

SPEED MEMO

STATE EMPLOYMENT
RELATIONS BOARD

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2007 MAY -4 P 12: 08

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May 2, 2007

Edward E. Turner
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State Employment Relations Bureau
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Columbus, OH 43215-4213

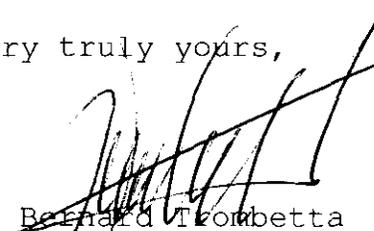
Re: Akron Fire Fighters & City of Akron
Case No. 06-MED-10-1187

Dear Mr. Turner:

Enclosed please find a copy of the Fact Finder's Report and
Recommendations in the above captioned matter.

Thank you for your cooperation.

Very truly yours,



I. Bernard Trombetta

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

AKRON FIREFIGHTERS ASSOCIATION : CASE NO. 06-MED-10-1187
IAFF, LOCAL 330 :
 :
 :
 UNION :
 :
 and :
 :
 CITY OF AKRON :
 :
 :
 CITY-EMPLOYER :

REPORT AND RECOMMENDATIONS OF THE FACT FINDER
May 2, 2007

FACT FINDER
I. BERNARD TROMBETTA
P.O. Box 391403
Solon, Ohio 44139
(440) 349-2110

I. DATES AND PLACE OF HEARING

This hearing was begun on March 27 and concluded on April 4, 2007. It was held in Akron, Ohio. The parties agreed to the second day of hearing.

II. PARTIES TO THE HEARING

The parties are the Akron Firefighters Association which is affiliated with the International Association of Firefighters, hereinafter referred to as the "Union" and the City of Akron, hereinafter referred to herein as the "City".

III. APPEARANCES

The following persons appeared on behalf of the respective party as noted:

For The Union

Ryan J. Lemmerbrock, Esq.	Attorney for the Union
Phillip Grauer	President of the Union
John Beavers	Vice President of the Union
Dale Sharp	Representative of the Union
Charles Rosenbaum, CPA	Expert Witness

For the City

Tammy L. Kalail, Esq.	Assistant Director of Law
Elaine Davidson, Esq.	Assistant Director of Law
James J. Masturzo	Deputy Mayor- Labor Relations
Larry Brunner	Deputy Fire Chief
Irene Miller-Dawson	Director of Finance
Mark McLeod	Employee Benefits Manager
Robert C. Ross, Jr.	Deputy Fire Chief
Shelly Green	Law Clerk

IV. WITNESSES

For the Union

Charles Rosenbaum, CPA	Financial Expert
Glenn Szana	Expert- Health Care
Phillip Grauer	President of the Local Union
John Beavers	Vice President of the Local
Dale Sharp	Representative of the Local

For the City

James J, Masturzo	Deputy Mayor
Larry A. Brunner	Deputy Fire Chief
Robert C. Ross, Jr.	Deputy Fire Chief
Diane Miller-Dawson	Director of Finance
Mark McLeod	Employee Benefits Manager

V. INTRODUCTION

This bargaining unit consists of the full-time Fire Fighters/ Medics (244); Lieutenants (90); Captains (17) and District Chiefs (8). The unit is represented by the Akron Fire Fighters Association, affiliated with the International Association of Firefighters. The Fire Chief and Deputy Chiefs are excluded from the unit pursuant to Section 4717.01 R.C.

This is a contract renewal. The current agreement expired on December 31, 2006.

The City is the county seat of and largest municipality in Summit County. It has a population of approximately 210,000 . It is an older city with pockets of residential, commercial and industrial lands, and at one time prided itself on being the tire capital of the U.S. Over the past decades, it, like most cities within the "rust belt", lost population, jobs, and tax revenues . Though the

revenue losses now seem to have leveled, it is still comparatively flat. It has a 2.25% municipal income tax, the revenue from which has experienced an average growth of only 2.73% over the last decade.

The parties met 8 times to negotiate the terms of a new contract. Many issues were resolved, but the parties were unable to reach an understanding on a new collective bargaining agreement. They did, however, agree upon a 3-year length and retroactive wages to January 1, 2007.

The City reached agreement with AFSCME, the Nurses Association, and the Civil Service Personnel Association during 2006, but was unable to reach an agreement with the FOP which also went to fact finding. The report in the FOP case was issued on April 11, 2007.

V. ISSUES PRESENTED

The following seven issues were presented for fact finding:

1. Article VIII (1); Wages;
2. Article VIII (18); Pension Pick Up (New Section)
3. Article VIII (5); Major Medical;
4. Article VIII(10); Prescriptions;
5. Article XX (Add Section E); Overtime Ranks.
6. Article XXX; Discipline
7. New Article or Memorandum; Assignment of Shift Commanders;

VII. THE RECOMMENDATIONS

a. Evidence and Exhibits

The Fact Finder is charged with considering all relevant and reliable information introduced by the parties in support of their respective positions in making his recommendations. Each party submitted a binder containing reports, charts, analyses, audits and other documents. The Fact Finder reviewed all pertinent exhibits.

b. Form of the Report

In order to condense these recommendations and avoid repetition, the positions of the parties will be presented succinctly. Arguments in support of respective positions will be consolidated into the "Discussion" section of this report. The party positions are not intended to be inclusive. The Fact Finder considered those arguments along with the relevant data in making the following recommendations.

c. Factors Considered

The Fact Finder, in accordance with Rule 4117-9--5(J), also considered the following:

- a. Past collectively bargained agreements between the parties;
- b. Comparison of unresolved issues with other public employees doing comparable work;
- c. Consideration of factors peculiar to the area and

classification;

- d. The interest and the welfare of the public;
- e. Ability of the employer to finance and administer the issues proposed;
- f. Effect of the adjustments on the normal standard of public service;
- g. Lawful authority of the employer;
- h. Stipulations between the parties;
- I. Any other factors not listed above which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

c. Issues Submitted

ISSUE NO. 1

ARTICLE VII- WAGES

UNION'S POSITION: The Union sought a wage increase of 4% in each of the 3 years of the contract.

CITY'S POSITION: The City countered by offering a 1%, 1% and 2 ½% wage increase over the life of the new 3 year agreement.

DISCUSSION: The Union received wage increases of 2%, 2% and 2% in the recently expired contract. The City

claimed that (1) for the past 20 years "pattern bargaining" has been in effect for all municipal employees, safety forces included and that the raises offered by the City and accepted by a number of other Unions should not be broken; (2) it is unable to meet the demands of the Union, particularly when the cumulative effect of the requested increase is factored into the three-year agreement; and (3) the firemen are paid a competitive wage and are not underpaid.

In response to the City's position that the "pattern" of increases offered to and accepted by some of the other unions should not be broken, the Fact Finder does not find the offer to be uniform. This Union did not combine with any other union to jointly negotiate the terms of a new agreement. The AFSCME contract (City Ex. QQ) expired December 31, 2005 and an unsigned "agreement" (City Ex. RR) provided for wage increases of 2% in 2006, 1% in 2007 and 1% in 2008 which is not the offer herein. The Nurse's contract, also signed and became effective in 2006, provided for increases of 2%, 1% and 1% (City Ex. MM). The Civil Service Personnel Association agreement was signed in January, 2006 and covers 2006 through 2008 and provided increases of 2%, 1% and 1%. (City Ex. OO).

These facts hardly establish pattern bargaining. The cited "pattern" contracts are dated, having effective dates beginning in 2006 and not 2007 as does this contract. At most it discloses a desire by the City to offer the same wage increases to its entire

workforce, which is not always justified nor fair.

Moreover, AFSCME, CSPA and the Nurses contracts contain a "me too" clause, obligating the City to match increases granted to any other units, except increases resulting from a third party award. A fact finder's recommendation is not an award since either party has the option of rejecting the report and proceeding to conciliation. A conciliator's award is a third party award, but the three unions cited above could not go to conciliation. As Professor Ruben noted in his FOP recommendations, the City has the option of rejecting the fact finder's report and going to conciliation to avoid the impact of the "me too" clause with the other three unions.

Even if the offer was construed as being a "pattern", there are additional reasons to break with the "pattern" in this instance:

1) the wage offer is lower in comparison to the increases offered under prior contracts (2% per year in the expired contract, and increases up to 3.75% per year prior thereto [1999-2003][City Ex. LL]); and

(2) the financial condition of the City while not particularly attractive, is better than it was in previous years and seems to be actually improving (new building, new residential areas, etc). Not surprisingly, the Union's expert claimed that the City could afford to adopt the entirety of the Union's demand while the City claimed that recommending the Union's demands would create a burden

upon the City which it could not meet without creating hardships in other areas. Its asset to liability ratio is positive and has remained at the approximately the same levels for several years; the City's bond rating though down from A1 in November 2004 is still rated at A2 as of August 2005, income tax collections increased by 12.6% in 2005 and property taxes by 15.3%. The City has managed its assets well and has kept expenses at manageable levels. (See Union Ex. 7). It is noted, however, that the general fund balance has declined by some 20% between 2000 and 2005. Is Akron out of the financial woods and on solid financial ground? Probably not, but most major cities within the "rust belt" face the same trying economic conditions. Through careful management of finances, income and expenses, major cities facing the same difficulties are succeeding in giving moderate wage increases to its workforce and delivering essential city services.

Wage comparables are still the best test to determine the fairness of the wages being paid and offered. Comparables between the public and private sectors are almost impossible to rate. A public employee's economic package contains numerous benefits and perks that are not matched by the private sector. (i.e. longevity, clothing allowances, sick leave, early retirement options, compensatory time cash-outs and time-banks). These benefits were often increased at the expense of wages, particularly in periods of tight finances so as not to inflame the electorate or jeopardize the

passage of tax levies. The benefits Akron's fire fighters receive are on a par with the benefits received by the fire fighters of other large municipalities (again Columbus excepted). Thus wages are the best test of comparables.

The City urged that overtime compensation be figured into the review, but did not furnish any breakdown between overtime paid to attend EMT classes or paid for actually working extra time. In any event, the Fact Finder is not inclined to include those earnings, regardless of the source, when comparing wages.

A more relevant statistic is the base wages paid by the 6 largest Ohio cities contained in City Exhibits U-1 through U-11 and SERB's benchmark report contained in City Exhibit II. The City ranks within the top three in base rate wages paid to entry level fire fighters, but falls to between third and sixth places when comparing maximum level wages.

Applying the City's offer of 1%, 1% and 2 ½% against the 2006 maximum rates in Exhibit U-1 discloses that the 2007 maximum pay would be \$49,991.97 or 4th place; in 2008 the maximum increases to \$50,491.88, barely passing Toledo for third place and in 2009 the maximum would be \$51,754.18, still third place. If the other cities grant wage increases, as expected, Akron's fire fighters would likely drop lower in the poll, perhaps bottoming out as low as sixth place.

Applying the proposed increases to the minimum scale, the City

would maintain 2nd position, behind only Cincinnati, for the duration of the contract.

The City's pay scale and wage proposal is weighted in favor of new hires at the expense of veteran fire fighters who comprise the majority of the unit. The city closest in population, square miles, size of unit and makeup is Dayton, yet it has maintained a 2nd ranking for the last 9 years. The City's fire fighters have a 10-year, 4-step progression between the minimum and maximum scales. The lieutenants, captains and district chiefs have a 3-step, 10-year progression.

The 16% rank differential is generous, but neither party sought a change. The differential, undoubtedly, is the result of bargaining gains in prior contracts and this Fact Finder will not make any recommendations impacting on it. The following recommendations are intended to keep the differential at 16%.

Attrition was not argued by either side and must, therefore, be assumed not to be a problem.

The offer does not cover increases in the cost of living. Simply put, this means that each member's income continued to erode in the face of increasing living costs and the City wanted each member to begin making contributions toward medical coverage. Implementation of the offer together with the aforesaid contribution would have meant a further erosion in income.

RECOMMENDATION: It is recommended that the "minimum" base rate (Grade 80, Step 3) be increased by 1% in each of the 3 years of the new contract. It is further recommended that the maximum wage rates and all interim steps be increased by 3% per year in each of the first 2 years (January 1, 2007 and January 1, 2008) and 3 ½% (January 1, 2009) in the third year of the contract.

ISSUE NO. 2

ARTICLE VIII (SECTION 18)- PENSION PICK-UP

UNION'S POSITION: The Union sought a pension pick-up of 2% per year for each year of the contract, reducing each member's contribution to 4% by the third and final year. The Union also demanded that the City pick-up any increases mandated by the Fund after the execution of the agreement.

CITY'S POSITION: The City was opposed to any additional pick-up which now stands at 24/10 as mandated by the OP&F .

DISCUSSION: During oral presentation the City stated that if the Union would accept its wage offer of 1%, 1% and 2 ½% (along with the changes to the prescription and hospital insurance coverages), the City would pick up the 2% pension contribution demand, thus casting additional doubt

on its pattern bargaining arguments.

The OP&F requires that 34% of a firefighter's wages be contributed into the fund. At present it is divided on a 24/10 basis with the employer (City) paying the greater percentage. In turn the fund affords fire fighters excellent benefits, including early retirement and disability benefits. These benefits are unmatched in the private sector.

The demand for the additional pension pickup is not unique to this unit or to fire fighters. A review of the evidence (Union Exhibit 45), however, fails to disclose a trend or pattern among fire departments statewide. Only Toledo and Columbus, among the 6 largest cities deviate from the 24/10 rate. A 2% pension pickup would cost the City an additional \$1,019.64 per fire fighter. This amount would increase during each year of the contract, depending upon wages paid.

Obviously, the Fact Finder is aware of Professor Ruben's recommendations in the police contract. The easiest course of action would be to follow his lead and recommend a 1% pickup (along with his recommendations on wages increases).

This Fact Finder, however, is bothered with the inability to truly test and compare earnings of public sector employees which might be due to the continual tweaking of benefits at the expense of wages. Admittedly, a fire fighters contribution rate of 10% is higher than his private sector brother, but the benefits afforded

by the OP&F are so much higher as not to invite a comparison. Increases in the pension pick up only beclouds the issue further and during the next contract negotiation the same arguments will be made regarding rankings and loss of position.

The Fact Finder has recommended a wage increase that, while not meeting the Union's demands, exceeded the City's offer and offers a reasonable increase in wages that should permit the members to keep pace among the 6 largest cities and cover most of the expected increases in the cost of living. It is doubtful that the City could afford both the recommended wage increase and a pension pick-up in any amount. This Fact Finder prefers to grant the increases in the form of wages, rather than benefits.

RECOMMENDATION: The Fact Finder recommends against adoption of the Union's proposal that the City pay an additional 2% pickup of the pension contribution.

ISSUE NO. 3

ARTICLE 8 (SECTION 5) MEDICAL INSURANCE COSTS

CITY'S POSITION: The City sought changes in medical insurance benefits by requiring a contribution by members commencing January 1, 2009. Family plan subscribers are to pay \$100 per month and single plan subscribers \$50 per month.

UNION'S POSITION: The Union demanded that the City continue to provide medical coverage as in former

contracts without contribution on their part.

DISCUSSION: The City is self insured and appears intent on continuing as such. It uses Medical Mutual as a benefits coordinator. Its contract with the benefits coordinator expires on January 31, 2008. New bids have not been solicited. The parties agreed that it was too early to obtain meaningful bids on a successor contract.

Recently, Medical Mutual and the local hospitals could not agree on the rates for reimbursement until the City paid a rather large sum of money to assure that employees covered under its medical plan would be treated at local hospitals. That is, however, one of the problems inherent in being self insured. At first glance, the City's proposal seems reasonable since a \$100 per month contribution would not offset the entire expected increase, likely to be between 7% and 10% (costs have risen between 13% in 2002 and 7.3% in 2006) (See City Ex. N).

Medical costs, and consequently medical insurance costs are continuing to rise, but the increases appear to have begun to level off. Of the 8 largest Ohio cities, only Akron does not require member participation at some level. (Union Ex. 46 and 47). Summit County employers seem to be split over the issue of member contributions. It is reasonable to assume that the City's costs for providing medical coverage to its employees will increase at the

expiration of the present contract.

During the hearing, the Union's expert, Glenn Szana roundly criticized the City's current medical plan as being outdated and one which discourages rather than encourages competitive bidding. Mr. Szana prepared a "cost neutral" plan, with updated benefits, services and terminology and submitted it to the City on October 30, 2006. Nothing further was done.

The Fact Finder was not able to weigh the differences in coverages, benefits or costs, yet he was urged to consider the expected increased costs and recommend employee contributions.

The City was willing to delay implementation of its demand for contribution until January 1, 2009. A new policy will be in effect on February 1, 2008. In other words, the City was willing to absorb the increased costs, if any, for the first 11 months of the new policy. The Fact Finder is ill-equipped to forecast medical cost increases when the only evidence before him was the testimony of an expert and a cost neutral plan, significantly different from the current policy. Will the cost neutral plan result in lower costs? Or will the cost neutral plan result in lower increases? A re-opener clause on medical insurance could be recommended, but re-openers are not favored by this Fact Finder. This problem can be better visited after the costs of the new plan are known and that will be during the negotiations on a successor collective bargaining agreement, some 30 months hence.

RECOMMENDATION: The Fact Finder recommends against the City proposal.

ISSUE NO. 4

ARTICLE VIII (SECTION 10)- PRESCRIPTIONS

CITY'S POSITION: The City has proposed that Section 10 be modified into a 3-tier system from the present 2-tier system. Formulary (name Brand) generic would remain at \$4; Formulary non-generic Brand-Name drugs would be \$8 and Non-Formulary (non-preferred) brand name drugs would be \$25. Mail order prescriptions would become mandatory for drug maintenance prescriptions and would range between \$2 and \$20.

UNION'S POSITION: The Union opposed any changes and urged retention of the present program.

DISCUSSION: Prescription drug expenses continue to rise, faster than even medical costs. The City is self insured, so it absorbs the increasing costs, Plan comparisons in Summit County and even statewide disclose that most employers are using the 3-tier system similar to the one proposed by the City (though costs vary from city to city). A review of the proposed changes fails to disclose that they would create a significant economic impact upon the members. Stemming the rising costs of prescription drug expenses is one of the areas on which management and labor should cooperate. If the City believes it can save money through the implementation of a 3-

tier system which appears to have little adverse economic impact upon the employees, then the program should be placed into effect.

RECOMMENDATION: The Fact Finder recommends that the modifications to the Section 10 sought by the City be granted. The City's proposal shall go into effect on January 1, 2008.

ISSUE NO. 5

ARTICLE XX (SECTION E) OVERTIME

UNION'S PROPOSAL: The Union proposed adding a new section to this Article to provide that when a loss of 5% of budgeted manpower occurs, openings on shift will be filled by overtime in the rank that the opening occurred.

CITY'S PROPOSAL: The City opposed the request

DISCUSSION: During oral presentation, the Union withdrew the demand and the parties entered into a written stipulation pledging to meet and discuss the issues of temporary, provisional appointees, safety of the bargaining unit members in the performance of their duties and manpower availability. If the parties could not reach agreement on these issues, both would be free to submit their respective recommendations to the mayor no later than January 1, 2008.

ISSUE NO. 6

ARTICLE XXX- DISCIPLINE

UNION'S POSITION: The Union sought changes to the Discipline article on the grounds that the present procedure did not afford either the employee or his representative enough time to investigate and respond to any complaint and/or charges. The Union submitted contractual language for the clause which it sought to be included in the new contract.

CITY POSITION: The City was against any changes on the grounds that the present language afforded ample protection when coupled with the Civil Service Rules.

DISCUSSION: The Fact Finder reviewed the clause submitted by the Union and finds it to be neutral and clear. The Civil Service Rules do not specifically address the problems raised by the Union in seeking amendments to the discipline clause. Under the present agreement, the "Discipline" clause is separate from the "Grievance" clause.

The first objection raised by the Union was the lack of time between receiving notice of alleged misconduct and the investigatory hearing. (The investigatory hearing is not the same as the pre-disciplinary conference). There is no specific time guaranteed between notice of misconduct and this hearing.

There is also a "Disciplinary Committee" which considers alleged misconduct (after the investigatory hearing) and makes recommendations to the Chief. The Committee consists of management and labor members appointed by the Chief.

The present process is not clearly defined and rather ponderous. Though the present article specifically requires "just cause" in all disciplinary matters, the procedure is not precise as it could and should be. A joint disciplinary committee may work to the benefit of the charged party, but requiring Union participation is not necessary. Workforce discipline is a function of management and the Union is willing to permit management to make these decisions without participation on its part.

The City did not submit language addressing the Union's concerns. The Union proposal adequately safeguards the rights of both management and the individual. The following recommendation adopts most of the Union proposal with a few modifications, which, hopefully, will clarify the procedure. The Fact Finder, however, does not agree with the Union's request that suspensions be fulfilled through the forfeiture of vacation or holiday pay since that remedy is akin to a fine rather than encouraging corrective conduct.

RECOMMENDATION: It is the recommendation of the Fact Finder
 that Article XXX be amended as follows:

ARTICLE XXX-DISCIPLINE

1) JUST CAUSE: No non-probationary employee shall be disciplined except for just cause.

2) PROGRESSIVE DISCIPLINE: All discipline shall be fair, uniform and progressive and shall, in so far as possible, follow the steps outlined below. In cases of serious misconduct the disciplinary process may begin at any step in the discretion of the City. The occurrences giving rise to disciplinary action are included in Rule 10, Section 2 of the Akron Civil Service Rules which are incorporated herein.

3) DISCIPLINARY STEPS: The steps of the disciplinary procedure are:

FIRST STEP- For the first occurrence of a minor infraction, the employee shall receive a "Verbal Warning", evidence of which shall be reduced to writing.

SECOND STEP- For a second occurrence of the same infraction or for a more serious infraction, or for an infraction occurring within 6 months from receipt of a verbal warning, the employee shall be given a "Written Warning".

THIRD STEP- For a third occurrence of the same infraction or for any infraction occurring within 6 months from receiving a written warning, the employee shall be subject to a 3, 7 or 14-day suspension without pay. The Chief shall determine the

length of the suspension and advise both the employee and Union in writing.

FOURTH STEP- If after receiving a 14-day suspension for the same or similar offense or if the employee is charged with a serious infraction, including but not limited to a felony committed on or off duty, failure to obey a direct order, wilful conduct leading to the injury or death of another, an employee shall be subject to termination, and/or demotion in rank and pay.

4) RETENTION OF RECORDS: A record of any disciplinary action shall be placed in the employee's personnel file. If an employee does not receive any verbal or written warnings or other disciplinary actions the record of prior disciplinary actions shall be removed from an employee's personnel file and not considered in any future disciplinary actions 1-year for verbal warnings; 2-years for written warnings and 3-years for any infraction resulting in a suspension of any duration or demotion in rank.

5) PRE-DISCIPLINARY CONFERENCE: In any disciplinary action in which the employee is subject to suspension, demotion or termination, an employee may request a pre-disciplinary conference before the Chief or his nominee at which the employee and/or his union representative shall be entitled to answer or refute the alleged violation or misconduct. The City shall promptly

schedule a Pre Disciplinary Conference if requested by the employee and give both the employee and Union not less than 24-hour notice, in advance of the conference. The Pre-Disciplinary Conference shall be informal and the Rules of Evidence shall not apply.

6) DISCIPLINARY HEARING: If the Chief or his nominee is dissatisfied with the response the employee made at the above conference or if a conference is waived, the matter shall be scheduled for a Disciplinary Hearing before the Chief or his nominee which shall be held within 30 days from the date of the Pre-Disciplinary Conference or waiver thereof. The Chief shall give not less than 7 days written notice of the Disciplinary Hearing to both the employee and the Union. The charged employee shall personally appear and may be represented by the Union. The City shall present its evidence in support of the alleged misconduct and the employee may introduce evidence to refute such charges. Witnesses may testify on behalf of either the City or employee. The Chief shall issue his findings and disciplinary recommendation, in writing, within 7 days from the conclusion of the hearing.

If the Chief's proposed disciplinary action is not accepted, the matter may be grieved pursuant to Article XIV beginning at Step 4.

ISSUE NO. 7

ASSIGNMENT OF SHIFT COMMANDERS- A NEW MEMORANDUM OR ARTICLE

UNION'S POSITION: The Union sought to have a settlement agreement of an Unfair Labor Practice incorporated into either a memorandum or new article.

CITY'S POSITION: The City was unwilling to enter into a memorandum or include the terms of the settlement into the new collective bargaining agreement and argued that the resolution of the unfair labor practice was temporary.

DISCUSSION: On September 17, 2003 the Union filed an Unfair Labor Practice against the City, alleging that the City was using deputy chief(s) (non bargaining unit members) to head the fire department bureaus which the Union believed to be bargaining unit work . On May 10, 2004 the parties entered into a settlement agreement in which the City agreed to certain promotions and the appointment of District Chiefs to head the six bureaus. In 1999 the parties resolved another unfair labor practice that appears dissimilar to the instant dispute. In any event the parties have a history regarding the appointment and assignment of district chiefs.

During oral argument the City claimed it might change the structure of the department and use the district chiefs in

capacities other than as bureau chiefs or as otherwise now used.

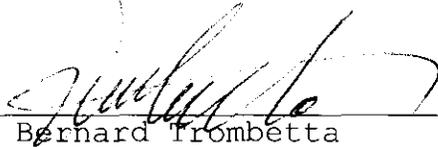
The Fact Finder believes that the 2004 settlement agreement is still in effect and constitutes a binding and enforceable agreement between the parties. The Fact Finder could not discern anything therein that the appointment of district chiefs to bureau heads was intended to be temporary. The second sentence of Section 2 of the settlement states "As a result, all six Bureaus will be headed by District Chiefs no later than December 31, 2004." The settlement does not state that the appointments were intended to be temporary or until the City decides to change the administration of the department or abolish the bureaus.

The appointment of district chiefs as well as the allegation that the duties of bureau chiefs was regarded as bargaining unit work would, likely, require the parties to bargain and agree before such changes are implemented. To do otherwise, would be to invite the filing of another unfair labor practice charge.

RECOMMENDATION: The request to incorporate paragraphs 2, 3 and 4 of the Settlement Agreement into either the new collective bargaining agreement or, as initially requested, into a memorandum is not

recommended since the 2004 Settlement Agreement is clear and enforceable.

Respectfully submitted,



I. Bernard Trombetta
Fact Finder

SERVICE

A copy of the foregoing was mailed to Ryan Lemmerbrock, Esq. attorney for of the Union, 820 West Superior Avenue, Cleveland, OH 44113 and James Masturzo, Deputy Mayor for Labor Relations, City of Akron, 146 S. High Street, #703, Akron, OH 44308 on this 2nd day of May 2007 by delivery service.



I. Bernard Trombetta