

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2007 JUN 11 P 2:15

June 10, 2007

In the Matter of:)	
)	
IAFF, LOCAL 4219)	
FULL-TIME FIREFIGHTER/ PARAMEDICS)	
)	SERB CASE:
AND)	<u>06-MED-10-1271</u>
)	
CITY OF NORTON)	FACT FINDER:
EMPLOYER)	BERNADETTE
)	MARCZELY, ESQ.

FACT FINDER'S REPORT

HEARING

**May 15, 2007, 10:00A.M.
Norton City Hall
Norton, Ohio 44203**

APPEARANCES

FOR THE UNION, IAFF LOCAL 4219

Andy Drwal	Vice President, OAPFF 2nd Div.
Carl Housley	President, IAFF Local 4219
Craig Potter	Fire Medic, IAFF Local 4219

FOR THE CITY OF NORTON, THE EMPLOYER

James Calco	Fire Chief, City of Norton
Nicholas Codrea	Consultant
John Moss	Finance Director
Rick Ryland	Administrative Officer

EXHIBITS PRESENTED AT THE HEARING**UNION EXHIBITS**

1. Pre-hearing Brief
2. John Moss Response to Cost Questions [5/13/07]
3. Discovery Questions regarding finances.
4. Revenue Report, 2006
5. Article 7- Settled.
6. Article 9 – Proposed Language – Grievance Procedures.
7. Grievance Procedure – Police Contract
8. Arbitration Procedure – Police Contract
9. Grievance Procedure – AFSCME Service
10. Grievance/Arbitration – Clerical
11. Article 15 – Proposed Language – Duty Hours
12. Appendix B – City Proposal / Current Schedule
13. Duty Hours – Definition of Work Period & Work Week
14. Norton Fire Graph of Calls/Time of Day [1995, 1996, 2002, 2004]
15. Article 16 – Proposed Language – Overtime and Court Time
16. Calco report on Full-time Firefighters and Overtime
17. Article 19 – Proposed Language – Sick Leave/ Rationale
18. Article 24 – Proposed Language – Seniority & Probation Period
19. Article 25- Proposed Language – Longevity
20. Article 26 – Proposed Language – Compensation/Rationale
21. Comparables: Barberton, Bath, Copley, Fairlawn
22. City of Norton Statement @ Police/ Firefighter Parity
23. SERB Annual Wage Settlement Report [1997-2006]
24. Letter to Moss [4/9/07] requesting financial information.
25. Second Request to Moss [5/3/07] for financial information.
26. Accumulation of On-call hours [12/27/05]
27. Capt. Schultz letter superseding 12/27/05 letter @ staffing
28. Larry Hitchings Personnel Order 07-06
29. Mark Kennedy Personnel Order 07-01
30. Norton Comprehensive Financial Report for year ending 12/31/05
31. Norton Comprehensive Financial Report for year ending 12/31/04
32. Committee of the Whole Report [6/19/06]
33. Article 28 – Proposed Language – Education/Rationale
34. Article 29 – Proposed Language – Uniforms/Rationale
35. Breakdown of Uniform Costs
36. Article 30 – Proposed Language – Insurance/Rationale
37. Insurance Co-Pay Grievance Form

38. Co-Pay Grievance Response from FF David Davis
39. Health Benefits Plan Amendment #5 –Prescription Revision
40. Carris & Calco Insurance Co-Pays for 2007 [12/21/06]
41. Article 34 – Proposed Language – Layoffs/Rationale
42. Article 10 –Layoff & Recall
43. Article 11 – Promotions/Transfers/Temporary Transfers
44. Article 15 – Layoff & Recall Procedure
45. Article 16 –Subcontracting
46. Article 34 –Layoffs
47. Article 35 – Retention of Benefits
48. Article 26 –Layoff & Recall – Part-time Firefighters
49. Article 27 –Crew/Squad Leader Comp./Rationale
50. Fire Department Promotions – Part-time Firefighters
51. Officer Responsibilities
52. Ramstahler Retirement Letter requesting part-time EMT status
53. Calco Letter promoting Ramstahler, Copen and Potter [7/20/06]
54. Record of Ramstahler vacation days [1/31/02, 5/29/02]
55. Article 37 – Proposed Language –Duration of Agreement
56. Article 38 – Execution
57. Zeiser Conciliation Report, June 21, 2006
58. Current Contract, January 1, 2006-December 31, 2006

CITY OF NORTON EXHIBITS

1. Total Compensation in Norton's Traditional Labor Market
2. Barberton Firefighters' Contract, 1/1/05-12/31/07 [Salary]
3. Cuyahoga Falls Firefighters' Contract, 7/1/05-6/30/08 [Salary]
4. Fairlawn Firefighters' Contract, 1/1/06-12/31/07 [Salary]
5. Macedonia Firefighters' Contract, 1/1/05-12/31/06 [Salary]
6. Franklin Firefighters' Contract, 9/1/03-8/31/06 [Salary]
7. Norton Firefighters' Contract, 1/1/06-12/31/06 [Salary]
8. Stow Firefighters' Contract, 4/1/05-3/31/08 [Salary]
9. Tallmadge Firefighters' Contract, 1/1/04-12/31/06 [Salary]
10. Twinsburg Firefighters' Contract, 1/1/06-12/31/08 [Salary]
11. Wadsworth Firefighters' Contract, 1/1/06-12/31/08 [Salary]
12. City of Norton Demographics: Income/Population Comparison
13. Brundige Fact Finders Report: 4/12/07
14. Norton Revenue Studies: 2004, 2005, 2006, and 2007
15. Earnings: Craig Potter, David Davis, Carl Housley
16. OPBA & AFSME Insurance Clauses

BACKGROUND

Norton, a suburb of Akron, is a city of approximately 11,000 located in southwestern Summit County. This fact finding report addresses the unresolved issues in the contract negotiations between the City of Norton and the full-time professional firefighters/EMTs currently employed by the City of Norton. At present there are three [3] full-time professional firefighters/EMTs covered by this agreement, and thirty-three [33] part-time firefighters/EMT's not covered by this agreement.

In the hearing, the full-time professional firefighters stressed that in prior negotiations they had accepted a wage freeze to accommodate the city's claim that a 4.6 levy would be required to fund raises. The firefighters claim that despite their earlier acceptance of a wage freeze, the city did not keep up with levy needs, and, as a result, the city again claims it cannot fund salary increases without passing a new levy. The last fire levy was passed in 1995 and was based on property valuations in 1995. The unit's three members also stress that, unlike part-timers, they have no other jobs. Their work as Norton full-time firefighters is their only source of income.

The City of Norton argued that by virtue of its management rights under Ohio's Collective Bargaining Law it has the right to determine the hours the full-time firefighters/EMTs worked and to use the part-time firefighters/EMTs to fill in as needed. The City also maintained that it did not have the money to fund requested wage increases, and would have to either layoff unit members or wait for the passage of a levy to fund the unit's request for pay increases.

In response to the City of Norton's assertion of Management Rights in determining the hours worked by the unit, the Union argued that *wages, hours, and terms and conditions of employment* are mandatory subjects for negotiation under Ohio's Collective Bargaining Law.

The fact finder will address each article in dispute at the time of the hearing. Each article will be cited as it appears in the current contract, followed by the Union's suggested revisions with rationales, and the City's suggested position with rationales. The fact finder will then either choose between the positions presented, or suggest a solution based on the fact finder's own judgment regarding the issue in dispute.

ARTICLE 7 – Section 4

SETTLED – TYPO

ARTICLE 9 – GRIEVANCE PROCEDURE

Section 1

Every employee shall have the right to present his grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal and except at Step 1, shall have the right to be represented by a person of his own choosing at all stages of the Grievance Procedure.

It is the intent and purpose of the parties to this Agreement that all grievances shall be settled, if possible at the lowest step of this procedure.

UNION’S POSITION

The union seeks no changes to this article.

RATIONALE

The Union believes the City’s suggested changes would limit their rights under the Civil Service rules. In support of its position, the Union cites Section 5 of Article 11 of the existing police contract, Article 10, Section 8 of the AFSCME contract, and Article 7, Section 8 of the Clerical contract [Exhs. 8, 9, 10]. Parity requires that the language remain unchanged.

CITY’S POSITION

The Grievance Procedure contained herein provides for a final and binding arbitration of grievances. Pursuant to ORC 4117.10(A), the City of Norton, Bargaining Unit Employees and IAFF recognize that any and all disputes arising out of the application and interpretation of this Agreement shall be resolved solely by this Agreement’s Grievance and Arbitration Procedures. Therefore, neither the State Personnel Board of Review nor the City of Norton’s Civil Service Commission shall have any jurisdiction to receive and determine any appeals relating to matters that were subject to this Agreement’s final and binding Grievance Procedure.

CITY'S RATIONALE

The proposed language clarifies the concept that the Grievance Procedure is to be used to resolve any and all disputes between the parties as to the application and interpretation of this Agreement. Subsequent Sections remain unchanged.

FACT FINDER'S DECISION

The language in Section 1 of Article 9 should remain unchanged.

RATIONALE

The union in Exhibit 6, of its evidence book states that it seeks no changes to this article as change would limit their rights under the Civil Service rules. They specifically cite Article 9, Section 1, in their exhibit, stating that "this article" [Article 9] should remain unchanged. The Union cites the Police, AFSCME, and Clerical contracts [Union Exhs. 8, 9, 10] each containing the same or similar language to that presently appearing in Article 9. In none of these contracts has the additional language proposed by the City been adopted. Therefore, in the interest of parity, and since both parties agree that to date Article 9 has caused no problems for either the City or the Union, the fact finder agrees that Article 9, Section 1 should remain unchanged.

ARTICLE 15, SECTIONS 1, 2, 3 – DUTY HOURS

SECTION 1

Work week: The normal "work week" for all employees shall be defined as consisting of forty (40) hours in a five (5) consecutive day period starting with the employee's normal scheduled work shift.

Tour of Duty Shift: A "tour of duty" or "shift" for all members of the Bargaining Unit shall be defined as the normal eight (8) hour period of time which said member is normally scheduled to work.

Day: A "day" as utilized in this Agreement shall be defined as that time span beginning with the employee's regularly scheduled tour of duty and ending twenty-four (24) hours later.

Open Shift: An “open shift” shall consist of a shift where there is no one scheduled to work or by reason of vacation, sick leave, compensatory days or any other reason there is an opening on a regularly scheduled shift.

SECTION 2

The shift bidding process may be renewed every six (6) months commencing January 15, 2004.

SECTION 3

The employer agrees to maintain shifts that yield a minimum of scheduled on-duty complement of at least one member of this Bargaining Unit per scheduled shift.

APPENDIX B

Section 1: Work Week (8 Hour)

- a. 8 hour work schedule shall consist of three (3) independent work periods beginning on Monday at 0600 hours (6 AM) and ending at 1800 hours (6 PM) on Friday of the five (5) consecutive day work period.
- b. Each employee will be awarded a shift corresponding to a letter consisting of the letters A, B, or C.

CURRENT SCHEDULE

SUN	MON	TUES	WED	THU	FRI	SAT
						1
2	A 6-2:00 B 9-5:00 C 10:00-6:00	A 6-2:00 B 9-5:00 C 10:00-6:00	A 6-2:00 B 9-5:00 C 10:00-6:00	A-6-2:00 B-9-5:00 C 10:00-6:00	A 6-2:00 B 9-5:00 C 10:00-6:00	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22

UNION'S PROPOSAL

SECTION 1:

Work Week: The normal "work week" for all employees shall be defined as consisting of an average of forty (40) hours in a [seven (7) in proposal -typo] five (5) consecutive day period starting with Monday and ending on Friday of the employee's normal scheduled work week.

The work week will be considered an eight (8) hour on duty shift beginning on Monday at 6:00AM and ending on Friday at 6:00PM.

Work Period: Should the Fire Chief exercise the twelve (12) hour scheduling option the normal "work period" for employees shall be one hundred and twenty (120) hours within a twenty-one (21) consecutive day work period.

Tour of Duty or Shift: A "tour of duty" or "shift" for all members of the Bargaining Unit shall be defined as the normal period of time which said member is normally scheduled to work. Both the one hundred and twenty (120) hours within a twenty-one (21) consecutive day work period, and the forty (40) hour work week as expressed in Appendix B attached to this Agreement.

Day: A "day" as utilized in this Agreement shall be defined as that time span beginning with the employee's regularly scheduled tour of duty and ending twenty-four (24) hours later.

Open Shift: An "open shift" shall consist of a shift where there is no one on-duty (of this bargaining unit) by reason of vacation, sick leave, compensatory days or any other reason there is an opening on a regularly scheduled shift.

Work Schedule: Work schedule shall be determined by the Fire Chief and shall consist of an average forty (40) hour schedule in the normal work week.

SECTION 2

The shift bidding process may be renewed every six (6) months commencing January 15, 2004.

SECTION 3

The Employer agrees to maintain a shift that yields a minimum on-duty complement of at least one member of this Bargaining Unit.

Identifying union members as A, B, and C, the union proposes the following 12 hour on duty shift.

SUN	MON	TUE	WED	THU	FRI	SAT
	A B	C A	B C	A B	C A	
	B C	A B	C A	B C	A B	
	C A	B C	A B	C A	B C	

RATIONALE

Section 1: The union seeks to clarify the descriptions of “work week” and “work period” consisting of an average of forty (40) hours scheduling either eight (8) hour shifts or twelve (12) hour shifts.

The work period will be considered a 12 hour on duty shift rotation through a twenty-one (21) consecutive day period. The twelve (12) hour on duty shift will begin at 6:00AM and end at 6:00 PM.

The Union makes it clear that a work period must NOT include Saturday or Sunday. The work week will be an eight (8) hour on duty shift beginning on Monday at 6:00AM and ending on Friday at 6:00PM.

The Union argues that hours are not solely a management right, but rather a negotiable item under Ohio’s Collective Bargaining Law. The Union wants defined 8, 10, or 12 hour shifts covering the hours between 6:00AM and 6:00 PM Monday through Friday. As indicated in Union Exhibit 14 [Norton Fire Graph of Calls/Time of Day] such a schedule covers periods of greatest weekday activity. The Union asks that shifts be defined so that full-time firefighters/EMTs will not be forced to cover shifts assigned to part-timers who have other employment that may conflict with Norton’s needs. The Union also argues that the Police and AFSCME Unions have defined Duty Hours in their contract.

CITY'S POSITION

SECTION 1

Work Week:

The normal "work week" for all employees shall be defined as consisting of *an average of* forty (40) hours in a seven (7) consecutive day period starting with the employee's normal scheduled work shift.

Work Period:

The normal "work period" does not represent a guaranteed "work period."

Tour of Duty or Shift:

A "tour of duty" or "shift" for all members of the Bargaining Unit shall be defined as the normal period of time which said member is normally scheduled to work.

Day:

A "day" as utilized in this Agreement shall be defined as that time span beginning with employee's regularly scheduled tour of duty and ending twenty-four (24) hours later.

Open Shift:

An "open shift" shall consist of a shift where there is no one scheduled to work or by reason of vacation, sick leave, compensatory days or any other reason there is an opening on a regularly scheduled shift.

Work Schedule:

Work schedules shall be determined by the Fire Chief and shall consist of an average forty (40) hour schedule in the normal work week.

Section 2:

The shift bidding process may be renewed every six (6) months commencing January 15, 2004. Postings shall include days and hours to be worked.

Section 3:

The Employer agrees to maintain shifts that yield a minimum of scheduled on-duty complement of at least one (1) member of this Bargaining Unit per scheduled shift.

RATIONALE

The Employer seeks flexibility in order to efficiently utilize Fire Medics. Fire Chief Calco may seek to improve coverage in the face of diminished funds.

FACT FINDER'S OPINION

The fact finder agrees with the Union that hours of employment are negotiable under Ohio's Collective Bargaining Law. Union members should be able to negotiate defined eight (8) or twelve (12) hour shifts as described in their proposal. They are merely seeking contractual parity with the Police Union and AFSCME on this issue. Both the Police and AFSCME have negotiated permanent schedules. The language proposed by the City is ambiguous and subject to the kind of arbitrary interpretation of hours Collective Bargaining is intended to discourage. Therefore, the fact finder recommends the adoption of the Union's proposed language. Specifically,

SECTION 1:

Work Week: The normal "work week" for all employees shall be defined as consisting of an average of forty (40) hours in a [seven (7) consecutive day period –typo] five (5) consecutive day period starting with Monday and ending on Friday of the employee's normal scheduled work week.

The work week will be considered an eight (8) hour on duty shift beginning on Monday at 6:00AM and ending on Friday at 6:00PM.

Work Period: Should the Fire Chief exercise the twelve (12) hour scheduling option the normal "work period" for employees shall be one hundred and twenty (120) hours within a twenty-one (21) consecutive day work period.

Tour of Duty or Shift: A "tour of duty" or "shift" for all members of the Bargaining Unit shall be defined as the normal period of time which said member is normally scheduled to work. Both the one hundred and twenty (120) hours within a twenty-one (21) consecutive day work period accompanying this proposal, and the forty (40) hour work week as currently expressed in Appendix B of the existing contract should be adopted.

Day: A “day” as utilized in this Agreement shall be defined as that time span beginning with the employee’s regularly scheduled tour of duty and ending twenty-four (24) hours later.

Open Shift: An “open shift” shall consist of a shift where there is no one on-duty (of this bargaining unit) by reason of vacation, sick leave, compensatory days or any other reason there is an opening on a regularly scheduled shift.

Work Schedule: Work schedule shall be determined by the Fire Chief and shall consist of an average forty (40) hour schedule in the normal work week.

SECTION 2

The shift bidding process may be renewed every six (6) months commencing January 15, 2004.

SECTION 3

The Employer agrees to maintain a shift that yields a minimum of on-duty complement of at least one member of this Bargaining Unit.

Identifying union members as A, B, and C, the union proposes the following twelve (12) hour on duty shift.

SUN	MON	TUE	WED	THU	FRI	SAT
	A B	C A	B C	A B	C A	
	B C	A B	C A	B C	A B	
	C A	B C	A B	C A	B C	

An alternative plan for eight (8) hour shifts appears in Appendix B of the existing contract cited above.

NOTE: The fact-finder further recommends that Section 4 be added to the contract to allay one of the Union’s major concerns with Article 15.

SECTION 4

The work week will not include Saturday or Sunday.

ARTICLE 16-OVERTIME PAY AND COURT TIME

SECTION 1:

All employees, for work performed in excess of forty (40) hours per week shall be compensated, at the employee's election, at the rate of one and one-half (1 ½) times the employee's regular hourly rate for all overtime, including travel and educational time, or Compensatory time subject to the limits below.

SECTION 2:

Employees appearing in court on behalf of the Employer shall be paid a minimum of three (3) hours. At the beginning of the fourth (4th) hour the employee shall be paid at one and one-half times (1 ½) times his regular hourly rate.

SECTION 3:

Employees called in by the Fire Chief or Shift Commander or by predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, or reported structure fires).

SECTION 4:

As far as possible, overtime shall be equitably distributed among all members of the Bargaining Unit. An overtime list shall be posted each pay period showing the number of hours worked by each employee. Except in emergency situations, when overtime is to be offered to members of the Bargaining Unit, the employee with the least number of overtime hours worked shall be called first, and the employee in charge of assigning overtime shall continue down the list until all members of the Bargaining Unit have been called. If an employee is called for overtime and refuses, that employee shall be charged as if he or she actually worked the eight (8) hours of overtime. Employees shall be offered overtime if on paid leave in the same manner as if not on paid leave, except that no employee shall be offered overtime if on sick leave or injury leave.

SECTION 5:

Employees shall have the right to accumulate compensatory time in lieu of overtime pay up to a maximum of eighty (80) hours of accumulated

compensatory time. Use of compensatory time shall be at the Chief's discretion and must not result in the payment of overtime. Compensatory time is defined as time off with pay in lieu of contractual overtime pay.

SECTION 6:

The employer is only obligated to pay overtime for those hours worked over forty (40) hours in a given pay period as currently observed by the City's finance officer (00:01 hours Saturday through 24:00 hours Friday).

SECTION 7:

Overtime caused by a shift change requested by the employee is not applicable to overtime payment to that employee.

UNION'S POSITION:

SECTION 1: SETTLED [CITY'S LANGUAGE]

All employees, for work performed in excess of an average of forty (40) hours per week shall be compensated, at the rate of one and one-half (1 ½) times the employee's regular hourly rate for all overtime, including travel and educational time. Additionally, employees may elect to accrue Compensatory time subject to the limits below.

SECTION 2: NOT DISPUTED BY PARTIES

SECTION 3: UNSETTLED

Employees called in by the Fire Chief or Shift Commander or by predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, reported structure fires, Multi vehicle MVA's with entrapment, Mutual-Aid requests, Support of Norton Police, or Any call that the Officer in Charge feels will be labor or manpower intensive.)

SECTION 4: NOT DISPUTED BY PARTIES

As far as possible, overtime shall be equitably distributed among all members of the Bargaining Unit. An overtime list shall be posted each pay period showing the number of hours worked by each employee. Except in emergency situations, when overtime is to be offered to members of the Bargaining Unit, the employee with the least number of overtime hours worked shall be called first, and the employee in charge of assigning overtime shall continue down the list until all members of the Bargaining Unit have been called. If an employee is called for overtime and refuses, that employee shall be charged as if he or she actually worked the hours of overtime. Employees shall be offered overtime if on paid leave in the same manner as if not on paid leave, except that no employee shall be offered overtime if on sick leave or injury leave.

SECTION 5: SETTLED [UNION LANGUAGE]

Employees shall have the right to accumulate compensatory time in lieu of overtime pay up to a maximum of eighty (80) hours of accumulated compensatory time. Use of compensatory time shall be at the Chief's discretion. Compensatory time is defined as time off with pay in lieu of contractual overtime pay.

SECTION 6: SETTLED [UNION LANGUAGE]

The employer is only obligated to pay overtime for those hours worked over the established work week or work period in a given pay period as currently observed by the City's finance officer (00.01 hours Saturday through 24:00 hours Friday).

SECTION 7: NOT DISPUTED BY THE PARTIES**SECTION 8: UNSETTLED**

Any openings on the posted schedule may be offered to part-time EMT's first, then within twenty-four (24) hours of the start of the shift shall be offered to members of this bargaining unit.

SECTION 9: UNION WITHDREW ITS PROPOSAL**RATIONALE**

The union wants overtime pay and court time pay defined in the contract.

CITY'S POSITION

As noted in the discussion of the Union's proposal, only Sections 3 and 8 remain in dispute between the parties. The Union's position for each section is discussed above. The City's positions follow.

SECTION 3:

Employees called in by the Fire Chief or Shift Commander or by predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, or reported structure fires).

SECTION 8:

The City rejects the Union's proposed Section 8 language, but offers no language of its own.

RATIONALE

The changes proposed by the City seek to cover any established work period. In all cases any hours worked in excess of the standard work week or work period would be paid at 1 ½ and considered overtime. The provisions proposed by the City comply with FLSA Safety Forces provisions.

FACT FINDER'S OPINION

SECTION 3:

The fact finder recommends the adoption of the language proposed by the Union:

Employees called in by the Fire Chief or Shift Commander or by predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, reported structure fires, Multi vehicle MVA's with entrapment, Mutual-Aid requests, Support of Norton Police, or Any call that the Officer in Charge feels will be labor or manpower intensive.)

RATIONALE

The Union's language differs from that of the City in that it expands the options for earning overtime pay at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay, i.e. adding, *Multi vehicle MVA's with entrapment, Mutual-Aid requests, Support of Norton Police, or Any call that the Officer in Charge feels will be labor or manpower intensive.* These added options, however, are merely a restatement of Chief Calco's own May 23, 2006, memo [Union Exh. 16].

Determination of the need for manpower is still left primarily to the Fire Chief and Shift Commander, however, if these entities are not available at the scene of an incident, the Officer in Charge [Union Exh. 16] has the power to determine manpower needs. If indeed the Fire Chief and/or Shift Commander is not available or first on the scene, in the interest of public safety, the Officer in Charge, must be free to determine the need for manpower, and should not be limited to the specific events enumerated in the City's proposal and the expiring contract.

SECTION 8:

The City objects to the Union's proposal that:

Any openings on the posted schedule may be offered to part-time EMTs 1st, then within twenty-four (24) hours of the start of the shift shall be offered to members of this bargaining unit.

The City offers no language of its own, however, appears to object to any offer of overtime pay being made to full-time EMTs. The fact finder offers the following compromise language:

Any openings on the posted schedule must be offered first to part-time EMTs , then, within twenty-four (24) hours of the start of the shift, unfilled openings shall be offered to members of this bargaining unit.

RATIONALE

The fact finder's rationale for this compromise language again arises out of concern for public safety as well as public finance. If indeed an opening on the posted schedule cannot be filled by part-time EMTs, the position must be covered by the City's full-time EMTs. To refuse to

cover posted, but unfilled positions with full-time EMTs when there are no part-time EMTs willing to serve, is to endanger public safety.

In addition, if full-time EMTs are indeed willing to come in to fill posted positions offered to part-time EMTs, but unfilled by part-time EMTs they are being required to work beyond their contractual work week or work period, and, as per settled Section 6 [above] deserve overtime pay at one and one-half (1 ½) times their regular hourly rate.

ARTICLE 19 – SICK LEAVE

Section 1

Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to contagious disease communicable to other employees; or 3) serious illness, injury or death in the employee's immediate family.

Section 2

All full-time employees shall earn sick leave at the rate of one and one quarter (1 ¼) days per month and may accumulate sick leave to an unlimited amount.

Section 3

An employee who is to be absent on sick leave shall notify his supervisor of such absence and the reason therefore at least one (1) hour before the start of his work shift each day he is to be absent.

Section 4

Sick leave may be used in segments of not less than one (1) hour.

Section 5

Before an absence of more than two (2) days may be charged against accumulated sick leave, the Chief may require such proof of illness, injury or death as may be satisfactory to him, or may require the employee to be examined by a physician designated by the Chief and paid by the Employer.

Section 6

If the employee fails to submit adequate proof of illness, injury or death upon request of the Chief, or in the event that upon such proof as is submitted or upon the report of medical examination, the Chief finds there is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may be considered an unauthorized leave and shall be without pay.

Section 7

The Chief may require an employee who has been absent due to personal illness or injury, prior to and as a condition of his return on duty, to be examined by a physician designated and paid for by the Employer, to establish that he is not disabled from the performance of his normal duties and that his return to duty will not jeopardize the health and safety of other employees.

Section 8

When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children or parents residing with the employee. When the use of sick leave is due to death in the immediate family, "immediate family" shall be defined only to include the employee's mother, father, spouse, child, brother, sister, father-in-law, mother-in-law, grandparents and step relatives as included in Article 20 Section 2.

Section 9

An employee who transfers from this department to another department of the Employer shall be allowed to transfer his accumulated sick leave to the new department within the City of Norton.

Section 10

Upon retirement, death or resignation of a full-time employee who has not less than ten (10) years of continuous service with the employer, such employee or his estate, shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement, death or resignation, multiplied by 120 days of unused accumulated sick leave upon retirement, death or resignation.

UNION'S PROPOSAL

The Union did not revise Sections 1 through 10 of Article 19 cited above. The Union does, however, object to the City's proposal that "resignation" be removed from the language of Article 19, Section 10.

RATIONALE

The Union objects to City's proposal that accumulated sick leave be lost if one resigns, rather than retires. The Union maintains that sick leave is earned and should NOT be lost by retirement or resignation. The Union further objects to the City's proposed language limiting retirement to that under the Police and Fire Pension System, as opposed to retirement under Social Security or PERS.

CITY'S POSITION

The City did not revise Sections 1 through 9 of Article 19 cited above. The City did, however, offer the following revision to Section 10 of Article 19:

On Retirement under the Police and Fire Pension System, a full-time employee who has not less than ten (10) years of continuous service with the Employer, shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement, multiplied by a maximum 120 days of unused accumulated sick leave upon retirement. In the event of an employee's death, his/her sick leave accrual up to the 120 day maximum payment shall be provided to the employee's beneficiary.

NOTE:

During the course of discussing these proposed changes to Article 19, Section 10, the City suggested that the existing language in Article 19, Section 10, be kept and that the City's proposed changes be placed in a new Section 11 targeting new-hires.

For employees hired after January 1, 2007, on Retirement under the Police and Fire Pension System, a full-time employee who has not less than ten (10) years of continuous service with the Employer, shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement, multiplied by a maximum 120 days of unused accumulated sick leave upon retirement. In the event of an employee's death, his/her sick leave accrual up to the 120 day maximum payment shall be provided to the employee's beneficiary.

In response, the Union objected to the addition of Section 11, and the City went back to its revision of Section 10.

RATIONALE

The City argued that its revisions clarified Sick Leave cash out payment and procedure, and noted that the City Employer wanted to establish a Sick Leave Cash Out benefit in line with the AFSCME agreements.

FACT FINDER'S OPINION

The Fact Finder agrees with the Union that sick leave is an earned benefit and should not be lost at death, retirement, or resignation. Sections 1 through 10 of Article 19 should remain unchanged.

The City's proposal, however, in its last line contains yet another proposed change:

In the event of an employee's death, his/her sick leave accrual up to the 120 day maximum payment shall be provided to the employee's "beneficiary".

While the existing language, proposed by the Union, states that:

Upon retirement, death or resignation of a full-time employee who has not less than ten (10) years of continuous service with the employer, such employee or his "estate", shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement, death or resignation, multiplied by 120 days of unused accumulated sick leave upon retirement, death or resignation.

It is the Fact Finder's recommendation that the City's language, changing "estate" to "beneficiary" be adopted.

RATIONALE

It would be unfair to an employee to make payment for earned and unused sick leave attach only upon death or retirement. It would also be fiscally unwise for the City to do this because it would lead to a "use it or lose it" mentality that probably would increase absenteeism.

ARTICLE 24 – SENIORITY & PROBATIONARY PERIOD

Section 1

Seniority shall be the date of the Employee's appointment to the Fire Department and the total length of this continuous service after that date, and shall be used for the purpose of layoff and recall rights, and eligibility to take promotional examinations in the Department. Where more than one (1) employee has been appointed on the same date, then his seniority shall be in accordance with his position in the original appointment list.

Section 2

Probationary Period. There shall be a probationary period of one (1) year for newly hired full-time employees of the City of Norton Fire Department. The Union recognizes and agrees with the right of Management to hire, discharge with due cause and discipline an Employee during the probationary period without interference from the Union. However, it is imperative an employee, especially a new employee, understand their relationship to the Employer and understand the rights, privileges and benefits to which they are entitled. Therefore, the Probationary Employee shall be covered by all Articles of this Agreement excepting those Articles that are in conflict with the provisions of the probationary period.

UNION'S PROPOSAL

Seniority shall be the date the Employee becomes eligible to join this Bargaining Unit, and the total length of this continuous service after that date, and shall be used for the purpose of layoff and recall rights, and eligibility to take promotional examinations in the Department. Where more than on (1) employee has been appointed on the same date, then his seniority shall be in accordance with his position in the original appointment list.

RATIONALE

The Union wants to protect the seniority rights of the members of the Bargaining Unit it represents, i.e., full-time Fire Fighters from the prospect of part-time Fire Fighters breaking into their seniority ranks. The Union also wants to clarify when seniority starts for the purpose of vacation, promotions, etc.

CITY'S PROPOSAL

Section 1

Seniority shall be the date of the Employee's appointment to the Fire Department as a full-time employee. The total length of continuous service after that date shall be used for the purpose of layoff and recall rights, vacation scheduling preference, and eligibility to take promotional examinations in the Department. Where more than one (1) employee has been appointed on the same date, then seniority shall be determined in accordance with their respective positions on the original appointment list.

RATIONALE

The City objects to seniority being incumbent on Bargaining Unit membership. Employees don't have to join the Union. The City's proposed language redefines Seniority based upon full-time service. It also clarifies same date hires' in-grade seniority based on eligibility lists.

FACT FINDER'S OPINION

Section 1

The City's language should be adopted with the following additional changes noted in underlined italics:

Seniority shall be the date of the fire fighter's appointment to the Fire Department as a full-time employee. The total length of continuous service after that date shall be used for the purpose of full-time fire fighter layoff and recall rights, vacation scheduling preference, and eligibility to take promotional examinations in the Department. Where more than one (1) full-time fire fighter has been appointed on the same date, then seniority shall be determined in accordance with the respective positions of the full-time fire fighters on the original appointment list.

RATIONALE

This additional language makes it clear that only full-time fire fighter service from date of appointment will be considered in determining seniority, thus addressing the Union's stated concern that the term "Employee" might allow part-time fire fighters to break into the full-time fire fighters' seniority ranks.

This additional language also addresses the City's concern that seniority should not be defined by eligibility for Union membership.

Section 2

UNION'S POSITION

Current language should remain unchanged.

RATIONALE

None given, but City says that it's proposal, given below, addresses IAFF expressed concerns.

CITY'S PROPOSAL

Section 2 and 3

An employee's seniority shall terminate whenever one of the following occurs:

- A) Discharge or removal from the Bargaining Unit for just cause;
- B) Retirement;
- C) Failure to return to work within fourteen (14) calendar days of a recall from layoff;
- D) Failure to return to work at the expiration of leave of absence;
- E.) A resignation

Section 3

Should an individual become re-employed full-time with the City of Norton Fire Department after the termination of his/her seniority under Section 2 above, his/her seniority date shall be the date of his/her subsequent re-employment.

RATIONALE

The City states that it drafted Sections 2 and 3 to address the IAFF's expressed concerns.

Section 4

Becomes the language of Section 2 – Probationary Period, to which neither party objected.

FACT FINDER'S OPINION

The City's proposed language for Sections 2 and 3 should be adopted, and the language defining *Probationary Period* in the current contract should become Section 4.

RATIONALE

Addresses both parties concerns.

ARTICLE 25 – LONGEVITY – SETTLED

UNION'S POSITION

Section 1

The Union accepts the City's new language

Section 2

The Union accepts an increase in the Longevity Benefit equal to the AFSCME agreements.

CITY'S PROPOSAL

Section 1

Bargaining Unit employees shall be entitled to receive a single lump sum longevity allowance *payable in December*, based on their *seniority completed* with the City of Norton. Completed service shall be defined as the employee's completed service on December 1 of the applicable year.

Section 2

Longevity allowance shall be based on the following schedules:

LONGEVITY PAY

SENIORITY COMPLETED	BUT LESS THAN	AMOUNT
5	6	\$352.00
6	7	\$387.00
7	8	\$422.00
8	9	\$457.00
9	10	\$492.00

10	11	\$527.00
11	12	\$562.00
12	13	\$598.00
13	14	\$633.00
14	15	\$668.00
15	16	\$738.00
16	17	\$808.00
17	18	\$879.00
18	19	\$949.00
19	20	\$1019.00
20+		\$1,171.00

ARTICLE 26 – COMPENSATION

Section 1

Effective January 1, 2006, through December 31, 2006, Fire Fighters/ Fire-Medics shall be entitled to the following hourly wage compensation:

	2006
CLASSIFICATION	BASE WAGE
FIRE/MEDIC 1 ST YEAR	\$18.22
FIRE/MEDIC 2 ND YEAR	\$21.14
FIRE/MEDIC 3 RD YEAR	\$22.61
FIRE/MEDIC 4 TH YEAR	\$25.70

UNION'S PROPOSAL

Section 1

Effective January 1, 2007, January 1, 2008, and January 1, 2009, respectively, Firefighter/Fire-Medics shall be entitled to the following hourly wage compensation:

CLASSIFICATION	2007 – 6.1%	2008 – 3%	2009 – 3%
FIRE/MEDIC 1 ST	\$19.33	\$19.91	\$20.51
FIRE/MEDIC 2 ND	\$22.43	\$23.10	\$23.80
FIRE/MEDIC 3 RD	\$23.99	\$24.71	\$25.45
FIRE/MEDIC 4 TH	\$27.27	\$28.09	\$28.93

RATIONALE

After taking a wage freeze last year the Union seeks to return to parity with the other safety forces within the City of Norton. The Union, in support of its bid for parity, includes the City of Norton's own Ordinance No. 75-2000 [Union Exh. 22], an *ordinance to provide parity between the base wage schedule of full-time firefighters/EMTs and full-time police officers as controlled by the collective bargaining agreement between the City of Norton and the O.P.B.A. and declaring an emergency.*

The Union further submits [Union Exhs. 28, 29] AFSCME Personnel Orders for Larry Hitchings and for Mark Kennedy, issued on January 5, 2007, indicating that Mechanic Hitchings will earn a probationary pay rate of \$19.54 per hour, while Mr. Kennedy, a full-time laborer will earn a probationary rate of \$15.35. A full-time firefighter/Medic 1st year earns only \$18.22 under the existing contract. It should also be noted that both hirings took place in January, 2007, while the City was claiming it could not fund full-time Firefighter/Medic raises.

In support of its proposal, the Union also cites hourly wage rates in comparable districts [Union Exh. 21, Barberton, Bath, Copley and Fairlawn] and SERB's Annual Wage Settlement Breakdown (1997-2006) [Union Exh. 23]. In 2006, the SERB report indicates that statewide the average settlement was 3.01%. In 2006, Norton Firefighters were subject to a wage freeze.

The Union further notes that Norton, unlike other comparables, has eliminated promotions for full-time Firefighters/Medics. In contrast, part-time firefighters can be promoted, and have received raises. In

2004, part-time firefighters were granted a 3 ½% raise, 3% in 2005, and 2% in 2006, and were granted added shifts [Union Exhs. 26, 27]. Part-timers were allowed to accumulate hours toward a complete shift.

Although the City claims it has no money to fund raises for full-time Firefighters/Medics, it continues to hire new employees, and it continues to shift work to part-time Firefighters/Medics, adapting time schedules to the needs of part-timers with other positions.

In summary, the Union emphasizes that its members are indeed *full-time Firefighters/Medics*. Union members, unlike part-time Firefighters, have no other source of income. The Union accepted a wage freeze in 2006, but cannot afford to do it again.

It should also be noted that on April 9, 2007, more than a month before this hearing, the Union, as part of Discovery, submitted a list of ten (10) questions [Union Exh. 24] regarding the City of Norton's finances to John Moss, the City's Finance Director. They received no response from Mr. Moss, and on May 3, 2007, submitted their questions a second time [Union Exh. 35]. Only on May 15, 2007, the day of the hearing, did the Union receive Union Exhibit 2, Mr. Moss' responses to these ten (10) questions. It should also be noted that Mr. Moss' responses contained handwritten revisions to the typed document. The Union contends that Mr. Moss, the City of Norton's Director of Finance did not comply with the Union's request for discovery, and presented his responses too late for a meaningful review.

THE CITY OF NORTON'S PROPOSAL

COMPENSATION (1/18/2007) 2% GWI

Section 1

Effective January 1, 2007 and January 1, 2008, respectively, Bargaining Unit Members shall be entitled to the following hourly wage compensation:

CLASSIFICATION	2007 2% GWI	2008 0% GWI
Firefighter 1st Year	\$18.58	\$18.58
Firefighter 2nd Year	\$21.56	\$21.56

Firefighter 3rd Year	\$23.06	\$23.06
Firefighter 4th Year	\$26.21	\$26.21

RATIONALE

The City proposes a wage increase of 2% in 2007 for the IAFF Local #4219. This GWI reflects the current financial status of the City of Norton, the depleted Fire and EMS Levy funds, and the need for fiscal responsibility. The City maintains that even this 2% GWI is beyond the City's means, but is made as a gesture of good faith.

The City also argues that its 2% proposal is equal to that recommended by Fact Finder Eugene Brundige in SERB Case 06-MED-12-1388 [City of Norton/Part-time Fire IAEP, accepted by the Norton City Council and the thirty-three [33] members of the Part-time Fire IAEP in April, 2007 [City Exh. 3].

The City offers its own comparables [City Exh. 1, 2] noting that the median household income in Norton, \$47,085, a figure placing it ninth in a list of comparable Summit Township Cities. The City rejects the Union's comparables noting that Barberton, Bath, Copley and Fairlawn are far wealthier cities.

Mr. Moss, the City's Director of Finance testified that if a levy is not passed, the fire department will cease to exist. A new levy must be passed or else costs must be trimmed. A fire levy, according to Mr. Moss must pay for equipment, building, and repair. City Exhibit 4 illustrates the fiscal crisis now facing the Fire Department. The fire department at this time is in debt as appropriations increase and revenues decrease.

The City also contends that under existing rules it cannot reassess to get more money. Even as new businesses enter the City and contribute to its fiscal status, the City contends that current laws merely require the City to maintain or lower existing evaluations. Thus, the City maintains that it cannot fund the raises requested by the Union.

FACT FINDER'S OPINION

The fact finder recommends the following compromise schedule for funding Full-Time Firefighter raises:

Section 1

Effective January 1, 2007, January 1, 2008, and January 1, 2009, respectively, Firefighter/Fire-Medics shall be entitled to the following hourly wage compensation:

CLASSIFICATION	2007 – 5.0%	2008 – 3%	2009 – 3%
FIRE/MEDIC 1 ST	\$19.12	\$19.69	\$20.28
FIRE/MEDIC 2 ND	\$23.19	\$23.89	\$24.61
FIRE/MEDIC 3 RD	\$23.74	\$24.45	\$25.18
FIRE/MEDIC 4 TH	\$26.99	\$27.80	\$28.63

RATIONALE

The Union took a wage freeze in 2006 and to accept the City's proposal would be to literally agree to yet another wage freeze in 2008, while not being given a chance to make up wages lost in 2006. While the City claims it cannot finance the Union's proposal, it does indeed continue to hire and promote in other units [Union Exhs. 28, 29].

The Fact Finder must also note that the City's refusal to answer the discovery questions submitted by the Union to Mr. Moss, the Director of Finance, on April 9, 2007 [Union Exh. 24], is not in keeping with good faith collective bargaining. The Union had the right to have this material submitted well before the hearing so that Mr. Moss' responses could indeed be studied and properly questioned at the hearing. As it is, the report submitted by Mr. Moss to the Union, dated May 13, 2007, indicates a decrease in wages for Full-time Fire employees and EMS in 2004, 2005, and 2006, amounting to 6.5% [Union Exh. 2]. At the same time Mr. Moss' report indicates a 66% increase in Part-time wages during this same period of time.

It should be noted that following the May 15, 2007, Mr. Codrea, the City's representative requested permission to submit a "corrected" response to the Union's questions by Mr. Moss, the City's Finance Director. This request was denied by the fact-finder because Mr. Moss had ample time to "correctly" reply to the Union's original discovery request on April 9, 2007 [Union Exh. 24]. A late and "corrected"

submission would give the Union no opportunity to question the information submitted by Mr. Moss, or Mr. Moss himself.

The fact-finder rejects the City's argument that because Part-time Fire IAEP accepted fact-finder Brundige's proposal for a 2% raise in 2007, Full-time Firefighters/EMT's should follow suit. As the Union argues, Full-time Firefighters have no other source of income. Firefighting for the City of Norton is their primary source of income.

Norton is a growing city and its financial planning should take its growth into account. No effort to pass a fire levy was made in 2006 when the Full-time firefighters willingly accepted a wage freeze to help the City deal with its financial problems. Now, by virtue of its own proposal, in 2008, the City again asks Full-time Firefighters to accept another wage freeze. This is simply not fair.

The Fact-finder's recommended compromise is based on the following reasoning:

- a) 2007 Raise = City's 2% offer + SERB 3% [freeze make-up]
- b.) 2008 Raise = Statewide SERB Average =3%
- c.) 2009 Raise = Statewide SERB Average =3%

The Fact-finder has made a three year recommendation in deference to the Union's argument that they are small (3 member) unit and cannot afford the cost of yearly negotiations leading to fact-finding/conciliation.

ARTICLE 28 – EDUCATION – SETTLED

Section 1

When a course of study at an educational institution is job related and pre-approved in writing by the Fire Chief and the Administrative Officer, the following reimbursement schedule shall apply subsequent to the employee's completion of such course:

<u>Grade</u>	<u>Reimbursement Percentage</u>
A	100%
B	100%

C	75%
D or less	0%

Reimbursement shall include tuition, required expenses, and required text. Documentation shall be provided including receipts and grade verification when reimbursement is requested. Maximum reimbursement under this Article shall be at the rate of tuition costs at the University of Akron or Kent State University.

RATIONALE

Both parties agree to clarify the amount of tuition cost reimbursement.

ARTICLE 29 – UNIFORM ALLOWANCE

Section 1

A new employee shall be entitled to receive a pro-rated amount of clothing allowance during his first calendar year of service with the City beginning with his starting date month if hired on or before the 15th of a month or the month following his hiring, if hired after the 15th of the month. Any amount not expended during the first calendar year shall be credited to the employee's next calendar year's allowance.

Section 2

All non-probationary Firefighters and Fire-Medics shall receive an annual uniform allowance payable prior to February 10 of each year. Said allowances shall be paid according to the following scale:

Effective Date:	01/01/2006
Firefighters/Fire Medics	\$800

Section 3

Any taxes incurred in regard to the Uniform Allowance shall be the Employee's responsibility.

UNION'S PROPOSAL

Section 1

Same as above

Section 2

All non-probationary Firefighters and Fire Medics shall receive an annual uniform allowance payable prior to February 10 of each year. Said allowances shall be paid according to the following scale:

Effective Date	01/01/07	01/01/08	01/01/09
Firefighters/Medics	\$962	\$962	\$962

Section 3

Same.

Section 4 – Same**RATIONALE**

The Union seeks to return to parity with the other safety forces with regard to its uniform budget. Following contract negotiations by other safety forces in 2003, a disparity developed between the uniform allowance for other safety forces and that for the Full-time Firefighters/Medics. Other Norton safety forces currently receive a \$962 uniform allowance, while Firefighters receive \$800, 17% less.

The Union also notes that in 2004, the fire chief required a change in the Duty Uniform resulting in the following increases:

2003 On-Duty Uniform	2004 On-Duty Uniform
Screen printed tee-----\$12.00	Elbeco Shirt-----\$46.00
Sears Navy Socks-----\$24.00	Elbeco Slacks---\$58.00
Previous Cost-----\$36.00	Current Cost----\$104.00

See Union Exhibit 35 for a further breakdown of Uniform Costs.

CITY'S PROPOSAL**Section 1**

Same.

Section 2

All non-probationary Firefighters and Fire-Medics shall receive an annual uniform allowance payable in February of each year. Said allowances shall be paid according to the following scale:

Effective Date: 01/01/06 [Date in City's prop.]
Firefighters/Fire Medics \$800.

Section 3

If a Fire Fighter should terminate or retire from employment with the Employer, the Employer shall deduct from such employee's final paycheck or any funds due the employee a sum equal to:

$$\frac{\$800.00 \times \text{the number of full months remaining in the year}}{12}$$

That is, the Uniform Allowance shall be pro-rated.

Section 4

Stays the same

FACT FINDER'S OPINION

There should be parity between the Uniform Allowances of Norton's Safety Forces. Therefore the Fact-Finder suggests the following schedule of Uniform Allowance Increases be adopted over the three years of this contract:

Section 2

All non-probationary Firefighters and Fire-Medics shall receive an annual uniform allowance payable *prior to February 10* of each year according to the following schedule:

Effective Date:	01/01/07	01/01/08	01/01/09
Firefighters/Fire Medic	\$854.00	\$908.00	\$962.00

RATIONALE

This language will bring the Firefighter/Fire-Medic Uniform Allowance in parity with the Uniform Allowance of other Norton Safety Forces over the term of this contract.

Payment before February 10 of each year clarifies the timing of this provision.

Section 3 – Same as in Current Contract

Any taxes incurred in regard to the Uniform Allowance shall be the Employee's responsibility.

Section 4 – Add City's Section 3 – Pro-Rate Uniform Allowances

If a Fire Fighter should terminate or retire from employment with the Employer, the Employer shall deduct from such employee's final paycheck or any funds due the employee a sum equal to:

The Uniform Allowance for that year x months remaining in that year

12

That is, the yearly Uniform Allowance shall be pro-rated.

RATIONALE

This language makes it clear that the Uniform Allowance is pro-rated to cover uniform needs over a year of employment, and if a Firefighter/Medic leaves the employment of the City before a year is over, the City will be allowed to recoup a portion of this allowance as per the formula in Section 4.

ARTICLE 30 –INSURANCE

Section 1

The employer will provide for each employee insurance coverage equal to or better than that coverage which each employee is presently receiving.

Section 2

The Employer will provide and pay the full premium on behalf of each employee, for optical vision care, equal to that coverage which each employee is presently receiving.

Section 3

The Employer will provide and pay effective 30 days after the contract is executed for full-time employees, the full premium for a life insurance policy in the amount of Twenty-five Thousand Dollars (\$25, 000.00).

Section 4

Effective January 1, 2003, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	Individual \$250 Family \$500	Individual \$500 Family \$1000
<u>Max out –of Pocket</u> [includes ded. Calendar Year]	Individual \$400 Family \$900	Indiv. \$1000. Family \$2000
<u>Hospital Expense</u>	90%	70% R&C
<u>Outpatient Surgery</u>	90%	70% R & C
<u>Sterilization</u>	90% up to \$500 Females & Males	70% R & C up to \$500 Females & Males
<u>Coinsurance</u>	90%/10%	70%/30% of R & C
<u>Prescription Drugs</u> Up to 30 Day Supply <u>(All within Network)</u>	Generic = \$5 Preferred Brand = \$10 Non-preferred = \$20	Generic = \$5 Formulary = \$10 Non-Formulary= \$20

The deductibles listed above are non-integrated with Network and Non-Network benefits.

Section 5

The City has the right to implement a generic and/or mail order drug program to effectuate the cost savings for the City. Current mail order provisions provide for up to a 90 day supply with a payment of two deductibles.

Section 6

Effective with the execution of the Agreement, the Employer will contribute \$28.00 per month per employee for the term of this Agreement for the AFSCME CARE Dental II Plan.

Section 7

The Employer agrees to provide a benefit for the Bargaining Unit member only for corrective eye surgery (i.e., laser surgery). This benefit is a one-time cost per employee up to \$2,000.

Section 8

If during the term of this Agreement, the Ohio PBA Bargaining Unit should become covered under a "Spousal Coverage Agreement" the parties would agree that members of the IAFF Bargaining Unit would be covered under said "Spousal Coverage Agreement". Spousal Coverage shall apply to spouses that work full time, as per HIPPA Standards.

UNION'S PROPOSAL**Section 1**

No Change

Section 2

No Change

Section 3

The Employer will provide and pay *effective thirty (30) days after the contract is executed*, the full premium for a life insurance policy in the amount of Forty Thousand (\$40, 000) dollars.

Section 4

Effective January 1, 2006, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	Individual \$250 Family \$500	Individual \$500 Family \$1000
<u>Max out –of Pocket</u> [includes ded. Calendar Year]	Individual \$400 Family \$900	Indiv. \$1000. Family \$2000
<u>Hospital Expense</u>	90%	70% R&C
<u>Outpatient Surgery</u>	90%	70% R & C

<u>Sterilization</u>	90% up to \$500 Females & Males	70% R & C up to \$500 Females & Males
<u>Coinsurance</u>	90%/10%	70%/30% of R & C
<u>Prescription Drugs</u> Up to 30 Day Supply (All within Network)	Generic = \$5 or Preferred Brand = \$10 Non-preferred = \$20	Generic = \$5 Formulary = \$10 Non-Formulary= \$20

The deductibles listed above are non-integrated with Network and Non-Network benefits.

Section 5

No Change

Section 6

No Change

Section 7

No Change

Section 8

DELETED BY THE UNION.

RATIONALE

Section 3

The Union seeks to raise the amount of the current life insurance policy to match the amount offered to other safety forces.

Section 4

The Union seeks to maintain a comparable comprehensive medical plan such as that currently being provided to the other safety forces.

CITY'S PROPOSAL

Section 1

The Employer will provide IAFF Local 4219 Bargaining Unit members with a Health Insurance Plan that is equal to the City of Norton's Health Insurance Plan. Said plan shall be equal in all aspects to the plan under the OPBA Police and Dispatcher Agreement. Additionally,

during the term of this Agreement the Employer will continue to contribute twenty-eight dollars (\$28.00) per month per employee in order to cover the premium for AFSCME CARE Dental II plan.

Section 2

No Change

Section 3--SETTLED

See Union's Language.

City's Section 4 = Union's Section 5 -SETTLED

No Change

City's Section 1 = Union's Section 6 - SETTLED

No Change

City's Section 5 = Union's Section 7 – SETTLED

No Change

City's Section 4

a. Effective January 1, 2006, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	Individual \$250 Family \$500	Individual \$500 Family \$1000
<u>Max out –of Pocket</u> [includes ded.] Calendar Year	Individual \$400 Family \$900	Indiv. \$1000. Family \$2000
<u>Hospital Expense</u>	90%	70% R&C
<u>Outpatient Surgery</u>	90%	70% R & C
<u>Sterilization</u>	90% up to \$500	70% R & C up to \$500

	Females & Males	Females & Males
<u>Coinsurance</u>	90%/10%	70%/30% of R & C
<u>Prescription Drugs</u>	Generic = \$5	Generic = \$5
<u>Up to 30 Day Supply</u>	Preferred Brand = \$10	Formulary = \$10
<u>(All within Network)</u>	Non-preferred = \$20	Non-Formulary= \$20

b.) Effective January 1, 2007, the following changes to the provisions set forth above shall be implemented:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	Individual \$300	Individual \$600
	Family \$600	Family \$1200
<u>Max out –of</u>	Individual \$500	Indiv. \$1200.
<u>Pocket</u>	Family \$1100	Family \$2500
[includes ded.]		
Calendar Year		
<u>Prescription Drugs</u>	Generic = \$8	Generic = N/A
<u>Up to 30 Day Supply</u>	Preferred Brand = \$12.50	Formulary= N/A
<u>(All within Network)</u>	Non-preferred = \$25	Non-Formulary= N/A

c.) Effective January 1, 2008, the following changes to the provisions set forth above shall be implemented:

<u>Deductibles</u>	Individual \$350	Individual \$750
	Family \$700	Family \$1400
<u>Office Calls</u>	\$15.00	\$30.00

CITY'S RATIONALE

The Insurance proposal noted above appears in the Daniel Zeiser's conciliation report submitted on June 21, 2006, and arose out of the City

of Norton's negotiations with the OPBA. After the City of Norton's Appeal in SERB Case Numbers 06-MED-09-1042, 1043, and 1044 [City of Norton/OPBA] was denied, the Health Care Plan awarded by Mr. Zeiser became the City of Norton Health Insurance Plan. The City asks that this plan be adopted for the IAFF as well so that there will a continuity of benefits for all City employees when the OPBA and AFSCME Collective Bargaining Agreements expire on December 31, 2008. The City wants all fifty-four [54] of its employee's in one plan, including the three full-time firefighters so that it can effectively manage a City-wide insurance plan. This plan would come up for renegotiation with the OPBA and AFSCME in December, 2008.

FACT FINDER'S OPINION

Section 1

The City's proposal for Section 1 is, *in part*, recommended. That is, Section 1 should read:

The Employer will provide IAFF Local 4219 Bargaining Unit members with a Health Insurance Plan that is equal to the City of Norton's Health Insurance Plan. Said plan shall be equal in all aspects to the plan under the OPBA Police and Dispatcher Agreement.

RATIONALE

Adoption of this language assures the IAFF parity with the City's other safety forces in the area of health insurance coverage. Concern for parity has been an issue throughout the hearing [Union Exh. 22]. Having all employees under one insurance plan will also make it easier for the City to work with its providers to get the better coverage, and to effectively administer the plan chosen.

NOTE:

The last line of the City's proposed language for Section 1 has been eliminated since it essentially repeats the Union's language proposed for Section 6 of the contract.

Section 2- SETTLED/UNCHANGED

The Employer will provide and pay the full premium on behalf of each employee, for optical vision care, equal to that coverage which each employee is presently receiving.

Section 3 – SETTLED/PARTIES AGREE

The Employer will provide and pay effective 30 days after the contract is executed, for full-time employees, the full premium for a life insurance policy in the amount of Forty Thousand dollars (\$40,000).

Section 4 –CITY’S PROPOSAL AS PER ZEISER CONCILIATION

a. Effective January 1, 2006, the Employer will provide a comprehensive medical plan that includes the following:

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	<i>Individual \$250 Family \$500</i>	<i>Individual \$500 Family \$1000</i>
<u>Max out –of Pocket</u> <i>[includes ded.] Calendar Year</i>	<i>Individual \$400 Family \$900</i>	<i>Indiv. \$1000. Family \$2000</i>
<u>Hospital Expense</u>	<i>90%</i>	<i>70% R&C</i>
<u>Outpatient Surgery</u>	<i>90%</i>	<i>70% R & C</i>
<u>Sterilization</u>	<i>90% up to \$500 Females & Males</i>	<i>70% R & C up to \$500 Females & Males</i>
<u>Coinsurance</u>	<i>90%/10%</i>	<i>70%/30% of R & C</i>
<u>Prescription Drugs</u> <i>Up to 30 Day Supply (All within Network)</i>	<i>Generic = \$5 or Preferred Brand = \$10 Non-preferred = \$20</i>	<i>Generic = \$5 Formulary = \$10 Non-Formulary= \$20</i>

b.) *Effective January 1, 2007, the following changes to the provisions set forth above shall be implemented:*

MMO SUPER MED PLUS NETWORK OR EQUIVALENT

	<u>Network</u>	<u>Non-Network</u>
<u>Deductibles</u>	<i>Individual \$300 Family \$600</i>	<i>Individual \$600 Family \$1200</i>
<u>Max out –of Pocket</u> <i>[includes ded.] Calendar Year</i>	<i>Individual \$500 Family \$1100</i>	<i>Indiv. \$1200. Family \$2500</i>
<u>Prescription Drugs</u> <i>Up to 30 Day Supply (All within Network)</i>	<i>Generic = \$8 Preferred Brand = \$12.50 Non-preferred = \$25</i>	<i>Generic = N/A Formulary= N/A Non-Formulary= N/A</i>

c.) *Effective January 1, 2008, the following changes to the provisions set forth above shall be implemented:*

<u>Deductibles</u>	<i>Individual \$350 Family \$700</i>	<i>Individual \$750 Family \$1400</i>
<u>Office Calls</u>	<i>\$15.00</i>	<i>\$30.00</i>

RATIONALE

The Fact Finder recommends the adoption of the insurance plan in Mr. Zeiser's Conciliation Report [Union Exh. 57, pp. 22-23] because it would assure the IAFF parity with the City's other safety forces on the issue of insurance. In addition, adoption of this plan will give the City an opportunity to study usage history in a larger context [54 employees as opposed to 3] and to better address ways to control the rising costs of effectively delivering health insurance.

Section 5 – PARTIES AGREE

Union's language and numbering system are recommended, since City's Section 4 is identical to Union's Section 5.

The City has the right to implement a generic and/or mail order drug program to effectuate the cost savings for the City. Current mail order provisions provide for up to a 90 day supply with a payment of two deductibles.

Section 6 –PARTIES AGREE

The Fact Finder has moved the last sentence of the City’s Section 1 which substantively agrees with the Union’s Section 6.

During the term of this Agreement the Employer will contribute \$28.00 per month per employee in order to cover the premium for the AFSCME CARE Dental II plan.

Section 7 –PARTIES AGREE

The City’s language in its Section 5 is the same as the Union’s language in Section 7. Therefore it is recommended that the Union’s language in Section 7 be adopted.

The Employer agrees to provide a benefit for the Bargaining Unit member only for corrective eye surgery (i.e., laser surgery). The benefit is a one-time cost per employee up to \$2, 000.

ARTICLE 34 –LAYOFFS

Section 1

Members of the Bargaining Unit may be laid off only for lack of work or lack of funds.

Section 2

In the event of a layoff situation, members of the Bargaining Unit will be laid off in accordance with their departmental seniority (last hired, first laid off).

Section 3

A member of the Bargaining Unit who is laid off shall be subject to recall from layoff for a period of three (3) years.

Section 4

A recall from layoff will be based upon departmental seniority (last laid off, first recalled).

Section 5

All part-time employees of the Fire Department will be laid off before any full-time members.

UNION'S PROPOSAL – NO CHANGE TO CURRENT LANGUAGE**Section 1**

Members of the Bargaining Unit may be laid off only for lack of work or lack of funds.

Section 2

In the event of a layoff situation, members of the Bargaining Unit will be laid off in accordance with their departmental seniority (last hired, first laid off).

Section 3

A member of the Bargaining Unit who is laid off shall be subject to recall from layoff for a period of three (3) years.

Section 4

A recall from layoff will be based upon departmental seniority (last laid off, first recalled).

Section 5

All part-time members of the Fire Department will be laid off before any full-time members.

RATIONALE

The Union seeks no changes. Their jobs are their sole sources of income, and to change this Article would jeopardize their job security.

CITY'S PROPOSAL**Section 1**

Members of the Bargaining Unit may be laid off only for *lack of work, lack of funds, job abolishment or Departmental reorganization.*

Section 2**SAME AS UNION'S****Section 3****SAME AS UNION'S****Section 4****SAME AS UNION'S****Section 5**

Three part-time employees of the Fire Department will be laid off before any one (1) full-time Fire Department employee is laid off. Should additional layoffs become necessary, the Employer will continue to follow this three (3) part-time to one (1) full-time ratio.

RATIONALE

The City seeks the change above due to recent Fact-Finding and Conciliation decision guidelines. Certain "neutrals" are of the opinion that absent layoffs, employers cannot demonstrate inability to pay or fiscal crisis.

FACT FINDER'S OPINION

The Union's proposal that current contract language remain unchanged is recommended. See above.

RATIONALE

Although the City says its language changes are due to recent Fact-Finding and Conciliation decision guidelines, the City does not cite those guidelines, and this fact-finder is not aware of them. Indeed layoffs are *not* the only way employers can demonstrate inability to pay or fiscal crisis. Among others, inability to pay or fiscal crisis can be shown by a significant loss of tax revenue due the loss of industry or population. This does not appear to be the case in Norton as demonstrated by the Committee of the Whole Meeting minutes of June 19, 2006, and of June 5, 2006 [Union Exh. 32, pp.8 and 2),. Norton is a growing community with resources.

The Fact Finder found it interesting that in the minutes of the June 5, 2006 Committee of the Whole Meeting, Mr. McGlone stated that the city had recently received \$425, 267.54 in estate money[Union Exh. 32,

p. 2]. The minutes show that it was decided that \$275, 000. be used for the 2006 Road Program, although the City testified that it had not conducted a fire levy because it would compete with a road levy. In the same minutes, Mr. Moss, the Director of Finance, stated:

“that the ½% of income tax increase and the fact that we are about 2% ahead in growth has helped with the city finances. . . .our carryover balances are low and should be allowed to grow up to a higher level.”

The Fact Finder also found it interesting that while the Full-time Firefighters accepted a wage freeze in 2006, because the City claimed an inability to pay, at the June 5, 2006, Committee of the Whole Meeting, in a 6-0 vote gave the Municipal Clerk of Council’s the following salary increase:

2006	\$35,000.	Percentage Increase
2007	\$39,000.	11%
2008	\$42,000.	7.9%

Also in the minutes of this June 5, 2006, Committee of the Whole Meeting, Mr. Tomko discussed the Micropaver Program and *“the waste of over \$50,000.00 for this program that he understands is not being used at all now.”* [Union Exh. 32, p. 4] Mr. Tomko went on to say that *“if you spend the money to buy it, then use it.”*

Layoffs are not needed to show that Norton or any city is in fiscal trouble. That being said, the minutes of the June 5, 2006, Committee of Whole Meeting do not support the City’s claim of inability to pay.

NEW ARTICLE 27 – PROPOSED BY THE UNION

Section 1

Crew/Squad Leader Approval and Compensation. A full-time Fire/Medic acting as a Crew/Squad Leader shall be compensated at an hourly rate of pay equal to 4% above the highest paid full-time Fire/Medic. The person acting as Crew/Squad Leader must fill the position for a minimum of one (1) hour per shift to be eligible for compensation. Any fraction of an hour thereafter worked, as Crew/Squad Leader will be compensated for the entire hour.

RATIONALE

Full-time Fire/Medics acting as Crew/Squad Leaders should be compensated for duties frequently performed. Police get 11% to lead. Also, Full-time Firefighters are not eligible for promotion. Part-time Firefighters are eligible for promotion, and therefore get Officer-in-Charge pay. When asked to perform as Officers-in-Charge, full-time firefighters should be paid.

CITY'S POSITION

The City rejects the addition of the Crew/Squad Leader Approval and Compensation clause proposed by the Union.

RATIONALE

Responsibilities and pay for Part-time Firefighters is more than that for Full-time Firefighters because of promotion within the ranks. There are thirty-three (33) Part-timers, three (3) Captains and four (4) lieutenants in the Part-time Unit. The City maintains that Full-time Firefighters are never asked to fill in for the Chief, and it would be difficult to determine when they are "in charge" at a given scene.

FACT FINDER'S OPINION

The Union's proposed clause regarding Crew Leader/Squad Leader Compensation should be added to the new contract. The Union has designated this as Article 27, but there already is an Article 27. The Union must decide whether it wants to replace the existing Article 27, not in dispute, with this one, or whether it wants to add an additional Article to the contract.

RATIONALE

Employees should be paid for the additional responsibilities entailed in taking on leadership roles, and leadership roles and responsibilities should be clearly defined.

ARTICLE 37 – DURATION OF AGREEMENT**UNION'S POSITION**

Section 1

This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and Norton Professional Firefighters Local 4219/IAFF and shall become retroactive effective January 1, 2007. This Agreement shall remain in full force and effect until December 31, 2009.

NOTE: The Union requests a re-opener in 2008 regarding health insurance. The fact-finder has denied this request for a re-opener in adopting the City's proposal for Section 1 of Article 20 dealing with health insurance.

RATIONALE

The Union, with only three (3) members cannot afford the costs of negotiations on a yearly basis. In addition, the Union would like the security afforded by a three-year contract.

CITY'S POSITION

Section 1

This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and Norton Professional Firefighters Local 4219/IAFF and shall become effective upon execution. This Agreement shall remain in full force and effect until December 31, 2008.

RATIONALE

The City proposes a two (2) year Agreement that will run concurrent with the OPBA and AFSCME CBA's.

FACT FINDER'S OPINION

The Fact Finder recommends that the Union's proposal be adopted, and that the contract become retroactive from January 1, 2007 and remain in full force through December 31, 2009. Parity with other safety forces has been a significant issue throughout this hearing. By following the negotiations of the OPBA and AFSCME the IAFF can have a basis for defining parity.

The Fact Finder, however, denies the Union's request for a re-opener in 2008 for the purpose of negotiating health insurance benefits. In the best interests of the City and all of its Unions and independent employees, it must be given the right and opportunity to seek health insurance programs for its collective employees without the pressure of individual bargaining unit negotiations.

RATIONALE

In the interest of labor stability, parity, and fiscal planning, both the Union and the City should have at least a three-year plan for dealing with developing an employer/employee relationship that is equitable and in the best interests of the Norton community.