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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
January 2, 2007

In the Matter of:)

The City of Bay Village)

and)

International Association of)
Firefighters Local 1144)

SERB Case No.
06-MED-10-1148

APPEARANCES

For the Union:

Randall Weltman, Attorney for the IAFF
Jim Walts, President, Local 1144
Thomas Boatwright, Local 1144 Bargaining Committee
Christopher Lyons, Local 1144 Bargaining Committee
Kevin Somerville, Local 1144 Bargaining Committee
David Stump, Local 1144 Bargaining Committee

For the City:

Jack Petronelli, Attorney for the City of Bay Village
Gary Ebert, Law Director City Bay Village
Steve Presley, Finance Director City of Bay Village

Fact Finder: Dennis M. Byrne

Background

The fact finding involves the members of the Bay Village Fire Department represented by the International Association of Fire Fighters (IAFF) Local 1144 and the City of Bay Village (Employer). Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions, but they were unable to come to an agreement. The Fact Finder conducted a mediation session before the hearing, but the parties still were unable to reach agreement on a new contract and eight (8) issues remain on the table: 1) wages (including paramedic pay), 2) uniform allowance, 3) holidays, 4) residency requirement, 5) sick leave bonus, 6) mechanic premium pay, 7) driving records, and 8) health care spending accounts. The major stumbling block is the wage issue.

Consequently, a Fact Finding Hearing was held on December 19, 2006. The mediation effort started at 10:00 A.M. in the Bay Village City Building. The formal hearing commenced at approximately 11:30 A.M. and ended at 3:30 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 main difference between the parties is the prospective wage increase for the firefighters. The union membership believes that it is underpaid. The Union presented data that it contends prove that the Bay Village firefighters are among the worst compensated firefighters in comparable cities throughout Northeast Ohio. The City, on the other hand, argued that it reached agreement with the police officers and that agreement set a pattern for all other City employees. Furthermore, the City's representatives stated that it has "pattern bargained" for over twenty-five years, and that the pattern should set wages, etc., for all its unionized employees. The Union vehemently opposes this position. The Union claims that pattern bargaining as practiced by the City means that the first unit that comes to an agreement with the City sets the wage bargain for all employees and, that this is not the intent of ORC 4117. Therefore, before the issues can be addressed, some discussion of both pattern bargaining and the use of data from comparable jurisdictions is necessary.

As in many instances in the public sector, the concept of pattern bargaining was borrowed from the private sector. In the private sector pattern bargaining usually refers to a situation where a large union (the Teamsters) signs an agreement with one small company and forces other employers in the same industry to accept the same terms. In the public sector the concept has come to mean that the wage agreement between one bargaining unit and the employer sets the wages for all the employers' unionized employees.

A conciliation report by David Pinkus from the previous round of negotiations between the parties that discusses the concept of pattern bargaining was entered into the

record. Pinkus lists five (5) standards that a union should consider when deciding whether to challenge a pattern agreement proposed by the Employer. The same criteria give guidance to a Neutral in deciding whether the Union has met its burden of proof in determining whether a pattern should or should not apply in a given instance. These standards are:

1. Does the Employer's position derive from a true pattern?
2. Is the pattern argument an attempt to abolish unique rights and privileges achieved by a bargaining unit?
3. Patterns should not be imposed if they are antithetical to the functions or history of the bargaining unit. Mere inappropriateness is not enough to overcome a practice.
4. A genuine pattern should not be recommended if it ruins the integrity, privacy, or power of a bargaining unit or its chosen representative.
5. An economic offer that is strikingly insufficient to compensate a particular group of employees equitably will not supplant a fair settlement no matter how many other units have ratified the pattern.

The current Fact Finder agrees with the position that a bargaining unit bears the burden of proof in trying to overcome a bona-fide pattern agreement. However, a single agreement with a single bargaining unit within any political jurisdiction is not a pattern per se (see #1 above). Rather, it is a single agreement with one bargaining unit that the employer hopes will become a pattern for all bargaining units. When the majority of bargaining units agree to the same terms, a true pattern emerges.

The use of a pattern argument is an acceptable bargaining tactic for any Employer. However, a pattern argument does not mean that all bargaining units must automatically agree to the same terms as other bargaining units. The National Labor Relations Act and ORC 4117 mandate that an employer must bargain over "wages, benefits, terms and other conditions of employment" with its employees. The first union to sign an agreement is not the proxy for all other unions. Each bargaining unit must be

allowed to present an argument that it has certain unique factors that necessitate that it should be treated differently than other bargaining units.

This does not mean that the idea of a pattern settlement has no meaning. Clearly, the conditions that affect one union within a City are similar to the conditions that affect other units. For example, the City's budgetary situation is the same for all employees. Similarly, the economic outlook, the rate of inflation, etc., are the same regardless of which Union is negotiating with the employer. However, sometimes unique conditions affect one bargaining unit, and this would lead to different contract clauses for different bargaining units within the same jurisdiction. For example, the contract between Bay Village and the IAFF contains a payment for paramedic work. This clause was inserted into the contract because when the first contract between the parties was negotiated firefighters put out fires. Over time, firefighters morphed into Firefighter/Paramedics, and the increased duties of the Firefighter/Paramedic job required the City to increase the firefighters' pay to compensate them for their increased responsibilities.

ORC 4117 lists the conditions that a Neutral must consider when making a wage recommendation. The factors include comparability and other factors normally or traditionally taken into account when making a recommendation. Therefore, any Neutral must consider both comparability and other conditions, e.g., a history of pattern bargaining, when making a recommendation.

The City's position is understandable, and the Neutral is sympathetic to the idea that all employees should be treated the same. However, that idea does not meet the Employer's burden of negotiating with each unit. The Employer can put that position forward and defend it, but every unit must be allowed to put forth reasons why it should

be paid more (negotiate unique contract clauses) than other units. The Employer must consider those arguments and respond to them. In the instant situation it is clear that the firefighters did not give the police officers the right to bargain for them, and that means the Employer must evaluate the Union's wage demands on their merits.

The second point that needs some clarification is the place of "comparables" in a negotiation. The use of data from comparable jurisdictions arises from the language of ORC 4117-9-05(2) which states that a Fact Finder consider:

(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.

This criterion is intended to insure that Neutrals have some objective evidence about job content, job skills, and the value that the labor market places on the job in question when making recommendations.

When the legislature enacted ORC 4117, the parties often selected any jurisdiction that tended to support their demands and ignored any jurisdiction that did not. Neutrals found this shot gun approach inadequate and often selected the jurisdictions that they believed were comparable. Neutrals usually enunciated the reasons that they believed one jurisdiction was comparable to another, and over time the selection of comparable jurisdictions became more consistent. Most neutrals use some or all of the following criteria in making a decision about comparability: geography, size, income, economic base, urban v. rural, workload, etc. While this list is not exhaustive, it does give an indication of the factors have been used to determine comparability. The result is that both sides now often use the same or similar lists of comparables during negotiations.

However, the emphasis placed on comparables data often takes on a life of its own. In general, Unions argue that their membership should not be at the bottom of any comparables list. Management usually argues that there is no reason for it to pay the highest wages and benefits, etc. Therefore, the mean wage (wage increase) of comparable jurisdictions has taken on a special and often unwarranted significance.

Without going into too much detail, the Union's position devolves into an argument that its members are not among the worst employees in the labor market and that they shouldn't be at the bottom of the barrel with respect to wages and benefits in the labor market all other things being equal. Management is therefore faced with a situation where it either accepts the idea that it should pay at least the mean of the wages/benefit distribution of the comparable jurisdictions; or it must argue that its labor force is in some way substandard. This latter argument is difficult to put forth if the Employer wishes to have a good working relationship with its employees.

One unintended result of this overdependence on the "average wage increase" argument is that oftentimes an Employer states that it has an inability to pay the Union's demand but it can afford a lesser amount. That is, "our employees are just as good as any other jurisdiction's employees, but we can't afford to pay your demand." This argument has nothing to do with the "inability to pay" in a technical sense and muddies the water when wages and benefits are discussed during negotiations.

The question is what does comparables data show? In general comparables data set the bounds of the negotiating range. That is, it is unusual that any jurisdiction will be significantly above or below the amount paid for the same work in comparable jurisdictions within a labor market. Absent some unusual factor, e.g., the loss of a major

employer leading to abnormally high unemployment, etc., there is no reason that any employer should be significantly outside the bargaining range for the relevant labor market.

The mean of that range is just one possible point where a bargain may be reached although it has taken on a special significance related to the fact that it purportedly means that the employees in question are at least average. Realistically, almost all contracts have unique clauses that have some special value to the bargaining unit. While more sophisticated presentations attempt to evaluate all the monetary items in a contract to calculate total compensation, even these analyses cannot adequately place a value on a non-monetary item that was bargained into a contract as a tradeoff for reduced wages. Therefore, the dependence on the mean of the wage distribution of comparable jurisdictions as a justification for a wage demand is a misapplication of the idea behind comparability. That is, if there are different clauses in different contracts reflecting different tradeoffs the parties have made in the past, then there will and should be different wage rates in different communities.

One final technical point must be mentioned here. The mean of any distribution is a statistical measure of central tendency. Along with the mean, the standard deviation must also be presented because some deviation from the mean is normal and has no real meaning, i.e., it is simply a reflection of tradeoffs made in the past. For example, there may be an outlier jurisdiction that earns significantly more (less) than all of the other comparable jurisdictions or the comparables data may show a wide dispersion between the highest paid and the lowest paid jurisdictions. This means that there were different tradeoffs during negotiations or that conditions varied in the different jurisdictions

sometime in the past. In these situations, the statement that “We are making X hundred dollars less (more) than the mean of (the distribution of) comparable jurisdictions” makes no sense except as an arithmetic exercise.

Comparables are an invaluable piece of evidence to a Neutral, but differences between the dollar value of wages and benefits paid in one jurisdiction compared to other jurisdictions is simply suggestive of the possibility that the wages paid by the employer are either too high or too low. If a bargaining unit’s wages fall within the range set by the highest and lowest paid units in the relevant labor market, mean wage figures are not and cannot be the single deciding piece of evidence to show that employees are either overpaid or underpaid. To reiterate: comparables data sets the bargaining range; it does not determine exactly what individual bargaining units should be paid.

The current Neutral does not believe that the fact that the police unit settled their contract mandates that the firefighters accept the same wage increase because of pattern bargaining. This is not reasonable and does not meet the strictures of ORC 411. However, the Neutral is also not convinced that the Union membership can simply cite some “comparables” statistics and use dollar differences from a mean number to justify their wage demands. With that as a background, a discussion of the issues will be given.

Issue: Article New: Driving Record

Union Position: The Union rejects the City’s proposal to add language to the contract that delineates possible penalties for a firefighter who has his/her driver’s license suspended.

City Position: The City wants to add language to the contract concerning possible penalties for firefighters who have their driver's licenses suspended.

Discussion: This issue arose because the City's insurance carrier has stated that if a on duty firefighter is involved in an accident while his/her driver's license is suspended, then the City's insurance will not cover the accident. The reason that the City gave for this state of affairs is that an insurance company did not check driving records, and a public safety force officer was involved in an accident while his driver's license was suspended for a DUI conviction. The insurance company was liable and had to pay a significant amount to settle the claim. Consequently, insurance carriers are now checking driving records and refusing to cover individuals whose licenses are suspended.

The City argues that if a firefighter cannot operate a vehicle, then he/she is not able to perform his/her job duties and, therefore, is subject to discipline up to and including discharge. The City desires to put language about this issue in the contract.

The Union is unwilling to add the City's suggested language to the contract. The Union states that there has never been a case of a firefighter operating a City vehicle with a suspended license. Therefore, in the Union's view, the City's proposal is fixing a problem that does not exist. Furthermore, the Union argues that proposing language that might lead to termination without knowing any specifics of the particular situation is unwarranted. The Union believes that the Management's Rights clause of the contract allows the City to implement a policy that would cover the situation of a firefighter working while his/her driver's licenses is suspended. The Union argues that if it disagrees with either the policy or its application, then it can avail itself of the grievance

procedure. For these reasons, the Union argues that there is no need for a new contract provision.

Finding of Fact: The City did not prove that it needed to modify the contract in order to meet the potential problems caused by firefighters operating city vehicles with suspended driver's licenses.

Suggested Language: None

Issue: Article V: Residency Requirement

Union Position: The Union demand is for the residency requirement contained in the contract to be changed to come into conformity with current State Law.

City Position: The City desires to keep the current contract language which mandates that firefighters live within twenty (20) miles of the Bay Village city center in the contract.

Discussion: The reason that this issue arose is that the Legislature revised the ORC and made residency requirements illegal. Therefore, the Union wants the residency requirement in the contract modified to meet the new law. The City argues that the legislature violated the Home Rule Provisions of the Ohio Constitution and, therefore, the Legislature's actions will be (are being) contested in court. Until the Courts rule on the new law, the City wants the current language to remain in the contract. The City also pointed out the police contracts with the City have the same provision and the police did not make any changes to current language when they negotiated their new agreement. Finally, the City stated that once the court challenges were completed, it would follow the applicable law.

This is an unusual situation. The current language in the parties' agreement does not specify that the firefighters live in Bay Village; rather they can live within twenty (20) miles of the city center. This would in some cases mean that the firefighters might live in another county. This is not a usual residency requirement that mandates a public employee live in the jurisdiction that pays his/her wages. Therefore, the situation in Bay Village may be murkier than the situation in many other municipalities.

Regardless of any other fact, State Law has changed; and all contracts must be in conformity with applicable State and Federal Law. Moreover most contracts have a separability clause dealing with exactly this issue. Consequently, the Fact Finder is going to recommend acceptance of the Union's position. However, common sense implies that this is a "six of one, half-dozen of the other" situation. If a firefighter uses the revised language of Article V and moves outside the twenty (20) mile limit and the new law is found to be unconstitutional, then he/she is faced with either moving back toward Bay Village or quitting the fire department. It only makes sense for anyone who is considering moving to wait until the legal challenges over this issue move through the courts. This is especially true given the fact that absent changes in the State Law the Fact Finder would recommend no change in the current language.

Finding of Fact: The contract between Bay Village and the IAFF should be brought into conformity with State Law. However, if the Law in question is found to be unconstitutional, then the Union did not prove that there was any need to change the current language and it should be reinstated.

Suggested Language: Article V: Residency Requirements

5.01 The City of Bay Village and IAFF Local 114 agree to follow applicable State Law with respect to residency requirements. Unless State Law mandates something different, all Fire Fighters shall reside within the City of Bay Village or within a twenty (20) mile radius from the center of Bay Village. If the twenty (20) mile radius enters any city or township, the entire city or township shall be included in the residency requirement.

Issue: Article XI.19: Sick Leave Bonus

Union Position: The Union demands that the sick leave bonus be increased (doubled) in the proposed contract.

City Position: The City rejects the Union's demand, but proposes changing the requirement(s) necessary to earn the bonus.

Discussion: The current sick leave bonus language states that any employee who utilizes twenty-five (25) hours or less of sick leave in a year shall receive twenty-five (25) hours of time off in the subsequent year. The parties agree that the bonus was added as a way to cut the use of sick leave and correspondingly reduce call-in overtime pay for firefighters called in to meet shift-manning requirements. The parties also agree that the clause has not had any noticeable effect on sick leave use. The Union claims that the reason is that the bonus is too low. Therefore, the Union proposes increasing the incentive not to use sick leave.

The City agrees that there is a problem with the bonus because it has had very little effect on sick leave use. During discussions on the issue, the Union stated that one reason that the bonus did not work was that if a firefighter was ill in the beginning of the year, then he/she could not earn the bonus for the rest of the year and that person had no incentive to curb sick leave use. That is, there was no incentive not to use sick leave in

July or August if a person became ill in January or February. In response, the City proposed breaking the bonus into two twelve and one-half hour (12 ½) segments. One half of the bonus could be earned in the first six months of the year and one half of the bonus could be earned in the second half of the year.

The Union's logic on this issue is correct. Assuming that a firefighter misses only one shift (24 hours) because of illness and reports to work on another day where he/she is ill but well enough to work, that firefighter is essentially trading time off today for the same amount of time off in the future. With any discount rate greater than zero, a rational individual would never choose to take the time off in the future, all other things being equal. Therefore, the incentive effect of the current system is minimal.

Both sides agree that the idea behind the bonus is that the City will save money because of a drop in overtime. If that is the situation, then the bonus should act as an incentive not to call off sick when a person is sick enough to call off but still well enough to work. In that instance there should be an incentive to come to work. Obviously a day for day trade is not an incentive. Therefore, the Fact Finder is recommending that the number of hours earned via the incentive be increased to thirty (30) hours. Thirty (30) hours gives the firefighter an incentive to work when he/she is able, but it does not add dramatically to the cost of the bonus. If the bonus still has little impact on the use of sick leave even after the number of earned hours off is increased, then the parties may have to reexamine the idea of a bonus as a way to lower sick leave usage.

The Fact Finder is also recommending that the City's split year system be implemented. While this system might have only a marginal effect on the use of sick leave, it is an attempt to meet the needs of the bargaining unit members who must call off

early in the year and who cannot qualify for any bonus time off because of an illness early in the year.

Finding of Fact: The current bonus payment of a day today v. a day in the future has had little success in curbing sick leave use.

Suggested Language: Article XI: Sick Leave

11.19 Any employee who utilizes twenty-five (25) hours or less of sick leave shall receive thirty (30) paid hours off each year when such employees meet this standard in the previous year. The benefit will be calculated on a semi-annual basis.

Issue: Article XX (New): Mechanic Premium Pay

Union Position: The Union demands that any firefighter designated to work as a mechanic be paid a bi-weekly bonus pro-rata adjustment on his base salary in the amount of one and three quarters (1.75%) percent.

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

Discussion: The City argues that the firefighter who is assigned to work as a mechanic is simply performing his assigned task and that there is no reason to pay a bonus to a firefighter for performing his assigned duties. The Union demands the extra pay for two reasons. First, the Union points out that the City is saving a significant amount by having the repair and maintenance of City vehicles done "in house" rather than contracting the work to a for-profit repair service. Second, the Union also believes that the assignment is outside the usual duties of a firefighter and, therefore the firefighter-mechanic should be compensated for his extra duties.

There is no doubt that the use of a firefighter/mechanic does save the Department time and money with respect to vehicle repairs. It is also true that the firefighter who is working as the Department's mechanic is also performing a job that is somewhat unusual, although not unheard of, for a firefighter. Under questioning from the Fact Finder the firefighter/mechanic admitted that he had the right to refuse the assignment, but that he liked the work and enjoyed making a contribution to the Department.

The Fact Finder does not believe that he has the right to create a new job classification. Therefore, the current situation whereby a firefighter is assigned to work as a mechanic must be viewed as a job assignment. The situation would be different if the firefighter in question did not have the right to refuse the assignment. But, the record shows that he has elected to perform the mechanic's duties in lieu of another assignment. Given the circumstances, the Fact Finder does not believe that the Union proved that there is a need for a bonus payment to the firefighter/mechanic.

Finding of Fact: The firefighter who is working as a mechanic is doing mechanic work in lieu of another job assignment within the fire department.

Suggested Language: None

Issue: Article XIII.03: Holidays

Union Position: The Union demands that the number of holidays paid as time and one-half be increased by two (2) days.

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

Discussion: There was a second minor demand made by the City of the Holiday provision. The City wished to change the list of holidays in Article 13.01 and delete the

employee's birthday and add Martin Luther King Day to the list of official holidays. The Union agreed to this proposal.

The major difference between the parties on this issue is the Union's demand to add two time and one-half holidays to the list of premium pay days in Article 13.03. The Union presented evidence (Union Exhibit #17) that showed the average number of premium paid holidays is seven for comparable jurisdictions. This data also show that the use of premium pay for holidays in fire departments is bifurcated. Bay Village, Westlake, and Fairview pay a premium for very few holidays, while North Olmstead, Lakewood, and Rocky River pay a premium for up to thirteen (13) holidays. The Fact Finder believes that there are no real external comparables on this issue. It is clear that the Unions in some jurisdictions have either traded off another benefit for holiday pay or have been unable to convince the Employer to pay a premium for holidays worked. On the other hand, the firefighters in some other jurisdictions have placed a high value on holiday premium pay; consequently, these contracts contain up to thirteen (13) premium pay holidays.

The testimony on the issue also touched on internal parity with the police department. The parties testified that the police department has the same list of holidays in its contract as the list contained in Local 1144's contract, and that police officers earn a one hundred (\$100.00) dollar bonus for working a holiday. This translates into a possible eleven hundred (\$1,100.00) dollars of premium pay for the police officers. It is also true that most police officers are scheduled to work on holidays because of their three shift schedules. Consequently, on average, a police officer probably receives in the vicinity of eight hundred (\$800.00) to one thousand (\$1,000.00) dollars of holiday pay per year

depending on the number of days worked. Given their twenty-four (24) hour schedules approximately one-third of the firefighters are scheduled on any given holiday and with only five (5) premium pay holidays, a firefighter will work one and two-thirds holidays per year on average. Using the language of Article XXVI (Hours), Article XX (Rates of Pay), and Article XVII (Overtime) to roughly calculate the amount earned by a firefighter at time and one-half shows that the average firefighter earns significantly less holiday pay per year compared to a police officer.

Consequently, the Fact Finder believes that the Union proved that the firefighters are not treated comparably with other City employees with regard to holiday pay. Therefore, the Fact Finder is recommending that the firefighters' list of premium pay holidays in Article XIII.03 be increased by one day. The Union asked for an increase of two (2) days; however, the data do not prove that the firefighters are so grossly underpaid with respect to holiday pay that the list of premium pay holidays should be expanded by 40% in one negotiation. If the Union still believes that it has a problem with the holiday pay section of the contract, then future negotiations are the place to attempt to enhance the benefit.

Finding of Fact: The external comparables on holiday premium pay in fire departments is inconclusive. However, the internal comparability data show that the Bay Village firefighters are underpaid compared to Bay Village police officers.

Suggested Language: Employees shall be compensated at the rate of time and one-half (1-1/2) for working New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day.

Issue: Article 19.04 (New): Health Benefit Flexible Spending Account

Union Position: The Union demands that the City institute a Health Spending Account Program.

City Position: The City wants more information on the possible costs of the program before it offers a pretax spending program for its employees.

Discussion: The Health Spending Account program that the Union wishes the City to institute allows the employee(s) to place pretax dollars into an account earmarked for spending on health and health related items. The Union has tied its demand to the fact that the Union membership has agreed to contribute to the cost of the health insurance plan offered by the City. The Union believes that the firefighters should be able to take advantage of the provisions of the tax code that allow the employees to make contributions to a tax free account that can only be used to pay for health care.

The City testified that it was studying the issue, but that it did not have good cost figures about the program and was, therefore, unwilling to commit to offering a Flexible Health Spending program to all City employees including the firefighters. The Fact Finder has researched the program (Health Savings Accounts and Other Tax Favored Health Plans, IRS Publication 969). In order to offer the plan, the City must hire a third party administrator to administer the program. Other than some start up costs, this appears to be the only significant cost that the City will incur. The Fact Finder does not have data on the cost of hiring a third party administrator or know if the City already contracts with a firm to administer the City's health program, etc. However, it is clear that the benefit to all City employees is substantial. This is especially true given the changes that the parties have agreed to in the funding of the City's health insurance plan.

Therefore, the Fact Finder urges the City to institute a Flexible Health Spending Program for all of its employees.

Finding of Fact: A Flexible Health Spending Account is a benefit to all employees of the City including the firefighters.

Suggested Language: The City shall make available to the members of the bargaining unit a Health Benefit Flexible Spending Program. Participation in such program will be on a voluntary basis.

Note: The final three issues; the recommendations on the general wage increase, paramedic pay, and the uniform allowance payment all impact the compensation of the firefighters. Therefore, the issues will be discussed as a package after some discussion of the applicable comparables.

Comparables were discussed in the Introduction to this report. However, the exact jurisdictions that the Fact Finder believes are comparable were not identified. The parties presented evidence on other comparable jurisdictions in their exhibits during the hearing. Bay Village has a web site and the site lists the cities that it compares itself to. The list includes Rocky River, Olmsted Falls, Westlake, Avon Lake, North Olmsted, Fairview Park, and Lakewood. The Union presented a number of exhibits comparing Bay Village to numerous other municipalities throughout Northeast Ohio. However, the main Union exhibit (Union exhibit #7) compares Bay Village to North Olmsted, Westlake, Rocky River, and Fairview.

The parties also discussed the fact that Bay Village belonged to a compact of cities that had agreements to help one another in times of need. The police compact is

called the “West Shore Cities” and it includes Bay Village, Fairview Park, North Olmsted, Rocky River, and Westlake. The fire compact is called the “Weshare Cities” and it includes the same cities as the West Shore Compact Cities with the exception that Fairview Park is in the West Shore Compact and Fairview is part of the Weshare Compact. Consequently, the Fact Finder believes that the applicable comparable cities to Bay Village are Rocky River, North Olmsted, West Lake, Olmsted Falls, Fairview Park, and Fairview. The parties presented no data from Avon Lake, which also might be considered a comparable. The Fact Finder examined and analyzed all available data from these jurisdictions when formulating his recommendations.

Issue: Article XX. 20.8: Rates of Pay – Paramedic Pay

Union Position: The Union demands that the paramedic bonus pay be calculated as one and three-quarters (1 $\frac{3}{4}$ %) percent of the base salary.

City Position: The City rejects the Union’s demand and wants to maintain the status quo on this issue. That is, the City wants to pay an annual bonus of one thousand and twenty-five (\$1,025.00) dollars.

Discussion: When the firefighter job title changed from Firefighter to Firefighter/Paramedic, the parties agreed that the increased responsibilities of the firefighters meant that their compensation should be increased. The City agreed to pay a paramedic bonus of one and three quarters (1 $\frac{3}{4}$ %) percent of the base salary. During the last round of negotiations, the bonus amount was fixed at one thousand and twenty-five (\$1,025.00) dollars. The firefighters believe that the bonus payment should revert to the old system, i.e., not be frozen. Moreover, the Union contends that the current fixed

bonus amount means that they are falling behind other comparable cities in terms of paramedic pay. The City disagrees and argues that the amount currently paid is reasonable.

The comparables data, such as it is, shows that Bay Village is at the bottom of the comparables list for all cities that pay a paramedic bonus. Westlake does not pay the bonus, but an inspection of the data shows that Westlake's base pay is above the rate paid in most other cities. This implies that Westlake folds the bonus payment into the base wage. The data show that the average paramedic-pay of the comparable cities is twelve hundred and seventy-five (\$1,275.00) dollars while Bay Village pays one thousand and twenty five (\$1,025.00) dollars. Therefore, the data show that Bay Village pays a bonus that is approximately twenty five (25%) percent below the average paid in other cities. Even given the fact that comparables data must be evaluated with a somewhat jaundiced eye, this fact does imply that the firefighters in Bay Village are not compensated similarly to other firefighters with regard to paramedic pay.

Given the City's objection to paying a percentage of the base as a bonus, the Fact Finder does not believe that the Union's proposal, which would cause the bonus to escalate every year, is warranted. However, the Union did prove that its membership does deserve some increase in the benefit. Consequently, the Fact Finder is recommending that the bonus be increased by two hundred (\$200.00) dollars. This will still not raise the Bay Village bonus to the average paid in comparable jurisdictions, but it is a significant increase and does keep Bay Village in line with other, comparable jurisdictions.

Finding of Fact: The evidence presented at the hearing proves that the Bay Village paramedic bonus is significantly below the amount paid in other jurisdictions.

Suggested Language: The language in Article 20.08 shall be amended to show a paramedic bonus payment of twelve hundred and twenty-five (\$1,225.00) dollars.

Issue: Article XVIII.04: Uniform Allowance

Uniform Allowance: The Union demands that the uniform allowance be increased by one hundred (\$100.00) dollars in each year of the proposed contract.

City Position: The City is offering to increase the allowance by one hundred (\$100.00) dollars in the second year of the prospective contract.

Discussion: This is an issue where the City is making a pattern argument. That is, the police contract specifies an increase of one hundred (\$100.00) dollars in the second year of the parties' new contract. The City argues that this sets a pattern and that the firefighters should accept the same change in the uniform allowance. The Union argues that it is behind in wages and benefits and, therefore, needs an amount greater than the amount negotiated into the police contract.

The Fact Finder believes that pattern agreements (internal comparability) must be given some weight when making recommendations. Moreover, the pattern argument is more persuasive when talking about benefits, etc. For example, a pattern settlement on health insurance is more compelling than a pattern on wages. Any jurisdiction will derive great benefit from having a single insurance plan for all of its employees. However, the argument loses some of its weight when applied to wages. All jobs are different and job requirements, duties, and structure change over time. Therefore, to claim that all individuals should have the same pay raise is less compelling than it first appears. A

benefit such as the uniform allowance payment falls somewhere in the middle of the validity curve with respect to arguments about a pattern agreement.

If the uniform allowance is adequate to meet the needs of the various groups of employees, then any changes to the allowance granted to one unit should have a significant impact on the amount of the benefit received by other bargaining units. That is, a pattern agreement should be a major factor in the determination of benefit paid to all employees. However, if one bargaining unit proves either a) that the benefit does not meet their needs, or b) the job has changed in ways that necessitate changes in the benefit, then the pattern should be given less weight. For example, if new a new fabric is developed that shields firefighters from the effects of smoke and/or flames, then the uniform allowance may need to change regardless of any pattern agreement with other employees. In this instance the Union made no such argument.

In this instance, the Union did not present any evidence that the uniform allowance was substandard with regard to other comparable jurisdictions. On the other hand, the City presented data showing that the uniform allowance paid in Bay Village is near the top of the amount paid in other jurisdictions. Therefore, the Fact Finder is recommending the City's position on this issue.

Finding of Fact: The Union did not prove that the uniform allowance paid in Bay Village is substandard.

Suggested Language: The language in Article 20.04 shall be amended to show a one hundred (\$100.00) dollar increase in the uniform allowance in the second year of the contract.

Issue: Article XX.01/.02/.03: Rates of Pay

Union Position: The Union demands a three plus (3+%) percent wage increase in each year of the prospective contract. In addition, the Union wants to add a fourth (4th) step to the pay scale.

City Position: The City is offering the same wage package that it negotiated with the police officers. That is, the City is offering a flat six hundred and fifty (\$650.00) dollar increase in each firefighter's base rate coupled with a two and one half (2 ½%) percent increase in 2007; a two and three quarter (2 ¾ %) percent increase in 2008; and a two and three quarter (2 ¾%) increase in 2009. The City is also proposing an increase in the rank differential to eleven (11%) percent. The City argues that this is the pattern settlement for all City employees.

Discussion: The central issue dividing the parties is the absolute certainty on the part of the firefighters that they are underpaid. This feeling stems from the fact that they believe that they have been unfairly forced into accepting a pattern (internal comparability) that has put them behind other comparable, external fire departments in terms of wages and benefits. This belief that they are and have been unfairly treated by the City was reinforced during the last round of negotiations when a fact-finding report adopting many of the firefighters' positions was overturned during conciliation. This series of events has hardened the firefighters in their belief that they are being held hostage to an unfair pattern. Consequently, the firefighters are fervent in their desire to get what they believe is a fair settlement.

There has been discussion of the place of pattern agreements at various points in this report. It should be clear that the current Fact Finder believes that each bargaining

unit must have the opportunity to bargain its own agreement. Even in the face of a valid pattern agreement, every bargaining unit must have the right to prove that unique circumstances necessitate a different settlement than the terms agreed to by other units. That being said, if all other units in a jurisdiction agree to the same terms, then the unit that wishes to change the agreement has to prove that there is some compelling reason to do so. Absent some extenuating circumstances, a valid pattern will usually be enforced.

In this particular instance the firefighters has presented evidence from comparable jurisdictions showing that they are behind other fire departments in terms of wages and benefits and, therefore should not be bound by the pattern. However, the data do not show, in the Fact Finder's opinion, that the firefighters are underpaid in any realistic sense. It is true that the data presented at the hearing did show that the paramedic premium pay component of the firefighters' wage was substandard, but that has been addressed. It may be true that the firefighters can show that they are a few hundred dollars behind other fire departments' personnel in terms of wages, but on a base of over sixty thousand (\$60,000.00) dollars, a few hundred dollars variance is hardly evidence that there is such a great disparity in wages that a Neutral should recommend an equity award to close the gap.

Moreover, if the City of Fairview is left out of the average wage calculations shown by the Union on its exhibit #7, the disparity almost disappears. Fairview pays significantly more than other jurisdictions on the comparables list and therefore the data on average wages is skewed. This is a legitimate reason to discount the data from Fairview. That is, "outliers" are often excluded from statistical analyses. A fair reading

of the comparables data shows that the members of Local 1144 are well within the range of wages paid in the local labor market.

Furthermore, some simple arithmetic and a calculator show that the differences between various wage package scenarios are minimal. Using the recommendations in this report and the City's wage offer leads to a base wage of sixty five thousand eight hundred and sixty seven (\$65,867.00) dollars in the third year of the agreement. Three, three (3%) percent across the board raises leads to a base wage of sixty five thousand five hundred and eighty two (\$65,582.00) dollars in the third year of the agreement. Three, three and one quarter (3 ¼%) percent across the board raises results in a base wage in the last year of sixty six thousand and fifty four (\$66,054.00) dollars. The difference between the City's wage offer (assuming that the recommendation on paramedic pay is accepted) and a recommended settlement of three, three and one-quarter (3 ¼%) percent increases is \$187.00. Realistically, the parties have reached an agreement in everything but name.

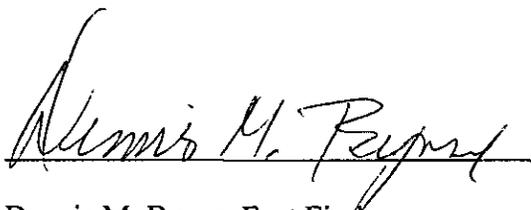
It must also be noted that the Union's original proposal includes adding an extra three (3%) percent step to the wage scale. During the hearing the firefighters stated that anyone hired prior to January 1, 2007 would automatically advance one step on the scale. This is tantamount to giving each and every firefighter a three (3%) raise before granting wage increases for the years of the prospective contract. That is, this would lead to the firefighters receiving four three (3%) percent wage increases. This would lead to a base wage of sixty seven thousand five hundred and fifty (\$67,550.00) dollars in the third contract year.

According to information presented at the hearing, this would put Bay Village either as the top or second to Fairview on the list of comparable cities. The data presented at the hearing show that the Fairview firefighters are the top paid firefighters in the area. Therefore, the Union's demand is to make the Bay Village firefighters the top (near the top) paid firefighters in the area. In addition, this is approximately two thousand (\$2,000.00) more that the City is offering. The Fact Finder believes that this demand is excessive and is not warranted by the facts of this matter.

Finding of Fact: The Bay Village firefighters are paid similarly to other firefighters in the area. Moreover, the difference in the positions of the parties based on the City's offer and a recommendation of three, three and one quarter (3 ¼%) percent increases is less than two hundred (\$200.00) dollars.

Suggested Language: The wage scale in Article XX of the contract shall be amended to show an across the board six hundred and fifty (\$650.00) dollar increase to the firefighters base rate on January 1, 2007. In addition, the first year wage increase shall be two and one half (2 ½%) percent; the second year wage increase shall be two and three quarter (2 ¾%), and the third year increase shall be two and three quarter (2 ¾%) percent.

Signed this 2nd day of January 2007, at Munroe Falls, Ohio.

A handwritten signature in cursive script, reading "Dennis M. Byrne", written over a horizontal line.

Dennis M. Byrne, Fact Finder



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Dennis M. Byrne

January 2, 2007

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

Re: SERB Case No. 06-MED-10-1148

Dear Mr. Turner:

I am enclosing the report for the Bay Village Fact Finding. As you will read, the differences between the parties are more philosophical than anything else. Therefore, there is little ability to bridge the gap in their positions. Actually, they are very close on the specifics of the matter. I do not think that this will be the end of the matter and another conciliation is in the cards.

If you have any questions, please contact me.

Sincerely,

Dennis Byrne
Arbitrator and Professor Emeritus of Economics

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STATE EMPLOYMENT
RELATIONS BOARD