

FACTFINDING REPORT AND RECOMMENDATIONS

In The Matter Of

City of Upper Arlington, Ohio

-and-

International Association of Firefighters, Local 1521

SERB Case No. 07-MED-09-0987

**Mollie H. Bowers
Factfinder**

2008 APR 22 A 11: 21

STATE EMPLOYMENT
RELATIONS BOARD

Representing the City:

Mark Lucas, Chief Negotiator
Joe Valentino, Assistant City Manager
Cathe Armstrong, Finance Director
Regina Drzewiecki, Deputy City Manager
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Brian Gatch, Wells Fargo Insurance
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Representing the Union:

Christopher A. Zimmer, President, Local
1521
Henry A. Arnett, Counsel
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Dean Durbin, Trustee
Jim Milc, Negotiating Team

Date of Hearing:

April 11, 2008

Report Issued:

April 19, 2008

BACKGROUND

The parties to this dispute are the City of Upper Arlington, Ohio (the 'City') and the International Association of Firefighters, Local 1521 (the 'IAFF' or the 'Union'). The bargaining unit is a composite of two units which together include: Battalion Chiefs; Captains; Lieutenants; and sworn Firefighters. These parties have negotiated several collective bargaining agreements over the last twenty-nine years. The last agreement was in effect from January 1, 2005 through December 31, 2007.

The parties have been attempting to negotiate a new collective bargaining agreement encompassing the years 2008 through 2010. They have been successful in resolving most of the issues brought to the table. Differences remained between the City and the Union regarding the following six issues:

1. Article 1 - Agreement
2. Article 14 - Rates of Pay/Wages
3. Article 23 - Insurance
4. Article 25 - Miscellaneous Economic Provisions
5. Article 28 - Entire Agreement
6. Appendix B - Drug and Alcohol Policy

As a result, the parties availed themselves of the dispute resolution process set forth in the Ohio Revised Code (ORC) Section 4117.14 (C)(3). The State Employment Relations Board (SERB) appointed Mollie H. Bowers to be the Factfinder from a roster of neutrals it maintains. April 11, 2008 was the mutually agreed upon date for the hearing.

HEARING

The Factfinder received the pre-hearing briefs of the parties in a timely manner. At the Hearing, the Union introduced a notebook containing an array of evidence, such as the current contract, past contracts, and comparability data. At

the outset of the hearing, the City stipulated that 'ability to pay' was not in dispute, however, it did not want this stipulation to be interpreted to mean that it had an unlimited ability to pay.

Depending on the issue being discussed, the designation of 'moving party' shifted between the parties. The City presented an expert witness, Brian Gatch, Wells Fargo Insurance Services, to help explain its position on Article 23, Insurance. This witness was known, in advance, to the Union.

ISSUES

I. Article 1, Section 1.4 Past Practice

A. City Position

In negotiations, the City proposed to eliminate this section all together. It noted, however, that ORC, Section 4117.14(C)(4)(e) includes, as the very first factor that a Factfinder shall consider is past collective bargaining agreements. Thus, the City ultimately agreed that the language proposed by the Union for modification of this Section on Past Practice should be retained, but the date should be changed.

B. Union Position

The Union did, indeed, provide several previous collective bargaining agreements between the parties, all of which contained the language at bar here. Thus, the Union is asking that the language be retained and that the effective date be changed to "after January 1, 2005.

C. Recommendation

There is no fundamental disagreement between the parties on this issue. Therefore, the Factfinder recommends that the language on Past Practice be retained and that the effective date be changed to "after January 1, 2005".

II. Article 14 Rates of Pay/Wages

A. Union Position

The Union is seeking a 5% increase in the hourly rates received by members of the bargaining unit in each of the following years: 2008; 2008; and 2010. There is no dispute over the City's ability to pay. Indeed, the Union claims that the City's fund balance usually is approximately three times that recommended for carry over.

The Union also points out that the City now has two sources of revenue that improve that picture even more. The first that the Union pointed to was that, four years ago, the City began billing for EMS services. In those four years, the City collected \$2.2 million dollars worth of revenue. It is now estimated, conservatively, that the City will obtain \$450,000 worth of revenue from this source in 2008.

The second source of additional revenue comes from the recent privatization of solid waste services. The City has a five year contract with the private provider of this service. The Union contends that projected savings, again conservatively estimated, will be about \$2. million per year.

According to the Union, the communities that have been deemed to be comparable to Upper Arlington were established as a result of the 1998-1999 negotiations. Those communities are: Norwich Township; Washington Township; Westerville; and Worthington. The Union said that the City wants members of the Firefighter bargaining unit to be paid "slightly above the average found in comparable jurisdictions". It also pointed out that when a member has five years' service, he/she "tops out in pay" and also starts to receive "service credit"; also known as longevity pay. The latter is not an issue in dispute.

The Union relies on the hourly rate as the basis for its wage proposals. Members of the bargaining unit work over fifty-two hours per week for fifty-three weeks, plus they also receive three hours FLSA pay each week; *i.e. overtime*. To determine the hourly rate, the Union divided the 2912 hours bargaining unit employees work by the total compensation received. This calculation resulted in Upper Arlington being ranked last among the comparable communities.

Next the Union looked at the rate of inflation which, according to the BLS data it used, showed a 4.3% increase. The Union emphasized that the City's wage proposals were all below the rate of inflation.

The Union also offered information on the workload of bargaining unit members. It said that the City has expected bargaining unit members to do "more with less" because five employees were removed from fire fighting duties, in 1994, and have not been replaced. It is not disputed

that the run volume is increasing, although the nature of the runs has changed from more traditional fire fighting activities to providing EMS services. Nevertheless, the Union asserted that the City's ladder company is busier than any other in central Ohio because of mutual aid and other considerations.

According to the Union, people in administrative positions in the Department (where the five employees were sent) are also "consistently overworked" because of the explosion of new mandates and of medicare/medicade reporting requirements.

Another reason the Union cited to support its pay increase proposals was a change in the financial responsibility bargaining unit members have for contributions to the Police and Fire pension fund. It explained that, under previous collective bargaining agreements, the City picked up the full 10% of the employees' contribution. Now, however, members are expected to pay 24% of the contribution.

Three other considerations were advanced by the Union with respect to its hourly rate pay proposals. The first was that the City has an excellent safety rating due, in part, to the superb performance of its fire service. Second, community ratings showed that the fire service was rated the best, above all other city services. Third, bargaining unit members in the fire service are paid less per hour than their counterparts in the Police Department who only work forty hours per week.

Enmeshed in the pay dispute is also a consideration of what the Paramedic Supplement should be.¹ The Union said that to achieve certification as a Paramedic, it takes over 2000 hours or approximately six months. Additionally, eighty hours of continuing education are required every three years to maintain certification. More than half of the bargaining unit members are Paramedics, distributed by rank as follows:

Firefighters - 28 out of a total of 47
Lieutenants - 4 out of a total of 5
Captains - 3 out of a total of 5
Battalion Chiefs - 3 out of a total of 3

Traditionally, those certified as Paramedics received supplemental compensation in the amount of five percent of their hourly rate. In the negotiations for the 2005-2007 contract, the City was successful in arguing that the value of a Paramedic did not result from the rank of the employee and, thus, the supplements for officers were reduced.

In the current negotiations, the IAFF chose a different approach to compensating Paramedics. That is, "all bargaining unit members who are certified as [P]aramedics receive a supplement equal to five percent of the top [F]irefighter's pay".² This proposal would mean that, eventually, all certified Paramedics would receive the same supplement (5% of the top Firefighters hourly rate), regardless of their rank.

¹ The Union explained that "Ohio emergency medical technicians can be certified at three levels, the first level being EMT-Basic, the second level being EMT-Intermediate, and the highest level, which requires the most training and imposes the most obligations and responsibilities, being EMT-Paramedic. (PHB., p. 7)

² "Officers who currently are receiving an amount greater than 5% of the top [F]irefighters pay would continue to receive their current levels, but eventually all [P]aramedics, regardless of rank, would receive the same supplement." (PHB, p. 8)

B. City Position

The City makes no claim that it is unable to pay, but asserts that this is not synonymous with an unlimited ability to pay. It does want to pay competitively, but the City believes that it does because it has had no problems recruiting and retaining Firefighters. In fact, only two Firefighters in the bargaining unit are not at the top pay step. For these, and other reasons, the City rejects the Union's proposal for a five percent increase, in each of the next three years, in the hourly wage of bargaining unit members

Of paramount importance to the City is that it be fiscally responsible in an ever changing environment. It points to the fact that, in 1995, CompuServ, a major employer in the area, drastically cut its workforce. *As a consequence, major budgetary problems were created which involved, inter alia, a crash program involving buyouts for early retirement.* Thereafter, the City adopted new financial policies which included a requirement for a balanced budget and an increase in the reserve to twenty percent of the fund balance.

The City acknowledges that, in the late 1990's, it realized a windfall from estate taxes. However, the City states that the future of such taxes is uncertain because the state keeps threatening to take them away. Similarly, the City says that the Local Government Fund is also in jeopardy for the same reason. Whatever happens, the reserve is not and

will not be used to pay for on-going expenses such as pay for its employees.

The City pointed out that the Fire Division is the largest Department and receives 28% of its budget each year. A critical concern to the City is that its infrastructure is coming to the end of its useful life. A seven year plan has been developed for capital improvements and for a way to fund it. The greatest expense for this plan comes in 2008 when, *inter alia*, \$6. million will be spent for a new fire station. The City says that the funds to pay for the capital improvements are being generated by the fees it receives for EMS runs. Out of that sum, the City also pays for equipment and supplies for EMS personnel.

The City rejected the Union's claim that it would realize savings because *solid waste disposal had been contracted out*. According to the City, of the \$1.8 million collected in fees for such service, 100% will be used to pay the subcontractor.

In previous rounds of negotiations, the City stated that no comparables were exchanged. Now that they have in the current negotiations, there is no basis to support what the IAFF is asking for. According to the City, a large part of the problem arises because the IAFF is relying on hourly wages as the basis for its claims, both internally, *vis-à-vis* Police Officers, and externally, *vis-à-vis* other fire departments that it says are comparable. To the City, the key element of distinction with comparables is not just the number of hours worked, or even the number of calls/runs.

The key factor is, that unlike any comparable jurisdictions, and even with its Police Officers, City's Firefighters in the bargaining unit are guaranteed three hours of overtime every week throughout the year, whether or not they have to work overtime, or are on vacation or sick leave, etc. The comparability data supplied by the Union is not dispositive, *inter alia*, because Firefighters in other jurisdictions have different hours of work, may have a higher hourly rate, may receive compensatory time in lieu of overtime, there are population changes, and they do not work within a closely defined parameter like the City's Firefighters do.

Similar fallacies exist, the City contends, in the Union's claim that Firefighters are paid a lower hourly rate than the City's Police. According to the City, a glaring fallacy in the IAFF's contentions is its assumption that Police Officers only work forty hours per week. This is not a fact. The City also points out that Police Officers, when on duty, are expected to be continuously engaged in their work, while members of the Firefighter bargaining unit are not.

Furthermore, the City challenges the inflation documentation that the IAFF provided, claiming that these data are not seasonally adjusted.

With respect to the Paramedic Supplement, the City says that, in the last negotiations, "the parties agreed . . . to cap [P]aramedic pay in return for a higher amount of increase in base pay". (PHB, p. 10) The City wants to retain that bargain and "sees no logic for paying one [P]aramedic more than another". (PHB, p. 10) It also reiterates that, even though the

number of runs may have increased, that is not dispositive of the workload because the City is a contained environment, and the population has not grown much.

C. Recommendation

The launch pad for this discussion is better here than in some situations. Past collective bargaining agreements, ability to pay, and the lawful authority of the public employer are not stumbling blocks in this instance. The Union attempted to leverage part of its pay demands by comparing the hourly rate bargaining unit members receive with that of the Police. This comparison was specious because it was predicated on the assertion that Police only work forty hours per week whereas Firefighters work many more. Similarly, the comparisons with other jurisdictions were not completely persuasive because the IAFF based its calculations on the hourly wage rate. When viewed in relation to hours worked and other compensable factors, plus area covered, population, etc. vis-à-vis other jurisdictions, these calculations did not produce the disparities alleged or justify the percentage increase requested in each of the three years of the impending contract.

The City presented persuasive testimony about how EMS and solid waste funds are being used. There are no windfall profits or real savings there to be used for on-going expenses. Additionally, it was undisputed that the City has significant capital improvement projects (including a fire station for \$6. million) planned to update and renew its aging infrastructure. In

formulating her recommendations, the Factfinder took into consideration that the biggest layout for these projects will come in 2008. She also considered that the City has the ability to pay and fees from EMS services will contribute heavily to meeting the expenses for capital improvements. In consideration of these factors, the Factfinder recommends that the hourly rate of Firefighters in the bargaining unit be increased as follows:

1. In the first year, 2008, of the contract, Firefighters shall receive an increase of 3.75 percent in their hourly rate. This increase shall be retroactive to January 1, 2008.
2. In the second year of this contract, 2009, the Firefighters shall receive another increase of 3.75 percent in their hourly rate.
3. In the third year of this contract, 2010, the Firefighters shall receive an increase of 3.50 percent in their hourly rate.

With respect to the Paramedic Supplement, the Factfinder recommends that the Union's proposal be adopted. That is that the Paramedic Supplement be set at five percent of the top Firefighter pay. Further, the contract language shall be retained that states, in essence, that officers above the rank of Firefighter (e.g., Lieutenants, Captains, and Battalion Chiefs) shall retain the supplements specified until such time that their rate equals five percent of top Firefighter pay.

III. Article 23 Insurance

A. City Position

All 269 employees of the City are covered by the same self-insured health plan. Based on recommendations from Mr. Gatch, the insurance consultant, the City has been advised to make two changes in the current plan to make it

biddable competitively. These changes are: "(1) a differential between what insurance will pay for in-network versus out-of-network services, e.g., doctors, hospitals, etc.; and (2) a three-tiered schedule for pharmacy co-pays". (PHB, p. 15) The problem with making these changes is that the language in the existing IAFF contract states that benefits must be maintained "consistent with the current health and dental care provider market". If the City makes the changes necessary to make its insurance competitively biddable, and the Union challenges "whether they are consistent with the current provider market, the matter will not be resolved until after the changes have already been made". (PHB, p. 15) Realistically, the City says that the proposed changes would not affect employees in the Firefighter bargaining unit until 2010, but if these changes are not made then all of the efforts made in these negotiations will be moot.

The flexibility to "shop" for insurance carriers is of paramount importance to the City, however, cost-sharing by employees is also a primary concern. Currently, employees in this bargaining unit pay 7% of the cost of the health insurance premium, not to exceed \$75.00 per month. This Union, along with all unions and the non-bargaining unit employees, have agreed that, beginning in 2009, Firefighters will pay 8% of the premium, not to exceed \$85.00 per month. This year, the IAFF is the lead union in the round of public sector negotiations. While the City understands the added pressure this places on the Union, it reiterates the imperative to make changes in health insurance to more effectively "shop" its bids.

The City would like to achieve a ten percent increase in Firefighter contributions to health insurance premiums in 2010. This would equal a

\$44.00 per month increase over the previous years' contributions and only for those on the family plan. According to the City, this would equal a one time adjustment of approximately 0.75% of a Firefighter's pay and a smaller percentage for Lieutenants, Captains, and Battalion Chiefs. Especially in today's environment, the City believes this is not too high a price to pay for quality health care insurance.

According to the City's consultant, a 20% differential is required by the insurance industry between in-network and out-of-network usage. Currently, network usage is paid at an eighty percent/twenty percent differential. The City proposes a differential for non-network usage of sixty percent/forty percent. The City believes that this would be an "ideal" differential to capitalize on competitive bidding of its plan. It also represented that only two percent of claims city-wide are for out-of-network services so the impact of this proposed change cannot be considered to be a heavy burden on members of the Firefighter bargaining unit.

With respect to pharmaceuticals, the current co-pay for bargaining unit members for Tier 1 and Tier 2 drugs is \$5.00.³ Tier 3 drugs are the most expensive and are not covered at all, although it is sometimes possible to obtain generic versions that would then be billed at the \$5.00 co-pay.⁴ The City's proposal is to cover drugs in all three tiers with co-pays as follows: (1) Tier 1 - \$10.00; (2) Tier 2 - \$20.00; and (3) Tier 3 - \$40.00 for each prescription.

³ Tier 1 and Tier 2 drugs can be described, in lay person's terms, as common prescriptions, either regular or generic versions, that are low moderate in cost. Examples can be Zoloft, Cephalexin, and Nystatin.

⁴ Examples of Tier 3 drugs are Celebrex and Viagra.

A. Union Position

The Union reviewed the history of the contributions made for family coverage by bargaining unit members between 2004 and 2007. It also reviewed, for these years, the beginning Employee Benefit Fund (EBF) balance, the revenues received, the expenditures made, the lapsed encumbrances, and the ending fund balance.⁵ Based on this information, the Union concluded that, from 2005 through 2007, the increase in the EBF balance increased by 15%.

The Union explained that caps on employee contributions are important for obvious reasons given the trend in health insurance costs. It also said that these caps should be maintained because the City bases its monthly premiums on the maximum projected claims which means that premiums collected are in excess of actual usage and no refunds have been afforded as a result of the savings. The Union therefore maintains that the caps on employee contributions should be as follows: (1) 2008 - 7% with a \$75.00 per month cap; (2) 2009 - 8% with an \$85.00 cap; and (3) 2010 - 8% with an \$85.00 cap. These caps are in line with those existing in comparable jurisdictions.

The Union emphatically rejects the City's proposal regarding the differential between in-network and out-of-network services. It explained that some bargaining unit personnel live an hour or more from a network provider and,

⁵ The City provided testimony by Finance Director Cathe Armstrong to explain why there are no "lapsed encumbrances".

thus, would experience a serious hardship in terms of both cost and of service utilization, especially in the case of emergencies.

The Union also rejected the City's proposal for a three tiered pharmaceutical plan. One piece of evidence the Union presented was a one day snapshot of the prescription costs, per shift at the current \$5.00 co-pay rate, at the rates proposed by the City, and the percentage increase in cost that this represented.⁶ The percentage increase ranged from a low of 271% to a high of 336%. The Union also presented information on prescription co-pays in comparable jurisdictions to show that, especially at Tier 3, the City's proposal is out of line.

B. Recommendation

It goes without saying that the provision of health care insurance, much less the cost to an employee of same are two of the most controversial issues in this country. The City is correct that flexibility in the plan is essential to bid competitively which can achieve good service to employees with less cost to both parties. Nevertheless, it is easy to understand why the Union is concerned with maintaining caps on employee contributions for premiums. Based on the data presented, and if other considerations discussed herein are adopted, the Factfinder recommends the following: (1) 2008 - 7% with a cap of \$75.00; (2) 2009 - 7% with a cap of \$75.00; and (3) 2010 - 8% with a cap of \$85.00. These recommendations are in accord with comparable jurisdictions.

⁶ Apparently, only Tier 1 and Tier 2 pharmaceutical were included.

With respect to the differential between in-network and out-of-network service, the Factfinder recommends that the current eighty/twenty percent differential be maintained for in-network services. The recommended differential for out-of-network services is seventy/thirty percent. These percentages are of the negotiated fee for service up to the cap, \$500.00 for in-network services and \$1,000.00 for out-of-network services, after which the City's co-insurer pays the remainder. This will impact very few employees in the bargaining unit and to a substantially lesser degree than the Union anticipated. One reason for this is that hospitals in central Ohio are all in the network. Another is that, in the case of emergencies, the care is covered at the in-network rate even if the emergency room utilized is not at a network facility. The third is that United Healthcare has a national network of hospitals and doctors so even if an employee is in California on vacation, the in-network rate would apply. These recommendations are also in accord with the conditions prevailing in comparable jurisdictions.

With respect to pharmaceuticals, the Factfinder recommends in favor of the City's three tier plan, but not entirely at the rates it proposed. The recommended rates are: (1) Tier 1 - \$10.00; (2) Tier 2 - \$20.00; and (3) Tier 3 - \$30.00. The Tier 1 and Tier 2 recommendations do not place an onerous financial burden on bargaining unit members. They also contain no limitations, as in some jurisdictions, that the pharmaceuticals be obtained only generic formulary.

In making this recommendation, the Factfinder recognized both that Tier 3 drugs are not now covered, at all, by the prescription plan and that some Tier 3 drugs can be obtained in generic formulary at an extraordinarily low price (even if the City's proposal was adopted). However, the fact is that all Tier 3 drugs are not available in generic formulary, and those that are not, are available only at an extraordinarily high price. Rather than having to forego these drugs, and risk the often serious health-related consequences, the City's Tier 3 proposal enables bargaining unit members to obtain these drugs at an extremely reasonable co-pay and, thus, it is recommended by this Factfinder.

In making these recommendations, the Factfinder believes that they meet the test of providing "substantially the same level of benefits . . . applicable to all other groups of represented employees and to all groups of non-represented employees by Ordinance". "Substantially" is not synonymous with 'precisely identical' in terms of the obligation it entails.

IV. Miscellaneous Economic Provisions

A. Union Position

According to the Union, the methodology the City has used to deal with uniform allowances has changed back and forth over the years, between payment by check of an agreed upon amount and submission of receipts for reimbursement by the City. The latter methodology is currently in effect. Recent rulings by the Internal Revenue Service (IRS) have cause what could easily become a major problem not only for the Firefighters, but also for the City. These rulings, in effect, mean that all reimburse items that are not an

essential part of a Firefighter's uniform or safety equipment (i.e., anything that could be used of personal use) are taxable as a benefit. Examples of the types of clothing that could come under the purview of the IRS are: running shoes; socks; pants; regular shoes; and T-shirts with the City IAFF logo.

The Union stated that this is a serious concern to Firefighters because, for example, they have to have running shoes to maintain the level of fitness the Department requires. The Union estimates that Firefighters need two pairs of running shoes, at an estimated cost of \$70-\$100.00 each per year. Two other examples are regular shoes and pants. The Union points out that Firefighters are not dressed at all times in their emergency response gear. They have to wear regular shoes and pants when, for example, they attend funerals or other official functions, addressing school students, and so forth. Other examples were provided.

To meet the Firefighters' needs and to shield both the City and the Firefighters from the reach of the IRS, the Union proposed that the City simply issue Firefighters a check, in a set amount, at the beginning of each calendar year. The amount it asked for in each year of the contract under consideration is as follows: (1) 2008 - \$950.00; (2) 2009 - \$1050.00; and (3) 2010 - \$1150.

B. City Position

The City agrees with both parties with respect to the jeopardy imposed on both parties as a result of the IRS rulings. It is also not opposed to returning to the payment of the uniform allowance via one annual check issued at the

beginning of each calendar year. However, the City disagrees with the amounts requested by the IAFF. It cites two reasons for this. First, the City said that when it first started paying uniform allowances, the sum was probably higher than the amount required. It does acknowledge that the cost now has probably caught up with the amount disbursed. Second, the City pointed out that not all Firefighters use all of their uniform reimbursement every year.⁷ The City is not opposed to a “modest” increase in the uniform allowance, but it rejects the sums requested by the IAFF.

C. Recommendation

Comparable data was not provided on this issue. The Factfinder did not consider this to be a problem. The parties are basically in agreement that the methodology used to provide the uniform allowance be changed from reimbursement of receipts to provision of a check for a set amount at the beginning of each calendar year. She so recommends.

If this recommendation is accepted by both parties, then this has a dramatic impact on the amount that the uniform allowance should be because it will be protected from being taxed by the IRS. That seemed to be the major factor accounting for the sums asked for by the IAFF. Therefore, the Factfinder recommends the following with respect to uniform allowances in each of the three years of the contract under consideration: (1) 2008 - \$800.00; (2) 2009 - \$850.00; and (3) 2010 - \$850.

⁷ There was discussion about the two Firefighters that did not use all of their allowance. The circumstances were not known to the City prior to this Factfinding, and are not a subject that should be included in this report.

V. Article 28 Entire Agreement

A. The Position of the Parties

There is basically no disagreement between the parties that this language should be maintained. However, the City was reluctant to sign off on this Article depending on changes in other parts of the collective bargaining agreement, including Article 1.

B. Recommendation

If other recommendations provided here are accepted, then Article 28 should be accepted by both parties.

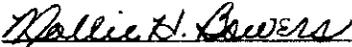
VI. Appendix B.

Also in dispute was Appendix B, the Drug and Alcohol Policy. At the outset of the hearing, the parties signed off on this Appendix and, thus, it is no longer a subject of consideration for this Factfinding.

VII. Incorporation

The Factfinder incorporates into her recommendations all of the agreements the Parties have agreed to at the table. These issues are no longer in dispute and should be accepted by their constituents on both sides of the table.

Date: April 20, 2008


Mollie H. Bowers, Factfinder