

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

APRIL 27, 2011

CITY OF LEBANON

and

LEBANON PROFESSIONAL FIREFIGHTERS, IAFF LOCAL 4796

Case No. 10-MED-07-0882

For the City

Pamela Krivda
Mark S. Yurick
George Clements
Michael T. Hannigan

Representing Attorney for the City
City of Lebanon Attorney
City Manager
Fire Chief

For the Union

William Quinn
Dion Grener
Steven Johnson

Director of Operations - Ohio Association of Professional
Firefighters
Union President - IAFF Local 4796
Secretary/Treasurer - IAFF Local 4796

Fact Finder

John P. Downs

INTRODUCTION

This case involves the fact finding process between the City of Lebanon and the Springdale Professional Firefighters, IAFF Local 4796. The unit is made up of six members consisting of three Captains and three Lieutenants.

The parties met on March 22, 2011, for approximately 11 hours at which time all parties agreed to try mediation. During mediation the Union presented a last chance settlement proposal. After many hours it appeared the City expressed no desire to take part by their position of no movement. Therefore, fact finding was undertaken on April 12, 2011.

The following tentative agreements are to be included in any agreement between the parties. These tentative agreements were agreed to prior to fact finding and both parties have copies:

Article 1	Recognition
Article 3	Non-Discrimination
Article 4	Binding Agreement
Article 7	Union Security and Dues
Article 8	Seniority, Layoff, and Recall
Article 10	Grievance Procedure
Article 11	Probationary Periods
Article 12	Personnel Files
Article 15	Allowances
Article 17	Deferred Compensation
Article 18	Tuition Reimbursement
Article 28	Outside Employment
Article 29	Discharge and Discipline
Article 30	Waiver in Case of Emergency
Article 32	Health, Safety and Employee Readiness

The following agreements were reached during mediation on March 23, 2011:

Article 13	Hours of Work and Overtime
Section 13.1	
Section 13.2	
Section 13.4	
Section 13.5	
Section 13.6	
Section 13.7	A, B, E
Section 13.9	
Section 13.10	
Section 13.11	C, D, E, F, G
Section 13.12	

Article 14	Promotions
Section 14.1	
Section 14.2	
Section 14.3	
Article 16	Wages and Compensation
Section 16.2	
Section 16.3	
Section 16.4	
Section 16.5	
Section 16.6	
Article 20	Holidays
Section 20.2	
Section 20.4	
Section 20.5	
Article 21	Holidays
Section 21.1	
Section 21.2	
Section 21.4	
Section 21.5	
Section 21.6	
Section 21.7	#3
Article 22	Sick Leave
Section 22.2	All but C
Section 22.3	
Article 23	Occupational Injury Leave
Section 23.1	
Section 23.2	
Section 23.3	
Section 23.5	
Section 23.6	
Section 23.7	
Article 24	Leaves of Absence
Section 24.1	
Section 24.2	B
Article 25	Donated Time
All sections	

Article 27 Uniforms and Equipment

Section 27.1

Section 27.2

Section 27.4

Section 27.5

Section 27.6

Section 27.7

Article 31 Drug and Alcohol Testing

Section 31.1

Section 31.2

Section 31.4

Section 31.5

Section 31.6

Section 31.7

Section 31.8 B, C

Section 31.10 Paragraphs 1, 2

Section 31.11

Section 31.12

Section 31.13

Section 31.14

Section 31.15

Section 31.16 A, B, D

Section 31.17

Section 31.18

Section 31.19

Section 31.20

The City of Lebanon is located in Southwest Ohio, placed nearly an equal distance between Cincinnati and Dayton, considered suburban to both major cities. The city is contained within an area of nearly twelve square miles, with a population of approximately 21,000 residents. This figure shows a roughly 25% growth since the 2000 census and nearly a 100% growth in numbers from the 1990 census. The city is the county seat for Warren County which annually ranks in the top three fastest growing counties in the state, with current projections showing a 16+% growth expectation annually through the year 2011.

The Lebanon Fire Department is a combination department consisting of part-time Firefighters, EMT's, and Paramedics which are supervised by full-time Fire Officers. These full-time officers command overall daily operations of the Fire Department, direct the staff, supervise fire companies and render medical treatment at accident scenes and other various calls for service, prioritize emergency and non-emergency operational issues, assist with special event preparation, respond to complaints and requests for information from citizens, provide fire suppression, basic and advanced life support, and

emergency mitigation support for manmade and natural disasters. Additionally, the Fire Officers establish and enhance relationships with citizens, government officials, and emergency personnel as well as train and mentor new recruits on fire suppression, emergency management, and advanced life support strategies.

The bargaining unit currently represents the six (6) full-time line Fire Officers within the Lebanon Fire Department.

3 Full-time Lieutenants

3 Full-time Captains

The fire department is currently operating under a five (5) year, 5.5 mill fire levy.

This is the first contract between the parties.

For comparables the Union used the fire departments of:

	<u>Population</u>
Mason	22,016
Norwood	21,675
Riverside	23,545
Sidney	20,211
Xenia	24,164

The City (Exhibit 10) used the following for comparisons:

Clearcreek
Deerfield
City of Franklin
Hamilton Township
City of Lebanon
City of Mason

The fact finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Union presented an IAFF Financial Analysis on the City of Lebanon for the period 2006-2009 on the general fund, fire funds, and expenses/revenue, investments vs. liability, benchmarked against Moody's.

IAFF Financial Analysis:

Lebanon's general fund balance decreased over 5% from FY 06 to FY 08, while the Fire and Life Squad fund balance increased over 34% for the same time period. The general fund's asset to liability ratio also decreased from FY 06 to FY 08 - over 17%. The Fire and Life Squad fund's ratio increased over 11% for the same time period. The city has positive governmental fund balances and positive asset to liability ratios. The general fund and Fire and Life Squad fund balances, as a percentage of fund expenditures, are above the Moody's threshold for all years reviewed.

Lebanon's general fund balance increased slightly from FY 08 to FY 09, while the Fire and Life Squad fund balance increased 5% for the same time period. The general fund's asset to liability ration decreased slightly from FY 08 to FY 09, while the Fire and Life Squad fund's ratio increased nearly 5% for the same time period. The city has positive governmental fund balances and positive asset to liability ratios. The general fund balance, both reserved and unreserved, and the total Fire and Life Squad fund balances, as a percentage of fund expenditures, are above the Moody's threshold for all years reviewed.

Summary 2009 CAFR:

Housing

The housing market made significant improvements in 2009 with new home construction at a three year high with 112 new housing units.

Commercial and Industrial

The Lebanon business community continued to recover in 2009 as development activity improved and positive signs of the economic recovery were evident.

Financial Trends

The City continues to benefit from its location with the Cincinnati - Dayton growth corridor, and has experienced sustained moderate tax base expansion. City government has renewed its focus on the delivery of core services, reduced or eliminated non-essential programs, and focused on the creation of increased General Fund reserves.

Governmental Activities

The city's income tax was established in 1970 at a rate of one percent. The rate has not been increased even though this rate is much lower than the state average for municipalities.

The local economy showed signs of improvement in 2009, and the beginning of the economic recovery was evident in increases in development activity.

The Fire and Life Squad Fund balance increased \$41,113 due to an increase in EMS payments. The Fire Department operates on monies from its 5.5 mill levy which has allowed the Fire Department to expand its current operations as its new facility on Lebanon Road including additional staff requirements.

The City Attorney asked how the report was made. Mr. Quinn replied that it was from public reports, Auditor's, etc. There was discussion by Mr. Clements for the City concerning the use of CAFR reports as being history not giving projections of funds. Mr. Quinn replied it does show carry-over funds.

The exhibit was official certification of estimated resources for 2011, a summary of amounts required from General Property Tax Approved by the Budget Commission and County Auditor's Estimated Rates Schedule A, 2011 Budget, and City of Lebanon for Fire and Life Squad Fund 213.

Mr. Clements stated he was the CEO for the City of Lebanon for 9.5 years. The City is not a rich community and that property tax revenues have scaled back. He stated that local government grants and gas tax have been reduced. The city will have a net loss projected in 2012 of \$120,000 from the general revenue and in 2013 approximately \$250,000.

The City's exhibit 2 shows the City's income Tax Revenue Trends for 2001-2018, for 2010 GF 56%, CIF 33%, GOBF 11. Exhibit 3 shows general fund balance year end

1986-2018. Mr. Clements stated costs are 75% labor with a 20% decrease in staffing. City Council is okay with a six month reserve.

Exhibit 4 City of Lebanon Fire and EMS Fund for 2005-2010 gives reserve days of operation for each year. Mr. Clements noted that monies for the fire department can not come from general funds, the fire department or EMS funding must come from the levy.

Exhibit 5 Health Insurance expenses chart for 2002-2010 claims vs. administration costs. Mr. Clements stated 2010 was a bad year with over \$500,000 in claims.

Exhibit 6 Total Health Insurance Expenses 1998-2010. Mr. Clements stated that in 2002 the City made plan changes as a cost savings.

Exhibit 7 Comparisons of Medical Insurance Plan Design 2002-Present. Mr. Clements said this shows the shift from the City to the employee with family coverage at \$1,120 and \$448 for single coverage.

Exhibit 8 Union economic proposals for 2010. Costing out.

Exhibit 9 Union proposal on costing out.

Exhibit 10 City Warren County Salary Comparisons. Clearcreek Township, Deerfield Township, City of Franklin, Hamilton Township, City of Lebanon, Mason.

Exhibit 11 Current Fire Levy 2010-2014. The numbers were out of line showing 2004-2008. Chief Hannigan, Fire Chief for 26 years, stated current levy taxes are always behind. The fire department can borrow for debt but for 5 years only.

Exhibit 12 Shows contracts for FOP, IBE, and non-union for years 2006-2013.

Exhibit 14 Chart of City of Lebanon staff member benefits. Fire member 52 hour work week. Mr. Clements stated benefits are a PPO City Plan that a third party administers.

Exhibit 15 List of employees making over \$60,000 a year. Mr. Quinn stated the City couldn't raise income tax but could fund the fire department from general revenue.

Article 5 Management Rights

Union's Position

The Union's position is that management rights are spelled out in 4117.08 ORC. This definition has significant case law and litigation over 27 year of history of the code.

City's Position

The City's position is to add certain work rules to 5.1. Its rationale is that the City is responsible for seeing that public needs are met. They want to retain control over shift times and to fill vacant positions on shifts. The City does not want the Union to participate in the selection of a new Chief.

The City's additional rationale is that for operational efficiencies or because of costs they want to contract work including fire services.

RECOMMENDATION

I recommend the Union's position on Management Rights per 4117. ORC.

Rationale

Work rules are a term and condition of employment. Filing positions on shifts must be orderly and by collective bargaining agreement. Contracting out of fire services undercuts the Union. The City can hire additional employees as fire fighters if they so desire, it appears they want to function by using part-time employees.

Article 6 IAFF Representation

Union's Position

A request for Union business leave of ninety-six (96) hours per year which is subject to approval by the Fire Chief.

City's Position

The City's position on 6.4 is that it would be fiscally irresponsible for the City to not only authorize but to pay for a City employee to conduct Union business on City time and money.

On 6.7 the City favors ending the sentence with the word "writing" so that any scandalous, scurrilous, or derogatory information is prohibited.

The City maintains monitoring e-mail communications from time to time concerning the Union's use. It can not be held liable should any problems arise.

For 6.8 on 96 hours paid to attend IAFF course by the President or designee, no other work group has extra time off to attend such courses.

RECOMMENDATION

I recommend on 6.4 the Union's position to conduct union business during work hours with pay. This is limited to 6.4. The City and the Union agree to not hold the City liable for any e-mails sent by the Union which are read throughout the City.

For 6.7 I recommend the Union's position and wording.

For 6.8 I recommend the Union's position but allowing only 48 hours paid excused absence for the local President or his designee to attend local, state, or International IAFF meetings, conventions and seminars.

Article 9 Modification, Separability and Conflict of Laws

Union's Position

Language provided unambiguous direction to the parties should questions arise over language conflicting with law the totality of the agreement and the ability for the parties to see legal remedies which are available.

City's Position

The City wants extra contractual remedies such as injunctions and unfair labor practices charges. The City does not recognize alleged past practices. Concerning 9.4, the City's position is if some provisions are invalidated, such invalidation would necessarily occur by operations of law. The City does not wish to commit to such renegotiation if law invalidates any collective bargaining provisions.

RECOMMENDATION

I recommend the Union's position on the following:

- Section 9.1
- Section 9.2
- Section 9.3
- Section 9.4
- Section 9.5

The City's rationale is they would desire to go outside of the contract with injunctions. As to unfair labor practices, either party can file with SERB as outlined in 4117 ORC. Also the City states if any provisions are invalidated by law, they do not wish to renegotiate.

Article 13 Hours of Work and Overtime

Section 13.3

Union's Position

Start time of 7:00 A.M. for first shift as people have lives to adjust and get kids to school, etc.

City's Position

The City's position is it needs flexibility to move that shift start time if necessary or if it's helpful for operations. The starting time for bargaining unit employees dictates the starting time for all other employees (6:00 A.M. - 8:00 A.M.).

RECOMMENDATION

I recommend the Union's position of 7:00 A.M. as a start time for first shift. It appears that a permanent start time will benefit all employees by knowing when to report to work.

Section 13.7 D Call Back Pay

Union's Position

Any employee called back shall be paid four (4) hours plus pay for actual hours worked at time and one-half.

City's Position

Pay two (2) hours call back pay and time and one-half for the hours worked. This is the same for other city employees and has been budgeted for.

RECOMMENDATION

I recommend the City's position as a current practice which has been budgeted for at that level.

Section 13.7 E Minimum Manning

Union's Position

Union's position for scheduling and overtime is that at least one full-time officer from the bargaining unit shall be maintained on duty.

City's Position

Only a six man unit, which would make them use two lists full-time/part time to fill the vacancy on the shift.

RECOMMENDATION

I recommend that the City have a full-time supervisor on each shift.

Section 13.8 Mandatory Overtime

Union's Position

The Union wants to maintain a list of full-time bargaining unit members.

City's Position

The list should include all full-time employees and allow for potential situations such as a newly hired full-time employee.

RECOMMENDATION

I recommend the Union's position of bargaining employees being called first. If the City desires to maintain a list of other employees, they can, however, bargaining unit employees will be called first for overtime.

Section 13.11A Average Work Week

Union's Position

Compensatory time off should be in the form of a twenty-four (24) hour work reduction day, and shall be called a Kelly day off. Two-hundred twelve (212) hours to be worked in a twenty-eight (28) day work period. The average work week shall consist of 50 hours.

City's Position

It should be a 52 hour work week with 42 calendar days vs. 28 days.

RECOMMENDATION

I recommend the City's position of a 52 hour week. I recommend the Union's position regarding the compensatory time and the Kelly day off.

Section 13.11B Kelly days

Union's Position

Each employee on a twenty-four hour work day shall be entitled to a Kelly day on a 28 day work period. Kelly day is 24 continuous hours off.

City's Position

Bargaining unit members get eight Kelly days now, to increase to 13 Kelly days would give five extra Kelly days. (28 days = 1 Kelly day Union/42 days = 1 Kelly day City.)

RECOMMENDATION

I recommend the Union's position of 28 days work period equaling one Kelly day of 24 hours duration.

Article 14 Promotions

Section 14.3 Applicants for open positions

Union's Position

The Union wants this article of selection to be grievable for the selection of Lieutenant or Captain by the Chief of Fire.

City's Position

This is a management right and they want to be able to select the best person for the position. The City also wants to be able to consider internal or external candidates.

RECOMMENDATION

The Chief can simultaneously open the promotional opportunity to external applicants, however, bargaining unit members should be considered first over outside candidates. This article is grievable under the contract.

Article 16 Wages and Compensation

Section 16.1 Retro of wages back to January 1, 2011

Union's Position

	2011 Effective 1-20-11	Lieutenant	\$28.54
		Captain	\$31.39
4% increase	2012 Effective 1-20-12	Lieutenant	\$29.68
		Captain	\$32.65
4% increase	2013 Effective 1-21-13	Lieutenant	\$30.87
		Captain	\$33.95

Based upon 50 hour work week.

City's Position

The City offered 1.5% for 2012 and 2013. The City does not agree to retroactivity due to the cost not being budgeted for.

RECOMMENDATION

The Union in Appendix A asked for retro pay effective January 20, 2011, but in fact finding they asked for retro back to January 1, 2011. I recommend retro pay back to January 1, 2011.

As to wage increases I recommend 2% for each of the three years, 2011, 2012, and 2013.

Section 16.3 Acting pay

Union's Position

The Union wants the employee to receive acting pay after the 31st day.

City's Position

The City wants language clearly stating that acting does not begin until the 31st day of the assignment regardless of the reason.

RECOMMENDATION

I recommend the language the City desires.

Section 16.7 Paramedic differential

Union's Position

The Union's position is that any firefighter, Lieutenant or Captain who maintains a State of Ohio paramedic certificate shall receive differential pay of 4% of his base salary payable the first day of July and the first day of December.

City's Position

The City disagrees saying paramedic duties are core duties for members of the unit. The costs for this would be \$66,392 over the life of the contract.

RECOMMENDATION

I recommend the City's position that there be no differential pay.

Section 16.8 Annual Service Credit

Union's Position

The Union wants the members to receive an annual service credit payment based on years of continuous service:

5 - 10 years service	\$1,000
11 - 15 years service	\$1,500
16 - 20 years service	\$2,000
21 and more years service	\$2,500

This is to be paid July 1 in the second pay period in July of each year.

City's Position

The City proposes the following payment plan:

5 - 9 years service	\$220
10 - 14 years service	\$345
15 - 19 years service	\$470
20 - 24 years service	\$600
25 - 29 years service	\$725
30 and more years service	\$850

RECOMMENDATION

I recommend the City's position which reflects the service credit paid to other city workers.

Article 19 Insurance

Union's Position

The Union's proposal is outlined in a counter proposal of January 13, 2011, which follows:

Section 19.1 The Employer shall make available to all full-time bargaining unit Employees comprehensive major medical, hospitalization, health care, dental, and optical insurance substantially equivalent to the plans currently in effect for employees at the effective date of the agreement. Any changes in coverage must be bargained. A change in third-party administrators (to administer the city's plan) and insurance carriers does not constitute a change in coverage.

Section 19.2 For each full-time Employee the cost of dental insurance for an individual policy shall be paid by the City. For a family dental insurance policy, the insurance coverage provided herein to full-time Employees shall be fifty percent (50%) of the annually set COBRA rate for family dental coverage. For individual and family hospitalization and medical insurance policy coverage, each full-time Employee shall contribute 11% of the cost of the annually set COBRA premium rate for either an individual or a family, as applicable.

The medical plan, whether individual or family coverage, shall include a prescription program whereby each full-time Employee pays the following deductibles: Generic drugs \$10, Name Brand Preferred \$25, Non-name Brand Preferred \$40.

Section 19.3 All full-time bargaining unit members are authorized to participate on a voluntary basis in any and all Wellness Inducement Programs that may be offered by the City and receive incentives as applicable. Any insurance premium discounts offered by the City to other classified, non-exempt employees as part of any Wellness Inducement Program will be provided to all bargaining unit members while on duty.

Bargaining unit members shall be provided the opportunity to reduce their health insurance premiums through participation in all Wellness Inducement Programs offered by the City. The intent of the Wellness Inducement Program is to place emphasis on the importance of achieving and maintaining a healthy lifestyle by linking bargaining unit member participation to reduced health insurance premiums. Reduction of bargaining unit member's insurance premiums are based upon a point system. Points will be awarded for participation in the following activities (Union's proposal included a chart of

points per wellness activity some of which are the same as those in the City's wellness program) as well as a chart for discounts on health premium contributions awarded for wellness (this is the same as the City's points system: for 170+ points, the premium is discounted from 11% to 5%, with the employee contributions 6%; for 140-165 points, the premium is discounted from 11% to 3% with the employee contributing 8% of the premium, and for less than 140 points, the employee receives no premium discount and contributes the full 11% of the premium).

Section 19.4 A difference between any employee (or his beneficiary) and the insurance carrier(s) or the processor of claims shall not be subject to the grievance procedure provided for in the Agreement between the City and the Union.

Section 19.5 The Employer shall provide term life insurance and accidental death and dismemberment coverage on each employee in an amount of \$40,000, payable to the spouse of the Employee, the designated beneficiary, or the Employee's estate. (Note: this benefit is provided under the City's proposal.)

Section 19.6 The failure of any insurance carriers(s) to provide any benefit for which it has contracted shall result in no liability to the City, or to the Union; nor shall such failure be considered a breach by the City or the Union of any obligation undertaken under this or any other agreement. Nothing in this Agreement, however, shall be construed to relieve any insurance carrier from any liability it may have to the City, Union, employee, or beneficiary of any employee.

Section 19.7 The terms of any contract or policy issued by an insurance carrier shall be controlling in all matters pertaining to benefits hereunder.

Section 19.8 In each calendar year that an employee declines health care coverage and, upon proof of coverage elsewhere, he/she shall receive a one-thousand eight-hundred dollar (\$1,800) allotment to waive health care coverage payable on or before the last regular payroll in December of that year for a full year of such waived coverage or a pro-rated amount on a monthly basis if less than one (1) year. This monetary allotment is only payable to those employees that are not carried on the municipality's health care plan in any form.

Section 19.9 Group coverage will become available to new members of the bargaining unit upon their application after they have completed sixty (60) days of employment with the City. After application, the coverage will begin as soon as practicable.

City's Position

Offer the same insurance coverage provided to all other employees of the City, including other employees who are represented. This is an excellent plan which includes major medical, dental, vision, prescriptions, family deductible of \$600 per year, individual out-

of-pocket maximum of \$1,200 per year, family out-of-pocket maximum of \$3,600 per year, doctor's office co-pay of \$30, specialist co-pay of \$50, emergency room co-pay of \$150, urgent care co-pay of \$50, and prescription co-pay tiers of \$10/30/50. Additionally, the City plan provides group term life insurance to each member with a death benefit of \$40,000.

Because the City has a relatively small number of employees, the City needs all employee lives in the same plan in order to competitively shop for health coverage. The struggle to find even remotely affordable health coverage is well known. To have a plan covering only six lives would be prohibitively expensive because there are so few among whom to spread the risk. Additionally, the City must control plan design in order to be able to make some plan design changes in order to keep the cost of insurance at rates the City can afford to pay. The City is self-insured. The Union's proposal would require rebidding and an increase in third party administrator costs. The Union's proposed health insurance buy out in its Section 19.8 represents yet additional costs to the City and no other City employee has that benefit.

The Union's proposed discounts for wellness are the same as are contained in the City insurance plan which is what the City proposes. The wellness plan has been restructured since last year and now provides opportunities for platoon system employees to participate on off-duty time in order to gain the necessary points for full premium reduction. The City's elimination period to participate in insurance is after thirty (30) days of employment with the City as opposed to the sixty (60) days proposed by the Union.

RECOMMENDATION

I recommend the City's insurance coverage which is provided to all employees, which should allow the fire officers the ability to use their continuing education towards points in the City's wellness program. The life insurance will be \$40,000. The Union members shall receive \$150 per month, which equals \$1,800 per year, if they do not participate in the City's insurance plan. This is estimated to save the City approximately \$5,000 a year for each employee who participates. The insurance costs are to be the same as for any other City employee. The elimination period shall be thirty (30) days of employment to participate in the program.

Article 20 Holidays

Section 20.1

Union's Position

The Union wants 11 scheduled holidays per year, the same as other employees of the City plus an increase in 24 hours of holiday leave annually.

City's Position

The City wants to give the 11 scheduled holidays without the additional 24 hours holiday leave.

RECOMMENDATION

The Union's position and recommend the additional 24 hours holiday leave for bargaining unit members who work 624 more hours per year than a 40 hour per week City employee.

Section 20.3 Bank of Time Off (Holiday)

Union's Position

Credit three platoon career employees with 144 hours of holiday pay at the beginning of the year.

City's Position

Credit the platoon career employee with 120 hours of holiday pay at the first of the year.

RECOMMENDATION

I recommend the Union's position of 144 hours of holiday time off for platoon career employees.

Section 20.5 Additional Holidays

Union's Position

In addition to the above listed holidays, any official special holiday of mourning proclaimed by the President, the Governor of the State of Ohio, or the City of Lebanon, and when affected Governmental Offices are to be closed, shall be designated as a paid holiday and an appropriate proportional increase in holiday leave shall be made.

City's Position

The City Manager may declare additional holidays in the event such holidays are established by executive order of the President or the Governor.

RECOMMENDATION

I recommend the Union's wording with the insertion of the City Manager in front of the City of Lebanon.

Article 21 Vacation

Section 21.3 Vacation accrual for career employees working forty (40) hour work week

Union's Position

Three platoon members work on average 100 hours over a 14 day period. All three are considered full-time employees.

<u>Uninterrupted Service</u>	<u>Vacation</u>	
From date of hire but less than 5 years	144 hours/year	6 days/year
After 5 years but less than 10 years	192 hours/year	8 days/year
After 10 years but less than 15 years	216 hours/year	9 days/year
After 15 years	288 hours/year	12 days/year

City's Position

The employees work an average of 80 hours over a 14 day period.

From date of hire but less than 1 year	48 hours/year
After 1 year but less than 5 years	96 hours/year
After 5 years but less than 10 years	104 hours/year
After 10 years but less than 15 years	120 hours/year
After 15 years	160 hours/year

RECOMMENDATION

I recommend the Union's position since these employees work an additional 624 hours per year than 40 hour per week City employees.

Section 21.7 Vacation Leave Buy Back

Union's Position

Under position item #1 an employee shall have completed at least 10 years service. Item #2 employees shall have already taken a minimum of 50% of their annual vacation accrual for the calendar year and all personal days.

City's Position

The City position on items #1 and #2 is the same as the Union's position.

RECOMMENDATION

I recommend the City/Union position on 21.7 items #1 and #2.

Section 21.8 Work week hours

Union's Position

The Union wants a 50 hour work week.

City's Position

The City wants a 52 hour work week.

RECOMMENDATION

I recommend the Union's position of a 50 hour work week.

Article 22 Sick Leave

Section 22.1

Union's Position

Full-time bargaining unit members working an average of 100 hours over 14 days should accrue 7.5 hours of sick leave per pay period.

City's Position

The City recommends 5.98 hours for these individuals.

RECOMMENDATION

I recommend the City's position of 5.98 hours accrued every pay period.

Section 22.2C Utilization

Union's Position

See Section 22.1.

City's Position

See Section 22.1.

RECOMMENDATION

See Section 22.1

Section 22.4 Use of Sick Leave

Union's Position

Bargaining unit members upon return to work shall complete an application for sick leave use on the provided form. The City may require at its option and prior notice the submission of a doctor's statement. It shall contain only generalized statements as to the nature of illness or injury, date of medical treatment and prognosis. Failure to provide sufficient reasons for the absence may result in denial of sick leave.

City's Position

Any employee requesting sick leave must inform their supervisor within the prescribed time as established by the department rules. The employee must give satisfactory reasons for sick leave use and the location of convalescence if different from their home address.

RECOMMENDATION

I recommend the City's position.

Section 22.5 Sick Leave usage

Union's Position

Sick leave shall be charged in one hour increments. In order to receive pay for sick leave usage, an employee must comply with all City rules and regulations on application and use. Falsification of the application for sick leave or medical practitioner's statement is grounds for disciplinary action. The employer has the right to investigate any request for sick leave and any excessive abuse. The employer can have the employee examined by a doctor of their choice to validate a claim for sick leave. The City may deny the payment of sick leave if their investigation indicates the absence was not within the provisions of

this article.

City's Position

Vacation leave and compensatory time may be used for sick leave purposes at the employee's request and with approval of the City Manager. Employees who are unable to return to work after exhausting all paid leave may apply for an unpaid leave of absence or may be eligible for unpaid Family Medical Leave.

RECOMMENDATION

I recommend the Union's position.

Section 22.6

Union's Position

Each full-time employee with ten (10) or more years of service with the municipality shall be paid for seventy-five percent (75%) of the value of his/her accrued but unused sick leave credit at the time of his/her retirement or one-hundred percent (100%) upon death prior to retirement. Such payment shall be based on the employee's rate of pay at the time of retirement or death. Payment for sick leave on this basis shall be considered to eliminate sick leave credit accrued. Such payment shall be made only once to an employee. Retirement for purposes of this section shall be defined as disability or service retirement under P.E.R.S., the Police and Fireman's Disability & Pension Fund, or other authorized public pension system.

City's Position

An employee who retires from employment with the City of Lebanon shall be entitled to receive payment for accumulated sick leave of 50% of such accumulated sick leave for up to 1040 hours accumulated and 10% for over 1040 accumulated sick leave hours. The employee shall also receive payment for all accumulated vacation. In the event an employee dies while being employed by the City and said employee qualifies for his respective retirement/pension fund, said employee's estate shall be paid for such accumulated time. Payment of accumulated leave shall be paid at the employee's rate of pay at the time of death or retirement.

RECOMMENDATION

I recommend the Union's position.

Article 23 Occupational Injury Leave

Section 23.4

Union's Position

Any employee claiming an occupational injury under this article shall file an injury claim with the Ohio Bureau of Workers' Compensation (OBWC) as soon as possible. Upon approval of the claim by OBWC, an OIL granted after the fifth (5th) day of absence shall be made retroactive to the first (1st) day of absence, and any sick leave or vacation used by the employee during the first five (5) days of absence shall be restored to his/her credit. The employee shall submit to the employer copies of all income and/or benefits paid by OBWC for the period during which the employee received full pay from the employer while on OIL. In the event the employee files a claim for lost wages with OBWC, it is understood and agreed that the employer's obligation under this article shall be only the difference between the employee's regular rate of pay and the amount of income benefits paid to the employee by OBWC. Should the injury claim ultimately be denied through the OBWC/Industrial Commission process, the employee shall revert to sick leave status and shall be charged with sick leave and/or vacation leave for all time paid by the employer for OIL.

City's Position

Simultaneously with the request for injury leave, the employee shall also make application and actively pursue a claim for benefits under Ohio's workers' compensation law to commence upon the expiration of the injury leave. The employee shall execute an agreement assigning any and all money received as compensation for lost wages during the period of paid injury leave, whether from the Bureau of Workers' Compensation and/or any other source to the City of Lebanon. After approval of the injury leave by the City, the City will issue a check to the employee each pay period equivalent to the employee's base pay for the relevant period.

RECOMMENDATION

I recommend the Union's position.

Article 24 Leaves of Absence

Section 24.2 C Personal Leave

Union's Position

Employees are eligible for up to twelve (12) hours personal leave from duty with pay annually for the transaction of personal business of an emergency nature upon approval

by the Fire Chief or his designee. The denial of such personal leave shall be based solely on a bona-fide operational need (e.g., no other paramedics on duty). Personal leave balances shall not accumulate or carry over from year to year.

City's Position

The employees shall receive the same as what the other employees receive in the City of Lebanon. They are permitted to accumulate up to 24 hours of personal time.

RECOMMENDATION

I recommend the City's position of 24 hours personal time.

Section 24.2 D Funeral Leave

Union's Position

1. Any bargaining unit member assigned on the forty (40) hour work week may be granted up to three days of paid funeral leave in the event of a death of an employee's immediate family. For the purpose of this section, immediate family is defined as the spouse, parent, son or daughter, brother or sister, grandparent, grandchild, stepchild, stepparent, legal guardian, mother or father-in-law, or other person who stands in place of the employee's parent.
2. Funeral leave of one day may be granted when a death occurs to any other relative or friend of an employee upon prior written approval of the department head and the City Manager. Funeral leave shall not be charged to the sick leave balance of the employee.
3. Bargaining unit members assigned on twenty-four (24) hour shifts, shall be paid his or her regular pay for three (3) twenty-four (24) hour work shift absence in the event of the death of his or her immediate family as described in section 1 above.
4. In the event of a death of a relative other than those in the immediate family as described above, the bargaining unit member shall be entitled to one (1) day of funeral leave in order that the bargaining unit member may attend the funeral.
5. In circumstances of unusual distance of travel or extreme weather conditions the Fire Chief may at his or her sole discretion, grant up to an additional one (1) day of funeral leave with pay for the employee to travel to the funeral of a relative in the immediate family as listed in section 3 above.

City's Position

1. Any full-time employee may be granted up to three (3) days of paid funeral leave, upon approval of the department head and the City Manager, in the event of a death in the employee's immediate family. For the purposes of this section, immediate family is defined as the spouse, parent, son or daughter, brother or sister, grandparent, grandchild, stepchild, stepparent, legal guardian, mother or father-in-law, or other person who stands in place of the employee's parent.
2. Funeral leave of one day may be granted when a death occurs to any other relative or friend of an employee upon prior written approval of the department head and the City Manager. Funeral leave shall not be charged to the sick leave balance of the employee.

RECOMMENDATION

I recommend the Union's position.

Article 27. Uniforms and Equipment

Section 27.3

Union's Position

Due to normal and reasonable wear and tear or failure of uniforms bargaining unit members shall receive an annual clothing allowance payment of \$800 payable the pay period that includes July 1. Structural firefighting gear or personal protection equipment issued to the employee shall be maintained by the employer at no cost to the employee. If significant changes are made to the daily uniform or class "B" uniforms the initial cost to implement or replace the uniforms shall become the responsibility of the employer.

City's Position

Where a bargaining unit employee supplies evidence that he/she sustained damage to personal property that is work appropriate while performing the duties of his/her assigned work, the employer shall reimburse the employee for the cost of necessary repairs, or replacement to eyeglasses up to a maximum of \$200 per year. The employee shall present the damaged property for the employer's inspection prior to the repair or replacement of said property. Repair or replacement of said property shall be at the employer's option.

RECOMMENDATION

I recommend the City's position as they already provide uniforms and equipment.

TOTALITY OF AGREEMENT

It is recommended that all agreed to articles listed prior to fact finding be included in the agreement.

This will affirm the foregoing report consisting of 27 pages, including the findings and recommendations set forth in the award by the fact finder and all tentative agreements reached by the parties.

Any matter presented before the fact finder and specifically addressed in this determination and award were given consideration but are not recommended for inclusion in the agreement.

If there is found conflict in the report between this fact finder's discussions and recommendations, the language in the recommendations shall prevail.

To the best of my knowledge, said report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I, therefore, offer my signature at my address in the County of Pickaway in the State of Ohio this date of April 27, 2011.

John P. Downs, Fact Finder