

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

April 6, 2011

In the Matter of:

City of Independence)	
)	
and)	Case No. 10-MED-09-1127
)	
International Association of Fire Fighters,)	
Local 2375)	

APPEARANCES

For the City:

Joseph F. Lencewicz, Labor Relations Representative
Peter H. Nelson, Fire Chief
Joseph T. Lubin, Human Resources Director
Steven A. Rega, Assistant Fire Chief
John M. Veres, Finance Director
Vern Blaze, Finance Coordinator/Systems Analyst

For the Union:

Ryan Lemmerbrock, Attorney
Mary Schultz, Financial Consultant
John W. Butler, Bargaining Team
Phillip Sedlon, Bargaining Team
Frank Aiello, Bargaining Team

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Independence and the International Association of Fire Fighters, Local 2375. The city is located in the southern part of Cuyahoga County, and had a population of 6,730 in 2010. It has collective bargaining agreements with the Fraternal Order of Police, which represents three separate bargaining units; AFSCME, which represents employees in the service department; and Local 2375, which represents 17 full-time firefighter/paramedics.

The parties began negotiations in the fall of 2010 for a successor contract to the one which was due to expire on December 31, 2010. When they were unable to reach an agreement, the statutory impasse procedure was set in motion. The Fact Finder was notified of his appointment on February 11, 2011. A fact-finding hearing was conducted on March 22, 2011, which was followed by an attempt to reach a mediated settlement. On March 28, 2011, a further mediation session was held with the parties' advocates. When the effort to reach an agreement failed, this report was prepared.

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;

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

Financial Status & the Ability to Pay

One of the key criteria is the ability to pay. In many disputes, it is a significant consideration in determining the appropriate recommendation for many of the unresolved issues. With that in mind, the Fact Finder will summarize the comments of the parties regarding the city's financial status and its ability to pay.

City Position - While the city did not claim that it was unable to pay the union's demands, it argues that "the current levels of wages and benefits are simply not 'sustainable.'" (City Pre-Hearing Statement, page 3). It asserts that "the key is to take prudent and gradual action now to address [wages and benefits] to avoid the 'draconian' measures that other employers have had to take." (Ibid.)

The city contends that corrective action is necessary. It points out that income tax revenue has fallen from \$23,057,581 in 2007 to \$22,000,000 in 2010 and is projected to increase to only \$22,443,311 in 2014. (City Exhibit 2) The city stresses that at the same time, General Fund and Street, Construction, Maintenance, and Repair Fund expenditures have risen from \$20,162,987 in 2007 to \$21,086,482 in 2010 and are expected to reach \$23,275,531 in 2014.

The city maintains that its unreserved General Fund cash balance should be noted. It states that the cash balance as a percentage of the general fund expenditures is one of the factors that Moody's uses to determine a city's bond rating. The city indicates that its cash balance at the end of 2010 was estimated to be 13.26% of General Fund

expenditures. (City Exhibit 8) It claims that Mood's requires a reserve of 15% to 20% for a rating in the Aa2 range, its current rating. (Ibid.)

The city argues that the cost of employing a firefighter is quite high. It indicates that the cost of a ten-year firefighter is \$67,173 in salary; \$30,248 in benefits, including workers' compensation, pensions, and sick and vacation accruals.¹ The city claims that the total compensation of \$112,315 is unsustainable and exceeds that of Brecksville, Broadview Heights, Cuyahoga Heights, and Valley View, which it suggests are comparable cities. (City Exhibit 4)

Union Position - The union argues that the city has weathered the economic downturn with only minor consequences. It points out that income tax revenues, general fund expenditures, and carryover balances for 2008-2010 and the projections for 2011 are as follows (Union Exhibit 4):

<u>Year</u>	<u>Income Tax Rev.</u> ²	<u>General Fund Exp.</u>	<u>Year-End Balance</u> ³
2008	\$23,020,000	\$19,120,000	\$2,154,000
2009	22,956,000	18,880,000	3,487,000
2010	21,999,000	19,104,000	3,283,000
2011	21,500,000	19,986,000	2,883,000

The union notes year-end balances represented 11.2% of general fund expenditures in 2008, 18.4% in 2009, and 17.0% in 2010 and the projected year-end balance for 2011 is 14.0% of budgeted expenditures.

The union complains that despite declining revenues, the General Fund has continued to subsidize other funds by transfers from the Income Tax Fund. It states that

¹ The cost of sick and vacation accruals are not ordinarily considered as part of total compensation.

² Income tax receipts go to the Income Tax Fund and money is transferred from there to the General Fund and other funds at the discretion of city council. In 2010 income taxes represented 76% of General Fund revenue. The Fire Department expenditures come from the General Fund.

³ The year-end balances excluded open purchase orders. Open purchase orders were more than \$200,000 in 2009 and more than \$255,000 in 2010.

over the past few years transfers for non-essential services, such as parks and recreation; tree trimming; and senior plowing, have increased. The union claims, however, that “even with declining tax revenues and the increased subsidy of other funds, the General and Income Tax Funds will have sufficient balances to carry the City into 2012.” (Union Exhibit 4, page 6)

ISSUES

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

1) Article XVI – Hours of Work, Section 16.01 - Work Schedule - The current contract provides for a 50.4-hour workweek. The union seeks to reduce the workweek to 48 hours effective January 1, 2012. The city opposes the union’s demand.

Union Position - The union argues that its proposal was made in response to the city’s attempt to “buy out” the sick leave incentive. It claims that it proposed reducing the hours of work in response to the city’s request to think “out of the box.” The union insists that “if the City seeks to ‘buy out’ [the firefighters’] sick leave incentive, an hours reduction is the appropriate consideration.” (Union Pre-Hearing Statement, page 3)

The union contends that a reduction in hours would have little impact on the fire department’s expenditures. It acknowledges that firefighters would get five more Kelly Days under its proposal but indicates that the city could use part-time firefighters to cover the days.

The union maintains that the hours reduction would put the firefighters in a similar standing among comparable departments to the city's police officers. It reports that the firefighters' hourly compensation ranks 13th among 31 area departments while the police officers rank 9th among 25 departments.⁴ (Union Exhibits 7 and 8) The union observes that its proposed reduction in hours would improve the firefighters rank to 7th.

City Position - The city argues that the union's demand is not justified. It disputes the union's reference to a "buy out" and claims that the reduction in hours is equivalent to a 5% wage increase. The city claims that the union's proposal is not thinking "outside the box" but is just a usual proposal.

The city contends that there is no economic justification for a reduction in hours. It points out that a 48-hour workweek would result in five additional Kelly Days which would require it to pay overtime or to hire more full-time or part-time firefighters. The city complains:

The current non-productive time consisting of vacations, sick days, and personal/holidays approximates 535 hours per year per employee. This translates into approximately 2,086 hours of "on station" time or approximately eighty-seven (87) days per year. The Union's proposal would reduce the number of "on-duty" days to eighty-two (82) per year. (City Pre-Hearing Statement, page 6)

It adds that "during 2010 the 'on station' non-productive paid hours were approximately sixty-two percent (62%) of the total 'on-station' paid duty." (Ibid.)

⁴ The comparable departments for the firefighters in order of total compensation are Beachwood, Highland Heights, Mayfield Heights, Brookpark, South Euclid, Mentor, Berea, Brooklyn, Lyndhurst, Middleburg Heights, Avon Lake, Rocky River, Independence, Cleveland Heights, Fairview Park, Westlake, Bedford Heights, Bay Village, North Royalton, Strongsville, Broadview Heights, Maple Heights, Twinsburg, Lakewood, Valley View, Brunswick, North Olmsted, Parma, Olmsted Falls, Garfield Heights, and Richmond Heights. The departments for the police officers in order of total compensation are Beachwood, Rocky River, Mayfield Heights, Lyndhurst, Mentor, South Euclid, Highland Heights, Richmond Heights, Fairview Park, Middleburg Heights, Westlake, Avon Lake, North Royalton, Bay Village, Berea, North Olmsted, Strongsville, Brooklyn, Lakewood, Broadview Heights, Cleveland Heights, Parma, Garfield Heights, Twinsburg, and Olmsted Falls.

The city maintains that the union's demand is not supported by the hours of similarly situated departments. It reports that the average weekly hours for Brecksville, Broadview Heights, Brooklyn, Cuyahoga, Garfield Heights, Maple Heights, North Royalton, and Valley View is 50.3 hours compared to its 50.4 hours. (City Exhibit 15) The city stresses that these departments are contiguous or nearby departments.

Analysis - The Fact Finder cannot recommend the union's demand. First, the comparable data does not support the reduction in the workweek sought by the union. The city's data for eight nearby departments indicates that only one department has a 48-hour workweek and the average for the departments is 50.3 hours, virtually the same as the city's current workweek. Even the union's list of 30 area departments shows only seven of the departments have the workweek the union seeks.

Second, the Fact Finder is skeptical of the union's claim that the reduction in hours would not increase the city's costs. While some of the Kelly Days might not drop staffing below the levels the department wishes to maintain, other vacancies would have to be filled. Whether the vacancies are filled by full-time firefighters working overtime or part-time firefighters, there is a cost to the city. The challenging economic situation facing Ohio cities makes it a difficult time to win a reduction in hours given the associated higher costs.

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

2) Article XVII – Overtime/Recall, Section 17.05 - Compensatory Time - The current contract provides for compensatory time in lieu of overtime at the

discretion of the chief. The union demands a provision allowing firefighters to accumulate compensatory time up to 96 hours per year with the option of being paid for their accrued time. It further proposes that firefighters be able to use their time in increments of two hours or more, subject to the approval of the chief, with the stipulation that he cannot deny a request for compensatory time solely on the basis that it creates overtime. The city wishes to retain the current language.

Union Position - The union argues that its proposal should be adopted. It reports that the current contract provision is meaningless because the Fire Chief refuses to allow any compensatory time. The union claims that granting comp time in lieu of paying overtime will result in cost savings for the city, particularly given that the time off is filled by part-time firefighters. It also indicates that comp time will allow firefighters to get additional training.

The union contends that its proposal involves minimal changes. It points out that its proposal permits employees to accumulate only 96 hours of comp time and imposes certain restrictions on the use of the time. The union stresses that the use of comp time would still require the approval of the chief but that a request could not be denied simply because it would create overtime as indicated in Beck v. Cleveland, 390 F.3d 912 (6th Cir. 2005).

The union maintains that its demand is supported by comparables. It observes that Beachwood, Garfield Heights, Lyndhurst, Mentor, North Olmsted, North Royalton, Olmsted Falls, Parma, Richmond Heights, South Euclid, and Twinsburg have comp time banks ranging from 96 to 480 hours and that the time can be take in increments as small

as one hour. (Union Exhibit 13) The union indicates that in eight of the departments employees have the option of rolling over or cashing out their accumulated comp time.

City Position - The city opposes the union's demand. It claims that it has been unnecessary for management to grant comp time because employees already have sufficient time off. The city adds that employees have flexibility in taking time off by trading shifts. It reports that in 2010 employees traded 3145 hours. (City Pre-Hearing Statement, page 7)

The city contends that the union's comp time proposal would increase its costs. It states that it "could be required to work overtime, add additional manpower which is economically imprudent at any time, but particularly at this time due to [the] current downturn in revenue and the freezing of manpower levels, or run short-handed on affected shifts." (Ibid.) The city observes that the Fire Chief testified that he has opposed comp time primarily because of the "games played" and the nightmare this creates.

Analysis - The Fact Finder must recommend the creation of a comp time bank. He recognizes that comp time banks may occasionally complicate scheduling but notes that despite this possibility, comp time banks are commonplace. Any concern about costs because accumulated hours may be cashed out at higher wages should be dismissed as long as the number of hours that can be accumulated is limited.

The Fact Finder believes that a very relevant comparison supports the union's demand. The city has negotiated a comp time bank with its patrolmen. While the work schedules of patrolmen and firefighters are different, there was no suggestion that the police department has faced problems due to its negotiated comp time bank.

The Fact Finder recommends that the city and the union adopt the comp time bank provided for in the patrolmen's contract. It allows patrolmen to accumulate 80 hours of comp time and makes the use of the time subject to the approval of the chief or his designee. Given these provisions, any impact on the Fire Department's operations and costs should be minimal.

Recommendation - The Fact Finder recommends the following contract language:

Employees may elect to take compensatory time-off in lieu of overtime pay, at the rate of one and one-half (1 ½) hours for each overtime hour worked, in accordance with the provisions of the Fair Labor Standards Act and Department of Labor Regulations and may accumulate and maintain up to a maximum of eighty (80) hours of accumulation during each year of the parties' collective bargaining agreement. If an employee desires to cash in compensatory time, the employee must notify the Chief in writing no later than December 1st of each year. Scheduling of compensatory time off shall be subject to the approval of the Chief or his designee.

3) Article XXII – Uniform Allowance and Maintenance, Section

22.02 - Uniform Allowance and Section 22.03 - Maintenance Allowance -

The current contract establishes a uniform allowance of \$500 and a maintenance allowance of the same amount. Both are paid in cash and require the approval of the Fire Chief and the Finance Director. The union proposes that the uniform and maintenance allowances be rolled into base pay and that the requirement for the approval be dropped. The city opposes the union's demand to roll the allowances into the base rate but agrees to eliminate the requirement for approval by the Fire Chief and the Finance Director.

Union Position - The union argues that its demand should be adopted. It points out that on January 10, 2011, the city informed the firefighters that in the future it would

be taxing their uniform and maintenance allowances. The union complains that if the city taxes the allowances separately, it significantly decreases the net amount that the firefighters will receive.

The union contends that its demand is appropriate. It states that “due to the suddenness of the City’s announced taxing of the allowance, and the resulting reduction in the allowance, the Firefighters seek to lessen the impact by rolling the allowance into their base salary.” (Union Pre-Hearing Statement, page 6) The union claims that if the allowances are going to be taxed as part of bi-weekly compensation, they should increase in the same manner as base wages.

City Position - The city argues that the union’s demand should be rejected. It indicates that employees have had a “free ride” by not having to pay taxes on their uniform and maintenance allowances but it is required to rectify the situation. The city claims that “to date, no retroactive adjustment was required by the City and the Union’s attempt to enhance this benefit going forward by rolling it into the base rate is totally unjustifiable.” (City Pre-Hearing Statement, page 8)

The city contends that the union’s proposal increases its costs. It stresses that rolling the allowances into the base rate translates to a 1.5% increase in pay and would impact all costs related to the base rate, including roll-up costs and overtime. The city observes that rolling the allowances into the base rate would mean they would be subject to compounding as the base rate increases.

The city accuses the union of engaging in a “gaming strategy.” It points out that in 1997 the union insisted that paramedic pay be rolled into the base rate and then in 2005 demanded that a paramedic stipend be restored. The city notes that in 1995 the union

agreed to a reduction in hours in exchange for a 3% offset in the base rate but in subsequent negotiations argued that its wages were not comparable to the patrolmen or other firefighters. The city insists that “the Union should not be given another opportunity to play future games with the negotiations process.” (Ibid.)

Analysis - The Fact Finder must reject the union’s demand. First, while the taxation of the firefighters’ uniform and maintenance allowances may reduce their net income, it appears inevitable given the way the allowances are structured. The firefighters may have been fortunate to avoid being taxed on them until 2011.

Second, the practice in Cuyahoga County and beyond is that firefighters and other employees are given cash allowances to purchase and maintain their uniforms rather than adding some amount to their base rates for these purposes.

Recommendation - The Fact Finder recommends the following contract language:

22.02 Each employee, except new hires during their first year of employment, shall be entitled to an annual uniform allowance of five hundred (\$500.00) dollars in May of each year by separate check.

22.03 Each employee shall be entitled to a one-time annual maintenance and cleaning allowance of five hundred (\$500.00) dollars to be paid in December by separate check. Newly hired employees shall have such payment prorated on a month to month basis.

4) Article XXIX – Hospitalization Insurance, Section 29.01 - Coverage and Section 29.03 - Premium Contributions - The current contract provides for health, dental, and vision insurance. Employees can chose the standard health insurance plan with a 20% co-insurance requirement, a high plan with no co-insurance, or a high deductible/HSA plan. Employees currently pay \$25 per month for

single coverage and \$60 per month for family coverage for the standard and high deductible/HSA plans and the same amount plus the extra cost of the high plan.

The city proposes increasing the monthly employee premium contributions by \$6.25 for single coverage and \$12.50 for family coverage. It also seeks to increase the annual deductibles by \$25 for single coverage and \$50 for family coverage in-network and by twice that amount out-of-network and to increase the co-pay for non-formulary prescription drugs by \$10 for retail and \$35 for mail order. It states that “its proposal is only applicable if the Union accepts a successor agreement for a one-year duration of January 1, 2011 to December 31, 2011.” (City Pre-Hearing Statement, page (9))

The union accepts the city’s proposal with the proviso that it be implemented on January 1, 2012.

City Position - The city argues that its proposal should be adopted. It states that its proposal contains minor modification to the plan design and a nominal increase in employee premium contributions. The city emphasizes that AFSCME, Local 2339 accepted its proposal.

The city contends that its health care costs are high and rising. It points out that health, dental, and vision benefits have risen from \$1,666,678 in 2003 to \$2,243,844 in 2010. (City Exhibit 5) The city projects that health care costs will rise to \$3,554,418 in 2015 based on an annual increase of 20%. (Ibid.)

Union Position - The union argues that the city’s proposal may be acceptable. It indicates that the changes in plan design and increases in employee premium contributions are acceptable if they are implemented on January 1, 2012. The union estimates that the increase in employee premium contributions results in decreases in

compensation of .22% for those with family coverage and .11% for those with single coverage even without considering the impact of the changes in plan design. It adds that it “agreed to increase the employees’ health care costs ... with the belief that the agreement would be part of a total economic settlement ... [but] the City has maintained the proposed concessions and offered no compensation to offset the increase in costs to the employees.” (Union Pre-Hearing Statement, page 7)

Analysis - The Fact Finder recommends the changes in health care that the city has proposed. The health care coverage provided to employees is very good and employees are provided with a broad choice of plans. Furthermore, even with the increases in premium contributions, employees’ contributions are not out of line in comparison to contributions being made by employees in other cities.

The Fact Finder believes that the impact of the increase in employee health care costs is offset by the other changes he is recommending. In particular, the restoration of the perfect attendance bonus in 2012 and the 2% wage increase recommended for that same year should be viewed as significant elements of the total settlement the union was anticipating when it accepted the city’s health care proposals.

The remaining question is the effective date of the changes. Since this report may not be approved before April 13, 2011, an effective date of January 1, 2011, would be impractical. On that basis the Fact Finder recommends that the new health care provisions be implemented as soon as practical, as is stated in the settlement the city reached with AFSCME, Local 2339. Logically, the increase in employee premium contributions should be effective at the same time the other changes are effective.

Recommendation - The Fact Finder recommends the following contract

language:

29.01 The Employer will provide on behalf of each full-time employee and his family if such employee is married, the medical, drug, dental and vision coverage as follows:

A. Effective January 1, 2011, or as soon as practical thereafter, all employees shall have the coverage summarized and contained in Appendix A (HSA Plan) and Appendix B (Standard Plan). Except as provided in Section 30.03, the cost for such coverage under this paragraph shall be borne by the city.

B. Effective January 1, 2011, or as soon as practical thereafter, if any employee elects the coverage summarized and contained in Appendix C (High Plan), the employee shall pay the difference in cost from the coverage summarized and contained in Appendix B (Standard Plan) and the amount contained in Section 30.03.

C. All employees shall have the dental coverage summarized and contained in Appendix D.

D. All employees shall have the vision coverage summarized and contained in Appendix E.

* * *

29.03 With the implementation of the new medical insurance plans, employee contributions shall be as follows:

HSA PLAN

\$31.25/month (Single)

\$72.50/month (Family)

STANDARD PLAN

\$31.25/month (Single)

\$72.50/month (Family)

HIGH PLAN

\$31.25/month plus the difference in the monthly premium between the High plan and the Standard plan (Single)

\$72.50/month plus the difference in the monthly premium between the High plan and the Standard plan (Family)

Employee contributions/costs shall be paid through automatic payroll deductions.

5) Article XXIX – Hospitalization Insurance, Section 29.02 -

Employer-Wide Joint Medical/Hospitalization Insurance Committee - The current contract establishes an Employer-Wide Joint Medical/Hospitalization Insurance Committee to review alternative insurance coverages and to make recommendations to the city. The city proposes adding that the committee will consist of one representative from each of the five bargaining units, four representatives of non-bargaining unit employees, and one member of city council. It also suggests that the contract state that “the duties and other details related to the function of the committee shall be determined by the committee under the direction and facilitation of the Human Resources Director.” The union opposes the city’s proposal as it is written.

Union Position - The union argues that the committee as proposed by the city is unacceptable. It complains that the authority, duties, and procedures of the committee are not specified. The union worries that under the city’s proposal the Human Resources Director “has full authority to determine all ‘duties and other details related to the functions of the committee.’” (Union Pre-Hearing Statement, page 8)

City Position - The city argues that the union’s concerns are not justified. It states that the Human Resources Director will assist the committee but the proposal provides that the “the duties and other details related to the functioning of the committee shall be determined by the committee.”

Analysis - The Fact Finder believes that joint health care committees can be useful to both employers and unions in addressing escalating health care costs and other

issues related to employee health care. He will recommend a minor change in the language proposed by the city which responds to the concerns of the union about the role of the Human Resources Director.

Recommendation - The Fact Finder recommends the following contract language:

A city-wide joint medical/hospitalization committee comprised of one (1) representative from each of the five (5) bargaining units, four (4) non-bargaining representatives from other city departments, and one (1) representative from Council shall be formed. The duties and other details related to the function of the committee shall be determined by the committee with the assistance of the Human Resources Director.

6) Article XXXIV - Compensation Schedule, Section 34.01 - Wage Schedule - The current contract provides for a wage schedule with four annual steps starting at \$47,488 and reaching a maximum of \$67,173. The city proposes establishing a separate, six-step wage schedule for firefighters who are paramedics and one for those who are not paramedics. The schedule for non-paramedics would start at \$35,879 and reach \$63,969. The range of the scale for paramedics would be from \$38,473 to \$67,173. The city wishes to reserve the right to place new employees on any step of the schedule and proposes keeping employees who are currently on the four-step schedule on that schedule. The union opposes the proposed six-step schedules.

City Position - The city argues that its six-step salary schedule for new employees should be implemented. It suggests that a six-step wage progression would better position Fire Department management to approach city council for money to meet its current and future manpower needs. The city indicates that it has had a six-step wage

schedule since January 1, 1995, with the service workers who are represented by AFSCME Local 2339.

Union Position - The union argues that the present four-step schedule should be retained. It claims that “dropping the entry level wages will adversely affect the City’s ability to attract quality Firefighters/Paramedics.” (Union Pre-Hearing Statement, page 9) The union complains that while the city’s proposal will allow it to save more than \$50,000 for each employee hired, it “is unwilling to offer anything to [it] to offset the loss in wages to bargaining unit members.” (Ibid.)

Analysis - The Fact Finder recommends that the city’s proposal be implemented. While he is aware of the problems sometimes associated with wage schedules that offer different wages over a significant number of years to employees doing the same job, he recognizes the desire and need for the city to control costs and understands that a lower starting wage will have no impact on present members of the bargaining unit. The Fact Finder shares the union’s concern regarding the city’s ability to recruit the best firefighter/paramedics but the city’s proposal does allow it to start new employees at any step of the schedule.

Recommendation - The Fact Finder recommends the following contract language:

34.01 Effective January 1, 2011, the following compensation schedules shall be effective for the members of the Independence Fire Department:

SCHEDULE I (For employees with paramedic certification)

	<u>2011 Annual Rate</u>	<u>2011 Hourly Rate</u>
1 st Year	\$38,473	\$14.68
2 nd Year	\$42,745	\$16.31
3 rd Year	\$47,488	\$18.12

4 th Year	\$53,905	\$20.57
5 th Year	\$60,312	\$23.02
6 th Year	\$67,173	\$25.63

SCHEDULE II (For employees without paramedic certification)

	<u>2011 Annual Rate</u>	<u>2011 Hourly Rate</u>
1 st Year	\$35,879	\$13.69
2 nd Year	\$39,862	\$15.21
3 rd Year	\$44,282	\$16.90
4 th Year	\$50,700	\$19.35
5 th Year	\$56,986	\$21.74
6 th Year	\$63,969	\$24.40

NOTE 1: New employees who become qualified as paramedics will receive the appropriate compensation in Schedule I effective the date the employee presents paramedic certification to the Chief or the date the employee is assigned paramedic duties, which ever is sooner.

NOTE 2: Consistent with Article VII (Management Rights), the City expressly reserves the right to hire employees at any step in the appropriate salary range as listed above.

NOTE 3: Employees currently in the 4-step progression shall be grandfathered in that 4-step progression.

Effective January 1, 2012, the rates shown in Schedules I and II shall be increased by 2%.

7) Article XXXIV - Compensation Schedule, Section 34.01 - Wage

Increase - The current contract provides for a top rate of \$67,173 for firefighters beginning with their fourth year of service. The city proposes a wage freeze for 2011 and insists on a one-year contract. The union agrees to a wage freeze for 2011 but proposes a two-year contract with a 3% increase effective January 1, 2012.

Union Position - The union argues that its wage demand is justified. It states that “despite the City’s healthy financial reserves, [it] has agreed to a wage freeze for 2011.” (Union Pre-Hearing Statement, page 9) The union claims that the wage freeze in

2011 and the increase in employees' health care costs as well as the city's ability to pay make a 3% wage increase appropriate in 2012.

The union contends that its wage demand is supported by the compensation of comparable departments. It reports that the total compensation of the city's firefighters, which includes base pay, paramedic pay, and clothing allowances but does not include longevity, is \$69,173 compared to an average of \$67,600 for 30 area departments.⁵

(Union Exhibit 7) The union indicates that the city ranks 13th among the departments and complains that in contrast to this, the city's police officers rank 9th among 26 departments.⁶ (Union Exhibit 8)

The union maintains that wage increases in other cities support its demand. It observes that in conciliation the Westlake police were subject to a wage freeze in 2010 but got 3% increases in 2011 and 2012 and in fact finding the firefighters in Highland Heights got a 2.5% increase in 2011 and a 3.0% increase in 2012. (Union Exhibits 18 and 28)

City Position - The city argues that the union's demand for a 3% wage increase in 2012 must be rejected. It states that the current economic downturn reduced its revenue from 2008 to 2010 and that projections show that revenue will be stagnant for several years. The city stresses that "it would be imprudent to commit beyond one year

⁵ The departments in order of total compensation are Beachwood, Highland Heights, Mayfield Heights, Brookpark, South Euclid, Mentor, Berea, Brooklyn, Lyndhurst, Middleburg Heights, Avon Lake, Rocky River, Independence, Cleveland Heights, Fairview Park, Westlake, Bedford Heights, Bay Village, North Royalton, Strongsville, Broadview Heights, Maple Heights, Twinsburg, Lakewood, Valley View, Brunswick, North Olmsted, Parma, Olmsted Falls, Garfield Heights, and Richmond Heights.

⁶ The departments in order of total compensation are Beachwood, Rocky River, Mayfield Heights, Lyndhurst, Mentor, South Euclid, Highland Heights, Richmond Heights, Fairview Park, Middleburg Heights, Westlake, Avon Lake, North Royalton, Bay Village, Berea, North Olmsted, Strongsville, Brooklyn, Lakewood, Broadview Heights, Cleveland Heights, Parma, Garfield Heights, Twinsburg, and Olmsted Falls.

and particularly at the Union's proposed three percent (3%) increase which no other internal or comparable external bargaining unit is demanding and receiving." (City Pre-Hearing Statement, page 9)

The city contends that the wage and benefits of its firefighters are "most competitive with similarly situated departments." (City Pre-Hearing Statement, page 10) It reports that "total compensation" for a ten-year firefighter is \$112,249 while the "total compensation" for Brecksville, Broadview Heights, Brooklyn, Cuyahoga Heights, Garfield Heights, Maple Heights, North Royalton, and Valley View ranges from \$97,683 to \$108,588.⁷ (City Exhibit 4) The city suggests that its comparisons to nearby departments are more appropriate than those offered by the union because the union's comparisons include some cities outside Cuyahoga County.

The city maintains that its position is supported by its agreement with the service employees. It points out that AFSCME, Local 2339 agreed to a one-year contract with a wage freeze in 2011. The city adds that the service employees have had a six-step wage progression since January 1, 1995.

Analysis - The city and the union have agreed to a wage freeze for 2011 making the issue whether the contract should be for one or two years and, if the term of the agreement is two years, the wage for 2012. As discussed below, the Fact Finder recommends a two-year agreement. This leaves the issue of the wage increase, if any, for 2012.

⁷ The city's concept of "total compensation" is unique. It consists of total pay for hours worked, which is total gross pay less vacation, sick leave, and holiday time, plus total fringe benefits, which includes attendance bonuses; uniform allowances; longevity; bonuses for unused holiday/vacation time; paramedic pay; vacation sick, and holiday/personal days; pension contributions; Medicare payments; and family hospitalization and other payments.

The Fact Finder believes that the city can comfortably grant a wage increase in 2012. He recognizes that the city's income tax revenues have fallen but notes that they are projected to increase in 2012. The Fact Finder feels that the continuing economic recovery means that income tax receipts are likely to exceed the city's projections. Furthermore, as discussed above, even with the recent declines in income tax revenue, the city maintained a healthy carryover balance as reflected in its favorable Moody's bond rating.

The Fact Finder, however, cannot recommend the 3% wage increase sought by the union. While the Fact Finder discounts the comparisons of total compensation offered by the city, the union's comparative data shows that the city's firefighters are well compensated. In addition, the wage increases in Highland Heights and Westlake involve cities with more favorable budget situations than Independence and are likely to exceed wages increases in other cities in Cuyahoga County.

The Fact Finder finds that a 2% wage increase is appropriate. It reflects the city's finances as well as the union's acceptance of the wage freeze in 2011 and the changes in health insurance. The recommendation also takes into account the Fact Finder's recommendation for the creation of a comp time bank and the restoration of the perfect attendance bonus in 2012.

Recommendation - The Fact Finder recommends the following contract language:

34.01 Effective January 1, 2011, the following compensation schedules shall be effective for the members of the Independence Fire Department:

* * *

Effective January 1, 2012, the rates shown in Schedules I and II shall be increased by 2%.

8) Article XXXVII - Conformity to Law, Sections 37.03 - New

Section - The current contract has the usual conformity to law provision stating that the contract prevails over or is subject to future laws and indicating that if a provision of the agreement is invalid or unenforceable, the surviving portions remain in force. The city proposes a new section which, among other things, would give the city the right to immediately implement any changes in the contract necessary to comply with Senate Bill 5 without bargaining with the union. The union opposes the city's demand.

City Position - The city argues that its proposal should be adopted. It claims that the new section is intended "to insure that pending legislation changes to O.R.C. 4117 as contained in Senate Bill 5 are an integral part of the negotiating process and obligations of both parties." (City Pre-Hearing Statement, page 10)

Union Position - The union argues that the city's proposal is improper. It claims that it did not see the city's proposal until the fact finding hearing; that it is unconstitutional and conflicts with Senate Bill 5; and that Senate Bill 5 is likely to be subject to a voter referendum.

Analysis - The Fact Finder cannot recommend the city's suggested addition to the conformity to law article. Should Senate Bill 5 become the law of the state, the city's proposal would grant it considerable power. In addition, there are a number of questions about the legality of the provision sought by the city.

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

9) Article XL - Duration of Agreement, Section 40.01 - The current contract has a duration of three years. The union proposes a two-year agreement effective January 1, 2011, through December 31, 2012. The city offers one-year agreement with the same effective date.

Union Position - The union argues that the Fact Finder should recommend a two-year agreement. It points out that if the present impasse is not resolved in fact finding, the parties would not have a contract in place until June or July of 2011 so that they would have to immediately return to the bargaining table. The union further claims that “the City’s stable finances do not warrant a return to the bargaining table months after concluding protracted and expensive negotiations.” (Union Pre-Hearing Statement, page 10)

City Position - The city argues that a one-year agreement is appropriate. It states that “due to the current economic downturn ... and the projected stagnant revenue for the next several years, it would be imprudent to commit beyond one year.” (City Pre-Hearing Statement, page 10) The city adds that the pending revisions to Chapter 4117 of the Ohio Revised Code call for a one-year contract as does its one-year agreement with AFSCME, Local 2339.

Analysis - The Fact Finder recommends a two-year contract. He believes that a return to the bargaining table almost immediately after concluding the current negotiations makes little sense. While the city faces many of the same challenges as

other cities, it's healthy financial outlook makes a one-year agreement unnecessary. Such an agreement would mean the nearly continuous negotiations and would impose extra costs on both the city and the union.

Recommendation - The Fact Finder recommends the following contract

language:

This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the Union except as otherwise noted herein and shall be effective January 1, 2011, and shall remain in full force and effect through December 31, 2012.

10) Article XLIII - Perfect Attendance, Section 43.01 - Incentive

Payment - The current contract provides that employees who do not use sick leave in any quarter of the year shall be paid a bonus of \$375 at the end of the quarter. The city proposes suspending the bonus for its proposed one-year agreement. The union rejects the city's demand.

City Position - The city argues that the perfect attendance bonus should be suspended for its proposed one-year agreement. It claims that a "historical cornerstone of [its] bargaining relations ... has been to treat all units in a comparable manner relative to wages and benefits." (City Pre-Hearing Statement, page 12) The city points out that service employees, who are paid 21% less than the firefighters, have agreed to a suspension of the perfect attendance bonus so that it would be unfair not to do the same with the firefighters.

The city contends that similarly situated fire departments do not have comparable bonuses. It report that while North Royalton has a \$1161 bonus, Brecksville, Broadview Heights, Cuyahoga Heights, Garfield Heights, Maple Heights, and Valley View do not

have sick leave bonuses and Brooklyn eliminated its \$500 bonus on January 1, 2009.

(City Exhibit 22)

Union Position - The union argues that the perfect attendance bonus should be retained. It states that the provision was introduced by the city in 2005 and agreed to by the parties. The union reports that in 2009 the firefighters received \$22,500 in perfect attendance bonuses. It asserts that if the city takes away a benefit, it should receive something in return.

The union contends that similar departments have sick leave bonuses. It states that Bay Village, Brooklyn, Brunswick, Cleveland Heights, Fairview Park, Lyndhurst, Mayfield Heights, North Olmstead, North Royalton, and Parma have an average sick leave bonus of \$1359.

Analysis - The Fact Finder recommends that the perfect attendance bonus be suspended for 2011 but reinstated in 2012. First, this reflects the fact that the city's financial situation is projected to improve in 2012. The suspension of the bonus provides relief to the city when it is most needed.

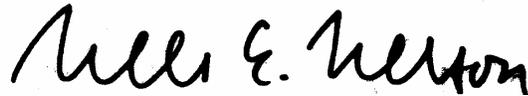
Second, the recommendation is consistent with the city's agreement with AFSCME, Local 2339. The city reported that AFSCME agreed to suspend the bonus for 2011. The continuation of the bonus is likely to be a topic for negotiations for a contract to be effective January 1, 2012.

Finally, the restoration of the perfect attendance bonus in 2012 is justified by the Fact Finder's other recommendations. He is recommending a wage increase of only 2% over two years as well as changes in the health insurance plan and higher employee

premium contributions. To take away the perfect attendance bonus, which amounts to an average of more than \$1000 for each bargaining unit member, is unjustified.⁸

Recommendation - The Fact Finder recommends the following contract language:

Effective January 1, 2012, a sick leave incentive shall be paid in accordance with these guidelines. If an employee does not utilize any of his sick leave within a three month period, i.e., January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, October 1st through December 31st, he shall be paid a bonus of three hundred seventy-five (\$375.00) at the end of that three month pay period.



Nels E. Nelson
Fact Finder

April 6, 2011
Russell Township
Geauga County, Ohio

⁸ Firefighters received \$22,500 in perfect attendance bonuses in 2009 which divided by the 17 firefighters in the bargaining unit is \$1323. To the extent that the total payment may have included money that went to three non-bargaining unit lieutenants and the deputy chief, the value of the benefit to the firefighters is overstated.