STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING
BETWEEN **Case No. 10-MED-06-0842**

THE SHEFFIELD LAKE PROFESSIONAL FIREFIGHTERS, LOCAL 2355, IAFF, OAPFF, AFL-CIO-CLC

"Employee Organization/Union"

and

CITY OF SHEFFIELD LAKE

"Employer"

REPORT OF FACT-FINDER AND RECOMMENDATIONS

DATE OF REPORT AND DATE OF TRANSMISSION: August 18, 2011

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I. INTRODUCTION.

This matter comes before the Fact-Finder as a result of a referral on March 3, 2011, by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between Local 2355, The Sheffield Lake Professional Firefighters, IAFF, OAPFF, AFL-CIO-CLC, as the collective bargaining representative ("Union"), and the City of Sheffield Lake ("Employer").

At the time of the Fact-Finder's initial appointment, he was instructed to conduct the hearing and issue a report by March 17, 2011, unless the parties mutually agreed to extend the period of fact-finding as provided under Administrative Code 4117-9-05(G). By communications, both written and telephonically with the parties, the parties had mutually agreed to an extension of time for the fact-finding hearing.

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."

Pursuant to the above authorization, on April 15, 2011, the Fact-Finder conducted mediation with the parties, which, unfortunately, did not evolve into a final resolution of the issues.

A fact-finding hearing was held on May 24, 2011, June 21, 2011 and July 6, 2011, all hearings being held at the City of Sheffield Lake City Hall. [1]

In addition to the representatives identified on the face sheet of this Report, also in attendance at one or all of the fact-finding hearings were the following:

[1] The reader is advised that during the pendency of this fact-finding, the General Assembly enacted 129th General Assembly File No. 10, Senate Bill 5, effective July 1, 2011. This legislation, commonly referred to as "SB 5," provided a number of changes in public sector collective bargaining. However, at the time of the writing of this Report, a referendum petition had been submitted to the Ohio Secretary of State seeking to repeal SB 5. On July 21, 2011, the Secretary of State certified the petition. (See, The Plain Dealer, July 22, 2011 edition, page B1.) Because the uncertainty as to whether SB 5 will become law and not known until the November 2011 election, this Fact-Finder is proceeding to interpret and apply the statutory and regulatory provisions as existing prior to July 1, 2011.

Scott S. Kozlowski, President, Local 2355, Sheffield Lake Firefighters
Brian Davis, Secretary-Treasurer, Sheffield Lake Firefighters
Wesley Mariner, Trustee, Sheffield Lake Firefighters

Additionally, during the course of the fact-finding hearings, testimony was also presented by Mary Schultz on behalf of the Union; Tamara Smith, Finance Director, City of Sheffield Lake; and Michael Conrad, Retired Fire Chief, Sheffield Lake Fire Department.

The Fact-Finder received and has taken into consideration numerous and extensive 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 January 1, 2008 to December 31, 2010. Although not every exhibit or document has been enumerated or analyzed in this Report, the Fact-Finder has reviewed each, as, for example, one exhibit was 95 pages. In that context, the Fact-Finder would be remiss if he did not commend the representatives of both the Union and the City for their presentation, their efforts and the exhaustive material.

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). In particular, Subsection (e) states in pertinent part: "In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section." Subsection (G)(7) identifies the considering factors as:

"(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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(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 the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment."

Consistent with the provisions of Revised Code §4117.14(C)(4)(e) and (G)(7)(a)-(f), SERB has set forth similar standards in Administrative Code 4117-9-05(J) and (K)(1) through (6).

II. BACKGROUND.

The City of Sheffield Lake is located in the northern portion of Lorain County, along the shore of Lake Erie. The City is a residential community with a population of approximately 9,500. The City's funding is primarily drawn from income tax revenue (approximately 51% of total General Fund income) and property tax revenue (approximately 14% of General Fund income) with the balance consisting of intergovernmental funds and local collections for fees and services.

The Sheffield Lake Fire Department consists of eleven members of the Bargaining Unit, being two lieutenants and nine firefighters. The Fire Chief is excluded from the Unit. All firefighters are also paramedics. As set forth under Article 1, Section 3 of the current Collective Bargaining Agreement, the Unit consists of "all full-time Fire Lieutenants, Fire Lieutenant Paramedics, Class A or below firefighters, and Class A or below firefighter paramedics who are full-time employees of the City of Sheffield Lake Fire Department." The Fire Department operates with three rotating 24 hour shifts, with each shift staffed with a minimum of three firefighters. The Fire Department is funded by the City's General Fund, the City's Fire Levy Fund, the Paramedic Program Fund, the Fire Salary Levy Fund and the Fire Operating Levy

Fund. The Levy Funds cover approximately 50% of the cost of the firefighters' compensation and approximately 25% of General Fund expenditures are applicable to Fire Department costs.

As previously noted, the current Collective Bargaining Agreement ("CBA") expired on December 31, 2010, to which the City filed a notice to negotiate on or about June 18, 2010. The parties had initially exchanged their respective proposals on November 22, 2010 and had been engaged in ongoing negotiations since, holding approximately three bargaining sessions and two mediation sessions with the Federal Mediation and Conciliation Service ("FMCS"). The Fact-Finder was not involved in the prior bargaining sessions or the FMCS mediation sessions.

III. FINANCES.

At the core of every public sector collective bargaining agreement is the issue of finances, and such is no less applicable in the instant matter. On the one hand, there is an understandable desire by the Union to obtain the best agreement for its members as relates to wages, benefits and conditions of employment. Equally so, on the other hand, a public employer seeks to provide the best, or most appropriate, public services for the benefit of its citizenry, taking into consideration the financial condition of the public employer in reaching an accommodation with its public employees, be they police, firefighters, service or any other classification of public employees. More often than not, these two divergent starting positions inevitably lead to an ultimate compromise or accommodation by the parties, resulting in a collective bargaining agreement. A collective bargaining agreement should not be interpreted in absolute terms by either party or by the general public of Sheffield Lake but rather as a working product embodied in a collective bargaining agreement either as negotiated between the parties, resolved through fact-finding, or as relates to safety forces, ultimately delineated by a conciliator.

It is with these broad principles in mind that the Fact-Finder has enunciated his recommendations pertaining to a new Collective Bargaining Agreement between the City and its

full-time firefighters. The parties and, more importantly, the general public should not interpret the proposed Collective Bargaining Agreement as constituting either a "win" or a "loss" as relates to either the City or the firefighters.

Two elements should be mentioned because they have some impact on the City's income, although they are not necessarily the overriding and determinative factors in evaluating every aspect of the Collective Bargaining Agreement. Those two aspects are products of the 2011-2013 biennium (July 1, 2011 – June 30, 2013) budget recently enacted by the General Assembly. The first impact is that the State has re-allocated the amount of appropriations to local governments referred to as "State Local Government Funds" and the second is the General Assembly's repeal of the Ohio estate tax to be effective in 2013. The year 2013 is mentioned because the Fact-Finder has recommended that the new Collective Bargaining Agreement be for the period January 1, 2011 through December 31, 2013.

The Union presented Mary Schultz, a certified public accountant and a certified fraud examiner. The Fact-Finder takes notice of her background as a financial analyst for a number of police and fire unions, as well as her credentials as a certified public accountant, with a Bachelor's Degree in accounting from Cleveland State University and a Master's Degree in executive management from Ashland University. Also, she has 21 years experience as a treasurer or chief financial officer of a number of Ohio public schools and eight years as a fiscal officer for public libraries (Union Exhibit 4).

Ms. Schultz testified that she was retained by the Union to examine the financial condition of the City of Sheffield Lake. She noted, in pertinent part (Union Exhibit 4), that the income of Sheffield Lake comes from a number of sources, to wit, real property taxes, income taxes, State Local Government Funds, estate taxes and local collections from fees and services.

The property tax constitutes approximately 14% of total General Fund revenue and income taxes represent approximately 51%. The Fire Department is funded through a number of funds referred to as the General Fund, the Fire Levy Fund, the Paramedic Program Fund, the Fire Salary Levy Fund and the Fire Operating Levy Fund. She noted that for 2009, general revenue funds were $2,962,000, or $158,000 less than what was collected in 2008. However, 2009 expenditures were $3,005,000, representing an $89,000 decrease from the 2008 expenditure level. Although revenues were less than expenditures, there was a General Fund carryover balance of $122,000 as of December 31, 2009, although some of that was apparently attributable to estate taxes.

Ms. Schultz also noted that the Special Levy Funds applicable to the Fire Department, previously stated, cover approximately 50% of the total Fire Department wages. She noted:

> "The 2011 Fire Department budget for the General Fund and Levy Funds combined is $1,389,000. The primary increases are the budget for the Kelly Time settlement costs, an increase of $40,000 from 2010 and an increase of $53,000 for the medical insurance costs. Yet the total amount budgeted for wages and the Kelly Time combined is $6,000 less than expended in 2010.
>
> In comparing the General Fund Fire Department budgets over the past few years, we find that in 2009, the Fire Department expenditures represented 25.72% of the total General Fund. In 2010, that percentage increased to 26.46%, and the budget for 2011 reduces the Fire Department to 25.01% of the total General Fund."

Ms. Schultz further noted that a 1% wage cost for the firefighters (excluding workers' compensation costs) is $9,910. In addition to that, $2,378 or 24% is allocated for the Ohio Police and Fire Retirement Contribution and $144 or 1.45% is allocated for Medicare, or a total cost of $12,432.00. Ms. Schultz concluded:

> "The City of Sheffield Lake was fortunate to receive an unexpected windfall in estate tax in 2010 that increased the General Fund balance to carry the City into 2011 after a period of difficult times and declining tax revenues. However, the 2011 budget was increased by $400,000, which completely eliminated the gain.

> The 12/31/11 year-end carryover balance, using the City's estimated revenues and budgeted expenditures, should be approximately $295,000. The City is able and willing to borrow short-term notes as needed. The four Fire Levy Funds will have an estimated unencumbered balance of $44,000 as of 12/31/11, all of which can be used for payment of firefighter wages and pension costs."

Ms. Schultz further noted the potential Local Government Fund changes which were proposed by the State 2011-2013 biennium budget and its impact on Sheffield Lake. For Calendar Year 2010, the City received Local Government Funds of $336,733. For Calendar Year 2011, it was projected that the City would receive 95% of its 2010 allocation or $319,896, resulting in a loss for 2011 of $16,837. For Calendar Year 2012, the reduction would be to 69% of 2011 levels for an allotment of $220,728, which is a loss in 2012 of $116,005. For the first half of Calendar Year 2013, there is a projected loss of $94,422 of Local Government Funds from that received in 2010. As cogently noted, that 2-1/2 year period, without State budget cuts and the City receiving the same local government funds that it received in 2010, would have resulted in $841,833, but with the State reallocation of Local Government Funds projected at $614,569, there is a negative difference of $227,264.

Tamara Smith, the City's Finance Director testified on behalf of the City. She stated that she has 17 years experience with the Finance Department with the last eight years as the Finance Director. She testified that the City had a hiring freeze in 2010 and also, as to the Police Department, no promotions were granted. In 2010, there was some adjustment in the City's hospitalization costs as, in that year, cities in Lorain County, including Sheffield Lake, joined a medical/hospitalization consortium in which the County was the administrator of a self-funded program. However, she further testified that the hospitalization premium increase for 2011 was 13% over what was paid in 2010. She also testified that there was an 8% hospitalization increase from 2009 over 2008 and a 6% increase for 2010 over 2009. She also indicated, by way of example, that the monthly premium for family coverage for 2010 was $1,303, which was

increased to $1,475 per month for 2011. Further, it was noted that, similar to the testimony presented by Ms. Schultz, Ms. Smith testified that total revenue for 2010 was $3,259,867.63 plus $614,260.05 from the Fire Levy Funds, or a total of $3,874,127.68. This was a revenue plus of $289,314.76 from 2009 and expenses attributable to the Fire Department were $1,368,309.62, which was a negative difference of $75,181.90 from 2009. Further, by way of example, for 2009, total revenues were $3,584,812, of which $622,228 was attributable to Fire Levy Funds, but there was a negative difference from the 2008 carryover of $147,488. Fire Department expenses for 2009 were $1,443,491, or a positive expense difference from 2008 of $38,388.

It is significant to note that in 2007, the City received $29,633 in estate tax, $21,717 in 2008, $52,992 in 2009, and $383,300 in 2010. The unexpected windfall in estate tax from 2010 was attributable to the passing of one of the city's wealthier residents. With the repeal of the estate tax projected in 2013, the City would no longer have that tax as an income revenue source, albeit relatively small, and, whether considered a windfall or not, would end up being a zero line item.

IV. INCLUSION OF CURRENT CONTRACT.

Except as otherwise set forth in this Report and Recommendations or as agreed to by the parties, in writing, the Fact-Finder recommends retention of current contract language.

V. AGREED ISSUES.

The Fact-Finder finds that the parties have agreed and resolved the following:

Article 4 (Non-Discrimination), Section 2, which shall read as follows:

> "The parties to this Agreement recognize their rights and responsibilities under federal and state civil rights laws. The parties agree that, insofar as practicable, the provisions of this Agreement will be applied without regard to race, color, religion, national origin, military status, sex, age, or disability except where a bona fide occupational qualification exists."

Article 12 (Vacations). Without setting forth the parties' initial respective positions pertaining to this article, suffice to note that the differences have been resolved, and it is the Fact-Finder's recommendation that Article 12 (Vacations) be retained as in current contract language.

VI. UNRESOLVED ISSUES.

Initially, it should be noted that although not binding on this Fact-Finder, it is nevertheless a significant factor considering that two other collective bargaining units in the City of Sheffield Lake have recently entered into Collective Bargaining Agreements, namely, an agreement between the City of Sheffield Lake and the Ohio Patrolmen's Benevolent Association (Patrol Officers, Sergeants, Dispatchers) for the period January 1, 2011 through December 31, 2013 (Union Exhibit 2) and an agreement between the City of Sheffield Lake and the American Federation of State, County and Municipal Employees ("AFSCME") for the period January 1, 2011 through December 31, 2013 (Union Exhibit 3). References to those two Collective Bargaining Agreements will be made in some of the issues in this Report.

Article 6 (Union Business), Section 2. The Union has proposed that Section 2 be modified by clarifying Subparagraph 3 dealing with the placement of a Union bulletin board and also proposes a new Subparagraph 5 allowing Union members to have preparatory time for negotiations, including bargaining meetings. The City proposes current contract language.

The Fact-Finder is of the view that because of past misunderstandings regarding the Union bulletin boards and the placement of it, it is appropriate to clarify that issue. Accordingly, the Fact-Finder recommends that Article 6, Section 2, Subparagraph 3 be amended to provide as follows:

> "Placement of Union Material on Union Bulletin Boards. The City will provide space for the Union Board and it will be in clear sight for all members to view.

> The bulletin board space shall be located within the living quarters area as determined appropriate by the Fire Chief and Local Union President."

As to Article 6, Section 2, Subparagraph 5, the Fact-Finder does not recommend inclusion of the Union's proposal as the language is rather "open-ended" as to the full scope of what preparation for negotiations might entail. Also, such a proposed provision may create conflict between regular work duties and negotiation matters. Further, the proposed language is, arguably, an all inclusive one applying to all of the Union members. For these reasons, among others, the Fact-Finder does not recommend inclusion of the requested Subparagraph 5.

Article 6 (Union Business), Section 4. The Union has requested that Section 4 be modified to provide that if a file is removed from an employee's file, a substitution letter explaining the removal should be inserted. The City counters that such a process is not necessary in light of current contract language and an employee's right to review their personal file at any reasonable time. The Fact-Finder believes that the Union's concerns are valid so that there is some documentation in an employee's file as to what has or has not been removed. Accordingly, the Fact-Finder recommends that Article 5, Section 4 be amended to read as follows:

> "All members of the Bargaining Unit or their Union representative, as requested in writing, shall have access to their personnel files, records and civil service files. If any file is removed from an employee's file, there shall be a letter replacing it and it must state a summary of the file removed."

Article 6 (Union Business), Section 5. The current Section 5 sets forth, in rather specific terms, 14 items for which the City shall provide space for use by the Union in conducting Union business and used by the firefighters for their convenience while on duty. The City has proposed deleting almost all of Section 5. The Union has proposed an expansion of the items. Frankly, the Fact-Finder is disturbed that the negotiations have reached a level where it is necessary to itemize virtually all of the items that the City would provide the firefighters in their

living quarters space. Inasmuch as this matter has become such an issue, the Fact-Finder, therefore, recommends that Section 5 be amended to read as follows:

> "The City shall continue to provide space now used by the Union in conducting its business. This space shall include but not be limited to:
>
> 1. Locker.
> 2. Meeting area.
> 3. Files.
> 4. Union computer (internet access to be paid for by Union).
> 5. Computer use for departmental business.
> 6. Copier use.
> 7. Phone use.
> 8. Copies of Council and Committee Minutes, Codified Ordinances, Contracts, Budgets and other documents pertinent to the Department of Fire as may be requested in writing."

The Fact-Finder agrees with the view of the City that the issues raised by the Union regarding items for use by the firefighters in their living quarters should be set forth in a separate article rather than encompassed in Article 6 dealing with "Union Business." Accordingly, the Fact-Finder recommends that a new Article be provided for in the Collective Bargaining Agreement to read as follows:

> "Section 1. The City will continue to provide, to the extent practicable and within its management discretion, space for those items necessary to maintain a reasonable standard for duty living conditions. Bargaining Unit Members shall be responsible for the daily maintenance and upkeep of their living quarters and fire house. Bargaining Unit Members shall maintain a neat and orderly living quarters environment.
>
> Section 2. Living quarters space afforded by the City may allow for but not be limited to the following privileges to be supplied by the Bargaining Unit Members:
>
> 1. Food locker.

2. Closet.

3. Television, including cable TV with cable boxes and including VCR/DVD/Blue-Ray (consistent with latest technology/camcorder/fax).

4. Furniture.

5. Dishwasher.

6. Grill.

7. Lounge chairs.

8. Refrigerator.

9. Coffee maker.

10. Cooking utensils.

11. Toaster oven/toaster.

12. Weight equipment.

13. Wireless internet (paid by Union)."

Article 9 (Overtime), Section 1. Subparagraph 1 provides that overtime is computed by taking the firefighters' salary divided by 2,080 and multiplying the result by 1-1/2 times. The City has proposed that the contract be changed to provide that overtime would be computed by dividing the salary by 2,600 times 1-1/2. In support, the City basically argues for the adjustment on economic terms that allow an inflated overtime rate for firefighters versus what would be an overtime rate if computed at 2,600. The 2,080 factor is a simple mathematical computation of a 40 hour work week times 52 weeks equal 2,080, whereas, a 50 hour work week times 52 multiplies out to 2,600. The City argues that using a 2,080 hour factor gives a projected overtime rate for the top ranking firefighter of $840.61, whereas if the 2,600 hour rate was computed it would result in an actual overtime rate of $672.48. (Employer Exhibit 2-A) The Union has argued that this particular issue was never discussed or reviewed prior to fact-finding

and suggests "bad faith" on the part of the City to now introduce this proposal, the ultimate effect of which would be to reduce the firefighters' overtime compensation.

The Fact-Finder is always uncomfortable in recommending changes in contract language unless there is some overriding justification or a necessity.

Article 10, Section 5 of the current contract states in pertinent part: "Each full-time employee of the Bargaining Unit of the Department shall work an average fifty (50) hour work week." The Fact-Finder well appreciates the economic differences that would result if a salary is determined on the basis of 2,080 hours or 2,600 hours. In this Fact-Finder's view, using a salary factor of 2,080 (which suggests a 40 hour work week) as opposed to the contractually required 50 hour work week, leaves a query as to why compensation generally is being computed based on the contractual basis of a 50 hour work week, but for overtime purposes you use a rate of 2,080. This, in effect, does constitute something of a windfall which does not appear to exist in any other City department and, undoubtedly, is unique to the firefighters. Based on the present contact requirement that a firefighter is to work an average 50 hour workweek, i.e., 2,600 hours, the Fact-Finder does not believe that it is appropriate or fair to disregard that provision and to provide for overtime at a 2,080 hour rate. Accordingly, the Fact-Finder recommends that Section 1, Paragraphs 1 and 2 be amended to read as follows:

> "(1) All overtime, except as listed below, salary divided by two thousand six hundred (2,600) multiplied by time and one-half (1.5).
>
> (2) Any Haz-Mat Technician, in the performance of their duties, shall be paid at the following overtime rate: salary divided by two thousand six hundred (2,600) multiplied by three (3)."

Article 9 (Overtime), Section 2. The City has proposed that the sentence in Section 2 which provides that employees on ATO or sick leave shall not be eligible for overtime be amended by adding after the word "ATO" "relief/leveling off time." The Fact-Finder is not

convinced that the proposed change is materially significant in justifying a change and, therefore, the Fact-Finder recommends that Section 2 be retained in current contract language.

Article 9 (Overtime), Section 3: The current Section 3 provides, in essence, that employees are paid overtime "for all hours worked in excess of the official tour of duty." The City has proposed changing the language to provide for overtime for hours worked "in excess of two hundred (200) hours of work in a twenty-eight (28) day work period." The Union has proposed current contract language.

The Fact-Finder does not believe that the current contract language should be changed and that the question of interpretation and application of "official tour of duty" is a matter administratively determined. Further, the Fact-Finder does not accept the City's position that off-duty requirements for training and overnight stays should not be considered as hours worked within the 200 hour/28 day work period. The present contract provides that hours for training, schools, required overnight stays on non-duty days are deemed to be work hours in excess of the official tour of duty. The Fact-Finder sees no reason for non-duty required activities by the firefighters not to be considered as having been worked in excess of the individual's official tour of duty. Accordingly, the Fact-Finder recommends that Section 3 be retained in current contract language.

Article 9 (Overtime), Section 7: The current Section 7 provides that if an off-duty firefighter is called in to respond, such individual is "entitled to a minimum of three (3) hours overtime pay, provided, however, no more than three (3) hours shall be paid to any off-duty employee so responding unless such employee, in fact, worked for more than three (3) hours in connection with the emergency to which such employee responds." The Union has proposed that the three hour provision be increased to four hours. The City proposes current contract

language. The Fact-Finder notes that in Section 8, it is provided: "In the event of scheduled overtime, those employees who are called in shall receive a minimum of four (4) hours of overtime pay. It is difficult for the Fact-Finder to perceive why there should be a differentiation between the call-in overtime pay under Section 7 and Section 8 when, in essence, the off-duty firefighters, responding to an emergency and is called in would be presumably doing the same work activity as an employee who is on scheduled overtime and is called in. No arguable rationale has been presented why Section 7 should be differentiated from Section 8, notwithstanding the circumstances of the call-in. Accordingly, the Fact-Finder recommends that Section 7 be rewritten as follows:

> "Notwithstanding the provisions of Section 1 herein, in the event of a squad call or fire call, when off-duty employees respond to such emergencies, those employees who are called in/paged in and respond are entitled to a minimum of four (4) hours overtime pay, provided, however, no more than four (4) hours shall be paid to any off duty employee so responding unless such employee, in fact, worked for more than four (4) hours in connection with the emergency to which such employee responds."

Article 10 (Work Week). Of all of the issues presented in the instant fact-finding, none was more contentious nor debated longer than this article. The core of Article 10 deals with the utilization of what is referred to as "earned time off" which is referenced in the Collective Bargaining Agreement as "ATO" and/or "ETO." The current contract provides in pertinent part in Section 5: "Each full-time employee of the Bargaining Unit of the Department shall work an average fifty (50) hour work week. Each such employee shall receive six (6) hours of 'earned time off' (ATO) (ETO) for each week of service."

The City's position is that under current scheduling, the Fire Department is based on a three platoon system, 24 hours on duty and 48 hours off duty, and that to attain that schedule with each employee working a 50 hour average work week (2,600 hours annually), an employee must use 312 hours of accumulated time off (ATO) which both the Union and the City refer to as

"Kelly Time"). The use of the Kelly Time or accumulated time off is done in order to attain the average 50 hour work week. The City argues that over the years, a practice developed whereby employees would elect not to utilize the ATO time, would work the time, and thereby earn overtime at the inflated rate. The City maintains that the determination to work extra time does not, and cannot, rest exclusively with the employee. $120,000 to $150,000 or more in automatic overtime costs is not only unaffordable but an abuse of the system and an unfair burden on the taxpayers. The City also argues that between 2003 and 2005, the Bargaining Unit employees' non-use of ATO time has almost doubled. Employer Exhibit 3-A reflects an average ATO of $11,127, which represents 22.5% increase over the firefighters' average base wage.

The term "Kelly Days" appears to have originated in the 1930s when Edward Kelly, then Mayor of Chicago, instituted a plan, now known as compensatory time, wherein an individual took a day off, which was taken in addition to normal time off or normal vacation. This was done to lessen the financial burden on municipalities during the Depression.

As further elaborated by the U.S. Department of Labor, Wage and Hour Division, in its Fact Sheet No. 8 (dated March 2011), it is stated as regards Section 7(k) of the Fair Labor Standards Act:

> "Under certain prescribed conditions, a state or local government agency may give compensatory time, at a rate of not less than 1-1/2 hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.
>
> An employee must be permitted to use compensatory time on the date requested unless doing so would 'unduly disrupt' the operations of the agency."

Michael Conrad, who was the Fire Chief from approximately 2005 to 2009 and who started with the Fire Department as a full-time firefighter in 1978, testified that originally ATO time was used as a "set-off" in order to reduce the work week from an average of 54 to 52 hours per week. In 1980, Conrad testified that for the first time a contract was negotiated covering the

period 1981 through 1983 which provided that the work week would be reduced from 56 to 54 hours per week with two hours being treated as "Kelly Time." Conrad further testified that at the time of this contract, the Mayor of Sheffield Lake was named Kelly, and he did not want the name "Kelly Time" placed in the contract for possible misinterpretations of intent in using the language, thus, in substitution, the term "accumulated time off" or the abbreviated term "ATO" was used. Conrad testified further that in 1986, the provision was changed from 54 hours to 53 hours, and in 1990, it was further changed from an average work week of 53 hours to 50 hours. In 1992, the parties negotiated an increase in ATO time with no wage increase.

Conrad further testified that the use of ATO was put into place in order to reduce the work week but also to recognize that if a firefighter used his ATO time for actual work, he was thereby entitled to be paid time and a half.

In the parties' Collective Bargaining Agreement from January 1, 1996 to December 31, 1998 (Union Exhibit 10), Article X provided, in pertinent part:

> "Each full-time employee of the Bargaining Unit of the Department shall work a fifty (50) hour work week. Each such employee shall receive six (6) hours of 'Earned Time Off' (ATO) (ETO) for each week of service." (Section 5) Further, the then Section 7 provided: "Each employee earning six (6) hours of 'earned time off' per week or three hundred twelve (312) hours per year is eligible to receive such time off in the year that it is earned. Any hours earned and not used in any calendar year shall be placed in 'the bank' and shall accumulate up to a total of three hundred twenty (320) hours, after which, any hours above the three hundred twenty (320) hour limit shall be paid at the overtime rate, with payment made by the first day of April in the next calendar year."

This was again repeated in the parties' Collective Bargaining Agreement for the period January 1, 1999 to December 31, 2001 (Article X), again in the parties' Collective Bargaining Agreement for the period January 1, 2002 to December 31, 2004, and again in the parties' Collective Bargaining Agreement for the period January 1, 2005 to December 31, 2007.

The Fact-Finder notes the arbitration decision by Arbitrator Elliot Beitner in the arbitration matter between the parties dealing with ETO under Federal Mediation and Conciliation Services Case No. 090413-55693-8. Arbitrator Beitner was called upon to make an interpretation of the meaning of certain ATO provisions. Although the Arbitrator's decision is informative, it is not necessarily preclusive as it was a product of a disputed grievance as opposed to a fact-finding protocol such as involved in the instant matter.

The Fact-Finder is acutely aware of the obvious financial impact upon the City because of the existence and/or utilization of ATO. However, in reviewing the numerous prior Collective Bargaining Agreements, it is equally clear that the ATO allowance has a direct financial impact upon the employee's compensation and has been a practice which has existed with the City for approximately the last two decades. Although the elimination of the ATO provision would reduce the City's cost for this item, the Fact-Finder is of the view that the City has lived with this provision for almost the last two decades and that the cost savings argued today were equally arguable over the past years, yet the contract remained unchanged.

In *Aiken v. City of Memphis*, 190 F.3d 753 (CA6, 1999) (City Exhibit 5-B), the Sixth Circuit noted that under 29 Code of Federal Regulations ("C.F.R.") §553.25(c)(2), agreements between employers and employees regarding compensatory time and the manner in which it is used are valid as long as they are not in conflict with the Fair Labor Standards Act itself. As noted in the Federal Regulation:

> "The use of compensatory time in lieu of cash payment or overtime must be pursuant to some form of agreement or understanding between the employer and the employee (or the representative of the employee) reached prior to the performance of the work. To the extent that the conditions under which an employee can take compensatory time off are contained in an agreement or understanding as defined in Section 553.23, the terms of such agreement or understanding will govern the meaning of 'reasonable period.' (*Id.* at 756-757)"

29 C.F.R. §553.23 recognizes the use of compensatory time in lieu of overtime payment in cash provided that there is an understanding between the employer and employee prior to the performance of the work and that such understanding "can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees . . .." (*Id.* at 757)

In light of all of the circumstances and history of the ATO provision, the Fact-Finder recommends that Article 10 be retained in its current language.

Article 13 (Paid Holidays). The current Collective Bargaining Agreement provides for 12 paid holidays, including the employee's birthday. In addition, there is a modification provision that in the event the Governor of Ohio or the President of the United States expands or eliminates a holiday, the holiday would likewise be added or eliminated for the employee. Further, under Section 2, holiday pay is computed on a 24 hour basis at the 50 hour rate. Also, under Section 3, in order to be entitled to holiday pay, an employee must report for work on the last duty day before the holiday and the first duty day after the holiday.

The City has proposed an elimination of the clause allowing for additions or reductions of holidays made by the Governor or the President, as well as proposing a recomputation of the holiday pay and allowing an employee one floating holiday per year (24 hours) in recognition of the employee's birthday. The Union has also argued for one personal day per year but in addition to the previously identified holiday dates. Also, the Union argues that the provision requiring that the employee report the day before holiday and the first duty day after the holiday be stricken.

The Fact-Finder is of the view that the current contract language dealing with expansion or reduction of holidays as determined by the Governor of Ohio or the President of the United

States should be retained. The Fact-Finder is not clairvoyant in knowing what state or national holidays may be added or eliminated during the life a three year collective bargaining agreement. Obviously, if a holiday is added, the employee gets the benefit and if a holiday is eliminated, the City gets the benefit. On balance, both parties face an equal risk.

In light of the Fact-Finder's previous reference to overtime pay being computed at the 50 hour rate rather than the 40 hour rate, equally so, under Section 2, the holiday pay should be computed at the 50 hour rate.

The Fact-Finder recommends that Section 1 be retained in its current language except that Item 12 (the employee's birthday) be stricken and the following paragraph added:

> "In addition to the foregoing, each employee shall be entitled to one floating holiday per year [twenty-four (24) hours] in recognition of the employee's birthday. A floating holiday may be used with the prior approval of the Chief. Requests shall be submitted in writing to the Chief of Fire at least seventy-two (72) hours in advance of the requested date."

The Fact-Finder further recommends that Sections 2 and 3 be retained as current contract language.

The Fact-Finder is of the view that the current language in Section 3 is an apparent effort to avoid potential misuse or abuse of an employee taking off time before the holiday and combining the holiday which may negatively impact on the City. Further, the Fact-Finder does not believe that there is anything in Section 3 which would preclude the City from waiving the work requirement if sufficient personnel were otherwise available.

Article 15 (Sick Leave) The current contract grants sick leave with pay at the rate of 1.25 days per month for each calendar month of service. The City argues for an adjustment of sick leave at the rate of 12.5 hours per month for each calendar month of service. The City's argument states:

> "Specifically, 2,080 [40 x 52 weeks] hour employees generally earn up to 120 hours of sick leave annually which is a ratio of 5.77% of the annual hours. The current granting of one and one-quarter days per month to this Bargaining Unit based upon a 24 hour day results in a disproportionate benefit whereby these Bargaining Unit employees receive credit of up to 432 hours of sick leave annually, a ratio of 16.62% of the annual hours. Although 2,600 hour employees may work a 24 hour day, they only work 108 or 109 days per year; 2080 hour employees work 260 days per year. Applying the same 5.77% ratio that is applicable throughout the City to this Bargaining Unit equates to 150 hours of sick leave annually for a fire firefighter expected to work 2,600 annual hours. 12.5 hours per month of service results in a pool of up to 150 hours of sick leave annually."

At first blush, the City's argument appears to set forth a rational approach. However, the defect is that the City speaks of the 2,080 employees in terms of "work days" (presumably an eight hour day), whereas the 2,600 hour employees work a "24 hour day." The City is equating hours worked with days worked which is a *non sequitur*. If the City wanted to put the firefighters on the same type of eight hour shift arrangement (presumably three shifts per day) and have firefighters function as a 2,080 hour employee, then their rationale would indeed be entirely correct. It is also significant to note that 2,080 multiplied by 1.25 results in a total of 2,600. Thus, the current contract language of 1.25 days per month appears to be the proportionate adjustment between a 2,600 hour employee and a 2,080 hour employee. This might logically explain why Section 1 of Article 15 provides for 1.25 days per month for sick leave rather than the 12.5 hours as suggested by the City.

For the reasons set forth herein, the Fact-Finder therefore recommends that the language of Article 15 be retained in the new contract.

Article 16 (In-Line-Of-Duty Injuries, Death In-Line-Of-Duty and Pension Require for In-Line-Of-Duty Injuries): The disputed issue pertaining to this Article deals with Section 7 which currently states: "Upon determination by medical authorities that the employee is totally and permanently disabled from performing their duties, then and in that event, the

employee will be placed on pension." The Union has proposed that the entire section be deleted, essentially contending that the City does not have the right to place an individual on a pension but, rather, such right is vested in the Ohio Police and Fire Pension Fund ("OP&F") in order to obtain a disability pension. The Union also attacks the verbiage "upon determination by medical authorities" which leaves open the question of "what medical authorities." The Union postulates that an independent physician or even a physician selected by the Union or the City might determine that an individual is disabled but OP&F might determine otherwise. The City has proposed language dealing with the question of employee fitness for duty, but the Fact-Finder does not believe that either the Union's suggestions or the City's proposal directly resolves the issue.

The Fact-Finder recommends that Section 7 be amended by deleting in its entirety the current language in Section 7 and inserting the following in lieu thereof:

> "Upon receipt of a medical professional's determination that an employee is not mentally or physically capable of performing the essential functions of his position, or poses a threat to himself or others, the Employer, the Union and the employee will meet within fourteen (14) calendar days of receipt of the determination to discuss possible alternatives and/or accommodations. If no alternative or accommodation is mutually agreeable, then the employee will be placed upon disability separation, provided, however, that such disability determination is upheld by the Ohio Police and Fire Pension Fund, utilizing any and all standards of determination as may be provided by the Ohio Police and Fire Pension Fund."

Article 18 (Differential Pay): Initially, the parties had different approaches to Sections 2 and 3 dealing with the use of an acting officer when that officer is on vacation, ATO, illness, etc. As a result of discussions occurring between the parties during the fact-finding, the Fact-Finder recommends that Section 2 and Section 3 of the current contract be retained. Additionally, Fact-Finder recommends that Section 1 of the current contract be retained.

Article 19 (Grievance Procedure), Section 2: Section 2 of this Article provides a time-protocol for the processing of a grievance. Initially, a grievance is required to be submitted, in writing, within 14 calendar days from the date of the incident. The Fire Chief is then to render a decision within ten calendar days. If the grievance is not settled at Step 1 (the Fire Chief), then the grievance is to be submitted within seven days to the Safety Director, who is to render a written decision within 14 calendar days. If the grievance is not settled at the Safety Director level, it is then submitted within seven calendar days to the Mayor, who is required to render a written decision within 14 calendar days. If the grievance is still not settled at the Mayor's level, the grievance can be submitted to arbitration by either the Union or the City within 14 calendar days of the Mayor's response.

The Union has proposed that the 14 day provision be reduced to ten days. In reading the current provision of Article 19, one must indeed "watch the clock" as to whether we are dealing with seven days or 14 days. Considering the size of the Bargaining Unit and the size of the City, the counting does become a little complex as to whether something must be done in seven days or in 14 days. In this instance, it is the Fact-Finder's view that general overall consistency would be beneficial to all parties. The Fact-Finder recognizes that the Mayor of Sheffield Lake is a part-time position, but it is nonetheless difficult to perceive that a grievance, at almost any stage, could not be decided and reduced to writing within ten calendar days (but excluding Saturdays, Sundays and holidays).

The Fact-Finder, therefore, recommends that Section 2, Step 1 of the grievance procedure be amended to read as follows:

> "The grievance must be first submitted to the Chief of the Fire Department, in writing, within ten (10) calendar days (excluding Saturdays, Sundays and holidays) from the date of the incident giving rise to the grievance."

Step 1 is further amended to read as follows:

> "The Fire Chief shall render a written decision within ten (10) calendar days (excluding Saturdays, Sundays and holidays) after receipt of the grievance."

In all other respects, Section 2, Step 1 shall be retained as written in current contract.

Further the Fact-Finder recommends that Section 2, Step 2 read as follows:

> "If the grievance is not settled as Step 1, the grievance shall be submitted within ten (10) calendar days (excluding Saturdays, Sundays and holidays) to the Safety Director, who shall render a written decision within ten (10) calendar days (excluding Saturdays, Sundays and holidays) after receipt of the grievance."

Further, the Fact-Finder recommends that Section 2, Step 3 read as follows:

> "If the grievance is not settled at Step 2, the grievance shall be submitted within ten (10) calendar days (excluding Saturdays, Sundays and holidays) to the Mayor. The Mayor/designee shall render a written decision within ten (10) calendar days (excluding Saturdays, Sundays and holidays) after receipt of the grievance."

Further, the Fact-Finder recommends that Section 2, Step 4 read as follows:

> "If the grievance is not settled at Step 3, the grievance may be submitted to arbitration by either the Union or the Employer upon written notice to the other party within ten (10) calendar days (excluding Saturdays, Sundays and holidays) of the issuance of the Step 3 response."

Article 19 (Grievance Procedure), Section 3: The Union has proposed that Section 3 be rewritten to provide that in the event a grievance is not timely responded to by the Employer, such failure or inaction shall be deemed to be a determination resolved in favor of the Union. As currently written, Section 3 states:

> "A grievance which is not processed to the next step of the procedure shall be considered resolved based upon the Employer's last response. A grievance not timely responded to by the Employer shall be considered to have been responded to in the negative and may be processed to the next steps. The time limits herein may be extended by the mutual written agreement of the parties."

The Union contends that Article 19, Section 3 conflicts with and is inconsistent with Article 20, Section 4 dealing with arbitration in that such section states:

> "If the City does not respond within the prescribed time limits, the grievance shall be settled in favor of the Union. If the Union does not respond within the prescribed time limits, the grievance shall be settled in favor of the City."

It does not take a rocket scientist to conclude that there is an internal inconsistency between Article 19, Section 3 and Article 20, Section 4. The Fact-Finder does have some difficulty with Article 20, Section 4 in that it puts both parties on a high level of attentiveness as regards time limits. The Fact-Finder does not believe that either party should be forced to be "blindsided" by having missed responding by a given time, which failure to act or respond may result in a resolution not desired by the particular party. The Fact-Finder is of the view that the language in Article 19, Section 3 provides the most equitable approach in that if a grievance is submitted and there is no timely response by the City, the employee should then consider that the grievance has been denied and, thus, without locking someone into a time limitation, affords the grievant the right to immediately proceed to the next step. To that extent, when the Fact-Finder discusses Article 20 (Arbitration), the comments made herein pertaining to Article 19, Section 3 shall likewise be incorporated in Section 4 of Article 20.

In all other respects and except as set forth herein, the current contact language shall be retained.

Article 20 (Arbitration): Section 1 of Article 20 provides that after the parties have complied with Article 19 (Grievance Procedure), they may submit to binding arbitration the following matters: computation of salaries, working hours, working conditions. The Union has proposed to delete Section 1. The Fact-Finder is inclined to agree with the Union as it is difficult to perceive that the Union is that clairvoyant or is willing to limit itself to only those three areas for arbitration attention. What may or may not evolve out of a grievance might, arguably, be something outside the scope of those three aspects, although those are certainly wide and encompassing areas of arbitration. Further, it would appear that if a grievance is raised which, again, arguably, is outside the scope of those three areas, then neither the City nor the Union may

submit the issue to arbitration, which would thus leave the disposition at the grievance level as the final disposition. Additionally, the Fact-Finder is of the view that Article 20, Section 1 conflicts with Article 19, Section 1. Under Article 19, a grievance is defined as "a misinterpretation, misapplication, or violation of an express provision of this Agreement." The grievance in issue thus might transcend the limited three areas enunciated in the present Section 1.

The City has proposed a substantial rewriting of Article 20, some provisions of which the Fact-Finder considers reasonable and proper, recognizing the Union's position that with the exception of the deletion of Section 1, current Article 20 should be retained in its present language.

After extensive consideration of the position of the parties and although the Fact-Finder is generally reluctant to rewrite entire articles, such action is deemed appropriate in this instance. Accordingly, the Fact-Finder recommends that current Article 20 be deleted in its entirety and that the following be inserted in lieu thereof:

> "Section 1. If a grievance, as defined in Article 19, Section 1, is not satisfactorily resolved after being processed through all of the steps of the grievance procedure, then within ten (10) calendar days (excluding Saturdays, Sundays and holidays) of the rendering of the decision at Step 3, or a time default by the Employer at Step 3, the Union may submit the grievance to arbitration. Additionally, the City may likewise submit to arbitration upon written notice to the other party within ten (10) calendar days (excluding Saturdays, Sundays and holidays) of the issuance of the Step 3 response.
>
> Section 2. An impartial arbitrator shall be selected from a panel supplied by the American Arbitration Association or the Federal Mediation & Conciliation Service upon the request of either party. The parties shall, within ten (10) calendar days of receipt of the panel, make a selection of an arbitrator. In the event the parties cannot agree, the American Arbitration Association or Federal Mediation & Conciliation Service shall provide a list of seven (7) arbitrators with each party alternately removing three (3) names from the list. Nothing herein shall preclude the parties from mutually agreeing to the selection of an arbitrator without the utilization of the American Arbitration Association or the Federal Mediation & Conciliation Service.

> Section 3. The arbitrator selected shall hear the issue and the decision of the arbitrator shall be limited to the issue or issues presented. The arbitrator shall have no power or authority to add to, subtract from, or in any manner alter the specific terms of this agreement or to make any award which violates any of the terms and conditions of this Agreement.
>
> Section 4. The question of arbitrability of a grievance may be raised by either party prior to proceeding on the merits of a grievance. The arbitrator's decision and award will be in writing. The decision of the arbitrator shall be final and binding upon the parties subject to the right of appeal to courts of competent jurisdiction by either party pursuant to the provisions of the Ohio Revised Code relating to appeals from arbitration decisions.
>
> Section 5. The fees and expenses of the arbitrator and the costs of the hearing room, if any, shall be borne equally by the City and the Union, unless otherwise specifically provided by the arbitrator. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any expenses incurred by the other party unless otherwise specifically ordered by the arbitrator or by a court of competent jurisdiction."

Article 24 (Safety): The Union had indicated that as relates to this article, the City had previously required the firefighters to take down the blinds in the firefighters' living quarters. It was argued that the firefighters, in moving about their living quarters, come in and out of the restrooms and showers and are potentially visible to those outside the fire station. It is perhaps unfortunate that this item of minutiae should have to be addressed in fact-finding, and the Fact-Finder recognizes that the City's basic position is the maintenance of current contract. However, for clarification purposes, the Fact-Finder recommends that Section 4 be amended to read as follows:

> "All firehouses shall be provided with locks for all windows and locks and keys for all doorways. Doors and windows may be closed and locked so as to prevent loss of property both to members and to the City. All windows shall have blinds and/or curtains to maintain employees' privacy, which blinds or curtains shall be provided by the City."

In all other respects, the Fact-Finder recommends retention of current language in Article 24.

Article 25 (Clothing and Personal Effects), Section 1: Section 1 states in pertinent part: "The City agrees to supply and maintain adequate sleeping and cooking facilities and

equipment for all personnel assigned to the Fire Station." The Union proposes to add the words "living quarters," whereas the City is satisfied with current contract language. It would seem that the City's agreement to "supply and maintain" sleeping and cooking facilities would encompass "living quarters," if not by direct definition then by implication. The Union argues, however, that in the administration of the contract, the Mayor has taken the position that the City does not have to provide "living quarters" because it is not specifically identified as such in Article 25, Section 1. Considering that the fire personnel are on duty over a twenty-four (24) hour shift, it is difficult to perceive how the providing of living quarters is not encompassed within the City's agreement to maintain sleeping and cooking facilities at the Fire Station. One could hardly argue that if, for example, a firefighter was watching television that such was an impermissible activity because it is not specifically stated as being allowed within the Fire Station, although that example has been addressed in a prior article.

Without belaboring the issue, the Fact-Finder recommends that Section 1 be amended to read as follows:

> "The City agrees to supply and maintain adequate sleeping, living quarters and cooking facilities and equipment for all personnel assigned to the Fire Station. Each full-time employee of the Department shall be provided, at the City's expense, adequate personal equipment, but not uniforms."

Article 25 (Clothing and Personal Effects), Section 5: The current section provides that each firefighter receives "an annual clothing and uniform maintenance allowance" of $500 per year. The Union proposes that this be increased to $800 per year. The Union argues that the $500 allowance is virtually the lowest clothing allowance of a number of cities which it contends are roughly comparable, including a number of nearby cities, for example, the City of Avon - $850; Avon Lake - $800; North Olmsted - $1,300; North Ridgeville - $750; or an overall average of $882.95 (Union Exhibit 15).

Further, in the police contract recently negotiated, under Article 29, police officers receive a uniform allowance of $810. Further, the City provides police officers with a replacement reimbursement of $400 per occurrence for damaged personal property, which is likewise granted by the City to firefighters under Article 25, Section 4. The City points out that under Section 6, the City provides at no cost to the firefighters at least three shirts and three pairs of pants (approved fire retardant clothing) by August 1 of each calendar year. It was indicated that the City pays approximately $6,000 in costs to comply with the Section 6 requirements. The Union argues that there are a number of personal equipment and uniform items which must be purchased, such as steel toed boots, which are continuing to rise in price.

The Fact-Finder appreciates that some inflationary costs are involved, particularly since the $500 allocation under Section 5 started on January 1, 2008. The comparables that are suggested by the Union under Exhibit 15 are suggestive but are not detailed to the extent of determining exactly what is or is not encompassed within a particular city's clothing allowance. For example, if the $6,000 disbursed to comply with Section 6 is factored in as part of a clothing allowance for the 11 firefighters, that would come to approximately $500 per firefighter which, when added to the clothing and uniform maintenance allowance, would be $1,000 per year.

On balance, however, the Fact-Finder believes that the Union has made a reasonable argument justifying for some increase, although modest, in the maintenance allowance. Accordingly, the Fact-Finder recommends that Section 5 be amended to read as follows: "Each employee shall receive an annual clothing and uniform maintenance allowance in the amount of Six Hundred Dollars ($600.00) per year which shall be payable as follows: on or before April 30th of each calendar year."

Article 27 (Hospitalization), Section 2: The issue pertaining to this article is encompassed within Section 2 which, under the current contract, the City pays 90% of the monthly costs and the employee pays the remaining 10%. In addition, the section provides that notwithstanding the 90%/10% contribution rate, the maximum contribution per month by the employee for the period January 1, 2008 through December 31, 2010 would not exceed $47.50 for single coverage and $100.00 for family coverage. The City now proposes to maintain the 90%/10% formula with a maximum employee contribution of $50.00 for single coverage and $120.00 for family coverage for the period July 1, 2011 through December 31, 2011, and that effective January 1, 2012, the percentage contributions would change to 88% for the City and 12% for each employee.

The Union proposes a continuation of current contract language.

Under Article 28 of the police officers' contract, there is a provision providing for the 90%/10% formula with a stipulation that commencing January 1, 2011, the maximum employee contribution will be $50.00 for single coverage and $120.00 for family coverage. However, the Fact-Finder notes that the police officers' contract (Union Exhibit 2) which is from the period January 1, 2011 to December 31, 2013 does not appear to contain the 88%/12% factor. Likewise, under Article 32 of the AFSCME contract, which also runs from January 1, 2011 to December 31, 2013 (Union Exhibit 3), effective January 1, 2011, the maximum employee contribution is $50.00 for single coverage and $120.00 for family coverage, again with an initial formula of 90%/10%. The readjusted formula of 88%/12% does not appear in Article 32 of the AFSCME contract. (See, also, City Exhibit 12-A.)

Although the readjusted formula for 2012 and 2013 do not appear in the Police or AFSCME contracts, there is a provision in Article 37 of the police contract which provides that

"either party may request to reopen the Agreement for purposes of economics for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 30, 2011." Although similar but not identical language, Article 43 of the AFSCME contract provides that "either party may request to reopen negotiations for purposes of wages and health insurance for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 31, 2011." Thus, without forecasting what the premium contribution or percentage participation might be, the parties have agreed to address that potential issue by way of a reopener.

The Fact-Finder perceives no reasonable or justifiable basis to separate the medical insurance provision relating to the firefighters from that applicable to the police and AFSCME contracts, particularly since the healthcare coverage policy is a city-wide contract and not one that is individualized for each particular collective bargaining unit. The Fact-Finder does not find any cogent reason to digress from that provided under the police and AFSCME contracts. Accordingly, the Fact-Finder recommends that Section 2 be amended to read as follows:

> "The Employer agrees to pay ninety percent (90%) of the monthly cost for those bargaining unit employees who elect to receive healthcare coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following: for the period July 1, 2011 to December 31, 2011, the maximum employee contribution shall be Fifty Dollars ($50.00) for single coverage; One Hundred Twenty Dollars ($120.00) for family coverage.
>
> Notwithstanding the above, either party may request to reopen negotiations for purposes of health insurance for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 31, 2011."

Article 29 (Paramedic Payment): All Sheffield Lake firefighters are required, as a condition of employment, to maintain paramedic certification. In addition to any base compensation, each firefighter is also granted a paramedic payment of $6,550 and a paramedical payment of $7,205 for lieutenants. The Union is now requesting that in lieu of the Article 29

paramedic payment as a separate item, such paramedic payment should be incorporated into the base salary provided for the firefighters under Article 30 (Annual Base Salary). Although the Union is not proposing an increase in the paramedic payment allocation, the Union contends that such paramedic payment is approximately equivalent to 15% of the firefighters' base salary, yet any paramedic pay is not subject to any cost of living increases.

The City proposes to maintain current contract language.

The Fact-Finder notes that in the various comparables presented by the Union in its Exhibit 15, the matter of separate paramedic pay goes all over the page with Sheffield Lake being the highest with a specific paramedic allocation, to other cities allowing for amounts of $700, $900, $2,600 and some not providing any separate paramedic payment but incorporating that into base salary. Thus, there is no central uniformity as to practice and it is virtually a matter of local discretion. The Fact-Finder appreciates that reasonable arguments could be made for both the Union's and the City's positions, even with a recognition that base salaries would have a cost of living factor which could also be applied to paramedic pay even if identified as a separate item. However, in light of the Fact-Finder's recommendations addressing Article 30 (Annual Base Salary), at this time, the Fact-Finder recommends that current contract language be maintained and that Article 29 remain unchanged.

Article 30 (Annual Base Salary): The Union has essentially made two alternate proposals. One is a wage increase of 8% for each of the three years of a new contract for a total of 24%. Alternatively, the Union stated in its Position Statement: "The Union has repeatedly stated to the City that it will agree to the same economic terms as all of the City's other bargaining units." Firefighters' Position Statement, p. 23.

The City has contended that the current contract wages provided for in 2010 should be continued for the next three years which, in effect, means zero percent increase over the life of the next three year contract.[2] The City's argument in part is that 2010 revenues are slightly higher than 2009 but that this results from an unusual and unanticipated collection in estate tax (because of a death of a wealthy resident) of over $300,000. Further, the City sets forth what it presents as a number of comparable cities, for example, Avon, Oberlin, Campbell and Girard, and that using those comparables, Sheffield Lake is fifth in population, fourth in per capita income ($20,219), third in the size of full-time firefighters, sixth in municipal income tax collections, sixth in per capita income tax and sixth in 2008 General Fund expenditures. (Employer Exhibit 14-A) Further, referring to its comparables, it contends that the minimum annual average is $37,783.88 versus $40,784.40 for Sheffield Lake (including paramedic payment), and that the average maximum is $46,455.11 versus Sheffield Lake's $48,568.42. (City Exhibit 14-B-1)

Without belaboring this issue, it is significant to note that under Article 26 of the police officers' contract for 2011, wages are frozen but that as part of the wage freeze, a one-time "lump sum wage equity adjustment" of $750 was paid with a reopener permitted under Article 37. Likewise, under Article 37 of the AFSCME contract, wages were similarly frozen for 2011 with a one-time lump sum payment of $750 with a wage reopener clause. In light of the identical provisions in the police and AFSCME contracts, the Fact-Finder perceives no reasonable basis to go outside of the Sheffield Lake's collective bargaining arrangements for purposes of making a recommendation or to deviate what has been bargained with the other two representatives.

[2] During fact-finding, the City modified its wage position, suggesting a wage freeze for 2011 and a reopener for 2012 and 2013.

Accordingly, the Fact-Finder recommends that Article 30 be amended to read as follows:

"Section 1. For the period January 1, 2011 to December 31, 2011, the annual base salary for full-time Class A and below firefighters in the City shall be as follows:

Firefighter	Step I	$34,234.47
	Step II	$36,184.58
	Step III	$38,149.17
	Step IV	$40,067.33
	Step V	$42,018.82

Section 2. The annual base salary for full-time Lieutenants in the City shall be as follows:

Step V (for the period January 1, 2011 to December 31, 2011)	$46,220.71

Section 3. Effective with the first pay after ratification by the parties, a one-time, lump sum wage equity adjustment shall be paid to Bargaining Unit employees employed as of January 1, 2011, as follows:

Firefighter (Step I – Step V)	$750.00
Lieutenant	$750.00

Section 4. Notwithstanding the provisions in Sections 1, 2 and 3, either party may request to reopen the agreement for purposes of economics for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 31, 2011."[3]

Article 31(Longevity): Under the current Article 31, each firefighter is entitled to a longevity pay of $136.59 commencing with the fifth year of such full-time employment and,

[3] The Union has referred, by way of example, to a number of fact-finding decisions pertaining to wages, such as OPBA and the City of Westlake, SERB Case No. 10-MED-04-0584 (Fact-Finder Harry Graham) – 0%/3%/3%; City of Independence and IAFF, Local 2375, SERB Case No. 10-MED-09-1127 (Fact-Finder Nels Nelson) – 0%/2% (two year contract); City of Elyria and IAFF, Local 474, SERB Case No. 09-MED-06-0677 (Fact-Finder Alan Ruben) – 0%/1%/1-1/2%; Olmsted Township and Olmsted Township Professional Firefighters Union Local 2845, SERB Case No. 09-MED-10-1283 (Fact-Finder Jonathan Klein) – 0%/1%/1-1/2%; Springfield Township and International Association of Firefighters, Local 3040, SERB Case No. 2010-MED-09-1088 (Fact-Finder William Binning) – 1%/1-1/2%/2%. Although the various fact-finding reports have been reviewed by this Fact-Finder and great respect is rendered to those fact-finders, the recommendations encompassed therein are not considered applicable in the particular facts and circumstances of the instant fact-finding.

thereafter, for each year of employment, the employee receives an increase of $136.59 to a maximum of 25 years of service which equates to $3,414.75.

Section 2 of the article provides for longevity pay for lieutenants of $150.25, again using the same type of formula and reaching a maximum after 25 years of service of $3,756.25. The Union has proposed a yearly longevity rate increase for the firefighter of $147.52 for 2011, $159.32 for 2012 and $162.01 for 2013. For the same operative years, the lieutenants' longevity pay would be $162.27, $175.25 and $189.27.

The City has requested that the current contract language be maintained, asserting two basic arguments. The first is that no other bargaining unit in the City received a longevity pay increase and, thus, none should be granted at the present time for the firefighters. Secondly, the City argues that the longevity pay for all eleven members of the Bargaining Unit (which includes two lieutenants) is $17,224.02. If that same amount was given in 2011, 2012 and 2013, the total longevity payout would be $51,672.06. (City Exhibit 15-A) In that same context, the City argues that, assuming the proposed 8% longevity increases is applicable to the next three years, this would result in a cost of $75,028.41 for the same period 2011-2013. Thus, granting the requested longevity pay would increase the City's costs over the three year contract term to $23,356.35.

The Fact-Finder is persuaded by the City's argument, particularly since no other bargaining unit has received a longevity pay increase and, in this Fact-Finder's view, at this time, it would be inappropriate to now grant a longevity rate increase to the firefighters. However, the Fact-Finder's view is that the instant issue dealing with longevity pay is another economic issue which the Fact-Finder has already addressed in other articles.

Accordingly, the Fact-Finder recommends that Article 31 be retained in its present format with no longevity pay increases for 2011. Notwithstanding that provision, the Fact-Finder further proposes that this article may be reopened at the request of either party as it relates to economics for purposes of addressing this issue for 2012-2013 similar to the reopener provision applicable to other economic provisions.

Article 32 (Minimum Manning): The core issue pertaining to this article deals with Section 2 which states: "The number of employees of the Bargaining Unit on duty, available to respond to an alarm, shall be a minimum of three (3)." Next to the ATO issue, this issue of minimum manning was probably the most contentious between the parties. To illustrate the opposite poles of the parties on this issue, the Union proposes to maintain current contract language for several reasons. First, the Union contends that the minimum manning of three employees of the Bargaining Unit has been in place under continuing collective bargaining agreements since 1996 (a period of 15 years) (Union Exhibit 20). The Union also relies upon the National Fire Protection Association's Standard 1710 captioned "Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments." Section 5.2.3.1 provides: "Fire companies whose primary functions are to pump and deliver water and perform basic firefighting at fires, including search and rescue, shall be known as engine companies." Section 5.2.3.1.1 then provides that "engine companies" "shall be staffed with a minimum of four on-duty personnel."

Much of the work of the City's Fire Department is devoted to providing paramedic and similar type services. Under Section 5.3.2.1.1, this can be classified as either a "first responder, basic life support (BLS)" or "advanced life support (ALS)." In that regard, Section 5.3.3.3.4 provides: "Personnel deployed to ALS [advanced life support] emergency responses shall

include a minimum of two members trained at the emergency medical technician – paramedic level and two members trained at the emergency medical technician – basic level arriving on scene within the established travel time."

The Union also relies on the fact-finding report of Fact-Finder William Binning regarding fact-finding between Springfield Township and the International Association of Firefighters Local 3040, wherein the fact-finder recommended current contract and rejected the Township's argument that minimum manning was a management right and that excessive overtime costs resulted to the township of some $60,000. (Union Exhibit 32)

Retired Fire Chief Michael Conrad testified that minimum manning started in the City in 1978 at two, which was then increased to four. In the Spring of 1998, the City passed a fire levy as a result of which the City maintained three. During the period 1994 to 1995, the City operated with one full-time firefighter and one part-time firefighter which, at that time, was viewed as appropriate. However, a fire occurred at that time before the 1995 elections resulting in a new city council, and Chief Conrad stated that the issue of minimum manning was a major election topic of discussion. In 1996, a minimum manning clause started to appear. The City has also had a paramedic unit since 1978 and, currently, all firefighters (full-time and part-time) are required to be paramedics. Chief Conrad also indicated that part-time firefighters are required to have 36 hours of training which the State of Ohio designates as "Firefighter I," whereas full-time firefighters must have 240 hours of training and are classified as "Firefighter II."

The City has countered in proposing that the minimum manning article be deleted from the Collective Bargaining Agreement asserting that staffing levels are the right and responsibility of the Employer. The City cites a number of SERB fact-finding and conciliation decisions, holding that minimum manning is a permissive subject, not a mandatory subject of bargaining,

for example, IAFF and the City of Chillicothe, SERB Case No. 06-MED-05-0626; the City of Marion and IAFF, Local 379, SERB Case No. 09-MED-01-0047; and the City of Upper Arlington and IAFF, Local 1521, SERB Case Nos. 10-MED-09-1165 and 1166 (Employer Exhibit 16-A).

The City also relies on the decision of Conciliator Virginia Wallace-Curry in the City of Campbell and Campbell Firefighters Association. Local 2998, SERB Case No. 03-MED-10-1299, wherein the Conciliator held in part (page 5): "The City needs to have the flexibility to meet its financial obligations, or the Campbell Fire Department could be eliminated altogether." At Page 6, the Conciliator further held:

> "But the subject of manning is not a mandatory subject of bargaining, it is a permissive subject. It is a management right that the Union was able to limit in the past. But under the dire financial times the area is experiencing, this right must be returned to management to maintain the viability of the City itself."

The Fact-Finder recognizes that under Revised Code §4117.08(C), it is stated:

> "Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of each public employer to:
>
> * * *
>
> (6) determine the adequacy of the workforce;
>
> * * *
>
> (8) effectively management workforce.
>
> The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as effect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement."

The Fact-Finder notes that under §4117.08, as enacted under Senate Bill 5, the language just quoted is continued in addition to other provisions.

The City further argues:

> "Due to the economic constraints facing the City and an inability of the parties to successfully work together to reduce and contain overtime costs, the City can no longer guarantee a staffing level of three (3) full-time personnel. The Governor's Budget Bill reduces Local Government Funds (LFG) by 25% in 2011 and 50% in 2012 (a loss of approximately $80,000.00 this year [2011] and $160,000.00 next year [2012]. This along with other changes will negatively impact the City's revenues over the next two years."

The City acknowledges that a reduction in the present required minimum manning will allow the City to use more part-time personnel.

The City also argues that the bulk of the firefighters' activities deal with fire rescue runs as opposed to fire runs. For example, in 2010, the City had a total of 870 runs consisting of 712 rescue runs and 158 fire runs; in 2009, the City had 891 total runs consisting of 708 rescue runs and 183 fire runs; in 2008, the City had 969 total runs consisting of 762 rescue runs and 207 fire runs. It is readily apparent that at least for the last half dozen years, most of the runs have been related to fire rescue rather than fire runs. Considering that a rescue run would normally entail three firefighters, a driver and two paramedics, testimony was presented that even the part-time firefighters are paramedics. Even if the part-time firefighter was utilized as an ambulance driver, it would still allow for the utilization of two full-time paramedics and a third part-time firefighter with paramedic training.

The Fact-Finder could go on and on with commentary and analysis on both sides of the ledger, the Union arguing that minimum manning of three is necessary to preserve the fire safety and protection of the citizens of the City, and the City arguing that economic necessity requires a modification of minimum manning in order to reduce the burden of overtime costs. The Fact-Finder is not insensitive to either position and, perhaps, ultimately, the consequences of any decision will be left in the hands of the citizenry of Sheffield Lake, which then must evaluate the

operational effectiveness of the Fire Department, not the least in terms of support or rejection of the various fire levies.

Retired Fire Chief Conrad made particular reference to two prior contracts which appeared to make some effort to adjust for both excessive overtime costs and the utilization of a part-time firefighter. These are set forth in the Union's contract from January 1, 1996 to December 31, 1998 (Union Exhibit 20) (Article XXXII, Section 3) and in the Collective Bargaining Agreement between the parties from January 1, 1999 to December 31, 2001 (Article XXXII, Section 3). For reasons which are not entirely clear, Section 3 of the minimum manning article was deleted in the January 1, 2002 to December 31, 2004 contract and thereafter. Notwithstanding the deletion of the old Section 3, the Fact-Finder is impressed with the use of the old Section 3 as a means of having a minimum manning of three firefighters but allowing for the use of a part-time firefighter when overtime costs have become a financial burden to the City. It is clear that the City's main concern in addressing minimum manning is as it relates to the overtime costs.

For the foregoing reasons, therefore, the Fact-Finder recommends that the new contract contain a new Section 3 in Article 32 to read as follows:

> "If sixty percent (60%) of the budgeted overtime monies within the City of Sheffield Lake for the Fire Department personnel have been expended prior to the seventeenth (17^{th}) pay period, or seventy percent (70%) prior to the twentieth (20^{th}) pay period, or eighty percent (80%) prior to the twenty-third (23^{rd}) pay period, or ninety percent (90%) prior to the twenty-fourth (24^{th}) pay period, then, and in that event, the minimum manning shall be three (3) firefighters per shift, one (1) of whom may be a part-time firefighter."

Article 33 (Officer, Department, and Mandatory Meetings): This article addresses the internal operations of the Fire Department dealing with the Fire Chief requiring school attendance and departmental meetings. Without going into an elaborate discussion, suffice to note that the changes proposed by the Union consist of clarifying language rather than any major

substantive change. Further, the Fact-Finder finds that the City, although satisfied with the present language of Article 33, is not adamantly opposed to the changes suggested by the Union.

Upon consideration, the Fact-Finder recommends that Article 33 be written as follows:

> "Section 1. The Fire Chief shall hold a minimum of three (3) officers' meetings and one (1) Department meeting per calendar year. Off-duty personnel who are required and/or ordered to attend any mandatory Department meetings shall be compensated for only those hours.
>
> Section 2. When the Chief declares that attendance at a Department meeting, school or for training is mandatory, the employee so ordered to such school or training shall be notified, in writing, a minimum of fourteen (14) calendar days prior to the start of said school or training.
>
> Section 3. No employee shall be required to attend any Department meeting, school or training session if that employee is previously scheduled off during that same period."

Article 38 (Retirement and Separation Pay): Section 1, as regards retirement pay, sets forth a provision that an employee retiring is eligible to be paid for accumulated sick time, ATO hours and vacation time using a formula of sick time up to 150 days times 24 hours times 50 hour rate (less any sick leave paid under Steps VI Pay per Article 41), ATO hours are paid at the hours times regular overtime rate, and vacation time is computed at the number of days times 24 hours times 50 hour rate.

The City proposes to limit the sick time accumulation to 1,500 hours, to clarify that ATO hours are at regular 50 hour rate and vacation time is hours times 50 hour rate. Also, the right to ATO hours applies only to ATO hours banked prior to June 1, 2011. The City contends that the proposed modifications are consistent with the other provisions dealing with sick pay and ATO. The Union proposes to maintain the current contract language.

The Fact-Finder has already addressed the question of the firefighters' entitlement to computations based on 50 hour rate and utilizing 24 hour workday as those are the actual hours that the firefighter is expected to work. The Fact-Finder finds no compelling reason to deviate

from the present contract provisions as they are consistent with the other decisions of the Fact-Finder.

Equally so, the Fact-Finder believes that Section 3 dealing with separation pay should similarly remain unchanged as that is the formula under which the employees have been operating in determining their retirement or separation pay.

Section 4 of the Article provides that an employee who is eligible for separation pay may be paid over a period of three years as determined by the City. The Union proposed that the three year period be reduced to one year, whereas the City proposes current contract language. The Union argues that the one year time period for the payout regarding separation pay should not be inordinately delayed as the firefighter may move to another geographical location, out of the state, and that a three year pay plan places an unreasonable burden on the employee. Equally so, a shorter pay period may arguably impose some financial hardship on the City although, presumably, an actuarial type of determination can be made during the employment period of the individual contemplating retirement. On balance, the Fact-Finder is of the view that current Section 4 language providing for a meeting between the employee and the Director of Finance "to discuss the method of payment/payment plan" leaves sufficient room for negotiations between the individual employee and the City in working out a pay plan that may be less than three years. The cost factor can certainly be an element of consideration by the City in determining the period of time to be paid, not more than three years. Accordingly, the Fact-Finder recommends that current Section 4 be retained.

Article 39 (Contracting Out): Current Article 39 provides that in the event subcontract work is undertaken by the City, such subcontracted work would not result in loss of work for Bargaining Unit employees, elimination of regular overtime and/or result in any layoffs.

The City, in its Position Statement, stated: "The City is agreeable to retaining language within the Agreement establishing that the City will meet and confer with the Union prior to awarding a subcontract for any work performed by the Bargaining Unit. However, the Employer is proposing to delete all restrictions on its ability to contract for services."

The Union, on the other hand, seeks a more expansive application of the contracting out provision, for example, proposing that the City cannot contract out any work dealing with fire suppression, fire inspection, rescue, paramedic services and EMS, as well as the present language in Article 39. The Union's basic contention is that if the City is allowed a free hand in subcontracting, such would be undertaken as a "backdoor" method of ultimately causing layoffs and diminution of the Bargaining Unit. The Union further argues that the present contract language dealing with contracting out has been in effect since 1996. (Union Exhibit 25)

Additionally, the Fact-Finder notes that under the recent police collective bargaining agreement, a contracting out provision was executed by the parties. Although the current Article 39 of the firefighters' contract is not identical to Article 36 of the police officers' contract, for the sake of consistency, if nothing else, plus the fact that the police contract has just been signed by the City, the Fact-Finder proposes that Article 39 regarding contracting out be rewritten to provide as follows:

> "Section 1. The City hereby agrees to meet and confer with the Union prior to awarding a subcontract for any work which would, in the normal course of City business, be performed by members of the Bargaining Unit. The extent of the work so subcontracted shall not cause: (1) lack of work for full-time Bargaining Unit employees; and (2) any full-time Bargaining Unit employees to be laid off."

Article 40 (Discipline): The present Article 40, in rather abbreviated format, addresses the general issue of discipline, notification and what may be appealed through the grievance procedure. The Union has proposed a rather extensive rewrite of Article 40, as well as adding

new Sections 4, 5, 6, 7, 8, 9, 10 and 11. The City has likewise provided a substantial rewrite of Article 40, particularly as to Sections 2 and 3 and adding Sections 4, 5 and 6.

Without belaboring the issue, the Fact-Finder notes that under Article 8 of the police contract, a comprehensive disciplinary format is set forth. The Fact-Finder finds no overriding reason why Article 8 of the police contract should not similarly be used in the firefighters' collective bargaining agreement. The Fact-Finder appreciates that a police officer and a firefighter are not the alter ego of each other but, in the matter of discipline, there is an overriding commonality plus the fact that the Fact-Finder believes that a more thorough and consistent disciplinary system would be interpreted and applied when it deals with more than one union within the City. Accordingly, the Fact-Finder recommends that Article 40 (Discipline) be written to provide as follows:

> "Section 1. The tenure of every employee subject to the terms of this agreement shall be during good behavior and efficient service. No non-probationary employee shall be reduced in payor position (including working suspensions), fined, demoted, suspended, discharged, or removed except for grounds stated in Section 2 of this article. The Employer may take disciplinary action against any employee in the bargaining unit, but only for just cause. Forms of disciplinary action may include:
>
> 1. Letter of instruction and cautioning.
>
> 2. Written reprimand.
>
> 3. Suspension without pay.
>
> 4. Suspension of record (i.e., working suspension).
>
> 5. Fines (i.e., forfeiture of accrued leave).
>
> 6. Demotion.
>
> 7. Discharge.
>
> An employee who is given a working suspension (i.e., suspension of record) shall be required to report to work to serve the suspension and shall be compensated at the regular rate of pay for hours worked. The working suspension shall be recorded in the employee's personnel file in the same manner as other disciplinary

actions and have the same effect as a suspension without pay for the purpose of recording disciplinary action.

Section 2. Incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, absence without leave, substance abuse, or any conduct unbecoming a public employee, or any other acts of misfeasance or malfeasance or nonfeasance, shall be cause for disciplinary action.

Except in instances where an employee is charged with a serious offense, discipline will be applied in a corrective, progressive, and uniform manner. Progressive discipline shall take into account the nature of the violation, the employee's record of discipline, and the employee's record of conduct.

Section 3. Whenever the Employer determines that a non-probationary employee may be suspended, reduced in payor position, or terminated, a predisciplinary meeting will be scheduled to investigate the matter. The Employer shall notify the employee in writing of the charges against the employee and what form of discipline may be imposed. This notification shall also include the time and place of a predisciplinary meeting, to be held within twenty-four (24) hours, between management and the employee.

The employee may be accompanied by a Union representative during the predisciplinary meeting. The employee shall have an opportunity in this meeting to respond orally to the charges prior to discipline being imposed. Any resolution to the disciplinary action by the employee and the Employer shall be consistent with the terms and provisions of this agreement. An employee who is disciplined may file a grievance in accordance with the grievance procedure herein.

Section 4. Appealable disciplinary actions (i.e., involving loss of payor reduction in rank) must be filed at Step 3 of the grievance procedure within five (5) calendar days from receipt of the notice of discipline by the employee. Disciplinary action not involving a loss in pay, excluding working suspensions, may be appealed through the grievance procedure, but is not subject to the arbitration procedure.

Section 5. Any employee under indictment or arrested for a felony may be placed on leave of absence without pay until resolution of the court proceedings. An employee may elect to utilize available paid leave (i.e., vacation, compensatory time). An employee found guilty by a trial court may be summarily discharged."

Article 42 (Calculation of Rates): This article sets forth in rather specific detail how pay calculations, including overtime and holiday pay will be calculated. The City proposes slight modifications of the computation formula, particularly dealing with the differentiation

between a 40 hour rate and a 50 hour rate. The Union proposes to maintain current contract language.

The Fact-Finder has already discussed the inappropriateness of using a 40 hour rate when the rate of pay and the workweek previously set forth in this report are all based on a 50 hour workweek. Using a 40 hour rate injects a disproportionate formula when all of the underlying workweek activities are based on 50 hours (2,600 hours per year) which, for example, was the recommended rate for use in Article 15 (Sick Leave).

The Fact-Finder proposes that Section 1, Paragraphs 2, 3, 4 and 5 be changed to read as follows:

> "Calculations for the 56 and 50 hour rates and bi-weekly pay will be done by taking the step rate of pay, including paramedic pay, if applicable, and adding any longevity duty employee, and dividing by 2,912, 2,600, and 26, respectively.
>
> Overtime calculations will be made by multiplying the 50 hour rate by one and one-half or two as defined in this Agreement.
>
> Holiday pay will be calculated by multiplying the 50 hour rate by 24 hours.
>
> Acting Lieutenants' pay will be calculated by multiplying the difference in the Acting Lieutenants' 50 hour rate of pay and the 50 hour rate of pay of a Lieutenant by the number of hours worked."

Article 43 (Duration): Without belaboring discussion on this particular issue, the Fact-Finder has noted the provisions dealing with duration as regards the police contract and the AFSCME contract which are in effect for the period January 1, 2011 through December 31, 2013. The Fact-Finder believes that it is appropriate to have a consistent provision among the various Collective Bargaining Agreements, if for no other reason so that the City is not faced with different provisions as relates to each Bargaining Unit. The Fact-Finder is particularly impressed with the duration language set forth in the AFSCME contract. Accordingly, the Fact-Finder recommends that Article 43 be amended to read as follows:

"Section 1. This Agreement between the City of Sheffield Lake and the Sheffield Lake Professional Firefighters, Local 2355, IAFF, OAPFF, AFL-CIO-CLC, shall be effective January 1, 2011 and remain in full force and effect until December 31, 2013. If either party desires to make any changes in the Agreement, notice of such desire shall be given no sooner than one hundred twenty (120) days or later than ninety (90) days prior to the expiration of the Agreement. The parties shall, within thirty (30) days from the date of such notice, meet to begin discussing such changes either of them may wish to make. If such notice is given, this Agreement shall remain in effect until the parties reach agreement on a new Agreement or until either party gives notice stating that this Agreement shall terminate forty-eight (48) hours after receipt of that notice. If no notice seeking modification is given, then this Agreement shall remain in effect for another year.

Section 2. Notwithstanding the provisions in Section 1, either party may request to reopen negotiations for purposes of economics (including, but not by way of limitation, wages and health insurance for 2012-2013) by submitting written notice to the other party between October 1, 2011 and October 31, 2011."

* * * * * * *

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 18th day of August, 2011.

Respectfully submitted,

/S/ *Donald N. Jaffe*

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 email transmission, this 18th day of August, 2011, on the following:

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