

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of The Fact-Finding Between:

CITY OF PARMA)	SERB CASE NO:
)	09-MED-07-0743
-AND-)	
)	
INTERNATIONAL ASSOCIATION)		
OF FIREFIGHTERS,)	
LOCAL 639)	

ATTENDANCE:

For The City

Gary Johnson, Esq.,	Attorney
Greg Baeppler	Safety Director
Elayne Siegfried	Personnel Director

For The Union:

Ryan Lemmerbrock, Esq.,	Attorney
James Astorino	President, NOFF
Patrick Lovejoy	President, Local 639
Lee Wester	Vice President, Local 639
Brian Flanagan	Member
Nick Kashi	Member

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The City of Parma, located in Cuyahoga County, Ohio, occupies an area of some twenty square miles and includes within its borders a 2009 estimated population of 77,354 who are resident within 36,400 households and whose 2008 medium household income was \$54,345.00. Parma is home to a branch of the Cuyahoga Community College, The Parma Chevy Stamping Plant and the Parma Community General Hospital.

At the time of this proceeding the City's Fire Department consisted of 81 Firefighters, 10 Lieutenants, 2 Inspectors, 6 Captains, an Assistant Fire Chief and the Fire Chief.

The Department's firefighting force is deployed in five stations, four of which are manned with five personnel on a shift, and one with only three.¹

With exception of the Assistant Fire Chief and the Fire Chief, the members of the Department form a Collective Bargaining Unit represented exclusively by the International Association of Firefighters, Local 639.

The City and the Union were signatories to a 2005 three year Collective Bargaining Agreement which expired on

¹ Minimum manning until January of 2010 was set at twenty-five personnel, subsequently reduced to twenty-two personnel, but then increased to twenty-three.

March 31, 2008. The parties subsequently entered into a one year Agreement, retroactively effective to April 1, 2008 and continuing until March 31, 2009. This 2008 Contract, while extending all other terms of the preceding Contract, amended the following Articles: Article 15 "Arbitration Procedure" (creating a permanent panel of arbitrators); Article 17 - "Sick Leave and Sick Leave Conversion" (providing for a twelve-hour "vacation bonus" for each ninety-day period during which no sick leave was taken); Article 25 - "Salary Schedule" (granting a one hundred dollar (\$100.00) increase in the basic salary schedules, a 2% increase in wages and a \$20.00 weekly stipend to employees required to be "on call" while on off-duty status); Article 26 - "Workweek, Overtime and Compensatory Time" (limiting emergency overtime to those situations where the employee was physically involved at an emergency site); Article 29 - "Duty Injury Leave" (allowing benefits to commence on the seventh calendar day of any period of disability and continue for six months, but waiving the seven-day waiting period if the Firefighter was injured on-duty and sent home by appropriate medical personnel); Article 31 - "Miscellaneous" (clarifying the City's obligation to reimburse employees for tuition, books and fees for required or approved courses); Article 31,

Section 31.06 "Trading Time" - (giving employees the right to trade 312 hours annually); Article 33 - "Transfers" - (stating in a Memorandum of Understanding that for the period ending March 31, 2010, the annual shift reassignment process would not result in transfers in excess of 25% of the shift personnel); Article 41 - "Duration of Agreement" (becoming effective as of April 1, 2008 and remaining in effect until March 31, 2009); Appendix "B" - (adding a Drug and Alcohol Testing Policy and Procedure); Memorandum of Understanding (containing the settlement agreement reached in resolution of the litigation entitled "Kashi vs. City of Parma", and extending it until December 31, 2009).

Faced with a looming financial crisis in 2009 because of an unanticipated revenue shortfall of four million dollars, the Firefighters and all other Bargaining Units were asked to make concessions so that the City could meet its statutory obligation to balance its 2009 budget without laying-off employees. Accordingly, a "Side Letter" or "Concession Agreement" was entered into with the Firefighters for the period beginning July 27, 2009 and ending on December 31st of that year, which suspended certain benefits so that the City could realize cost

savings of \$650,000.00.² To this end the parties agreed that both the vacation bonus payment set forth in Article 17.07 and the sick leave conversion option available under Article 17.09 would be suspended during 2009. Further, the holiday premium set forth in Article 20 would not be earned from July, 2009 until the end of the year, and employees who incurred overtime by being called-in were to be paid time and one-half instead of double time.

Article 21 - "Vacations" was modified so that tour Firefighters were to be scheduled for two additional tours of duty, while forty-hour employees were scheduled to lose three, ten hour days of their vacation. In addition, Article 26 - "Kelly Days and Compensatory Time" was altered so that tour employees were to work two Kelly Days at their regular holiday rate of pay, and all Firefighters could neither use nor accumulate compensatory time for the remainder of 2009.

Finally, Article 31.06 - "Trading Time", was amended to remove the limitations on the number of shifts that Firefighters could trade.

²The Union reports that the savings amounted to \$708,000.00.

The concessions, however, were conditioned upon the City's not laying-off Bargaining Unit members.³

Concurrently, the several Police Department Bargaining Units entered into "Concessionary Agreements", also designed to also save \$650,000.00 in 2009.⁴ These Agreements were extended through December 31, 2010.

The Steelworkers' Bargaining Unit also executed a Concessionary Agreement which not only suspended the option of selling-back accumulated sick leave, but, while maintaining the existing wage schedule, effectively cut members' compensation by 12% by reducing their work hours.

³ "In the event that the City implements a layoff of members in this bargaining unit during 2009, the terms of this agreement shall be terminated and the parties shall be restored to their position as of the date of the execution of the agreement."

"In the event that cuts of the daily minimum staffing of the 24-hour shift crew are needed, the City agrees to give the union 30 days notice during which time the City and the Union shall use the 30 day period to negotiate the proposed changes to this agreement. If an agreement is not reached after this 30 day period, then the City may proceed with its changes subject to the Union's rights. In the event that the City implements daily minimum staffing reductions, the terms and provisions of this agreement with the exception of paragraphs 1, 2 and 7 will be immediately terminated and the terms of the contract will be restored."

⁴ The Union calculates that the concession resulted in savings of only \$91,000.00. The concessions were limited to suspension of the cash-out of sick leave and compensatory time, but the Bargaining Unit members gained vacation carry-overs and banking of non-F.L.S.A. overtime hours.

As 2009 drew to a close, the Firefighters and the City began negotiations looking towards the execution of a successor to the Concession Agreement.

The City again sought concessions, but this time did not claim that they were needed in order to balance its budget. Indeed, no specific dollar amount of concessions was identified. And, this time, the City did not link its proposals to a "no layoff" quid pro quo.

The parties declared impasse, and on June 18, 2010, the undersigned was appointed Fact-Finder by the State Employment Relations Board.

The Fact-Finder conducted a mediation session with the parties on August 17, 2010, which succeeded in facilitating the resolution of issues involving Article 5, Section 5.03 - "Management Rights"; Article 15, Section 15.01 - "Arbitration Procedure"; Article 31, Section 31.07 - "Miscellaneous" and Article 34, Section 34.01 - "Military Pay". Moreover, a series of proposals to add new provisions and to amend other Articles and Sections of Articles of the subsisting Contract, were withdrawn and are deemed to have been abandoned.

Further, the parties tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other Articles, Appendicies, and Memoranda of

Agreements from the 2005, 2009 and Concession Agreements except those listed below.

Remaining unresolved were proposals submitted by one or both parties to make changes in, or add Sections to, the following Articles:

- Article 17 - "Sick Leave", Sections 17.07, 17.08, 17.09;
- Article 20 - "Holidays", Section 20.08;
- Article 21 - "Vacation" Section 21.02(I);
- Article 22 - "Longevity", Section 22.02;
- Article 23- "Uniform Maintenance Allowance", Section 23.02;
- Article 24 - "Insurance", Section 24.01;
- Article 25 - "Salary Schedule";
- Article 26 -"Workweek, Overtime, Comp Time", Section 26.04;
- Article 27 -"Educational & Occupational Wage Supplements", Section 27.01, 27.03 and 27.05;
- Article 28 - "Pension" Section 28.02 and New Section;
- Article 30 - "Fire Prevention", Section 30.01;
- Article 32 - "Safety Manning", Section 32.01;
- Article 37 - "Promotions", Sections 37.02, 37.06;
- Article 41 - "Duration"

At the direction of the parties evidentiary hearings were held on October 26th, and 27th, and November 9th, and 22nd, 2010. Timely in advance of the first day of hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code, Section 4117.14(C)(3)(a).

At the hearings the parties introduced a combined total of more than one hundred documents.

Among other officials, the City presented City Auditor Dennis Kish to report on the City's financial condition.

The Union, in its turn, in addition to some of its officers, called upon consultant Frank A. Suponcic, CPA,CFE,CFP, to offer an evaluation of the City's financial statements.

Those financial statements were updated to include the entire calendar year 2010, and the parties thereafter submitted post-hearing briefs summarizing their positions and the supporting evidence, and extended the time within which the Fact-Finder might issue his Report.

In making his analysis of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c). 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;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

THE FACT-FINDER'S REPORT:

PREFACE:

With a few exceptions, the disagreements over the shape of the successor Contract involve compensation issues. The City contends that its financial condition requires the continuation and expansion of concessions that the Union made in 2009.

The Union, on the other hand, argues that the City's financial condition has improved to the point where it no longer needs the concessions, but on the contrary, can afford to provide compensation increments in line with those being offered to Firefighters in peer Departments.

The conflict thus raised requires the Fact-Finder to look to the City's future fiscal condition, not to its past. It also obligates him to consider competing demands for City services, and, in particular, those of other

groups of employees who also look to redress their concession reduced economic status.

Assuming the City has the "ability to pay" the Union's compensation and benefit enhancement proposals, the further question remains whether any advance in Firefighters wages and benefits is justified because of improvements in the compensation of Firefighters in comparable jurisdictions.⁵

The Fact-Finder looks at the "ability to pay" issue first, and then turns to consider the "comparability" question.

ABILITY TO PAY:

Parma's general fund revenues peaked in 2008 when it collected some \$45,937,000.00. The full effects of the recession was felt in 2009 when revenues plummeted nine percent to \$41,802,000.00.

As a result of reducing expenditures from the total of \$42,540,000.00 in 2008 to \$37,864,000.00 in 2009, and

⁵ Increases in the cost of living as measured by the Consumer Price Index are not material to the present discussion. Even though the Index - because of food, energy and gasoline price rises - has increased to more than 3% over the twelve months ending in May, 2011, the prices of these commodities are too volatile to conclude that inflation considerations support the Union's case for compensation improvements.

The Consumer Price Index For All Urban Consumers had increased by just 1.1% for the twelve months period ending December 30, 2010.

limiting the transfers out of the General Fund to \$3,753,000.00 in 2009, instead of the \$4,637,000.00 allocated in 2008, Parma was not only able to balance its 2009 budget, but also to increase its unencumbered cash reserve from \$1,971,000.00 in 2008 to \$2,156,000.00 in 2009.

In 2010, the City's income improved to \$43,730,000.00, and while disbursements were higher than in 2009 amounting to \$39,626,000.00, transfers to other funds fell from \$3,753,000.00 to \$3,291,000.00, and the General Fund balance improved from \$2,156,000.00 to \$2,969,000.00 as of December 31, 2010, representing approximately seven percent of the City's 2010 total expenditures and transfers. The income reflected an annual grant of \$500,000.00 from the Illuminating Company which will be discontinued after 2011.

The municipal bond credit rating agencies have traditionally required a General Fund minimum balance of 5% of current expenditures in order to maintain a double "A" quality rating, and, in difficult economic times, such as the present, insist upon a higher reserve ratio.

However, as of the date of the preparation of this Report, it appears likely that Parma's Local Government Fund subvention which amounted to \$3,347,000.00 in 2010 and

accounted for eight percent of the City's total revenue, will be slashed by 12.5% in 2011 and 37.5% in 2012.

If so, then Parma's Local Government Fund receipts would decline by some \$418,000.00 in 2011, and by as much as \$1,255,000.00 in 2012.

The \$357,000.00 of the State income tax collection disbursed to the City in 2010 is also expected to be reduced in 2011.

Further, it is likely that the Corporate Activities Tax subsidy which amounted to \$425,000.00 will be either reduced or eliminated in 2012.

On the other side of the ledger, the City controlled its expenditures largely by reducing personnel costs.

In 2010 the aggregate amount of salaries paid employees amounted to \$28,653,600.00, about \$1 million dollars less than the total paid out in 2009, which, in turn, was some \$1,660,000.00 less than the \$31,314,000.00 expended in 2008.

As far as other cost categories are concerned, the City expects its health care cost to increase in 2011 from \$5,584,000.00 in 2010 to \$5,863,000.00 in 2011. Health care cost increased by \$542,000.00 in 2010 over 2009, but the parties have changed coverage from a zero co-payment

policy to a "90/10" Plan which is expected to reduce this cost.

So too, the City estimates that its fuel expenditures will increase by some \$65,000.00 - from \$525,000.00 in 2010 to \$590,000.00 in 2011.

As of September 28, 2010 "Fitch Rating" service downgraded its rating of the City's \$2.3 million dollars limited tax general obligation bonds from "AA" to "AA-" and its \$20.2 million dollar limited tax general obligation bonds from "AA" to "A+".

On a positive note, the Fitch Report related that employment at General Motors, the City's largest taxpayer, grew in 2010 from one-hundred to approximately fifteen hundred full-time workers.

Nonetheless, the Report cautioned that the City's property tax base decreased by almost 10% in 2010 as a result of the triennial property reassessment, so that the 2011 real estate tax collections are expected to be flat. The property tax accounts for some 11.19% of General Fund receipts, and collections in 2010 fell by 11% from the 2009 total.

The Union painted a more sanguine picture of the City's financial condition. It criticized the City's transfers out of the General Fund to the special purpose

funds as "excessive". In particular, it took issue with a \$400,000.00 transfer to the Liability Insurance Fund (No. 605) which ended the year with a balance of \$308,000.00.

The Union's financial consultant pointed out that the "all funds" unencumbered cash balance for 2010 of \$5,145,000.00 was the highest since December 31, 2007 and some \$478,000.00 over 2009 and \$958,000.00 more than in 2008.

Further, the EMS-Fire levy revenues have consistently increased in each of the last several years reaching \$2,893,000.00 in 2010.

Moreover, the 2011 and 2012 economic forecasts for the Northern Ohio region predict a modest improvement in employment and other economic factors which suggest that Parma's income tax revenues which make-up 62.55% of Parma's General Fund receipts, will continue to recover in 2011 and, more strongly in 2012.⁶

COMPARABLE CITIES:

The City selects nine jurisdictions as comparable to Parma: Berea; Broadview Heights, Brook Park; Independence;

⁶Parma's income tax rate of 2.5%, subject to a credit of 2%, is average or above among all municipal residential tax rates in Cuyahoga County, and in the present political climate, there is no reasonable chance of an increase.

Middleburg Heights; North Olmsted; North Royalton; Parma Heights and Strongsville.

The Union agrees that five - Brook Park, North Royalton, Middleburg Heights, Parma Heights and Strongsville - are comparable, but rejects Berea, Broadview Heights, Independence and North Olmsted. Instead, the Union would add the following five: Brooklyn; Cleveland Heights; Euclid; Garfield Heights and Lakewood.

Not surprisingly, each array of chosen municipalities tends to favor its proponent's position on the issues.

Each of the proffered communities shares at least one of the significant attributes of population, proximity, area, department size, service calls and median household income (a proxy for resource base) with Parma, but none can be said to be on "all fours" with Parma.

None of the five communities jointly considered comparable by the parties nor the additional nine proposed by one or the other are anywhere close to Parma's population. They range from 11,586 in Brooklyn to 54,765 in Lakewood.

Six of the communities selected by one or both parties border Parma - Brooklyn; Brook Park; Middleburg Heights; North Royalton; Strongsville and Parma Heights. Four

others range in proximity from eight miles (Garfield Heights) to twenty miles (Euclid).

In looking at territory covered, only Strongsville at twenty-four square miles and North Royalton at twenty-one approximate Parma's size. Euclid is the next largest in size but covers only ten square miles.

In terms of department size only Lakewood with eighty-eight members, and Cleveland Heights with seventy-seven and Euclid with seventy-six are anywhere close to Parma.

Parma's number of fire stations - five, exceeds all of the other communities. Strongsville has four stations while Brook Park and Euclid have three. The volume of calls made by Parma Firefighters is more than twice as large as that of any of the other communities.

Parma's median household income of \$54,000.00 (as of 2008) is, however squarely in the middle of the pack, exceeded by four of these communities but greater than the remainder.

The Fact-Finder will consider both sets of jurisdictions in his analysis, giving greater weight, as appropriate, to the five cities common to both lists.

On many of the issues, the Union also invites the Fact-Finder to consider the treatment of what it contends are "internal comparables" - the Parma Police Department

Units - with respect to the number of the subjects under review. The Fact-Finder will address the asserted disparities between the salary, benefits and other conditions offered the Police Department Units and the other City Bargaining Units - represented respectively by the Ohio Police Officers Benevolent Association, the Fraternal Order of Police, AFSCME, the Service Employees and the Steelworkers Unions.

In this connection, the Fact-Finder notes that some of the benefits which the City seeks to eliminate or suspend are available to all Bargaining Units and non-Bargaining Unit employees.

CONTRACT PROVISIONS AT ISSUE:

I. Article 17 - "Sick Leave":

A. The April 1, 2005 Contract:

Section 17.07, 17.08 and 17.09 of the expired Contract provided:

"Section 17.07: Vacation Bonus: Any full-time employee who completes a quarter (1/4) of a year with perfect attendance from January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31, utilizing no sick leave days, shall be entitled to receive a credit for twelve (12) hours."

This provision was modified by the June 12, 2009 "Tentative Agreement" to read as follows:

"Vacation Bonus: If during any continuous ninety (90) day period, a full-time employee does not use any sick leave as provided, the full-time employees shall be entitled to

receive a credit for twelve (12) hours ("vacation bonus"). The Bonus period will run for ninety (90) days from the use of the last sick leave day, except for absence due to a death in the immediate family, for sick leave used for injury leave, or for approved leave required by the Family Medical Leave Act, when no sick leave is used."

Section 17.07 was further modified by an undated "Side Letter" or "Concession Agreement" as follows:

"Article 17.01 Vacation Bonus: Will be suspended for the balance of 2009. No further payments will be made to members pursuant to this Section for the rest of 2009. Members' accounts will be credited for 2009 if the member meets the qualifications of this Section, but no payments will be made in 2009."

"Section 17.08: The unused vacation bonus will be paid out within thirty (30) days of the close of the quarter in which it is accumulated.

"Section 17.09: Any employee who has accrued not less than six hundred (600) hours of sick leave shall have the option of converting such accumulated sick leave into pay at the rate of two (2) accumulated sick leave hours for one (1) hour of pay. The maximum pay available shall be forty-eight (48) hours per calendar year. The conversion applies only to sick leave earned within the calendar year and must be requested in writing by the employee on or before November 15th. The payment shall be made in the first pay period in December.

This Section was amended for the period commencing on July 27, 2009 and ending on December 31, 2009 by the Side Letter as follows:

"Article 17.09 Sick Leave Conversion: Will be suspended for the balance of 2009 and no member will request payment pursuant to this Section for the rest of 2009."

B. The City's Proposal:

The City seeks to eliminate the sick leave - vacation bonus provisions of Paragraph 17.07 and 17.09, so that employees would no longer accrue or be awarded the vacation bonus for perfect attendance, nor able to sellback accrued and unused sick leave.

The City rejects the Union's proposal for two (2) "health days" per year.

C. The Union's Proposal:

The Union opposes elimination of the vacation bonus for perfect attendance, and the unused sick leave sellback option.

The Union would add a new Section 17.11 to provide that Firefighters may take-off two "health days" per calendar year to be charged against the Firefighter's accumulated sick leave, but without affecting eligibility for the sick leave bonus.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Three separate provisions are at issue here:

Vacation Bonus For Perfect Attendance:

First is the question of whether the current "vacation bonus" program should be maintained, or as the City proposes discontinued.

Beginning with the 1994 Contract, the Firefighters had received a "bonus" of twelve hours of vacation leave while maintaining perfect attendance, initially during a calendar quarter, and since the 2009 Agreement, during any rolling ninety-day period.

The Contracts with each of the Police Department's Bargaining Units provided similar bonus opportunities.

The Union estimates that elimination of the vacation bonus would save the City up to \$118,147.00 a year. The City concurs.

The City points-out that Firefighters in four of the jurisdictions it has designated as comparable (Berea; Brookpark; Middleburg Heights and Strongsville) do not offer a bonus for perfect attendance. Broadview Heights allows an employee to cash-out any unused holidays, if the employee takes less than seventy-two hours of sick leave per year; Independence offers employees a bonus of \$375.00 for each quarter in which they maintain perfect attendance. North Olmsted offers employees twenty-six hours of additional leave if they go six months without drawing upon sick leave. North Royalton provides employees with one bonus day for each quarter during which they are not absent from work. Parma Heights gives employees twelve-hours of

compensatory time for each quarter during which perfect attendance is maintained.

Of the five additional jurisdictions in the Union's array of comparable cities (Brooklyn; Cleveland Heights; Euclid; Garfield Heights; Lakewood) only Lakewood provides an attendance bonus - fifteen-hours for each quarter of perfect attendance.

The City acknowledges that all Police Department Bargaining Units receive credit or payment equal to 1.5 or 1.25 days for perfect attendance in a three months period.

At this juncture, halfway through 2011, the Fact-Finder believes that it makes good sense to continue to permit employees to earn the perfect attendance bonus, but defer payment of it for the remainder of the successor Contract because of the uncertainty of the City's revenue prospects. The concession, however, as in the 2009 Side Letter, should be made contingent upon the City's maintaining the present staffing level of the Fire Department.

Accordingly the Fact-Finder finds appropriate and recommends that Section 17.07 of Article 17, "Vacation Bonus" be amended to read as follows, and as so amended incorporated and carried forward into the successor Agreement:

Section 17.07 - Vacation Bonus: Any full-time employee who completes a ninety-day rolling period with perfect attendance, utilizing no sick leave days, shall be entitled to receive a credit of twelve-hours.

Section 17.08: The unused vacation bonus will be paid out within thirty (30) days of the close of the quarter in which it is accumulated. However, such payments will be suspended for the period commencing on July 1, 2011 and ending on June 30, 2012 so that no payments will be made to members pursuant to this Section. Members' accounts will be credited for perfect attendance during the period July 1, 2011 to June 30, 2012 if the member meets the qualifications of Section 17.07. Payment of the bonus entitlements accrued during the period July 1, 2011 through June 30, 2012 shall be paid not later than December 31, 2012. Should the City layoff any Bargaining Unit member or members, or should the City refuse to fill, or unreasonably delay the filling of any vacancy occasioned by the retirement, resignation, death or other termination of employment of any Bargaining Unit member, then the suspension of payment of unused vacation bonus hours will be abrogated instantly and payment of all unused vacation bonus hours shall be made not later than thirty-days after the happening of any such event. For purposes of the anti-layoff and filling of vacancy provisions, 'Bargaining Unit member' means a Bargaining Unit member whose hire date was on or before June 18, 2010."

SICK LEAVE SELLBACK:

As with the "Vacation Bonus" provision, the City proposes to eliminate the sick leave conversion option.

Between thirty and thirty-five members have elected to convert their accrued but unused sick leave hours each year. The Union estimates that the withdrawal of the sick leave conversion privilege would save the City about \$43,000.00 a year. The City concurs.

However, the privilege of converting accumulated sick leave to cash has been available since the 1998 Contract, but was suspended pursuant to the 2009 Side Letter Agreement.

The Contracts with the Police Department's Bargaining Units offer the opportunity to convert eighty-hours of sick leave for forty-hours of pay. However, the Police Department Units also agreed to suspend sick leave conversion payments during calendar year 2010, while allowing continued accrual.⁷

Looking at the parties' selection of comparable communities, none of the Employer's selected communities permit annual sell-back of unused sick leave. All except Middleburg Heights (right to convert not available until bank reaches 1,440 hours) and Berea (conversion of unused sick leave not available until twentieth year) do not permit employees to sellback their unused and accrued sick leave until retirement.

⁷The Steelworkers and AFSCME Contracts which expire on April 1, 2012 allow a reopener for wages, longevity and uniforms as of April 1, 2011. As of January 1, 2011 among other provisions, full-time employees were given the option of converting up to eighty-hours of sick leave earned in the year at the rate of two-hours of sick leave for one-hour of pay provided a balance of one hundred twenty hours remains in their banks.

Given Parma's present economic circumstances, the Fact-Finder believes that the Firefighters' right to cash-out their unused accrued sick leave, should be suspended for the period commencing on July 1, 2011 and during the term of the successor Agreement, as has been recommended with respect to the "vacation bonus", and on the same condition.

The Fact-Finder therefore finds appropriate and recommends that Section 17.09 be amended as follows, and, as so amended, incorporated and carried forward into the successor Agreement:

Section 17:09: Any employee who has accrued not less than six hundred (600) hours of sick leave shall have the option of converting such accumulated sick leave into pay at the rate of two (2) accumulated sick leave hours for one (1) hour of pay. The maximum pay available shall be forty-eight (48) hours per calendar year. The conversion applies only to sick leave earned within the calendar year and must be requested in writing by the employee on or before November 15th. The payment shall be made in the first pay period in December.

"The foregoing sick leave conversion privilege will be suspended for the period commencing on July 1, 2011 and during the term of this Agreement. Members may request payment for all eligible hours accrued during this period on or before December 1, 2012, and payment shall be made not later than December 31, 2012.

"Should the City layoff any Bargaining Unit member or members, or should the City refuse to fill, or unreasonably delay filling any vacancy occasioned by the retirement, resignation, death or other termination of employment of any Bargaining Unit member, then the suspension of payment of unused sick leave hours will be abrogated instantly and payment shall be made not later than thirty-days after the

happening of any such event. For purposes of the anti-layoff and filling of vacancies provisions 'Bargaining Unit member' means a Bargaining Unit member whose hire date was on or before June 18, 2010."

USE OF ACCUMULATED SICK LEAVE AS TWO PERSONAL HEALTH DAYS:

The Union seeks to allow employees to take up to two of their accumulated sick leave days as "Personal Health Days", that is, without regard to any personal or family member health related problem. However, the taking of one or both days would not affect eligibility for the "sick leave incentive vacation bonus".

The City opposes any such conversion privilege.

The City is concerned that encouraging employees to take-off two days whenever they wish would increase overtime costs. It points-out that none of its listed comparable cities permits Firefighters to utilize any of their sick leave allotments as "personal days".

The Union, for its part, seeks equal treatment with the Police Department and other Bargaining Units which do allow Patrolmen, Sergeants, Lieutenants, Captains and other employees to take-off two personal days and charge the absences against accumulated sick leave.

The Fact-Finder observes that there is no necessary equilibration between the various types of time-off

negotiated on behalf of Police Department Bargaining Units and that won by the Fire Department Bargaining Unit.

As to the Union's request that employees taking-off personal days not be disqualified for the perfect attendance bonus, the Fact-Finder concludes that such an allowance would be inconsistent with the basic purpose of the attendance bonus which is to incentivise employees not take time-off.

On balance, the Fact-Finder believes that it is possible to modify the formulation of the Union's proposed benefit so as to avoid triggering overtime costs and remain consistent with the attendance incentive.

The Fact-Finder therefore finds appropriate and recommends that Article 17 be amended by the addition of a New Section 17.11 to read as follows, and as so amended, carried forward and incorporated into the successor Agreement:

Section 17:11: Employees with accumulated sick leave may, upon not less than forty-eight (48) hours notice to the Fire Chief and with his approval, take-off two (2) Health Days per calendar year to be used at the discretion of the employee and charged against the employee's accumulated sick leave entitlements. Health days may be used in whole or partial increments. No approval shall be granted by the Fire Chief if the requested health day time-off would result in an overtime cost to the City. Use of health days shall be counted as absences for purposes of the Sick Leave Bonus in Article 17.07."

II. Article 20 - "Holidays"

A. The April 1, 2005 Contract:

The expired Contract provided in Sections 20.06 and 20.08:

Section 20.06: All employees working on the following Holidays shall be compensated at time and one-half for all hours worked on said Holiday, unless the employee is not regularly scheduled to work the day but works the hours on overtime, when such payment shall be double time.

The undated "Side Letter" or "Concession Agreement" modified Section 20.06 as follows:

Article 20.06: Holiday Premium Pay will be altered to the extent that commencing in July, 2009, the Holiday Premium Pay of time and one-half shall not be earned by any member in 2009. Further, members not regularly scheduled to work the day but working the hours on overtime shall be paid time and one-half instead of double time. Notwithstanding this Paragraph, members identified as in 'pensionable years' shall be compensated according to 20.06.

Section 20.08: Employees who have completed eighteen (18) years or more of service in the Parma Fire Department shall receive one (1) personal day each year, employees who have completed twenty-five (25) years or more of service in the Parma Fire Department shall receive two (2) personal days, to be taken during the calendar year. Employees eligible for personal days must use them during the calendar year or incur loss of same."

B. The City's Proposal:

The City seeks to eliminate the additional personal day granted to employees with eighteen years of service and the two additional personal days which employees of twenty-five years are eligible.

C. The Union's Proposal:

The Union rejects the City's proposal and instead, seeks to increase the number of holidays for which an employee receives premium pay for working, from four to six. It also seeks to provide an additional personal leave day for employees who have fifteen years seniority, two additional personal days for employees who completed eighteen years of service and three additional days for employees who have twenty-five years seniority.

The City spurns these proposals.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Number of Personal Days:

In support of its proposal to delete Section 20.08 in its entirety so as to eliminate the extra personal days granted to employees who have completed at least eighteen years of service in the Department, the City argues that employees with this much seniority work only some eight-five (85) days per year and that granting them additional time-off simply increases the City's staffing costs. In this connection the City takes the opportunity to criticize the pension system's DROP Program which allows employees with twenty-five years of seniority who have attained age forty-eight to have their projected pension payments placed

in a deferred compensation account for up to eight years. The City estimates that Firefighters who retire after the eight year period will be entitled to receive some \$400,000.00.

As the Union points-out, the DROP Program is unrelated to the Firefighters' Holiday benefits.

As of the time of the Fact-Finding hearing, there were twenty-seven Firefighters with twenty-five or more years of service who receive two-days additional time-off during the year, and eighteen others who have between eighteen and twenty-five years of service who are entitled to one additional personal day-off.

The Union concedes that elimination of these personal days-off would result in a \$53,000.00 cost saving to the City,⁸ but contends that elimination of the benefit is not warranted on any basis.

The concessions sought by the City would fall only upon the most senior employees in the Bargaining Unit. The Fact-Finder believes it more appropriate that, to the extent feasible, whatever concessions are required to be made equitably affect all members of the Bargaining Unit, not a targeted portion.

⁸ The less senior members would lose annually \$735.00, the more senior members would lose \$1471.00.

The Fact-Finder does not find the City's proposal to be appropriate, and does not recommend it.

The Fact-Finder next considers the Union's demand to tack-on an extra day to the two existing allotments, and extend the additional day privilege to Firefighters who have completed fifteen years of service.

Parma Firefighters currently receive six tours of holiday time (144) hours.

Reviewing the holiday time-off allowed Firefighters in other jurisdictions said to be comparable to Parma, the Fact-Finder notes that of the City's selected nine, three offer more - Berea and Broadview Heights (ten tours), North Olmsted (seven tours), but (three tours to be taken without pay in 2010 and 2011). Three - Brook Park, Parma Heights and Strongsville - allow the same six tours off as Parma. The remaining three - North Royalton, Middleburg Heights and Independence - allow only five tours off-duty.

None of the nine cities proposed by the Employer as comparable to Parma offer additional holiday time-off following eighteen years of service nor, for that matter, do any of the Parma Police Department Bargaining Units have such a privilege.

Of the Union's proffered ten, five offer more than the six tours presently given in Parma - Brooklyn (12); North

Royalton (9); Euclid (9); Garfield Heights (8) and Lakewood (7). Four offer the same six tours - as Parma - (Brook Park; Parma Heights and Strongsville).

Middleburg Heights, in contrast, offers only five holiday tours.

The number of holiday tours-off available in Parma remains consistently in the middle of the groupings of comparables as it did five years ago when an Arbitrator declared that "comparison of holiday time-off for Parma Firefighters versus their compatriots in other communities shows that they approximate the average."

Accordingly, the Fact-Finder does not find appropriate and does not recommend any change in the number of personal days available to Firefighters, nor does the evidence considered in light of the City's present economic context justify the addition of personal days to senior employees as the Union contends.

The Fact-Finder is reluctant to utilize scarce resources to benefit this selected portion of the Bargaining Unit membership.

Consequently the Fact-Finder finds appropriate and recommends that Section 20.08 be carried forward without change and incorporated into the successor Contract.

Holiday Premium Pay:

The Fact-Finder comes finally to consider the Union's demand to modify Section 20.06 to add Independence Day and Labor Day to the four holidays on which Firefighters who are scheduled to work receive time and one-half their straight time rate - New Year's Day; Thanksgiving; Christmas Day and Easter Sunday.⁹ Here, at least all Firefighters are potentially eligible for the proposed benefit, if it is otherwise justifiable.

The Parma Police Department Units receive premium pay on the same four holidays as the Firefighters.

Looking at the holiday premium compensation offered in the parties' selection of comparable Departments, Euclid provides time and one-half for working on thirteen holidays; Broadview Heights and North Olmsted do so on ten holidays; Strongsville on six; Independence, Parma Heights,¹⁰ Cleveland Heights and Garfield Heights on five, Lakewood on four¹¹ Brooklyn on three and North Royalton on two.

⁹ Employees who are called-in to work on any of those days in which they are not regularly scheduled to work receive double time payment.

¹⁰ Parma Heights offers double time to those who work on Christmas.

¹¹ Lakewood pays double time to those who work on all four.

Raising the number of premium pay holidays from four to six places Parma in the middle of the list of ten comparable jurisdictions.

The two holidays for which the Union seeks time and one-half for those Firefighters scheduled to work are both traditional family get-together days, and it is appropriate that Firefighters who miss the activities receive extra compensation. All Firefighters have a chance to be scheduled on-duty on those holidays, and so receive the enhanced pay.

The City estimates that the Union's proposal would cost \$500.00 per Firefighter, or, assuming full-staffing, up to \$25,000.00 a year. The increased cost has been considered in light of the total recommended compensation package - including concessions, deferrals and increases - and is well within the City's financial capabilities. The Fact-Finder sees no reason, therefore, why the Union's demand should not be accepted.

Accordingly, the Fact Finder finds appropriate and recommends that Section 20.06 be amended as follows and, as so amended, carried forward and incorporated into the successor Contract:

Section 20.06: All employees working on the following Holidays shall be compensated at time and one-half for all hours worked on said Holidays, unless the employee is not

regularly scheduled to work the day but works the hours on overtime, and such payment shall be at double-time.

"New Year's Day
"Independence Day
"Labor Day

Thanksgiving Day
Christmas Day
East Sunday"

III. Article 21 - "Vacation " - Section 21.02(I):

A. The April 1, 2005 Contract:

The expired Contract provided in Article 21, Section 21.02(I) as follows:

"Section 21.02(I): Upon completion of twenty-five (25) years of service, and each five (5) years of service thereafter, an eligible employee shall receive one (1) additional tour of duty (24 hours) of vacation. Employees on a forty (40) hour work schedule shall receive an additional day (10 hours) of vacation in the same manner."

[The undated "Side Letter" or "Concession Agreement" modified Sections 21.02 and 21.03 for 2009 only as follows:

"Article 21.02: Vacations will be altered to the extent that members who work on the twenty-four (24) hour shift or tour of duty will be scheduled for two (2) tours of duty of their vacation leave in 2009. The scheduling of these days will be based on rank and seniority."

"Section 21.03: Vacations will be altered to the extent that members who work a forty (40) hour workweek will be scheduled to work three (3) ten (10) hour days of their vacation leave in 2009 at the regular hourly rate of pay. The scheduling of these days will be based on rank and seniority."]

B. The City's Proposal:

The City seeks to amend Section 21.02(I) so as to delete one vacation day for Firefighters with twenty-five years or more of service.

C. The Union's Proposal:

The Union seeks to maintain Article 21 without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City proposes to make a permanent adjustment in the vacation time allotted to the most senior Firefighters by capping maximum vacation time at five weeks when Firefighters have achieved at least eighteen years of service.

Adoption of the City's proposal would save between \$20,000.00 and \$23,000.00 a year.

The amount, however, would come exclusively at the expense of the twenty-seven members of the Bargaining Unit who have twenty-five or more years of service.

The Fact-Finder has previously expressed his opinion that it is preferable that economic concessions offered to the City be made, as far as practical, on a Bargaining Unit-wide basis, and not visited exclusively upon any particular group of members.

Moreover, while twenty-five year employees receive thirteen tours¹² and an additional tour at thirty and at thirty-five years, the amount does not appear excessive based upon review of comparable communities.

Of the nine selected by the City, North Royalton offers fifteen tours of vacation at twenty years of service; North Olmsted provides fifteen tours at twenty-one

¹² Forty-hour employees receive six weeks of vacation after twenty-two years of service with the Department.

years of service; Parma Heights provides fourteen tours at twenty-four years of service; Middleburg Heights provides thirteen tours at twenty years of service; Broadview Heights offers twelve and one-half tours at fifteen years of service. The remaining cities offer significantly less than Parma - Berea offers six weeks (12 tours) vacation after twenty-one years; Strongsville provides six weeks vacation after twenty years of service and Brook Park gives five weeks (10 tours) after seventeen years of service.

Looking at the additional communities cited by the Union as comparable, (1) Cleveland Heights grants twenty tours of vacation after eighteen years of service; (2) Brooklyn provides fifteen tours after twenty-five years of service; (3) Garfield Heights offers fourteen tours of vacation after twenty-five years; (4) Lakewood offers twelve and one-half tours after twenty-five years, and (5) Euclid grants twelve tours after twenty years of service.

The vacation time available to Parma's most senior Firefighters is not out of line with that available to their peers in other jurisdictions.¹³

¹³ The Union reports that Parma Firefighters work 2,153 hours a year compared to only an average of 2,142 hours worked by Firefighters in comparable cities.

As to "internal comparables" the Union cites the fact that all the Police Department Units receive six weeks of vacation after twenty-two years of service.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 21, Section 21.02(I) be carried forward without change and incorporated into the successor Agreement.

IV. Article 22 - "Longevity" Sections 22.01 & 22.02:

A. The April 1, 2005 Contract:

Article 22, Sections 22.01 and 22.02 of the expired Contract provided:

"Section 22.01: All Employees shall receive longevity payments after the completion of the required length of continuous full-time service pursuant to the following schedule:

After five (5) years	\$ 300.00 per year
After ten (10) years	\$ 600.00 per year
After fifteen (15) years	\$ 900.00 per year
After twenty (20) years	\$1200.00 per year
After twenty-five (25) years	\$1500.00 per year
After thirty (30) years	\$1800.00 per year

Section 22.02: Longevity payments shall be made in equal bimonthly payments."

B. The City's Proposal:

The City wishes to suspend accrual and payment of longevity compensation in 2011.

C. The Union's Proposal:

The Union rejects the City's proposal and instead, asks to increase longevity payments from sixty (\$60.00) dollars per year to one hundred (\$100.00) dollars per year up to twenty-five hundred (\$2500.00) dollars payable after twenty-five years of service.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The present annual cost to the City of Firefighter longevity payments is \$87,000.00. The payments are classified by length of service as follows:

YEARS:	PERSONNEL:	AMOUNT:	TOTAL :
5	7	\$ 300.00	\$ 2100.00
10	24	\$ 600.00	\$14400.00
15	21	\$ 900.00	\$18900.00
20	11	\$1200.00	\$13200.00
25	22	\$1500.00	\$33000.00
30	3	\$1800.00	\$ 5400.00

The present complement of Firefighters is heavily skewed towards the upper end of the seniority scale with approximately one-quarter of the Bargaining Unit having at least twenty-five years of service. As these Firefighters retire, the cost to the City of longevity will decrease.

Because the City has not made the case for additional concessions in order to balance its budget, the Fact-Finder is not persuaded that it is necessary for longevity payments to be suspended.¹⁴

Moreover, the longevity payments so scheduled are lower than those offered by the Union's designated comparable communities.

Only the Parma Heights longevity schedule provides lesser amounts. The initial five-year step pays just

¹⁴ The Fact-Finder observes that the City has not claimed that the Police Units have been asked to suspend their longevity payments.

\$250.00, and subsequent steps increase by an additional \$250.00 to a maximum of \$1500.00. Brooklyn mirrors the Parma schedule. Each of the other communities provides a more lucrative longevity schedule - the Middleburg Heights schedule starts at \$375.00 and increases by \$75.00 each year thereafter; Garfield Heights pays \$1,925.00 after five years, and the amount escalates to a maximum of \$2,525.00 after twenty years; Lakewood and Strongsville start with \$500.00 after five years and add \$100.00 every year thereafter, Brook Park's five year longevity bonus is \$560.00 and the amount increases to \$3,410.00 after thirty years.¹⁵

These comparative data strongly support the Union's request to increase the annual stipend.

The City, this time, calls attention to internal comparisons, and points-out that the Police Department Units receive lesser longevity supplements after the initial five years step which offers \$350.00, but increases by only \$250.00 every five years thereafter (not \$300.00) to a maximum of \$1,600.00 after thirty years.

¹⁵ Euclid calculates its longevity schedule as percentages of the base wage rate, beginning at 3.50% after five years, and ending at 8% after twenty years. Depending on the current Euclid wage scale, the dollar amounts may be more or less than those offered by Parma.

In consideration of the City's uncertain financial prospects, the Fact-Finder finds appropriate and recommends the annual longevity supplement be increased from \$60.00 to \$80.00 and capped at \$2,000.00 after twenty-five years of service.

The additional cost to the City will be less than \$30,000.00

However, taking into account the Union's "full employment" priority, the Fact-Finder will recommend that the \$20.00 increment be suspended during the life of the Contract provided that no Firefighters are laid-off and all vacancies caused by retirements, resignations or other forms of employment termination are promptly filled through the recruitment and appointment procedure during the period of the Contract, and should such layoff or layoffs occur, or should vacancies not be promptly filled, such \$20.00 increment would come into retroactive effect as of January 1, 2011.

Taking these considerations into account, the Fact-Finder finds appropriate and recommends that Article 22, Sections 22.01 and 22.02 - "Longevity" be amended to read as follows and as so amended carried forward and incorporated into the successor Contract:

Section 22.01: All Employees shall receive longevity payments after the completion of the required length of continuous full-time service pursuant to the following schedule:

After five (5) years	\$ 400.00 per year
After ten (10) years	\$ 800.00 per year
After fifteen (15) years	\$1200.00 per year
After twenty (20) years	\$1600.00 per year
After twenty-five (25) years	\$2000.00 per year

Section 22.02: Longevity payments shall be made in equal bimonthly payments. However, the longevity payments set forth in Article 22, Section 22.01 of the 2005 Contract shall remain in effect during the term of this Contract and the schedule set forth in Section 22.01 hereof shall be suspended and without operative effect during the term of this Contract provided that should the City layoff any Bargaining Unit member or members, or should the City refuse to fill or unreasonably delay filling any vacancy occasioned by the retirement, resignation, death or other termination of employment of any Bargaining Unit member, then the suspension of the foregoing longevity schedule will be abrogated instantly and such schedule shall become retroactively effective. For purposes of the anti-layoff and filling of vacancies provisions, 'Bargaining Unit member' means a Bargaining Unit member whose hire date was on or before June 18, 2010."

V. Article 23 - "Uniform Maintenance Allowance:"

A. The April 1, 2005 Contract:

The expired Contract provides for a uniform maintenance allowance in Article 23, Section 23.02 as follows:

"Section 23.02: All employees, after two (2) years of employment, shall receive an annual cash payment in the amount of nine hundred fifty dollars (\$950.00) for uniform and clothing maintenance. This payment shall be made no later than May 31st of each year. This amount shall be one thousand fifty dollars (\$1,050.00) and one thousand one hundred fifty dollars (\$1,150.00) in 2006 and 2007, respectively."

B. The City's Proposal:

The City demands to suspend the 2011 uniform allowance payments.

C. The Union's Proposal:

The Union asks to increase the Firefighters' annual uniform allowance from \$1,150.00 to \$1,400.00 effective as of January 1, 2011.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Here again the parties march in opposite directions. While the City wants to suspend the Uniform Allowance payments for 2011, the Union proposes to increase the allowance to \$1400.00.

The suspension of the uniform allowance as proposed by the City would save \$104,000.00 per year.

The additional amount sought by the Union would cost an additional \$25,000.00 a year.

In a prior 2005 Arbitration Award, the Firefighter's Uniform Allowance was ordered to be gradually increased to equal that then paid to the Police Officers. Based upon that Arbitrator's survey of other jurisdictions, he concluded that "the uniform allowance should be the same for Firefighters and Officers."

At present the Patrolmen's Unit Uniform Allowance is \$1400.00 per year, and the Supervisor's Unit receives \$1600.00 annually. According to a local uniform supplier, a Firefighter's uniform set costs \$82.50 more than that of a Patrol Officer.

Of course, Firefighters do not buy complete outfits every year. Neither do the Police Officers for that matter. Nonetheless, a clothing allowance provides a means of enhancing employees compensation without incurring "roll-up" costs. (i.e., pension, Medicare and Workers' Compensation).

Of the City's ten comparable communities, three offer a greater uniform allowance - Cleveland Heights

(\$1,400.00); Parma Heights (\$1,500.00) and Euclid (\$1,900.00).

The increase sought by the Union is modest, and, considering the totality of the Fact-Finder's recommendations, within the City's financial ability to pay.

The Fact-Finder therefore finds appropriate and recommends that Article 23, Section 23.02 be amended as follows and as so amended carried forward and incorporated into the successor Agreement:

Section 23.02: All employees, after two (2) years of employment, shall receive an annual cash payment in the amount of one thousand, four hundred (\$1,400.00) dollars for uniform and clothing maintenance. This payment shall be made not later than August 1, 2011, and not later than May 31st of each year thereafter."

VI. Article 24 - "Insurance" (Appendix "D")

A. The April 1, 2005 Contract:

The expired Contract continued the following dispute resolution provision for dealing with disagreements over the provisions of the health insurance program:

"Insurance Committee Rules (Appendix D):

"(Paragraph 1) - At the conclusion of the bargaining unit's current collective bargaining cycle, or sooner if all Employer bargaining units agree, an employee Committee of up to eighteen (18) bargaining unit representatives, who must be participants in one of the Employer's current health care plans and who have been selected from the following employee groups: Corrections, Dispatch, Clerical/Technical, Service, Service Supervisors, Fire, Police, Police Supervisors, and non-bargaining unit employees. The Employer shall provide advisor(s) or facilitators to assist the employee Committee regarding health care issues.

"(Paragraph 2) - The Committee shall be required to review the Employer's current health care plans, including it['s] plans for medical, dental and vision benefits, and adopt new or revised plan or plans that are competitive in the health care market and that will achieve the goals of promoting cost containment within the plan and minimizing premium contributions by employees.

...

"(Paragraph 4) - Within six (6) months following its first meeting, the Committee shall vote upon proposed new or revised health care plan or plans that meet the goals set forth above. If a majority of all members of the Committee approve such proposed new or revised plan or plans, then such plan or plans shall become the Employer's plan or plans, and the Employer shall be authorized and directed to implement the plan or plans.

"(Paragraph 5) - If the Committee, however, fails within six (6) months after first meeting to approve a new plan or plans, then the Employer shall be authorized to submit the

matter to binding arbitration with an arbitrator selected by Grievance Procedure. The submittal shall instruct the arbitrator to select from health care plans submitted and order the Employer to implement such new or revised health care plan or plans for all Employer employees that meet the goals set forth above.

"(Paragraph 6) - The Committee shall meet thereafter when called upon by the Employer to consider further and additional revisions to the Employer's plan or plans in order to meet the goals set forth above. When meeting in such future years, the Committee and the Employer shall continue to follow the procedures set forth above for approving appropriate additional revisions to the Employer's health care plan or plans.

"(Paragraph 7) - In no event shall the Employer implement a new or revised health care plan or plans, pursuant to either Committee approval or arbitration order, earlier than January 1, 2007. When the Employer implements a new or revised health care plan or plans, pursuant to Committee approval or as a result of an arbitrator's order, if they are inconsistent or in conflict with the new or revised plan or plans approved or ordered, the plan or plans will no longer be binding upon the Employer.

"(Paragraph 8) - In the event that the Employer and other bargaining units fail to agree to the establishment of the Employee Health Care Committee set forth above, the Employer and the Union shall meet to negotiate new health care provisions. Should the Employer and the Union not come to a mutual agreement, the issue of health care coverage shall be submitted to binding conciliation under O.R.C. 4117."

B. The City's Proposal:

The City asks to abolish binding arbitration of health care plan disputes by deleting Paragraphs 5, 7 and 8 from the "Insurance Committee Rules" contained in Appendix "D".

C. The Union's Proposal:

The Union wishes to retain Appendix "D" without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The present health care program created by the expired April 1, 2005 Contract required employees to pay 10% of the monthly premium for health insurance up to \$90.00 for family coverage and \$50.00 for individual coverage, subject to a "me too" provision if any of the other groups of employees were provided with a more favorable plan. Co-payments for drugs ranged from \$10.00 to \$30.00 depending upon whether the prescription called for a generic, name brand or non-formulary medication.

Section 24.06 authorized the establishment of an Insurance Committee composed of representatives from each of the City's Bargaining Units and a "minimum of one (1) representative of Employer". The Committee was charged with "exploring cost saving measures and making recommendations to each bargaining unit and to the City.

Appendix "D" to the Contract contained "Insurance Committee Rules" which specifically tasked the Committee with reviewing the "current health care plans and adopting plans that "are competitive in the health care market and that will achieve the goals of promoting cost containment

within the plan and minimizing premium contributions by employees." The recommendations of the Committee, approved by majority vote, become "the Employer's plan" and the City is directed to implement the plan.

If the Committee were to fail within six months after its first meeting to approve a new plan or plans, the City is directed to submit the potential plans to binding arbitration with an arbitrator selected through the grievance procedure. The arbitrator is mandated to choose from among the health care plans submitted and "order the Employer to implement such new or revised health care plan or plans" that meet the stated goals.

Thereafter, the Committee is instructed to meet when called upon by the Employer to consider revisions to the then current plan in order to meet the Contractual objectives. Failure to agree upon a revision results in the issue being resolved through the arbitration process.

The arbitration process was a result of a 2005 Fact-Finding Recommendation which, in turn, was modeled after the Contractual formula which was then followed by the City of North Olmsted, but which has since been repealed.

The Committee and the City initially adopted a "100%" plan - no co-insurance or deductibles - requiring employee

monthly contributions of \$155.54 for enrollment in the family plan and \$60.64 for single enrollment.

In 2011, however, the Committee and the Employer agreed to offer a less costly "90/10" plan requiring a 10% employee co-payment, but reducing employee monthly premium contributions while increasing certain out-of-pocket costs.

The City's budgeted insurance costs for 2011, however, increased by approximately \$200,000.00.

The City does not propose any immediate increase in employees' premium payments, deductibles or co-insurance obligations. Rather it is focused upon eliminating from the Contract the requirement that insurance plan changes which the City wishes to make, but are not approved by the Committee, go to binding arbitration.

While the City would eliminate binding arbitration, it does not offer any substitute form of joint determination.

The Union has no substantive counter proposal but, instead, proposes to retain the existing Contract provisions including the Appendix "D".

According to the State Employment Relations Board Research and Training Section's 2010 Annual Report on the Cost of Health Insurance in Ohio's Public Sector, the average monthly premium amounts paid by employees in cities with 25,000 to 100,000 population are \$95.00 for family

coverage and \$34.00 for single coverage, representing approximately 8% of the total premium charge. The amounts do not vary significantly when the survey is limited to all cities in the Cleveland region.

The Union points-out that Firefighters currently pay, substantially more than these averages.

As apparent from its original proposed changes to Article 24, the City would limit its responsibility to pay the health insurance premium to the amount it paid in 2010, and increase to 20% the employee's share of premium charges. It would increase the deductibles for prescriptions.

The cost of health insurance is a concern of both the City and the Union, and both parties have an interest in controlling costs and equitably distributing them. This is an economic issue which perhaps is second in importance only to wages. The Fact-Finder sees no justification for consigning the health insurance program to the City's unilateral determination.

The Committee's mission is to seek out and recommend health insurance changes designed both to maximize cost savings, and minimize employee contributions. In the event impasse is reached, the arbitration process is initiated. Arbitrators are instructed to choose among the plans

submitted, the one that best meets both those goals. The process is similar to the conciliation model available when impasse persists in negotiations over other terms and conditions of employment.

Accordingly, the Fact-Finder does not recommend any changes in Article 24, Appendix "D" and the Memorandum of Understanding which relate to this Article. Instead, he finds appropriate and recommends that Article 24, Appendix "D" and the related Memorandum of Understanding be carried forward without change and incorporated into the successor Agreement.

VII. Article 25 - "Salary Schedule":

A. The April 1, 2005 Contract:

Section 25.03 of the expired Contract provided a wage schedule which, as modified by the June 12, 2009 "Tentative Agreement", so as to reflect a 2% wage increase for calendar year 2008, a one hundred (\$100.00) dollar increase across-the-board supplement and a two hundred (\$200.00) dollar signing bonus, is set forth below:

Section 25.03: Effective January 1, 2008, all employees shall be paid according to the following:

<u>Rank:</u>	<u>Rate:</u>
Firefighter 1 st yr.	\$45,975.00
Firefighter 2 nd yr.	\$49,010.00
Firefighter 3 rd yr.	\$53,891.00
Firefighter 4 th yr.	\$56,893.00
Firefighter 5 th yr. +	\$59,935.00
Lieutenant	\$67,182.00
Inspector Fire Prevention	\$68,682.00
Captain	\$79,467.00"

"Employees shall receive a two hundred (\$200.00) dollar signing bonus upon the execution of this Agreement."

Section 25.09: Employees who are required to carry a City provided pager, a City provided cell phone, or an approved employee owned cell phone ... while on off-duty status shall receive additional compensation in the amount of twenty (\$20.00) dollars per week."

B. The City's Proposal:

The City proposes a wage freeze for 2010 and 2011, and the elimination of the \$200.00 signing bonus.

C. The Union's Proposal:

The Union also would forego a wage increase in 2010, but demand a 2% wage increase retroactively effective to January 1, 2011 and a 3% increase to become effective as of January 1, 2012. It would retain the signing bonus agreed to upon execution of the 2005 Contract.

The Union proposes to add a provision which would allow the Training Captain to request a lateral move to shift assignment as Line Captain when a vacancy occurs in that position.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City estimates that the Union's demand for an immediate 2% wage increase would cost an additional \$390,000.00, an amount which the City asserts it cannot afford. Its concern is amplified because of the pressure that would be exerted upon it to grant similar increases to other bargaining units and non-bargaining unit employees. City-wide, a 2% increase would cost the City an additional \$800,000.00 a year.

The City notes that no City employee received a wage increase in 2010 and that consequently, the Union's concession for that year is not as altruistic as it first might appear. In 2010, not only were there no increases, but, so the City claims, a majority of its employees made

concessions through taking extended time-off without pay and relinquishing stipend payments amounting in total to approximately \$1,000,000.00.

The members of the AFSCME Bargaining Unit and non-Union employees had taken sixteen unpaid furlough days in 2010. They will take twelve in 2011. So also, the members of the Steelworkers Bargaining Unit have agreed to reduce their work hours for 2011.

The Union, on the other hand, seeks wage increases in order to achieve pay "parity" with Parma Police Officers and Firefighters in other Departments.

The Union, using 2007 statistics calculates the Fire Department's base salary, excluding supplements, to be \$58,662.00 and that of the Patrol Officers to be \$61,303.00.

The City, conversely, claims that the average annual salary, including longevity and uniform supplements, but excluding overtime, of its Patrol Officers with at least five years seniority is \$66,221.00, while the average salary for similarly situated Firefighters is greater - \$67,921.00 per year.

The Union also attempts to measure the differential between base salaries of Police Officers and Firefighters in comparable jurisdictions to prove that the percentage

"spread" between Parma's "disfavored" Firefighters and the "favored" Police is larger than in any other of these jurisdictions. The wage differentials range from a minus 2.6% to plus 2.1%, while Parma Firefighters' base wage is minus 4.5% below that of Parma Police Officers.

The "Firefighters versus Police" data is unimpressive for several reasons.

Police Officers are members of a distinct occupation, and the Fact-Finder has not been given evidence that there is an established history of "compensation parity" between the two Departments.

Next, the Union's evidence of the alleged disparity in the wages of Parma's Firefighters and its Police Officers does not take into account total compensation including available allowances and supplements which may constitute material components of the compensation package and which may create even a greater variance. Finally, the ratios of compensation between Police and Firefighters in other cities disproves any assertion that wage parity between two forces is the norm.

More persuasive is the Union's assertion that Parma's Firefighter compensation is less than that offered in eight of the ten cities it deems comparable.

Thus, the 2009-2010 base wages of the ten is reported as follows: Brook Park (\$67,394.00); Brooklyn (\$64,945.00); Middleburg Heights (\$66,817.00); North Royalton (\$62,619.00); Parma Heights (\$59,547.00); Strongsville (\$63,423.00); Cleveland Heights (\$61,406.00(2008)); Garfield Heights (\$59,511.00); Lakewood (\$61,031.00) and Euclid (\$53,916.00 (2008)).

Only the City provided the Fact-Finder with an "apples to apples" comparison of the total compensation of Firefighters in the nine Departments it deems comparable by including not only their base salaries, but also their longevity increments, uniform allowances, EMS and Paramedic supplements and other enhancements for which their Firefighters are eligible.

But this compensation survey calculated at the five year, ten year, fifteen year and twenty year averages reinforces the Union's case. The compensation paid to Parma Firefighters in 2010 was consistently below that paid by eight of the nine cities, by 3.34% at the five year level and 4.6% at the twenty year seniority level. The sole exception was North Olmsted.

Several of these cities cited by the parties provided wage increases in 2009 and 2010. Brooklyn (3.25% (2009)); Brook Park (3.0% (2009) and 0.0% (2010)); Garfield Heights

(2.4% (2009)); Lakewood 2.5% (2009)); Middleburg Heights (3.0% (2009) and 3.0% (2010)); Strongsville (3.25% (2009) and 1.5% (2010)); North Royalton (0.0% (2010)); Berea (2.25% (2010)); Broadview Heights (1.5% (2010)); Brook Park (0.0% (2010)); Independence (3.5% (2010) (negotiated in 2007-2008)) and North Olmsted (0.0% (2010)).

However, the Fact-Finder must consider the City's "ability to pay" the Union's proposed wage increases.

The 2011 General Fund receipts and expenditures are unfavorably projected by the City. Property tax collections are expected to be "flat", an assumption which is not challenged by the Union. The City has also predicted that its income tax collections will also be flat. 2010's revenues exceeded those for 2009, and since the area's economic outlook continues modestly positive, the City's estimate appears unduly pessimistic. The City also forecasts a 50% reduction in its Local Government Fund receipts of \$930,500.00, and the elimination of its Estate Tax receipts of \$1,250,000.00. However, it appears likely that the City's Local Government Fund revenues will be cut by 12.5% in 2011 and by 37.5% in 2012. It does not appear likely that any Estate Tax revenues will be lost in either 2011 or 2012.

On the expenditure side of the ledger, the City's estimate of an 8% health care cost increase seems excessive in light of the addition of a 10% co-payment requirement.

These "assumptions", of course, may miss the mark badly and reality might be far more adverse than expected.

As the Fact-Finder observed in his "Preface" to this Report, the 2010 General Fund balance amounted to \$2,969,000.00, equal to about 7% of the City's 2010 total expenditures and transfers.

Allowing for a prudent minimum carry forward of 5% of such outlays, as recommended by bond rating agencies, there would be available a total of approximately \$858,340.00, if needed, to make-up for any revenue shortfall or unanticipated cost increases.

A \$200.00 signing bonus would cost the City \$20,000.00, and is well within the City's resources. Beyond that the City's capacity to offer any wage increase is speculative, and in an uncertain and precarious economic environment, restraint is called for.

The Fact-Finder will recommend a one percent base wage increase, effective as of January 1, 2011, but suspend payment of the increment for the duration of the Contract, provided that the City not layoff any Firefighters or refuse to fill, or unreasonably delay filling, any

vacancies in the Bargaining Unit created by retirements, resignations or other circumstances. Should such layoffs or such unfilled vacancies occur, then the one percent increment shall become immediately payable with retroactive effect.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 25, Section 25.03 be amended as follows, and as so amended, carried forward and incorporated into the successor Agreement:

Section 25.03: Effective January 1, 2011, all employees shall be paid a one percent increase in their base wage rate as follows:

<u>Rank:</u>	<u>Rate:</u>
Firefighter 1 st yr.	\$46,435.00
Firefighter 2 nd yr.	\$49,500.00
Firefighter 3 rd yr.	\$54,430.00
Firefighter 4 th yr.	\$57,462.00
Firefighter 5 th yr. +	\$60,534.00
Lieutenant	\$67,854.00
Inspector Fire Prevention	\$69,369.00
Captain	\$80,262.00"

"Such one percent wage increases as reflected in the foregoing schedule shall be suspended and not paid for the duration of this Contract, provided that should the Employer layoff any member or members of the Bargaining Unit or should the Employer upon the retirement, resignation, removal, death, or other termination of employment of any Bargaining Unit member refuse to fill the vacancy or unreasonably delay doing so, then the foregoing base wage schedule shall become retroactively effective to January 1, 2011, and the one percent increment shall be paid to all employees forthwith. For purposes of the anti-layoff and filling of vacancies provisions, 'Bargaining Unit member' means a Bargaining Unit member whose hire date is on or before June 18, 2010.

"Employees shall receive a two hundred (\$200.00) dollar signing bonus upon the execution of this Agreement."

The Union also seeks to permit the Training Captain to request a lateral move to shift assignment as a Line Captain upon a vacancy in a Line Captain position.

None of the comparable communities cited by the parties have Contractual provisions allowing a Training Captain to move to a vacant Line Captain position.

The parties failed to provide sufficient evidence on this issue to allow the Fact-Finder to make an informed judgment. Accordingly, the Fact-Finder does not find appropriate and does not recommend the addition of a provision to the Contract authorizing a Training Captain to transfer into a Line Captain position vacancy, and the subsequent posting for bid of the Training Captain position.

VIII. Article 26 - Workweek, Overtime,
Compensatory Time - New Section:

A. The 2009 Contract:

The parties entered into a "Memorandum of Understanding" ("MOU") which incorporated the terms of a settlement reached by the parties in litigation entitled Kashi vs. City of Parma, respecting allowance of the use of at least twenty-four (24) hours of accrued compensatory time per calendar day by City Firefighters, so long as such use did not unduly disrupt the operations of the City as set forth in the Fair Labor Standards Act (F.L.S.A.) including the applicable regulations and governing case law. The 2009 Agreement provided:

"11. Letter of Understanding: City will execute a letter of understanding to the Union confirming that the terms of the Settlement Agreement and Memorandum of Understanding executed by the parties in Kashi, et al vs. City of Parma shall be extended through December 31, 2009, with the MOU's dispute resolution mechanisms available at the end of this period if necessary."

The subsequent 2009 "Side Letter" or "Concession Agreement" amended Article 26 to provide:

"Article 26: Compensatory Time. Notwithstanding the terms and provisions contained in the settlement agreement of the lawsuit captioned Kashi et al vs. City of Parma that allows the use of at least twenty-four (24) hours of accrued compensatory time per calendar day, the members shall not use any compensatory time for the remainder of 2009. The Memorandum of Understanding referenced in the above mentioned settlement agreement will be extended up to and through June 30, 2010."

B. The City's Proposal:

The City seeks to maintain the MOU as an attachment to the Collective Bargaining Agreement.

C. The Union's Proposal:

The Union wants to incorporate the terms of the MOU into the Contract so as to avoid the necessity of annually renegotiating its extension.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Kashi litigation settlement agreement directed that its terms be incorporated into the parties Collective Bargaining Agreement through a separate Memorandum of Understanding.

Thus, when the Memorandum was set to expire on June 30, 2009, the parties agreed to extend it.

The Union proposes that the terms now be incorporated into the Collective Bargaining Agreement itself so that the parties no longer annually renegotiate the extension of the Memorandum of Understanding.

The Fact-Finder does not understand that the City has any objection to the terms of the Memorandum of Understanding, and finds that the Union's proposal to incorporate the terms as a separate provision of the

Collective Bargaining Agreement itself to avoid annual renegotiation of its extension, makes good sense.

Accordingly, the Fact-Finder finds appropriate and recommends that a new Section 26.09 containing the terms of the Memorandum of Understanding be added to Article 26 of the parties' Collective Bargaining Agreement, and carried forward and incorporated into the successor Agreement.

IX. Article 27- "Educational Occupational Wage Supplements" Article 27, Sections 27.01 - 27.05:

A. The April 1, 2005 Contract:

Article 27 of the expired April 1, 2005 Contract provided in pertinent part:

"Section 27.01: All state-certified Fire Safety Inspectors who are assigned duty as Fire Safety Inspectors shall receive an annual payment of two hundred dollars (\$200.00) per year.

"Section 27.02: All state-certified Emergency Medical Technician-Ambulance (EMT-B) card carriers shall receive an additional four hundred dollars (\$400.00) per year.

"Section 27.03: All state-certified Emergency Medical Technician-Paramedic (EMT-P) card carriers shall receive an additional five hundred dollars (\$500.00) per year.

"Section 27.04: State-certified Emergency Medical Technicians shall be entitled to receive the above stated additional payments under only one of the EMT categories at the Employee's highest level of certification.

Section 27.05: Employees who are assigned to ambulance duty shall, in addition to their regular pay, receive two dollars (\$2.00) for each hour so worked."

B. The City's Proposal:

The City asks that the Firefighter's wage supplement for ambulance duty granted by Section 27.05 be reduced from \$2.00 per hour to \$1.00 per hour.

C. The Union's Proposal:

The Union seeks to maintain the ambulance duty supplement at its current level, but demands an increase in

the annual Paramedic stipend from \$500.00 to \$850.00 and an increase in the Fire Safety Inspector's annual supplement, from \$200.00 to \$500.00.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Ambulance Duty Supplement:

The City proposes a permanent reduction in the ambulance duty supplement, not merely its temporary suspension during the present period of fiscal adversity.

Consequently, the Employer's proposal to reduce the ambulance duty pay from \$2.00 to \$1.00 per hour is not based upon budget necessity but rather, according to the City, "due to its excessive nature".

Two-thirds of the members of the Bargaining Unit are Paramedics.

The \$2.00 per hour payment to Paramedics, according to a 2005 interest arbitration award "has a long history", it "came as part of a deal between the parties ... that Paramedics will be obligated to ride the ambulance for an increased number of years and the City agreed to increase the payment to \$2.00. ... [The City sought to reduce the payment to \$1.00] "At arbitration no mention was made of reducing the number of years a Paramedic was required to ride. Thus, the position of the City is insupportable."

The City argues that most of the surrounding communities pay their Paramedics between \$1,500.00 and \$2,000.00 per year whereas a Parma Firefighter who rides the ambulance for most of his time can make more than \$4,000.00 per year the \$500.00 Paramedic allowance.

The City estimates that the \$1.00 per hour reduction it proposes would save \$60,000.00 a year.

But, according to the Union, only one-fourth of the Paramedics receive more than \$3,000.00 in ambulance duty pay, while another quarter received less than \$1,000.00. The average ambulance duty pay amounted to \$1,983.00 for the twelve months ending on November 30, 2010.

The individual components of total compensation will vary from jurisdiction to jurisdiction. For the Fact-Finder, the critical inquiry is not whether one particular element is higher or lower than that in other communities' compensation formula, but whether total compensation differs significantly.

Even when considered on a "component-by-component" basis, Parma's ambulance service supplement is not "excessive".

A survey of eight of the ten communities selected by the Union as comparable to Parma offer reveals that the average annual Paramedic pay is \$2,329.00. Parma

Firefighters receive, on average, Paramedic pay of \$2,656.00 (including the \$500.00 stipend). Parma Heights, Euclid and Cleveland Heights pay more than Parma. Brooklyn Paramedics receive virtually the same amount as the average Parma Paramedic - \$2,602.00.

Among the City's comparables, Berea gives a stipend of 5% of base wage or \$3,126.00 (2010 rate) while Parma Heights offers 6% or \$3,573.00 (2009 rate), Broadview Heights grants \$2,300.00, Independence allows \$1,000.00 and North Olmsted authorizes \$1,400.00. The other cities do not provide an EMT-P stipend.

The compensation offered Parma Paramedics seems to fall within the middle of the pack of comparables, and the Fact-Finder finds no reason to adjust it either downwards or upwards.

Accordingly, the Fact-Finder does not find appropriate and does not recommend the City's proposal to reduce the current ambulance duty supplement of \$2.00 for each hour worked to \$1.00, nor the Union's proposal to increase the Paramedic annual stipend from \$500.00 to \$850.00. He recommends, instead, that Sections 27.03 and 27.05 be retained without change and carried forward and incorporated into the successor Agreement.

Fire Safety Inspectors Certification Bonus:

Section 27.01 provides for a \$200.00 per year payment to "all State-certified Fire Safety Inspectors who are assigned to [fire inspection] duty..." The Union seeks to increase the amount to \$500.00.

Pursuant to Article 30, Section 30.04:

"Firefighters temporarily assigned to the [Fire Prevention] Bureau shall be compensated at a flat rate of twenty dollars (\$20.00) per tour of duty, beyond that of their normal hourly rate as a Firefighter..."

Sixty Parma Firefighters are State Certified Inspectors.

In no other City do two-thirds of its Firefighters receive a supplement for holding a Fire Safety Inspector certification. In fact, none of the other comparable cities provides a bonus for becoming certified as a Fire Safety Inspector.

There is no evidence that fire safety inspection duties have become more complex or burdensome.

Seven cities from the Union's list of comparable communities, have no more than three listed Fire Safety Inspectors, and six of the seven have a Lieutenant or an Assistant Chief in that capacity.

Parma has a Senior Inspector and two Inspectors who are assigned full-time to the Fire Inspection Bureau. The

Senior Inspector receives a 2.2% differential or \$1,500.00 above the Lieutenant's base pay rate.

The Fact-Finder does not find appropriate and does not recommend any increase in the compensation offered Fire Firefighters who are certified to serve as Fire Safety Inspectors.

Accordingly, he finds appropriate and recommends that Section 27.01 be carried forward without change and incorporated into the successor Agreement.

X. Article 28 - "Pension Retirement", Sections 28.02 and New Section:

A. The April 1, 2005 Contract:

The expired Contract provided in Article 28.02 as follows:

"Section 28.02: Upon retirement of a full-time Employee who has not less than ten (10) years of continuous service with the Employer and who has qualified for retirement benefits from the State of Ohio Police and Firemen's Disability and Pension Fund, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement on the following basis:

"1. All employees shall receive an amount equal to one-third (1/3) of their total unused sick leave to a maximum of two thousand one hundred sixty (2,160) hours provided that such resulting numbers shall not exceed seven hundred twenty (720) hours. Payment shall be at the forty (40) hour pay rate.

"Payments shall be included in the last paycheck due the employee prior to the last official day of work in the case of retirement and, in the case of death, payment shall be made to the Employee's estate."

B. The City's Proposal:

The City seeks to maintain Article 28 without change.

C. The Union's Proposal:

The Union demands that the unused sick leave payout upon retirement be increased from one-third of the total of unused sick leave hours to a maximum of 720 hours to one-half of the total unused sick leave without a maximum.

The Union also asks that language be added to the Contract to effectively create a Health Care Reimbursement Account to which the City would contribute \$25.00 per month for each employee.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Sell-Back of Unused Sick Leave:

The Union notes that two of the ten communities it proffers as comparable to Parma - Brooklyn and Strongsville - allow Firefighters to cash-in up to one-half the number of accrued hours without limitation. Parma Heights allows three-fifths of unused sick leave to be cashed-out at retirement up to a maximum of twelve hundred hours. Both North Royalton and Euclid allow sellback of one-third of accrued sick leave, up to eight hundred and fifty-hours in the case of North Royalton, and up to twelve hundred hours in the case of Euclid. Only Lakewood which allows one-quarter of accrued hours to be cashed-in up to a maximum of six hundred hours and Middleburg Heights which permits one-third of accrued hours to be sold back up to a maximum of

six hundred and eighty-hours¹⁶ permit fewer hours to be sold-back upon retirement than does Parma.

Under the Employer's listing of comparable communities, Berea has a bifurcated payout system pursuant to which employees with at least ten, but less than twenty, years service are entitled to cash-out one-third of their sick leave allotment up to four hundred and eight-hours, while those having at least twenty years seniority may cash-out up to fifteen hundred and twelve hours. Broadview Heights permits one-fourth of accumulated hours up to two hundred and forty hour maximum to be sold back to the City. Independence permits Firefighters to sell back one-third of their unused sick leave hours up to six hundred and twelve hours while North Olmsted permits the sell back of one-half accrued hours up to a thousand hour maximum. The City's calculation for Brook Park indicates that this City permits Firefighters to sellback one-half of their accumulated unused sick leave up to a maximum of fourteen hundred and forty-hours.

The present one-third, or seven hundred twenty-hour, cash-out limitations for Parma Firefighters, however,

¹⁶ Middleburg Heights, according to the City's research, allows Firefighters to sell back one-third of their unused sick leave up to a two thousand and forty-hour maximum.

mirrors that available in the Police Department with which, for other purposes, the Union seeks "parity".

The Fire Department is disproportionately composed of members who have twenty-five or more years of service and during the 2010-2011 timeframe, ten members are expected to retire. The increase in the buyback of unused accrued sick leave time would have significant financial impact upon the City.

The Union asserts that its proposal would serve as an increased incentive not to use sick leave, and therefore tend to reduce overtime costs.

Here, the Fact-Finder observes that the amount of overtime utilization by the Department has decreased markedly over the past two years, and that the amount of unused sick leave hours suggests, not that employees are working when they are truly ill, but rather that the total amount of sick leave available to Firefighters is, as the City would have it, "excessive".

The cost implications of the sick leave cash-out are not clear. The City estimates that each retiring employee's pay-out could be increased by as much as \$20,000.00, assuming a 3,000 hour accrual bank, or a possible \$200,000.00 in total extra costs if ten employees retired.

In the existing posture of the City's financial condition, and the uncertainty of the cost of the Union's proposal, the Fact-Finder does not find appropriate and does not recommend that the Union's proposal be adopted.

The Establishment of a Health Care Reimbursement Account:

The Union's narrative argues that prior to 2005 the City provided health care benefits to Firefighter retirees. In that year, the benefits were eliminated by an Arbitration Award.

Thereafter, the Union complains, the Fire Pension Fund has increased the cost of retirees' health care coverage to the point where it leaves retirees without affordable health care options. It seeks to have the City establish and fund a health care reimbursement account. ("HRA").

The City is opposed, citing the "slippery slope" specter it is unwilling to create a new obligation which would escalate as medical costs continue to rise, causing the Union to demand greater levels of employer contributions.

The Union's proposal of \$25.00 monthly contributions is equivalent to a one-half (1/2) percent pay increase which, if offered to other units, would cost the City an additional \$200,000.00 per year.

The Union's expert on the subject suggested that rather than direct employer contributions to the account, another option would be to fund the account through contributions from employees from their accumulated sick leave and vacation leave banks. The City would benefit by the consequent reduction of its future liability associated with the payment of accrued, unused leave.

The possibility of employee contributions to such a plan from Firefighter's accrued leave entitlements appears not to have been a subject of serious negotiations between the parties.

The Fact-Finder does not find appropriate, and does not recommend at the present time the creation of such an HRA, but does recommend that the issue be explored at the next set of Contract negotiations.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 28 be carried forward without change and incorporated into the successor Agreement.

XI. Article 30, Section 30.01 "Fire Prevention Bureau":

A. The April 1, 2005 Contract:

Section 30.01 of the expired Contract provides:

"Section 30.01: The existing Bureau of Fire Prevention in the Division of Fire is hereby maintained. The Bureau shall operate under the supervision of the senior ranking inspector and control of the Fire Chief."

B. The City's Proposal:

The Employer seeks to retain the Contract language without change.

C. The Union's Proposal:

The Union asks that the most senior Inspector in the Bureau receive \$2,000.00 per year as additional compensation, and be designated as the Supervisor of the Bureau.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union's proposal in effect would create a new position entitled "Supervisor of the Bureau" to which the most senior Fire Prevention Inspector would be appointed and be paid an additional \$2,000.00.

The Union notes that the Senior Inspector is responsible for the day-to-day operations of the Bureau

including training and evaluation of the junior Inspectors, and preparing the Bureau's annual budget among other tasks.

Although the Fire Prevention Bureau Inspectors receive a base wage which is 2.2% more than that of Lieutenants, the Union argues that Senior Inspectors performs duties similar to those of a Captain, and should approximate the Captain's base wage rate percentage differential.

The Union provided Fire Prevention Inspector pay data for seven of its comparable cities. In five, the Bureau was headed by a Lieutenant. In the remaining two, one was headed by an Assistant Chief and the other by a Fire Marshall. In only one of the communities - Maple Heights - was the Officer in charge provided with base wage equivalent to a Captain's pay.

The City points-out that none of the communities on its list comparables offer any such pay rate and that the Parma Bureau is commanded by a ranking Officer.

The Fact-Finder believes that it is not appropriate to single out one person in the Bargaining Unit for an increase without changed circumstances justifying the exceptional supplement.

Therefore, the Fact-Finder finds appropriate and recommends that Article 31 be carried forward without change and incorporated into the successor Agreement.

XII. Article 32 - "Safety Manning":

A. The April 1, 2005 Contract:

The expired Contract provided in Article 32:

"Section 32.01: Safety Manning: Sufficient Fire Suppression Personnel shall be maintained on duty and available for fire suppression activities. The Employer and Union shall make a good faith effort to mutually agree on the number necessary to meet the basic fire suppression needs of the Employer. If personnel are not available to meet this requirement, employees shall be recalled to overtime."

B. The City's Proposal:

The City wishes to maintain the current language without change.

C. The Union's Proposal:

The Union seeks to provide for minimum manning of not less than three Firefighters to each pumper, four Firefighters to an engine or truck and two Firefighters on each EMS Squad. The Union also proposes that when a two-piece engine or truck company is utilized, the minimum manning of the Company should consist of five Firefighters.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

In support of its demand, the Union presented a series of excerpts from agreements reached with other cities for manning minimums. Thus, the Union cited a 1993 "Letter of Understanding" between the City of Brook Park and its

Firefighters where the City agreed to "continue the current nine (9) man minimum ... during the term of the Collective Bargaining Agreement" and a North Royalton Agreement which provided in Article XXIX, Section 29.03 that "the Employer agrees that the department will be staffed to require at least six (6) certified firefighters ... scheduled to be on-duty at any given time...". The Union also offered an undated excerpt from a Garfield Heights Contract which, in Article XVI, Section 5, touched upon the subject by stating that "all overtime shall be of voluntary nature except in the case of a manpower shortage (less than eight (8) Firefighters on-duty)...". It submitted an undated document entitled "Appendix A - Minimum Staffing per Vehicle", said to be from the Lakewood Collective Bargaining Agreement, which stated that "each Engine Company shall be staffed with a minimum of four (4) firefighters ... Each Hook and Ladder Company shall be staffed with a minimum of four (4) firefighters ... And each Squad shall be staffed with a minimum of two (2) emergency medical technicians one of which must be qualified as an EMT". Finally, the Union entered into the record an excerpt apparently from a Euclid Collective Bargaining Agreement which declared in Article 45, Section 1 that "sufficient personnel to operate all responding equipment and apparatus in a safe manner, as

determined by the fire chief ... shall be maintained on duty and available for response to alarms." (Section 3 goes on to provide that "any dispute concerning the number of personnel necessary to operate all responding equipment and apparatus in a safe manner shall be subject to resolution under the terms of the grievance procedure...").

It is not clear whether any or all of these Contract provisions are currently in effect.

The City maintains that none of its nine communities proffered as comparable to Parma have any provision requiring "safety manning" except North Royalton which in Article 29.03, requires a six man per shift minimum manning, except in an emergency.

While staffing decisions are ordinarily a matter of permissive, not mandatory, negotiations, if inadequate staffing affects the safety of employees, the matter may be said to implicate their "conditions of employment" and hence become a mandatory subject of bargaining. Cf., Toledo Police Patrolmen's Ass'n., Local 10, IUPA vs. Toledo, 127 Ohio App.3d 450, 713 N.E. 2d 78 (6th Dist., 1998).

Casting the issue in terms of "safety", and calling attention to NFPA Standard 1710 which recommends that engine and ladder companies be staffed with a minimum of

four on-duty personnel in order to assure "safe, effective, and efficient emergency operations",¹⁷ the Union proposes that the Parma Fire Department dispatch crews consisting of as many as five, but not less than three, Firefighters to fire scenes and not less than two for ambulance runs.

The Union cites an April, 2010 study conducted by the National Institute of Standards and Technology of the United States Department of Commerce, (NIST Technical Note 1661) which examined the impact of crew size on Firefighter safety at residential structure fires, and found that NFPA standard 1710 was justified. The empirical study based on over sixty full-scale fire experiments concluded that four-person crews exceed three-person crews in performance and rescue ability.

The NIST study considered the physiological effects of crew size on Firefighters, and reported linkage between crew size, overexertion and sudden cardiac arrest.

¹⁷ "NFPA 1710 outlines the following minimum requirements for staffing fire suppression services (based upon operations for a 2000 square-foot, two story, single family occupancy, with no basement, exposures or unusual hazards):

"A minimum of four fire fighters per engine company or truck company" (The standard sets requirements for the number of personnel required per company not per apparatus.) Therefore, "if a company is composed of two or more engines, it can staff each engine with two personnel as long as the company contains a minimum of four personnel continually operating together..."

The current staffing levels¹⁸ so the Union complains require Firefighters to continuously operate with crew sizes below those recommended by the NFPA Standard 1710. It seeks a Contract provision "insuring that the Firefighters will not be sent to fires with staffing levels shown to be unsafe and insufficient."

Consequently, the Union proposes that its minimum staffing personnel be Contractually required.

The documentary material offered by the Union falls short of compelling statistical evidence of significant injury to Firefighters associated with lesser manning of equipment and companies.

The City's 2007 Annual Report reflects thirty-one injuries sustained by the members of the Department sixteen of which did not require treatment.

Fifteen of the accidents involved muscle strain and eighteen occurred during the rendition of EMS service.

The loss of time resulting from injuries to the back or shoulder amounted to one hundred and forty-two days.

¹⁸ The Union cites that four out of five of the Fire Department Stations have one Engine Company staffed with three Firefighters and one Medic Unit staff with two Firefighters. Station No. 3 has a ladder truck, a heavy rescue vehicle, and a special operations trailer with three Firefighters available to staff the vehicles, depending upon the call.

Because the presentation focus of the parties in the instant proceedings was elsewhere, the evidence of a material threat to Firefighters safety, while suggestive, is too meager to permit a finding.

In any event, the problem is not immediate, and will arise only if the Fire Department staffing is once more reduced.

Both the reasonableness and good faith effort of the City to provide adequate staffing is subject to the grievance and arbitration procedure, and the opportunity for a full scale ventilation of the issue.

The Fact-Finder does not find appropriate and does not recommend the Union's proposal to include a "minimum apparatus staffing" Article in the successor Contract.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 32 be carried forward without change and incorporated into the successor Agreement.

XIII. Article 37 - "Promotions", Sections 37.02, Section 37.03, Section 37.04 and Section 37.06:

A. The April 1, 2005 Contract:

The expired Contract provided in Sections 37.02-37.06 as follows:

"Section 37.02: A Civil Service examination shall be given and a promotional list of successful applicants shall be compiled in accordance with the rules and regulations of the Civil Service Commission, except that no employee shall be eligible to take the Lieutenant's Exam without having completed five (5) years in the rank of Fire Fighter by the time of the written examination. Upon the compiling of such a list, the Civil Service Commission shall provide the Safety Director with the names of the three (3) highest scorers on the list in alphabetical order.

"Section 37.03: A Promotional Board consisting of five (5) persons shall be created as follows: (A) the Fire Chief; (B) the Safety Director; (C) an Arbitrator selected from the Panel listed in the Arbitration Procedure; (D) one employee from the rank where the vacancy exists, to be appointed by the Union President of the Bargaining Unit; and (E) one representative from the Union, to be appointed by the Union President. The Arbitrator shall be paid by the Employer.

"Section 37.04: The Promotional Board shall conduct oral interviews of the three (3) individuals whose names were supplied by the Civil Service Commission. The Board shall evaluate the individuals, based on the interviews, and recommend the individual it deems most qualified for the position. The Employer shall then appoint such individual to the position as soon as reasonably practicable. The Promotional Board shall develop such administrative procedures necessary to fulfill its duties pursuant to this Article. Board decisions shall be by majority vote from a secret written ballot. In the event more than one (1) vacancy exists for promotion, an additional name for each additional vacancy shall be supplied at the rate of one (1) additional name for each additional vacancy (e.g., 3 vacancies require 5 names.)."

Section 37.06: The above Review Board will be used in the promotion of the following positions, Fire Inspector, Lieutenant and Captain."

B. The City's Proposal:

The City proposes to be able, in its discretion, to require candidates who have qualified for promotion after taking a Civil Service Examination to be evaluated by an assessment center. It would add the following sentence to Section 37.02: "Such employees may be sent to an Assessment Center of the Employer's choice. Assessment Center evaluations shall be considered by the Promotional Board."

It would also amend the second sentence of Section 36.04 to read: "The Board shall evaluate individuals, based on any Assessment Center's evaluation, the interviews, and recommend the individual it deems most qualified for the position."

The City would also eliminate Section 37.06 in its entirety.

Further, when the position of Chief or Assistant Chief is vacant, the City proposes that the selection of the successor is to be made by a Promotion Board consisting of the Mayor, the Safety Director and the Fire Chief of a City with a population of 35,000.00 or more.

Although the City's proposal is not entirely clear, it appears that the existing Review Board would apparently not be used in the promotional process for vacancies in the positions of Fire Inspector, Lieutenant and Captain.

C. The Union's Proposal:

The Union prefers to retain the existing procedure for promotion without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City seeks to employ an assessment center to evaluate employees applying for promotion and allow the interviewing panel to consider the report of the evaluation.

The City would designate an assessment center operated by the International Association of Fire Chiefs, Kent State University or some other qualified organization.

North Royalton is apparently the only City which has a somewhat similar proposal. Its Contract provides for an "assessment board" to be established and approved by the City's Labor-Management Committee.

The Fact-Finder observes that such assessments may cost more than \$5,000.00. However, the City proposes only a permissive right to send employees to an Assessment Center, not a firm requirement.

Nonetheless, if the Assessment Center evaluation is useful in making a determination as to which of competing candidates for promotion is better qualified, the Fact-Finder does not see any reason to object to the process.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 37, Sections 37.02 and 37.04 be amended to read as follows, and as so amended, carried forward and incorporated into the successor Agreement:

Section 37.02: A Civil Service examination shall be given and a promotional list of successful applicants shall be compiled in accordance with the rules and regulations of the Civil Service Commission, except that no employee shall be eligible to take the Lieutenant's Exam without having completed five (5) years in the rank of Fire Fighter by the time of the written examination. Upon the compiling of such a list, the Civil Service Commission shall provide the Safety Director with the names of the three (3) highest scorers on the list in alphabetical order. Such employees may be sent to an Assessment Center of the Employer's choice. Assessment Center Evaluations shall be considered by the Promotional Board.

...

Section 37.04: The Promotional Board shall conduct oral interviews of the three (3) individuals whose names were supplied by the Civil Service Commission. The Board shall evaluate the individuals, based on any Assessment Center's Evaluations, the interviews, and recommend the individual it deems most qualified for the position. The Employer shall then appoint such individual to the position as soon as reasonably practicable. The Promotional Board shall develop such administrative procedures necessary to fulfill its duties pursuant to this Article. Board decisions shall be by majority vote from a secret written ballot. In the event more than one (1) vacancy exists for promotion, an additional name for each additional vacancy shall be supplied at the rate of one (1) additional name for each additional vacancy (e.g., 3 vacancies require 5 names.)."

The existing five person Promotional Board consists of the Fire Chief, the Safety Director, an Arbitrator from the parties' permanent panel and an employee from the rank where the vacancy exists appointed by the Union President and a representative from the Union appointed by the Union President. It currently recommends individuals deemed most qualified for promotion to vacant positions above the rank of Firefighter.

The City would eliminate Section 37.06 which states that "the above review board will be used to the promotion of the following positions: Fire Inspector, Lieutenant and Captain."

Other than redundancy, the City offers no reason as to why that provision should be eliminated and the Fact-Finder finds appropriate and recommends that Section 37.06 remain without change and be carried forward and incorporated into the successor Agreement.

The City's second request is that when the positions of Assistant Chief or Chief become vacant, a panel consisting of the Mayor, the Safety Director and a Fire Chief from another city with over 35,000 population be established to make the effective recommendation of the successor.

The City notes that this is the system employed to fill a vacancy in the positions of Police Chief and Assistant Police Chief, and is incorporated into the Police Department Contracts.

The fact that the Police Department uses the procedure suggested by the City is of interest, but not compelling. The City has not provided any reason as to why the present procedure for the selection of the Fire Chief and Assistant Chief is inadequate, or why the proposed three-person panel would be more effective.

Since the Union opposes the change, and the City has not provided evidence as to the superiority of its proposed change in the promotional procedure, the Fact-Finder does not find appropriate and recommend the City's proposal to provide a special promotional board to fill vacancies in the positions of the Fire Chief and Assistant Chief.

XIV. Article 41 - "Duration":

A. The April 1, 2005 Contract:

The expired Contract covered the period of April 1, 2008 through March 31, 2008.

A "Tentative Agreement" executed as of June 12, 2009 and subsequently ratified by the parties expired on March 31, 2009, and a "Side Agreement" entered into in July of 2009 expired as of December 31, 2009.

B. The City's Proposal:

The City proposes the successor Contract be retroactive to April 1, 2010 and continue in effect until either December 31, 2011, the date preferred, or March 31, 2012, at the latest.

C. The Union's Proposal:

The Union proposes that the Contract be retroactive to January 1, 2010 and continue through December 31, 2012.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City points-out that as of the present date none of the other Unions have a Contract that continues beyond March 31, 2011. That is the expiration date of the Steelworkers Contract.

The City's objection to the Union's requested December 31, 2012 expiration date is that it is unable to meaningfully estimate its cost and revenue for that year.

But, having the successor Contract expire as of December 31, 2011, is not a feasible option. It would present the parties with the necessity of reopening negotiations almost immediately following, as is most likely, conclusion of the Conciliation procedure to settle the terms of the successor Contract.

The Union argues that the parties have been in continuous bargaining since 2008. The impasse declared then led to Fact-Finding hearings in 2009. Those proceedings resulted in a one year Agreement, which, in turn, was followed by negotiations for a Concession Agreement. Within a few months of that Agreement, negotiations resumed and eventuated in the present Fact-Finding hearings.

The Fact-Finder is sympathetic to the Union's desire for breathing room, and its concern over the escalating cost of extended negotiations.

The Fact-Finder is equally sympathetic to the City's concern over its inability to realistically estimate its financial condition for the full twelve months of 2012.

Accordingly, the Fact-Finder believes that his recommendations can be accepted within the framework of prudent estimates and that June 30, 2012 is an appropriate ending date for the successor Contract with January 1, 2010, as a retroactive effective date.

Should the City's 2012 financial posture materially depart from expected parameters, the solutions can be addressed and remedied during the balance of the year.

On balance, the Fact-Finder finds appropriate and recommends that Article 41 be amended to read as follows and as so amended carried forward and incorporated into the successor Agreement:

Article 41 - Duration of Agreement:

Section 41.01: This Agreement represents the complete Agreement on all matters as subject to bargaining between the Employer and the Union and except as otherwise herein stated shall become effective as of January 31, 2010 and shall remain in full force and effect until and including June 30, 2012."

Report and Recommendations signed, dated and issued at Cleveland, Ohio this 14th day of July, 2011.

Alan Miles Ruben
Fact-Finder

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