters to different shifts with little or no input from the affected firefighter and/or the Union. The City will be able to change assignments based on "operational needs." There is no definition of what constitutes an operational need.

The Fire Department (City) has a scheduling practice and that practice allows fire department personnel to have some certainty about their shift assignments. The City's proposed changes to Article 7 could negate the entire concept of shift schedules. The City's language would allow it to change a firefighter's shift with no (little) consultation. The City claims that its proposed changes are necessary in order to make the Department operate more efficiently and cut down on the amount of overtime earned by the firefighters. However, the proposed changes are so sweeping that the concept of shift assignments would be seriously eroded. The Fact Finder understands the City's concern of overtime use. However, in this instance the City's proposed changes in the contract are too broad to be accepted.

Finding of Fact: Both parties suggested changes to Article 7, but neither proved that the current language was creating problems for the department. The current language gives the City some operational flexibility and affords the Union some input of proposed schedule changes.

Suggested Language: Current Language

Issue 3: Article 8: Overtime/Compensatory Time

City Position: The City is proposing language that will change the way that overtime is calculated by changing the definition of hours worked. In addition, the City is proposing language that would change the way that compensatory time is liquidated.

Union Position: The Union rejects the City's demands and wishes to maintain the status quo.

Discussion: This issue illustrates the differences in the parties' positions with respect to overtime use. The City argues and presented information to show that overtime use spiked in calendar year 2007. However, the City was using part time employees in 2007, under the agreement signed with the Firefighter's Union in 2006. That agreement cut the number of full time employees per shift from fourteen (14) to twelve (12). In addition, the City was allowed to schedule up to two part time employees per shift. Unfortunately, this change in the manning practice did not save money on overtime. The reason is that in most overtime situations, a part time employee was not readily available on a timely basis. This led the City to fill overtime positions with full time employees. That is, the full time complement of firefighters was reduced and part time employment was authorized, but the amount of overtime going to full time employees increased. The Union argues that the answer to the part time use problem is to hire more full time employees and staff at a realistic level.

The City looking at the same data comes to an entirely different conclusion. The City argues that the reason that the part time experiment did not work as planned is because the scheduling inflexibility built into the contract does not allow it to use part time workers efficiently. The City wishes to have the flexibility to schedule more part time employees, and it is trying to change every article in the contract that deals with scheduling to give it maximum flexibility.

The Union objects to the City's proposals and believes that the City is trying to gut the current scheduling practices within East Cleveland. Moreover, the Union continues to argue that the real problem is that there are not enough full time employees scheduled per shift.

The City proposes to change the definition of overtime to FLSA v. non-FLSA overtime. A main reason is that by making this change the City can change the way that the base rate used in the calculation of overtime is computed and delete some of the hours currently charged as time worked from the definition of hours worked for the calculation of overtime. For example, the City wants to delete vacation hours from the definition of time worked because this will reduce overtime hours. In addition, it wishes to delete longevity and educational bonus payments from the definition of the base rate used to calculate the rate paid for overtime because it will reduce overtime cost.

The Union objects to these proposals because both work to its detriment. The City's suggested language would reduce the number of overtime hours worked, and the change in the calculation of the base rate would reduce the hourly rate applicable to overtime. The Union sees the City's proposals as a way to cut the take home pay of its membership even though the East Cleveland firefighters are the worst paid firefighters in the local labor market.

This is an example of equal and competing interests. Both sides' positions can be justified depending on how the problem is viewed. The City is trying to provide fire suppression and EMS services to the citizens of East Cleveland in the face of financial problems. The firefighters are trying to raise families and make ends meet in the face of very low pay for their efforts compared to all other jurisdictions. There is no villain in this drama.

The Fact Finder agrees that the definition of hours worked which includes sick leave and vacation leave seems generous, but the standard definition of hours worked for the calculation of overtime in fire contracts usually is that all hours paid count toward

hours worked. The East Cleveland contract is somewhat less generous than many other contracts in this respect because sick leave hours do not count as hours worked. The change being suggested by City, i.e., vacation hours do not count, would make East Cleveland an outlier in this respect. Therefore, Fact Finder is recommending no change in the way that the hours used to compute overtime is calculated. However, in order to try to save the City some overtime cost, the Fact Finder is recommending that longevity and educational bonus payments not count in the base rate for the calculation of overtime cost for contractual overtime.

Finding of Fact: The overtime cost calculations for the East Cleveland Fire Department are standard in fire contracts throughout the relevant labor market.

Compensatory Time:

City Position: The City wants to change the way that compensatory time is paid. The City demand is that compensatory hours not count as hours worked in the calculation of overtime.

Union Position: The Union rejects the City's demand and wants to retain the status quo.

Discussion: The City's position is that compensatory time does not count as hours worked in the calculation of overtime hours. Compensatory time is future time off for current work. That is, rather than pay overtime, an employer will give the employee time off sometime in the future. Usually the time off is given on an hour for hour basis and the use of comp time was a way for the employer to avoid paying overtime.

Comp time must be redeemed however, and many employers found that the accrued liability was more onerous than simply paying the overtime when it was earned.

Because comp time is earned in lieu of an overtime payment, but credited on an hour for hour basis; it usually counted as hours worked for the calculation of overtime when it was used. This is the way the system works in East Cleveland.

Finding of Fact: The way that comp time is used and credited in East Cleveland is standard within the relevant labor market.

Suggested Language: Current Language

Issue 4: Article 9: Safety Manning

City Position: The City's position is that manning is a permissive subject of bargaining and as such, it cannot be bargained to impasse.

Union Position: The Union rejects the City's contention and desires to maintain the status quo.

Discussion: The City placed two court decisions and six (6) Fact Finding or Conciliation as exhibits that it claimed buttressed its position on this issue. The City claims that the result of this analysis in these documents is that manning is a permissive item and cannot be bargained to impasse. The Fact Finder has reviewed all of this documentation and finds that most are not germane to the present situation. However, the Fact Finder agrees that manning is a permissive item of negotiations; but once a permissive item is bargained into a contract, negotiations over that item must continue. This proposition is accepted law and the Court in the *Youngstown* decision cited by the Employer wrote:

The Employer is not required to bargain on subjects reserved to the management and direction of the governmental unit *except* (emphasis added) as (they) affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.

In other words, if the employer agreed to the insertion of a permissive item into the contract, that item must continue to be bargained over. The City claims that it cannot be bargained to impasse, but that is an assertion. The Court does not say that. Rather, the court makes clear that even though ORC 4117 has seemingly conflicting strictures regarding collective bargaining issues, once an item is inserted into a contract, provided that the item is not a prohibited item, it cannot simply be removed.

The City agrees to this and argues that it is negotiating over the removal of the manning requirement. The City's position is that it is fulfilling its requirement by talking to the Union. This is not enough; the Union negotiated a manning agreement into the contract at some time in the past, and that agreement is binding. The City can attempt to negotiate the item out of the agreement as part of a quid pro quo, but it cannot just delete the item from the agreement.

The City's exhibits also include a number of Fact Finding and Conciliation Reports. All of those documents contain recommendations about manning provisions. Not surprisingly, the recommendations cited find that manning provisions are a permissive item; and the Neutrals involved in these cases recommend against a manning clause. The Union presented a Conciliation Report by Conciliator Graham that took the opposite view. The current Fact Finder agrees that manning is a permissive item, and if the Union was attempting to insert a manning provision into the contract, the Fact Finder would recommend against the clause.

However, in this instance the article in question has been in the contract for many years and has become part of the fabric of the parties' relationship. To recommend that

the clause be removed from the contract with no quid pro quo would fundamentally change the relationship. In this instance, that does not seem warranted.

These negotiations are between a public employer and a non-strike unit, and the parties are under the dispute resolution procedures outlined in ORC 4117. That means a Fact Finder and/or a Conciliator can make recommendations to modify an existing contract clause. The Fact Finder recognizes that the City of East Cleveland faces financial pressure. However, the Fact Finder also recognizes that the Union believes that the City is trying to replace the Union membership with part time employees. Consequently, the Fact Finder is not recommending deletion of the manning requirement, but is recommending that the manning provision be reduced by two full time positions and that the City should be allowed to use part time employees in place of full time firefighters. That is, the full time compliment of firefighters per shift is reduced to ten (10) and the City can use up to three (3) part time employees per shift.

If the City is able to schedule in such a way that vacation time, call offs, etc., (shift fill) are filled by part time firefighters, then the cost of providing services may fall. However, if the cost of overtime rises, this would indicate that the shift is undermanned and overtime costs are due to a lack of available manpower. Moreover, if the City simply tries to run a shift with eleven (10) firefighters, then its contention that it needs more part time employees will be undermined. It should be iterated again at this point that the City stated that it believes that thirteen (13) firefighters are needed to meet the staffing needs of each shift.

Finding of Fact: The manning article is a long-standing agreement between the parties and is valuable to the union membership. Without a quid pro quo of equal value, the Fact Finder does not believe that it should be deleted from the contract.

Suggested Language: Article 9 Safety Manning

9.01 The employer agrees to maintain, on a daily basis, a minimum Safety Fire Fighting Force of ten (10) on-duty fire fighters, including officers. If sufficient personnel are not available to meet the minimum staffing requirements, fire fighters will be recalled on overtime to maintain the ten (10) minimum safety-manning requirements. The on-duty fire fighting force does not include staff personnel such as the Fire Chief, or the Fire Prevention Officer.

9.02 The City may hire part-time (non bargaining unit) fire fighters. The City may utilize up to three (3) part-time firefighters per shift per day. All part-time firefighters will have certifications commensurate with the minimum requirements for permanent employment by the City of East Cleveland.

Issue 5: Article 11, Salaries

City Position: The City is offering one (1.0%) in the current year of the contract and two (2.0%) percent in the next contract year.

Union Position: The Union is demanding four and one-half (4 ½%) in the current year of the contract and four (4.0%) in the next contract year. In addition, the Union demands that Paramedic Pay be increased by two (2.0%) in the current contract year.

Discussion: It must be noted that the parties agreed on a three-year term for the contract. The current contract will cover calendar years 2007, 2008, and 2009. The parties also agreed to a wage freeze in the first contract year. Therefore, the parties' positions on the wage issue relate to calendar 2008 and 2009.

At the point that economic issues are discussed during most fact-finding hearings, the City Finance Director presents evidence on the financial condition of the city. The Union always cross-examines the Finance Director and often makes its own financial

presentation. That was not done in this case because both sides agree that East Cleveland's financial picture is bleak. While the City's representatives offered a number of exhibits on the City's finances, there was little discussion of East Cleveland's overall economic condition.

As a result of the City's financial problems, the Union based its entire presentation of the concept of internal parity. Essentially, the Union demanded the same wage and benefit levels negotiated by the police officers. The City rejected this approach and claimed that the police division had found ways to increase the funds coming into the City's coffers and those funds were used to increase the police department's budget. Consequently, the City wanted the firefighters to find ways to either 1) increase the revenues flowing into the department or 2) find ways to make the department more efficient and lower costs. The City argued that it would fund wage and benefit changes out of the savings generated within the Fire Department.

The City does not believe that the Fire Department can find ways to increase revenues to any great extent and concentrated on finding ways to increase the efficiency of the Department. Because most of any budget goes to pay for labor, the City zeroed in on the labor cost of running the fire service and argued that overtime costs were out of control and that was caused by the manning article in the contract. The City hammered away at manning, and that was the major stumbling block to reaching an agreement because the Union would not agree to further cuts in the full time complement of firefighters on each shift and an increase in the number of part time employees in the Department. The City believes that the intransigence of the firefighters in helping the

City stretch its revenues is the reason that the wage and benefit offers to the firefighters are less than the amounts offered to the police officers.

The Fact Finder is not sure that this is correct. An examination of the data presented by the City does show that overtime spiked in 2007. However, the firefighters testified that spike was due to the fact that there were not enough full time firefighters assigned per shift; and as a result of the under manning, the department often had to call firefighters into the stations and pay these officers call-in pay. According to this logic the City would pay less overtime if it scheduled more full time personnel. Of course, hiring more full time employees would increase the Department's budget, which is what the City is trying to avoid. Nonetheless, there is some truth to both parties' positions.

The situation is complicated by the fact that the City's data show that the overall cost of running the fire service has only increased by a total of 3.4% from 2003 through 2008 ($4,074,000 - 3,940,000 = 134,000 / 3,940,000 = 3.4\%$). This amounts to approximately .6% per year. This does not indicate that the Fire Department is a source of waste. While the approximately four million (\$4,000,000.00) dollars that the City pays to provide fire suppression/EMS services may be too much for the service actually provided to the citizens of East Cleveland; the data do not paint a picture of a department that is overspending on a year-to-year basis.

These data present a dilemma for a Neutral attempting to make a wage recommendation. It is noteworthy that after the Department hired more full time employees, the use of overtime dropped precipitously. It appears that overtime use for 2008 will be approximately forty (40%) lower than overtime use for 2007. It is not clear that overtime is the problem. Rather, the problem may be the overall staffing level of the

Department. The City will have to decide on the optimal number firefighters on each shift and in the Department as a whole. During the mediation effort, the City's representatives stated that thirteen (13) firefighters on each shift was a workable number.

However, the City may be faced with a situation where it will have to decide if it wishes to continue to offer the same level of service to the citizens of East Cleveland. The City's demand to hire part time employees and cut the complement of full time employees on duty per shift will only ameliorate the situation if part timers are 1) cheaper and 2) if overtime does not rise dramatically. However, the last year that the City used part time employees was the year that overtime rose dramatically.

The City also testified that it was having trouble hiring and maintaining firefighters because it paid wages and benefits that were very low compared to surrounding areas. It is hard to see how a wage offer of one (1.0%) percent per year will help solve that problem. Finally, the internal comparable shows that the police department received four and one-half (4 ½%) percent in calendar 2007. Therefore, the Fact Finder believes that the firefighters should also receive four and one-half (4 ½%) percent for calendar year 2007.

The City's offer would continue to cause the firefighters real incomes to drop. The East Cleveland firefighters will slowly be forced to leave the city because of economic necessity. The Fact Finder understands that this recommendation may force the City into an uncomfortable position. However, the firefighters deserve some reasonable wage increase rather than slow strangulation. It is unreasonable for the City to believe that it is equitable to pay other groups of City employees significantly more than the fire department personnel.

Paramedic Pay:

City Position: The City wishes to maintain the status quo on this issue.

Union Position: The Union demand is for the Paramedic Pay to double from two (2.0%) percent to four (4.0%) percent.

Discussion: The discussion mirrors the discussion of the wage issue. The data show that the paramedics in East Cleveland are the lowest paid paramedics in the relevant labor market. The Union demand would increase the paramedic pay to rank the paramedics employed by East Cleveland into the bottom third of all paramedics. If this data were presented in a City with more financial resources than East Cleveland, the Fact Finder would recommend acceptance of the Union's position. However, in this instance the Fact Finder is recommending that the paramedic bonus payment be increased by one (1.0%) percent.

The suggested raise will only place the East Cleveland paramedics on the bottom rung of the pay scale. Moreover, the City of East Cleveland must be able to entice paramedics to work in the City. Hopefully an increase in the paramedic bonus will help the City in its endeavors to hire and retain employees.

Finding of Fact: The data presented by the City and the Union show that the members of the East Cleveland Fire Department are the worst paid firefighters and paramedics in the area. The firefighters' relative rank on the pay ladder (paramedic pay ladder) plus internal parity (equity) considerations require a raise equal to the amount given to the police officers.

Suggested Language: The pay scale on page 7 of the current contract shall be amended to show a four and one-half (4 ½%) percent increase in the base wage for calendar year

2008. The parties agree to reopen negotiations on wages for 2009 no later than June 1, 2009; and they agree that wages for the reopener shall be retroactive to January 1, 2009.

Note: Section 3 of the wage article remains in effect and each firefighter receives a dispatching payment of fifteen (\$15.00) dollars per week.

Issue 6: Articles 12 and 13 (Uniform/Shoe Allowance)

City Position: The City objects to the Union's proposals on these issues and requests the status quo. The City did indicate a willingness to change the current system of payment to the firefighters in the form of a check to a "quartermaster" type system.

Union Position: The Union demand is for an increase of \$400.00 in the uniform allowance and a \$100.00 increase in the shoe allowance.

Discussion: The parties agree that the uniform/shoe allowance has not increased for over ten (10) years. Therefore, the allowance is not large enough to adequately recompense the firefighters for their uniform needs. If external comparability were an issue in these negotiations, East Cleveland would be at the bottom of any comparables list. Moreover, the firefighters testified and the City's representatives grudgingly agreed that newly hired firefighters did not receive a full set of new turnout gear. The City stated that it furnished used turnout gear because the cost of new gear was prohibitive. The Fact Finder notes that the City's proposed language for this article states that the City will provide a full uniform for all newly hired employees. This language does not imply and/or mean that the gear will be used.

During negotiations, the City offered to raise the uniform allowance to five hundred (\$500.00) dollars. This is less than meets the eye because the current allowance

is four hundred (\$400.00) dollars for uniforms and one hundred (\$100.00) dollars for shoes, i.e., five hundred (\$500.00) dollars. Because the City wishes to collapse Articles 12 and 13 into one article, the City is offering the same amount that it currently offers. The City argues that it cannot afford to raise the clothing allowance if the firefighters will not agree to changes in the manning provision that will allow the City to save money on overtime use.

The Fact Finder believes that the current allowance is inadequate in every way. The cost of everything has risen over the last ten years, and uniforms and specialized equipment is no exception. The City's argument that it cannot afford the Union's demand is unreasonable. The City has decided to have a fire department for the safety of the citizenry, and it must make a reasonable effort to provide the equipment that its firefighters need. At the same time, the Fact Finder is mindful of the financial condition of the City. Therefore, the Fact Finder is recommending that the allowance be increased to seven hundred (\$700.00) dollars. The Fact Finder also notes that the police department has a clothing allowance of one thousand and twenty five (\$1,025.00) dollars. However, that allowance has a two hundred and fifty (\$250.00) dollar payment for a firearm. Therefore, the clothing allowance portion of the payment is for eight hundred and twenty five (\$825.00) dollars. The Fact Finder's recommendation closes the gap between the police unit and Local 500, but parity between the units is not achieved.

Finding of Fact: The clothing/shoe allowance in East Cleveland is substandard by any measure of external parity and is also is substandard when compared to other City bargaining units. The suggested increase will not change the fact that the East Cleveland

firefighters have the lowest uniform allowance within Cuyahoga County and the surrounding area.

Suggested Language: Article XII Uniform Maintenance/Shoe Allowance

12.01 The annual uniform/shoe maintenance allowance shall be seven hundred (\$700.00) dollars, payable in two equal installments of three hundred and fifty (\$350.00) dollars.

Eligibility for the payment of such installment shall be based upon a members' employment in the classified service, Division of Fire, on the dates of certification. The dates of certification shall be May 31st and November 30th of each year. The payments shall be made in June and December of each year.

Note: The Fact Finder is recommending that Articles 12 and 13 be collapsed into one combined Article 12.

Issue 8: Longevity

City Position: The City has proposed no changes to the longevity schedule except a clarification that longevity payments only go to individuals who work in East Cleveland.

Union Position: The Union demand is for parity with the police units.

Discussion: The discussion on this issue is similar to the discussion on the wage scale.

However, in this situation the police contract specifies a longevity scale that pays the officers more and has shorter time limits for earning increased longevity payments.

There seems to be no reason for this disparity, except the Employer claims that there is a need to make the Fire Department more efficient and keep costs down. The Fact Finder understands the City's position, but ultimately the City must decide if it wants to provide

fire protection/EMS services to the citizens of East Cleveland; and if it does, then it must pay a living wage.

Finding of Fact: The current longevity scale is deficient in both time needed to receive a payment and the amount of payment compared to the police officers. However, in recognition of the City's financial condition, the recommendation will be only to correct the inequity in the accrual rate.

Suggested Language:

Longevity

<u>Years of Service</u>	<u>Entitlement</u>
1 through 4 years	\$275.00
5 through 9 years	\$825.00
10 through 13 years	\$975.00
14 through 19 years	\$1,125.00
20 years of more	\$1,325.00

Issue 10: Article 18 Life Insurance

City Position: The City wants to maintain the status quo on this issue.

Union Position: The Union demand is for parity with the police officers' contract on this issue. That is, an increase in the amount of life insurance from thirty thousand (\$30,000.00) dollars to fifty thousand (\$50,000.00) dollars with the premium fully paid by the City.

Discussion: This is another issue that is not of either major importance or cost to the City. However, the City argues that given the fact that the firefighters are not willing to change the manning article to allow operational efficiencies, that it does not have the ability to meet the Union's demand.

Public safety employees almost always have similar amounts of insurance. Parity between units is often the way that different bargaining units frame their demand on this

issue. The reason is that public safety workers have dangerous jobs; and unfortunately, the insurance is sometimes necessary. In this case, the police officers contract is superior to the firefighters. Moreover, the cost of a term life insurance policy is minimal in terms of the overall budget for a public employer. This is true in this case, even given the financial condition of East Cleveland.

Finding of Fact: The Public Safety forces within a City should have similar life insurance policies because they face similar hazards in their jobs.

Suggested Language:

The City at no cost to the employee shall provide a Life Insurance Policy for each bargaining unit member in the amount of Fifty Thousand Dollars (\$50,000.00).

Issue 11: Article 19 (Sick Leave)

City Position: The City has undertaken a complete rewrite of the existing sick leave article based on ORC 124.38. In addition, the City is demanding that the sick leave accumulation formula be changed to lessen the number of hours of sick leave accumulated by the firefighters from two hundred and eighty eight (288) hours per year to one hundred and forty four (144) hours per year. Finally, the City has proposed moving some sections of the current sick leave article into an Injured on Duty article.

Union Position: The Union demands the status quo on this issue.

Discussion: The main difference between the parties is the sick leave accumulation rate currently in the parties' labor agreement. The contract states that each firefighter shall receive one sick day per month of service. Therefore, a firefighter can accumulate two hundred and eighty eight hours of sick leave per year (12 x 24 = 288). Other city

employees accumulate sick leave at a rate of four and six tenths hours pre pay period. The City pays its employees biweekly; and therefore, most City workers receive one hundred and twenty sick leave hours per year ($4.6 \times 26 = 119.6$). This amounts to three weeks of sick leave per employee.

The City believes that the firefighters receive an unusually high number of sick leave hours and that the figure should be adjusted. In general, the City follows the ORC when making its calculations, and its proposed language is similar to both the ORC and the contract recently negotiated with the police department. The City claimed that the police department contract should be followed in this instance, i.e., the City made an internal parity argument in defense of its position on this issue.

The Fact Finder believes that the City's position on this issue has merit. This is especially true given the fact that there is a separate Injury on Duty Article proposed by the City to account for the problems suffered by a firefighter in the line of duty. However, the Fact Finder also notes that there was no testimony about any abuse of sick leave and that the buyout provision in the contract mirrors the ORC language on the issue. Therefore, the accumulation rate of sick leave does not have any real impact on the City.

Nonetheless, if there is a change in the buyout provision negotiated in the future, then the number of hours that a firefighter can accumulate may become a problem. Moreover, the accumulation rate probably insures that every retiring firefighter receives the maximum buyout regardless of the number of days that he/she was ill. This might have some marginal impact on the City's finances. However, that impact would be minor.

The Fact Finder is recommending acceptance of the City's proposal on this issue. One hundred and forty four (144) hours of sick leave is equal to six (6) full twenty-four (24) hour days. This is equal to approximately three full weeks of work for a twenty-four (24) hour schedule. This is reasonable given the hours of sick leave accumulated by other City employees.

The City also demanded some other changes to the article. The City argued that its changes were in accord with the ORC and the police contract. The Fact Finder is not recommending two proposed changes that are not found in the ORC. Specifically, the last sentence in the new Section 10.2 should have a period after the word family and the phrase "where the employee's absence in reasonably necessary" shall be deleted. That wording is so imprecise as to be meaningless. In addition, the proposed Section 10.5 is not recommended for inclusion into the contract.

Finding of Fact: The sick leave accumulation language found in the current contract is overly generous.

Suggested Language:

The City's proposed new language for the sick leave article is recommended for inclusion into the contract with the exception of the changes listed above.

Issue 13/14: Article (New) Injured on Duty Leave

City Position: The City has crafted an Injury on Duty Leave Article from parts of two other articles that relate to injury on duty. In addition, the Employer proposes that a light duty provision be added to the contract.

Union Position: The Union objects to some portions of the new light duty provision.

Discussion: The City has rewritten the language of the current Article 19 and part of Article 14. The new Article has four sections. There was little discussion of sections 1, 2, and 3 because these sections are either copied verbatim from the existing contract or the Union agreed with the City's proposal. Section 4 concerns light duty assignments, and there was some discussion on this section.

The City proposes to pay light duty assignments at seventy-five (75%) percent of the firefighter's base rate. This is a change from the current contract that pays an injured firefighter at one hundred (100%) percent of his base rate. The Union objects to the fact that an injured person who is returned to duty must work for less than his base wage. The City argues that it is more than an injured worker would receive from the Bureau of Workers' Compensation, and that it takes into account that the employee is not performing all of his duties.

The Fact Finder cannot accept the City's argument on this issue. An injured worker who is returned to light duty is working for the City. He/she was injured in the line of duty, and his family's economic situation has probably already been adversely affected by the injury. In addition, the Employer decides if a light duty assignment is available and if it will be offered to the injured firefighter. If the City wishes to have the firefighter work at a light duty assignment, then the City should pay the employee's base wage rate for the work.

Finding of Fact: The Injured on Duty article is unobjectionable. The light duty pay provision penalizes a firefighter who was injured in the line of duty.

Suggested Language:

Section 4. Light Duty Work after IOD Period. After the sixty (60) working day or thirty (30) calendar day IOD period should the employee still be unable to return to work, the Employer may require the employee to submit to a fitness for duty exam to ascertain whether or not a light duty position may be available. The employee may also apply for lost wages and benefits through the Bureau of Workers' Compensation. Should the fitness exam or physician's certification determine that the employee is capable of performing in a light duty capacity, and the Employer determine that a suitable light duty position is available and that it wishes to offer the position to the employee, an offer of light duty will be made to the employee.

The light duty position will be compensated at the employee's regular hourly rate. The employee will decide whether he desires to accept the employer's offer of light duty. Nothing in this article shall obligate the Employer to offer or create a light duty position for an employee who is unable to return to work after the IOD period. Light Duty positions are intended to be temporary in nature.

Light duty assignments shall ordinarily be limited to daylight hours or to the employee's normal duty shift. Other assignments may be made on an emergency basis. Under no circumstances are such other assignments to be used as a means of coercing fire fighters to return to "full duty" before they are fully recovered.

Issue 15: Article 21, Vacations and Holiday Time

City Position: The City proposes no change to the vacation schedule and wishes to reduce the number of holiday hours accumulated by the members of the fire department.

Union Position: The Union demands that its membership have the same vacation schedule as the police officers, and it rejects the City's demand on holiday hours.

Discussion: The Union bases its position on internal comparability. The police officers negotiated a vacation schedule that differs from the firefighters' vacation schedule in two ways. The police contract allows officers with twenty (20) years of service to have six (6) weeks of vacation. The firefighters can only earn five (5) weeks of vacation. In addition, vacation time accrues at a faster rate in the police department when compared to the fire department. For example, a firefighter receives four (4) weeks of vacation with fourteen (14) years of service. A police officer receives four (4) weeks of vacation with ten (10) years of service. The firefighters believe that internal parity (equity) considerations necessitate an increase in their vacation schedule.

The City rejects the Union's demand. The City repeated its assertion that the police officers helped pay for their wage and benefit demands by increasing the efficiency of the department. The City argues that unless the firefighters find some way to increase efficiency and/or lower costs within the fire department, there is no way that it can fund the Union's proposals.

The Fact Finder is sympathetic to the City's arguments. However, the argument that the firefighters should find ways to pay for any increased benefits in their contract can only stretch so far. The police department is enhancing its revenues by the use of a technological breakthrough that is unavailable to the fire department. The City demands that the Union accept manning changes within the department as a quid pro quo for its economic demands. That is, the City argues that because the police officers have a technology available to them that can lead to higher revenues in the police department,

they are able to negotiate richer contract clauses than the firefighters. This is not reasonable. The fact that the Police Department has access to technology unavailable to the firefighters cannot be used as a justification for paying the firefighters substantially lower benefits than the police officers.

Internal comparability is a factor involved in most if not all contract negotiations. Comparability, both internal and external, is a factor that neutrals must use in formulating their opinions according to ORC 4117. It is hard to understand how vacation schedules can be totally different among different bargaining units of the same employer. Ultimately, equity considerations will force vacation schedules toward parity. In this instance, the City's position that all other contested clauses are dependent on the firefighters accepting a change in the manning requirements now in place cannot be sustained.

Note: The Fact Finder is not recommending full parity at this time because he is aware that the City is facing financial difficulties. This means that some inequity is being recommended for the current contract, and the recommended scale does have a lower cost to the City than full parity with the police unit.

Finding of Fact: Equity and parity considerations imply that vacation schedules should be similar for employees of the same employer.

Suggested Language:

<u>Years of Service</u>	<u>Vacation</u>
Beginning after 1 year of service	2 weeks vacation
Beginning after 5 years of service	3 weeks vacation
Beginning after 12 years of service	4 weeks vacation
Beginning after 16 years of service	5 weeks vacation

There is a second component to this Article. The City wishes to reduce the hours earned by the firefighters for holidays. Currently, the firefighters receive thirteen (13) hours of holiday time for each of the thirteen (13) holidays paid by the City. The City proposes to change the number of hours paid.

City Position: The City wants to reduce the number of hours paid per holiday from thirteen (13) hours to nine and three fifths (9.6) hours.

Union Position: The Union rejects the City's position.

Discussion: The City bases its position on the fact that other City employees earn eight (8) hours of holiday time, i.e., one shift, per holiday. This implies that most City employees earn one hundred and twenty four (124) hours of holiday time. The firefighters earn one hundred and sixty nine (169) hours of holiday time. The City argues that this is inequitable.

The reason that the hours of holiday time are different for different bargaining units is that the fire suppression firefighters work a twenty-four (24) hour schedule. This means that each firefighter is paid for one half a scheduled turn while other employees are paid for a full turn. The City wants to equalize hours, but the firefighters negotiated an agreement that considers work schedules. However, the trend seems to be to pay firefighters for holiday time more in line with the total hours paid to other employees. The thirteen hours is somewhat high. Therefore, the Fact Finder is recommending that the number of hours paid for a holiday be reduced to twelve (12) hours, i.e., one-half of a twenty four hour shift. This is a marginal change, but it does save the City some money.

Finding of Fact: The payment for each holiday to members of the fire suppression cadre of firefighters is somewhat high.

Suggested Language: (Note: The City's suggested language also states that fire department employees who work an eight (8) hour shift receive eight (8) hours of holiday pay per shift. There was no testimony on this issue. Therefore, the Fact Finder is recommending the status quo for fire department personnel who are scheduled in eight (8) hour time blocks.

Holiday Credit: The City agrees to value each employee's allotted thirteen (13) holidays at twelve (12) hours per holiday. (See note above)

Issue 20: Article 41: Residency

City Position: The City's contention is that a Residency Requirement (Article) is not a mandatory subject of bargaining.

Union Position: The Union position is that the contract contains a residency article and that it wants to maintain the status quo.

Discussion: Residency is a hot button issue in collective bargaining at this time. Many jurisdictions have passed legislation mandating a residency requirement for their employees. Unions have been adamant in their assertion that residency is not and should not be a condition of employment. The State Legislature weighed in on the debate and passed legislation that preempted local jurisdictions from passing residency requirements, and many localities sued to overturn the legislation based on the home rule provisions of the Ohio Constitution. The State Supreme Court is currently deciding the issue.

Residency requirements are a two edged sword. Municipalities argue that their employees should live in the place they work. This contention is based on loyalty and economic considerations. Individuals shop and spend in their home community, and

municipal governments believe that economic activity should take place in the local community. In addition, local government employers believe that their employees should be loyal to the place that employs them.

The other side of the coin is that many localities do not have the wherewithal to provide the best amenities and infrastructure for their citizens, and the presence of a residency requirement often is a factor in whether a potential employee will apply for a position in a jurisdiction. In jurisdictions that have trouble recruiting and retaining employees, any negative factor must be considered when deciding on the pros and cons of residency legislation.

The current state of the law is that residency is a mandatory item in negotiations, but that municipalities can pass prospective residency ordinances that preempt negotiated provisions. The rationale for this finding is a fairly tortured ruling in the case of *Siegel v. St. Bernard Firefighters Association, Local 450, IAFF*, 1997 SERB 4 – 21 (CP Hamilton, 11-19-96) by the Court of Appeals of Ohio, First Appellate District, Hamilton County. In that decision the court found that a residency requirement was a mandatory issue of bargaining, but that a valid local ordinance that was duly enacted and that was *prospective* (emphasis added) became effective on the date that a collective bargaining contract expired. The Court's logic on the matter was an attempt to rationalize two disparate pieces of legislation that conflict on whether or not residency requirements are a mandatory issue of bargaining. Essentially, the Court said yes and no. Regardless, the current state of the law in Ohio is that residency requirements are trumped by valid city ordinances. The Ohio Supreme Court will have the last word on the issue.

It would be foolhardy for any Union or local government to change policy at the present time because the ongoing court action could invalidate their actions.

Nonetheless, the Fact Finder believes that the current language contained in the Firefighters' contract is presently illegal and should be removed. However, the Fact Finder is also aware that the City just signed a contract with the Police Officers that contains a residency article. This provision will remain in effect until December 31, 2010. Therefore, the Fact Finder is recommending a "me too" clause on this issue. That is, if the City is willing to negotiate a residency clause with other city bargaining units, then the firefighters should have the same language placed in their contract.

It should also be noted that the City is aware of the problems that its insistence on its position might cause and it offered to "grandfather" all current firefighters to insure that they were not affected by the residency requirement. The City offered this exemption to the current employees in recognition of the fact that for years the contract between the firefighters and the City contained language stating that employees of the City did not have to live in East Cleveland and that it was unfair to require employees who had children enrolled in school, etc., to either forfeit their positions with the City or be forced to sell their homes and move into the City. Therefore, only new hires will potentially be covered by the City's residency ordinance.

Finding of Fact: Current Ohio law makes residency a mandatory issue of bargaining. However, the law also allows a valid local ordinance to supercede a residency article when the contract term is over.

Suggested Language: Article 4: Section Residency

41.03 If any other City bargaining unit has an article in its contract that does not require City employees to live in East Cleveland, the members of IAFF Local 500 shall have the same clause added to their contract.

Issue 21: Article 41 Miscellaneous Provisions

City Position: The City wishes to delete Sections 4, 7, and 8 from the contract.

Union Position: The Union does not object to the deletion of the enumerated sections from Article 41.

Discussion: The Union does object to the fact that the City is trying to rewrite the entire contract. The Union pointed out that the contract had been in force for a number of years and that, in its opinion, there was no need to rewrite every Article. However in this case, the Union does agree that the three sections of Article 41 that the City wishes to delete no longer have any meaning and that the sections in question have no impact on the parties.

Suggested Language: Delete sections 4, 7, and 8 from Article 41.

Issue 24: Article New (Discipline)

City Position: The City is proposing to add a disciplinary procedure article to the contract.

Union Position: The Union does not believe that the contract should be rewritten, but it has no specific objections to the City's proposed language.

Discussion: The proposed language is in accord with ORC 124.34, and the same or similar language is found in many contracts. According to the record of the hearing, the Union suggested changes to the language during negotiations, but did not sign a TA on the issue. There was little discussion of the issue during the hearing.

The Fact Finder also checked the proposed language against the contract between the City and the police officers. The language is similar, and there are only a few differences. Consequently, internal parity is maintained between different City bargaining units with respect to discipline. This is in accord with the contracts in most other jurisdictions that treat various groups of employees similarly with respect to disciplinary actions.

Finding of Fact: The City's proposed language is standard and makes the disciplinary procedure more transparent than the current contract.

Suggested Language: The language proposed by the City in Tab 24 of the evidence book submitted into the record at the Fact Finding hearing shall be entered into the contract.

Issue 25: Article New: Part Time Employees

City Position: The City demands the right to hire part-time employees.

Union Position: The Union did not put forth a position on this issue, but spoke against the City's suggested language.

Discussion: ORC 4117.08 (C1-C9) states that management has the right to direct its labor force. If an Employer does not have a valid agreement that supercedes ORC 4117.08.C, then the Employer can hire, fire, manage, direct, etc., its workforce. In this

instance the contract contains a manning clause, but that clause does not keep the Employer from hiring part-time employees. Consequently, the Fact Finder believes that the City of East Cleveland does have the right to supplement its full-time labor force with part time employees.

The finding that the City has the right to employ part-time employees should not come as a surprise to either the Union or the City. The parties negotiated an agreement that modified the manning article during the term of the last agreement. The City's contention that it needs some way to provide services to the citizens of East Cleveland in a cost effective manner is compelling. Moreover, the Union's often stated assertion that they were not trying to maximize overtime, but rather provide quality fire suppression and EMS services to the citizenry must be taken at face value.

However, the Union is afraid that the City will try to replace full-time employees with part-time employees. In order to assuage that fear, at least somewhat, the Fact Finder recommends that part-time employees be used for shift fill duties. Moreover, while the Fact Finder recommended some modification of the existing manning clause, he did not recommend that it be deleted from the contract. Consequently, the use of part time employees cannot be seen as a backdoor way to get rid of full time employees.

Finding of Fact: The use of part-time firefighters to supplement full-time firefighters is fairly common throughout the relevant labor market.

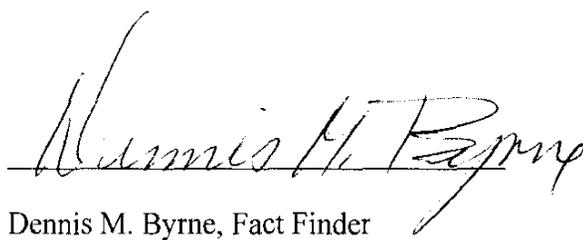
Suggested Language: Issue 23: Article (New)

23.01: The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of East Cleveland and maintain the integrity of fire department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift

strength, avoid overtime, cover time off, cover call offs, meet operational/manning requirements, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) or regularly scheduled hours of bargaining unit members.

23.02: In the event that a reduction in force (layoff) becomes necessary, the Employer agrees that all part-time employees shall be laid off before any full-time employee is laid off.

Signed this 1st day of January 2009, at Munroe Falls, Ohio.


Dennis M. Byrne, Fact Finder