

FACTFINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO

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STATE EMPLOYMENT RELATIONS BOARD

July 17, 2008

In the Matter of:

City of Brook Park

and

Brook Park Firefighters Association,  
IAFF Local 1141

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Case No. 07-MED-08-0783

APPEARANCES

For the City:

Gary Johnson, Attorney  
Mark Elliott, Mayor  
Lisa J. Zamiska, Commissioner of Human Resources  
Martin S. Healy, Assistant Director of Finance  
James Dustin, Health Insurance Consultant

For the Union:

Tom Hanculak, Attorney  
Jim Astorino, President  
Brian McClain, Vice President  
Matt Lynch, Secretary/Treasurer  
Stephen Baker, Committee Member  
Sal Catalano, FNA Def Com/HRA  
Matthew Wright, Committee Member

Factfinder:

Nels E. Nelson

## BACKGROUND

The instant case involves the City of Brook Park and the Brook Park Firefighters Association, IAFF Local 1141. The city is a southwestern suburb of Cleveland with a population of 21,218. The union represents the city's 40 full-time firefighters.

In the fall of 2007, the parties began negotiations for a successor agreement to the one due to expire on December 31, 2007. After six negotiating sessions, the parties reached impasse. On January 31, 2008, the Factfinder was notified of his appointment. He met with the parties on March 24, 2008, to attempt to resolve the dispute by mediation. When no settlement was reached, factfinding hearings were held on May 13, 2008, and June 4, 2008.

On July 13, 2008, the Factfinder contacted the parties. He indicated that he was working on his Factfinding report and proposed that he meet with them to try to come up with a report that would be more likely to settle the dispute. The city agreed to meet but the union felt that a meeting would not be productive and requested the Factfinder to complete and issue his report.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

## ISSUES

The parties submitted 19 issues to the Factfinder. For each issue, the Factfinder will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. He will then offer his analysis for each issue, followed by his recommendation.

1) Article X - Overtime, Section 1 - Base Salary - The current contract requires the overtime rate to be based on a 40-hour workweek. The city demands to change the base to 48 hours. The union opposes any change.

City Position - The city argues that it cannot afford to calculate overtime based on a 40-hour workweek. It points out that in 2007 it paid more than \$300,000 in overtime in the fire department and that 20% of the total was due to the higher overtime rate. The city insists that its financial situation requires it to reduce overtime costs.

The city contends that a comparison to other cities supports its position. It indicates that four nearby cities do not calculate overtime rates based on 40 hours. The city acknowledges that North Olmsted uses a 40-hour overtime rate for emergency holdovers and Parma for emergency call-ins. The city claims that the cities relied upon by the union as comparables have not been used in the past.

The city cites the decision of Factfinder Robert Stein in North Olmsted Firefighters, IAFF Local 1267 and City of North Olmsted; SERB Case No. 06-MED-09-



0918; February 15, 2007. It reports that in that decision Stein recommended that the 40-hour overtime rate apply only to emergency holdovers rather than to all overtime.

Union Position - The union argues that the status quo ought to be maintained. It points out that for more than 20 years overtime has been based on a 40-hour workweek. The union indicates that a change to a 48-hour base would reduce the overtime rate by \$7.61 and leave the overtime rate for firefighters \$7.04 lower than for police officers. It stresses that based on the average amount of overtime worked and 72 hours of holidays, granting the city's proposal would mean a \$2070 reduction in pay for the firefighters.

The union maintains that comparable communities support its demand. It observes that in Macedonia, Cuyahoga Heights, and Rocky River firefighters' overtime pay is based on 40 hours. The union indicates that Factfinders William Miller, Dennis Byrne, and Martine Fitts refused to change procedures calling for the calculation of overtime based on 40-hour workweeks.

Analysis - The Factfinder recommends that the base for calculating overtime be changed. He recognizes that the 40-hour rate has existed in the city for many years and has become part of the compensation expected by the firefighters. Despite this fact, the Factfinder believes that a reduction in the current rate is appropriate.

First, the 40-hour rate enjoyed by the city' firefighters is not the normal situation. A few cities in Cuyahoga County do calculate all overtime based on 40 hours but none are among the six nearby cities generally used by the parties as comparable cities. North Olmsted does provide overtime based on 40 hours for emergency holdovers and Parma for emergency call-ins but this is far less extensive than what the firefighters in Brook Park want to preserve.

Second, the city faces considerable overtime costs in the fire department. The high cost is a function of the 40-hour overtime rate, minimum manning, and the staffing decisions of the city. Increasing staffing to reduce overtime costs must be weighed against the cost of extra fringe benefits associated with hiring more firefighters. Relaxing the minimum manning is contrary to the argument of the union that doing so threatens the safety of the public as well as firefighters. Thus, reducing the overtime rate appears to be the best option for reducing overtime costs.

Third, the most important consideration is the difficult economic situation facing the city and the union. Income tax collections at Ford have fallen significantly in the first five months of 2008 compared to prior years and are likely to continue to fall. In fact, the parties may have to make additional adjustments as tax revenues fall as employment at Ford declines.

The Factfinder, however, cannot recommend the city's proposal to increase the overtime base from 40 hours to 48 hours. As the union pointed out, a change of this magnitude would result in a large reduction in firefighters' earnings. Increasing the overtime base to 44 hours would provide some relief to the city and result in an overtime rate more in line with neighboring cities without too strong an impact on the earnings of the firefighters.

Recommendation - The Factfinder recommends the following contract language:

When a full-time employee is required to work in excess of the regularly scheduled hours under Article IX of this Agreement, such employee shall receive an overtime payment at the rate of one and one-half (1 ½) times the employee's regular rate of pay for each hour worked, based on a forty-four (44) hour workweek.

2) Article X - Overtime, Section 1 - Extension of Work Day - The current contract requires minimum of two hours pay when an employee is required to work in addition to his regularly scheduled workday. The city wishes to eliminate the minimum if the time abuts an employee's regularly scheduled work day. The union opposes any change.

City Position - The city made no statement at the hearing regarding its demand.

Union Position - The union made no statement regarding the city's demand.

Analysis - The Factfinder does not believe that the current language ought to be changed. The issue appears not to be an important issue for either the city or the union and no basis was provided to change the current contract.

Recommendation - The Factfinder rejects the city's demand.

3) Article X - Overtime, Section 3 - Inclusion of Sick Leave - The current contract counts sick leave as time worked for the calculation of overtime. The city proposes the omission of such time. The union opposes any change.

City Position - The city suggests that other cities do not include sick leave in the calculation of overtime.

Union Position - The union argues that sick leave should continue to count for purposes of calculating overtime eligibility. It points out that it has always been part of hours worked and is included for all bargaining unit and for non-bargaining unit employees in the city. The union adds that all of the comparable cities count sick leave

as hours worked except Parma where there are some restrictions on when sick leave is included in hours worked.

Analysis - The Factfinder sees no reason to change the current contract. The data furnished by the union suggest that the firefighters do not use excessive amounts of sick leave. Furthermore, the city includes sick leave in the hours worked for all other employees and the comparable cities, with only one exception, include sick leave in their overtime calculations.

Recommendation - The Factfinder rejects the city's demand.

4) Article XI - Sick Leave, Section 1 - Accrual Rate - The current contract states that the firefighters accrue 13 hours of sick leave per month. The city proposes to change the accrual rate to 4.6 hours per 80 hours worked. The union rejects the city's demand.

City Position - The city argues that the accrual rate corresponds to the civil service code's accrual rate. It adds that most fire departments have the rate it has offered.

Union Position - The union opposes the city's demand. It points out that its accrual rate puts it right in the middle of the comparable cities in total hours earned per year. The union acknowledges that the civil service code does specify the accrual rate the city is seeking but it notes that the code also has personal leave, which the city does not have.

Analysis - The city failed to convince the Factfinder that there is any reason to change the longstanding accrual rate.

Recommendation - The Factfinder rejects the city's demand.

## 5) Article XI - Sick Leave, Section 2 - Proof of Illness or Injury &

Return to Work Examination - The current contract requires a firefighter to submit a signed statement justifying the use of sick leave or a doctor's slip if he sees a doctor. The city proposes that it have the right to require a doctor's slip and that the contract specify that a doctor's slip must be submitted for an absence of two or more days. It also demands the right to require a return-to-work physical where an employee has been absent due to illness or injury.

City Position - The city argues that its demand should be adopted. It claims that an employee should not have to wonder when a doctor's slip is needed to return to work and it should not have to be concerned about a grievance when it requires a return-to-work physical. The city indicates that fitness for work is any important issue because firefighters drive large vehicles down city streets.

The city maintains that contracts in the comparable cities support its demand. Its states that its data show that four of the cities "may" require proof for the use of one day of sick leave and that North Olmsted's contract states that employees "shall" provide a doctor's statement for missing one day of work. Three of the cities require return-to-work physicals for absences of two days.

Union Position - The union contends that there is no basis for the city's demand. It points out that the average annual use of sick leave per man over each employee's years of service is 64.82 hours per year. The union suggests that this indicates that there is no problem with sick leave abuse in the city.

Analysis - The Factfinder finds no need to change the current provisions regarding the use of sick leave. First, he sees no evidence of the abuse of sick leave in

Brook Park. Second, the city has the right to demand proof of illness or injury or to require a return-to-work physical under the current contract.

Recommendation - The Factfinder rejects the city's demand.

#### 6) Article XI - Sick Leave, Section 1 - Unauthorized Use of Sick

Leave - The current contract has no provision dealing specifically with the unauthorized use of sick leave. The city seeks language stating that if an employee does not furnish satisfactory proof of illness or injury, the leave is considered unauthorized and without pay.

City Position - The city offered no comment on its demand.

Union Position - The union offered no comment on the city's demand.

Analysis - The Factfinder sees no need for the proposed language.

Recommendation - The Factfinder rejects the city's demand.

#### 7) Article XI - Sick Leave, Section 1 - Patterned Use of Sick Leave

(New) - The current contract has no specific provision dealing with the patterned use of sick leave. The city proposes language that states that the patterned use of sick leave constitutes just cause for discipline.

City Position - The city claims that most of the comparable cities have language prohibiting the patterned use of sick leave.

Union Position - The union made no comment on the city's demand.

Analysis - The patterned use of sick leave clearly constitutes just cause for discipline. It is illogical to identify one kind of misconduct and specify that it is grounds

for discipline. This position is bolstered by the fact that the city did not suggest that there is a problem with the patterned use of sick leave or with the use of sick leave in general.

Recommendation - The Factfinder rejects the city's demand.

8) Article XI - Sick Leave, Section 2 - Conversion Rate - The current contract requires firefighters to be paid 5/8 of their unused sick leave at retirement up to 1440 hours with the proviso that firefighters hired before December 31, 1994, who had a minimum of 1500 hours of sick leave in 2005, have no cap on their hours. The city proposes reducing the conversion rate to 3/8 of the unused sick leave up to 2350 hours. The union opposes any change in the conversion rate.

City Position - The city argues that the conversion rate should be reduced to 3/8. It claims that it has the highest conversion rate amount the surrounding cities. The city charges that a former mayor negotiated the increase in the conversion rate and then sued the city to collect his accumulated sick leave at the new rate. It worries that if all of the firefighters who are eligible to retire do so, it would cost the city \$1.5 million.

Union Position - The union contends that the current conversion rate should be maintained. It indicates that the increase in the rate to 5/8 was approved by city council for all bargaining and non-bargaining unit employees. The union states that the city's proposal would result in a \$122,522 reduction in the cash value of the accumulated sick leave for the eight employees eligible to retire.

Analysis - The Factfinder cannot recommend the reduction in the sick leave conversion rate sought by the city. While the Factfinder would not have recommended the 5/8 conversion rate, a prior mayor and city council agreed to it four years ago.

Absent a clear reason to change the results of recent bargaining, the Factfinder is reluctant to do so.

Recommendation - The Factfinder rejects the city's demand.

9) Article XII - Vacation, Section 1 - Vacation Entitlement - The current contract grants five weeks of vacation after 18 years of service. The union proposes that five weeks of vacation be granted after 15 years and six weeks after 25 years. The city opposes any change in the current vacation schedule.

Union Position - The union argues that its proposal should be adopted. It indicates that fire personnel in comparable cities qualify sooner for five weeks of vacation and that Brook Park is the only city not to have six weeks of vacation. The union adds that at 25 years of service the city's employees work more hours than employees in any of the comparable cities.

The union maintains that its proposal is not very costly. It states that in the next couple of years many of the employees with five weeks of vacation will be retiring and will be replaced with employees who will be entitled to only two weeks of vacation. The union insists that its proposal will not be a burden on the city.

City Position - The city opposes the union's demand. It points out that the fire department's vacation schedule is exactly the same as for other city employees. The city asserts that firefighters do not need more vacation because their 48-hour workweek means that they work only 90 tours of duty. It adds that since fire employees can retire at 25/48 and go into the DROP program where they can bank \$40,000 per year, they do not need to be granted more vacation to encourage them to continue to work.

The city complains that the union's proposal is expensive. It states that it will have to pay the employee on vacation straight time plus fill the vacancy created at time and one-half. The city maintains that this means that the cost of the extra week of vacation is two and one-half times the employee's rate of pay.

Analysis - The Factfinder cannot recommend the union's demand to improve the vacation schedule. He appreciates that all of the comparable cities get six weeks of vacation but it is also true that no other Brook Park employees get six weeks of vacation. Furthermore, the economic situation facing the city suggests that it is not a good time for firefighters to seek more paid time off.

Recommendation - The Factfinder rejects the union's demand.

10) Article XIII - Holidays, Section 1 - Holiday Hours - The current contract grants 144 hours of holiday leave. The city seeks to reduce leave to 120 hours. The union opposes any change in holiday leave.

City Position - The city argues that there is a well-established pattern in the city that supports its position. It points out that other unions get 96 hours of holidays. The city claims that since firefighters work 20% more hours, they should receive only 20% more holiday leave but they receive 50% more than other employees.

Union Position - The union observes that the same law firm that currently represents the city agreed to the 144 hours of leave during the last negotiations. It points out that its combination of holiday and personal leave is less than in three of its six comparables. The union adds that firefighters in the city work more hours at 15 years of service than all but one of the comparable cities and more hours than all of the comparables at 25 years of service.

Analysis - The Factfinder cannot recommend the city's demand. First, a workday for a firefighter is 24 hours compared to 8 hours for other city employees, which undermines the city's argument that firefighters should simply get 20% more holiday time than other city employees.

Second, as indicated in the discussion above, the Factfinder is reluctant to reverse changes made in recent negotiations. In the case of holiday hours, it was in the last negotiations that holiday time was increased to 144 hours. It is not clear what the rationale is to reverse this agreement only three years later.

Third, the comparables strongly support the union's position. If holidays and personal leave are combined, the average of the hours for the six comparable cities is 180 hours. The city's demand for a reduction in holiday time would place its firefighters further behind firefighters in nearby cities.

Recommendation - The Factfinder rejects the city's demand.

11) Article XIV - Compensation, Section 1 - Salary Increases - The current contract has salary schedules for four classes of firefighters. In each class, the employees receive a pay increase every six months and reach the top rate in two years. In addition, they get longevity increases starting at five years and continuing through 25 years of service. The parties have agreed to change the salary schedules so it takes four years to reach the top step and to place longevity payments in a separate section of the contract. They do, however, disagree on the salary increases for 2008 and 2009. The union demands 3.5% increases in salary effective January 1 of 2008 and 2009. The city offers 2% salary increases in 2008 and 2009.

Union Position - The union argues that the salary increases it is seeking are in line with surrounding cities. It points out that the average salary increase for seven nearby cities is 3.29% in 2008 and 3.17% in 2009. It acknowledges that some of the cities had smaller increases than it is demanding but stresses that it has offered to make significant changes in health insurance which will shift some of the costs to employees.

The union contends that the city will obtain significant cost savings. It claims that while its proposed wage increase will cost \$129,500, savings due to comp-time cash-in, health care deductibles and out-of-pocket changes, reduced overtime with vacation credits due to retirement, changes to annual pay increases for new hires, and payroll reductions due to retirement will produce a net reduction of \$90,300.

The union maintains that the firefighters are responsible for other savings for the city. It reports that while cleaning and contract expenses range from \$50,478 for “public properties” to \$300,325 for the Recreation Center, firefighters cut the grass, shovel snow, and clean the fire station at no cost to the city.

The union states that data from the State Employment Relations Board show that the city’s salary offer is too low. It observes that in 2007 the average wage settlement for the Cleveland region was 3.06% and the statewide increase for firefighters was 3.21%. The union indicates that the city has offered significantly less than has been agreed to by other employers in Ohio.

The union charges that the city misspent money and offers a number ways the city could save money. It claims that the city purchased a CAD system from a vendor whose price was hundreds of thousands of dollars higher than the lowest bidder, paid a consulting engineer more than some other cities, and gave 10% to an EMS billing service, which it claims is excessive. The union suggests that the city could save money

by cutting back on Community Days and by consolidating supervision in the service and recreation departments.

The union argues that the city is in good financial shape. It points out that a report from an analyst from the international union reported that the asset-to-liability ratio for the general fund at the end of 2006 was 3.35 and that the cash balance was equal to nearly 80% of the general fund balance. The union notes that the report stated that the total fund balance for the general fund was 48.9% of general fund expenditures. It adds that the same report indicated that other governmental funds had positive balances and asset-to-liability ratios.

The union notes a number of other positive points. It states that they include FEMA grants to the fire department of more than \$1 million since 2003; the strong market for office space; the increase in capital projects; consistent income tax collections from National City Bank and NASA; an increase in parking fees from \$100 to \$125; and NASA's capture of a significant part of the new Constellation Program.

City Position - The city argues that compensation in Brook Park compares favorably with nearby cities. It indicates that average compensation, including wages, longevity, uniform allowance, and EMT or Paramedic pay, show the city's paramedics and other firefighters earn more except for firefighters/EMTs with five years of service. The city claims that average base pay and overtime for firefighters in the city in 2007 was \$77,092.

The city contends that it is in a very difficult financial situation. It points out that estimated income tax revenue for 2008 is \$18.2 million compared to \$21.5 million in 2007. The city notes that total expenditures are expected to rise from \$24.1 million to \$24.5 million.

The city complains that the decrease in employment at Ford has had a major impact. It states that withholding tax collections are down substantially through May 2008 compared to the first five months of 2003 to 2007. The city indicates that overall tax collections are also down significantly.

Analysis - One of the important criteria in making salary recommendations are the rates paid in comparable jurisdictions. In the instant case, the data indicate that the city's pay compares favorably with nearby cities. In addition, the city claims that in 2007, firefighters earned considerable overtime pay. Thus, the union is not in a position to argue that it needs to catch up to other cities.

Another important consideration is wage increases being agreed to in other jurisdictions. The average increases for firefighters in eight nearby cities are 3.17% in 2008 and 3.19% in 2009. Data from SERB indicate similar increases in the Cleveland region and for firefighters statewide.

The average increase received by other employees is a useful consideration in making salary recommendations. In any area, there is a hierarchy of salaries, which is the result of economic, political, and other factors, including bargaining by the parties. By recommending an increase similar to that being granted by other employers, a city's relative position is maintained. While in many instances there is no reason to believe that the hierarchy of salaries should be changed, in some cases a change in the underlying circumstances suggest that a change might be in order.

Another important consideration in formulating a salary recommendation is the ability to pay. Brook Park has enjoyed a strong ability to pay for many years. It has benefited from the income taxes paid by employees at Ford and at NASA. While employment and tax collections remain strong at NASA, income tax receipts at Ford have

fallen dramatically. The data provided by the city for the first five months of 2008 clearly establish this fact. Furthermore, the future of employment at the Ford plants was uncertain even before the recent significant decline in auto sales. The city's difficult economic situation dictates caution on its part.

The Factfinder recognizes that the city has a healthy carryover balance. This strong position, however, is a function of its strong revenue collections in the past. The city and union will have to adjust to the changes that have occurred and may occur in the future. They should not proceed as though nothing has changed.

The union has acknowledged the city's economic difficulties. It has agreed to increase the number of years it take to get to the top salary and, as will be discussed below, to a number of changes in health insurance that will save the city money. However, even with these changes the union's demand for 3.5% salary increases is incompatible with the city's economic situation.

Considering the above factors and the other statutory criteria, the Factfinder recommends a 3% salary increase effective January 1, 2008, and a 2.75% increase effective January 1, 2009. While this is generally less than increases in nearby communities, it reflects the difficulties facing the city. It also is based on the fact that compensation of firefighters in the city compares favorably with its neighbors who are not experiencing the difficulties faced by the city.

**Recommendation** -The Factfinder recommends the following contract language:

The salaries of employees shall be increased 3% effective January 1, 2008, and 2.75% effective January 1, 2009.

12) Article XIV - Compensation, Section 2 - Paramedic Pay for

Lieutenants - The current contract requires the city to maintain an 11% differential between the top firefighter's salary and the Lieutenant's salary. It also provides for lieutenants who maintain their paramedic certification to be paid \$2,100 per year. The city proposes to eliminate this payment. The union wishes it to be continued.

City Position - The city argues that there is no justification for paying the lieutenants \$2,100 for maintaining their paramedic certification. It states that this constitutes a double payment because the 11% rank differential is based on a firefighter with paramedic certification.

Union Position - The union contends that the city cannot show any reason for the elimination of the lieutenants' paramedic pay.

Analysis - The Factfinder recommends that the \$2,100 payment to lieutenants who maintain their paramedic certification be eliminated. As the city pointed out, their compensation is based on a firefighter with paramedic certification. The current arrangement significantly expands the differential between firefighter/paramedics and similarly certified lieutenants.

Recommendation - The Factfinder recommends the following contract language:

The City will maintain an 11% differential between the top Firefighter's salary and the Lieutenant's salary.

13) Article XV - Insurance, Section 1 - Hospitalization Insurance - The

current contract provides for a 100% plan, co-pays of \$10 for many services, prescription drug co-pays of \$5/\$10/\$25, and no employee premium contributions. The city proposes

changing to a 90/10 plan with annual deductibles of \$200/\$400, maximum out-of-pocket limits of \$1000/\$2000, \$20 co-pays for many services, a \$50 co-pay for emergency room visits, and prescription drug co-pays of \$10/\$20/\$30. It also demands that employees pay 10% of the premiums effective January 1, 2008. The union proposes a 90/10 plan with annual deductibles of \$200/\$400, out-of-pocket maximums of \$500/\$1000, including the annual deductibles for in-network services and twice those amounts out of network. It opposes any increase in the co-pays and any premium contribution.

City Position - The city argues that its health care costs have become burdensome. It points out that the annual premium for family coverage is more than \$19,000 and is increasing rapidly. The city notes that James Dustin, its insurance consultant, testified that in 2007 the city budgeted \$2.540 million for medical, dental, and vision insurance but actual expenditures were \$2.690 million and that estimated expenditures for 2008 are \$3.160 million.

The city contends that its proposal is consistent with the market place. It indicates that Dustin stated that the proposed single and family out-of-pocket maximums and co-pays are average for the area. The city observes that he reported that the proposed prescription co-pays are also typical for the market.

The city relies on the data for the six comparable cities. It indicates that four of the six cities require employees to pay part of the premiums for health insurance. The city claims that the deductibles are also consistent with what it has proposed.

The city maintains that the State Employment Relation Board's 16<sup>th</sup> Annual Report on the Cost of Health Insurance in Ohio's Public Sector supports its position. It points out that the report indicates that in 2007, 74% of the respondents required employees to pay part of the premium for single converge and 75% for family coverage.

The city notes that the average contributions were \$51.95 per month for single plans and \$144.76 per month for family plans. It adds that two-thirds of the plans required both deductibles and co-insurance.

Union Position - The union argues that its proposal is reasonable. It states that it seeks reasonable deductibles and out-of-pocket maximums. It complains that the city's approach is part of the a plan "to take as many concessions and reductions to impasse with the expectation that the Fact Finder will recommend at least one of their proposals, if not more." (Union Pre-Hearing Statement, page 6)

The union contends that the city's offer is more costly for employees than the health plans for the six comparable cities. It points out that the data reveal that three of them offer 90/10 plans, one a 80/20 plan, and one with no co-insurance; four have office co- pays from \$10 to \$20; and four have no annual deductibles. The union notes that out-of-pocket maximums for four cities range from \$300/\$400 to \$1000/\$1000.

The union complains that the city's proposal involves many added costs. It states that the city's proposal increases the co-pays for a doctor's office visit from \$10 to \$20 and includes similar increases for outpatient services and mental health services. The union indicates that the city's proposed plan adds a 10% co-insurance for vision and hearing tests and mammograms and routine laboratory tests and a \$50 co-pay for the emergency use of an emergency room.

Analysis - The Factfinder believes that a change in the city's health insurance program is inevitable. First, the testimony of the city's insurance consultant and the data he provided establish that health care costs are high and continue to rise. Second, the comparable cities show that the city has provided better insurance than other cities and has not required the employee contributions that many cities require.

To the union's credit, it has recognized the economic situation facing the city and the need to modify the health insurance program. The dispute centers on the out-of-pocket maximums, co-pays, and the proposed employee premium contribution.

The Factfinder believes that the city's proposed \$1000/\$2000 out-of-pocket maximum is too high and recommends out-of-pocket maximums of \$750/\$1000, excluding the annual deductibles. This recommendation is consistent with the health insurance offered by other public employers. Furthermore, it is supported by the testimony of the city's insurance consultant that \$750/\$1000 are the usual amounts for the area.

The Factfinder cannot recommend the co-pays proposed by the city. The current co-pays are \$10, except for the co-pay for outpatient mental health and substance abuse services which is \$5, and the city wishes to double them at the same time it imposes a 10% co-insurance requirement. The Factfinder believes that increasing the \$10 co-pays to \$15 and the \$5 co-pays to \$7.50 would be more appropriate.

The Factfinder also cannot recommend subjecting a number of preventive services to the 10% co-insurance requirement. First, these are services that are often fully paid for by an employee's insurance plan. Second, employees should be encouraged to have routine tests as part of their physical examinations to promote the early diagnosis of potentially serious conditions and prevent greater expenditures at a later time.

The Factfinder reaches a different conclusion with respect to the city's proposals regarding the prescription drug co-pays. The city's proposal to increase the co-pays by \$5, except the second tier, which would increase from \$10 to \$20, is not unreasonable given the arrangements in other cities.

The Factfinder, however, must reject the city's demand that employees pay 10% of the premiums. The Factfinder has recommended an increase in most of the co-pays, a 10% co-insurance requirement, and annual deductibles, which should produce significant savings for the city. It is not appropriate to require a premium payment for the first time at the same time as these changes are being implemented.

The final question is the effective date of the recommended changes. Since it is impossible to implement the changes on a retroactive basis, the Factfinder recommends that the changes in health insurance be put into place as soon as practicable after the new agreement takes effect.

Recommendation - The Factfinder recommends the following contract language:

The city will provide and pay for the full premium on behalf of each fulltime employee for single or family hospitalization and medical service under the current plan or substantially similar plan with the following exceptions:

1. Annual deductibles of \$200/\$400
2. Co-pays of \$15 except for outpatient mental health and substance abuse services of \$7.50
3. Coinsurance of 10% except for immunizations; allergy testing and treatment; well child care laboratory tests (to age nine); routine mammogram; routine pap test; routine laboratory, X-Rays, and medical tests (age nine and older); and routine endoscopic services (age nine and older).

The changes in the current plan noted above are to be implemented as soon as practicable after the collective bargaining agreement becomes effective.

#### 14) Article XVII - Miscellaneous, Section 12 - Severance Benefits,

Subsection B - Healthcare Reimbursement Accounts (New) - The current contract does not provide for Healthcare Reimbursement Accounts. The union proposes

establish a deferred compensation representative that would provide healthcare reimbursement accounts for members that would be funded by 60% of employees' accumulated and unused sick leave and other leave. The city opposes the union's demand.

Union Position - The union argues that its demand ought to be accepted by the city. It points out that it will allow retirees to pay many health care expenses with before-tax money. The union claims that since the cost to the city is minimal, the city is opposed to it only because it hurts the firefighters. (Union Pre-Hearing Statement, page 7)

City Position - The city rejects the union's demand. It raises a number of questions relating to its potential liability and the use of an additional payroll slot. The city indicates that it is talking to other providers about healthcare reimbursement accounts.

Analysis - The Factfinder cannot recommend the union's proposal. The implementation of an additional deferred compensation plan and Healthcare Reimbursement Accounts raises a number of issues and concerns for both the city and its employees. A brief presentation by a representative of one provider in a very adversarial setting leaves too many questions unanswered for the Factfinder to recommend the union's demand. The parties need to work together on the implementation of Healthcare Reimbursement Accounts.

Recommendation - The Factfinder rejects the union's demand.

15) Article XXI - Fire Prevention Bureau, Section 6 - Paramedic Pay -

The current contract includes salary schedules for a Fire Inspector and an Assistant Fire

Prevention Officer but does not grant paramedic pay to Fire Prevention Bureau personnel. The union proposes that they be paid \$1500 to maintain their paramedic certification. The city opposes the union's demand.

Union Position - The union argues that its demand ought to be granted. It claims that it is in the interest of the department and community that employees in the Fire Prevention Bureau maintain their paramedic certification because it improves efficiency and service. The union notes that other promoted positions in the fire and police departments receive added compensation for education and certifications.

City Position - The city argues that the union's demand ought to be denied. It indicates that fire prevention personnel do not count for minimum manning and it does not make sense for them to maintain a certification they hardly ever use.

Analysis - The Factfinder cannot recommend the union's demand. The fire prevention personnel are not required to maintain their paramedic certification and seldom, if ever, go on squad runs. The union was unable to present a convincing rationale to change the existing situation.

Recommendation - The Factfinder rejects the union's demand.

16) Article XXIII - Obligation to Negotiate - The current contract does not include an obligation to negotiate clause. The city proposes adding such a clause. The union opposes the city's demand.

City Position - The city argues that its proposal should be recommended. It states that it should not be obligated to negotiate once negotiations are over except for affects bargaining as required by SERB. The city reports that four of the six comparable cities have obligation to negotiate classes.

Union Position - The union opposes the city's demand. It points out that the collective bargaining agreement between the parties predates the Ohio collective bargaining law and that it has never contained an obligation to negotiate clause. The union claims that the city was unable to demonstrate it has suffered any harm due to the absence of the language it seeks.

Analysis - The Factfinder recommends that the city's demand be denied. While obligation to negotiate clauses are contained in many IAFF contracts, the city and union in Brook Park have never agreed to place one in their agreement. With more time, the parties should be able to identify language from one agreement or another that is mutually acceptable.

Recommendation - The Factfinder rejects the city's demand.

17) Article XXIV - Total Agreement - The current contract does not include a total agreement clause. The city wishes to add one. The union opposes the city's demand.

City Position - The city argues that its position ought to be granted. It states that the proposed language acts as a zipper clause so that it knows its obligations under the contract. The city claims that it will have to make changes in the way it operates and the contract needs to be clear that it can make a change unless it is prohibited by the contract. It reports that three of the six comparable cities have the language it seeks.

Union Position - The union opposes the new language being sought by the city. It observes that the parties' contract has never had a total agreement clause and the city is unable to demonstrate that it has experienced any harm as a result and

characterizes the clause the city is demanding as “extreme.” The union notes that Factfinder Harry Graham rejected a total agreement clause.

Analysis - The Factfinder denies the city’s request for the reasons stated in connection with its demand for an obligation to negotiate clause.

Recommendation - The Factfinder rejects the city’s demand.

18) Memorandum of Agreement - Retiree Healthcare - The current contract includes a memorandum of agreement that indicates that the parties would negotiate over the city’s obligation under Article XVI, Section 1(b), to pay the health insurance premiums required of retirees by the Police and Firemen’s Disability and Pension Fund. Pursuant to the memorandum, the parties agreed to limit the city’s contribution to \$400 per month until a retiree is eligible for Medicare and to limit the contribution to \$200 per month after that point. They further agreed to restrict the provision to employees who retired by December 31, 2007.

Both parties propose changes in Article XVI, Section 1(b). The city offers to extend this benefit to employees who were eligible to retire on December 31, 2007, but did not retire at that time but it proposes to discontinue any payment for employees after they are eligible for Medicare. The union seeks to extend the benefit to employees who are eligible to retire on or before December 31, 2010.

Union Position - The union argues that the eligibility for retiree health insurance payments should be extended. It points out that two firefighters will be eligible to retire by December 31, 2010. The union notes that no additional firefighters will be eligible for the benefit because after a firefighter was hired in 1983, none were hired until 1994.

City Position - The city contends that its proposal ought to be adopted. It points out that no other city has ever paid for retirees' health insurance except for Parma. The city, however, notes that Conciliator Harry Graham ended the payment of health insurance premiums in Parma.

Analysis - The payment of health insurance premiums for retirees is unique, or nearly unique, to Brook Park. While the Factfinder understands the strong desire of the union to extend the benefit to a few additional employees, he cannot force the city to do so.

Recommendation - The Factfinder rejects the union's demand.

19) Letter of Understanding - Minimum Manning - The current contract has an attached letter of understanding that establishes minimum manning of nine. The city seeks to delete the letter. The union wishes to retain the letter.

City Position - The city argues that the letter should be deleted. It acknowledges that three nearby cities have some language regarding minimum manning but maintains that it is distinguishable from the instant case. The city indicates that the contract in North Olmsted only requires the formation of a committee to increase daily staffing levels; Fairview Park has a memorandum of understanding that calls for six on duty but it includes a number of exceptions; and Parma requires only a "reasonable good faith effort to schedule three firefighters to front-line equipment."

The city contends that the issue of minimum manning is not properly before the Factfinder. It cites IAFF Local 218 and City of Middleburg Heights; SERB Case No. 06-MED-09-1090; July 23, 2007, where Factfinder Charles Adamson held that minimum manning is a permissive subject of bargaining and within the exclusive purview of the

employer. The city also notes that Adamson held that under the contract the city had the right to control and determine the workforce.

The city maintains that statutory language supports its position. It points out that Section 4117.08(C) of the Ohio Revised Code provides that an employer has the right to “determine the adequacy of the work force” and to “layoff, transfer, schedule, promote, or retain employees.” The city adds that Section 737.04 of the ORC gives the fire chief “the sole statutory responsibility for stationing Fire Fighters.” (City Pre-Hearing Statement, page 17) The city claims that this requires the employer to have the discretion to determine the number of firefighters manning each shift.

The city asserts that the current contract enhances its statutory authority. It states that under Article III of the contract, it has the “exclusive right to manage operations, control the premises, direct the work force and maintain efficiency of operations” and “to determine ... work schedules.” The city charges that minimum manning “severely frustrates the Employer’s ability to carry out the rights and obligations contained in Article III.” (City Pre-Hearing Statement, page 18)

The city maintains that minimum manning frustrates its budgetary obligations. It indicates that it has limited financial resources and “should not be hamstrung by contract language that may prevent it from making decisions like whether to open one or more fire stations.” (City Pre-Hearing Statement, page 18) The city stresses that it must be free to allocate available resources in the public interest.

The city argues that Factfinders and Conciliators have denied union demands for minimum provisions. It claims that Dennis Minni in City of Lorain and the Fire Fighters (no copy or citation provided) denied a request for minimum manning, stating the “the

Employer needs to keep its discretionary powers to manage city services in order to prepare for future economic conditions.” (Ibid.)

The city characterizes minimum manning as a “sheep in wolf’s clothing.” It asserts that such provisions allow firefighters to force employers to pay overtime to them. The city complains that “unfettered employee control” has forced it to spend more than \$300,00 on overtime even though a chief, captain, and fire inspector were sometimes available to respond to calls when necessary.

The city contends that minimum manning is not a safety issue. It charges that during negotiations the union did not point to any empirical study to support its claim that minimum manning is a safety issue. The city further notes that if there is an emergency, it has mutual aid agreements with surrounding cities which would provide aid.

The city suggests that a minimum of nine does not correspond to the workload. It points out that there are an average of seven runs per day, including six EMS runs. The city notes that since there are three fire stations, there are barely more than two runs per station per day.

Union Position - The union argues that without nine-man minimum manning firefighters cannot adequately and safely perform their duties. It points out that the Baldwin Wallace Fire Regionalization Project, Final Draft Report, dated January 2008, reports that the NFPA standards indicate that staffing in Brook Park should be set at 13. The union notes that the NFPA calls for a minimum of ten firefighters to be at a fire scene. The union adds that if minimum manning is reduced below nine firefighters on duty, only two firefighters will be assigned to an engine, which is not safe for the community or the firefighters.

The union contends that minimum manning is not the cause of the city's overtime expenditures. It states that while overtime expenses have grown, nothing in the city has changed since minimum manning was agreed to 15 years ago. The union claims that the overtime is due to the city's hiring and staffing practices. It observes that the Baldwin Wallace report indicates that seven cities in the study spent 15% of their base salaries on overtime.

The union rejects the city's assertion that it can rely on mutual aid to meet its needs. It suggests that help may not be available because other cities are running short. The union adds that in any event, mutual aid takes 8 to 12 minutes to arrive after the city's firefighters arrive. It notes that the Baldwin Wallace report observes that the NFPA has stated that cities should not rely on mutual aid to replace required equipment and staff.

The union disputes the city's claim that minimum manning is a permissive subject for bargaining. It points out that in the Adamson decision cited by the city, minimum manning was not included in the existing contract. The union stresses that in Brook Park minimum manning has been part of the contract and, therefore, has become a mandatory subject for bargaining.

The union claims that other departments have agreements regarding minimum manning. It offers the agreements in Westlake, Rocky River, Parma, North Royalton, North Olmsted, Lakewood, Eastlake, East Cleveland, and Fairview Park.

The union maintains that the NASA facility located in the city impacts staffing. It reports that NASA relies on the city for fire protection. The union further notes that in May 2008 NASA reassigned its first responders to the day and afternoon shifts leaving none on the night shift.

The union argues that Factfinders and Conciliators have upheld the nine-man minimum manning in the city. It points out the in 1995 Factfinder Louis Thomson found that manning was a safety issue and reaffirmed the nine-man minimum manning and that his finding was confirmed by Conciliator Margaret Johnson. The union reports that in 1999 Factfinder Thomas Skulina recognized the financial aspects of minimum manning but recommended no change in the existing manning requirement. It observes that his recommendation was upheld by Conciliator Jonathan Klein.

The union cites a report prepared for the city in September 2000 by Leadership Solutions. It indicates that the report advised the city to increase its staffing to 15 per shift in order to maintain its ISO rating of 4 and to reduce overtime. The union states that Leadership Solutions also suggested staffing rescue units with three firefighters.

Analysis - Minimum manning is frequently an issue in firefighter bargaining. While most of the nearby cities do not have minimum manning requirements as in Brook Park, a number of westside and other Cuyahoga County departments do have them.

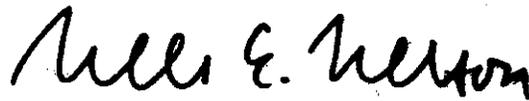
The city's claim that minimum manning is a permissive subject for bargaining must be rejected. The case before Factfinder Adamson dealt with a situation where there was no minimum manning requirement in the contract. In the instant case, the contract has a minimum manning clause, which makes it a mandatory subject for bargaining under Ohio law.

The Factfinder must also dismiss the city's contention that the minimum manning provision conflicts with the city's right under the Ohio Revised Code or the management rights clause in the contract. While the ORC and the contract protect certain management rights, the city exercised its management rights when it negotiated a minimum manning clause.

The union's opposition to the elimination of minimum manning is strongly supported by Factfinders' and Conciliators' decisions in the city in two recent rounds of bargaining. In both rounds of bargaining, the Factfinders and Conciliators rejected the city's attempt to eliminate minimum manning. This Factfinder cannot simply dismiss the opinions of four other neutrals.

While the Factfinder recognizes that minimum manning in the city may be changed in the future, he believes that the city's demand is premature. First, future employment levels at Ford and the income tax receipts the plants produce are not known. Depending on events at the plants, the city and union may have some difficult choices to make regarding manning and related issues. Second, the city is building an underpass under the railroad tracks that have divided the city for many years. Once the underpass is completed, the city may wish to close a fire station. If such is the case, it will have an important impact on the issue of minimum manning.

Recommendation - The Factfinder rejects the city's demand.



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Nels E. Nelson  
Factfinder

July 17, 2008  
Russell Township  
Geauga County, Ohio