

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

June 7, 2010

In the Matter of:

City of Highland Heights)
)
 and) Case No. 09-MED-10-1294
)
International Association of Fire Fighters,)
Local 2380)

APPEARANCES

For the City:

Jim Budzik, Attorney
Timothy G. Paluf, Law Director
Anthony Ianiro, Finance Director
William R. Turner, Chief of Fire
Lee Molnar, Captain

For the Union:

Ryan Lemmerbrock, Attorney
Mary Schultz, Financial Consultant
Bill Bernhard, President, Local 2380
Ron Gerome, Firefighter
Kevin Madger, Firefighter

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Highland Heights and the International Association of Fire Fighters, Local 2380. The city consists of 5.5 square miles, is located in eastern Cuyahoga County, and has a population of 8,082. It has a number of major employers, including Progressive Insurance, Phillips Healthcare, and Swagelok. The union represents the approximately 18 full-time firefighters, including four lieutenants but excluding the captain and chief. The city also uses 10 to 12 part-time firefighters to maintain the desired manning.

When the parties were unable to reach an agreement on a successor to the contract expiring on December 31, 2009, they invoked the fact-finding process. The Fact Finder was notified of his appointment on February 8, 2009. A mediation session was held on March 23, 2010. When no settlement was reached, a fact-finding hearing was held on April 20, 2010, and April 30, 2010.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and 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 stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted eight issues to the Fact Finder. For each issue, the Fact Finder will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. He will then offer his analysis for each issue, followed by his recommendation.

1) Article IX – Sick Leave, Section 9.15 – Sick Leave Bonus - The current contract provides for a sick leave bonus of 12 hours for employees who use no sick leave or personal sick time during a calendar year. The parties have agreed to replace the annual bonus with quarterly bonuses. The union seeks to make the bonus equal to eight hours per quarter; to remove the restriction on the use of personal sick time; and to place the hours in the employee’s comp time bank. The city proposes a four-hour per quarter bonus and wishes to continue to pay the bonus in cash and to include the restriction on the use of personal sick time.

Union Position - The union argues that its demand should be adopted. It indicates that area comparisons support its demand. The union states a majority of 15 fire departments within a 15 to 20 mile radius of the city have sick leave bonuses.¹ It reports that the nearby departments have bonuses as follows:

Lyndhurst	60 hours
Mayfield Heights	48 hours

¹ The departments are Aurora, Beachwood, Bedford, Eastlake, Lyndhurst, Mayfield Heights, Mayfield Village, Richmond Heights, Solon, South Euclid, Twinsburg, University Heights, Wickliffe, Willoughby, and Willoughby Hills.

Mayfield Village	56 hours
Richmond Heights	32 hours
South Euclid	30 hours
University Heights	20 to 60 hours

City Position - The city argues that its demand should be adopted. It points out that it has agreed to the union’s demand for quarterly bonuses and has increased the number of hours. The city notes that the police have a quarterly bonus of three hours but it has offered the firefighters four hours reflecting their longer workweek.

The city contends that its comparable departments support its offer. It reports that the bonuses of nearby departments are as follows:

Lyndhurst	60 hours
Mayfield Village	56 hours
Mayfield Heights	48 hours
Richmond Heights	32 hours
South Euclid	30 hours
University Heights	20 to 60 hours
Wickliffe	0
Willoughby Hills	0

The city maintains that its comparable cities are more appropriate than the ones offered by the union because the union includes some cities from Summit County.

The city indicates that some of the departments that offer sick leave bonuses impose conditions on eligibility. It observes that both Lyndhurst and Mayfield Village require employees to maintain a certain number of hours of sick leave in order to receive a bonus.

Analysis - The Fact Finder cannot recommend the changes sought by the union. While it cited a number of cities that have agreed to larger sick leave bonuses than the city’s offer of 16 hours per year, only a few of those jurisdictions have quarterly bonus systems and some of the union’s comparable departments have no sick leave

bonuses at all. In addition, the Fact Finder does not believe that the union provided sufficient justification to require the city to place sick leave bonuses in firefighters' comp time banks rather than pay them in cash or to drop personal sick leave from consideration in eligibility for the sick leave bonus.

Recommendation - The Fact Finder recommends the following contract language:

An employee who uses no sick time or personal sick time during a quarter of the year (January 1-March 31, April 1-June 30, July 1-September 30, or October 1-December 31) shall receive a four-hour bonus per quarter not to be deducted from sick time. This bonus is in addition to all sick leave bonuses earned after 1,200 hours. This bonus shall be paid in the first pay period following the end of the quarter.

2) Article X – Vacations, Section 10.01 – Vacation Accrual - The current contract sets forth vacation eligibility in terms of the number of shifts, ranging from five shifts after one year to 12 ½ shifts after 20 years. The city proposes changing the vacation entitlement to hours with an employee receiving from 100 hours after one year to 250 hours after 20 years. The union opposes the city's demand.

City Position - The city argues that its demand should be recommended. It points out that employees work a 50-hour week so their vacation ought to be set forth in hours. It acknowledges, however, that among its comparables more departments specify vacation time in terms of tours or shifts than in hours.

Union Position - The union opposes the city's proposal. It claims that its pre-hearing statement did not address the city's demand because it was withdrawn by the city in January. The union states that in 2007 it gave up one free personal leave day when the

city agreed to the current language. It reports that it added data regarding comparable departments when the city placed its proposal back on the table at fact finding.

Analysis - The Fact Finder must reject the city's demand. The data for comparable cities indicates that it is more or less customary to specify firefighters' vacation time in terms of tours of duty. The parties followed this practice in the past and the city did not present any convincing reason to change the current agreement.

Recommendation - The Fact Finder recommends the current contract language be retained.

3) Article X – Vacations, Section 10.02 – Vacation Scheduling; Article XI - Holidays, Section 11.02 – Holiday Scheduling; and Article XVI – Hours of Work, Section 16.01 – Scheduled Days Off (SDOs) - The scheduling of time off is covered by the contract and the department's Standard Operating Procedures. Article X, Section 10.02, of the contract states that vacation is to be approved by the chief and the SOP require employees to request vacation by May 15. Article XI, Section 11.20, indicates that holidays are to be requested 30 days in advance to be approved by the chief. Article XVI, Section 16.01, instructs the chief to schedule one SDO during each 28-day work cycle.

The city proposes that vacation, holidays, and SDOs be scheduled by February 15. It also seeks to include a sentence in the holiday scheduling provision stating that the rescheduling of a holiday may be denied due to "operational needs/scheduling of the Department." The city wishes to add to Section 16.01 a statement that SDOs can be

traded provided they are documented and approved in accordance with the department's rules and regulations.

The union agrees to the city's proposal to schedule vacation, holidays, and SDOs by February 15. It opposes the stipulation that the rescheduling of holidays with 30 days of advance notice can be denied based on "operational needs/scheduling of the Department." The union offered no objection to the city's proposal regarding the procedure for trading time.

City Position - The city argues that its demand should be adopted. It claims that its proposal will create a "workable, known work schedule for bargaining unit employees," which will benefit both parties

Union Position - The union indicates that it is willing to agree to the city's proposal providing firefighters can continue to reschedule holidays without being restricted by "operational needs." The union claims that a firefighter's ability to reschedule a holiday with 30-days notice has never been restricted.

Analysis - The sole issue before the Fact Finder is the union's insistence that the firefighters retain the ability to reschedule holidays with 30-day advance notice. Since the Fact Finder believes that the union's acceptance of the city's demand to schedule vacation, holidays, and SDOs by February 15 should make the city's job of scheduling time off easier, he sees no reason to restrict the use of holiday time in ways it has not been restricted in the past. If rescheduling holidays proves to be a problem that cannot be resolved during the term of the agreement, the city can address the issue during the next negotiations.

Recommendation - The Fact Finder recommends the following contract

language:

Section 10.02

Vacation time shall be scheduled off by the employee by February 15 of each year with approval by the Chief.

Section 11.02

All full-time employees shall receive on January 1 of each year one hundred and twenty (120) hours of “holiday time” as compensation for the ten (10) holidays set forth in paragraph 1. The one hundred and twenty (120) hour figure shall equate to twelve (12) hours per holiday. This “holiday time” shall be scheduled off by the employee by February 15 of each year. However, employees shall have the ability to reschedule their holidays off if the employee provides thirty (30) days advance notice of the rescheduling in order to be approved by the Chief.

Section 16.01

Those employees scheduled in accordance with the three (3) platoon system shall work an average fifty (50) hour workweek. One day will be scheduled off every twenty-eight (28) day work cycle to attain the fifty (50) hour workweek. The scheduled days off (SDOs) will be scheduled by the employee by February 15 of each year, subject to approval by the Chief.

4) Article XVII – Overtime, Section 17.02 – Call-In Time - The current

contract establishes a two-hour minimum for call-ins. The union demands to increase the minimum to three hours of pay. The city wishes to retain the current minimum.

Union Position - The union argues that its demand is justified. It indicates that increasing call-in pay to three hours creates parity with the city’s police officers. The union also states that firefighters in Bedford, Eastlake, Lyndhurst, Mayfield Heights, South Euclid, Twinsburg, University Heights, and Willoughby receive three hours of call-in pay.

City Position - The city opposes the union's demand. It maintains that the union's attempt to compare the call-in pay of firefighters and police officers is inappropriate because their duties differ. The city adds that three hours is in the middle of the union's list of comparable departments.

The city reports that the number of call-ins is limited. It points out there are from 12 to 20 call-ins per year. The city notes that a call-in may involve two or three firefighters or it may include ten firefighters.

Analysis - The Fact Finder cannot recommend the union's demand. He understands that the police officers have a three-hour minimum but he recognizes that the jobs of the firefighters and police officers differ. Furthermore, the data offered by the union reveals that while some departments have three-hour minimums, a significant number of departments have two-hour minimums. Given that there are a limited number of call-ins each year, the Fact Finder feels that the consideration of this issue ought to be postponed to future negotiations.

Recommendation - The Fact Finder recommends the current contract language be retained.

5) Article XVII - Overtime, Section 17.04 - Compensatory Time - The current contract establishes a comp time bank of 120 hours with employees paid in cash for overtime in excess of that amount. It provides that if an employee provides two-week notice, comp time must be granted even if a part-time firefighter is not available but with the provision that it may be denied "if proper shift manning cannot be maintained." The parties have agreed to increase the comp time bank to 168 hours but to require pay for all

accumulated hours in excess of 120 hours as of December 31 in January of the following year at the prior year's rate of pay. The union wishes to drop the provision giving the city the right to deny comp time to maintain shift manning. The city wishes to retain that authority.

Union Position - The union argues that the sentence giving the city the right to deny the use of comp time to maintain shift manning should be dropped. It contends that it conflicts with the previous sentence of the section. The union further maintains that the sentence has never been enforced and is inconsistent with the intent of comp time under the Fair Labor Standards Act.

City Position - The city rejects the union's demand. It states that the law does not guarantee employees the right to use comp time whenever they please. The city complains that the union's demand to remove the restriction of use of comp time did not appear until its final proposal.

Analysis - The Fact Finder cannot recommend that the contractual restriction on the use of comp time be dropped. It has apparently been in the contract for some time and no evidence was provided to show that it has created undue problems. If changes in the department's policies create problems with the use of comp time, the union will have an opportunity to address them in subsequent negotiations.

Recommendation - The Fact Finder recommends the following contract language:

Employees shall, at their election, be able to accrue compensatory time at one and one-half (1½) times the number of overtime hours worked in lieu of cash payment, up to a maximum of one hundred and sixty-eight (168) hours per year. In the event an employee works overtime when his comp-time bank is one hundred and sixty-eight hours, he shall be paid cash for such overtime.

All hours over one hundred twenty (120) in an employee's comp-time bank as of December 31, shall be paid in cash to the employee in January of the succeeding year but at the prior year's rate of pay at which they were earned. Provided an employee provides a two (2) week notice, all comp-time requests will be granted, regardless of the availability of a part-time firefighter fill-in. Comp time may be denied if proper shift manning cannot be maintained.

6) Article XX - Insurance, Sections 20.01-20.07 - Health Insurance -

Appendix A of the 2007-2009 collective bargaining agreement lists a number of the features of the city's health insurance plan, including an in-network deductible of \$250 for single coverage and \$750 for family coverage. In 2009 the city changed from the existing Anthem PPO to a United Health Care High Deductible Health Plan/Health Savings Account plan with deductibles of \$1250 for single coverage and \$2500 for family coverage. However, in order to comply with the contract, it agreed to deposit the full amount of the deductibles in each employee's HSA. In 2010 the city changed to an Anthem HDHP/HSA with deductibles of \$1500 for single coverage and \$3000 for family coverage but it agreed to deposit \$1250 or \$2250 in each employee's HSA leaving employee deductibles at \$250 for single coverage and \$750 for family coverage. At the same time, it required employees to sign individual agreements promising that if they left the city's employ, they would pay the city a prorated amount for the HSA contributions it had made on their behalf.

In fact finding the city seeks to decrease its contributions to employees' HSAs, thereby increasing employees' deductibles. For 2011 it proposes decreasing its contribution to \$1000 for single coverage and \$2000 for family coverage, leaving employees with deductibles of \$500 for single coverage and \$1000 for family coverage. For 2012 the city seeks to reduce its contributions to \$750 for single coverage and \$1500 for family coverage, resulting in employees' deductibles at \$750 for single coverage and

\$1500 for family coverage. It also wishes to have employees sign individual agreements requiring employees who leave the city to reimburse it on a prorated basis for any HSA contributions they had received. The city further demands that employees pay 7% of the premiums effective January 1, 2011, and 10% effective January 1, 2012.

The union offers to increase employee in-network deductibles to \$300 for single coverage and \$875 for family coverage in 2011 and to \$350 for single coverage and \$1000 for family coverage in 2012, provided its wage demand is accepted. It proposes that any requirement for employees to reimburse the city for HSA contributions be placed in the collective bargaining agreement. The union strongly opposes the city's demand for employee premium contributions.

City Position - The city argues that its proposal represents an attempt “to catch up with the rest of the world.” It suggests that the State Employment Relations Board's 2006 Report on Health Insurance Costs in Ohio's Public Sector shows that other public employees are paying substantial amounts for their health insurance. The city also claims that the data for its comparable cities supports its demands.

The city complains that its health insurance costs have risen. It points out that when it got its renewal notice in the fall of 2009 from United Health Care, the rate increased 40%. The city notes that even the new Anthem plan it adopted resulted in a 20% rate increase. It asserts that health insurance costs will continue to rise.

The city maintains that its health insurance proposal is fair. It observes that the firefighters are well paid so that they can afford the increased deductibles it has proposed.

Union Position - The union argues that the city has proposed “incredible” and “unreasonable” increases in health insurance costs. It claims that if the city's

proposed increases in deductibles and premium contributions are adopted, the result would be equivalent to a 3.5% to 4% wage decrease.

The union contends that the city has engaged in bad faith bargaining. It reports that the city's January 6, 2010, proposal required the city to pay the first 4% of any increase in premiums with any additional amount being split by the parties. The union observes that the city's January 26, 2010, proposal does not call for any employee premium contributions. It complains that despite these facts, the city's fact finding position calls for employee contributions of 7% in 2011 and 10% in 2012.

The union maintains that in the past when employee health care costs have risen, the city increased employees' compensation. It points out that when prescription co-pays increased in 2004, the firefighters received a \$600 in-service training bonus. The union notes that in 2007 police officers were granted \$400 in range pay to offset higher health care costs.

The union claims that the health insurance benefits enjoyed by other jurisdictions support its position. It submitted a summary of the health insurance provisions from the contracts of 32 communities in Cuyahoga and Lake Counties showing employee premium contributions, deductibles, co-insurance requirements, and maximum employee annual costs.

The union cited City of Lockport and Metropolitan Alliance of Police, Chapter 75, 127 LA 516 (2009), in support of its position. It reports that in Lockport the employer proposed an employee contribution to health insurance premiums when there had been none in the past. The union indicates that Arbitrator Aaron Wolf held that since

premium contributions represented a significant change from prior agreements, the city had to offer a “quid pro quo” to the union in order to achieve its demand.

The union questions the city’s demand to have employees who leave the city sign individual agreements requiring them to reimburse the city on a prorated basis for any HSA deposits made on their behalf. It claims that this requirement belongs in the collective bargaining agreement.

Analysis - While the Fact Finder understands the burden that rising health care costs impose on employees, he must recommend the city’s proposal to decrease its funding of employees’ HSAs, increasing their deductibles. Although it is difficult to compare health plans because plan designs differ in many ways, the data provided by both the city and the union indicate that employees in comparable cities bear a significant share of health care costs. They may face large deductibles, high co-insurance requirements, significant premium payments, limits on benefits, or some combination of these features.

An examination of SERB’s annual surveys of health insurance costs in Ohio also supports the city’s demand. The 2006 report, which was submitted by the city, shows that city employees face an average in-network deductible of \$1,145 for family coverage, a 87.9% co-insurance requirement, and pay 6.5% of their premiums. Subsequent surveys reveal that the burden on employees has steadily increased.

The city has attempted to control its rising health insurance costs. It repeatedly changed carriers for its PPO plans. In 2009 it took a new tack by adopting a United Health Care HDHP/HSA and only one year later went to a similar plan offered by Anthem. Without these efforts, health care costs in the city would be even higher.

The Fact Finder cannot recommend the city's proposal that would require employees to pay part of their health insurance premiums. The union accepted the city's decision to go to a HDHP/HSA plan, which saved the city money, and indicated its willingness to consider higher deductibles. In addition, the fact that the city's January 26, 2010, offer did not include premium contributions and its final offer to the Fraternal Order of Police did not include them, suggests that premium contributions should not be recommended by the Fact Finder.

The Fact Finder recommends that the requirement for employees to reimburse the city for HSA deposits should be put in the contract. It is the appropriate and logical place for the requirement since it applies to all of the members of the bargaining unit. At the hearing, the city appeared to have no objection to the language proposed by the union.

Recommendation - The Fact Finder recommends the following contract language:

20.01 Upon commencement of employment, all full-time employees shall be entitled to personal health care coverage and benefits and family health care coverage and benefits, where applicable. The Employer will pay one hundred percent (100%) of the premiums for the duration of the Agreement. Health care coverage and benefits are set forth in Addendum A. The Employer reserves the right to change providers or insurers as long as the benefits are comparable to coverage as outlined in Addendum A and that the Employer may increase deductible amounts subject to employee deductible maximums set forth in Section 20.03.

20.02 The Employer shall provide each employee with a \$25,000 life insurance policy.

20.03 For 2010 only, the Employer will fund \$1,250 or \$2,250 of the deductibles through an HSA account. Such HSA contributions will be made by March 15, 2010. Effective January 1, 2011, employees shall be responsible for a \$500 deductible for single coverage and a \$1000 deductible for family coverage. Effective January 1, 2012, employees shall be responsible for a \$750 deductible for single coverage and a \$1500 deductible

for family coverage. The Employer's funding for the HSA shall occur before January 31 of 2011 and 2012.

Section 20.04 Retain current contract language on the Health Care Committee.

Section 20.05 Retain current contract language on opt-out amounts in Section 20.02.

Section 20.06 The following shall apply to the funding of HSAs.

a. If an employee joins the Employer's health care plan after January 1 and the plan deductible exceeds the deductible set forth under Addendum A, the Employer's contribution to the employee's HSA will be prorated based upon the months of employment remaining in the health insurance policy year.

b. If an employee has been advanced HSA funding in any calendar year, is separated from employment during the calendar year prior to December 1 (except for lay-off or reduction in force), and has money remaining in the HSA (i.e., has not exhausted the HSA funding prior to separation), any remaining amounts in the HSA shall remain in the employee's possession and control except that the employee shall reimburse the Employer the remaining HSA funding on a prorata basis through a withholding of the appropriate amount from the employee's final pay check.

c. If an employee switches from single to family coverage during the year, the Employer will provide additional funding to the employee's HSA to the family plan amount within ten (10) days of the plan change, with the additional funding amount being calculated on a prorata basis. Conversely, if an employee switches from family to single coverage during the year, the Employer may require the employee to reimburse the Employer the difference in the family and single funding by a proportionate reduction in pay from the employee's remaining pay checks for the year, with the amount being calculated on a prorata basis.

Addendum A

Modify the language pertaining to annual deductibles (in-network) as follows:

Annual Deductible Effective January 1, 2010 - \$250
single and \$750 family

Effective January 1, 2011 - \$500 single
and \$1000 family

Effective January 1, 2012 - \$750 single
and \$1500 family

7) Article XXI - Rates of Pay, Sections 21.01, 21.02, and 21.03 -

Rates of Pay - The current contract has annual base rates of pay ranging from \$49,106.31 for a Probationary Fireman to \$67,241.01 for a Fireman A and \$75,323.52 for a Lieutenant. The union demands wage increases of 3.5% effective January 1, 2010; 4% effective January 1, 2011; and 4% effective January 1, 2012. The city proposes a wage freeze for 2010, a 1.25% increase in 2011 and a 1.50% increase in 2012.

Union Position - The union argues that its wage demand ought to be adopted. It indicates that the 2009 maximum base salaries in its comparable departments are as follows:

Aurora	\$60,401
Beachwood	69,112
Bedford	63,636
Eastlake	62,697
Lyndhurst	65,903
Mayfield Heights	66,473
Mayfield Village	68,000
Richmond Heights	66,045
Solon	65,729
South Euclid	66,174
Twinsburg	61,823
University Heights	65,467
Wickliffe	65,773
Willoughby	73,259
Willoughby Hills	62,979

The union acknowledges that salaries in the city are “on the higher side” but notes that they are not on the top.

The union maintains that its wage proposal is tied to its health insurance position. It points out that it has agreed to higher deductibles and claims that it is asking for an extra one-half percent in the last two years of the agreement to offset the higher health insurance costs.

The union contends that the city has the ability to pay its wage demand. It observes that the city has had considerable increases in revenue and healthy unencumbered balances. The union points out that in 2008 the city raised its income tax rate and, as a result, at the end of 2009 its had a General Fund balance of \$4,171,000. It claims that the General Fund balances understate the excess revenues because since 2007 the city has transferred nearly \$2.5 million to its Capital Improvement Fund.

The union complains that despite the city's increased revenues, the fire department's budget has been reduced. It states that the department's 2009 budget was reduced by over \$13,000 and then it spent only 94% of its budget with the remainder being returned to the General Fund. The union indicates that at the same time, the budgets of the Police Department, Service Department, Law Department, and the Mayor's Office increased.

City Position - The city argues that a comparison to other cities supports its wage offer. It states that the compensation of 15-year firefighters, including base pay, paramedic pay, and longevity and, in the case of Highland Heights, a fitness bonus, is as follows:

Mayfield	\$72,595
Lyndhurst	71,834
University Heights	71,476
South Euclid	70,915
Richmond Heights	70,686
Wickliffe	68,898

Mayfield Heights	68,873
Willoughby Hills	64,579
Average	70,326
Highland Heights	73,080
Difference	2,753

The city asserts that there is no reason that its firefighters should stay \$2753 above the average for the comparable cities.

The city also relies on the offer it made to the Ohio Patrolmen's Benevolent Association. It claims that its offer included a wage freeze for 2010 followed by a 1.5% increase for 2011 and a 1.75% increase for 2012 as well as the same health insurance offer extended to the firefighters. The city indicates that the offer was written by a Fact Finder while he was attempting to mediate the case.

The city maintains that its wage offer is consistent with the economic situation. It points out that in March 2010 the Ohio Department of Family and Job Services reported that the unemployment rate in Cuyahoga County was 9.8% and notes that the U.S. Bureau of Labor Statistics indicated that between February 2009 and February 2010, the unemployment rate for the Cleveland-Elyria-Mentor Metropolitan Statistical Area rose from 9.4% to 10.6%. The city indicates that the BLS's price index for All-Urban Consumers declined by .4% from 2008 to 2009.

The city suggests that wage settlements in nearby cities support its position. It states that the firefighters in both Mayfield Village and South Euclid accepted wage freezes.

The city opposes the union's demand for automatic increases in the other forms of compensation. It points out that while it has offered to increase the educational bonuses, paramedic pay, and longevity by the same percentage as its wage it opposes any increase

in the uniform allowance or the physical fitness bonus. The city notes that the contract does not require the automatic increases sought by the union.

The city does not dispute that it has the ability to pay the union's wage demands but states that it must behave in a fiscally responsible manner. It reports that since 2006 General Fund revenues have declined every year except for 2007 when the income tax rate was increased from 1.5% to 2%. The city observes that in 2010 General Fund revenue is projected to decline 3.6% due to a decline in income tax revenue and reduced property tax collections and expenditures are budgeted to be 1.9% less than the prior year.

Analysis - The Fact Finder faces significantly different wage proposals. The union demands a 3.5% increase in 2010 followed by 4% increases in 2011 and 2012. The city seeks a wage freeze for 2010 followed by a 1.25% increase in 2011 and a 1.50% increase in 2012. This means that the union is demanding an 11.5% increase over three years while the city is offering 2.75% over the same time period.

The Fact Finder's recommendations are governed by the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. One of the criteria is the ability of the employer to pay. Everyone appreciates that in the recent past, we have faced the most severe economic downturn since the Great Depression. It has resulted in falling revenues for public employers and increasing demands for assistance. Fortunately, the economy seems to be rebounding as reflected in the significant growth in Gross Domestic Product in the first quarter of 2010 as well as in other measures of economic activity.

While the City of Highland Heights has felt the impact of the recession, it has fared better than many other public employers. In 2009 its income tax collection

declined by 6.7%. However, income tax collections for the first four months of 2010 are down only 4.85%, suggesting that collections for the year will be significantly stronger than for 2009.

The strong financial position of the city is also reflected in its carryover balances. It ended 2008 with a General Fund carryover of \$3,852,065 which is equal to 37% of its 2009 General Fund expenditures of \$10,512,851. Furthermore, despite the decline in income tax revenues in 2009, the city's carryover balance grew to \$4,171,165. With projected 2010 General Fund expenditures of \$10,308,649 and projected revenues of \$10,458,000, the result will be a further increase in the carryover balance.

Another statutory criterion is the wages paid to comparable employees. As is often the case, the parties have provided different lists of comparable cities. However, regardless of which list is considered, it is clear that the firefighters in Highland Heights are well compensated compared to nearby cities as well as other cities in Cuyahoga and Lake Counties.

The Fact Finder believes that it is important to recognize that there is always a hierarchy of wages in an area. Some cities pay high wages while others pay much less. The differences in wages are the result of a variety of factors, including not only variations in the resources and wealth of the communities but also past bargaining by the parties.

Another criterion normally and traditionally taken into account in the fact-finding process is the wage settlements reached by other employers and unions. The Fact Finder believes that this is a useful consideration. If a Fact Finder recommends a wage

settlement that roughly corresponds to other settlements, he preserves the wage rankings established by the parties.

The Fact Finder recognizes that there are situations where a change in the existing wage hierarchy is appropriate. A city may fall upon hard times or may suddenly enjoy significantly greater resources. However, unless the parties provide the Fact Finder with a good reason to change the existing array of wages in an area, he or she should resist the temptation to make significant changes in the wage rankings that the parties themselves have established.

The significance of the settlements reached by other employers and unions is reflected by the fact that SERB provides a variety of data on wage settlements in the Ohio public sector. The most recent settlement data appeared in early 2010. The data regarding average settlements reached in 2009 include the following:

Statewide	2.15%
Cleveland	2.18
Cities	2.46
Firefighters	2.47

The data for multiple-year agreements concluded during 2009 are as follows:

First Year	2.09%
Second Year	2.46
Third Year	2.65

The Fact Finder believes that the union is entitled to a somewhat greater wage increase than the SERB data might suggest. This conclusion follows from the city's strong financial position. More importantly, it reflects the higher health insurance deductibles recommended by the Fact Finder.

The Fact Finder, however, rejects any suggestion that the union is entitled to a significantly larger increase than the settlements reported by SERB. First, while a few

nearby cities may have granted substantial increases, a number of other area cities have obtained wage freezes or won other concessions resulting in significant savings. Second, some of the wage settlements relied upon by the union were negotiated before the seriousness of the current economic downturn was known by the parties. The latest SERB data reveals that average wage settlements fell from approximately 3% in 2007 and 2008 to much closer to 2% in 2009.

Based upon the above analysis, the Fact Finder recommends that wages be increased by 2% in 2010, 2.5% in 2011, and 3% in 2012.

Recommendation - The Fact Finder recommends the following contract language:

21.01 Effective January 1, 2010, all rates of pay shall be increased by 2%.

21.02 Effective January 1, 2011, all rates of pay shall be increased by 2.5%.

21.03 Effective January 1, 2012, all rates of pay shall be increased by 3%.

8) Article XVIII - Educational and Other Pays, Sections 18.01 - 18.03 and 18.07; Article XIX - Uniform Allowance, Section 19.03; Article XXII - Longevity, Section 22.01; and Article XXXVI - Physical Fitness, Section 36.02 - The current contract provides educational and other bonuses, a uniform allowance, longevity, and a physical fitness bonus. The union seeks the same percentage increase for each of the additional payments as for the base wage. The city offers the same percentage increase only for educational and other pays (Article XVIII) and longevity (Article XXII).

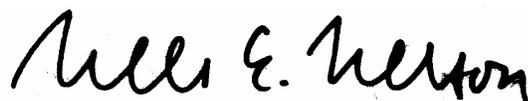
Union Position - The union claims that the current contract provides for automatic increases in the extra pays and other compensation.

City Position - The city claims that the current contract does not have language providing for automatic increases.

Analysis – During the last round of bargaining, educational and other bonuses, the uniform allowance, and longevity were increased by the same percentage as the basic wage. The physical fitness bonuses were increased by negotiated dollar amounts. On that basis, the Fact Finder recommends that the educational and other bonuses, the uniform allowance, and longevity be increased by the same percentage as the basic wage. Since the union did not seek to negotiate a specific increase in the fitness bonus, it should remain the same for the balance of the agreement.

Recommendation - The Fact Finder recommends the following:

The educational and other bonuses shown in Article XVIII, Sections 18.01 - 18.03 and 18.07; the uniform allowance shown in Article XIX, Section 19.03; and longevity shown in Article XXII, Section 22.01, shall be increased each year of the agreement by the same percentage as the base wage.



Nels E. Nelson
Fact Finder

June 7, 2010
Russell Township
Geauga County, Ohio