



("Contract") running from January 1, 2005 and December 31, 2007 expired on January 1, 2008. Prior to this hearing, the parties had negotiated and resolved a very large number of open items, but were unable to reach agreement on only eight others.

Meetings to attempt to settle these outstanding issues resulted in two mediation sessions held on June 25 and July 15, 2008 in the City's administration building. During these two sessions the Parties negotiated in good faith and were able to resolve issue involving Articles 1-12, 14-18, 27, 29, 31-34, 36, 39-41, and three new articles: Seniority, Reduction in Force and Recall, and Fire Marshal classification. The Parties agreed to have the remaining open issues addressed in a Fact-Finder's Report.

In that respect, a 1-day fact-finding was held on August 8, 2008. In advance of this hearing, both parties filed pre-hearing position statements which were duly received and considered by the Fact-Finder

It is important to note that changes in the contract that the Parties mutually negotiated in earlier negotiations or during the two mediation sessions are not addressed in this Report; rather they are considered resolved and are hereby adopted without discussion.

### **III. DISCUSSION AND FACT-FINDER'S RECOMMENDATIONS**

#### **ARTICLE XIV - VACATIONS**

##### **City**

In addition to some minor wording modifications to clean up existing language in the contract, the City proposes a series of changes in the vacation article that would make the fire-fighter's vacation schedule consistent with the rest of the City's employees. The City points out that this unit accrues more vacation at the five (5) and fifteen (15) year service level than other employees and so to be consistent across the City's workforce, it asks that the fire-fighter's current 7½ tours of vacation accrual after five (5) years of service be reduced to seven (7) tours, and the twelve and one-half (12½) tours accrual after fifteen (15) years of service be reduced to twelve (12) tours.

In addition, consistent with the most recent police contract, the City proposes that while this unit should continue to be able to cash out unused vacation time at retirement, as well as carry over vacation time into the following calendar year, they should be required to use a minimum amount of their accrued time not only to help ensure that employees are taking enough time off from work to aid in their mental and physical well being, but assist the City in projecting its annual personnel costs, as well.

### Union

The Union counters that the City's proposal constitutes a significant change in current practice that is not warranted. Rather, it points out that the current accrual schedule was bargained for over time and that various concessions were made to get this language. Further, over a twenty-five (25) year career the cost of the the current accrual schedule amounts to only about an additional \$900 per employee. Lastly, the Union points out that their enhanced benefit schedule constitutes a form of pay supplement that is not unwarranted given the relatively low pay of this unit vis a vis other, comparable fire-fighters in other municipalities.

### Fact-Finder Recommendation

While the City's attempt to harmonize vacation accrual schedules across bargaining units is understandable, in the context of the other changes this Fact-Finder will be recommending as regards fire-fighter total compensation, infra, it is recommended that the current vacation accrual language remain unchanged.

This Fact-Finder does, however, find merit in the City's argument that vacation leave is designed to encourage employees to take a degree of respite away from the rigors of their jobs. Therefore, because it's healthier in the long run for employees to take their accrued leave, and scheduled time away from work offers the collateral benefit of helping to stabilize the City's personnel planning, the Fact-Finder recommends adoption of the City's proposal to require members of this unit to use a minimum of their accrued vacation leave.

And, the Fact-Finder also recommends adoption of the City's other non-controversial, and non-substantive, proposals to clean up the language of Article XIX.

In that regard, consistent with these recommendations, the Fact-Finder's suggested changes to Article XIV are as follows:

**ARTICLE XIV**  
**VACATIONS**

**Section 1. Accrual.** All full-time employees shall be granted the following vacation leave with full pay based on their length of *continuous full-time* service according to the following schedule:

<u>Length of Full-time Service</u>	<u>Vacation Time</u>
After one (1) year full-time service	5 Tours Off
After five (5) years full-time service	7½ Tours Off
After ten (10) years full-time service	10 Tours Off
After fifteen (15) years full-time service	12½ Tours Off
After twenty (20) years full-time service	15 Tours Off

**Section 2. Usage/Carry-Over.** Employees shall become eligible for vacation leave on their anniversary date of hire and vacation leave will normally be taken by the employee within twelve (12) months thereafter. Employees shall be permitted to carry over from one year to the next immediate year, up to one (1) year of earned but unused vacation leave, at the current rate of accrual. Such vacation must be taken as time off during that next immediate year or it shall be forfeited. With the exception of the summer months (June-September), scheduling of vacation will follow Department S.O.P. 301.00. During the summer months, any employee may only schedule five (5) tours off the first bid, after which scheduling will revert back to S.O.P.'s.

**Section 3. Vacation Cashout/Required Usage.** After five (5) years of service, if an employee at anytime during their vacation accrual year has vacation time remaining, they may, with two weeks' notice, receive payment at their regular rate for these hours, ~~once each vacation accrual year.~~ *Employees with seven and one-half (7 ½) or ten (10) tours of vacation must use a minimum of five (5) tours annually. Employees with 12 and one-half (12 ½) or fifteen (15) tours of vacation must use a minimum of eight (8) tours annually. Every employee must use a minimum of one (1) shift annually.*

Forty (40) hour employees must use a minimum of two (2) weeks annually. *A forty (40) hour employee with five (5) or six (6) weeks of annual accrual must use a minimum of three (3) weeks annually.*

**Section 4. Emergency Work during Vacation Period.** In case of emergency, the Fire Chief has the right to require employees to work on all or part of planned vacation leave. If an employee is required to work under circumstances set forth above, the employee shall be paid an amount equal to one and one-half (1-1/2) times the usual compensation for the day or days so worked, and the employee shall have the vacation days worked scheduled for a later time in the calendar year.

**Section 5. Separation Payment.** Upon separation from employment with the Employer, except for cause, an employee shall be entitled to compensation, at his current rate of pay, for the prorated portion of any earned but unused vacation leave for the current year to his credit at the time of separation, and in addition shall be compensated for any unused vacation leave accrued to his credit that had been carried over from the previous year. Death of an employee shall result in this amount paid to the employee's spouse or estate, if no spouse exists.

**Section 6.** Effective on or about October 1, 1983, employees who served on a part-time basis prior to the creation of a full-time Fire Department shall receive credit towards their

"Length of Full-Time Service," as provided in paragraph 15.01 above, according to the following formula:

- A. The number of hours worked on a part-time basis will be added and totaled;
- B. The above total will be divided by two thousand nine hundred twelve (2912);

C. The resulting calculation shall equal the number of years to be credited to the employee's length of full-time service.

In the event the figures for making the above calculations are not available from the Finance Department, such calculations shall be made as soon as possible with the time credit being made retroactive to the affected employee's anniversary date in October, 1983. ~~Effective with this contract (1-1-98), no credit for service with any other fire service will be given, except as outlined in the Ohio Revised Code.~~

*Section 7. Prior Service Credit for Employees Hired After January 1, 1998. For all bargaining unit members hired after January 1, 1998, service credit for vacation purposes shall be based on years of continuous, full-time service with the City of Eastlake, Ohio.*

## Article XX - Holidays

### City

The City proposes changing the fire-fighter's holiday provision to bring this benefit into conformity with other City contracts, as well. In that regard, the City points out that this unit receives more holiday and personal time than other units, to wit, the fire-fighters receive 192 hours of annual personal and holiday time, or 7.14% of their annual work hours, while other City employees receive only 128 hours, or 6.15%, of their annual work hours. Or, to understand the City's position in another context, the fire-fighters' holiday accrual is approximately 29.25% greater than any other unit in the City.

The City has also proposes language which would be consistent with what the police unit was recently awarded which would similarly require fire-fighters to schedule and utilize their holiday time.

### Union

Again, the Union sees no need for change in this provision because the current language was bargained for over time in exchange for other concessions, including lower annual increases, and even pay freezes. The Union also points out that members of this unit work more hours than other City employees and so should enjoy higher relative holiday accrual.

### Fact-Finder Recommendation

In light of this unit's relatively lower pay than comparable units in other cities, which will be addressed infra, this Fact-Finder doe not recommend reduction in the fire-fighters' current holiday accrual schedule. While there may be cause to revisit a fire-fighters' enhanced holiday accrual that exceeds that of other City employees in later contracts, because of this

unit's lingering pay disparities with comparable units in other cities, and a recognition that the enhanced holiday accrual rate to a certain degree serves to partially enhance this unit's total compensation package, it is recommended that current holiday accrual levels be left unchanged, at least for the duration of this contract.

However, as for the City's proposed language regarding how this unit should be required to more efficiently schedule and utilize their accrued holiday and personal time, the Fact-Finder does find the logic behind that proposal persuasive. Therefore, while it is recommended that this unit keep its current accrual levels, their accrued hours should be scheduled and used in a manner similar to all other City employees.

Therefore, consistent with these recommendations, supra, it is recommended that the contract be amended as follows:

## **ARTICLE XX HOLIDAYS**

**Section 1.** All full-time employees shall receive seven (7) twenty-four (24) hour tours of duty off with pay in lieu of the eleven (11) specified city-wide holidays. Additionally, each employee shall receive one (1) personal day (1 tour) to be taken during the calendar year with advance approval. Forty hour employees shall receive four (4) P.A. days and the same holidays, as outlined by Codified Ordinance 155.03.

~~**Section 2.** Employees shall have the option of selecting to take either the time off with pay or to be paid for the holidays at their straight time rate of pay and shall notify the Fire Chief of their election. Personal days may not be surrendered for pay.~~

~~**Section 3 2. Holiday/Personal Time Scheduling.** Should an employee elect to take the time off instead of pay for the holidays, The employee shall designate the days he wishes to take off, which shall be subject to the advance approval of the Fire Chief as to when they may be taken. *An employee shall be required to take the time during the year in which it is earned and shall not be able to carry the time over into the next calendar year.*~~

~~**Section 4 3. Holiday Work Option.** An employee who elects to take time off for holidays, shall be required to take the time off during the year in which it is earned and not be able to carry the time over into the next year. *At the discretion of the respective department head, with consideration of workloads and department needs, an employee may work designated holidays. The employee may then elect to take the additional holiday compensation in the form of payment.*~~

**ARTICLE XXI**  
**INSURANCES**

**City**

Again, the City proposes bringing this unit's health benefits into conformity with those benefits currently being offered to other City employees, most particularly the police local. It suggests that there is not a valid reason to carve out this unit from all others. In its words,

*"(T)o modify the current language for insurance benefits to bring these employees in line with the trend statewide with regard to insurance contributions" the City proposes that the premium cost sharing formula should be altered to increase this Union's share of the monthly premiums from their current level, 8%, to 15%".*

And the City believes it only fair that an employee whose elects coverage under the City's health care plan, while at the same time getting coverage through their spouse's employer, should be required to pay the \$75 spousal surcharge that its insurance carrier has recently implemented and whose cost to date has been borne by the City.

**Union**

The Union responds by proposing to maintain current contract language except for changing the current 92-8 premium split to a set dollar amount, requiring a certificate of coverage from the Lake County Commissioners Health Plan that locks in current coverage through the end of this contract, and providing a spousal opt-out incentive that would pay all unit employees who decline City health insurance a payment of \$200/month.

Again, it's the Union's wish to continue the same health insurance coverage, at the same cost-sharing formula, as it has enjoyed for the last few contracts. In addition, the Union proposes that if a bargaining unit employee opts out of the City's plan because he/she can get coverage through a spouse, then the City and the employee should share in the cost savings of doing so.

**Fact-Finder Recommendations**

As articulated during the hearing, absent a compelling economic reason, this Fact-Finder is not a proponent of health care carve-outs for individual public sector bargaining

units employed by the same Employer; in this era of budget-busting healthcare costs, this has become a luxury whose time has passed. Rather, it almost always more cost-effective for employers to aggregate their employees for coverage and place them under the same plan. And, with the cost of coverage escalating exponentially, it's important for Cities to do what they can to moderate premium increases not only so they can continue to afford broad coverage to their employees, but to do so in a manner wherein they are better able to budget for cost increases going forward. Therefore, this Fact-Finder does not recommend a health plan carve-out for this fire-fighter's unit alone.

That said, the Fact-Finder can also find no compelling reason to recommend that the fire-fighters be required to pay any more than the 92-8 split currently provided for in the police contract. However, he does find support for the notion that an employee who elects to be covered under the City's health care plan should not reasonably expect the City to then continue to pay hundreds or even thousands of dollars a month for the privilege of having him also covered under a spouse's separate plan (in essence, paying the entire cost for the luxury of the employee being covered by two different plans). Therefore, it is recommended going forward that City fire-fighters who elect coverage under the City's health care plan while also enjoying coverage under a spouse's separate plan be required to either affirmatively opt out of the City's coverage, or pay the reasonable \$75/month spousal surcharge.

Therefore, the recommended contract language would read as follows:

**ARTICLE XXI  
INSURANCES**

**Section 1.** ~~Effective January 1, 2006, the Employer will pay 92% of the cost of medical/hospitalization coverage, for full-time employees, after satisfactory completion of initial 90 days without any reimbursement by the City for co-pay or deductibles. The employees shall pay the remaining eight percent (8%) through automatic payroll deduction.~~ *The Employer shall make available to all full-time bargaining unit members comprehensive major medical/hospitalization health care insurance. The Employer shall be able to change insurance carriers or self-insure, providing the benefits are comparable to existing benefits.*

**Section 2. Liability Insurance.** The Employer shall carry liability insurance coverage for employees operating within their scope of employment as long as such coverage is reasonably available.

**Section 3. Contribution Rates.** ~~The employer shall be able to change insurance carriers or self-insure, providing the benefits are comparable to existing benefits. The Employee shall contribute ninety-two percent (92%) and bargaining unit members shall contribute eight percent (8%) for the premium cost of health care coverage under the applicable plan, without reimbursement by the City for co-pays or deductibles. Eligible employees may elect any available coverage (e.g., single, two-party, family, etc.) subject to the plan offerings. Employee participation~~

costs, as may be applicable, shall be made through payroll deduction. Each employee responsible for any health plan costs shall sign a payroll authorization form for the applicable deduction in order to participate in or continue coverage. Upon enrollment/application of an eligible employee, coverage will commence in accordance with the provisions of the plan, plan provider, or administrator, as applicable.

**Section 4. Spousal Coverage/Surcharge.** Notwithstanding the premium sharing schedule established above, an employee whose spouse has coverage available through another employer yet chooses to enroll the spouse under the City's plan shall pay a seventy-five dollar (\$75.00) spousal surcharge. The remaining costs of the premium, less the spousal surcharge, if applicable, would be split according to

**Section 3.** If the employee's spouse does not have coverage available through another Employer, they may participate in City coverage without the spousal surcharge.

**Section 4 5. Insurance Opt-Out.** Any employee who elects to obtain health care coverage through another source other than the City of Eastlake, with presenting proof of such coverage, will receive one hundred dollars (\$100.00) monthly for the individual plan, one hundred fifty dollars (\$150.00) per month for employee and spouse or children, and two hundred dollars (\$200.00) per month for the family plan.

**Section 6. Insurance Committee.** The parties agree that in their continued efforts to reduce hospitalization medical costs, an Employer-Wide Joint Medical/Hospitalization Insurance Committee will be maintained and convened as necessary to review alternative insurance coverage and plans and make recommendations to the Employer. It is understood that such recommendations do not obligate either party contractually. If the Committee obtains a plan more favorable to employees than the plans to be in effect on April 1, 2005, at a cost acceptable to the Employer, such plan, at the Employer's discretion, may be substituted for the then current plan.

**Section 5 7. Exposure Related Testing.** Due to the hazard of blood borne pathogens and infectious disease exposure to firefighters and EMS personnel who respond to emergency medical and hazardous materials incidents, and as a result of the State of Ohio Workers Compensation Plan not allowing a worker's compensation claim for exposure only, the City agrees to pay for blood testing and related treatment necessary to determine if an infectious disease has been contracted. If an infectious disease has in fact been contracted due to a work-related incident exposure, the claim will then be submitted to the Ohio Bureau of Workers Compensation for determination of allowance and subsequent benefits.

## ARTICLE 22

### SALARY SCHEDULE

#### City:

In light of the City's continued financial uncertainty, and the fact that only recently (less than 12 months ago) did it leave distressed status, the City proposes very modest 1% wage increases in each of the three (3) years of the new contract. And, in support of its proposal, the City points out that while this unit's rank and file wages may trail the wages of comparable units in other cities, this unit's enhanced benefits exceed the benefits of these comparable jurisdictions and so this unit's total compensation, rather than wages alone, should be kept in mind when comparing this fire-fighter's local with other locals.

**Union:**

In light of the fact that the Union presented wage data that showed that this unit substantially lags behind the average wages of fire-fighting units in comparable municipalities, the Union proposes a significant increase in wages: a 3% general increase in each of the three years of the proposed contract, as well as an additional \$.65/hour yearly "equity adjustment". It points out that its proposed 3% raise is the same general increase that the police unit was recently awarded in conciliation. And, the \$.65/hour equity adjustment is intended to prevent the unit from falling even further behind the average wages of fire-fighting locals in comparable jurisdictions.

In light of the wage freeze it accepted in 2004, and the relatively paltry wage increases of 2% in 2005, 2006, and 2007, the Union believes that the City is now in the financial position of being able to afford to help this unit start catching up on wages. In support of its position, and contrary to the City's claim of limited ability to pay, the Union presented a financial expert whose testimony that the City is now on strong financial ground rebutted the City's claim that it could not really afford the Union's proposal. And, the expert testified that the City had a sufficient anticipated general fund surplus to grant the Union's request.

**Fact-Finder Recommendation**

The Fact-Finder is cognizant of the fact that the City less than eight months ago ended its state of fiscal emergency and is legally obligated to carefully manage its revenues and expenses. While there was some question about the Union expert's assessment that the City's current financial health allows it to grant a healthy increase, the Fact-Finder takes arbitral notice of three facts; one, the comparables provided by both the Union and the City leave no question that, as to wages alone, the rank and file in this unit substantially trail other, similarly situated fire-fighting units in northeastern Ohio, in some cases by \$10,000 or more. Two, while the City's fund balances remain precarious, it recently funded its police unit with an across-the-board 3% wage increase. And, three, during the hearing, the City's representatives admitted that because the rank and file in this unit had substantial wage disparities with comparable units in other cities, it was a priority that needed to be addressed.

In light of the wage data provided by both parties, the Fact-Finder recommends, particularly in light of his recommendations on the issue of minimum staffing to be discussed

later, infra, that this unit deserves, and this City can afford, the same across-the-board wage increases of 3% in each year of the contract that the police unit was recently awarded.

In addition, this Fact-Finder is also cognizant of the fact that a 3-3-3% general increase would do little if anything to help this unit to narrow the wage gap with comparable fire-fighting locals going forward since many or most of them will, too, enjoy upcoming raises of similar magnitude. Therefore, an across-the-board increase of 3% annually over the life of the contract will most likely only serve to memorialize the continuing disparities in wages.

Accordingly, in light of these considerations, the Fact-Finder also recommends that the rank-and-file also receive an additional equity adjustment of \$.25/hour for each of the first two years of the contract, and \$.20 hour in the third, with both the wage increase and the equity adjustment granted retroactive to the expiration date of the contract. In the context of some other issues this Fact-Finder will be discussing later that will help ameliorate the overall cost of this contract, including the use of part-time personnel, it's this Fact-Finder's studied opinion that these proposed increases, while substantial, are justified. In addition, the Employer's proposed non-substantive clean-up of language in sections 1, 5, 6, and 7 should be adopted. Therefore, to reflect these recommendations, the proposed language would read as follows:

**ARTICLE XXII, SECTIONS 1-7**  
**SALARY SCHEDULE**

**(Note: Old Sections 2-4 replaced with wage appendix)**

**Section 1.** All employees shall receive salaries and wages in accordance with the provisions of this Article.

**Section 2. General Wage Increases.** *The following represents the annual base percentage increases for bargaining unit members for the duration of this agreement. The actual wage rates are attached and appended to the parties' agreement as Appendix A. Effective January 1, 2008, bargaining unit members will receive a twenty-five cents (\$.25) wage adjustment and three percent (3.0%) general wage increase. Effective January 1, 2009, bargaining unit members will receive a twenty-five cents (\$.25) wage adjustment and three percent (3.0%) general wage increase. Effective January 1, 2010,, bargaining unit members will receive a twenty cents (\$.20) wage adjustment and three percent (3.0%) general wage increase.*

**Section 3.** In the event any employee is required to work a forty (40) hour work week, the ~~above-rates~~ **annual salaries** and their fringe benefits will be modified to the 2,080 hour equivalent.

**Section 7-5.** Upon completion of fifteen (15) department years with the City and at the discretion of the Chief, members may, based on their seniority, drop their Paramedic or Intermediate status, as long as this reclassification does not deplete the minimum (as described by Ordinance) staffing levels. The request to drop status would remove incentive pay.

**APPENDIX A  
WAGE SCHEDULE**

<b>Effective 1/1/08 (\$ .25 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 13.84	\$ 37,216.06
<i>Firefighter (After 1 year full-time service)</i>		\$ 17.31	\$ 46,547.76
<i>Firefighter (After 2 years full-time service)</i>		\$ 21.45	\$ 57,679.35
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 21.68	\$ 58,288.54
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 22.39	\$ 60,199.19
<i>Lieutenant</i>		\$ 23.58	\$ 63,383.60
<i>Lieutenant w/ EMT-I</i>		\$ 23.80	\$ 63,992.79
<i>Lieutenant w/ EMT-P</i>		\$ 24.53	\$ 65,958.82
<i>Battalion Chief</i>		\$ 26.04	\$ 70,001.63

<b>Effective 1/1/09 (\$ .25 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 14.52	\$ 39,024.80
<i>Firefighter (After 1 year full-time service)</i>		\$ 18.09	\$ 48,636.46
<i>Firefighter (After 2 years full-time service)</i>		\$ 22.36	\$ 60,102.00
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 22.59	\$ 60,729.46
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 23.32	\$ 62,697.43
<i>Lieutenant</i>		\$ 24.54	\$ 65,977.37
<i>Lieutenant w/ EMT-I</i>		\$ 24.77	\$ 66,604.84
<i>Lieutenant w/ EMT-P</i>		\$ 25.53	\$ 68,629.85
<i>Battalion Chief</i>		\$ 27.08	\$ 72,793.95

<b>Effective 1/1/10 (\$ .20 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 15.16	\$ 40,749.36
<i>Firefighter (After 1 year full-time service)</i>		\$ 18.84	\$ 50,649.36
<i>Firefighter (After 2 years full-time service)</i>		\$ 23.23	\$ 62,458.87
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 23.47	\$ 63,105.16
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 24.23	\$ 65,132.16
<i>Lieutenant</i>		\$ 25.48	\$ 68,510.50
<i>Lieutenant w/ EMT-I</i>		\$ 25.72	\$ 69,156.79

<i>Lieutenant w/ EMT-P</i>	\$	<i>26.50</i>	\$	<i>71,242.55</i>
<i>Battalion Chief</i>	\$	<i>28.10</i>	\$	<i>75,531.58</i>

**ARTICLE XXII**

**MINIMUM MANNING**

**City**

The City proposes removing the minimum manning provision requiring that at least seven (7) full-time firefighters be on duty at all times. Since the provision first found its way into the contract in 2004 the City asserts that overtime costs in this unit have increased dramatically. The City emphasizes that while it would never knowingly compromise the safety of its fire-fighters, there is no demonstrable evidence that a minimum manning requirement of seven (7) fire-fighters on every shift in any way improves the safe operations of this unit. Rather, it believes that the introduction of this clause by the last administration was unwarranted and has only served to increase costs with no demonstrable improvement in safety.

And, the City asserts that because minimum manning has been found by the courts to be a permissive subject of bargaining the Union does not have the right to force it to negotiate the removal of this clause to impasse.

**Union**

The Union, on the other hand, disagrees with the City and believes that the issue of minimum manning is a mandatory, not permissive, issue of bargaining. Further, they assert that minimum staffing is, in fact, a safety issue, and to adopt the City's proposal and remove the clause would jeopardize fire-fighter's safety. In support of its position, the Union produced a copy of NFPA 1710 which speaks, to among other things, recommended staffing levels.

**Fact-Finder Recommendation**

The Fact-Finder recognizes the concern that members of safety-sensitive professions have regarding the safe and efficient operations of their work. However, while intuitively minimum manning clauses are assumed to enhance safety by ensuring that there are a sufficient number of fire-fighters on duty to cover assigned duties in an emergency, in fact there are a dearth of studies that show this to be the case. While this Fact-Finder recognizes

that minimum staffing clauses are a coveted addition to fire-fighting contracts, these clauses do increase overtime costs, oftentimes dramatically.

Generally, because unions are willing to grant concessions in order to achieve minimum staffing language in the contract, it's reasonable to assume that this unit did the same. However, while this provision provides questionable safety enhancements at significant cost to the City and so may have no place in the contract, this Fact-Finder finds it premature to recommend removing language that was so recently negotiated.

Rather, it appears that the most pressing issue facing this unit is the need to close the substantial wage disparity gap among the rank and file with fire-fighting units in comparable municipalities. The Parties should be cognizant of the fact that by retaining a minimum staffing provision in the contract that this in turn drives up overtime costs that shrinks the pool of City money available to provide these needed wage increases. Further, apparently before the inclusion of the minimum manning requirement there was no violation of the recommended staffing levels set forth in NFPA 1710.

While for the reasons mentioned this Fact-Finder recommends that the minimum staffing language be retained, at least through this contract cycle, he does recommend deleting the language that requires that minimum staffing levels be composed of full-time personnel only. While the Union does offer a number of studies that purport to show that part-time fire-fighters compromise safety, and letters of concern regarding the same from past and present City fire chiefs, again, clear evidence that part-timers compromise safety appears more anecdotal than scientific.

Accordingly, while the minimum staffing language should remain in the contract, the Fact-Finder believes that there needs to be a balance between the added overtime costs that minimum staffing clauses create, and the City's good faith attempts to be responsible stewards of the public's money to manage those personnel costs through the use of less expensive part-time staff. As such, and in recognition of the fact that these part-timers would, themselves, be certified fire-fighting professionals, it is recommended that the City's potential proposed use of part-time fire-fighters to help staff the minimum manning requirements be adopted, with the following caveats to be addressed later in this Report, *infra*.

**NEW ARTICLE XXII SECTIONS 8**  
**SALARY SCHEDULE MINIMUM MANNING**

**Section 8.** The City shall maintain a minimum of seven (7) ~~full-time~~ Fire Fighters on duty at all times.

**ARTICLE XXIV**

**WORKING OUT OF CLASSIFICATION**

**City**

The City proposes to change current practice that automatically promotes an employee into a higher classification (i.e., shift commander), without permitting administration to determine whether or not department needs warrants the position needing to be filled, and if so, who is the bargaining unit member best suited to assume those duties.

**Union**

Since this particular scenario happens only about once a week, the Union suggests that the current practice is working and proposes leaving the contract language unchanged.

**Fact-Finder Recommendation**

The Fact-Finder recommends that the City's language be adopted. To maintain good and efficient order, and control unnecessary costs, it should be within management's prerogative whether or not the circumstances warrant the need to have someone act as shift commander, and if so, which bargaining unit employee is best able and willing to fulfill those duties.

Accordingly, on the basis of management rights, as well as the need for the City to effectively manage its limited resources, it is recommended that the City's proposed language be adopted, to wit:

**ARTICLE XXIV**  
**WORKING OUT OF CLASSIFICATION**

**Section 1.** ~~An employee who is required to accept responsibilities and carry out the duties of a position or rank above that which he normally holds, (S.O.P. 302.45, 302.46), shall be paid at the rate for that position while so acting. An employee required to assume the duties that are exclusively the part of a higher classification shall receive the rate of pay for that classification.~~

~~**Section 2.** In the absence of the shift commander, the shift supervisor shall assume his duties. He shall support the objectives of the Department and the policies of the Fire Chief.~~

**Section 3.** The individual working the affected Shift, with the most departmental seniority, *in the classification from which the assignment is to be made*, will receive the stated upgrade.

**Section 4.2.** The member with the most departmental seniority based on hire date and/or promotion date, will always be designated as in charge of the run. When a Battalion Chief or Lieutenant is present, they will be in charge of said run.

### Article XXIII

#### **HOURS OF WORK/OVERTIME PAY**

##### **City**

The City resists any attempts by the Union to enhance the contract's current 2-hour minimum call-in/call-back policy. Rather, its position is that if an employee is called back to work, and is being paid for the two (2) hour period, s/he should then stay at work, ready for duty, until such time as the two (2) hours is up (even if the situation warranting the call-back does not require the full two (2) hours of his/her work time).

##### **Union**

The Union takes issue with the City's position, and proposes not only that an employee be allowed to leave work once the his/her tasks associated with the call-back are completed, but that the current 2-hour minimum be increased to three (3) hours. In addition, it asks that there be language included in the contract that would allow a fire-fighter to be released from call-back should s/he not be needed.

##### **Fact-Finder Recommendation**

In light of cost-savings recommended elsewhere in this contract, specifically dealing with part-time personnel, discussed infra, the Fact-Finder recommends adoption of the Union's proposal. Further, it is not recommended that once called back to work that employees be required to remain on the job for the duration, even if there is no more work to do. This Fact-Finder takes arbitral notice of the fact that not only are employers paying a premium for the inconvenience placed on employees to come back to the job after they are off the clock, but that a "remain on the job" requirement is not common practice.

However, to avoid compounding the pay impact that an enhanced call-back premium would create, there should be language that precludes the pyramiding/duplication of call-back pay during this three (3) hour minimum call-back period. Further, it is recommended that eligibility for an additional call-back minimum would begin again after the initial 3-hour minimum call back time period.

In that respect, the following language is proposed to reflect these recommendations:

**ARTICLE XXIII, SECTION 2**  
**HOURS OF WORK/OVERTIME PAY**

**Note: all other sections of this article have been tentatively agreed upon.**

**Section 2. Call-in/Call back.** In the event an employee is called in to work after he has left work or on a day when he is not scheduled to work, the employee will be guaranteed a minimum of ~~two (2)~~ **three (3)** hours pay at his straight time rate of pay or one and one-half (1 1/2) times his regular hourly rate for all hours actually worked, whichever is greater, providing such hours do not abut the employee's normally scheduled work day.

*In a call-in/call back situation the following provisions shall apply:*

- a. Time of Call. The start time of compensation for members that are called back to work will begin at the time of request to return to work.*
- b. Release. The member will be released from call back duty when the "on duty" crew and firehouse equipment is deemed in service by the officer in charge.*
- c. No Duplication/Pyramiding. There shall be no duplicating or pyramiding of call back minimum payments. The call-back minimum covers all call-backs occurring during the three (3) hour period from the time of a call. Additional call-backs after that time period will be eligible for a new minimum.*

**NEW ARTICLE**

**PART-TIME PERSONNEL**

**City**

The City feels very strongly that to be the most cost-effective steward of the City's finances, and to allow flexibility of scheduling to best manage overtime, holidays, vacations and unscheduled absences, management should have the discretion to augment staffing in the fire service with certified part-time fire-fighters. It asserts that the combination of minimum staffing and the requirement to use full-time staff only compounds the financial impact on the City's budget unnecessarily and significantly.

To allay Union concerns on the impact that hiring part-timers could have on bargaining unit job security, it has proposed tempering its proposal by offering the following protection: the use of part-timers would not cause a reduction in force in the level of full-time employment nor their regularly scheduled hours. Further, in the event of a necessary reduction in force, part-time personnel would be laid off first. The City also points out that that not only do bargaining units in other cities employ part-timers as a way to better manage costs, but that many fire-fighters, including some in this bargaining unit, got their start by working part-time for other fire departments.

## Union

The Union expresses concerns that part-time personnel would compromise safety. Specifically, they articulate that part-timers could not be expected to be completely familiar with standard department operating protocol and so in times of emergency this unfamiliarity with how and why things are done lead to mistakes that could be costly.

The Union also points out that in a 1980 referendum City residents voted to not only to have a full-time fire department, but raise taxes for the privilege. And, so, to now employ part-time personnel would be contrary to the wishes of City residents for a full-time fire-fighting force.

Lastly, the Union provided four (4) reports, one fact-finder's report, and two letters (one from the current fire chief and one from his predecessor) that purportedly call into question the efficacy and potentially illusory cost-savings to be achieved with the employment of part-time fire suppression professionals.

## Fact-Finder Recommendation

This Fact-Finder has carefully considered the positions of both parties and is aware that this issue is one that has complicated settlement of this contract.

The Union spoke passionately about this issue at the hearing, provided a number of studies exploring the potential safety ramifications of employing part-time help, and produced two letters from former and current Chiefs that expressed concerns about the idea. A review of those supporting documents is warranted.

It should be noted that the fact-finding report the Union provided as justification for its continued resistance to the idea dealt not with whether or not part-time fire-fighters should be used, but whether it was prudent to increase the level of part-timers in the Richmond Heights department from 33% to 40%. In the Miami Valley Fire/EMS Alliance study they did not recommend against part-timers but rather discussed some of the issues and concerns for departments that choose to do so. The Hanover Park Fire Department Study also did not suggest that part-time fire-fighters were inappropriate, rather, "(T)he problem is the inability to rely on these part-time fire-fighters to fill the needed staffing positions". The University of Michigan study also did not recommend not using part-timers but rather recommended the hiring of additional full-time staff "from the existing pool of part time employees". Lastly, after discounting the expected savings from using part-timers and discussing some of the concerns that full-time personnel have with working side-by-side with part-timers, the

Worthington Fire Department Study simply concluded that "(T)he part time program may not be for you".

Likewise, the March 30, 2007 letter from then chief Richard Sabo pointed out that "Every Lake County department has part-time personnel under their employment except Eastlake". He went on to recommend that the hiring of part-time personnel "needs further research and study". And, most recently, Chief Whittington in a July 16, 2008 letter admitted that "Any evidentiary material that either supports or contradicts minimum staffing can be argued from both sides for years".

Recognizing that no credible source flatly rejects the hiring of part-time fire-fighters, and recognition of the fact that probably 99% of all departments around the country employ them (including every volunteer fire department), this Fact-Finder recommends the inclusion of the City's proposed language, with certain restrictions, that would permit the City to consider employing part-time fire-fighting professionals. In addition to the above realities, this recommendation is based on the further, following reasoning.

One, for the reasons put forth by the Union, while intuitively it would seem that part-timers who are *not on site every day* could jeopardize the safety of those who work side-by-side on a full-time basis by degrading efficient response and team-effort, this Fact-Finder is aware of no definitive study that shows this to be so. Two, part-timers have historically been employed side-by-side with full-time employees in a significant number of safety-sensitive professions, including both fire and police as well as EMT, paramedics, nursing, medicine, et al, without any demonstrable untoward safety ramifications. Three, many comparable fire-fighting units in other Ohio municipalities have for years supplemented their staffing with part-timers. Four, many fire-fighters, including apparently a number in this bargaining unit, got their start in the profession working as part-timers. Finally, while safety concerns are never unimportant, the potential cost-savings realized by the use of part-time personnel could conceivably be used going forward to help fund additional recommended improvements in this unit's wages, discussed in more detail, *infra*.

In recognition of some of the Union's articulated concerns, however, it is recommended that an ad hoc committee be formed composed of both labor and management representatives from the City to study and discuss issues pertaining to the integration and functioning of part-time personnel into the fire department. It is also recommended that the City's decision whether or not to hire part-time fire-fighters be delayed for at least six (6) months from the date of the new contract until such time as that committee has had the full opportunity to vet the issue in more detail and articulate their views to City administration through a formal, but non-binding, committee recommendation. Further, if the City does

eventually opt to employ part-timers this option should be used to augment staffing and not become a back-door attempt to reduce the current number of budgeted fire-fighter FTE's.

In that respect, the following language to reflect these recommendations is proposed:

**NEW ARTICLE**  
**PART-TIME PERSONNEL**

*Section 1. The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of Eastlake and maintain the integrity of fire department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) of regularly scheduled hours of bargaining unit members*

*Section 2. Overtime Work. Whenever the Employer determines that overtime work is necessary, it will offer the overtime work opportunity to eligible full-time bargaining unit members prior to offering the overtime work to part-time firefighters.*

*Section 3. Ranking Officer Functions. The Employer agrees that part-time firefighters will not be used for supervisory/rank personnel.*

*Section 4. Part-time Officer Committee. The parties agree to establish a committee consisting of not more than four (4) representatives of the Employer and four (4) representatives of the Union to meet and discuss issues related to the integration and functioning of part-time personnel within the Fire Department.*

**IV. CONCLUSION**

While this Fact-Finder realizes that neither Party will be fully satisfied with this Report, I do believe that the facts support the conclusion that it meets the standard of fairness in these matters, i.e., both Parties have been asked to make what I believe to be equal sacrifices. So, in that respect, I suggest that the package is one that both parties can feel comfortable recommending to their respective constituencies.

Issued: September 3, 2008

Respectfully submitted,



Jared D. Simmer, Esq.

Fact-Finder

attach.

**CERTIFICATE OF SERVICE**

I hereby certify that the above Fact-Finder's Consent Report and Recommendations were served upon the following parties, to wit, IAFF Local 2860 via Daniel J. Leffler, Esq. and the City of Eastlake, Ohio via Michael Esposito, Esq. by United States Post Office overnight mail service, and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) by first class mail, this 3d day of September, 2008.



Jared D. Simmer, Esq.

Fact-Finder