

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING  
BETWEEN:**

Case No. 10-MED-04-0634

**CANFIELD PROFESSIONAL  
FIREFIGHTERS ASSOCIATION, IAFF  
LOCAL 4507**

“Union”

and

**CARDINAL JOINT FIRE DISTRICT**

“Employer”

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**REPORT OF FACT-FINDER  
AND RECOMMENDATIONS**

**DATE OF REPORT AND DATE OF MAILING: August 18, 2010**

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## **I. INTRODUCTION.**

This matter comes before the Fact-Finder as a result of a referral on June 18, 2010, by the State Employment Relations Board (“SERB”) pertaining to fact-finding protocol between Canfield Professional Firefighters Association, IAFF Local 4507, as the collective bargaining representative for six full-time firefighter employees in the bargaining unit (“Union”), and the Cardinal Joint Fire District (“Employer” or “Fire District”). Excluded from the bargaining unit are all other employees of the Fire District, including the Fire Chief, Deputy Fire Chief, Clerk-Treasurer and all part-time officers and firefighters.

At the time of the Fact-Finder’s initial appointment, he was instructed to conduct the hearing and issue a report by July 2, 2010, unless the parties mutually agreed to an extension of fact-finding as provided under Administrative Code 4117-9-05(G). By communications with the parties’ representatives on June 21, 2010, and telephone conferences with the parties’ representatives on June 24, 2010, the parties had mutually agreed to an extension of time for the hearing and issuance of the Fact-Finder’s Report and Recommendations to August 16, 2010, which, by the parties’ consent dated July 29, 2010, was further extended to August 20, 2010.

In addition to the representatives identified on the face sheet of this Report, the following were in attendance:

On behalf of the Union:

Bill Wilkeson, IAFF President , Local 4507  
Mark D’Angelo, IAFF Vice President, Local 4507

On behalf of the Fire District:

Andrew Skrobola, Chairman, Board of Trustees, Fire District  
Marie Izzo Cartwright, Vice Chair, Board of Trustees, Fire District  
Robert J. Tieche, Chief, Fire District

The Fact-Finder received and has taken into consideration the exhibits and materials presented by both parties, including the parties' respective pre-hearing position statements and the current Collective Bargaining Agreement between the parties effective July 1, 2007 to June 30, 2010.

In addition to the material presented and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

Revised Code §4117.14(C)(4)(f) provides: "The fact-finding panel may attempt mediation at any time during the fact-finding process. From the time of appointment until the fact-finding panel makes a final recommendation, it shall not discuss the recommendations for settlement of the dispute with parties other than the direct parties to the dispute."

A fact-finding hearing was held on July 29, 2010 at the City of Canfield City Hall located at 104 Lisbon Street, Canfield, Ohio. Prior to the hearing on July 29, 2010, the parties had conducted bargaining sessions and/or submission of proposals.

## **II. RECOMMENDATIONS.**

### **A. Tentative Agreement Issues.**

Prior to the commencement of fact-finding, the Fact-Finder engaged in mediation conferences with the parties with a view of resolving the issues or in delineating the essential differences. As a result of those proceedings and discussions, except as otherwise noted herein, the Fact-Finder mediated the following provisions which are referenced hereinafter for purposes of identification and are not specific recommendations of the Fact-Finder. The provisions mediated are as follows:

**Article 4 – Union Rights, Section 4.4:** “Employees of the bargaining unit who are selected by the Union to attend meetings, conventions and seminars shall be granted paid leave for such purposes provided such leave is scheduled not later than the 20<sup>th</sup> of a month for leave to be taken in the following calendar month. Not more than two employees may be on such leave at any one time, and said employees shall not be on the same shift. Union leave for these purposes shall be limited to 120 cumulative hours per calendar year for the bargaining unit.

**Article 10 – Committees and Meetings, Section 10.1:** “In the interest of sound labor management relations, the parties agreed to meet not more than once a week at reasonable, mutually convenient times for the purpose of discussing those matters as outlined in Section 10.3 below, or any other mutually agreed to subject matter, however, health and safety matters shall be the subject of mandatory discussion. The meeting shall be closed to the public.”

**Article 18 – Education and Training, a new Section 18.8:** Tentative Agreement (TA) signed by the parties.

**Article 23 – Sick Leave, Section 23.1:** Tentative Agreement signed by parties.

**Article 23 – Sick Leave, Section 23.6:** Tentative Agreement signed by parties.

**Article 25 – Vacations, Section 25.2:** Tentative Agreement signed by parties.

**Article 25 – Vacations, Section 25.3:** Current contract language except the following sentence in Section 25.3 is amended to read as follows: “Vacation requests that have not been scheduled by March 31 should be submitted for approval to the Fire Chief at least one month in advance, though requests submitted less than one month in advance will still be considered.”

**Article 26 – Hours of Work and Overtime:** The following section is added to Article 26, designated as Section 26.5, to read: “Employee shall normally be scheduled for not more than forty-eight (48) consecutive hours.”

**Article 29 – Exchange of Work Time, Section 29.1:** Amended as per Tentative Agreement signed by the parties.

**Article 31 – Injury on Duty, Phone Policy, Internet Access and Work Rules:** As an aside, it is noted that certain items, initially set forth within fact-finding, and dealing with Article 31, Injury on Duty, Phone Policy, Internet Access and Work Rules, were withdrawn by the Union. Any counterproposals by the Fire District pertaining to those same issues and the Fire District’s proposed Drug and Alcohol Policy were likewise withdrawn on the basis that those subject matters would be items for discussion and review by the labor management committee within the scope and spirit of Article 10, Committees and Meetings.

**B. Contested Issues.**

**Family and Medical Leave:** The Union has proposed that the Fire District adopt and incorporate the Family and Medical Leave provisions to the bargaining unit. In part, the Union argues, by analogy, that the Fire District affords Family and Medical Leave Act benefits to the Fire Chief by virtue of Section 7.04 of the District’s employment contract with the Fire Chief. That section states: “The Employee’s eligibility for benefits under the Family and Medical Leave Act (FMLA) will be determined in accordance with the FMLA and, if eligible, the Employee’s rights and obligations will be determined in accordance with the FMLA.” The Fire District argues that the Fire Chief is not presently covered under FMLA and that Section 7.04, at best, is an “if come” provision which essentially provides that if and when FMLA might be deemed applicable to the Fire Chief and/or the Fire District, then the Fire Chief would be accorded the benefits under FMLA.

Without going into a detailed analysis of the Family and Medical Leave Act (29 U.S. Code §2611, *et seq.*), it is sufficient to note that under §2611(2)(B)(ii), an “eligible employee” does not include “any employee of an employer who is employed at a worksite at which such

employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.” Also, under §2611(4)(A)(i), the term “employer” “means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the calendar or preceding calendar year”. The Act also notes that FMLA applies to public employers which are referred to as “public agencies” if they come within the definition of §203(x) of the Fair Labor Standards Act (29 U.S. Code §203(x)), and are otherwise within the definition of the term “employer.”

Based on the present language of the Family and Medical Leave Act and the evidence presented at fact-finding, it is readily apparent that the Fire District has substantially fewer than 50 employees, and there is no evidence suggesting that the number “50” would be reached in any foreseeable future. The adoption of the Union’s proposal would thus require a recommendation that the contract FMLA mirror the federal statute. At this juncture, the Fact-Finder is unwilling to recommend such an extension.

***Recommendation:*** The Fact-Finder recommends that the Union’s Family and Medical Leave Act proposal not be adopted.

**Article 9 – Corrective Action:** The Union has proposed that Article 9 be amended by adding a new Section 9.8. In summary, the proposal deals with time limitations applicable to disciplinary actions and removal of disciplinary decisions. Records pertaining to oral and/or written reprimands would be removed from an individual’s file 12 months after the discipline was imposed, provided that no other discipline has been imposed in the preceding 12 months; records relating to suspensions of 30 days or less would be removed 24 months after the date discipline was imposed, provided that no other discipline had been imposed during the preceding



24 months; records pertaining to suspensions of more than 30 days would be removed from an individual's file 60 months after the date discipline was imposed provided no other discipline had been imposed during the preceding 60 months. The Fire District has asserted that the proposal should not be adopted on the basis that this provision is significantly different from what is provided in Article 9, Corrective Action, of the contract between the Fire District and AFSCME Ohio Council 8, AFL-CIO, the collective bargaining representative for the part-time firefighters. Additionally, the Fire District asserts that its disciplinary system was approved between the Fire District and the Union in an arbitration proceeding, Federal Mediation and Conciliation Service Case No. 09-03117, decided January 16, 2010 by Arbitrator Paul F. Gerhart. The current contract language, dealing with disciplinary actions, is set forth in Section 9.5 which states:

“The Employer will utilize principles of progressive discipline, which may include but not be limited to a documented verbal warning, written warning, suspension, demotion, and discharge. However, the parties recognize and agree that the discipline imposed in any given instance will depend on all the facts and circumstances, including the severity of the misconduct, the Employee's seniority and overall work record.”

The Fact-Finder is aware that some collective bargaining agreements contain provisions having mandatory removal of reprimands and suspensions. Those provisions tend to be found in larger bargaining units than that found here. In this instance, the Fact-Finder is of the view that considering the number of bargaining unit members, the Fire District should have a wider latitude in determining the scope of its discipline. The Fact-Finder recognizes that certain discipline that might be imposed is unduly harsh or even that the discipline should be removed. Such a contention might arise in a grievance proceeding. The Fact-Finder is of the view that the scope and extent of discipline, including the possible removal of disciplinary action from an individual's file might occur but, at this time, should not be specifically categorized.

**Recommendation:** The Fact-Finder recommends that the proposed new Section 9.8 not be adopted.

**Article 16 – Uniforms:** The Union has proposed a new Section 16.4 providing for a uniform maintenance allowance of \$250.00 per year after completion of an individual's probationary term. The current Article 16 provides that the Fire District provides employees with uniforms and equipment. It further provides that if an item of personal property is lost or destroyed during the employee's performance of duties, the employee is entitled to reimbursement for the value of the item to a maximum of \$500.00. The Union has argued that a uniform allowance should be provided because there might be items to be purchased by a firefighter, such as a different type of boot than that provided by the Fire District. Fire boots, for example, can be substituted by a firefighter for the ones provided by the City but the substitution is at the employee's own expense. The Union also argues that other fire departments provide a uniform allowance.

The evidence was fairly clear that uniforms and equipment were provided by the Fire District and there was no outside, independent monetary exposure that a unit member had. However, the Fact-Finder is not unmindful that a firefighter's uniform is not an ordinary, everyday item of clothing but is limited to duty assignments, special occasions, such as funerals, special observances and that a firefighter's appearance is a reflection on the Fire District. A firefighter thus incurs some monetary exposure to maintain his uniform. It is recognized that under Section 16.3, if a uniform is worn out as a result of ordinary wear and tear, the Fire District will replace that uniform.

**Recommendation:** The Fact-Finder recommends that a new Section 16.4 be added to state as follows:

“The Employer shall provide each full-time employee with a uniform maintenance allowance of \$50.00, upon the completion of his probationary term, during each year of the contract, payment to be made on such date as determined by the Fire District.”

**Article 20, Wages:** As is not unusual, a core issue in the fact finding related to the matter of wages. The Union proposed wages over a three year period of 5%-5%-5%. The Fire District countered with a proposed wage freeze for the first year of the contract (July 1, 2010 to June 30, 2011), a 1% increase in the base rate effective July 1, 2011, and a 1% increase effective July 1, 2012.

The Union argued, in part, that based on the Fire District’s profit and loss statement for Calendar Year 2009, the Fire District had total general fund income of \$1,287,014 and an equipment fund balance of \$520,884. For the same calendar year, the Fire District had total general fund expenses of \$1,286,274 and equipment fund expenses of \$509,500. The evidence reflected that the Fire District has a separate “equipment fund” although the parties have disagreed as to the interpretation and application of the levy language. The Union’s basic contention as to this item was that \$83,250 was expended for “capital outlay,” but which amount was charged against the general fund and should have been charged against the equipment fund. For 2010, the Fire District’s projected profit and loss overview reflects a projected surplus from the general fund of \$15,585.56 and an equipment fund balance of \$321,2088.67. Here, again, however, the Union argues that \$91,200 for capital outlay was projected to be charged against the general fund, whereas that amount should be charged against the special equipment fund. The equipment fund is generated by virtue of a 1.1 millage property assessment, the levy being continuous. The Fire District argues that a general fund renewal levy of 0.42 mills will be on the November, 2010 ballot, and it is uncertain whether the levy will be renewed. The levy generates approximately \$200,000 a year. Further, the Fire District contends that on January 18, 2007

(Resolution 2007-1), and again on March 15, 2007 (Resolution 2007-7, amending Resolution 2007-1), the Fire District provided that where routine maintenance, repairs, and equipment purchases costing less than \$5,000, such charges would be made against the general operating fund and that repairs, maintenance, and equipment purchases in amounts greater than \$5,000 would be paid from the equipment fund.

The Union also argues that the first year's costs covering proposed wages, state mandated costs (*e.g.*, pensions) but excluding health care costs would be \$14,500 and that the total for the full three year contract would be \$90,600. Thus, the Union asserts that a 5%-5%-5% increase is not unreasonable. The Fire District argues that such a proposed increase is unrealistic in that no public sector contract of any recent date has provided for a 5%-5%-5% wage increase.

The Union also relied on wage information provided in SERB's Clearinghouse "Benchmark Report" reflecting a salary of approximately \$35,000 for other fire departments. The Fire District argues that the Benchmark Report dated June 30, 2010 is not entirely accurate because the computation of the \$35,000 wage figure was based on a 53 hour work week for Bazetta Township (nine firefighters), whereas no hourly computation was made by SERB as to Cardinal Fire District and that the figures entered appear to be based on 2,080 hours but, in fact, should have been computed on the basis of 2,756 hours. Using the current base pay of \$12.47 per hour times 2,756 hours results in \$34,367, which is asserted to be quite comparable to that provided to firefighters in other departments.

The current contract, expiring on June 30, 2010, provided for a 3%-3%-3% increase.

The Fact-Finder is not insensitive to the realities of the current economic situation which has evolved over the last 1-1/2 years, a situation that certainly was not envisioned when the present contract was signed in July 2007. Also, the Fact-Finder is mindful of the renewal levy

scheduled to be voted upon this November, the outcome of which is not known by anyone. Notwithstanding those factors, however, the Fact-Finder is of the view that a pay increase is appropriate.

**Recommendation:** The Fact-Finder recommends that Article 20 be amended to provide as follows:

“Bargaining unit employees employed as of the effective date of this Agreement will receive a 2-1/2% increase in their base rate of pay effective as of the first day of the pay period beginning on or after July 1, 2010.

Effective the first day of the pay period beginning on or after July 1, 2011, bargaining unit employees will receive a 2-1/2% increase in their base rate of pay in effect as of that date.

Effective the first day of the pay period beginning on or after July 1, 2012, bargaining unit employees will receive a 3% increase in their base rate of pay in effect as of that date.”

**Article 20 – Wages, Section 20.5 (Longevity Pay):** The Union has proposed an adjustment and amendment to Section 20.5 dealing with longevity pay. Currently, longevity pay is provided covering from four years at 25¢ to 21 years and over of \$1.60. The Union proposes an increase of 10¢ for each longevity category. Also, it is indicated that of the six firefighters, five are at the “six year” level and that the additional cost to the district would be \$1,378 per year per firefighter. Further, the Union argues that the part-time firefighters are provided a better longevity amount (25¢ / \$1.85), however, their hourly rate of pay is substantially less.

The Fact-Finder recognizes that longevity pay is often urged as a factor to “hold on” to senior and more experienced firefighters and that the firefighters’ years of service are recognized by the differential in pay. In light of the recommendation made pertaining to wages, at this time, and again sensitive to the current state of the economy, the Fact-Finder is of the view that the longevity increase requested by the Union should not be adopted.

**Recommendation:** It is the recommendation of the Fact-Finder that current contract language as presently set forth in Article 20, Section 20.5 should be retained.

**Article 21 – Holidays:** Under the current contract, regularly scheduled employees are compensated at time and a half in the event their regular work schedule requires them to work on various holidays, such as New Year’s Day, Easter Sunday, Labor Day, etc. The Union proposed that in the event a firefighter who is not regularly scheduled for such holiday but is “called in,” then that individual, now paid time and a half, should be paid two and a half times his regular hourly rate for the primary reason that such special called in firefighter is altering his personal schedule. The Fact-Finder appreciates that a firefighter who was not scheduled and then comes into work is adjusting his personal schedule, however, it was indicated that such a call-in does not require the firefighter to accept and that he may refuse to report. Further, there may be an intangible morale factor between firefighters in that one firefighter is receiving time and a half and another firefighter standing right next to him is receiving two and times his base pay. In light of the current economy, the Fact-Finder does not believe that the proposal is appropriate at this time.

**Recommendation:** It is the recommendation of the Fact-Finder that current contract language be retained.

**Article 23 - Sick Leave, Section 23.2:** The current contract provides that unused sick leave can be accumulated up to a maximum of 600 hours. The Union proposes that the section be amended to allow that unused sick leave can accumulate without any hour restriction. The Fire District contends that the granting of unlimited accumulation will create an unintended consequence and financial burden on the Fire District by virtue of Section 23.8. That section provides that if a full-time employee retires with at least ten years of full-time service with the

Fire District, the employee may elect, at the time of retirement, to be paid for 25% of the value of the employee's accrued but unused sick leave. Thus, by allowing for an unlimited accumulation of sick leave, a significant additional financial allocation, *i.e.*, the 25% factor, would be an additional cost to the Fire District.

The Fact Finder is of the view that some adjustment is appropriate.

**Recommendation:** The Fact-Finder recommends that Article 23, Section 23.2 be amended to read as follows: "Unused sick leave shall accumulate up to a maximum of 800 hours."

**Article 23 – Sick Leave, Section 23.4:** The current contract provides that if an employee is unable to work and is utilizing sick leave, that employee is required to notify the Fire Chief or his deputy no later than eight hours before the start of his scheduled duty time and to provide a reason for such sick leave. The Union proposes to amend that section to provide that notification of the use of sick leave and inability to work should be provided no later than one hour. The Fire Chief testified that one hour is too short a period of time considering the size of his workforce, including part-time firefighters and that the eight hour rule at least gives him some reasonable notice to find a replacement. One hour can come and go very quickly.

**Recommendation:** The Fact-Finder recommends that current contract language as to Section 23.4 be retained.

**Article 23 – Sick Leave - Miscellaneous:** The Fire District has presented a number of proposals regarding some additional or amendatory language pertaining to various sections within Article 23 which will be reviewed *seriatim*.

The Fire District has proposed certain additional language adding Section 23.3(a) setting forth with some specificity eligibility for sick leave. Without going into a detailed analysis,

suffice to indicate that the Fact-Finder is of the view that the current contract language set forth in Section 23.3, with one exception, is sufficient to permit the Fire Chief managerial control over usage of sick leave. The one exception, pertaining to a change to Section 23.3, is a rewording of the last sentence in Section 23.3, and the Fact-Finder recommends that the last sentence in Section 23.3 read as follows: “‘Immediate family’ shall be defined as the bargaining unit employee’s mother, father, spouse, child, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren.”

The Fire District has proposed an amendment to Section 23.4 to the extent that a written reason for sick leave for absences of more than one, rather than two, consecutive tours of duty. The Fact-Finder believes that the current contract language is sufficient. Current contract language should be retained.

**Article 27 – Health Insurance:** The current contract allowed for the Fire District to change carriers or to become a self-insurer and also provided various levels of employee contribution to the premium charges which, for example, for single coverage was 5% in the first year of the contract and rising to 10% in the third year of the contract, and whereas, for family coverage, it was 15% of premium for the first and second year and decreased to 10% for the third year. The Union has proposed that for the term of the new contract effective July 1, 2010, single coverage, dual coverage and family coverage would each stay at 10%. The Fire District has proposed an increase in the premium contribution of 15%, 20% and 25% for single coverage for the three years of the contract, 20%, 25% and 30% for dual coverage, and 20%, 25% and 30% for family coverage. The Fire District has argued that because of the increasing costs of health care, it is necessary to increase an employee’s contributions. The Fire District maintains insurance coverage through an insurance carrier, but is also self-insured, thus making the



insurance coverage an excess provider. Also, the Fire District assumes the deductible for the firefighters in its capacity as a self-insurer and reimburses the firefighters for any deductible charges asserted against them. For 2009, the District's self-insurance payback costs were \$11,348 and, thus far, for 2010, is \$6,600. The Fact-Finder is also appreciative of the fact that unknown healthcare costs may ensue in light of the congressional enactment of the Patient Protection and Affordable Care Act signed by the President on March 23, 2010, P.L. 111-148 (42 U.S. Code §18001, *et seq.*). The Fire District also argues that although the percentage of premium participation by the employees is proposed to increase, the net effect will be substantially less because the current premium costs are less under the new format with the District as a self-insurer versus its prior premium exposure.

The Fire District has proposed an amendment to the language in Section 27.1 referring to the representation that the Fire District will provide "insurance coverage comparable" in the event of a change in plan to new language to state "not substantially less than in effect as of June 1, 2007." The Fact-Finder is not entirely clear as to whether this is merely a semantic change or a substantive change, as it is contended by the District that it is merely a different choice of words. In that context, the Fact-Finder does not believe that a language change is necessary and, therefore, recommends that current contract language be retained.

As to Section 27.2 dealing with the employee contribution to premiums, the Fact-Finder recommends as follows:

	<u>Single Coverage</u>	<u>Dual Coverage</u>	<u>Family Coverage</u>
Effective 7/1/2010	12-1/2%	12-1/2%	12-1/2%
Effective 7/1/2011	12-1/2%	15%	15%
Effective 7/1/2012	15%	18%	18%

The District has proposed new language for Section 27.4 dealing with notification in instances of coordination of benefits because of separate insurance coverage through a spouse. The Fact-Finder is of the view that the request for notification is not unreasonable and clarifies current contract language. Accordingly, the Fact-Finder recommends that current Section 27.4 be deleted in its entirety and, in lieu thereof, Section 27.4 read as follows:

“For the duration of this Agreement, coordination of benefits is required for Employees whose spouse is employed full-time, defined as at least 32 hour per week and has access to health insurance through his/her employer. In such cases of coordination of benefits, the health insurance of the spouse shall be the primary insurance for the spouse, with the Employer’s insurance as secondary coverage. The Employee must notify the Employer immediately in writing of the commencement of such group health coverage for the spouse and/or other dependents. For eligibility determinations under this provision, the Employer may require an employee to periodically submit a form that includes certification of coverage or non-coverage by the spouse’s employer. The Employer reserves the right to verify this information at any time.

There will be a surcharge of \$100.00 per month for an Employee whose eligible spouse has access to health insurance through his/her employer, but who nevertheless chooses to enroll in coverage in the Employer’s health insurance plan. Eligible dependents will be covered by the insurance plan of the spouse who has the earlier birthday in the calendar year.”

**Article 33 – Duration of Agreement:** The parties are not in any significant disagreement as to the duration of the contract although the Union, as an issue, asserted a three year contract. The Fact-Finder finds that a three year contract period is consistent with statutory guidelines and is not a contentious issue.

***Recommendation:*** The Fact-Finder recommends that the current Article 33 be deleted in its entirety and substituted in lieu thereof the following: “This Agreement shall be effective as of July 1, 2010, and shall remain in full force and effect until June 30, 2013.”


**Miscellaneous:** Except as otherwise amended, substituted or revised as set forth in this Report, or as separately agreed upon by virtue of a Tentative Agreement (TA) signed by the parties, the Fact-Finder recommends that in all other respects, current contract language be

retained, and that the Union and the Fire District respectively be deemed to have withdrawn all other aspects or issues.

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Executed at the City of Cleveland, Cuyahoga County, Ohio, this 18<sup>th</sup> day of August, 2010.

Respectfully submitted,



DONALD N. JAFFE  
Fact-Finder

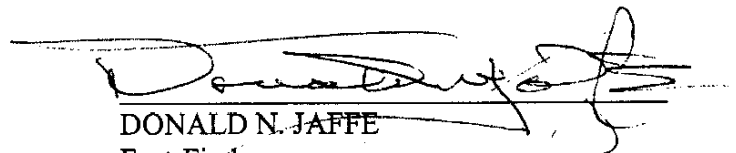
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via overnight U.S. Overnight Express Mail, postage prepaid, this 18<sup>th</sup> day of August, 2010, on the following:

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