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**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 10-MED-10-08-0987**

**INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 109
and
CITY OF NEWARK, OHIO**

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

**John F. Lenehan
Issued July 7, 2011**

Appearances:

VIA E-MAIL

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Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

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REPORT AND RECOMMENDATIONS

I BACKGROUND

On November 30, 2010 The State Employment Relations Board (SERB) appointed John F. Lenehan as a fact finder in the case of Newark City and International Association of Firefighters Local 109, Case #10-MED-08-0987. The parties mutually agreed to extend the filing of the fact finding report until July 7, 2011 as provided under the Ohio Administrative Code, Section 4117-9-05 (G).

The parties are The International Association of Firefighters Local 109 (Union or IAFF) and the City of Newark (City or Employer). The Union represents Firefighters throughout Ohio. The City of Newark was established in 1802 and is the largest City in Licking County. According to the 2010 census, it has a population of over 47,000. It is located in Central Ohio east of Columbus.

The Bargaining unit consists of all full time uniform employees of the Newark Fire Department with the exception of the Fire Chief. Ranks included within the bargaining unit are those of Firefighter, Lieutenant, Captain and Assistant Chief. There are approximately eighty-three (83) employees in the Bargaining Unit.

The parties agreed to schedule mediation before the Fact Finder for May 13, 2011. Mediation was held on that date but no agreement was reached. Another day of mediation was held on May 19, 2011. Again no agreement was reached at that session. The mediation efforts being unsuccessful, the parties scheduled and held a fact finding hearing on June 2, 2011. The hearing commenced at 9:00 a.m.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

on that date and recessed at 5:00 p.m. The Fact Finding Hearing was continued to June 16, 2011. The hearing commenced at 9:00 a.m. and concluded at approximately 11:00 p.m. that evening. It was agreed by the parties that the fact finders report would be filed on July 7, 2011.

Formal bargaining sessions had been held on a number of occasions from October, 2010 through May, 2011. The parties were able to discern the areas of agreement and impasse. Prior to the commencement of fact finding, the parties had reached written tentative agreement on all but fifteen (15) Articles. The issues and Articles that remain in dispute are:

1. Article 5, Union Representation
2. Article 9, Staffing of Companies
3. Article 13, Holidays
4. Article 14, Vacations
5. Article 15, Sick Leave
6. Article 20, Hours
7. Article 21, Overtime Pa
8. Article 22, Compensatory Time
9. Article 25, Quarter Master
10. Article 27, Insurance
11. Article 32, Paramedic Differential
12. Article 39, Wage Tables, Base Wage Rates
13. Article 40, Contracting Out
14. Article 41, Tuition Reimbursement
15. Article 42, Paramedic Certification.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

During the fact finding hearing the parties were able to sign off on Article 27, Insurance and Article 41, Tuition Reimbursement. In Addition, they were able to agree as to the term of the Collective Bargaining Agreement.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taking into consideration.

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

III ISSUES AND RECOMMENDATIONS

REVIEW OF CITY'S FINANCIAL STATUS

The Employer presented the testimony of City Auditor Stephen E. Johnson, who stated that Newark's revenues and expenses, as with many cities in Ohio, have become problematic. In 2010, the City had a 1.3 million carryover, representing only 4% of the General Fund. Accounting standards in Moody's report submitted into evidence favor an approximate 10% carryover. To attain this carryover, the City transferred \$800,000 from its Workers Compensation Fund and \$400,000 from its budget stabilization fund (rainy day fund). The carryover was also made possible by city employees taking a wage freeze for 2010. The city relying on no increase in benefit costs and 11 layoffs and vacancies through attrition in 2010 was able to balance its budget. Otherwise, according to the city auditor, they would not have been able to do so.

In addition, the city has taken other measures to cut costs. Since 2006 it has laid off or not filled 78 positions or 15% of its work force. It has abolished two departments. Most of these were in non-safety forces. The city contends this will not be enough to balance future budgets. The Ohio Legislature has indicated there will be significant reductions in local government funding. The city auditor projects the city's revenue is to be reduced by approximately \$265,000 in 2011 and as much as 1.3 million in 2012 in local government funding. In addition, the Ohio Legislature's current budget eliminates the estate tax which provided \$800,000 in revenue in 2010. The city is also anticipating a reduction in the roll back in homestead exemptions. In the meantime lower interest rates have cut interest earnings, which have provided approximately 1 million per year in recent years.

In 2001 a joint safety levy was passed by Newark residents to supplement the budgets of both the police and fire divisions. The levy placed an addition .5% tax on working residents in Newark and those who work in Newark but reside elsewhere. In 2010 this levy generated approximately \$5,439,000, which

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

was divided between the police and fire departments. The total amount budgeted for the fire department was approximately \$9,838,000.

The city's income tax rate is 1.75% making it higher than cities of similar size in Ohio. Tax revenues have fallen in recent years from over 20 million in 2006-2008 to 18.77 million in 2010. The city's population has increased. The percent of those living in poverty has also increased from 13% in 2000 to 20.2% in 2010, a 55% increase. Adjusted gross income data indicates that incomes have stagnated since 2007 reaching the high that year. Per capita income was \$21,941.00 in 2011 while average gross income was \$37,886.00 and median household income was \$36,541.00. Meanwhile incomes in the Firefighters Bargaining Unit exceed those of other citizens in Newark.

Total general fund revenues have also fallen from a peak in 2007. The largest contributor to the general fund has been the income tax. However, as noted before, interest income also peaked in 2007 while real estate taxes have remained relatively flat. The city does not anticipate an increase in real estate tax revenue in 2011. Estate taxes vary every year, depending on the assets of residents who pass away. In 2007, 2010 the city collected over a million in estate taxes, as noted above this revenue stream may be eliminated. The court revenues have remained stable and provided approximately \$1.5 million in revenue. Personal property and miscellaneous tax revenue have declined. Overall, in 2007 the general fund had \$31.3 million in total revenues and fell to \$27.7 million in 2010. The city projects total revenues for 2011 to be \$26.9 million. Meanwhile, cash reserves have fallen \$3 million in 2007 to \$1.3 million in 2010.

The income tax revenue analysis for 2008 to the present, prepared by the city tax administrator, Barbara Jones, notes a significant drop of \$1.1 million business net profit taxes from 2008 to 2009. Even though there was a moderate increase in net profits in 2009-10 collections were markedly below 2008 level. The tax administrator also noted that while it was too early to get an accurate picture of 2011 there has been a moderate increase in business returns filed in 2011, suggesting a small increase in net profits,

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

though it is not expected to exceed 2010 collections. Non-resident collection has seen no growth since 2009, indicating that non-residents or self-employed tax payers are not finding work in Newark and non-resident taxpayers waiting to invest in rental properties are not investing in Newark. As to resident net profit tax, the trend from 2009 to 2010 signals that more residents are finding employment outside of Newark. The trend appears to continue into 2011. For 2008-10 withholding dollars from businesses in the city to the service courtesy withholding segment demonstrates the growth is outside the city withholding those revenue dollars from the residents of Newark. Finally, the tax administrators report noted that the net tax collected has fallen from \$20.4 million in 2008 to \$18.3 million in 2010.

While revenues have been falling the city's expenses, of course, have increased somewhat. Given the cuts the city has made, expenses have been kept in line pretty well. For example, the fire division costs were \$8.4 million in 2005; they rose to \$9.58 million in 2008, and were reduced to \$8.9 million in 2010. Total city expenditures were \$27.5 million in 2005, rose to \$30.9 million in 2008 and have been cut to \$27.8 million in 2010.

The Union counters the Employer's position on finances with exhibits and articles explaining that the economy is improving on both the State and Local levels. Specifically the Union has submitted exhibits that the unemployment rate has dropped from 10% in 2010 to 8.7% in March, 2011. In addition, people are moving into the City and employers are hiring. Household incomes, according to the Union, have also increased since 2000. These indicators point to increased tax revenues in the future. It should also be mentioned that the City's bond rating has been rated as Aa3 by Moody's, which is high grade long term debt, although the lowest high grade rating. In 2007 the City instituted an EMT service fee which provides approximately \$1.5 million in revenue per year. The City has also stabilized its expenditures compared to revenue. It has a small net fund gains in 2010 and predicts larger gains in 2011.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

While the Union understands that the City is not in the best financial shape, it disagrees with its contention that the situation is hopeless. The Union has worked with the City stabilizing expenses. The Bargaining Unit has taken reductions already, not replacing officers who have left, reducing overtime, and more. It has taken a wage freeze. It is mindful that the City is looking for further reductions and expenditures. However, not all reductions can be placed at the feet of the fire fighters. Employees still have homes to pay for and bill to pay, children to clothe, feed and educate. Cutting their salary and benefits even more will only make it harder to raise a family.

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

Issue #1

ARTICLE 5

UNION REPRESENTATION

EMPLOYER'S POSITION

The Employer proposes to change the provisions of Article 5. Section 5.1 to read as follows:
(Changes and/or new language are in bold and underlined; there are no changes in the other sections of this Article)

Section 5.1. The Union representatives shall confine their Union activities to the **off duty** investigation and processing of grievances, or attending meetings as authorized by this Agreement, so as not to **require recall or** interfere with any employee's normal assigned work location, until released by the Fire Chief or designated representative, which release shall not be withheld where the Union gives the Chief (**or** his/her designated representative) seventy-two (72) hours advance, written notice or, if it is impossible to give seventy-two (72) hours advance, written notice, such other notice as is feasible. Union representatives shall not utilize City vehicles for travel to conduct Union business, except to the extent authorized in advance by the Fire Chief, or his/her designated representative.

Union representatives who are released for Union activities under this Article, and are physically present within the city limits, must timely respond to calls to duty.

Section 5.2. Any Union representative shall cease unauthorized Union activities immediately upon any order by the supervisor of the area in which the Union activity is being conducted, or upon the order of the platoon supervisor. Any violation of the rules of this Article shall subject the employee to disciplinary actions.

The Union shall be credited each calendar year a total of two hundred sixteen (216) hours, which may be used by uniformed personnel of the Division of Fire for attending conferences, seminars, district meetings, and Union activities upon the prior written approval of the Fire Chief, which approval shall not be withheld where the Union gives the Fire Chief, or his/her designated representative seventy-two (72) hours advance, written notice or, if it is impossible to give seventy-two (72) hours advanced, written notice, such other notice as is feasible. Time spent on authorized business under this provision shall be compensable at the rate of pay for each individual who participates for those days the employees was scheduled to work. Payment shall be made directly to the individual participants. Persons authorized to participate in a function or functions which qualify for compensation under this provision shall be chosen by the executive body of the Union Local.

No more than forty-eight (48) unused hours provided in accordance with this Article shall be carried over for use in the next calendar year.

Section 5.3. When Union leave is requested under the provisions of this Article, the representative requesting such leave shall specify in the request for leave the nature of use of

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

leave, the location where he/she will be located, and the expected time to be used. Union time off is for a minimum of three (3) hours.

Section 5.4. Union time off shall not be required and not charged for designated members participating in contract negotiations, arbitration, fact finding, or disciplinary hearings, or any other similar meetings that the city required the unions attendance and that the Fire Chief or his designee approves. If on duty, the designated representatives will be given the needed time off to attend such meetings or hearings as paid time off. Time spent on authorized business under this provision shall be compensable at the rate of pay for each individual who participates for those hours the employees was scheduled to work. Payment shall be made directly to the individual participants.

According to the Employer, the foregoing proposed changes would make it clear that bargaining unit members on union leave will not result in recall of employees. Also, the proposed changes would require bargaining unit members on Union leave who are physically within the city limits to respond to calls to duty.

The Employer states that it seeks to address two issues with the foregoing proposal. The first is public perception. It argues that conducting union business on taxpayers' or company time should not result in the public being forced to pay double time and a half as a result of a recall of an off-duty employee while other employees participate in Union business.

The second issue raised by the Employer is requiring bargaining unit members to perform their job responsibilities when they are called to do so while they are paid by the City. Specifically, bargaining unit members should be required to leave City meetings and training sessions to attend to emergency calls.

UNION'S POSITION

The Union proposes current contract language. It argues that consistent with Article 5, Section 5.1, the Union has always been able to conduct Union business on duty as long as it did not interfere with an employee's normal work, e.g., investigating and processing grievances, and representing employees being involved in disciplinary matters. In addition, the Union has worked in conjunction with the City on many issues while on duty. According to the Union the City's proposal is to basically ban all Union activity on duty which would in fact prohibit the Union from properly and legally representing its membership.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Union has also raised a concern as to its current rights under Section 5.2 should the Employer's proposed language be adopted. The hours credited to the Union each year (currently 216) are needed and used at the discretion of the Union Executive Board with at least seventy-two (72) hours

notice to the Fire Chief to attend Union meetings at local, district, state, and international level. They are needed for the Union to conduct business off duty when its members and officers are scheduled to work. The hours have been used for these purposes for at least twenty (20) years or more.

OPINION

The Employer submitted into evidence the testimony of the Fire Department Chief Jack Strickradt and various exhibits, specifically, copies of Cost of Reductions, Updated June 16, 2011 (Employer Exhibits Book #1, Tab 9) and e-mails requesting leave time (Employer Exhibits Book #1, Tab 10). The Fire Chief estimated the potential maximum liability for overtime costs as a result of the leaves granted under this Article to be \$7,500.00; the exhibit under Tab 9 of Book #1 of Employer Exhibits estimates the maximum costs to be between \$5,000.00 and \$7,000.00. To demonstrate that additional overtime is required for attendance at union meetings, the Employer introduced through the testimony of the Fire Chief a series of emails in which the Fire Chief approved leave requested by the Union for members of the bargaining unit to attend union meeting. The Fire Chief testified and the emails indicated that additional overtime would be required to meet the minimum manning requirements of Article 9 and cover the shifts.

The Union also submitted testimonial and documentary evidence. The Union President David McElfresh testified that the same or similar language as that set forth in Article 5 has been in the Collective Bargaining Agreements since 1984. He stated that the Union has always been able to conduct business on duty as long as it didn't interfere with an employee's normal work. The Employer's proposal would ban all Union activity on duty which would in fact prohibit the Union from properly and legally representing its membership.

As to the concern regarding leave for attendance at Union meetings, the Union President testified the 216 hours credited to the Union each year have been in place since 1995. They are needed and used at the discretion of the union Executive Board with at least seventy-two (72) hours advance notice to the Fire Chief to attend Union meetings at local, district, state and international level, including conferences, seminars and union committee meetings. Also, these hours are needed for the Union to conduct business off duty when the officers are normally scheduled to work, since meetings, conferences and other union

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

functions often occur when members are working. According to the Union President these hours have existed and been used for at least twenty-six (26) years.

Union Exhibit #7 contained the following documents: the Union Representation provisions from the 1984, and 1995-97 Collective Bargaining Agreements; a report on the leave hours used during the

past ten (10) years; and comparable provisions from the collective bargaining agreements AFSCME and the FOP have with the Employer.

OPINION

Based upon the evidence submitted, it is the opinion and the finding of the Fact Finder that the Union's position is more persuasive. First, there is a paucity of evidence that the on the job dealing with union business under the terms of this agreement cost the Employer overtime or interrupts providing services. The administration of the Collective Bargaining Agreement requires the participation of both parties. The underlying assumption is that both parties will interact in the administration of the agreement on a day to day basis. Also, they will do so in a common sense good faith manner. To the recollection of this Fact Finder there is no indication that fire fighters have failed to respond in an emergency and that it was a necessity to recall a fire fighter when dealing with a grievance or a matter of short term duration on the job

Second, while there can be an overtime cost in granting leave to attend conferences, seminars, district meetings, and Union activities, such is restricted and controlled by Section 5.2 of the Collective Bargaining Agreement. It should be noted that there is also a similar cost with other paid leaves granted under the Agreement. The leave under this section of the contract is restricted to 216 hours and requires seventy-two (72) hours notice to the Fire Chief. The report on the use of this leave set forth in Union Exhibit # 7 does not indicate over use or abuse during the past ten (10) years.

Third, the leave granted under the provision of this Agreement is not unique or unusual. Such provisions are common in many public sector bargaining agreements. The Agreements which this Employer has with AFSCME and the FOP contain similar provisions,

Finally, assuming the maximum possible cost of granting leave under this section, it is not significant in consideration of the overall budget of the Employer to justify further contract restrictions. Seventy-five hundred (\$7,500.00) dollars would not bankrupt the City or push it to the brink.

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

RECOMMENDATION

Therefore, it is recommended that the Union's position be adopted and that there be no change in the language of Article 5 of the Collective Bargaining Agreement.

Issue #2

ARTICLE 9

STAFFING OF COMPANIES

Currently Article 9 reads as follows:

ARTICLE 9

STAFFING OF COMPANIES

The Employer pledges to make a concerted effort to maintain sufficient staffing of each company, within the financial capability of the City, to provide an adequate number of personnel to effectively protect the citizens of Newark and firefighting personnel.

The Union pledges to make a concerted effort to cooperate with the Employer in reducing the amount of absences in the Fire Department.

This provision shall not be construed as prohibiting the Employer from laying off employees due to lack of work or lack of funds, or from temporarily revising the manning levels due to excessive absenteeism, or financial limitations. Statutory procedures regulating layoffs shall be followed.

Consistent with the terms of this article, at least nineteen (19) bargaining unit members shall be assigned to platoon duty at all times and either (i) maintain a minimum of three engines or ladders at all times with a staffing of four members or (ii) maintain a minimum of four engines or ladders at all times with a staffing level of three members.

EMPLOYER'S POSITION

The Employer proposes eliminating the last paragraph of the foregoing Article, which contains provisions for maintaining minimum manning requirements of nineteen (19) bargaining unit members assigned to platoon duty at all times and maintaining a minimum of three engines or ladders at all times with a staffing of four members or a minimum of four engines or ladders at all times with a staffing level of three members. According to the Employer, Article 9 restricts the Chief's ability to properly and effectively manage the work force while meeting the needs of the City.

The Employer asserts that while the union argues that this is a safety issue, and that this minimum number is needed to ensure the safety of the fire fighters, safety is not the real issue. To support this

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

contention, it sets forth the statement made by Fact Finder John Babel, Jr., in his report issued on February 1, 2011, in the City of Upper Arlington Contract recommending the removal of the minimum manning clause. Fact Finder Babel's statement in pertinent part reads as follows: "Safety is an extremely important aspect of this clause, but the requirement to have four fire fighters and three medics at the firehouse is not the safety factor, safety it [sic] is at the scene of the fire. . . the decision will be made by the fire chief, who has the experience and knowledge of what has to be done, and would keep safety as the number one factor." Thus, the Employer argues the same is true for the citizens of Newark and the employees of the Fire Department.

The Employer in its position statement, also, argues that the manning provisions in the FOP contract with the Employer does not interfere with the Police Chief's ability to assign and meet the needs of the City, and does not result in overtime costs commensurate with the Fire Union contract and has not resulted in any safety issues.

UNION POSITION

The Union proposes current contract language. It argues that the language has been in past contracts and was the result of arbitration and negotiations surrounding that arbitration. This provision in the Agreement is crucial to the local and its members . Staffing is part and parcel of the health and safety of firefighters. There is a direct correlation between staffing levels and safety, workload and injury rates. The minimum number of staff is derived from several sources, including the National Fire Protection Association (NFPA), the United States Occupational Safety and Health Administration (OSHA), and the Ohio Bureau of Workers' compensation (BWC). Since the standards promulgated by the foregoing organizations and agencies are not binding on the Employer, the Collective Bargaining Agreement is the only means they have to ensure that the staffing levels established by the aforementioned agencies and organizations are maintained. The Union's original proposal in negotiations was to increase staffing to twenty-three (23), placing four (4) members on all fire apparatus and complying with NFPA 1710.

Recognizing that staffing has an impact on the Employer's finances, the Union infers that because the Employer does not hire and maintain a sufficient level of firefighters, it is required to call in firefighters to work overtime when staffing drops below the minimum. Further it argues overtime costs have already been reduced, and it is making significant concessions in other areas that will save the Employer a considerable amount of money, alleviating the need to gut the minimal level of safety provided by Article 9 solely because of financial reasons.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

OPINION

According to the testimony of the Fire Chief Stickradt, and the memorandum to file he prepared (Employer Exhibits ,Book #1, Tab 11), dated March 30, 2006, eighty (80) bargaining unit employees are required to staff nineteen (19) platoon positions referred to in Article 9 of the CBA. Currently, the Employer has only seventy-two (72) personnel assigned to fill those eighty (80) positions. In addition, the testimony of Chief and Assistant Chief William A. Spurgeon and the Fire and EMS statistics established that the EMS runs exceeded the number of Fire runs (Employer Exhibits Book #1, Tab 11). According to their testimony, the mandated staffing does not give the Employer the flexibility to effectively, economically and efficiently adapt to the changing services required by citizens of Newark. The demand and the need for EMS services and units is greater than that for fire units. Thus, the provisions of Article 9 on mandated staffing are no longer relevant to the service demands of the City. As a result, the mandated staffing under this Article has resulted in excessive overtime or recalls that according to the Chief will result in exhausting of the budgeted overtime funds at the end of September of 2011 (Employer's Book #1, Tab 27) or, at the current rate of recalls, possibly in August.

Assistant Chief Spurgeon testified that an arbitrary number of trucks is a level of service, not a factor for safety. Also, sending more men to the scene does not necessarily increase safety. He did acknowledge that four (4) men on a truck equate to safety and he does not believe two (2) men on a truck is safe.

There was additional testimony from both the Chief and Assistant Chief about the required manning for house and commercial fires. Mutual Aide Agreements with other fire departments in the area are assurance and backup that there will be a sufficient number of fire fighters at a fire for the safety of both citizens and firefighters.

According to the Chief eliminating minimum staffing would result in an expense reduction of \$69, 385 as of May 9, of the current fiscal year. Had minimum staffing not existed in previous years, the expense reduction for 2010 would have been \$143,967, for 2009 \$400,000, for 2008 \$742,137 and for 2007 \$865,904. The Employer estimates annual savings for future years of \$150,000.00 per year.

The Union presented extensive testimony, numerous exhibits and a power point presentation in support of its position on retaining the minimum staffing provisions of Article 9 (Union Exhibits #8 through #19). The testimony of the Union President David McElfresh explained the history of the minimum staffing provisions.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

According to the Union President in 1992-1994 CBA the minimum staffing provisions provided for twelve (12) during the day and thirteen (13) at night . The minimum staffing provisions were increased to fifteen (15) in the 1995-97 CBA. With the passage of the Safety Levy that was presented to the voters on a promise (among others) to increase staffing in the Fire Department, the City Council passed an ordinance in 2002 to increase authorized staffing in the Fire Department from seventy-eight (78) to ninety-three (93) Firefighters. This number of Fire Fighters was determined at the time of the levy to be appropriate number to properly staff the Fire Department. As a result of the City's failure to hire additional staffing, the Union filed a grievance which was subsequently taken to arbitration. The grievance was settled through mediation on February 7, 2003. The settlement was to be effective May 1, 2003. That settlement is the current language in Article 9 on mandatory staffing. The language was first added to the 2004-2006 CBA and has been in every contract since that time.

The reason behind the minimum staffing provisions of Article 9 was that prior to the 2003 change, the Newark Fire Department staffed their fire trucks with only two (2) personnel. This, according, to the Union President was way below national safety standards such as OSHA's two (2) in and two (2) out law, which requires at least four (4) firefighters to be present before interior fire attack could be made. This was also incorporated in the Ohio Administrative Code 4123:1-21-07. Even with current three (3) fire fighter staffing on each engine or ladder, it would require a second truck to arrive, sometimes from another part of town, prior to doing an interior attack at any fire. National standards such as NFPA 1710, recommends a minimum of four (4) personnel on fire engines and five (5) on ladder apparatus. NFPA 1710 also addresses response time requiring an initial assignment of at least four (4) firefighters to arrive on scene in four (4) minutes, and a full assignment of at least fifteen (15) fire fighters on a scene in eight (8) minutes (seventeen (17) if aerial apparatus and supply pump are in operation, which in service is always responded with aerial apparatus. There are multiple studies and articles that support the need for adequate staffing, and the correlation between loss of life and property is proportionate to staffing and response time.

The Union President testified that the Newark Fire Department's current staffing is still below the recommended four (4) or five (5) firefighters on fire apparatus. Also, the Department is still running with three (3). Based upon recommended National standards the Department would need at least twenty-four (24) fire fighters for minimum staffing. Due to financial limitations it has continued to operate with only nineteen (19) in order to try to maintain fire and EMS coverage to all areas in the City. The current staffing at nineteen (19) is not sufficient, adequate, or safe; it does not meet recognized national standards. Also, it should be noted that Fire and EMS runs have continued to increase over the years but staffing has not.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Addressing the issue of recall and overtime, the President stated that in 2009 the City received a Federal Grant and hired three (3) new firefighters. At that time, this brought the overall staffing up to a level that minimized the amount of overtime needed to maintain nineteen (19) minimum staffing. This brought the overtime down from \$825,011.43 in 2008 to \$470,979.75 in 2009 and to \$193,599.29 expended in 2010 for overtime. The overtime expenses were significantly lowered by hiring the appropriate number of personnel to cover staffing.

OPINION

This is not simply a question of safety versus budget. There is no question that staffing at the scene of a fire is crucial to the safety of the fire fighters and the occupants in a building at or near the fire. Also, the evidence submitted during the fact finding hearing clearly establishes that the Employer (City) has and will have budget constraints in the future, and that overtime resulting from recall of fire fighters to meet the staffing requirements of Article 9 is costly.

The question then is, can safety standards be maintained and both Fire and EMS services be provided with less overtime cost to the Employer. Based upon the evidence submitted the answer is yes. Safety occurs at the scene of the fire according to the testimony of witnesses and exhibits from both the Employer and the Union, not at the fire house. The evidence establishes that the location of fire department facilities and the existence of mutual assistance agreements with neighboring fire departments would provide sufficient staffing at the scene of a fire or an emergency. Also, enabling the fire fighters assigned to EMS runs to cover for other fire fighters at the scene of the fire would provide back- up and coverage to assure the safety for fire fighters and occupants of a building.

Although the Union has presented a convincing case for the establishment and incorporation of the mandatory manning provision in Article 9, the evidence no longer supports the retention of that provision. EMS runs over the years have been exceeding fire runs. Fire runs require more fire fighters on a truck than do EMS runs. The needed services have changed somewhat over the years, and what may have been at one time practical, cost effective and efficient in serving the citizens of Newark no longer is. The Employer needs the flexibility to determine the level of service and assign staff in order to provide services to the extent possible within available economic resources.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Fact Finder concurs with the opinions expressed by Conciliators William C. Binning and Virginia Wallace-Curry in the cases of *In the Matter of Conciliation between IAFF Local 39 and the City of Marion, Ohio*, SERB Case #09-MED – 01-0047, decided January 29, 2010 and *In the Matter of the Conciliation between The City of Campbell and IAFF Local # 2998*, SERB Case # 03-MED-10-1299, decided December 20, 2004. . Their opinions are best summarized by Mr. Binning in his award in the *City of Marion* case, which in pertinent part reads as follows:

The Union offered up a number of Arbitration Awards that supported its position on minimum manning. In normal times those awards deserve respect. However, these are very difficult times for cities in Ohio and their financial problems are not short – term, but chronic. Give attention to a quote from the well-respected Virginia Wallace-Curry, who wrote in a Conciliation for Campbell, Ohio: “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 return to management to maintain the viability of the City itself. (The *City of Campbell and Campbell Firefighters Association Local 2998, IAFF* December 20, 2004 p.6)

The City of Campbell is a declining city that started its revenue loss before cities like Marion. But Marion needs flexibility to address its growing financial challenges.

Also the Fact Finding recommendations of Virginia Wallace –Curry and John Babel Jr. in the cases of *In the Matter of Fact Finding between the City of Mentor and Mentor Professional Firefighters Association, IAFF Local 1845*,SERB Case # 04-MED- 12-1310, decided October 31, 2005 and *In the Matter of the Fact Fining between IAFF Local 1521 and the City of Upper Arlington*, decided February 1, 2011, support the elimination of minimum manning.

RECOMMENDATION

Therefore, it is recommended that the last paragraph of Article 9 be deleted as proposed by the Employer and that Article 9 shall read as follows:

ARTICLE 9

STAFFING OF COMPANIES

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Employer pledges to make a concerted effort to maintain sufficient staffing of each company, within the financial capability of the City, to provide an adequate number of personnel to effectively protect the citizens of Newark and firefighting personnel.

The Union pledges to make a concerted effort to cooperate with the Employer in reducing the amount of absences in the Fire Department.

This provision shall not be construed as prohibiting the Employer from laying off employees due to lack of work or lack of funds, or from temporarily revising the manning levels due to excessive absenteeism, or financial limitations. Statutory procedures regulating layoffs shall be followed.

Issue #3

ARTICLE 13 HOLIDAYS

Current contract language

ARTICLE 13

HOLIDAYS

Section 13.1. The following holidays are those which shall be recognized and observed by staff personnel in the Fire Department:

- A. New Year's Day
- B. Martin Luther King Day
- C. President's Day
- D. Memorial Day
- E. Independence Day
- F. Labor Day
- G. Columbus Day
- H. Veteran's Day
- I. Election Day (12:00 noon to 5:00 p.m.)
- J. Thanksgiving Day
- K. Christmas Eve
- L. Christmas Day
- M. Employee's Birthday
- N. Floating Holiday (1)

Section 13.2. Members assigned to staff duty shall receive those holidays listed in Section 13.1 off with pay, with the time off deducted from the member's bank of holiday hours accumulated pursuant to

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 13.3, below.—Those members also shall be eligible to work and at their option may work the holiday listed in Section 13.1.—Members working those holidays shall receive their normal pay and no hours shall be deducted from the member’s bank of holiday hours, for all hours worked on the holiday.

Section 13.3. All members shall receive on January 1 of each year two hundred (200) holiday hours, providing the annual budget has been balanced for that year, otherwise each employee will receive the ratio proportion directly related to budget that the City is using as the interim budget. (Example: if the city is operating on an interim budget say of 25% then each employee may receive that same amount of eligible hours for that year), until the annual budget has been approved, then the employee will receive the balance of the two hundred (200) holiday hours.

Holiday hours may be used as time off during the year, cashed in during the year upon thirty (30) days written notice to the City, or carried over to the following year. Holiday hours used as time off may be taken in hourly increments, with a minimum use of three (3) hours. The maximum number of hours that can be cashed in yearly by a member is one hundred fifty two (152) hours. The maximum number of hours that can be carried over to the following year is twenty-four (24). Any holiday hours not carried over to the following year or not used or cashed in during the year shall be cashed in and paid to the member on the last paycheck of the year.

Section 13.4 An employee that is hired during the year will receive holiday hours on a prorated basis. An employee separating from the city prior to December shall also have their holiday hours pro-rated.

EMPLOYER’S POSITION

The Employer proposes three changes to the foregoing provisions of Article 13. The first change would be the deletion of Election Day and the Employee’s Birthday as holidays. The second change would be the deletion the holiday bank. The third change would pay time and a half for those employees assigned to work holidays. Also, the Employer would recommend that these changes take effect January 1, 2012.

The Employer’s rationale for removing Election Day as a holiday is that such is no longer necessary for employees to take time off to vote. Early voting and absentee voting is available. Its rationale as removing an Employee’s Birthday is that such is not a common practice in the workforce, and are particularly uncommon where the employer is funded by public tax dollars and instituting City-wide cost reductions.

As to the proposal to remove the holiday bank, the Employer sets forth the following rationale. The bank gives fire fighters 200 hours per year. If they work a holiday, then they do not have to deduct those holiday hours from their bank. If they do not work a holiday, then they must deduct those hours from their bank. At the end of the year, they are permitted to cash out their bank, up to 152 hours. The cash out at the end of 2010 was \$293,372.44. No other city employees have holiday banks. The fire

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

fighters are the only city employee with this benefit. The Employer seeks to place the fire fighters in the same position as its other employees, which will be a significant cost reduction for the City.

UNION POSITION

Although the Union believes that current language could easily be justified and should be maintained, it proposes reducing holiday hours by 24% for the first two years of the contract. For those two years, the holiday bank will be reduced from 200 hours to 152. This according to the Union calculations would result in a savings of approximately \$189,000.00 for 2001 and 2012.

According to the Union, the City's proposals on Article 13 would gut the holiday article and would undo the previous bargaining on holidays (including a quid pro quo) to increase number of holiday hours in exchange for an increase in the work week for fire fighters. Prior to 1995 the Fire Department worked a schedule that averaged 42 hours per week. This schedule required 4 platoons to be staffed. The holiday pay for bargaining unit members prior to 1995 was at a double time rate for that portion of the work performed on the holiday.

Beginning in 1995, the parties negotiated a new schedule, in which firefighters worked an average 48 hours per week on a three platoon system. This schedule is still being used. The City proposed the idea of a holiday bank as an incentive to switch to the 48 hour work week. It has been in the contract since 1995. Since 2001, the holiday bank has been 200 hours with a maximum of 152 hours a year to be cashed in.

The Union maintains that its proposal saves the City more money than what the FOP's new contract does. Under the FOP contract the City would save approximately \$140,000.00 on holiday pay, while the Union's proposal would result in a savings of approximately \$50,000.00 more on holidays.

OPINION

The Employer's position as to reducing the number of holidays has some merit. The other bargaining units do not have Election Day and an Employee's Birthday as holidays. However, the FOP and AFSCME contracts provide three floating holidays and thirteen and fourteen total holidays. The Employer's proposal would leave the Union with fewer holidays than the other units, i.e., one Floating Holiday for a total of twelve holidays... It is the Fact Finder's opinion that only one holiday should be deleted, and that is the Employee's Birthday.

As to the Employer's recommendation to delete the holiday bank, the Fact Finder, based upon the evidence, the uniqueness of the fire fighters work schedule, a comparison with provisions in other

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

bargaining unit contracts and the history of the negotiations regarding Article 9, finds that the Holiday Bank should remain in the contract and that there should be no change in the rate of pay for work on the holidays. In addition, the Union's proposal should be adopted and be in effect commencing January 1, 2012 for the remainder of the contract term, i.e., 200 hundred hours being reduced to 152 hours for 2012, and 2013.

RECOMMENDATION

Therefore, it is recommended that Article 13 be changed to read as follows:

Issue #3

ARTICLE 13 HOLIDAYS

ARTICLE 13

HOLIDAYS

Section 13.1. The following holidays are those which shall be recognized and observed by staff personnel in the Fire Department:

- A. New Year's Day
- B. Martin Luther King Day
- C. President's Day
- D. Memorial Day
- E. Independence Day
- F. Labor Day
- G. Columbus Day
- H. Veteran's Day
- I. Election Day (12:00 noon to 5:00 p.m.)
- J. Thanksgiving Day
- K. Christmas Eve
- L. Christmas Day
- M. Floating Holiday (1)

Section 13.2. Members assigned to staff duty shall receive those holidays listed in Section 13.1 off with pay, with the time off deducted from the member's bank of holiday hours accumulated pursuant to Section 13.3, below.—Those members also shall be eligible to work and at their option may work the holiday listed in Section 13.1.—Members working those holidays shall receive their normal pay and no hours shall be deducted from the member's bank of holiday hours, for all hours worked on the holiday.

Section 13.3. All members shall receive effective January 1, 2011 two hundred (200) holiday hours... **On January 1, 2012 and January 1, 2013 all members shall receive one hundred fifty-two (152) holiday** hours providing the annual budget has been balanced for that year, otherwise each employee will receive the ratio proportion directly related to budget that the City is using as the interim budget. (Example: if the city is operating on an interim budget say of 25% then each employee may receive that

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

same amount of eligible hours for that year), until the annual budget has been approved, then the employee will receive the balance.)

Holiday hours may be used as time off during the year, cashed in during the year upon thirty (30) days written notice to the City, or carried over to the following year. Holiday hours used as time off may be taken in hourly increments, with a minimum use of three (3) hours. The maximum number of hours that can be cashed in yearly by a member is one hundred fifty two (152) hours. The maximum number of hours that can be carried over to the following year is twenty-four (24). Any holiday hours not carried over to the following year or not used or cashed in during the year shall be cashed in and paid to the member on the last paycheck of the year.

Section 13.4 An employee that is hired during the year will receive holiday hours on a prorated basis. An employee separating from the city prior to December shall also have their holiday hours pro-rated.

Issue #4

ARTICLE 14

VACATIONS

Current contract language

Section 14.1. After one (1) year of employment with the City, each bargaining unit employee shall earn one hundred and twenty (120) hours of vacation leave. One (1) year of service shall be computed on the basis of the completion of twenty-six (26) biweekly pay periods.

Any bargaining unit employee with seven (7) years of service shall have earned and is entitled to one hundred and ninety-two (192) hours of vacation leave with full pay in the eighth year. Any such full-time employee with fourteen (14) or more years of service with the City shall have earned and is entitled to two hundred and sixty four (264) hours of vacation leave with full pay commencing with the employee's anniversary date in the fifteenth (15) year. Any such full-time City employee with twenty-one (21) or more years of service with the City shall have earned and is entitled to 312 hours of vacation leave with full pay commencing with the employee's anniversary date in the twenty-second (22) year.

Section 14.2. Vacation leave shall accrue to any such employee at the rate of 4.62 hours each biweekly pay period for those entitled to one-hundred and twenty (120) hours of vacation leave per year; 7.38 hours each biweekly pay period for those entitled to one hundred and ninety-two (192) hours of vacation leave per year; 10.154 hours each biweekly pay period for those entitled to two hundred and sixty-four (264) hours of vacation leave per year; 12.0 hours each biweekly pay period for those entitled to three-hundred and twelve (312) hours of vacation leave per year.

Section 14.3. Accrued vacation leave may be taken after completion of twelve (12) months of service and not before.

Section 14.4. An employee may accumulate and carry over vacation leave to the following year. However, no vacation leave shall be carried over under any circumstances for more than four (4) years.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 14.5. Upon termination or separation from employment, an employee is entitled to compensation at his/her current rate of pay for any accrued and unused vacation leave in 14.4 above, up to the maximum of vacation leave that could be accrued in the employee's last three years of employment, provided that such employee is not dismissed for cause.

Section 14.6. In the case of the death of a City employee, the accrued and unused vacation leave shall be paid forthwith to the employee's spouse or other written designee. If there is no surviving spouse, or other written designee, it shall be paid to the estate of the employee.

Section 14.7. For purpose of manpower scheduling, the vacation list shall be passed around for sign up by seniority on each platoon commencing no later than December 1 for the up-coming year.

Vacation sign-up commencing on December 1 for the coming year shall be in accordance with SOP 100.07 in effect as of December 21, 2006 unless SOP 100.07 is changed by mutual agreement of the union and the city.

Due consideration for individual employee convenience and seniority will be given, but the needs of the City in scheduling workloads will be the controlling factor. Notwithstanding at least two (2) employees but no more than three (3) employees shall be permitted off on vacation or holiday hours or compensatory time. Three (3) employees will only be allowed off on vacation, holiday hours, or compensatory time when the minimum staffing level can be maintained without causing a call-in.

Section 14.9. A minimum of three (3) hours of vacation or holiday hours must be used. At least two (2) employees but no more than three (3) employees shall be permitted off on vacation or holiday hours or compensatory time. Three (3) employees will only be allowed off on vacation, holiday hours, or compensatory time when the minimum staffing level can be maintained without causing a call-in.

EMPLOYER'S POSITION

The Employer proposes the following changes in Article 14.

1. Effective July 1, 2011 the Employer proposes reducing vacation hours and the number of steps in the vacation schedule under Sections 14.1 and 14.2.
2. Under Section 14.2 the Employer proposes reducing the number of years that an employee can carry over vacation leave from four years to two years.
3. The Employer proposes removing current language which will give the Fire Chief his management right to consider the needs of the Fire Department in approving time off for employees.

The Employer gives as its rationale for the foregoing measures cost reduction in order to address the financial strains the City is experiencing and will experience in the future. Its proposal for reducing

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

the steps and the number of vacation hours under 14.1 and 14.2 would not impact current employees; it would only impact new hires so the City can reign in future costs.

The Employer also anticipates cost savings under Section 14.4 in its proposal to reduce the maximum leave carry over from four years to two years. According to the Employer service and non-union City employees are permitted to accrue up to three years, and police are permitted to accrue up to a maximum of three times their current annual accrual rate.

According to the Employer, its proposal on Sections 14.8 and 14.9 address a major concern. The current language of those sections allow at least two employees off on paid leave at any given time. Scheduling is a management right and the current language interferes with the Fire Chief's ability to control paid time off and Union leave. This leave and others have a major impact on safety and costs. The provisions in the contracts with other bargaining units explicitly states that the needs of the City in scheduling workloads is the controlling factor in allowing employees to take vacation leave.

The Union proposes current contract language. According to the testimony of President, the current language has been in the contract since 1995 when the Fire Department switched to the current 24 hours on and 48 hours off work schedule. As for comparables, the Union believes that the current contract provisions fall in line with other City departments (Union Exhibit # 24). The AFSCME contract starts out with 80 hours which is equal to two weeks of vacation for employees in the AFSCME bargaining unit. AFSCME members also accumulate vacation quicker than what the members IAFF do, but at a similar rate. As for the provisions in the FOP contract, the IAFF vacation provisions already falls in line with the 2nd tier vacation that the FOP agreed to in its current contract. The second tier vacation for new hires under the FOP contract starts out at 80 hours of vacation and accumulates vacation quicker. . The Union presented Union Exhibit # 25 to demonstrate that its members need 120 hours of vacation that they start at in order to take two consecutive weeks off. Union Exhibit # 27 was introduced to show that employees in the bargaining unit have an equal amount or less vacation than ninety percent of the departments in the area.

Finally, the Union argues that the two tier vacation the FOP accepted is not a fair and equal thing to establish or start in any article or policy.

OPINION

Based upon the testimony and exhibits presented on this issue, the Union's position is more persuasive. The internal and external comparables presented are convincing. Vacation leave for the

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

bargaining unit is not excessive. Also, there would be no significant savings during the three year agreed to contract term by going to a two tier system for new hires.

Nor would there be a significant cost savings, if any reducing the vacation carry over from four years to two years. It is possible that the implementation of such a provision would result in an increase in usage during the year causing an increase in recalls, and thus, more overtime. Of course, if vacation leave could be denied by the Chief, and if employees were not able to take the leave, then there would be significant savings because of the forfeiture of vacation. Surely that is not the Employer's intent.

There is an assumption that if you grant vacation leave in a contract, employees should have an opportunity to use it. Based upon the uniqueness of the fire fighters work schedule and the difficulty with absences caused by other leaves, it appears that the current language is a compromise balancing the interest of the Employer in restricting the number of employees on vacation at one time and the right of employees in the bargaining unit to have an opportunity to use vacation leave. The Fact Finder does not recommend upsetting that balance.

RECOMMENDATION

Therefore, based upon the evidence, it is recommended that be no change in the current contract language.

Issue #5

Current Contract Language

ARTICLE 15

SICK LEAVE

Section 15.1. Crediting of Sick Leave. Sick leave credit shall be earned by each full-time employee at the rate of 7.38 hours of sick leave each bi-weekly pay period which is 192 hours of sick leave per year. Unused sick leave shall accumulate without limit.

Section 15.2. Retention of Sick Leave. The previously accumulated sick leave of an employee who has been separated from the public service shall be placed to his/her credit upon his/her reemployment in the public service provided that such reemployment takes place within ten (10) years of the date on which the employee was last terminated from public service.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 15.3. Expiration of Sick Leave. If illness or disability continues beyond the time covered by earned sick leave, the employee may be granted an unpaid medical leave of absence in accordance with the appropriate rules or policies of the Employer.

Section 15.4. Charging of Sick Leave. Sick leave shall be charged in minimum units of one-quarter (1/4) hour. An employee shall be charged for sick leave only for days upon which he/she would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled workday or workweek earnings.

Section 15.5. Uses of Sick Leave.

- A. Sick leave shall be granted to an employee upon approval of the Chief or his designee for the following reasons:
1. Illness or injury of the employee or a member of his/her immediate family requiring the employee's care.
 2. Death of a relative other than a member of his/her immediate family, limited to three (3) working days, or in the event the employee has no accrued sick time, the employee must use his/her accrued overtime, or in the event the employee has no accrued overtime, then the employee must use accrued vacation time, or in the event the employee has no accrued vacation, then the time off may be granted without pay.
 3. Medical, dental or optical examination or treatment of employees or a member of his/her immediate family, which requires the employee, and which cannot be scheduled during non-working hours.
 4. If a member of the immediate family is afflicted with a contagious disease or requires the care and attendance of the employee or when, through exposure to a contagious disease, the presence of the employee at his/her job would jeopardize the health of others.
 5. Pregnancy and/or childbirth and other conditions related thereto.
- B. "Immediate family" means an employee's spouse, parents, parents -in-law, children, step-children, or other relatives who qualify as dependents under the internal revenue code and who are living in the same household.

Section 15.6. Evidence Required for Sick Leave Usage. The Employer may require an employee to furnish a standard, written, signed affidavit explaining the nature of the illness to justify the use of sick leave or in accordance with the other Sections of this Article, may require a certificate stating the nature of the illness from a licensed physician to justify the use of sick leave.

After the employee is off three (3) consecutive work shifts, an employee must provide the Employer with a physician's certificate explaining the nature of the illness or injury and any related restrictions which justifies the use of sick leave. The certificate must be presented upon the employee's return to work or sick leave shall not be allowed.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Falsification of either the written, signed affidavit or a physician's certificate shall be grounds for disciplinary action including dismissal.

Section 15.7. Notification by Employee. When an employee is unable to report to work due to a reason listed under section 15.5 of this article, he/she shall notify his/her department head or other designated person, as soon as possible prior to the time he/she is scheduled to report to work on each day of absence. Failure to do so, inform the department head or his/her designated representative on each occasion or at agreed intervals, in the case of extended illness, shall result in a loss of that day's pay. Continued abuse of this Section will give cause for dismissal from service with the Employer.

Section 15.8. Abuse of Sick Leave. Patterned or excessive use of unexcused sick leave will be tracked by Human Resources and reported to the Fire Chief and may result in discipline. Employees intentionally failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave with intent to defraud will result in dismissal and refund of salary or wage paid.

Section 15.9. Physician Statement. If medical attention is required, the employee shall be required to furnish a statement from a licensed physician notifying the Chief or his/her designee that the employee was unable to perform his/her duties. Where sick leave is requested to care for an member of the immediate family, the Chief or his/her designee may require a physician's certification to the effect that the presence of the employee is necessary to care for the ill person.

Section 15.10. Physician Examination. Upon recommendation from the Fire Chief and Safety Director, the Director of Human Resources may require an employee to take an examination, conducted by a mutually agreed to, licensed physician, to determine the employee's physical or mental capability to perform the duties of the employee's position. If found not qualified, the employee may be placed on sick leave or disability leave. The cost of such examination shall be paid by the Employer.

Section 15.11. Administration of Sick Leave. The provisions of this Article shall be uniformly administered throughout the Division of Fire, and it shall be the responsibility of the Office of the Director of Human Resources to implement this Article to accomplish such purpose.

Section 15.12. Stress Leave. Members of the bargaining unit shall be entitled to use two (2) days of accrued sick leave per year as stress days. The employee shall identify which sick days are stress days. Stress days shall be charged against the accrued sick leave irrespective of the fact that stress days do not meet the criteria otherwise set out for sick leave.

Section 15.13. Conversion. Employees who have accumulated four hundred eighty (480) hours of sick leave or more may elect to convert forty-eight (48) hours of sick leave into twenty-four (24) hours of vacation. The employee may elect to convert sick leave to vacation at any time during the year. Once sick time has been converted to vacation, it shall not be converted back to sick time.

Each member who has accrued more than 480 hours of sick time may, in October of each year, convert sick leave to cash at the rate of three hours pay for each four hours of sick leave being converted, according to the following schedule:

Accrual of sick leave used
during previous 12 months

Number of hours which may be
converted at 75%

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

No Usage	154 hours
1 hour to 47 hours	128 hours
48 hours to 119 hours	102 hours
120 plus hours	0 hours

Note: Stress days, catastrophic donations, and sick hours converted to vacation do not count in accrual of sick leave used for conversion.

Any amounts cashed in shall be added to the employee's normal paycheck. This amount shall be paid the first pay period of November.

Section 15.14. Catastrophic Sick Leave Donation. A catastrophic sick leave program is established to assist employees who are placed on a leave of absence by a licensed physician due to an accident or long-term illness not job related, and who has exhausted all other available paid leave (see Section D FMLA). The catastrophic sick leave donation program can be utilized only if the following conditions are met:

- A. The employee's physician certifies that a long-term medical injury or illness exists.
- B. The illness or injury will require the employee to be off work for at least 120 days.
- C. The employee must have worked for the City at least one continuous year prior to the illness or injury.
- D. Employees under FMLA may retain compensatory time while receiving catastrophic sick leave donation. All other paid time must be exhausted prior to receiving a sick leave donation. Employees not covered under FMLA must exhaust all paid time off prior to receiving catastrophic sick leave donations.
- E. All sick leave donations from other employees of the City shall be voluntary. Bargaining unit employees may donate sick leave to the eligible ill or injured employee. Sick leave that is donated shall be subtracted from the donating employee's sick leave bank.
- F. The employee donating must retain a balance of two hundred forty (240) available sick leave hours. Any donated leave will not be returned.
- G. Utilization of this donation program is limited to two times during the employee's tenure with the City.
- H. Donated sick leave hours will be credited to the injured or ill employee as needed by pay period. Employees who qualify for catastrophic sick leave shall be temporarily assigned to a forty (40) hour work week. Employees shall not receive more than 2080 donated hours per incident. Sick leave shall be paid out at a rate of the employee who is injured or ill.
- I. IAFF members may donate sick leave to other city employees outside the IAFF Local 109 bargaining unit, who qualify for catastrophic sick leave donations.

EMPLOYER'S POSITION

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Employer has proposed the following changes and/or additions to the foregoing Article:

1. Adding language to Section 15.2 that expressly prohibits employees from receiving sick leave credit from a previous public employer if the employee received payment for the sick leave from the previous public employer;
2. Adding language to Section 15.12 prohibiting employees from using their stress days on holidays. In addition the Employer proposes language which specifies that it is not required to recall an employee to work and thus, pay overtime when someone uses a stress day; and,
3. Removing catastrophic sick leave donation by deleting Section 15.14.

In support of the proposed changes in Section 15.2, the Employer argues that it should not be responsible for paying out on sick leave that was earned and accrued some place other than the City. It is the Employer's belief that the proposed language changes will not affect any current fire fighters.

As to the restricting the use of stress days, the Employer states that this proposal stems from the current practice of fire fighters increasing the use of stress days at the end of the year. According to the Employer, this defeats the purpose of stress days, which is to provide two additional sick leave times in which the illness does not necessarily qualify for sick leave. These leave days are "demand days" by employees and are unscheduled. Since the use of these days requires overtime to cover the resulting absences, the Employer proposes language which will not require the Fire Chief to recall a fire fighter to work and incur additional overtime expenses.

In addition, the Employer wishes to remove the catastrophic sick leave donation because of the costs. When an employee uses the catastrophic sick leave donation bank, the Employer cannot fill the position. This results in overtime costs to cover the absence, and costs in continuing insurance coverage, sick leave and vacation leave accruals. Also, the other City bargaining units have agreed to remove catastrophic sick leave from their agreements. The City will also be removing this benefit from the non-union work force.

UNION'S POSITION

The Union proposes to cut the catastrophic leave provisions in half, capping such leave at 1,040 hours rather than the current level of 2,080. It is opposed to the City's desire to limit the use of stress

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

days, change the conversion language, delete payout for sick leave, and delete catastrophic leave donation.

OPINION

The Employer's proposed changes to this Article have merit and should be incorporated into the future agreement. The proposed changes to 15.2 clarifies existing language and provides that an employee with an accumulated sick leave balance with a previous public employer is not paid twice for the same sick leave. Also, it is not likely this would have any impact on current employees.

Stress days under this contract are identical to personal leave days under many CBAs with other Ohio public entities. These days provide an employee with the right to take leave on demand without any restriction. The purpose of personal leave or , in this case stress days, is to provide compensated leave to an employee in an emergency or for personal reasons for which no other paid leave is available during a normal business week. A fire fighter works a unique schedule which requires him/her to be scheduled to work some holidays. This is an expected predicable part of the job. Obviously, the right to take stress leave on the holidays has placed a costly scheduling and overtime burden on the Employer. Thus, it is the opinion of this Fact Finder that to restrict the use of these leave days is not unreasonable.

Although the Union in its prehearing position statement opposes any change to the conversion language and the deletion of the sick leave pay out, these issues were rendered moot by the Employer's withdrawal of its proposal on the deletion of Section 15.13.

As to the deletion of the catastrophic leave, the Employer's rationale set forth above is persuasive. It is consistent with the benefits provide to all city employees, and will reduce any overtime or additional costs as a result of not being able to hire new employees (Employer Exhibits, Book #1, Tabs 6 and 7).

RECOMMENDATION

Therefore, it is recommended that Employer's proposed changes be adopted and that Article 15 be changed to read as follows:

ARTICLE 15

SICK LEAVE

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 15.1. Crediting of Sick Leave. Sick leave credit shall be earned by each full-time employee at the rate of 7.38 hours of sick leave each bi-weekly pay period which is 192 hours of sick leave per year. Unused sick leave shall accumulate without limit.

Section 15.2. Retention of Sick Leave. The previously accumulated sick leave of an employee who has been separated from the public service shall be placed to his/her credit upon his/her reemployment in the public service provided that such reemployment takes place within ten (10) years of the date on which the employee was last terminated from public service **and he/she did not receive payment from the previous public employer.**

Section 15.3. Expiration of Sick Leave. If illness or disability continues beyond the time covered by earned sick leave, the employee may be granted an unpaid medical leave of absence in accordance with the appropriate rules or policies of the Employer.

Section 15.4. Charging of Sick Leave. Sick leave shall be charged in minimum units of one-quarter (1/4) hour. An employee shall be charged for sick leave only for days upon which he/she would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled workday or workweek earnings.

Section 15.5. Uses of Sick Leave.

- A. Sick leave shall be granted to an employee upon approval of the Chief or his designee for the following reasons:
1. Illness or injury of the employee or a member of his/her immediate family requiring the employee's care.
 2. Death of a relative other than a member of his/her immediate family, limited to three (3) working days, or in the event the employee has no accrued sick time, the employee must use his/her accrued overtime, or in the event the employee has no accrued overtime, then the employee must use accrued vacation time, or in the event the employee has no accrued vacation, then the time off may be granted without pay.
 3. Medical, dental or optical examination or treatment of employees or a member of his/her immediate family, which requires the employee, and which cannot be scheduled during non-working hours.
 4. If a member of the immediate family is afflicted with a contagious disease or requires the care and attendance of the employee or when, through exposure to a contagious disease, the presence of the employee at his/her job would jeopardize the health of others.
 5. Pregnancy and/or childbirth and other conditions related thereto.
- B. "Immediate family" means an employee's spouse, parents, parents -in-law, children, step-children, or other relatives who qualify as dependents under the internal revenue code and who are living in the same household.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 15.6. Evidence Required for Sick Leave Usage. The Employer may require an employee to furnish a standard, written, signed affidavit explaining the nature of the illness to justify the use of sick leave or in accordance with the other Sections of this Article, may require a certificate stating the nature of the illness from a licensed physician to justify the use of sick leave.

After the employee is off three (3) consecutive work shifts, an employee must provide the Employer with a physician's certificate explaining the nature of the illness or injury and any related restrictions which justifies the use of sick leave. The certificate must be presented upon the employee's return to work or sick leave shall not be allowed.

Falsification of either the written, signed affidavit or a physician's certificate shall be grounds for disciplinary action including dismissal.

Section 15.7. Notification by Employee. When an employee is unable to report to work due to a reason listed under section 15.5 of this article, he/she shall notify his/her department head or other designated person, as soon as possible prior to the time he/she is scheduled to report to work on each day of absence. Failure to do so, inform the department head or his/her designated representative on each occasion or at agreed intervals, in the case of extended illness, shall result in a loss of that day's pay. Continued abuse of this Section will give cause for dismissal from service with the Employer.

Section 15.8. Abuse of Sick Leave. Patterned or excessive use of unexcused sick leave will be tracked by Human Resources and reported to the Fire Chief and may result in discipline. Employees intentionally failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave with intent to defraud will result in dismissal and refund of salary or wage paid.

Section 15.9. Physician Statement. If medical attention is required, the employee shall be required to furnish a statement from a licensed physician notifying the Chief or his/her designee that the employee was unable to perform his/her duties. Where sick leave is requested to care for an member of the immediate family, the Chief or his/her designee may require a physician's certification to the effect that the presence of the employee is necessary to care for the ill person.

Section 15.10. Physician Examination. Upon recommendation from the Fire Chief and Safety Director, the Director of Human Resources may require an employee to take an examination, conducted by a mutually agreed to, licensed physician, to determine the employee's physical or mental capability to perform the duties of the employee's position. If found not qualified, the employee may be placed on sick leave or disability leave. The cost of such examination shall be paid by the Employer.

Section 15.11. Administration of Sick Leave. The provisions of this Article shall be uniformly administered throughout the Division of Fire, and it shall be the responsibility of the Office of the Director of Human Resources to implement this Article to accomplish such purpose.

Section 15.12. Stress Leave. Members of the bargaining unit shall be entitled to use two (2) days of accrued sick leave per year as stress days. The employee shall identify which sick days are stress days. Stress days shall be charged against the accrued sick leave irrespective of the fact that stress days do not meet the criteria otherwise set out for sick leave. **Stress days may not be used on holidays or cause recall.**

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 15.13. Conversion. Employees who have accumulated four hundred eighty (480) hours of sick leave or more may elect to convert forty-eight (48) hours of sick leave into twenty-four (24) hours of vacation. The employee may elect to convert sick leave to vacation at any time during the year. Once sick time has been converted to vacation, it shall not be converted back to sick time.

Each member who has accrued more than 480 hours of sick time may, in October of each year, convert sick leave to cash at the rate of three hours pay for each four hours of sick leave being converted, according to the following schedule:

<u>Accrual of sick leave used during previous 12 months</u>	<u>Number of hours which may be converted at 75%</u>
No Usage	154 hours
1 hour to 47 hours	128 hours
48 hours to 119 hours	102 hours
120 plus hours	0 hours

Note: Stress days, catastrophic donations, and sick hours converted to vacation do not count in accrual of sick leave used for conversion.

Any amounts cashed in shall be added to the employee's normal paycheck. This amount shall be paid the first pay period of November.

Issue #6

ARTICLE 20

HOURS

Current Contract Language

Section 20.1. The normal workweek for the Division of Fire shall consist of twenty-four (24) consecutive hours on duty followed by forty-eight (48) consecutive hours off duty, with a Kelly day system, on a twenty-one (21) day cycle, except the position of Fire Chief. The Department shall be divided into three (3) platoons. Kelly days will be selected by seniority and may be traded. Staff personnel shall work a normal workweek of forty (40) hours with the hours to be determined by the Chief.

Section 20.2. The beginning and ending times of each shift shall be 0800 a.m. to 0800 a.m. and may be changed for the operational benefit of the Department. No shift change shall occur until after the City has met with the Union to discuss the proposed change and the employees have received advance notification of the new schedule.

Section 20.3. Schedules for light duty firefighters and firefighters going to EMT, EMT-A, or first-time medic school only may be varied to accommodate the needs of the affected employee or the needs to the Department.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 20.4. On February 29 of each leap year, platoon members shall each work an eight (8) hour shift and shall receive eight (8) hours pay for such work.

Section 20.5. There shall be no training, inspections, pre-plans or hydrant maintenance on Sundays (except in extraordinary circumstances), holidays, and after 10:00 p.m. on weekdays and Saturdays, except for those members who need to maintain hours for Medic Recertification.

EMPLOYER'S POSITION

The Employer has proposed that new language be added to specify that no more than one (1) officer, one (1) fire fighter and two (2) fire fighter/paramedics be permitted to be off on the same Kelly Day. The Employer also proposes that for all new hires after July, 2011, the normal work week shall include Kelly Days for a fifty-three (53) hour average work week and shall have fire fighters hourly wage rate adjusted to a fifty-three (53) hour workweek average based on the annual salary.

The Fire Chief needs to ensure the proper balance of fire fighters, fire fighters/paramedics and officers. Currently, Kelly Days are picked according to seniority only, without consideration or restriction on the classification of employee taking the day off. To remedy this, the Employer proposed language that would allow for a more even distribution of the number of employees off on Kelly Days.

In addition, the Employer proposes a fifty-three (53) hour work for new hires. Currently, fire fighters work a forty-eight (48) hour week. External comparables show that financially sound municipalities average a fifty-three (53) to fifty-six (56) hour per week (Employer Exhibit, Book #1, Tab 15). Fewer hours in the work week result in a greater base pay per hour. A fifty-three hour work week would also require the Employer to pay less in overtime, addressing the City's overriding financial concerns.

UNION'S POSIITON

The Union proposes current contract language. Previously, the Union had proposed no more than two (2) officers may be off on the same Kelly Day.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

OPINION

The Employer's position has merit and should be adopted. The evidence establishes that the Fire Chief needs to ensure a proper balance of personnel on each shift and should have the right to restrict the number of officers, fire fighters and fire fighter/paramedics who can be off on the same Kelly Day. The Employer's proposal that new hires work a fifty-three (53) hours week, not only puts the City on an equal footing with comparable cities in the area, but also helps the Employer reduce its future overtime liability.

RECOMMENDATION

Therefore, the Employer's proposals regarding Article 20 should be adopted and incorporated in the future agreement. Article 20 should be changed to read as follows:

ARTICLE 20

HOURS

Section 20.1. The normal workweek for the Division of Fire shall consist of twenty-four (24) consecutive hours on duty followed by forty-eight (48) consecutive hours off duty, with a Kelly day system, on a twenty-one (21) day cycle, except the position of Fire Chief. **For all employees hired after July 1, 2011, their normal workweek shall include Kelly Days for a fifty-three (53) hour average workweek and they shall have their normal hourly rate adjusted to a fifty-three (53) hour workweek average based on the annual salary.** The Department shall be divided into three (3) platoons. Kelly days will be selected by seniority and may be traded. **No more than one (1) officer, one (1) fire fighter and two (2) fire fighter/paramedics may be off on the same Kelly Day.** Staff personnel shall work a normal workweek of forty (40) hours with the hours to be determined by the Chief.

Section 20.2. The beginning and ending times of each shift shall be 0800 a.m. to 0800 a.m. and may be changed for the operational benefit of the Department. No shift change shall occur until after the City has met with the Union to discuss the proposed change and the employees have received advance notification of the new schedule.

Section 20.3. Schedules for light duty firefighters and firefighters going to EMT, EMT-A, or first-time medic school only may be varied to accommodate the needs of the affected employee or the needs to the Department.

Section 20.4. On February 29 of each leap year, platoon members shall each work an eight (8) hour shift and shall receive eight (8) hours pay for such work.

Section 20.5. There shall be no training, inspections, pre-plans or hydrant maintenance on Sundays (except in extraordinary circumstances), holidays, and after 10:00 p.m. on weekdays and Saturdays, except for those members who need to maintain hours for Medic Recertification.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Current Contract Language

ARTICLE 21

OVERTIME PAY

Section 21.1. Employees shall receive overtime pay, or compensatory leave time in lieu of overtime pay for all assigned work performed which exceeds the normal work day or week, within any pay period. For purposes of this Article, “assigned work performed” shall include all hours in paid status. Overtime compensation shall be computed at one and one-half (1-1/2) times the employee’s regular hourly rate, or one and one-half (1-1/2) hours of compensatory leave time, for each hour of overtime worked. Personnel called in for overtime not contiguous to their regularly assigned shift shall be paid a minimum of three (3) hours at one and one-half times their base rate of pay, or if the employee is called in to attend a meeting, the employee shall be paid a minimum of two (2) hours at one and one-half times the employee’s base rate of pay. Light duty firefighters are not eligible for overtime.

Section 21.2. Employees eligible for overtime pay must designate to the Chief, or his/her designated representative, during the pay period the overtime is worked, if they desire to receive compensatory time in lieu of overtime pay. Compensatory time will be earned, accumulated, and used in accordance with this Article, and Article 22 of this Agreement.

Section 21.3. Personnel called in for overtime shall be called in for overtime according to overtime lists maintained by the bargaining unit. The call-in lists for overtime shall be made on the basis of seniority, and employees shall be called in for overtime based upon their placement on the list. Call-in for overtime shall be in accordance with the recall policy then in effect. Special assignments made by the Chief shall not be subject to the provisions of this section.

Recall policies shall be designed to attempt to create equal opportunity for overtime for employees, to fulfill the needs of the Department for the efficient delivery of services, and to ensure that those individuals with special certification or qualifications perform those tasks for which they are specifically certified or qualified.

These provisions are not meant to limit the authority of the City to establish recall policies for the efficient use of overtime and manpower and the Chief retains the discretion to make the changes in recall policies and procedures to the extent the policies, procedures and changes do not conflict with the provisions of this Article. Any changes shall be presented to and discussed with the Union at least two weeks prior to implementation.

Section 21.4. Personnel working past their regular shift hours shall be paid in quarter hour increments, rounded in employee’s favor.

Example:	1 to 10 minutes worked	= 1 quarter hour paid
	11 to 20 minutes worked	= 2 quarter hours paid
	21 to 30 minutes worked	= 3 quarter hours paid

Section 21.5. When an overtime situation occurs for a full twenty-four (24) hour shift, members called in to work the overtime in a non-emergency situation shall work a maximum of twelve (12) hours.

EMPLOYER’S POSIITON

The Employer proposes the following changes to Article 21.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

1. Section 21.1 – overtime to be paid on hours actually worked, not paid.
2. Section 21.3 – overtime list to be kept by the Fire Chief, not the bargaining unit.
3. Section 21.3 – employees to be recalled for overtime based on special certifications or qualifications, viz., officers, medics hazmat personnel, etc..
4. Section 21.4 – time beyond regular shift not to be rounded up in favor of the employee, but be paid for time actually worked.

Currently, employees can accrue overtime and/or compensatory time after reaching forty-eight hours, even if its hours are not actually worked, but paid, e.g., sick leave, vacation or other paid leave. The Employer maintains that its proposal is consistent with the Fair Labor Standards Act and is fair.

The Employer also proposes changing who maintains the personnel list for overtime purposes. Currently, the bargaining unit maintains the list. According to the Employer, this allows the Union to call people in off of the list, regardless of whether they are qualified to hold the vacant position. Those recalled should have the proper certifications and qualifications to do the job. The Employer's proposal would give the Fire Chief the ability to make this determination. This, the Employer claims would address the concerns of the union on safety.

Finally, the Employer proposes in Section 21.4 that the rate of pay for overtime be paid at a rate that is consistent with time actually worked. A fire fighter who works thirty-one (31) minutes is currently paid for a full hours worth of work.

In conclusion, the Employer argues that the current contract structure for payment after their regular shift hours as well as paying overtime for time accrued as paid leave, but not actually worked does not make sense for a City that is laying off dozens of employees and is projected to run out of allotted overtime money in the 15th or 16th pay period in 2011.

UNION POSITION

The Union proposes two overtime lists, one for fire fighters and fire fighters/paramedics, and one for officers. The Union argues that the current way the City recalls members for overtime is not fair, in that it does not attempt in any way to equally distribute overtime to all members. Currently, fire fighters, only, get the majority of all overtime. The city refuses to call a fire fighter/paramedic if it only needs a fire fighter. As a result, only 17% of the membership get the majority of the overtime, and the largest group fire fighter/paramedic rarely get called for overtime. The city maintains that the fire fighters do not receive the fire fighter/paramedic differential, and therefore are less expensive. However, this is not the case, the majority of the time. Fire fighters are the most senior on the department and at the top of the pay

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

scale and top levels of longevity pay, which actually makes it more expensive to call a firefighter in a lot of circumstances. Even though there are a large number of senior fire fighter/paramedics as well, that make slightly more than a fire fighter, the extra expense is minimal. The Union presented examples of how its proposal would result in a cost saving (Union Exhibits 30 through 33).

The Union also presented into evidence comparables on overtime pay of twenty-six fire departments in the area (Union Exhibit #34). The evidence indicates that of the twenty-six (26) departments reviewed on the SERB website all departments paid overtime for 'all hours in paid status', except for three. London City excluded sick leave, Marysville paid on actual hours worked and Westerville excluded injury leave. The departments paid the overtime rate at 1.5 except for two. Circleville paid at 2.1 and London paid at 1.81.

Under the contract the City has with AFSCME, overtime is paid on hours worked. Hours worked is defined under that contract as "all hours in active pay status" (Union Exhibits #34 through 36).Also, Union Exhibit #36 indicates that the overtime rates for AFSCME and FOP members are higher for starting employees and for the senior police officers.

OPINION

The Employer's first proposed change to base overtime pay on actual hours worked should be rejected. It is not supported by the evidence submitted at the Fact Finding Hearing. Although the proposed change may be in accord with the Fair Labor Standards Act, neither external nor internal comparables support this change. The majority of departments in the area base overtime pay on hours paid, not actual hours worked. Also, the AFSCME contract with the City defines hours worked as "all hours in paid status".

As to the overtime list being kept by the Fire Chief, the Fact Finder is of the opinion that this should be a collaborative effort. The Chief should keep and maintain this list with the approval of Union as to the order of employees by seniority.

Of course it makes sense to recall employees who will be able to do the job, i.e., have the certifications and qualifications. The Union's proposal for two lists can be implemented and the Employer's concerns as to recalling qualified employees can be met. Having a separate list for officers fits perfectly into the Employer's requirements. Also, restricting recall of officers to fill fire fighter and firefighter/paramedic positions in situations to when the fire fighter and fire fighter/paramedic list is exhausted will ease overtime costs. A separate list for fire fighters and fire fighter/paramedics will distribute overtime more equally and fairly.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Fact Finder is of the opinion that the Employer's position as to the calculation of personnel working past their regular shift hours should be rounded in accordance with the example set forth in the Employer's proposed language and that the language, "rounded in the employee's favor" should be deleted. Hopefully, this change will avoid confusion, although the current language seemed reasonably clear.

RECOMMENDATION

Therefore, it is recommended that there be no change in the current language of Section 21.1 of Article 21 and that Sections 21.3 and 21.4 incorporate the foregoing recommended changes. Article 21 should be changed to read as follows:

ARTICLE 21

OVERTIME PAY

Section 21.1. Employees shall receive overtime pay, or compensatory leave time in lieu of overtime pay for all assigned work performed which exceeds the normal work day or week, within any pay period. For purposes of this Article, "assigned work performed" shall include all hours in paid status. Overtime compensation shall be computed at one and one-half (1-1/2) times the employee's regular hourly rate, or one and one-half (1-1/2) hours of compensatory leave time, for each hour of overtime worked. Personnel called in for overtime not contiguous to their regularly assigned shift shall be paid a minimum of three (3) hours at one and one-half times their base rate of pay, or if the employee is called in to attend a meeting, the employee shall be paid a minimum of two (2) hours at one and one-half times the employee's base rate of pay. Light duty firefighters are not eligible for overtime.

Section 21.2. Employees eligible for overtime pay must designate to the Chief, or his/her designated representative, during the pay period the overtime is worked, if they desire to receive compensatory time in lieu of overtime pay. Compensatory time will be earned, accumulated, and used in accordance with this Article, and Article 22 of this Agreement.

Section 21.3. Personnel called in for overtime shall be called in for overtime according to overtime lists maintained by the **Fire Chief with the approval of the bargaining unit as to the order of employees on the list by seniority. There shall be two (2) lists, one (1) for officers only and one (1) for firefighters that includes non officer firefighters and non officer firefighters/paramedics.** The call-in lists for overtime shall be made on the basis of seniority, and employees shall be called in for overtime based upon their placement on the list **by calling the first member on the list who meets the minimum requirements needed to fill the position. Officers shall not be called for firefighter or firefighter/paramedic recalls except in the case that the firefighter list was exhausted. Firefighters shall not be called to work for officers' recalls except in the case that the officer list was exhausted.** Call-in for overtime shall be in accordance with the recall policy then in effect. Special assignments made by the Chief shall not be subject to the provisions of this section.

Recall policies shall be designed to attempt to create equal opportunity for overtime for employees, to fulfill the needs of the Department for the efficient delivery of services, and to ensure that

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

those individuals with special certification or qualifications perform those tasks for which they are specifically certified or qualified i.e., **officers, medics and hazmat personnel.**

These provisions are not meant to limit the authority of the City to establish recall policies for the efficient use of overtime and manpower and the Chief retains the discretion to make the changes in recall policies and procedures to the extent the policies, procedures and changes do not conflict with the provisions of this Article. Any changes shall be presented to and discussed with the Union at least two weeks prior to implementation.

Section 21.4. Personnel working past their regular shift hours shall be paid in quarter hour increments as follows:

Example:	1 to 15 minutes worked	= 1 quarter hour paid
	16 to 30 minutes worked	= 2 quarter hours paid
	31 to 45 minutes worked	= 3 quarter hours paid

Section 21.5. When an overtime situation occurs for a full twenty-four (24) hour shift, members called in to work the overtime in a non-emergency situation shall work a maximum of twelve (12) hours.

Issue #8

ARTICLE 22

COMPENSATORY TIME

Current Contract Language

Section 22.1. Bargaining unit employees having compensatory hours credited, may use it as time off from regular duty upon approval of the Fire Chief, or the Chief's designated representative, provided an adequate number of personnel are on duty to cover the shift.

Section 22.2. Employees may select the dates on which they wish to schedule compensatory time off, and shall be required to report for duty, and make sure an adequate number of personnel are on duty before being released on compensatory time, by the Chief, or the Chief's designated representative. Employees shall be required to file a written form requesting the amount of compensatory time to be used. Compensatory time shall be charged hour for hour with a one-hour minimum. Employees shall be held accountable for hours used and required to report in by the Fire Division's direct phone lines. Compensatory time shall not be used for vacation use, except as provided herein.

Section 22.3. Bargaining unit employees may be permitted to schedule compensatory time off in the same manner as vacations are scheduled provided such compensatory time off does not interfere with any regular vacation scheduling for other employees, and is approved by the Fire Chief. Regular vacation scheduling is that which is scheduled by employees the prior December. Compensatory time may be scheduled in this manner, only when an adequate number of employees are scheduled to cover the shifts.

Section 22.4. Employees receiving compensatory leave time in lieu of overtime pay, for assigned work performed which exceeds the normal work week within any pay period shall receive compensatory leave time at the rate of one and one-half (1-1/2) hours of compensatory leave time for each hour of overtime

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

worked. For purposes of this Article, “assigned work performed” shall include all hours in paid status. Employees shall not be permitted to accumulate over four hundred eighty (480) hours of compensatory leave time. Employees shall be permitted to carry their accrued, unused compensatory time into the following calendar year, subject to the provisions of this Section, and employees may elect annually to convert up to 96 hours of compensatory time to a cash payment.

EMPLOYER’S POSITION

The Employer proposes removing language which requires overtime to accrue based on paid time off. The rationale for this proposal is the same as that set forth under Issue # 7, Article 21, Overtime Pay. As with the proposal for overtime this proposal is consistent with the Fair Labor Standards Act. It is fundamentally fair, and addresses the problem the City will face in the 15th or 16th payroll period when it runs out of money to pay overtime.

UNION POSITION

The Union proposes current contract language and opposes any change for the same reasons it set forth under Issue # 7, Article 21.

OPINION

The reasons stated in the Opinion under Article 21 are incorporated herein. The Employer’s proposal should be rejected and there should be no change in the current contract language.

RECOMMENDATION

Therefore, it is recommended that there be no change in the current contract language of Article 22. The language of Article 22 shall be as stated above.

Received Electronically @ SERB July 8, 2011

12:02pm SERB Case #10-MED-08-0987

ARTICLE 25

QUARTERMASTER SYSTEM

Current Contract Language

On January 1 of 2010 the City shall create a quartermaster fund consisting of moneys equal to \$950 for the Newark Fire Division. This aggregate amount of money shall be used by the firefighters of the Newark Fire Division to purchase uniforms and equipment approved and used by members of the Division. All allotted monies must be spent between January 1 and November 1 each year. After November 1, any money that a bargaining unit member has remaining of their allotment shall be paid to that member in the form of a payroll check issued in the first pay period in December. The amount of the check shall be \$950 in 2010 minus the cost of any items purchased through the quartermaster system. This money shall only be paid once the bargaining unit member meets the required uniform items criteria as indicated in Section 25.8b of this appendix.

Any firefighter that is hired on or before July 1 of the previous year shall receive the full yearly allotment placed in the account for the current year. Any firefighter that is hired after July 1 of the previous year shall have an amount of half of the yearly allotment placed in the account for the current year and the full amount for each year after.

Any employee, whose employment with the City is terminated for any reason, shall not be required to repay any of the monies the employee received under the reimbursement procedure of the quartermaster system. The one exception to this would be an employee found guilty of criminal misconduct directly pursuant to the application of this Article.

Any employee, whose employment with the City is terminated for any reason prior to November 1; their allotment payout shall be pro-rated, determined by the number of months they were employed in that allotment year. Example: if an employee terminates employment on January 31 they are due one twelfth (1/12) of their annual allotment in their final payout.

The City shall supply no less than one-half (1/2) of the funds referred to above by January 1 and will add the balance of the funds upon approval of the full budget each year. The Auditor/Treasurer shall supply to the quartermaster, through the Fire Chief, a monthly report indicating the amount remaining in the fund. This report shall commence January 1.

The position of Quartermaster is created within the Division of Fire. This sworn employee of the rank of Captain or above shall be responsible, in addition to any regularly assigned duties, for the administration of this program. The Quartermaster shall be appointed by the Fire Chief.

In January all members will receive a uniform inspection by the Quartermaster, specifically recording the required uniform items needed. The Quartermaster will also look for serviceability of the required items. The required items that are not accounted for or serviceable will be ordered through the Quartermaster before any other optional items can be purchased. Fire Division policy will be created to provide for the proper and equitable distribution of uniforms and equipment.

Items to be supplied by the Division of Fire in accordance with Article 25

- NFPA approved turnout gear including: helmet, gloves, coat, pants, suspenders, boots, heat/flame resistant protection hood
- SCBA mask

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

- First two (2) button up shirts (Class B)
- First two (2) pairs of pants (Class B)
- First jacket
- Badge
- Rescue rope bag
- Portable radios for officers
- Any item that becomes a required part of an employee's turnout gear shall be purchased by the City and not come out of quartermaster allotments.
- The Division of Fire will provide all the necessary equipment for apparatus and specialty teams as they currently do, and will not require this equipment to come out of individual's quartermaster allotment.

Section 25.8b Quartermaster Items – Authorized List

General uniform requirements: subject to inspection considered Class B uniform per SOP 102.8.

- Two (2) button up shirts
- Two (2) pairs of pants
- One (1) pair of boots
- Two (2) t-shirts
- One (1) belt
- One (1) jacket
- One (1) badge

Additional Uniform Items, optional*:

*These items can be requested once the Quartermaster is satisfied that each member has the required items. It will also be the discretion of the Quartermaster and approved by the Fire Chief to order these items as the individual employees budgeted account permits.

These items must be approved by the Quartermaster that they meet the Division's standards for use on duty.

Personal Clothing:

- Additional uniform(s)
- Specialty uniform(s) including plain clothes for members that are not required to be in uniform.
- Hat/cap with division logo
- Toboggan(s) with division logo
- Watch
- Safety glasses
- Sun glasses
- Running shoes
- Shorts (workout)
- Pants (workout)
- FR Under Armor heat gear
- FR Under Armor cold gear

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

- Long underwear
- Gloves (for warmth)
- Socks
- Insoles for boots/shoes
- Re-sole boots/shoes
- Class A dress uniform and all accessories
- Overcoat for Class A uniform
- Shoe polish

Personal Gear:

- Knife
- Multi-purpose tool
- Flashlight (NFPA approved, or at least meets standards for task it will be used in i.e.; special duty)
- Flashlight bulbs
- Door wedges
- Extrication gloves
- Tools for turnout gear (screwdrivers, pliers, vice grips, haligan tool, pocket spanner, etc.)
- Strobe light (approved for safety)
- Leather fire boots
- Leather suspenders
- SCBA mask bag
- Prescription SCBA mask
- Portable radio (division use with identifier)
- Amateur radio equipment
- Public safety communications monitor
- Lapel mic
- Portable radio strap
- Portable radio case
- Digital camera and accessories
- MP3 player
- PDA
- Laptop computer
- Portable GPA systems and mapping programs
- Cell phone (phone only, no monthly fees)
- Batteries all sizes (for approved devices)
- Gear bag
- Bedding (for division beds)
- Truck mans belt
- Personal escape pack
- Ballistic vest
- Vehicle organizer

Department Related Educational Material:

- Books (including promotional exam study material)

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

- Computer programs
- Videos, CDs and DVDs Magazine subscriptions
- Magazine subscriptions

Members of specialty teams or other job specific assignments such as prevention or investigation can purchase specialty items at the discretion of the appropriate division chief, the Quartermaster and the Fire Chief.

Arson Investigators or other lawfully commissioned law enforcement members of the Division of Fire may purchase approved items specific to their duties with the Fire Division from the approved Division of Police Quartermaster with approval of the Fire Chief.

EMPLOYER'S POSITION

The Employer proposes the following changes in the Quartermaster System under Article 25.

1. Reduce the quartermaster payout from \$950 to \$425.
2. Delete language that gives a pro-rated share of the quartermaster allowance to employees whose employment with the City is terminated.
3. Deletes a number of items on the list; it does, however, keep items which are essential to the employee' job responsibilities, including uniform and books which are department-related educational materials.

The Employer seeks to address two concerns with this proposal. First, by reducing the payout by half the City will reduce annual costs by \$37,350.00. Second, the public has expressed concerns about the price of some items being spent with Quartermaster funds. As an example, one fire fighter spent \$348 on a watch. Another firefighter spent \$140.00 Bose headphones. Yet another spent \$400.00 on two iPods in one day. The Employer's proposal seeks to return to the fundamental purpose of the system, which is to provide an allowance to employees to use to maintain a uniform appearance and safety equipment.

The FOP has agreed to reduce its quartermaster funds by half for two years and permanently remove controversial items from the list.

UNION'S POSITION

The Union proposes keeping the current quartermaster system and the current amount for uniforms, but striking a couple of items from the list which apparently is a concern to some City officials. The City's proposal to reduce the uniform allowance to a level it was at prior to 1984 is unacceptable.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

During Interest Based Bargaining (IBB) four years ago for the 2007-2009 contract, the City proposed to replace the uniform allowance with the Quartermaster System. Both parties worked very hard to create a system that they could reach consensus on. The cost of purchasing a fire department item is expensive. In addition any item that is purchased for firefighting must be approved by the National Fire Protection Association (NFPA) if applicable. This causes the price to rise significantly. A set of uniforms costs approximately \$225.00 and the department requires a spare uniform be available at all times.. Should a garment or piece of equipment be damaged at the firehouse or on a run, it is the fire fighter's responsibility to replace it. A cost list is submitted as Union Exhibit #38. A Class A- dress uniform costs \$400 and promotional study materials cost \$500, as examples.

According to the Union, the needs outweigh the stipend. During IBB negotiations for the 2007-2009 contract, the parties addressed the fact that the FOP in its contract with the City also has a quartermaster system providing for \$1250 a year. In an effort to close the gap with the FOP, the Union agreed with the City to increase the allowance for fire fighters by \$50 per year for 2008 and 2009. Although the cost of goods has increased, there has been no increase in the stipend; it has remained the same since 2009.

The Union concedes that there have been some growing pains with the quartermaster system which has brought scrutiny to the Fire Division and the union. That according to the Union was the result of items being purchased that technically met the requirements, but not the intent of the Article. The Union agrees to delete digital cameras, laptop computers and PDA's just as the FOP agreed to with the City.

OPINION

Both parties have presented compelling arguments in support of their positions. The Employer has a need to cut costs and demonstrate the frugal use of taxpayers' monies. In addition, the Fact Finder's report on the mediated settlement with the FOP which reduced the allocation to police officers under their quartermaster system by fifty percent is a compelling internal comparable that must be considered.

The Union through testimony and exhibits has demonstrated that the current stipend is not excessive and it was the intent of the parties to gradually increase the stipend to the same level as that in the FOP contract. At this time a fire fighter receives approximately \$300.00 less than a police officer with the City.

Both parties agree that items should be deleted from the Quartermaster List. The Union agrees to delete the same items as agreed to by the FOP.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

In view of the history of negotiations, the future of the Employer's finances, costs of uniforms and equipment, and the settlement with the FOP, the Fact Finder believes changes in the allocation, the pay out for a terminated employee and items on the list are justified. Although the FOP's allocation was reduced by 50%, the Fact Finder does not believe that extensive of a reduction is warranted here,. A reduction from \$950.00 to \$750.00 in the allocation under this article would produce a cost savings for the Employer and allow monies for a fire fighter to replace items. Since the parties are more than half way through 2011, the reduction would be difficult to implement this year. Thus, the reduction to \$750 for the Quartermaster fund should be effective January 1, for 2012 and 2013 and revert to \$950.00 at the end of the contract, i.e., December 31, 2013, as is provided in the FOP contract.

It is the opinion of the Fact Finder that the Employer's proposal to delete the language in Article 25 regarding a payout to terminated employees should be adopted. Also, the Fact Finder believes that the Union's proposal to delete digital cameras and accessories, PDAs and laptop computers from the Quartermaster list should be adopted.

RECOMMENDATION

Therefore, it is recommended that allocation to the quartermaster fund be reduced from \$950 to \$750 for 2012 and 2013, that the pay out for terminated employees under Article 25 be deleted and that digital cameras and accessories, PDAs and laptop computers be deleted from the quartermaster's list.

Article 25 should read as follows:

ARTICLE 25

QUARTERMASTER SYSTEM

On January 1 of 2011 the City shall create a quartermaster fund consisting of moneys equal to \$950 for the Newark Fire Division. This aggregate amount of money shall be used by the firefighters of the Newark Fire Division to purchase uniforms and equipment approved and used by members of the Division. All allotted monies must be spent between January 1 and November 1 each year. After November 1, any money that a bargaining unit member has remaining of their allotment shall be paid to that member in the form of a payroll check issued in the first pay period in December. The amount of the check shall b \$950 in 2011 minus the cost of any items purchased through the quartermaster system. This money shall only be paid once the bargaining unit member meets the required uniform items criteria as indicated in Section 25.8b of this appendix.

For the years 2012 and 2013, the \$950 figure in the foregoing paragraph will be reduced to \$750. At the end of 2013, this reduction will expire and the \$950 in the preceding paragraph will be reinstated and become effective again.

Any firefighter that is hired on or before July 1 of the previous year shall receive the full yearly allotment placed in the account for the current y ear. Any firefighter that is hired after July 1 of the previous year

Received Electronically @ SERB July 8, 2011

12:02pm SERB Case #10-MED-08-0987

shall have an amount of half of the yearly allotment placed in the account for the current year and the full amount for each year after.

Any employee, whose employment with the City is terminated for any reason, shall not be required to repay any of the monies the employee received under the reimbursement procedure of the quartermaster system. The one exception to this would be an employee found guilty of criminal misconduct directly pursuant to the application of this Article.

The City shall supply no less than one-half (1/2) of the funds referred to above by January 1 and will add the balance of the funds upon approval of the full budget each year. The Auditor/Treasurer shall supply to the quartermaster, through the Fire Chief, a monthly report indicating the amount remaining in the fund. This report shall commence January 1.

The position of Quartermaster is created within the Division of Fire. This sworn employee of the rank of Captain or above shall be responsible, in addition to any regularly assigned duties, for the administration of this program. The Quartermaster shall be appointed by the Fire Chief.

In January all members will receive a uniform inspection by the Quartermaster, specifically recording the required uniform items needed. The Quartermaster will also look for serviceability of the required items. The required items that are not accounted for or serviceable will be ordered through the Quartermaster before any other optional items can be purchased. Fire Division policy will be created to provide for the proper and equitable distribution of uniforms and equipment.

Items to be supplied by the Division of Fire in accordance with Article 25

- NFPA approved turnout gear including: helmet, gloves, coat, pants, suspenders, boots, heat/flame resistant protection hood
- SCBA mask
- First two (2) button up shirts (Class B)
- First two (2) pairs of pants (Class B)
- First jacket
- Badge
- Rescue rope bag
- Portable radios for officers
- Any item that becomes a required part of an employee's turnout gear shall be purchased by the City and not come out of quartermaster allotments.
- The Division of Fire will provide all the necessary equipment for apparatus and specialty teams as they currently do, and will not require this equipment to come out of individual's quartermaster allotment.

Section 25.8b Quartermaster Items – Authorized List

General uniform requirements: subject to inspection considered Class B uniform per SOP 102.8.

- Two (2) button up shirts
- Two (2) pairs of pants
- One (1) pair of boots
- Two (2) t-shirts
- One (1) belt

Received Electronically @ SERB July 8, 2011

12:02pm SERB Case #10-MED-08-0987

- One (1) jacket
- One (1) badge

Additional Uniform Items, optional*:

*These items can be requested once the Quartermaster is satisfied that each member has the required items. It will also be the discretion of the Quartermaster and approved by the Fire Chief to order these items as the individual employees budgeted account permits.

These items must be approved by the Quartermaster that they meet the Division's standards for use on duty.

Personal Clothing:

- Additional uniform(s)
- Specialty uniform(s) including plain cloths for members that are not required to be in uniform.
- Hat/cap with division logo
- Toboggan(s) with division logo
- Watch
- Safety glasses
- Sun glasses
- Running shoes
- Shorts (workout)
- Pants (workout)
- FR Under Armor heat gear
- FR Under Armor cold gear
- Long underwear
- Gloves (for warmth)
- Socks
- Insoles for boots/shoes
- Re-sole boots/shoes
- Class A dress uniform and all accessories
- Overcoat for Class A uniform
- Shoe polish

Personal Gear:

- Knife
- Multi-purpose tool
- Flashlight (NFPA approved, or at least meets standards for task it will be used in i.e.; special duty)
- Flashlight bulbs
- Door wedges
- Extrication gloves
- Tools for turnout gear (screwdrivers, pliers, vice grips, haligan tool, pocket spanner, etc.)
- Strobe light (approved for safety)
- Leather fire boots

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

- Leather suspenders
- SCBA mask bag
- Prescription SCBA mask
- Portable radio (division use with identifier)
- Amateur radio equipment
- Public safety communications monitor
- Lapel mic
- Portable radio strap
- Portable radio case

- MP3 player

- Portable GPA systems and mapping programs
- Cell phone (phone only, no monthly fees)
- Batteries all sizes (for approved devices)
- Gear bag
- Bedding (for division beds)
- Truck mans belt
- Personal escape pack
- Ballistic vest
- Vehicle organizer

Department Related Educational Material:

- Books (including promotional exam study material)
- Computer programs
- Videos, CDs and DVDs Magazine subscriptions
- Magazine subscriptions

Members of specialty teams or other job specific assignments such as prevention or investigation can purchase specialty items at the discretion of the appropriate division chief, the Quartermaster and the Fire Chief.

Arson Investigators or other lawfully commissioned law enforcement members of the Division of Fire may purchase approved items specific to their duties with the Fire Division from the approved Division of Police Quartermaster with approval of the Fire Chief.

Item #10

Current Contract Language

ARTICLE 27

HOSPITALIZATION, MEDICAL AND LIFE INSURANCE

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Section 27.1. The Employer shall provide group medical insurance coverage for each employee and dependents at a level comparable to the benefits agreed upon as part of the 2007 – 2009 Collective Bargaining Agreement negotiations (see schedule of benefits attached).

Section 27.2. The Employer, Union and employees acknowledge the importance of and must engage in mutual efforts to control the cost of health insurance care. As premium rates increase over the course of this Agreement, the parties agree to meet and discuss the increase in premium cost for the purpose of discussing alternatives to maintain cost control, including, but not limited to alternate insurance coverage or alternate means of providing coverage.

The Union understands and agrees that any increase in the premium rates for health, medical, and related insurance premiums shall be a factor considered in the total economic proposals for successive negotiations. Any rate increases which may be implemented during the period of this Agreement shall also remain subject to the wage negotiations of subsequent Agreements.

It is further agreed and understood that during the term of this Agreement that individual carriers/providers may, through no fault of the City, Union, or employees cease coverage. Should such occur, any employee adversely affected shall be given the opportunity to enroll with an alternative carrier with the appropriate premium rates subject to the premium rate applied herein or to waive coverage and receive an appropriate pro-rata amount of the waiver of coverage payment.

Section 27.3. Contributions. The parties agree that contributions to the premiums for health insurance provided by this Article will be paid as follows:

City share of monthly premium	90%
Employee share of monthly premium	10% pre-tax contribution

The employee's premium contribution (individual, double or family) will be deducted bi-weekly in equal increments.

Section 27.4. Non-Pay Status. An employee in a non-pay status due to their own health related condition or that of an immediate family member will be required to pay the employee's share of the monthly health insurance premium.

An employee in a non-pay status for reasons other than a health related condition, will be responsible for one hundred percent (100%)

Platoon Employees

48 – 95 hours	=	one quarter of the total monthly premium
96 – 143 hours	=	one half of the total monthly premium
144 – 191 hours	=	three quarters of the total monthly premium
192 plus hours	=	one hundred percent of the total monthly premium

Staff Employees

40 – 79 hours	=	one quarter of the total monthly premium
80 – 119 hours	=	one half of the total monthly premium
120 – 159 hours	=	three quarters of the total monthly premium

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

160 plus hours = one hundred percent of the total monthly premium

Section 27.5. Waiver of Coverage. An employee who provided satisfactory proof of medical coverage under another employer sponsored insurance plan may waive medical coverage. An employee who waives coverage will receive up to the following maximum:

Waiver of medical insurance	\$1000.00
Waiver of dental insurance	\$ 50.00
Waiver of both (dental & medical)	\$1050.00

If at least ten employees take advantage of this Section, each employee waiving coverage will receive the following:

Waiver of medical insurance	\$3000.00
Waiver of dental insurance	\$ 150.00
Waiver of both (dental & medical)	\$3150.00

Payments will be made in December of the calendar year coverage is waived. Payments for new hires, terminations, etc., will be prorated.

Section 27.6. Life & Dental Insurance. Each bargaining unit employee shall receive, at the expense of the City, a thirty thousand dollar (\$30,000) term life insurance policy containing a double indemnity clause covering accidental death benefits. The City will make available dental insurance coverage for employees at the City's expense and double or family coverage at the expense of the employee.

Section 27.7. Labor-Management Committee. Employer and Union agree to establish a joint Labor Management Committee to study medical insurance benefits plans.

EMPLOYER'S POSITION

The Employer proposed the following changes:

1. Removing the provision from Section 27.1 providing for comparable benefits;
2. Increase the employee share of the premium from 10% to 20%;
3. Removing dollar figures in section on employees waiving insurance;
4. Making City Employees married to another City employee ineligible for the waiver stipend;
5. Prohibits spouses who have insurance coverage available through their own employer from being covered under the City's Insurance; and,
6. Increases in caps on the prescription drug coverage.

UNION'S POSITION

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Union accepted the Employer's new schedule of benefits which would significantly reduce the City's costs on prescription drugs. The Union also proposed increasing the employee's share of the premium contribution, from 10% to 12%. In addition, the Union proposed that spouses of employees must enroll in their employer sponsored health insurance plans. However, there was a concern that where coverage was not available at the spouse's place of employment if the spouse could be eligible for coverage with the City.

OPINION

The other City bargaining units and non-represented employees accepted the Employer's proposed plan. The co-pay on the premium for an employee was increased to 12%. Hospitalization insurance has been a major cost factor to both employers and employees in the private sector. This has been recognized by both the Union and the Employer in this matter. The parties in the mediation process had come close to an agreement. The hold-up was the Union's concern with spousal coverage. This fortunately was resolved during the Fact Finding Hearing on June 16, 2011. The Employer agreed to a new provision proposed by the Union and the parties were able to agree to the Employer's proposal on hospitalization coverage, which was the same as that offered to other employees with the City.

The agreement by the Union and other employee groups will result in considerable cost savings to the Employer.

RECOMMENDATION

Therefore, it is recommended that the tentative agreement reached by the parties on June 16, 2011 be adopted and made a part of this report. Also that it be incorporated into the future agreement of the parties. A copy of the tentative agreement is to be attached to this report as Appendix A.

Item #11

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

ARTICLE 32

PARAMEDIC DIFFERENTIAL

Current Contract Language

Firefighter/paramedics shall receive additional pay equivalent to seven (7) percent of their regular hourly rate, as set forth in Article 39, for hours assigned to the medic unit and worked as a paramedic.

In addition, all employees possessing an EMT-P card shall be paid an annual lump sum of eight hundred dollars (\$800.00). This payment shall be made with the first pay check issued in December. An employee separating from the City prior to the date of annual issuance, shall be paid that prorated portion due him/her for time served in that calendar year. An employee hired after the beginning of the year shall be paid that prorated portion due him/her for time served in that calendar year.

EMPLOYER'S POSITION

The Employer proposes removing the seven percent differential that fire fighters currently receive for maintaining an EMT-P card (paramedic certification card). In lieu of removing the wage differential, the Employer would increase the annual lump sum that the firefighters/paramedics receive from \$800.00 to \$1000.00 a year. In addition, the Employer has proposed language that requires employees receiving the lump sum payment to have actually worked as a paramedic a minimum of one twenty-four hour shift per month.

The initial purpose of the wage differential was to provide an incentive for fire fighters to become certified paramedics. Since certification is now required of all new hires and most of the fire fighters have this certification there is no longer a need for such an incentive. The Employer seeks to supplement the wage differential deletion by increasing the annual payment to \$1,000.00; it claims that one 'bonus' for maintaining required certifications is sufficient. In addition, it is the Employer's position that if a fire fighter receives a lump sum bonus for having the paramedic certification, he or she needs to have worked as a paramedic. According to the Employer, the costs savings for the City would be \$147,604.

UNION POSITION

The Union proposes keeping the current contract language and adding a differential equal to the current paramedic differential percentage of seven percent. The testimony and exhibits put into evidence by the Union establishes that the paramedic differential has been part of the contract since 1989. Initially it was a twenty cents per hour. As the training and responsibility required of paramedics by the State of Ohio increased so did the bonus and hourly differential for working on a medic unit. The current rate of

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

seven percent was established in 2007 as a result of negotiations and recognition by both the City and the Local that EMS was the overwhelming majority of the service provided.

The training required to obtain paramedic certification has evolved from a six month adult education class to an eighteen month college level program. Continuing education requirements have also increased dramatically. Paramedics are now required by the state to attend eighty-six hours of continuing education over a three year period. This is an increase from 1991 when the differential was added.

The Union has proposed a differential of seven percent for employees filling forty hour staff positions. It believes that the differential is warranted due to (1) the amount of work that occurs outside of their typical work schedule, (2) the reliance of the division on these employees to answer questions, perform job functions and be available for recall outside their normally scheduled shift, (3) the loss of pay these members receive when they are placed in forty hour positions. Since some of the forty hour positions are hard to fill, there have been situations in the past where the Chief has had to place a member in a forty hour position which causes that member to lose his paramedic differential. Offering the differential would be an incentive for employees to bid on these positions, because the loss of the paramedic differential would be off set.

OPINION

It is the opinion of the Fact Finder that the Employer's proposal to eliminate the differential and increase the annual lump sum bonus to \$1000.00 should be rejected. There should be no change in the differential and bonus for the term of the contract. What the Employer is proposing is a drastic reduction in the salary and wages for a majority of the employees in the bargaining unit. The additional two hundred dollars per year would not come near covering the reduction in wages. Considering the other cuts being proposed, the increase in insurance premiums, the reduction in benefits, the potential elimination of the pension pick up and little or no wage increase, the elimination of the differential at this time would be too much of a burden and is unwarranted.

The fire fighters/paramedics are by action of the parties a de facto separate classification, and consideration might be given to recognizing them as such in future agreements. A separate higher and reasonable rate assigned to the new classification would enable the elimination of the differential.

Likewise, it is the opinion of the Fact Finder that the Union's proposal on the differential for the forty hour staff personnel should be rejected. While compensation may be a legitimate concern for the

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

forty hour staff personnel, this Article is not the appropriate form. The parties might deal with this in the future with a separate wage scale or classification with a higher wage.

The Fact Finder believes that the Employer's proposal to require an employee to serve a minimum of one twenty-four hour shift per month on a transport unit in order to receive the \$800 bonus has merit and should be adopted and incorporated into the current language of the contract.

RECOMMENDATION

Therefore, it is the recommendation of the Fact Finder that there be no change in the paramedic differential and the annual bonus, and that the requirement that an employee serve a minimum of one twenty-four hour shift per month on a transport unit to receive the annual bonus be incorporated into the contract. Also, it is the opinion of the Fact Finder that there should be no forty hour differential. Article 32 should read as follows:

ARTICLE 32

PARAMEDIC DIFFERENTIAL

Firefighter/paramedics shall receive additional pay equivalent to seven (7) percent of their regular hourly rate, as set forth in Article 39, for hours assigned to the medic unit and worked as a paramedic.

In addition, all employees possessing an EMT-P card shall be paid an annual lump sum of eight hundred dollars (\$800.00). This payment shall be made with the first pay check issued in December. An employee separating from the City prior to the date of annual issuance, shall be paid that prorated portion due him/her for time served in that calendar year. An employee hired after the beginning of the year shall be paid that prorated portion due him/her for time served in that calendar year. **An employee must serve a minimum of one twenty-four hour shift per month on a transport unit to receive the annual bonus.**

Item #12

ARTICLE 39

WAGE TABLE OF BASE WAGE RATES

Current Contract Language

Section 39.1 The following base wage rates shall be effective January 1, 2010, through December 31, 2010.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

BASE HOURLY RATE (40 HOURS)

Firefighters hired prior to January 1, 2007

	2010
*Firefighters 0 – 12 months	15.12
*Firefighters 12 – 24 months	18.59
*Firefighters over 24 months	23.50
Lieutenants	25.96
Captain	28.68
Assistant Chief	31.69

BASE SALARY RATE

	2010
*Firefighters 0 – 12 months	31,449.60
*Firefighters 12 – 24 months	38,667.20
*Firefighters over 24 months	48,880.00
Lieutenants	53,996.80
Captains	59,654.40
Assistant Chiefs	65,915.20

*Note: For any employee hired after January 1, 2007, the following will apply:

BASE HOURLY RATE (40 HOURS)

	2010
Firefighters 0 – 12 months	15.12
Firefighters 12 – 24 months	16.79
Firefighters 24 - 36 months	18.46
Firefighters 36 – 48 months	20.13
Firefighters 48 – 60 months	21.80
Firefighters 60 months plus	23.50

BASE SALARY RATE

	2010
Firefighters 0 – 12 months	31,449.60
Firefighters 12 – 24 months	34,923.20
Firefighters 24 – 36 months	38,396.80
Firefighters 36 - 48 months	41,870.40
Firefighters 48 – 60 months	45,344.00
Firefighters 60 months plus	48,880.00

Section 39.2. Forty (40) hours per week shall be used as base hours when calculating hourly payments under this Agreement. This can be computed by doing the following:

Annual pay divided by 2080 hours = per hour base rate of pay.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The wage table reflects annual increases of 0% for 2010.

Differential for officers will be calculated using the rank immediately below the affected rank at 10.5% in 2010.

The City shall pickup an 3.5% of the employee's contribution to the Police and Fire Pension Fund total in 2010.

EMPLOYER POSITION

The employer proposes a zero percent wage increase for three years. In addition, the Employer proposes removing the 3.5% pension pick up that it currently pays on behalf of bargaining unit members. The Employer states that its proposal is a reflection of the City's financial condition. The City's safety forces are paid primarily out of the General Fund. The City has an income tax, of which .5% is dedicated to safety forces. This equates to approximately \$2 million tax revenue out of \$9 million budget for police and another \$2 million revenue for fire out of a \$9 million General Fund budget. The General fund provides approximately \$14 million for the safety forces (\$7 million each for police and fire).

According to the Employer, the General Fund revenue has reached precarious levels. The City has spent the last several years making drastic cuts and significant reorganizations in an effort to reduce costs due to declining revenues. Since 2006 the City has laid off or not filled seventy-eight positions (15% of its workforce) and abolished two departments. While the City has significantly reduced expenses, it has run of options to save money elsewhere. Most of the reductions were in non-safety forces. These measures will not be enough in the future. The State has made significant reductions in local government funding. The City Auditor projects a reduction of approximately \$265,000 during 2011, \$530,000 in 2012 and \$530,000 in 2013 in Local Government Funding.

In addition, the City is anticipating reductions in the Estate Tax, the 10% Rollback, the Homestead Exemption and interest income. The City's entire 2011 fire budget was based on the 2010 funding levels Any additional burden on the fire budget either through and negotiated agreement or loss of funding, such as income tax levels not producing projected income will impact the ability to fund the Fire Department at 2010 levels and will result in cuts within the Fire Department. The Employer cannot offer any increase in wages and needs relief from wages and benefits in order to provide the citizens of Newark the fundamental services for which they pay taxes.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

UNION POSITION

The Union proposes reducing the overtime rate by 9.1 % (new Section 39.3). This proposal is conditioned upon the articles on staffing, hours, overtime and compensatory time (Articles 9, 20, 21, and 22 remaining as proposed by the Union. The Union also proposes a pay package that on top of the 2010 wage freeze should be acceptable. For 2011, 1% of the pension pick-up will be swapped for a 1 % pay increase. Instead of picking up 3.5% of the employee's 10% pension contribution, the City will pick up only 2.5%. In exchange for giving up the 1% pension pick-up, fire fighters base wages would increase 1 %. For each year the pension pick up would be reduced by 1.25%, and for each year the fire fighters would receive a three percent wage increase.

The Union believes that the potential loss of a portion of local government funds will be more than offset by increases in other revenues.

OPINION

While the Fact Finder does not believe that the City's financial condition and future is hopeless, it is certainly desperate at this time. At best the future is unpredictable. The City simply does not have the resources to pay the increase sought by the Union over the proposed three year term of a new contract.

The 1% wage increase proposed, to be effective after the execution of the agreement, for 2011 in exchange for reducing the pension pick up by the Employer is not budget neutral. The 1% increase in wages costs more than 1% of the pension pick up because of costs of paying gross wages. There is normally 25% to 35% additional cost for payment of wages. The pickup does not include these costs. The same principle would apply to the pickup for 2012 and 2013. Also, the proposed wage increase for 2012 and 2013 of three percent each year of which 1.25 percent is pickup plus the cost of paying gross wages exceeds the wage settlement in the FOP Fact Finders Report and the settlement AFSCME has with the City.

The Union's proposal on reducing overtime by 9.1%, while appealing, is rendered a nullity because of the condition that the Articles on staffing, hours, overtime and compensatory time will remain as proposed by the Union. The Fact Finder has recommended changes in the Articles 9 and 20 on Staffing and Hours. Thus, this proposal cannot be considered.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The Employer's proposal of no wage increase for the duration of the agreement, asking fire fighters to contribute 3.5% share of pension contributions and incurring further costs for health care are too much to ask at one time. A similar proposal was rejected by Fact Finder Daniel G. Zeiser in the FOP Fact Finding with the City.

It is the opinion of this Fact Finder that there should be no reduction in the pension pickup for the duration of the new agreement, and that there be 0% increase in wages for 2011, 1% increase in wages for 2012 and 1% wage increase in 2013.

RECOMMENDATION

Therefore it is recommended that there be no reduction in the pension pickup for the term of the new agreement, that there be no increase in wages for 2011, and that there be a 1% increase in wages for 2012 and a 1% increase in wages for 2013. The parties shall change Article 39 to reflect these changes.

Issue #13

ARTICLE 40

CONTRACTING OUT

It has been in the past and will continue to be in the future the City of Newark's intent to provide professional service to our citizens at a competitive overall cost to the community.

Our current firefighter/paramedic workforce has provided that kind of service for Newark and therefore, no member of Local 109 of the I.A.F.F. will be displaced by any external firefighter/paramedic providing organization.

EMPLOYER'S POSITION

The Employer proposes adding language to the contract which would make it clear that the City of Newark has the right to supplement its fire department with part-time fire fighters. The Employer claims that part-time fire fighters are the norm across the county. Part-time help is needed to supplement the fire force. The part-time fire fighters would not be replacing full-time fire-fighters. Part-time fire fighters would fill in when full-time fire fighters are using either paid or unpaid leave. It is to be noted

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

that current fire fighters with Newark Fire Department work as part – time employees in other fire departments.

Also, the Employer is agreeable to placing language in another section of the contract because of the Union’s concern that this is not the appropriate place for this proposal.

UNION’S POSITION

The Union proposes current contract language. It is strongly opposed to hiring part-time fire fighters. According to the Union, part-time fire fighters do not have the training, dedication, do not know the City, would cause morale problems and the expenditure of additional funds. Also, they would earn about the same as new full time employees.

OPINION

It is the opinion of the Fact Finder that this provision is unnecessary. The Union’s argument is more persuasive as to full time fire fighters being better able to serve the needs of the City. This is especially true in consideration of the other findings and recommendations set forth in this report.

RECOMMENDATION

Therefore, it is recommended that there be no change in the language of Article 40 and that the contract language remain the same as set forth above.

Issue #14

ARTICLE 41

TUITION REIMBURSEMENT

Current Contract Language

Article 41.1(a) will expire on December 31, 2007. Article 40.1 (b) is written to replace 41.1(a) when it expires and will continue through the duration of this contract.

Section 41.1a.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

All full-time employees with one or more years of continuous active service shall be eligible for consideration of a reimbursement of no more than \$1,000 per year for instructional fees for undergraduate or graduate courses towards a degree or certification, pre-approved by the City and voluntarily undertaken by the employee. The tuition reimbursement program shall be subject to the following conditions:

- A. All courses must be taken during other than scheduled working hours. All scheduled hours for courses of instruction must be filed with the Chief or his designee. All courses are subject to the approval of the Chief. There must be a correlation between the member's duties and responsibilities and the courses taken or the degree program pursued. Any situation which, in the discretion of the Chief, would require a member's presence on the job shall take complete and final precedence over any time scheduled for courses.
- B. Any financial assistance from any governmental or private agency available to a member, whether or not applied for and regardless of when such assistance may have been received, shall be deducted in the entire amount from the tuition reimbursement the member is eligible for under this section. If a member's tuition is fully covered by another governmental or private agency, then the member is not entitled to any payment from the City.
- C. Employees seeking authorization of a tuition reimbursement must first submit to the department head for review, all necessary information pertaining to the proposed course degree to be pursued, the educational institution and the employee's best estimate of courses to be taken.
- D. Courses must be taken at accredited colleges, universities, technical and business institutes or at their established extension centers, and these must first be approved by the City. Seminars, conferences and workshops are not included.
- E. Reimbursement for tuition will be made when the member satisfactorily completes (attains at least a grade of "C": or its equivalent for undergraduate work and a grade of at least "B" or its equivalent for graduate work) a course and presents an official certificate or its equivalent and a receipt of payment or copy of the unpaid bill from the institution confirming completion of the approved course.
- F. Reimbursement will not be granted for books, paper, supplies of whatever nature, transportation, meals, or any other expense connected with any course, except the cost of tuition and fees as outlined in Paragraph D.
- G. Department equipment will be made available for departmental sponsored classes or tuition reimbursement approved classes, with the approval of the Chief of Fire.
- H. Any employee participating in the tuition reimbursement program who resigns (except resignation due to disability), retires (except retirement due to disability) or is discharged for cause must repay the tuition reimbursement paid by the City for courses taken less than two years

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

prior to the date of termination or discharge. If necessary, this amount will be deducted from the employee's terminal leave pay or final paycheck.

Section 41.1 (b)

All full-time employees with one or more years of continuous active service shall be eligible for 100% reimbursement up to an annual (designated fiscal year) individual aggregate amount of thirty five hundred dollars (\$3,500.00) for undergraduate courses taken towards an Associates or Bachelors degree and forty five hundred dollars (\$4,500.00) for graduate courses taken towards a masters or other graduate degree. Any employee intending to use tuition reimbursement shall submit a letter of intent with estimated cost for the entire year. Such letter of intent shall be submitted by January 30, all courses of instruction, pre-approved by the Fire Chief, Safety Director, and Human Resources Director and voluntarily undertaken by the employee. The annual aggregate liability to the City for the entire Fire Division will not exceed twenty-five thousand dollars (\$25,000) per fiscal year.

Employees will submit the request per quarter, semester or other module, established by the institution, in advance and include the full amount (tuition and estimated cost of allowed expenses requested). Upon approval, a purchase order will be issued encumbering the money. The availability of funds is on a first come, first served basis and there is no guarantee of approval if the total amount described in paragraph one is exhausted. A report will be published monthly by the division fiscal manager and distributed to the Chief and the IAFF President.

Employees will notify the Office of the Chief, in writing, within seven (7) calendar days if they withdraw from a course, fail the course, or fail to obtain a C or above, the course is cancelled or in any other event in which reimbursement will not be permitted. The monies encumbered can then be unencumbered and made available to other employees. Employees failing to make a proper notification may have their privileges under this Article suspended for a period of six (6) months.

Public Safety classes taken pursuant to paragraph "C" and not part of a degree program are limited to one course per year at a total cost not to exceed five hundred dollars (\$500.00). These funds are subject to availability of funds listed in paragraph one. These courses are subject to the approval of the Fire Chief with regards to manpower and operational needs.

The tuition reimbursement program shall be subject to the following conditions:

- A. All courses applied towards a degree must be taken during other than scheduled working hours, unless otherwise approved by the chief. All scheduled hours for courses of instruction must be filed with the Chief or his designee. All courses are subject to the approval of the Chief. There must be a correlation between the member's duties and responsibilities and the courses taken or the degree program pursued. Any situation which, in the discretion of the Chief, would require a member's presence on the job shall take complete and final precedence over any time scheduled for courses.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

- B Any financial assistance from any governmental or private agency available to a member, whether or not applied for and regardless of when such assistance may have been received, shall be deducted in the entire amount from the tuition reimbursement the member is eligible for under this section. If a member's tuition is fully covered by another governmental or private agency, then the member is not entitled to any payment from the City.

- C. Employees seeking authorization of a tuition reimbursement must first submit to the department head for review, all necessary information pertaining to the proposed course degree to be pursued, the educational institution and the employee's best estimate of courses to be taken.

Courses must be taken at accredited colleges, universities, technical and business institutes or through their established extension centers, and Fire Academies or courses, which must first be approved by the Fire Chief, Safety Director, and the Human Resources Director

- D. Reimbursement for tuition will be made when the member satisfactorily completes (attains at least a grade of "C": or its equivalent for undergraduate work and a grade of at least "B" or its equivalent for graduate work) a course and presents an official certificate or its equivalent and a receipt of payment or copy of the unpaid bill from the institution confirming completion of the approved course.

- E. Reimbursement for required books, instructional materials and fees other than penalty fees for any course outlined in paragraph D shall be at 100%. Reimbursement for books and instructional materials which are strongly advised, though not required, shall be at 25%. There shall be no reimbursement for meals, travel expenses, housing, or extra-curricular activities.

- F. Department equipment will be made available for departmental sponsored classes or tuition reimbursement approved classes, with the approval of the Chief of Fire.

- G. Any employee participating in the tuition reimbursement program who resigns (except resignation due to disability), retires (except retirement due to disability) or is discharged for cause must repay the tuition reimbursement paid by the City for courses taken less than two years prior to the date of termination or discharge. If necessary, this amount will be deducted from the employee's terminal leave pay or final paycheck.

- H. Employees enrolled in the Deferred Retirement Option Plan (DROP) are not eligible to participate in the program.

EMPLOYER'S POSITION

The Employer agrees to the Union's proposal on tuition reimbursement.

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987
UNION'S POSITION

The Union proposes eliminating tuition reimbursement in 2012. This will save the City \$25,000, the amount of the annual cap on tuition reimbursement.

OPINION

It is the opinion of the Fact Finder that the Union proposal and the tentative agreement signed by the parties on June 16, 2011 be adopted and incorporated into this report. Article 41 is to be attached hereto as Appendix B.

Item # 15

ARTICLE 42 PARAMEDIC CERTIFICATION

Current Contract Language

Section 42.1. All Employees hired after November 19, 2002 shall be required to obtain paramedic certification within three years of his or her hire date as a condition of employment, provided that the City shall pay for and enroll the employee in a paramedic program within one year from the employee's date of hire. All employees hired after January 1, 2007 must retain their paramedic certification unless given chief's approval.

Section 42.2. Non-officer bargaining unit members who are certified paramedics may drop or not renew their paramedic certification so long as there remain thirty-five (35) other non-officer certified paramedics below them in seniority on the Department. For every two (2) employees' hired after January 1, 2007 upon receipt of their paramedic certification this number thirty-five (35) shall increase by one (1).

Section 42.3. Employees requesting to rescind, not re-certify or regain paramedic certification shall do so in accordance with procedures, rules and regulations established by the Department.

EMPLOYER'S POSITION

The Employer proposes in Section 42.1 that all employees hired after November, 2002 be required to obtain paramedic certification, but it does not require the City to enroll the employee in a paramedic program. Also, the Employer proposes in Section 42.2 that the minimum number of employees who must maintain their paramedic certification increase by one every time some new is hired.

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

The rationale provided by the Employer is its philosophy that fire fighters be paramedics. This is also consistent with the vast majority of the work, over 90% which the Fire Department is called upon to do. The Union's proposal is contrary to the major functions of the Department.

UNION'S POSITION

The Union maintains that the City should have to pay for training for a certificate that it requires. It also questions the number of paramedics needed before a member would be allowed to drop his certification.

OPINION

The Fact Finder believes that the Employer should prevail on this issue. It is in the best interest of the City to have all fire fighters be paramedics. Since no new fire fighter is hired without the certification providing the initial training is no longer require. Although there is some flexibility in dropping certification the City wants to assure that there are sufficient number of paramedics.

RECOMMENDATION

Therefore it is recommended that the Employer's proposal be adopted in that Section 42.1 no longer requires the City to pay for the initial paramedic training and that the minimum number of employee who must maintain their paramedic certification increase by one with every new hire. Article 42 shall read as follows:

ARTICLE 42 PARAMEDIC CERTIFICATION

Section 42.1. All Employees hired after November 19, 2002 shall be required to obtain paramedic certification within three years of his or her hire date as a condition of employment. All employees hired after January 1, 2007 must retain their paramedic certification unless given chief's approval.

Section 42.2. Non-officer bargaining unit members who are certified paramedics may drop or not renew their paramedic certification so long as there remain **forty-six (46)** other non-officer certified paramedics below them in seniority on the Department. For employees' hired after **October 11**, this number **forty-six (46)** shall increase by one (1).

Section 42.3. Employees requesting to rescind, not re-certify or regain paramedic certification shall do so in accordance with procedures, rules and regulations established by the Department.

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

Item #16

ARTICLE 49

DURATION OF AGREEMENT

Current Contract Language

Section 49.1. This Agreement shall be effective as of January 1, 2010, and shall remain in full force and effect through December 31, 2010, unless otherwise terminated as provided herein. Copies of this Agreement shall be made available to each employee in the bargaining unit within thirty (30) days of signing thereof with cost to the Employer.

Section 49.2. If either party desires to modify, amend, or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

Section 49.3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make requests and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agree that the other shall not bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either of both parties at the time they negotiated or signed this Agreement.

POSITION OF THE PARTIES

Both the Employer and the Union on June 16, 2011 reached an agreement on the duration of the contract and signed a tentative agreement. The tentative agreement reflected a termination date of December 21, 2013. Email correspondence with the parties representatives clarified that the termination date should be, and is, December 31, 2013. A copy of the tentative agreement is to be attached as Appendix C.

RECOMMENDATION

Therefore, is recommended that the Tentative Agreement reached and signed on June 16, 2011 should reflect a termination date of December 31, 2013. Article 49 shall read as follows:

ARTICLE 49

DURATION OF AGREEMENT

Section 49.1. This Agreement shall be effective **upon execution**, and shall remain in full force and effect through December 31, 2013, unless otherwise terminated as provided herein. Copies of this

Received Electronically @ SERB July 8, 2011 12:02pm SERB Case #10-MED-08-0987

Agreement shall be made available to each employee in the bargaining unit within thirty (30) days of signing thereof with cost to the Employer.

Section 49.2. If either party desires to modify, amend, or terminate this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

Section 49.3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make requests and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agree that the other shall not bargain collectively or individually with respect to any subject or matter referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either of both parties at the time they negotiated or signed this Agreement.

IV CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted June 2, and 16, 2011. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

V Proof of Service

This fact-finding report was electronically transmitted this 7th day of July 2011, to the persons named below.

Union Representative

Received Electronically @ SERB July 8, 2011
12:02pm SERB Case #10-MED-08-0987

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/S/ John F. Lenehan
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