

NORMAN R. HARLAN, FACT FINDER: REPORT ISSUED OCTOBER 16, 2008

IN THE MATTER OF FACT FINDING

STATE OF OHIO - STATE EMPLOYMENT RELATIONS BOARD (S.E.R.B.)

CASE NO. 08-MED-04-0488:

SALEM FIRE FIGHTERS, IAAF LOCAL #283 AND CITY OF SALEM

BACKGROUND

Salem is located in northeastern Ohio. It is situated about twenty five (25) miles north-northwest of East Liverpool and some fifteen (15) miles south-southwest of Youngstown. Its population is about twelve thousand (12,000). The City government is comprised of an elected Mayor and seven (7) elected members of the City Council.

The City has had a COLLECTIVE BARGAINING AGREEMENT (CBA) with the Fire Fighters, IAAF Local #283 for an unspecified number of years. There are fifteen (15) Fire Fighters in the bargaining unit. The Parties signed a CBA effective July 1, 2005, terminating June 30, 2008. The Parties began bargaining prior to the expiration of the 2008 CONTRACT but were unable to reach agreement.

By letter of July 11, 2008 the Undersigned was appointed by the Board (S.E.R.B.) as the Fact Finder under the Ohio Revised Code(O.R.C.), Section 4117.14(C)(3) The Parties agreed to extend the Hearing date under Ohio Administrative Code 4117-9-05(G).

By mutual agreement with the concurrence of the Fact Finder

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STATE EMPLOYMENT
RELATIONS BOARD

the Hearing was set for Thursday, September 11, 2008 in Salem at the Council Chambers of City Hall. The Parties provided their Position Papers consistent with O.R.C. 4117-9-05(f). The Parties jointly requested mediation in view of the significant number of outstanding issues. The Fact Finder agreed to attempting to mediate the issues.

The Hearing lasted some nine hours and several issues were resolved. The Parties advised the Fact Finder they would continue bargaining but requested another date for Fact Finding in the event they were unsuccessful. Wednesday, September 17, 2008 was set as the next Hearing date in the event agreement on the open issues could not be reached. The afternoon of Friday, September 12, 2008 the Fact Finder was advised there were still unresolved issues. It was agreed to continue September 17, 2008, 3:00 p.m. at City Hall in Salem.

The Fact Finder advised the Parties under THE OHIO PUBLIC EMPLOYEE BARGAINING ACT and ADMINISTRATIVE RULES of the STATE EMPLOYMENT RELATIONS BOARD in conjunction with the Ohio Revised Code Chapter 4117 and Ohio Administrative Code Chapter 4117 he is required to address the following:

Factors to Be Considered by Fact-Finding Panel

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| 4117-9-05(J) | The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel. |
| 4117-9-05(K) | The fact-finding panel, in making recommendations, shall take into consideration |

the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- 4117-9-05(K)(1) Past collectively bargaining agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3) The interests 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;
- 4117-9-05(k)(4) The lawful authority of the public employer;
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05-(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment."

The same individuals represented the Parties September 11 and 17. Representing the City were Howard Heffelfinger, Clemans Nelson & Associates, Matthew Baker, Esq., Clemans-Nelson and Jim Armeni, City Auditor. Dennis Haines, Esq., represented the Fire Fighters along with Michael Taylor, 3rd District Vice President, Ohio Association of Professional Fire Fighters, and Local Union #283 Officers Rodney Hughes, Scott Mason, Jeff Olinger and Aaron Loper. Derek Day attended September 17 but did not attend September 11.

During preliminary discussions with the Parties while attempting to schedule the Hearing the Fact Finder mentioned he would appreciate being provided the Position Statements a week prior to the Hearing. He is aware under 4117-9-05(F) the Parties need only to submit the Statements "prior to the Hearing."

Mr. Heffelfinger submitted the Statement in behalf of the City September 2, 2008. Mr. Haines, Esq., submitted the Statement for the Fire Fighters September 4, 2008. Primarily due to the drastic differences between the Statements related to "unresolved issues" both Statements are quoted in relevant part.

CITY OF SALEM

4. "Following is the Employer's position on the unresolved issues:

Article II, Recognition

The Employers's proposal in Section B is to clarify that the names of Union representatives are to be provided in writing to the Mayor's Office, not the City administration. In this section the Employer has also proposed language to clarify who is to be considered the "designee" of the Fire Chief.

The Employer's proposal in Section 3 is to clarify that the Union will be permitted to hold meetings and conduct elections on City property during work hours only with the approval of the Chief and providing such does not interfere with the operations of the department.

The Employer rejects the Union's proposal for new sections D, E., F, and G. The Union's proposal addresses succession and sub-contracting. The Employer believes, at best, the Union's proposal is a permissive topic of bargaining because it appears to conflict with R.C. 4113.03.

Article V, Wages

In Section A it is the Employer's proposal that the bi-weekly schedule be increased by the amounts of the proposed increases, which are 1.5% retroactive to July 1, 2008, 1.5% on July 1, 2009, and 1.5% on July 1, 2010.

In Section B it is the Employer's proposal that the hourly rate be calculated using 106 hours instead of 80 hours. That is because these employees work, on average, 106 hours each bi-weekly pay period, not 80 hours.

The Employer's proposal is to delete Section C, which provides a formula for paying employees at a daily rate.

The Employer's proposal is to change current Section D to Section C and to modify the language on the calculation of retroactive pay.

The Employer's proposal is to change current Section E to Section D and to delete the references to "her."

The Employer's proposal is to change current Section F to Section E.

The Employer's proposal is to change current Section G to Section F.

In new Section G it is the Employer's proposal that an employee receive a contract incentive of 1.5% of his base earnings by the end of July 2009. Such incentive will be paid, minus all appropriate deductions, as a lump sum.

In new Section H it is the Employer's proposal that an employee receive a contract incentive of 1.5% of his base earnings by the end of July 2010. Such incentive will be paid, minus all appropriate deductions, as a lump sum.

In new Section I it is the Employer's proposal that an employee receive a contract incentive of 1.5% of his base earnings by the end of July 2011. Such incentive will be paid, minus all appropriate deductions, as a lump sum.

Article VII, Longevity

The Employer's position on this issue is to maintain current contract language in Sections A, B, and C. This is the same longevity schedule that is found in the labor agreement with the FOP/OLC.

Article VIII, Uniform and Uniform Allowance

In Section A it is the Employer's proposal that the allowance be increased to \$700.00 in calendar years 2009, 2010, and 2011. However, it is also the Employer's position that the allowance be provided on a purchase requisition system, not on the basis of cash to the employee.

In Sections B and C the proposed changes are to correspond with the proposal that the allowance be provided on a purchase requisition system.

In Section D it is the Employer's proposal that the and the manner in which it is purchased be in accordance with procedures established by the City of Salem, not the City of Salem Fire Department. In this section the Employer is also proposing that items not approved, or purchases in excess of the annual allowance, will be the responsibility of the employee.

In Section F the proposed changes are to correspond with the proposal that the allowance be provided on a purchase recognition system.

It is the Employer's understanding that the Union has agreed to the changes proposed by the Employer in Section G.

Article IX, Educational Certificate Bonus

In Section A it is the Employer's proposal to delete the State Certified T&I Instructor certification, to correct EMT Titles, and to maintain the current bi-weekly certification amounts. The Employer has also agreed with the Union's proposal to delete the certification for the Scott Trained Repair Technician. Finally, in this section the Employer rejects the Union's proposal that employees also receive a supplement based upon college degrees.

In Section B it is the Employer's proposal to maintain current contract language and to reject the Union's proposal to allow a bargaining unit employee to receive multiple pay supplements based on certifications and education.

Article X, Overtime

In Section A it is the Employer's proposal that overtime be

paid on the basis of a 28 day, 212 hour cycle pursuant to the Fair Labor Standards Act. It is also the Employer's proposal that overtime is to be paid only on hours actually worked.

In Section B the Employer has proposed a modification to correspond with the Employer's proposed change to Section A. In Section B the Employer has also proposed that the use of compensatory time must be requested at least two (2) weeks in advance.

In Section B(1) the Employer has proposed the deletion of "her." The Employer has added language that guarantees the employee at least three (3) hours of work and pay when he is called in (currently it is a guarantee of three (3) hours of pay.) The Employer has also proposed the deletion of additional language that requires the Employer to round the time worked up to the nearest half hour increment. Finally, the Employer has proposed the deletion of language that allows the employee to leave after he has completed the call-in assignment.

In Section B(3) the Employer has proposed the deletion of "her," the deletion of a three (3) hour minimum for "witness time," and the deletion of additional language that requires the Employer to round time worked up to the nearest half hour.

In Section B(4) the Employer has proposed the deletion of "her" and the deletion of additional language that requires the Employer to round time worked up to the nearest half hour.

In Section B(5) the Employer has proposed the deletion of "her," the deletion of the phrase "so that shift strength can be maintained by Management," the deletion of additional language that requires the Employer to round time worked up to the nearest half hour, and the deletion of language that gives the Employer discretion when it comes to scheduling employees and acknowledges that the Employer is only obligated to pay overtime in accordance with Section A of the article.

It is the Employer's proposal to delete Section B(6), "walk-in pay," from the agreement.

Article XI, Pension Pickup

In Section A the Employer has proposed a date change.

In Section B the Employer has proposed modifying the lang-

uage to clarify that the only plan the Employer is required to negotiate over is the plan referred to in Section A. The Employer has also proposed correcting some typographical errors in this section.

In Section C it is the Employer's proposal that effective July 1, 2009, the Employer will pay \$1,276.08 per month for the family plan and \$365.21 for the single plan. These represent the premium amounts the Employer was paying on June 30, 2008, when the contract expired. The employee will be required to pay any additional premium cost through payroll deduction.

The Employer has proposed a new Section D that requires spouses of City employees to obtain single coverage through their own employers.

The Employer has proposed a new Section E that allows the Employer to offer alternative plans to employees. The terms and conditions of these alternative plans will be controlled by the Employer. In the event of changes to an alternative plan, any affected employee would be permitted to withdraw and return to the negotiated plan.

The Employer's proposal is to change current Section D to Section F, current Section E to Section G, and current Section F to Section H. In new Section H it is also the Employer's proposal to clarify that the role of the Health Care Cost Containment Committee is to discuss and attempt to agree upon cost containment measures.

Finally, the Employer is proposing the deletion of current Section G, which is obsolete.

Article XIV, Vacation

In Section A the Employer has proposed revising the vacation schedule to make it consistent with the Employer's proposal to go to twelve (12) hour shifts (see Article XVI.) The Employer's proposal would also establish vacation parity with the police bargaining units.

In Section B it is the Employer's proposal to insert the word "normally," to change two (2) days to mean twenty-four (24) hours of vacation instead of forty-eight (48) hours of vacation, and to clarify that vacation carry over is to be limited to twenty-four (24) hours.

In Section D(6) and Section D(7) it is the Employer's proposal to clarify that the language applies only to bargaining unit members. The Employer has also proposed deleting

references to "her."

Article XV, Holidays

In Section A the Employer has proposed that employees receive ten (10), twelve (12) hour days off per year instead of the current five (5), twenty-four (24) hour days (this is in lieu of City holidays). The Employer has also proposed deleting the seven (7) Kelly days that employees currently receive in order to comply with the Fair Labor Standards Act. by going to twelve (12) hour shifts the Kelly Days would no longer be necessary.

In Section B the Employer has proposed deleting reference to "she" and "her." In this section the Employer has also proposed revising the formula for determining prorated holidays for new employees.

In Section C it is the Employer's proposal to revise the language to state that holidays are taken off with the approval of the Chief or his designee. The current language only permits the Chief to grant time off to two (2) bargaining unit members on the same shift at the same time.

In Section F the Employer has proposed adding language to clarify that the hours of premium pay bargaining unit members receive for working Thanksgiving and Christmas will not be considered in the calculation of overtime. In other words, the pyramiding of overtime will not be permitted. Finally, in Section F the Employer rejects the Union's proposal to add Memorial Day and Independence Day to the list of premium pay holidays.

Article XVI, Hours of Work

It is the proposal of the Employer to delete current Sections A and B, which address a work schedule of twenty-four (24) hours on and forty-eight (48) hours off, and replace it with a schedule of 212 hours over the course of a twenty-eight (28) day work cycle. Under the Employer's proposal, shifts will be scheduled in twelve (12) hour increments.

The Employer's proposal is to change current Section C to Section B.

Article XVII, Sick Leave

It is the Employer's understanding that the parties have agreed to changes in Sections B and C.

In Section D it is the Employer's proposal to maintain current contract language and to reject the Union's proposal to delete this section and replace it with a new article titled Personal Leave and Union Business.

In Section E the Employer has submitted a counterproposal to the Union's proposal to tighten up on a bargaining unit member's ability to use sick leave. The Union has informed the Employer that it can agree to the Employer's counterproposal, but only in conjunction with the current work schedule.

In Section F the Employer has proposed deleting references to "her."

In Section G it is the Employer's proposal to delete language that ceased to be in effect on June 30, 1999. The Employer rejects the Union's proposal to go back to this old language.

It is the Employer's proposal to change Section H to Section G and to delete an obsolete reference to June 30, 1999. It is also the Employer's proposal to not permit an employee who was removed for just cause to receive severance pay. In this section the Employer has proposed clarifying that employees receive retirement benefits from the Ohio Police and Fire Pension Fund, not from the City of Salem. Finally, the Employer rejects the Union's proposal to delete this section and to go back to old contract language.

It is the Employer's proposal to change Section I to Section H and to delete references to obsolete language. Also, the Employer again rejects the Union's proposal to go back to this old language.

Finally, the Employer rejects the Union's proposal to add new Sections M and N.

Article XXI, Safety Equipment

The Employer's proposal in Section E is

to delete the minimum manning provision. The Employer's position is that this is a permissive topic of bargaining, and the Employer is not interested in including minimum manning in the successor agreement.

Article XXIV, Duty Injury

The Employer believes the parties may have a tentative agreement on this article. In Section B the Employer's proposal is to add language that requires employees to file an accident report "prior to the end of their shift."

In Sections D and E the Employer is proposing the deletion of "she" and "her."

Article XXV, Job Descriptions

It is the Employer's proposal in Section A to acknowledge that the parties agreed to changes to the job descriptions and that the revised job descriptions are found in Appendix B.

It is the Employer's proposal in Section B to include a process for the parties to follow whenever it becomes necessary for the Employer to revise job descriptions.

Article XXIX, Promotional Examinations

It is the Employer's proposal to delete this article from the agreement. Part of the reason is because the Employer believes Section 2 is unlawful. It is also the position of the Employer that promotional examinations for firefighters are best handled by following Ohio law and the Civil Service rules and regulations of the City of Salem.

Article XXXV, Term of Agreement

It is the Employer's proposal in Section A that the date of the new agreement be inserted into the contract once the new date is established. It is also the Employer's proposal that the agreement expire June 30, 2011.

It is the Employer's proposal in new Section B to include a zipper clause.

Finally, it is the Employer's proposal to change Section B to Section C and to revise the signature date.

Appendix A, Overtime Policy

It is the Employer's proposal that the parties meet to discuss the overtime policy after Article X, Overtime, is resolved.

Appendix B, Job Descriptions

The Employer has proposed modifying the job descriptions to be consistent with the the Employer's proposal to establish twelve (12) hour shifts. The Employer has also proposed revising the job description for firefighters to reflect that they are expected to respond to emergencies as directed, such as hazmat situations and confined space rescues.

Appendix D, Hospitalization Benefit Highlights

It is the Employer's proposal that a current copy of the highlights be appended in the agreement after the parties resolve Article XII, Hospitalization, Dental and Optical Insurance.

Appendix G, Authorization for Union Dues Deduction

It is the Employer's proposal to delete the maintenance of membership provision that the Employer believes is unlawful.

New Article, Layoff and Recall

The Employer has proposed an entirely separate article to address layoff and recall. The current agreement has one paragraph that addresses layoff in Article IV, Employees' Rights/Employer's Rights. This paragraph also contains an inaccurate reference to a section of the Ohio Revised Code.

New Article, Non-Member Service Fee

The Employer has decided to withdraw its proposal on this issue.

New Article, Part-Time Personnel

The Employer has proposed a new article that would permit

paid personal leave and Union leave. Current Article XVII allows bargaining unit member to use one (1) day of sick leave as a personal leave day. It also allows the unit to use up to three (3) days of sick leave or other accrued leave time to conduct Union business.

Enclosed please find a copy of the employer's proposals on the above-referenced issues. I look forward to seeing you on September 11, 2008."

/s/ Howard D. Heffelfinger

SALEM FIREFIGHTERS, IAFF LOCAL283

4. "The following are the Union's unresolved issues:
- A. The Union wants a three (3) year contract beginning July 1, 2008 and ending June 30, 2011. All of the terms and conditions in the current Collective Bargaining Agreement shall be the terms and conditions in the new Collective Bargaining Agreement with the dates changed to reflect the new date of the Agreement and changes in the rates of pay for each year of the contractd as requested in 'B' below.
 - B. The bargaining unit members rates of pay should be adjusted upward to reflect yearly increases as follows:

First contract year	3.5%
Second contract year	3.5%
Third contract year	3.5%

/s/ Dennis Haines

CERTIFICATE OF SERVICE

Certificate of Service for the Employer was provided by the office of Marsha I. Hershey, Regional Secretary, who signed for the Service.

Certificate of Service was provided for the Union by Dennis Haines (#0014406) who signed for the Service.

FOREWARD

On September 11 the Parties agreed to mediation. They were promptly advised it was not the Fact Finder's job to negotiate the CONTRACT. This remark was not made to be rude or unkind to the Parties. Rather, it was made since the POSITION PAPERS were miles apart. The Employer showed some twenty two (22) unresolved Issues. The Union showed two (2) unresolved Issues. Obviously mediation would not be successful if the Parties were unwilling to be more flexible. They showed some flexibility.

The issuance of the REPORT was originally scheduled for October 1, 2008. Over the years it has become common for the Parties to request a DRAFT at least a few days in advance of the issuance of the REPORT. This is done because the CODE only grants seven (7) days for the Parties to either ratify or reject the REPORT. The unresolved Issues shown as unresolved in the Fact Finder's notes were addressed. The DRAFT was sent September 30, 2008, followed by the REPORT October 1, 2008. Upon receipt of the DRAFT Sept. 30 the Employer called the Fact Finder, contending there were unresolved Issues not addressed in the REPORT. The Union was contacted. A conference call was arranged. During the Conference Call the City contended at the close of the Hearing of September 17, 2008 the following ARTICLES were unresolved:

ARTICLE V - WAGES

ARTICLE X - OVERTIME

ARTICLE XI - PENSION PICKUP

ARTICLE XIV - VACATION

ARTICLE XV - HOLIDAYS

ARTICLE XVI - HOURS OF WORK

ARTICLE XXI - SAFETY EQUIPMENT

APPENDIX A - "The Parties will address once Article IX is decided."

PART-TIME PERSONNEL (NEW ARTICLE PROPOSED BY THE CITY)

The errors concerning the omitted Articles occurred when the Fact Finder erroneously coded the provisions as having been settled. He regrets the error and apologizes to the Parties and the Board.

The Parties were responsive to the urging of the Fact Finder and resolved some ten (10) issues during the first Hearing September 11. It became apparent the three most important issues related to ARTICLE V, WAGES, ARTICLE X, OVERTIME and ARTICLE XXI, SAFETY EQUIPMENT (Section E). These were discussed at length during the September 17 Hearing as well. The Employer stressed the costs as well as being able to direct the workforce.

Considerable effort was spent discussing ARTICLE XII, HOSPITALIZATION, DENTAL, AND OPTICAL INSURANCE. The cost of these benefits prior to July 1, 2008 exceeded \$1,200 (one thousand two hundred dollars) per month per employee. The City was advised this PLAN would cost in excess of \$1,500 (one thousand five hundred dollars) per month after July 1, 2008. The Parties reached a Tentative Agreement on this provision September 17 and signed-off September 20, 2008, with Michael Taylor representing the Fire Fighters and Howard Heffelfinger representing the City. It is estimated during the life of the CONTRACT the City will save in excess of \$100,000 (one

hundred thousand dollars). In reality, this provision should have been shown on the preceding page among the most important issues, if not the most important.

UNRESOLVED ISSUES

ARTICLE V - WAGES

Section A. "The base salary for the employees of the Salem Fire Department covered by this Agreement shall be paid as set forth below:

Note: The Bi-Weekly Schedule for the following RANK is shown on the schedules: 3rd Class FF, 2nd Class FF, 1st Class FF, Lt./Inspector and Captain appear."

Early-on the Union proposed 3.5 per cent for each year of the CONTRACT; i.e., for 2008-09, 2009-10 and 2010-11, effective July 1, 2008. The Employer proposed 1.5 per cent for each of the same years. The Union's final proposal was 3.0 per cent for each year. Management countered with a 2.5 per cent raise for the first year and 3.0 per cent for each succeeding year, contingent upon the Union's accepting the City's proposal to replace the current language of Article XII, HOSPITALIZATION, DENTAL AND OPTICAL to language drafted by the City. The Fire Fighters agreed to the new proposal but did not agree to accept the 2.5 per cent the first year, 2008-09.

RECOMMENDATIONS

The Fact Finder recommends the following:

2008-09	3.0 per cent
2009-10	3.0 per cent
2010-2011	3.0 per cent

This recommendation is made primarily in consideration of the Union's acceptance of the Employer's proposed language for Article XII, HOSPITALIZATION, DENTAL AND OPTICAL which will result in substantial savings to the City. Also relevant is the fact the Fire Fighters had no wage increase during the term of the 2005-08 LABOR AGREEMENT.

Section B. "Wherever in this contract it is stated that wages are to be paid at an hourly rate, the following formula shall apply:

(Biweekly Base Salary + Biweekly Longevity pay + Biweekly Educational Certificate Pay)
80

The Employer notes the workweek for a Fire Fighter is fifty three (53) hours which amounts to one hundred and six (106) hours bi-weekly. As shown in the formula above the current language uses eighty (80) hours to determine the hourly rate. Management proposes inserting 106 hours in the formula, replacing 80 hours to determine the hourly rate. The Union opposes any change, noting the drastic decrease in pay. The Union reiterates during the term of the current LABOR AGREEMENT it had agreed to no increase during the three-year term of the 2005-2008 COLLECTIVE BARGAINING AGREEMENT. Management adds using the 106 hours is a more practical approach since this is the amount of hours worked bi-weekly by the Fire Fighters.

RECOMMENDATION

The Fact Finder recommends no change. Obviously such a change in the formula would serve to reduce the Employer's costs substantially. However, the City did not argue inability to pay under 4117-9-05(K)(3). Further, what the Employer seeks would amount to about a twenty five (25) per cent reduction in the hourly rate. Such a drastic reduction should be a subject of negotiations between the Parties rather than coming from the stroke of a pen by the Fact Finder.

ARTICLE X - OVERTIME

The Fact Finder has reviewed more than once the lengthy proposals and counter proposals. He has already recommended no change in the formula appearing in ARTICLE V, Section B. This means Section A of ARTICLE X remains the same since the formula is the same as the formula in Section B of ARTICLE V.

Section B of ARTICLE X reads:

"Employees may designate that overtime resulting from the following may be paid either monetarily, using the above rates, or in compensatory time at the 1 1/2 rate."

The Employer proposes adding: **"The use of compensatory time must be requested at least two (2) weeks in advance."**

The Fact Finder recommends the language proposed by the Employer be added to the current language of Section B, ARTICLE X as it appears above, except in case of an emergency.

RECOMMENDATION: Section B, ARTICLE X:

Employees may designate that overtime resulting from the following may be paid either monetarily, using the above rates, or in compensatory time at the 1 1/2 rate. **The use of compensatory time must be requested at least two (2) weeks in advance, except in case of an emergency. (Bold type is newly recommended language)**

REASON:

The addition of the recommended language affords the Employer a reasonable amount of time to schedule the workforce and harms no one.

Probably ninety five (95) per cent of the discussion of ARTICLE X related to the formula. The Employer proposed changes related to Sub-sections of Section B contingent upon changing the formula. Since no change is recommended in the formula, no change is recommended in the Sub-sections; i.e., current language is recommended.

ARTICLE X - PENSION PICKUP

Currently the City pays 100% (one hundred per cent) of the contribution to the Pension Fund, which amounts to ten (10) per cent of the Employees' wages. The City proposes capping its contribution at 8.5 per cent with the Unit Members contributing 1.5 per cent. The Fire Fighters propose leaving the Employer contribution at ten per cent with the Unit Members picking up any contribution above ten per cent.

RECOMMENDATION

Add the Union's proposal to the current language of ARTICLE XI. The current language appears below, along with the Union's proposed language, which appears in bold type.

- A. The City will pay one hundred percent (100%) of the employee's contribution to his/her pension fund. Said funds are to be credited to the individual member's account in the same manner as if the funds had been withheld from the member directly. **Any pension contribution in excess of ten per cent (10%) will be the employees' responsibility.**

REASON:

The Fact Finder is aware the Employer contribution is significant and it is unusual for employees not to share in the pension contribution. However, the 1.5 per cent requested by the City would cut in half the modest wage increase. Further, such a major change should be a product of collective bargaining between the Parties.

ARTICLE XIV - VACATION

ARTICLE XV - HOLIDAYS

ARTICLE XVI - HOURS OF WORK

The Employer proposed numerous changes to ARTICLES XIV, XV and XVI; "all tied to elimination of the Manning Provision." (Employer) The "Manning Provision" refers to Section E of ARTICLE XXI. The City seeks to completely eliminate Section E.

The Union strongly opposes any change. ARTICLE XXI, Section E will be discussed infra, but it seems appropriate to state at this time that the Fact Finder will not recommend eliminating Section E nor will he recommend amending the language. Consequently the changes sought by the Employer in ARTICLES XIV, XV and XVI are moot issues.

RECOMMENDATION:

Current language will be maintained in ARTICLES XIV, XV and XVI.

ARTICLE XXI - SAFETY EQUIPMENT

Section E: "Whenever the manpower drops to a level below four (4) men per shift, the officer in charge, with the prior approval of the Chief, shall contact off duty employees of the Fire Department according to established procedures in this contract under Article X. Fill-in Time and Appendix A, to re-establish the shift strength to four (4) men, including the Chief, if on station."

Citing costs the Employer proposes to eliminate Section E in its entirety. It submits there will be no reduction in service to the public and contends it poses no threat to safety. It stresses when a fire is made known everyone in reality is on call and the Fire Fighters always respond. The City also views this as a Management Rights issue; i.e., the right of the City to manage its facilities and to direct the workforce.

The Union opposes any change, arguing strongly that the retention of the "Four-Man Crew" is the minimum crew size needed to protect the public. The Fire Fighters also emphasize:

- a. It agreed in the past to permit the Chief to serve as a member of the Four-Man Crew to cover for absenteeism.
- b. It agreed to the hiring of a "provisional" person to fill in. The provisional is not eligible for benefits, which saves the City money.
- c. The Ohio Administrative Code establishes regulations and guidelines for Fire Fighters. In part it states:

"The requirements of this chapter are minimum requirements of an employer for the protection of such employer's employees and others, and constitute protective standards for all regular members of lawfully constituted fire departments of municipal corporations and townships....." 4123:1-21-01, p. 1.

"Employees operating in hazardous environments at emergency incidents shall operate in teams of two or more....." 4123:1-21-07, p. 103.

"At working structural fires a minimum of four employees shall be required, consisting of two employees working as a team in the hazardous atmosphere, who shall remain in voice or visual contact with each other, and two members who are located outside the hazardous atmosphere, who shall be responsible for maintaining a constant awareness of the number and identity of those members if required." Id.

The Employer also proposed the following be added to ARTICLE XXI as part of Section E in the event its proposal to eliminate Section E is not accepted.

"Should during the life of this Agreement the City find itself in a layoff situation, under fiscal watch or in fiscal emergency Section E of Article XXI is rendered null and void.

The Union objects to the inclusion of this language, primarily because it views the language as stripping employees of basic seniority rights.

The Fact Finder served sixteen (16) years as an elected public official. He is sensitive to increased costs and declining revenue in the public sector. He understands the need to operate within a budget and he understands fiduciary liability. He also understands the need of management to direct the workforce and its duty to provide services to the public. However, the addition the City seeks to ARTICLE XXI is broad, speculative and has the potential of eroding the bargaining unit. The total Record does not warrant the Fact Finder's recommending this additional language. It remains as a proper subject of bargaining for the Parties. The Fact Finder recommends the Parties attempt to negotiate a LOCAL AGREEMENT if manning remains an issue.

RECOMMENDATION

The Fact Finder recommends no change to Section E of ARTI-

CLE XXI for the following reasons:

- a. As noted by the Employer, four (4) Fire Fighters may not be required for minor situations and there are fires which do not require entrance into a facility. The major flaw in this argument is when the siren sounds the Fire Fighters do not know if it is a minor situation or a major situation.
- b. The Union has shown flexibility in permitting the Chief to complete the Crew to cover absenteeism, as well as not opposing the use of a "provisional" person to complement the Crew.
- c. Section E is not in conflict with the OHIO ADMINISTRATIVE CODE.
- D. The recommendation is consistent with 4117-9-05(K) (3) as it refers to considering "the interests and welfare of the public....." supra, p. 3.

APPENDIX A - OVERTIME POLICY

The Fact Finder's notes reflect:

"The Parties will address the language once ARTICLE X is decided."

ARTICLE X has been decided and appears supra, pp. 18-19. It is not necessary to quote this lengthy provision since its current language will be maintained. The Fact Finder's work with ARTICLE X and APPENDIX A is completed and no further commentary is necessary.

RECOMMENDATION:

No change in APPENDIX A is recommended. Continuing discussion concerning the management of overtime is suggested under ARTICLE XXXII - LABOR-MANAGEMENT COMMITTEE.

Norman R. Harlan

Norman R. Harlan, Fact Finder

Steubenville, Ohio

October 16, 2008

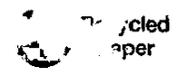
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