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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

Maple Heights Fire Fighters,
IAFF Local 1184

-And-

City of Maple Heights

)
) 07-MED-10-1083
)
)
)
) Fact-Finder:
) John T. Meredith

**REPORT AND RECOMMENDATIONS
ISSUED JUNE 12, 2008**

APPEARANCES

Present for the Union:

James Astorino, President NOFF/IAFF
Rick Parker, Negotiating Committee
Jim Ferris, Negotiating Committee
Terry Everiss, Local 1184 President
Tom Plunkett, Negotiating Committee

Present for the Employer:

Kenneth Schuman, Counsel
James Catelucci, Fire Chief
Thomas Zammikiel, Finance Director
Laurie Waller, Human Resources
John Montello, Law Director

INTRODUCTION

The parties to this Fact-Finding proceeding are the Maple Heights Fire Fighters, IAFF Local 1184, and the City of Maple Heights, OH. The bargaining unit consists of all Fire Cadets, Fire Cadets First Class, Fire Fighters Class I, Fire Lieutenants, and Fire Captains, a group of approximately 39 employees. The subject Agreement will be a successor to the August 1, 2004 – December 31, 2007 Agreement between the parties.

The parties initiated collective bargaining for the successor Agreement but were unable to resolve all issues. The State Employment Relations Board, by letter dated March 13, 2008, appointed the undersigned, John T. Meredith, to serve as Fact-Finder. By agreement of the parties, a Mediation session with the Fact-Finder was scheduled for 10:00 a.m. on April 17, 2008. Some issues were resolved during Mediation. These issues are more specifically described in the Mediation Section of this Report and Appendix A.

A hearing was held on May 22, 2008 to take evidence on the unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. The unresolved issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report. In making his recommendations, the Fact-Finder has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) 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.
- (3) The interest and welfare of the public, 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.
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

MEDIATION

The parties met with the Fact-Finder on April 17, 2008 to attempt a mediated settlement. Some issues were resolved, and the parties prepared agreements, with appropriate language. These agreements were reviewed by the parties prior to issuance of this Report. With two exceptions, they were approved, in some instances with minor language modification. The approved agreements are attached hereto and incorporated in this Report as Appendix A. The parties and Fact-Finder also briefly discussed the possibility of additional mediation on the hearing day, but it did not appear that mediation would resolve the remaining disputed issues.

BACKGROUND: CITY PROFILE AND FINANCES

Maple Heights is an inner-ring suburb of Cleveland. Most of its 27,000 people live in modest single-family homes built in the post-World War II period of economic expansion in Northeast Ohio. While not wealthy, it has been stable and solvent for most of its existence.

During the past several years, however, Maple Heights has experienced adverse economic conditions. In part this no doubt reflects job losses in Northeast Ohio manufacturing industries. More recently, the City's problems have been aggravated by the sub-prime lending crisis. In fact, Maple Heights was featured in a September 2007 New York Times article on the national mortgage crisis. The article, headlined "Can the Mortgage Crisis Swallow a Town," includes the following passage:

In terms of the subprime mortgage meltdown, Ohio has been among the hardest hit states, according to the Mortgage Bankers Association. In Cuyahoga County, which includes Cleveland and surrounding suburbs, roughly 30 percent of subprime mortgages are either delinquent or in foreclosure, says Jim Rokakis, the

county treasurer. But this leafy community of bungalows and small family homes built after World War II could be described as its epicenter. Already, Maple Heights, with a population of 27,000, ranks No. 1 in Cuyahoga County in foreclosures per capita, according to Policy Matters Ohio, a nonprofit research group. Ranked by ZIP code, the number of foreclosures here puts Maple Heights in the top one-half of 1 percent nationally, Realty Trac says.

Economic decline has had consequences for City revenues, and City employees, shared the burden of the City's economic difficulties. City services were reduced and there were personnel reductions in most City departments. Since 2002, Maple Heights has eliminated 107 positions, and these reductions impacted every department except the Fire Department.

Employees, including firefighters, also received percentage wage increases which trailed the average wage increases given to their counterparts in neighboring communities and throughout the State of Ohio. As a result, the relative ranking of Maple Heights wage scales has declined relative to other area communities since 2001. Moreover, the Firefighters also lost ground relative to Maple Heights Police, as their wage increases trailed increases granted to the police for 2005 and 2007.

However, in February 2007, the City raised its income tax from 2.0% to 2.5%, and this will increase annual income tax revenues by more than \$1 million. Further, in November 2007, the City renewed its police and fire levies, and these renewals will result in increased annual revenue of approximately \$54,100 for each department commencing in 2009.

As a result of increased tax revenue, the City has been able to settle new bargaining agreements with all union groups whose contracts expired December 31, except for the firefighters, whose contract is the subject of these proceedings. Each of the new agreements provides for 3% annual increases in wages.

However, notwithstanding the substantial increase in income tax revenue, the City still has financial concerns. Some of the additional revenue is needed to restore service and personnel cutbacks in critical areas. Also, increased revenue from the income tax is partially offset by declines in personal property tax revenue (down approximately \$91,000 from 2005 to 2007) and in funding from the County's distribution of local government funds (down approximately \$100,000 from 2006 to 2007). Over time, the onslaught of foreclosures and ongoing decline in property value will lead to loss of real estate tax collections. While real property taxes primarily impact schools rather than cities, housing market issues also may contribute to population decline and thus loss of income to tax in future years.

UNRESOLVED ISSUES

1. Section 6.06 – Bargaining Unit Work (New Section)

Union Position: The Union proposes to add a new section to Article VI, Union Rights. The new section would state: “Bargaining unit work shall be performed only by bargaining unit members.” The Union states that its proposed language is consistent with current practice. The language would guarantee continuation of the practice, and thus prevent the City from contracting work out and/or hiring part-time or volunteer firefighters. Of these, the Union expressed most concern about possible use of part-time personnel, as part-timers are used by some other cities.

Employer Position: The City opposes addition of the new language. It denies any present intent to contract work out or to use either part-time or volunteer firefighters, but believes it should retain the right to do so in case deteriorating finances or other changes in circumstances warrant such a decision.

RECOMMENDATION: The proposed new language should not be added to the Agreement.

Rationale: Both parties agree that this is an issue with no probable immediate impact. The Fact-Finder understands the City's concern that deteriorating finances or changes in circumstances beyond its control might require considering a change in current practices. In that event, SERB cases defining a mid-term bargaining obligation would offer the Union some protection, depending on the nature of any changes proposed. Accordingly, the Fact Finder does not see a need to include the proposed language in the Agreement at this time.

2. Section 10.04 - Minimum Staffing

Employer Position: The City proposes to delete section 10.04 of the Agreement, which guarantees minimum staffing levels. The City disavows any current intent to reduce staffing, but states that determination of staffing levels should be retained as a management right.

Union Position: The Union opposes deletion of minimum staffing guarantees. It submitted substantial evidence to establish the necessity of adequate staffing levels for effective and safe firefighting. It states that current contractual minimums are required for safety and operational efficiency, and that they are consistent with longstanding practice. They were incorporated in the past two collective bargaining agreements during negotiations, presumably as a quid pro quo for Union agreement to other terms. The Union is entitled to retain the benefit of its bargain.

RECOMMENDATION: No change in current minimum staffing language.

Rationale: The Union makes a good case for staffing minimums to insure safety and operational efficiency. Although staffing levels often are considered a management right, in this case the Union negotiated staffing guarantees for its members in two past contracts, apparently at a time when the City was unable to offer competitive wage proposals. The Fact Finder is not inclined to take away such a negotiated benefit, absent a quid quo pro or a clear showing of operational necessity. (See SERB Rule 4117-09-05(1).

3. Section 13.01 – Substance Abuse Policy

Background, Positions of the Parties: Section 13.01 of the 2004-2007 Agreement states: “The Employer and the Union agree that a substance abuse policy shall be negotiated.” Pursuant to this provision, the parties agreed to the terms of a substance abuse policy and further agreed that the policy would be attached to the Agreement as an Exhibit. However, they disagree as to the language of 13.01. The City proposes the following language: “The Employer and the Union agree to the Substance Abuse Policy attached hereto as Exhibit A. Any and all components of this Substance Abuse Policy can be altered or modified at any time at the sole discretion of the Fire Chief.” The City justifies its proposed “sole discretion” language on grounds that promulgating policies is a management right. The Union approves of the first sentence, but vehemently disagrees with the second. Sole discretion language, in its view, is antithetical to the negotiations process.

RECOMMENDATION: Section 13.01 should state: “The Employer and the Union agree to the Substance Abuse Policy attached hereto as Exhibit A.” The

proposed “sole discretion” language should not be included. New language included in Appendix B to this Report.

Rationale: While policies often are promulgated by employers pursuant to a management rights clause reserving the right to promulgate rules and policy, here the City and the Union agreed in the prior contract that the Substance Abuse Policy would be negotiated by both parties. A negotiated policy is a bilateral agreement, and generally not subject to unilateral modification at the sole discretion of one party. Including the proposed “sole discretion” language, therefore, would not be appropriate.

4. Section 15.01 – Scheduling

Employer Position: The City proposes to consolidate Sections 15.01 and 15.02 of the current agreement into a single paragraph, which would state: “Effective January 1, 2005, the average workweek for employees working the three platoon system shall be forty-nine (49) hours. The work shift for said personnel shall not normally be more than twenty-four (24) consecutive hours in each seventy-two (72) hour period, except in cases of overtime. Starting time for all tours of duty shall be seven (7:00) o’clock a.m. The F.L.S.A. days off shall be selected in accordance with existing Departmental Policy that can be modified at the sole discretion of the Fire Chief.” The only substantive change in this proposal is the addition of the “sole discretion” clause. The City justifies this on grounds that scheduling is and should be a management right.

Union: The Union does not object to the proposed consolidation, but vehemently opposes the addition of the “sole discretion” clause.

RECOMMENDATION: Consolidate current sections 15.01 & 15.02 as proposed, but without addition of the “sole discretion” language. Language implementing this recommendation included in Appendix B to this Report.

Rationale: While scheduling begins as a management right, it can be limited by contract. In Maple Heights, the 2004-2007 Agreement did limit management’s right to schedule by including specific language in Sections 15.01 and 15.02. Adding the “sole discretion” language would diminish the security negotiated by the Union in the prior agreement. Absent a negotiated quid pro quo or a showing of some operational necessity, the Fact-Finder is not inclined to recommend substantive modification of the provision included in the 2004-2007 Agreement. See SERB Rule 4117-09-05(1).

5. Section 15.03 – Fire Prevention Shift Schedule

Employer Position: The City proposes to eliminate this provision which provides that Fire Inspectors will be scheduled for four 10-hour days. The City asserts that scheduling should be a management right and that the Fire Chief believes a 5-day, 8 hours/day schedule is a more efficient use of personnel.

Union Position: The Union opposes deletion of this provision. The Fire Inspectors prefer the four, 10 hour/day schedule, and believe that it is as efficient as the prior 5-day schedule. It was a negotiated benefit in the last Agreement, and the Union should not have to give it up without a quid pro quo in these negotiations.

RECOMMENDATION: No change in current language of Section 15.03.

Rationale: The City has not shown a sufficient operational need to change this recently negotiated benefit without a quid pro quo.

6. Sections 16.04 – Compensatory Time Cash Out (New Section)

Union Position: The Union proposes to add a new section to Article 16, Call-In, Overtime & Court Time Pay. The new section would permit the annual conversion of up to 200 hours of compensatory time to cash. Proposed language would state: “Employees shall have the option of an annual cash payout of up to two hundred (200) hours of compensatory time. Notification of intent shall be given no later than December 31st of each year and the payment will be made no later than April 1st of the calendar year.” In support of this proposal, the Union states: 1) Two other City bargaining units (IBT 507 and Foreman/Laborers 1099) have this cash-out benefit. 2) The Fire Chief cashed out a part of his compensatory time last Fall. 3) Permitting cash-out would reduce the City’s pension contributions and a current cash-out would be paid at a lower rate than a deferred cash-out. 4) Some other cities allow their firefighters to cash out compensatory time on a regular basis during their career.

Employer Position: The City opposes the proposed change. It state that Local 507 and Local 1099 represent very small bargaining units (approximately 12 or 13 employees total), and they have a lower cap on compensatory time accumulation than the firefighters. Cash-out is not permitted in the other large bargaining units (e.g., police). If the Union proposal became part of the Agreement and every firefighter exercised the right to cash out 200 hours, the substantial cost would impose a current financial hardship on the City. Most other neighboring cities do not permit annual cash out of compensatory time, and those that do are not as high as the 200 hours proposed by the Union here. Current practice, consistent with state law, permits the transfer of compensatory time during the three years preceding retirement. This is the right

exercised by the Chief last Fall, and thus his transfer of compensatory time is not inconsistent with the City's rejection of the Union's proposal to permit cash-out of 200 hours annually.

RECOMMENDATION: The proposed new language should not be added to the Agreement.

Rationale: The Union and the City did not submit hard data to support their representations regarding the cash-out practices of other area cities. Based on the oral testimony, it appears that practices vary from city to city, but that most cities in this area do not offer an annual cash-out opportunity of the magnitude proposed here. Given the state of the local economy in Maple Heights at this time, the Fact Finder understands the City's reluctance to expose itself to a substantial current expense even if it might avoid a somewhat greater expense years later at the time employees retire.

7. Sections 16.08 – Additional Hazards Pay (New Section)

Background: The Union proposes adding the following new language: "All employees shall receive an Additional Hazards Pay of two thousand dollars (\$2,000.00) annually, for providing service to municipal entities under service contracts with the Employer. Such payment shall be divided into the biweekly pay." Though not mentioned by name, this proposal is intended to secure additional compensation for work performed pursuant to an Emergency Fire and Rescue Service Agreement between the City and the Village of Walton Hills.

For approximately ten years, the City and the Oakwood Fire Department have provided fire and rescue services for Walton Hills, which has no Fire Department or emergency medical service. Walton Hills has compensated the City for its services, but

Maple Heights Firefighters have not received additional compensation for their Walton Hills work, the Union has not previously sought such extra compensation. Effective 2008, Walton Hills entered into a new Emergency Fire and Rescue Service Agreement with the City. Under the new contract, the price paid to the City has increased and the Bedford Fire Department has replaced Oakwood as the City's partner. The City's annual share of the new contract price is approximately \$298,000, including \$70,000 direct reimbursement for fire inspection and dispatch and \$228,000 general compensation. Oakwood filed a lawsuit challenging the new services agreement, but Maple Heights and Bedford continue to perform Walton Hills work while the court case is pending.

Union Position: The City receives substantial compensation for work performed by the firefighters in Walton Hills, and the firefighters should share in this benefit. The Walton Hills contract increases the firefighters' workload. In 2007, Walton Hills calls constituted four percent (4%) of the Maple Heights Department's total call volume. Moreover, covering Walton Hills entails additional hazards which require additional training, specifically water rescue and rope rescue.

Employer Position: The City opposes additional compensation for the Walton Hills work. Servicing Walton Hills has been part of the Fire Department's regular duties for ten years, and additional compensation has neither been sought nor paid. Substitution of Bedford for Oakwood as the City's partner will not increase the workload. To the contrary, Bedford is a more sophisticated department and should be a more effective partner. The firefighters do indirectly benefit from the money paid by Walton Hills, as it has helped the City maintain Department staffing levels while other City Departments have suffered layoffs.

RECOMMENDATION: The proposed new language should not be added to the Agreement.

Rationale: While the Walton Hills service contract does create additional work for Maple Heights firefighters, this has been true for a number of years. For the duration of the Walton Hills relationship, the parties seem to have accepted that their regular compensation covers all of their firefighting and emergency service work for both Maple Heights and Walton Hills. There is no anticipated change in the relationship which would justify a change in the compensation system during the term of the new Agreement.

8. Sections 19.11, 19.12 – Sick Leave Cash Conversion

Union Position: The current Agreement permits accumulation of sick time, but caps the payout of unused sick leave upon retirement at 33% (employees with 5 to 25 years service) or 40% (employees with 25 or more years service) of 2548 hours for 49 hour/week employees and 33% (40%) of 2160 for 40 hour/week employees. The Union proposes to eliminate this cap on the sick leave payout. In support, it states that the Maple Heights police have an uncapped sick leave payout in their agreements.

Employer Position: The City opposes elimination of the sick leave payout cap. While admitting that it agreed to continue the uncapped payout permitted in the police agreements, it notes that no other employee group in the City has this benefit or is being granted this benefit in recently negotiated bargaining agreements. Further, the City notes that the current benefit (33% or 40% or 2548 hours) is better than the sick leave payouts provided by most (though not all) of other area firefighter collective bargaining agreements.

RECOMMENDATION: No change in language in the current Agreement.

Rationale: Most public employers have some cap on sick leave payout and such caps are necessary and desirable to maintain some budgetary control over future expenditure commitments. The police parity issue is sufficiently addressed by other recommendations of this Report, see items 11 and 12 below.

9. Article 25 – Longevity

Union Position: Maple Heights currently has a 5-step longevity schedule, beginning with 2% of the base rate after 5 years, and increasing to 3% after 10 years, 3.5% after 15 years, 4% after 20 years, and 4.5% after 25 years. The Union proposes to increase the schedule by 1.5% at each step so that employees would get 3.5% after 5 years, 4.5% after 10 years, 5% after 15 years, 5.5% after 20 years, and 6% after 25 years. In support, the Union notes that the dollar rank of Maple Heights longevity pay is less at each step than the average longevity pay in neighboring cities of Bedford, Bedford Heights, Warrensville Heights and Garfield Heights. The Union acknowledges that the current percentages are the same for Maple Heights police, but states that application of them yields a lesser amount for firefighters because the firefighters' pension pick-up plan decreases the base wage to which the percentage is applied.

Employer Position: The City opposes any change in longevity. Longevity percentages are uniform throughout the City. While pension pick-up does have a slight effect on the dollar amount of longevity, the pick-up has other advantages and the firefighters voluntarily opted for that program. Bedford, Bedford Heights, and Warrensville Heights are more prosperous communities than Maple Heights, and thus are not proper comparisons for wages and longevity.

RECOMMENDATION: No change in the current longevity provision.

Rationale: Maple Heights' longevity program does not compare favorably to longevity plans in neighboring communities. However, this alone is not enough to justify departing from the uniform percentage longevity scale applicable to all other Maple Heights employees and locked into the City's other collective bargaining units for the next three years.

10. Article 27 – Health Insurance

Employer Position: The City proposes to increase the employee contribution to monthly health insurance premiums from \$20.00 single and \$40.00 family to \$50.00 single and \$70.00 family. In support, it asserts: 1) The City has experienced significant increases in health costs, which create a burden on its budget. In fact, in 2007, health care costs comprised 13% of the general/income tax budget. 2) The City currently maintains top-of-the-line health coverage which costs \$1,263.01 per month for a family policy. Only \$40 of this monthly cost is borne by the employee. 3) Employee contributions in other area cities and statewide are generally higher than the contributions paid by employees in Maple Heights. In fact, SERB reports that the average employee contribution for a family plan statewide was \$104/month in 2007, significantly more than the City's proposed increase to \$70/month. Thus, comparability data clearly supports the City's health care proposal.

Union Position: The City has agreed to retain the current health care benefit in collective bargaining agreements covering all other Maple Heights employee groups. The firefighters should receive the same generous health care benefit as other City employees.

RECOMMENDATION: No change in the current health care provision.

Rationale: Although the City proposal is supported by comparability data, this alone is not sufficient to justify providing a lesser health care benefit for firefighters than is provided for other City employees.

11. Article 28 – Salary (“Equity Adjustment,” Wage Increase)

Union Position: The Union proposes a 4% wage increases in each year of a 3-year contract, plus payment of \$1000 “equity adjustments” on December 30, 2007, December 28, 2008, and December 29, 2009. The Union acknowledges that other Maple Heights bargaining units have settled for annual increases of 3%, but justifies its demands by arguing: (1) Passage of the income tax increase and renewal of the Fire Levy in 2007 eliminates prior limitations on the City’s ability to pay. 2) The Union accepted below average compensation during the term of the last Agreement when the City was in financial difficulty with the belief and understanding that the City would make it up when financially able. (3) Maple Heights Firefighters have lost ground relative to firefighters in neighboring communities (Bedford, Bedford Heights, Warrensville Heights, Garfield Heights) in recent years. In 2001, Maple Heights was the 2d highest paid Fire Department in this group, and historically received at least average compensation. Since 2004, however, Maple Heights has ranked last in compensation. This is particularly unfair, as Maple Heights has a heavier call volume than neighboring departments. (4) Passage of the income tax increase has effectively reduced take-home compensation by one-half of one percent. (5) During the last Agreement, Firefighters have lost ground relative to inflation.

The Union further established that, during the term of the last Agreement, Firefighters salaries were lower than salaries paid to the Maple Heights Police. Specifically, Firefighters had a wage freeze from August 2004 – December 2004, and then received increases of 2.0%, 3.0% and 3.25% for 2005, 2006 and 2007. During the same period, the police, who delayed negotiations and utilized SERB fact-finding procedures, were awarded increases of 3.0%, 3.0% and 3.50% for 2005, 2006 and 2007. This result, the Firefighters say, was contrary to their legitimate expectations at the time they signed the last Agreement.

Employer Position: The City proposes 2.0% annual increases in each of three years, but acknowledges that it can pay 3.0% increases and has agreed to 3.0% increases in Agreements with other union-represented City employees. It opposes the Union’s 4% increase proposal, and opposes the Union’s demand for three \$1000 “equity adjustments.”

The City acknowledges that, with passage of an income tax increase and renewal of the Fire and Police Levies, it has sufficient funds to cover wage increases and restore some City services during the term of the new Agreement. However, it notes that Maple Heights is not out of the economic woods. As detailed in the Background Section of this Report, supra, Maple Heights still faces serious social and financial challenges due to general economic decline in the area, aggravated by the subprime foreclosure crisis.

Therefore, the City maintains, it should not be compared to more prosperous cities such as Warrensville Heights, Bedford or Bedford Heights. It states that Garfield Heights, another neighboring community, is a more appropriate comparison, and notes that Maple Heights Firefighter pay is not far behind Garfield Heights pay.

RECOMMENDATION: Increase base salary 3.0% each year. In addition, employees shall be paid a lump sum of \$625 per person at the beginning of the Agreement, and this amount shall be rolled in to the wage scale before the first 3% wage increase is computed. In addition, a \$275 lump-sum payment shall be made at the beginning of the second year (2009) but this payment shall not be rolled into the base. Language to implement this recommendation is attached in Appendix B to this Report.

Rationale: Maple Heights is blessed with multiple separate collective bargaining units, each of which has its own collective bargaining agreement. While there are some differences in the various agreements, including some of their economic provisions, the City naturally has attempted to provide comparable basic wage increases for each group over the years. This year, the employee groups with December 31, 2007 contract expirations have settled for 3-year agreements with 3% annual wage increases. This pattern is established and must be considered under the statutory guidelines for fact-finding. [See SERB Rule 4117-09-05 (1), (2) and (6)] The Firefighters must show some persuasive justification to deviate from it.

The Fact Finder recognizes that Maple Heights Firefighters have lost ground to their counterparts in neighboring cities during the past several years, as have other Maple Heights employees. This is unfortunate, as are the economic conditions which caused it to occur. However, the Firefighters do not appear to have suffered more than other City employees. And, as the City points out, some neighboring cities, such as Bedford, Bedford Heights and Warrensville Heights, have more financial resources than Maple

Heights. The Firefighters “equity” argument, therefore, does not justify an increase above the 3% annual increase granted to other Maple Heights employees.

However, the Firefighters raise a second argument which has more merit. During the term of the August 2004 – December 2007 Agreement, the Firefighters also fell behind Maple Heights police officers represented by the FOP. This was a departure from the historical pattern, and occurred not by design, but rather because the FOP was able to obtain a better wage settlement by delaying agreement and utilizing the fact-finding process.

Comparing wage scales in FOP and IAFF Agreements for the August 2004 – December 2007 period shows the following:

<u>Year</u>	<u>FOP Wage</u>	<u>IAFF Wage</u>	<u>IAFF with 5% *</u>	<u>Difference</u>
2005	\$53,126	\$50,135	\$52,641	-\$485
2006	\$54,721	\$51,639	\$54,220	-\$501
2007	\$56,636	\$53,317	\$55,983	-\$653

*NOTE: The City pays a part of the firefighters’ pension obligation equal to 5% of base salary. Police have a different pension pick-up arrangement, so firefighter salary with the 5% adjustment is the appropriate comparison to police salary.

The firefighters’ cumulative “loss” relative to police during the term of the past agreement was in excess of \$1600 in base wages. Moreover, if the 3% increase is applied to the \$53,317 base, then the \$653 annual gap will remain – in fact, it will expand by a small amount in each year of the new Agreement.

This analysis includes only base wage rates. In addition to base wages, Police also received physical and weapons proficiency pay totaling \$2100/year during the last contract, while Firefighters received \$750 physical proficiency pay and \$1500 paramedic

pay, a total of \$2250/year. This somewhat reduces the cumulative relative “loss” in comparative compensation by \$450 to a little under \$1200 during the three-year period. On the other hand, the police receive a materially larger allowance for uniforms and equipment than the firefighters. If considered, this would increase the annual disparity in total compensation from \$633 to \$1053.

The Fact-Finder is not inclined to give much weight to the uniform allowance disparity. The uniform allowance issue was not raised in negotiations. Moreover, uniform allowances theoretically are in the nature of reimbursement, and thus are not the same as wages. Neither party presented hard data to show whether firefighters and police had comparable reimbursable expenses, nor did either party submit comparability data on the uniform allowance question. However, the Fact-Finder does believe that physical proficiency pay (both police and fire), weapons proficiency pay (police only), and paramedic pay (fire only) should be considered in any comparison of police and firefighter compensation.

After considering all of these factors, and for the purpose of restoring approximate parity between Police and Firefighter compensation, the Fact-Finder recommends that a \$625 lump-sum payment be made to each firefighter at the beginning of the Agreement, rolled into the base before application of the 3% wage increase for 2008. This would result in a 2008 salary of \$55,560. When the 5% pension pick-up is added, the effective 2008 salary compensation would be \$58,338, substantially the same as the \$58,335 to be paid the police for 2008 under their new contract. Further, the two lump-sum payments of \$625 (2008) and \$275 (2009) would substantially compensate firefighters for the cumulative shortfall in their compensation relative to police

compensation during the term of the prior agreement. In conjunction with recommendation for Section 30.02, Physical Proficiency Pay (Section 12, below), this recommendation should result in substantial parity in total compensation by the end of the Agreement on December 31, 2010.

12. Section 30.2 – Physical Proficiency Pay

Union Position: The Union proposes increasing annual “physical proficiency pay” from \$750 to \$1,200 in 2008, \$1,300 in 2009, and \$1,400 in 2010. In support, it notes that the City’s new Agreement with the police provides \$1,200, \$1,300 and \$1,400 physical proficiency pay, respectively. It further states that, without increases in proficiency pay, the firefighters would have \$933 per man per year less than the police in 2008 when all specialty pay and allowance items are considered. (Specifically, for this comparison, the Union includes uniform allowance, vest allowance, firearms proficiency, education, and physical proficiency pay for police, and uniform allowance, paramedic compensation, education, and physical proficiency for firefighters. Police do not receive paramedic compensation, and firefighters do not receive firearms proficiency pay or a vest allowance.)

Employer Position: The City proposes no increase. Uniform and vest allowances should not be considered in this comparison, as these are specific to the uniform needs of the respective departments. Further, physical proficiency pay cannot be viewed in isolation. Firefighters receive \$1,500 in paramedic pay in addition to \$750 physical proficiency pay, a total of \$2,250 per year. In 2007 police received \$1,100 physical proficiency pay and \$1,000 firearms proficiency pay, for a total of \$2,100. Per the new police Agreement, physical proficiency pay will increase \$100 per year. Even without an

increase, the firefighters would be \$50 ahead of the police in 2008, as the sum of police physical and firearms proficiency pay would be only \$2,200.

RECOMMENDATION: Physical Proficiency Pay should be increased \$150 to \$900 in 2008, and this rate shall remain in effect for the duration of the Agreement. Language to implement this recommendation attached in Appendix B to this Report.

Rationale: The relevant comparison is between the sum of base wage, physical proficiency and firearms proficiency pay for the police and the sum of base wage (adjusted for 5% pension pick-up), physical proficiency pay and paramedic compensation for firefighters. In conjunction with the base wage recommendation (see Section 11 of this Report, above), the recommended adjustment in proficiency pay should provide approximate parity in police and fire compensation by the third year of the Agreement. Firefighters who qualify for paramedic pay (and some do not) will be \$200 ahead of police in 2008, and \$100 ahead of police in 2009. This is not unreasonable, as the \$1200 shortfall in firefighter compensation in 2005-2007 was not fully made up by the \$625 bonuses provided by the wage recommendation, item 6, above.

SUMMARY OF RECOMMENDATIONS

1. Section 6.06 – Bargaining Unit Work (New Section)

The proposed new language should not be added to the Agreement.

2. Section 10.04 – Minimum Staffing

No change in current minimum staffing language.

3. Section 13.01 – Substance Abuse

Section 13.01 should state: “The Employer and the Union agree to the Substance Abuse Policy attached hereto as Exhibit A.” The proposed “sole discretion” language should not be included. New language included in Appendix B to this Report.

4. Section 15.01 - Scheduling

Effective January 1, 2005, the average workweek for employees working the three platoon system shall be forty-nine (49) hours. The work shift for said personnel shall not normally be more than twenty-four (24) consecutive hours in each seventy-two (72) hour period, except in cases of overtime. Starting time for all tours of duty shall be seven (7:00) o’clock a.m. The F.L.S.A. days off shall be selected in accordance with existing Departmental Policy.

5. Section 15.03 – Fire Prevention Shift Schedule

No change in current language.

6. Section 16.04 – Compensatory Time Cash-Out (New Section)

The proposed new language should not be added to the Agreement.

7. Section 16.08 – Additional Hazards Pay (New Section)

The proposed new section should not be added to the Agreement.

8. Sections 19.11, 19.12 – Sick Leave Cash Conversion

No change in language of current Agreement.

9. Article 25 - Longevity

No change in current longevity provision.

10. Article 27 – Health Insurance

No change in current health care provision.

11. Article 28 – Salary (“Equity Adjustment”, Wage Increase)

Increase base salary 3.0% each year. In addition, employees shall be paid a lump sum of \$625 per person at the beginning of the Agreement, and this amount shall be rolled in to the wage scale before the first 3% wage increase is computed. In addition, a \$275 lump-sum payment shall be made at the beginning of the second year (2009) but

this payment shall not be rolled into the base. Language to implement this recommendation is attached in Appendix B to this Report.

12. Section 30.2 – Proficiency Pay

Physical Proficiency Pay should be increased \$150 to \$900 in 2008, and this rate shall remain in effect for the duration of the Agreement. Language to implement this recommendation attached in Appendix B to this Report.

SUBMISSION

This Fact-Finding Report is submitted by:



John T. Meredith, Fact-Finder

Shaker Heights, Ohio
June 12, 2008

CERTIFICATE OF SERVICE

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 12th day of June, 2008:

James Astorino, President
Northern Ohio Fire Fighters
3100 East 45th Street, Suite 214
Cleveland, OH 44127

Kenneth A. Schuman, Esq.
Reddy, Grau & Meek
5306 Transportation Blvd.
Garfield Heights, OH 44125

Representative of IAFF Local 1184

Attorney for the City



John T. Meredith, Fact-Finder

APPENDIX A
Agreements Reached by the Parties

11.05 - Records of disciplinary actions that are more than five (5) years old shall, upon request of the employee, be removed from his / her personnel file.

15.02 - The Chief shall issue a General Order designating a work cycle which will comply with F.L.S.A. requirements and which will be reflective of the forty-nine (49) hour average workweek.

15.04 - Employees hired before July 21, 1984, shall not be required to become certified as paramedics.

17.01 - Holidays. The Parties agree that the two floating holidays will be renamed Christmas Eve and New Year's Eve.

17.03 - The last sentence of 17.03 of the Collective Bargaining shall read as followed: Compensatory time shall be taken in minimum blocks of four hours..

17.06 - The Parties agree that this section shall read as follows to mirror the police contract:
When an employee is required to work (i.e. when shift commences on the holiday) on New Year's Eve, New Year's Day, July 4th, Thanksgiving Day, Christmas Eve, and Christmas Day, they shall be paid at the rate of 1 ½ times their regular rate of pay based on the forty-nine (49) hour rate in addition to any other holiday benefit.

27.10 - Waiver of Medical, Dental, and Vision Insurance

For the duration of the agreement, Employees may choose to "opt" out of the Employer provided medical, dental, and vision plans. Employees choosing to "opt out" of the medical, dental, and vision plans shall receive \$150.00 a month for each month said medical, dental, and vision plans are waived.

28.15 - Pension Pickup

By November 1st of each year, an employee may "opt out" or "opt in" to the pension contribution provided for in Section 28.01 herein. If Employee "opts out," the Employee's base salary shall increase by an amount equal to the fifty percent (50%) Pension Contribution in Section 28.01.

ARTICLE 30 – PHYSICAL PROFICIENCY

30.01 - All bargaining unit members shall be eligible for a physical proficiency allowance upon successful completion of an optional annual physical fitness program.

30.03 - The program shall be based upon standards developed by the Employer, ideally based upon the recommendation of a joint Employer/Union physical standards board. While it is understood that the Employer shall have the final decision on the test standards, it is also understood that the standards shall not be unreasonable in either scope or application and shall bear a direct relationship to the requirements of the position of Firefighter.

APPENDIX B
Recommended Language Changes

Section 13.01 – Substance Abuse

The Employer and the Union agree to the Substance Abuse Policy attached hereto as Exhibit A.

Section 15.01 – Scheduling

Effective January 1, 2005, the average workweek for employees working the three platoon system shall be forty-nine (49) hours. The work shift for said personnel shall not normally be more than twenty-four (24) consecutive hours in each seventy-two (72) hour period, except in cases of overtime. Starting time for all tours of duty shall be seven (7:00) o'clock a.m. The F.L.S.A. days off shall be selected in accordance with existing Departmental Policy.

Article 28 – Wages

Revise Sections 28.03 to 28.06 to state:

- 28.03 Each Firefighter shall be paid a \$625 lump-sum amount after ratification of this Agreement in 2008, and this \$625 shall be rolled in to the base before the 3% increase for 2008 provided in Section 28.04 is computed. Each firefighter shall be paid an additional \$275 lump-sum amount in the second year of this Agreement (2009), but this amount shall not be rolled into the base.
- 28.04 Effective for 2008, bargaining unit employees shall receive a three percent (3%) direct wage increase, to be computed after the \$625 lump-sum payment is added to the current base. (The resulting annual direct wage for the Fire Fighter classification will be \$55,560.)
- 28.05 Effective January 1, 2009, bargaining unit employees shall receive a three percent (3%) direct wage increase. (The resulting annual direct wage for the Fire Fighter classification will be \$57,227.)
- 28.06 Effective January 1, 2010, bargaining unit employees shall receive a three percent (3%) direct wage increase. (The resulting annual direct wage for the Fire Fighter classification will be \$58,944.)

Section 30.2 – Physical Proficiency Pay

Effective January 1, 2008, the Physical Proficiency Allowance shall be paid in December of each year in the amount of nine hundred dollars (\$900).

EXHIBIT – Agreed Substance Abuse Policy (Reference Section 13.01)

Section 1 – Policy Statement

Both the Union and the Employer recognize illegal drug usage and workplace alcohol abuse/misuse as a threat to the public safety and welfare and to the employees of the Fire Department. Thus, the department will take the necessary steps, including drug and alcohol testing, to maintain a drug/alcohol free workplace. The goal of this policy is education, prevention, and rehabilitation rather than termination.

Section 2 – Definitions.

- (a) The term “drug” includes cannabis as well as other controlled substances as defined in the Ohio Revised Code.
- (b) The term “illegal drug usage” includes the use of cannabis or any controlled substance, which has not been legally prescribed and / or dispensed, or the abusive use of a legally prescribed drug.
- (c) The term “drug test” means urinalysis testing consisting of an initial screening step and a confirmation step employing the gas chromatography/mass spectrometry (GC/MS) utilizing urine samples collected according to a chain of custody procedures consistent with the United States Department of Transportation (“D.O.T.”) regulations.
- (d) The term “Misuse of Alcohol” means the use or possession of alcohol in the workplace, or testing positive (as defined in paragraph (e) for the presence of alcohol in an employee’s system while at work).
- (e) The term “Alcohol Test” means a test selected and certified under Federal Standards. An initial positive level of .04 grams per 210 L of breath shall be considered positive for purposes of authorizing a confirming alcohol test. If initial screen results are negative, i.e., below the positive level, testing shall be discontinued; all samples destroyed and a record of the testing expunged from the member’s personnel file. Only members with screen test results that are positive on the initial screen shall be subject to confirmation testing for alcohol. With respect to confirmation testing, a positive alcohol level shall be .04 grams per 210 L of breath. If confirmatory breath testing results are negative, i.e., below the positive level, all records of the testing shall be expunged from the member’s personnel file
- (f) “Voluntary Participation in a Dependency Program” means in the absence of a positive test result or a request to take a drug/alcohol test, an employee seeks the professional assistance of a treatment program supervised by a medical review officer and members of the Employee Assistance Unit and / or covered by the employee’s insurance plan.

- (g) "Employee Assistance Programming" means the City of Maple Heights offers its employees a prepaid, confidential Employee Assistance Program (EAP). The goals of the program are (1) to retain valued employees, (2) to maintain productivity through the early identification of personal, family and life problems and (3) to motivate its employees to seek assistance with their life management problems, issues or concerns.

The City of Maple Heights has retained an external counseling group, to work with its employees. The professionally trained personnel are qualified to assess the employee's status, provide short-term counseling, referral and / or follow up services until the employee's problems, issues or concerns are resolved. Assistance with the management and control of drugs and / or alcohol abuse is included in the scope of services offered by EAP services are available twenty-four hours, seven days per week. The employee can either be referred by the City or self-refer to the EAP Program. More information can be obtained from the employee's Supervisor or the Human Resources Department at the City.

Section 3 – Notice and Education of Employees Regarding Drug / Alcohol Testing.

There will be a ninety (90) day education and information period prior to the testing under this policy for employees, except that prior policies governing the testing of cadets and testing under consent forms shall remain in effect during this period.

All employees will be informed of the department's drug / alcohol testing policy. Employees will be provided with information concerning the impact of the use of drugs on job performance.

In addition, the employer will inform the employees of the manner in which these tests are conducted, the reliability of the tests performed, under what circumstances employees will be subject to testing, what the tests can determine and the consequences of testing positive for illegal drug use and alcohol abuse / misuse. All new employees will be provided with this information when initially hired. No employee shall be tested until this information has been provided.

Section 4 - Basis for Ordering an Employee to be Tested for Drug / Alcohol Abuse.

Employees may be tested for drug / alcohol abuse misuse during working hours under any of the following conditions:

- (a) Where there is a reasonable suspicion that the employee to be tested is using or abusing illegal drugs or alcohol while on duty. Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist which present a reasonable basis to believe that an employee is using alcohol or illegal drugs in violation of this policy. Two examples of where reasonable suspicion shall be deemed to exist are where there has been a serious on-duty injury to an employee, or another person, the cause of which is otherwise unexplained, and where an employee, while driving a city vehicle becomes involved in a traffic accident which results in physical harm to persons or property where the circumstances raise a question as to the existence of substance abuse by the employee

involved. The listing of these examples is not intended to exclude other situations, which may give rise to reasonable suspicion of abuse. A supervisor ordering an employee to take a drug / alcohol test shall give the Fire Chief, in writing, his / her "reasonable suspicion" reasons for ordering the test. A copy of the "Reasonable Suspicion" reasons shall be provided to the Union and the Employee upon request.

- (b) Upon return to duty after an absence for an unexplained illness or from a thirty (30) day or more disciplinary suspension, or upon reappointment to the department.
- (c) Prior to a return to duty after participation in a substance abuse rehabilitation program, regardless of the duration of the program, and following an employee's return under these circumstances wherein the employee shall be required to undergo three (3) urine tests within the one-year period starting with the date of return to duty. Prior to obtaining a drug alcohol test from an employee as set forth in sections (a) through (c) above, the City shall instruct the employee that the results of the drug / alcohol test can result in termination from employment.

Section 5 – Urine Samples.

Specimen collection will occur in a medical setting and conform to the United States Department of Transportation regulations. The procedures should not demean, embarrass, or cause physical discomfort to the employee. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of evidence. The employee will complete a form indicating the use of all drugs currently being taken and identify the prescribing physician. The employee designated to give a sample must be positively identified prior to any sample being taken. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure that the results match the employees tested. Samples shall be stored in a secure and refrigerated atmosphere until tested or delivered to the testing lab.

Upon request, an employee shall be entitled to the presence of the IAFF representative before testing is administered.

Section 6 – Testing Procedure.

The City's testing facility is Company Health Care at (Marymount Hospital). Their office is located at 5555 Transportation Boulevard, Garfield Heights, Ohio 44125. Their telephone number is 216.518.3655 and facsimile number is 216.518.3675. Please be informed that as part of the testing process, each employee will be asked to present photo identification and to sign a waiver that must be witnessed by another individual. Prior to such test, the employee will complete a form indicating the use of all drugs currently being taken and identify the prescribing physician. If initial screen results are negative, i.e. below the positive level, testing shall be discontinued and samples properly disposed of. The testing facility selected by the City to conduct the analysis

shall be experienced and capable of quality control, documentation, chain of custody, technical expertise, and demonstrated proficiency in urinalysis testing. The testing or processing phase shall consist of a two-step procedure.

- (i) Initial Screening step, and
- (ii) Confirmation step.

The urine sample is first tested using a screening procedure. (EMIT or an equivalent test). For a specimen testing positive, a confirmatory test employing the gas chromatography / mass spectrometry (GC / MS) test (or an equivalent test) will be used. An initial positive report will not be considered positive, rather it will be classified as a confirmation pending. Where a positive report is received, urine specimens shall be maintained under secured storage for a period of not less than one (1) year. Any sample, which has been adulterated or is shown to be a substance other than urine, shall be reported as such. All test results shall be evaluated by suitable trained medical or scientific personnel prior to being reported. All unconfirmed positive test records shall be destroyed by the laboratory. Test results shall be treated with the same confidentiality as other employee medical records. Test results used as evidence for disciplinary action shall also be entitled to the same confidentiality. An employee who tests positive for drugs and or alcohol will be given the opportunity to review the tests and, if desired, a reasonable opportunity to rebut the results.

Section 7 – Disciplinary Action.

- (a) **Drugs.** Employees who as a result of being drug tested are found to be using illegal drugs shall be subject to dismissal. Employees who are found to be abusing drugs which have been legally prescribed shall be subject to dismissal.
 - (b) **Alcohol.** An employee who tests positive for alcohol shall be subject to discipline. Any employee testing positive for alcohol for a second time shall be subject to further departmental charges.
- © Refusal to submit to a drug / alcohol test, or adulteration of, or switching a sample shall also be grounds for dismissal.

Section 8 – Right to Appeal:

An employee disciplined as a result of a drug test has the right to challenge such discipline using the grievance procedure.

Section 9 – Voluntary Participation in a Dependency Program.

Employees who may be drug / alcohol dependent are encouraged to voluntarily seek professional assistance through a treatment program supervised by a medical review officer and members of an Employee Assistance Unit and / or a program covered by the employee's health insurance plan.

Voluntary assistance should be sought BEFORE the drug abuse affects job performance or endangers fellow employees or members of the public. Participation in a dependency program is voluntary and strictly confidential. Under provisions of departmental rules, neither the City administration, the Division of Fire nor any unit or entity within the City shall have access to the program's files and records. However, the Fire Chief or his designee of a medical liaison shall be advised when an employee is hospitalized or is an outpatient as part of drug dependency rehabilitation. Also, upon written request of the participating employee, efforts at rehabilitation will be divulged on his/her behalf in cases of disciplinary action.

Section 10 – Effect on Discipline

Illegal drug use of alcohol misuse or participation in any substance abuse dependency or rehabilitation program will not preclude disciplinary action against employees for any law or rule violation even though such law or rule violation may have been connected in part with drug/alcohol abuse, and/or even if the rehabilitation program is voluntarily undertaken.