

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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CITY OF NORTH OLMSTED, OHIO

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\* SERB Case No.  
\* 08-MED-09-1048

STATE EMPLOYMENT  
RELATIONS BOARD  
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-and-

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS, LOCAL 1267

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FACT-FINDING REPORT AND RECOMMENDATION

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## **FACT-FINDING CRITERIA**

In the determination of the facts contained herein, the Fact-Finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained 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 the determination of issues submitted to

mutually agreed-upon dispute settlement procedures in the public service or in private employment.

This matter came on for hearing on November 5, 2009 after several mediation sessions were conducted on August 11; 14; September 1; and 16, 2009. The undersigned was mutually selected and signed-off on as Fact-Finder for this process of fact-finding.

The Employer is an Ohio municipal corporation located in Cuyahoga County, Ohio where it has its property, elected and appointed officials and employees who provide services to and for its residents. This public employer shall hereafter be referred to as the "Employer", the "City " or "Management".

The Employee Organization, hereafter referred to as the "Firefighters", "Local 1267", "I.A.F.F." or the "Union", is the certified and exclusive collective bargaining representative for this unit of professional firefighters.

### **BACKGROUND INFORMATION**

In 2008 and more evident in 2009, the severe economic pressures facing the United States were visited upon N. Olmsted, OH much the same as with most municipal entities. When revenue

streams are diminished due to job losses, sinking real estate valuations and fewer transactions subject to retail sales taxation political entities, such as this city, are constrained to reduce expenditures and closely monitor the elements of municipal finance when engaging in collective bargaining responsibilities for either the year at hand or beyond.

The parties herein commenced bargaining in the latter part of 2008. Based upon what the representatives have imparted to me either thru plenary mediation sessions or in post-hearing briefings, this is most definitely a time when the Employer needs to seek concessions with the *quid pro quo* being minimized bargaining unit member lay-offs. Management's further objective is, of course, maintaining an acceptable level of services to its citizens in police, fire, streets and recreation and related responsibilities.

The undersigned put in a great amount of time with these parties in mediation seeking to "package" terms which would meet the City's targeted reduction in costs for this bargaining unit of approximately ten per cent (10%). This is not a measure arrived at in a flippant manner. I also presided over the police contract's fact finding and am aware that the service workers ("AFSCME bargaining unit") and the non-organized clerical employees concluded their respective economic terms for 2009 and beyond at this level of wage/benefit reduction.

I can also attest to the fact the City's negotiations team made numerous financial projections and reported same to the Union and the undersigned.

The fact that a formal hearing needed to be conducted underscores that the mediated efforts failed to bring about a tentative agreement. It is understood that this happens; especially when the tone of negotiations is one of concession.

However, what I find lamentable is that the Union feels, as stated in its post-hearing brief, that the Employer has not accurately costed its demands, acted in a "punitive" fashion and chose its positions in an overreaching manner with little regard to the scope of its demands.

I need to relate these matters lest a party allege I failed to read their brief, evaluate their position(s) or utilize same in arriving at my recommendations. Reasserting unfair labor practice accusations in this process will not bring about any meaningful action from a fact finder; I simply have no jurisdiction over such charges. In fact, I believe I secured from both advocates a stipulation to proceed with the mediation effort in the side-bar conference referred to. What I sought was their commitment to continue discussing cost-cutting measures in order to preclude laying off firefighters. Since continued talks along those lines did follow, resumption of ULP claims in this process is contrary to this statutory system of fact-

finding. I understand that I may be overly sensitive to this issue because post-hearing briefing is rarely done and this may have been a way to vent frustrations due to the inability to reach a mediated settlement, but it is not progressive in terms of reaching the goal needed herein.

What makes me feel lament is that the parties worked through a number of issues such as sharing financial data, detailed discussions on where or how cost attenuation could be achieved and reaching a level of rapport between the respective committees that I'll term "trust issues", yet filed briefs for me to consider in making my recommendations, which reverted back to more acrimonious positions.

In summary, the theme I'm working with is that the City seeks a ten per cent (10%) reduction in operating costs from this bargaining unit but the Union claims the City's position excises some \$650,000.00 from the fire department's labor costs. The targeted 10%, about \$440,000.00, is thus exceeded without justification and, the IAFF claims the Employer has thrown in non-economic language changes demands which pose threats to bargaining rights and are unwarranted. Further, this reduction in labor costs is sought in order to avoid further lay-offs of personnel from this bargaining unit.

Each side presented the Fact-Finder with exhibits and testimonial evidence covering their respective positions on the unresolved issues.

As required by law, they also furnished “contract ready” language for incorporation into their CBA.

It must also be noted that a party’s demands or positions taken either during contract negotiations or before the undersigned in mediation or at the Fact-Finding hearing which are not expressly listed in the following recommendations are either rejected, deemed withdrawn or were agreed to prior to the formal fact finding hearing.

Having emphasized that the current severe economic downturn cannot be overlooked in making the following recommendations and expressing my frustration with the “return to square one” type of post-hearing briefings, I nevertheless need to proceed with each open issue starting with those presented by the City in numerical order as per the parties’ CBA.

**WHEREFORE**, the following recommendations are submitted for ratification by both parties and placement in their CBA at the appropriate article and /or section:

1. Article VIII **GRIEVANCE PROCEDURE:**  
(Sections 8.3, 8.6)

The City proposes to create a private arbitration panel and not utilize the services of a designating agency.

The Union is opposed to having a closed panel and wishes to continue selecting neutrals for grievance resolution as previously done by alternately striking from a FMCS provided list of five neutrals.

I spent time at the hearing exploring the Union's concerns with creating a private panel. I do not share their concern that the IAFF will have no input into the selection of private panel members. As discussed at the hearing, private arbitration panels are predominantly filled after contract negotiations are concluded in both sectors. The ability to empanel or remove an arbitrator may be a term of a closed panel system as is the number of names to be selected, the manner of appointing from among those neutrals, how neutrals are to be compensated and when awards are due to be issued, among other things.

The Union states that its "first and foremost" concern is that not one arbitrator has

been agreed upon. They also maintained that legal counsel for the City would control the selection process leaving the Union with no input as to arbitrator selection.

I disagree with the above fears and concerns. Private panels are far and away constituted by both parties after their CBAs are settled or awarded. There is equal input and leeway to allow a variety of terms to meet the needs of both parties. If they cannot reach agreement on the neutrals to be listed, a panel won't result and the parties will need to mutually agree on an arbitrator or pay for the services of a designating agency.

I note that in Ohio's public sector there are over two hundred private arbitration panels. Private panels are included in N. Olmsted's other labor agreements and there's no indication of dissatisfaction from those organizations.

Given the misplaced fears of the Union and the desire of the City to reach internal consistency, I recommend that the City's position be adopted and that such five (5) person private panel's rules and participating arbitrators be mutually agreed upon subsequent to the finalization of this CBA.

Further, having made the above recommendation to set up a private panel, the undersigned agrees to neither seek nor accept

appointment to the resulting arbitration panel in order to allay any claims of self-interest in this recommendation.

Article IX **PERSONNEL REDUCTION:**

The Union indicated that this change to Section 9.2 was agreed to but not in tentative agreement form. In it, recall rights would be increased to forty-eight (48) months from thirty-six (36) months and also made retroactive to laid-off employees since the year 2008.

The City has not briefed or included a contrary response in its position statement.

Therefore, I'm formally recommending that this demand be granted since I recall the City indicated it was in agreement with it at the hearing.

Article XI **OVERTIME:**

The City wants to have Section 11.2 provide that an employee cannot receive additional minimum call-in assignments unless the employee has returned home at the completion of the initial call-in and the minimum call-back period.

The IAFF objects to this measure claiming it was first proposed in the formal

hearing and that the instance which prompts the City's demand is best resolved thru the CBA's grievance-arbitration process where it is said to be.

Upon reflection, I cannot support an employee being allowed under the current CBA's language to parlay a second call-in pay premium while still in an initial call-in pay status. I do not intend to "arbitrate" the incident giving rise to the City's concern herein. Since that matter is said to be currently processed as a grievance, it should run its course as such and, if arbitrated successfully, the employee's premium pay claims will be enforced. However, this does not preclude the Employer from attempting to rectify what it sees as a financial burden under the current CBA language. Arbitrators often tell parties that they cannot obtain new or modified contract terms through the grievance machinery. Indeed, CBAs often expressly deny neutrals the ability to alter, amend or modify the terms of a labor agreement. Bargaining over a new contract is the ideal time when parties may seek to construct new language or modifications to existing terms for purposes of correcting or clarifying issues or disputes which arise in the day to day operation of the CBA.

I see no compelling proof that the City uses current call-in policy to take advantage over its firefighters. Furthermore, there is every

indication that this type of event rarely occurs but since it has a cost component to it and comes at a time when the parties are bargaining to save money and avoid lay-offs, I recommend the Employer's language be adopted.

**Article XIII HOLIDAYS:**

**Section 13.1**

Management has proposed cutting back on holidays from the current seven (7) to five (5) plus drop having a personal day off. (These are 24 hour paid holidays).

The Union is opposed and cites that other units in the City have not made similar concessions. The Employer thus has not demonstrated a viable case for further reducing this bargaining unit's holidays while they already are 25% behind the units who are not scheduled on a twenty-four (24) hour basis as firefighters typically are.

Upon analysis of the CBAs involved, I concur with the IAFF position on the proposal to reduce this unit's paid holidays. There is no internal comparable standard to be met; in fact the opposite may be correct as the Union has alleged.

This proposal is denied and I herewith recommend the Union's position that no

decrease in paid holiday benefits be resorted to in order to trim labor costs.

**Article XIV VACATION:**

The City seeks to attenuate the number of tours used for vacation time by employees in this unit. Due to shorter work hours for firefighters over the years at the ten (10) year service point a firefighter actually enjoys a week more than a forty (40) hour per week co-worker not in this unit.

The Union position is that this benefit is actually less for firefighters, who cannot help that they are deployed in tours of duty instead of eight (8) hour shifts without needing to sleep at a fire station in order to be available for calls reduce commuting time.

Further, the Employer proposes to cease the sale back of accrued vacation time for this CBA. The Union also feels this is not needed.

I deny the Employer's attempt to reduce vacation benefits for firefighters in this unit. I do recommend however, that the practice of selling back accrued vacation time for cash be ended and thus grant only that aspect of the City's demands relative to Vacations. Ending a direct cash flow source is very much in keeping with the goal of trimming labor contract costs in order

to avoid lay-offs.

**Article XV- SICK LEAVE:**  
**Section 15.2**

Management seeks to make the sick leave bonus hours twelve (12) hours of compensatory time only.

The IAFF position is the City only intended this demand serve as a “chip” to be traded off for measures the City really wants to obtain in this process.

In evaluating this section I cannot see what savings the City realizes since the “bonus” aspect is a reward for not tapping out of sick leave benefits and incurring overtime. Making it less attractive as a “bonus” works at cross purposes with the intent to curtail overtime and related costs. I do not recommend the City’s position on Section 15.2.

Also, the Union proposes that Section 15.3 be modified to increase payout ratio from  $\frac{1}{2}$  to  $\frac{5}{8}$  and up the maximum from \$1000.00 to \$1500.00. To place them on par with the police unit’s terms.

I do not recommend either of these

increases at this point in time due to the cost factor.

Finally, in the sick leave sections 15.7, 15.8 and 15.9, the City seeks language making it easier to obtain medical certificates supporting use of sick leave benefits which the Union is opposed to due to what it maintains is an absence of sick leave abuse by this unit's members.

The City asserts that it has no issue with the practice of return to work medical slips for missing one, two or three tours of duty. What is sought is a means to police sick leave abuse by employees who are actually able to work. When suspected misuse of sick leave is present, the Employer may require a medical examination at the City's expense in order to be assured that the usage was proper before debiting the employee's sick leave "bank".

When sick leave use forms a pattern and there is insufficient medical proof of illness, sick leave is not justified. In these instances employees may be disciplined and just cause for so doing exists in the demonstrated pattern and lack of adequate medical proof.

The Union claims the City was not interested in discussing this proposal during negotiations and that other units do not have similar strict requirements regarding the use of

sick time off.

After weighing both sides' points on the matter I'm convinced that the City's position is meritorious and recommend adoption of the City's proposals for 15.7, 15.8 and 15.9, and deletion of conflicting provisions as proposed.

**Article XVIII SALARIES:**  
Section 18.1

The City's position on wages is for a three (3) year agreement with zero (0%) in both 2009 and 2010. This would be followed by a wage and unpaid Kelly Days<sup>1</sup> re-opener for 2011 commencing in November of 2010.

Local 1267 also wants a three (3) year contract but with the following uniform wage percentage increases:

2009: One per cent (1%) retroactive to January 1, 2009;

2010: Two per cent (2%); and

2011: Three per cent (3%).

The Employer's documentation and supporting contract information coupled with the

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<sup>1</sup>To be discussed *infra* under Art. XXV **HOURS OF WORK.**

general wage settlements internally agreed to by other units and N. Olmsted substantially warrant adaptation of its position on wages. Throughout the mediation sessions it was made abundantly clear that there exists a palpable inability to pay.

Indeed, throughout the entire efforts undertaken by the undersigned with these parties never once was it contemplated that there was a possibility of an actual wage increase. As previously noted, the underlying theme of this process is how to reach an approximate ten (10%) per cent reduction in labor contract costs in order to avoid laying-off firefighters from Local 1267's ranks.

The financial projections provided by the City were kept up to date over the months this process transpired. Since the hearing many Ohio municipalities large, mid-size and small, have resorted to wage freezes, furloughs, elimination of overtime and overtime generating language and policies in order to keep from imposing serious reductions in force. Recently, Cleveland and Akron undertook such measures for similar reasons with its uniformed services.

It is fair to generalize that municipalities in Ohio, (N. Olmsted among them) for the most part, met their 2009 fiscal labor relations needs with reserve funding, which will not be available in equal measure for use in off-setting labor contract cost shortfalls in 2010.

It is one thing to bargain over or recommend thru a process such as this one, appropriate wage increments when there is economic stability and growth with no serious disruptions to municipal revenue streams. But it is a different animal to analyze and opine about the need and amount of concessions when warranted.

The later is clearly the case herein. Therefore, I recommend the City's position on Salaries fully expecting that should better fiscal projections be on hand in late 2010 when the re-opener is begun, a potential for an actual wage raise for this unit in 2011 will exist.

The Union has criticized the City for not providing a 2011 projection in its brief. This is not a wilful ploy or deceptive move by the City from my perspective. The vagaries of the many economic factors facing not just this Employer but the global community, make such efforts most difficult. This Union has members who have regularly attended City Council meetings and the Finance Director has been and gives every indication that she will continue to provide the Local 1267 leadership with "the numbers" as this year progresses. The bulk of the concessions needed herein reside in the wage freezes, unpaid Kelly days and the deletion of the weekend bonuses (Sect. 18.5).

I thus recommend the City's positions on

unpaid Kelly Days, Salaries and deletion of the Weekend Bonus for the foregoing reasons.

However, I do not recommend changes to the Longevity payment language in section 18.6. I calculate sufficient labor cost savings are to be derived from the prior concessions recommended without reducing the Longevity pay benefit.

**Article XXIII-SUCCESSORS:**

For many years this CBA has had a boilerplate successors and assigns clause which the City wants to delete in order to position itself for possible entry into a fire protection consortium with four (4) to six (6) other municipalities. In its view, having to bargain over the continuation of benefits and practices could become a “deal breaker” and cause the other communities which do not have such language in their firefighter labor agreements to not want to invite N. Olmsted’s participation.

The City says this is “private sector language” and urges its deletion.

The Local 1267 response is one of staunch opposition to ending this Successors clause. It maintains the City’s labor counsel has stated all the firefighters would be laid off to allow the

City to merge into the joint fire district being contemplated. It is the loss of contractual protections that concerns the Union; they claim there is nothing preventing the City from joining a joint fire district.

I understand the needs of the City and the fears of the bargaining unit and its representatives. Since the other municipalities in the contemplated district are organized by the IAFF, any joint fire district would soon have a labor agreement very similar to what these fire departments have today. This would be done either thru voluntary recognition by the new fire district entity of the respective communities as the new employer or by a new representation election conducted by the SERB. Either way, the result would be a firefighter labor agreement not radically different than this one or the ones in the other communities contemplating the joint fire district.

The employer entities will obviously want the experienced and trained professional firefighters in its employ today who know the respective communities' residential and commercial structures and fire prevention needs to be in the new fire district. Also, there is little likelihood that another employee organization, whether in existence now or formed for the specific purpose of organizing firefighters in a new fire district, will be a competitor to the IAFF.

However I discern that the current members of Local 1267's bargaining unit have a concern that somehow they might not be hired by the new district. This is understandable and deserves to be addressed in a proactive manner. Whereas the Union points out that there is nothing in their CBA preventing the City from participation in a joint fire district should one become reality, the current obligation to have the parties' CBA "succeed" to the potential new entity will still require that collective bargaining take place to create a more comprehensive labor agreement for any such new fire district both initially and in moving forward over time. There will be no dismantling of this unit's contractual terms. Economic terms and working language will be necessary for a new fire district as it comes into existence and undertakes its operations. Intentionally fomenting labor relations issues would not only add difficulties to the venture, it would be downright foolhardy. Furthermore, the existing provision does not require that any of these employees, or all of these employees, are guaranteed a job. It only requires the assumption of the CBA if any are hired. Hence, the District could only hire ten (10) employees and not the rest of the workforce, while assuming the CBA.

Therefore I recommend that the City agree to the following pledge of continued employment as a firefighter in exchange for

deletion of the Successor language:

(New) In the event that the City joins a joint municipal fire district it pledges to hire all employees in its employ at the time N. Olmsted joins or participates in the creation of a joint fire district.

#### **Article XXV-HOURS OF WORK:**

Paid “Kelly days” serve to reduce the workweek. As a concession to realize savings needed to prevent lay-offs, captains, lieutenants and fire fighters shall have ten (10), eleven (11) and twelve (12) unpaid Kelly days respectively in 2010 and in 2011. Any forty hour employees shall have their unpaid holidays and unpaid furlough days prorated accordingly. (The unpaid Kelly days for 2011 are subject to be re-opened in November of 2010 same as the wage rates under the Salaries article.

Although the Union opposed this, I have recommended the Employer’s proposed wage freezes because together deletion of the weekend bonus payments they yield sufficient cost savings to meet the targeted goal approximately \$440,000.00 needed to preclude lay-offs.

#### **Article XXXIV-DRUG AND ALCOHOL**



**POLICY:**

The City seeks to implement the Bureau of Worker's Compensation ("BWC") procedures as agreed to by the City's police department and its union. The BWC program includes the reasonable suspicion approach currently in this CBA but also post-accident and similar types of testing without using random employee selection testing measures.

The Union sees this proposal as invasive of employees privacy, overly circumspect for employees who routinely suffer burns, strains, cuts and smoke and other irritant inhalation and, since its non-economic, it is not called for either as a cost cutting measure or based on substance abuse incidents in the unit. In fact local 1267 maintains that the City's only espoused reason for seeking this change is that the police unit agreed to it.

I disagree with the Union's claim that there is no justifiable reason to implement the BWC policy. I see more than a desire to reach internal consistency with the police unit's contract terms. The BWC has a much more comprehensive drug testing policy than what is currently in place.

I'm impressed with what the Bureau has created in terms of not just "catching" substance abusers but educating employees and managers alike and making this information and help

available the families of employees as well. The goal is as much one of creating a safer work environment as it is to identify and discipline for breaches of the policy. Obviously, the BWC has had to put a great deal of effort into this policy's development. I am not saying the current policy in the CBA is bad or wrong; it is narrower in scope and that may be because of BWC's experience with private and public sector employees and substance abuse issues.

I feel that the fear that every minor scrape or bruise will bring about a protracted testing sequence is not warranted. Employees should consider that the safety of each of them or the groups they function in is best served when incidents which might represent indicia that a co-worker is impaired is in the individual's and their own best interest regarding job safety. The BWC program is much more than a system for identifying substance abusers. It is educational and provides help before harmful incidents occur.

I recommend that the BWC policy be adopted in place of the current drug testing language.

**Article XXXVIII-SAFE MINIMUM STAFFING:**

The City's proposal replaces the committee's inclusion of the Assistant Fire chief with the Human Resources Director.

The Union opposes this measure feeling that the

Assistant Chief brings needed insight to the efforts of this committee. It also wants Council members to continue to sit ex-officio on it.

I agree with Management's position that this committee serves an administrative function and is better conducted as a matter of labor relations.

I recommend the City's proposal to change the personnel on this committee.

**Article XXXIX-TOTAL AGREEMENT:**

The Employer seeks to add a "zipper clause" to the CBA just as it has with its other bargaining units. The last iteration of this CBA saw some past practices eliminated thru fact finding but did not completely provide that the City could make changes not specifically referred to in the CBA. This proposal would yield the same type of administrative language found in the other CBAs to which the City is privy to.

The Union does not want a zipper clause claiming there are too many practices and conditions for the parties to set forth in their labor contract.

Instead, Local 1267 proposes a new article, PREVAILING RIGHTS, which would preserve whatever current rights and conditions which are not in the CBA. Further, the Union would have deleted the language from the prior CBA which discontinued side

agreements in favor of an express recitation in the agreement that wages, benefits and working conditions will remain in effect.

In weighing both sides' proposals and their arguments in support of their clearly opposite positions I cannot help but conclude that the Union is prone to perpetuate the rather convoluted and cryptic labor relations of the past by seeking to eradicate the last Fact Finder's recommendation to dissolve whatever practices existed between these parties prior to January 1, 2007.

I disagree with the Union's assertion that the practices thus cut-off as of the 2007-08 CBA makes that language no longer necessary. Indeed, the institution of a zipper clause in this CBA moving forward as sought by the City reaches for the rest of the total agreement not recommended in the last fact finding procedures.

I cannot see what the Union's claim that the City has "no regard for the existing terms and conditions of employment, whether the conditions constitute past practices or are contained in side agreements" is predicated upon. Or, that the City's alleged lack of regard has lead to "...the Union having to constantly litigate just to maintain existing conditions."

I discern that the City wants just the opposite. That is, incorporate its Total Agreement language so that when the parties have fully bargained their CBA's terms in an informed manner the resulting agreement

will serve to illustrate to both sides what their respective rights and responsibilities are. Sure, from time to time a situation might arise about which the CBA is silent and thus establishing a *past practice* would have applicability to asserting a party's position on a grievance. But to allege the City itself has engaged in "a practice of unilaterally changing terms and conditions of employment" works to demonstrate that the express contract language is controlling and that resorting to "side deals" promises, or characterizing the conduct of representatives or elected officials is a way to foment poor labor relations and the need to "constantly litigate".

I favor zipper clauses because they serve to make negotiating parties very serious about what their CBA winds up saying. They help remove doubt about what the wages, hours, terms and conditions of employment are. Allowing a system of side deals, handshake agreements and mere conduct to have a bearing on what the parties owe each other to trump is an inexact approach to collective bargaining which could yield different outcomes if perennially arbitrated or made the subject of ULP charges. I'm baffled by the Union's statement:

"Based upon its past behavior, the City has no doubt that if such language is included in the CBA, the City will terminate any and all existing unwritten past practices or unwritten conditions of employment, whether or not they are currently recognized by the parties as such." (See Un. Br. Pg. 32)

A zipper clause basically seeks to formulate what the parties have bargained over and agreed to. Thus, subsequently, extrinsic claims are not allowed to be asserted in derogation of the printed terms of an executed CBA. Making unwritten terms and conditions of employment express contract parts is a desirable approach to collective bargaining because of the greater transparency and the need not to consider a cryptic network of verbal promises, memoranda or “side agreements” which compete with the formal CBA.

Based upon the foregoing analysis I recommend the City’s proposed TOTAL AGREEMENT language with the addition of the following sentence at the end:

“Any claimed violation of this paragraph may be subject to the grievance procedure of this Agreement.”

Plus, I do not recommend the Union’s language on PREVAILING RIGHTS. I do not see that the City has an intent to force the Union to need to engage in “years more of litigation” (Un. Br. Pg. 33) because they have had four or five grievances go to arbitration in recent years.

Furthermore the City is only proposing a provision being included in the agreement that exists in all the other labor contracts between the City and the unions representing the other employees.

This addition makes this provision identical to the total agreement provision presently in effect in the

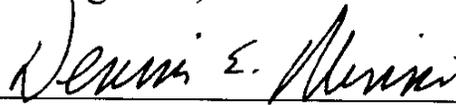
City's police contract.

**Article XL-DURATION:**

Having made the foregoing recommendation on SALARIES, *supra*, makes the term covered by this CBA a foregone conclusion. The Union notes DURATION OF AGREEMENT in its brief (Un Br. Pg. 31) but thereafter states said nothing different than the three (3) years the City proposes. Since the Union proposed three years of wage increases I conclude that a three (3) year duration is what both parties want and hereby recommend the same, commencing on January 1, 2009.

I reiterate that there shall be a wage and unpaid Kelly day re-opener held in the first part of November, 2010 to apply to the last year, 2011.  
(The unspecific date in November 2010 is to allow the Finance Director sufficient time to obtain the most recent monthly or quarterly financial data for use in said re-openers.)

Respectfully submitted this 11th day of February, 2010  
at Strongsville, OH.



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Dennis E. Minni, Fact-Finder