

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**In The Matter of Fact-Finding
Between**

International Association of Fire fighters, Local 1521

And

City of Upper Arlington

Re: Case No(s). 10-MED-09-1165 10-MED-09-1166

FACT-FINDER: John Babel Jr.

Representatives

For Union

Jim Mild, President, Local 1521
Henry A. Arnett, Counsel
Drew Durben, Vice President, Local 1521
Joe Smith, Secretary/Treasurer
Christopher A. Zimmer, Negotiation team member

Representing the City

Mark Lucas, Chief Negotiator
Joe Valentino, Assistant City Manager
Cathe Armstrong, Finance Director
Regina Drzewiecki, Deputy City Manager for Human Resources
Jeanine Hummer, City Attorney
Robin Sowry, City Attorney's Office
Jeff Young, Fire Chief

INTRODUCTION

The fact-finder was contacted under the auspices of The Ohio State Employment Relations Board to assist in the negotiated procedures between International Association of Fire Fighters, Local 1521 and the City of Upper Arlington.

The most recent Collective Bargaining Agreement was effective January 1, 2008 through December 31, 2010. Both parties agreed to extend the date for the Fact Finding report. The hearing was held on January 5 and 10, 2011 at the Upper Arlington City Administration building, 3600 Tremont, Upper Arlington, Ohio.

Local 1521 represents a deemed certified unit and a unit of battalion chiefs, which for collective bargaining purposes, have been combined by the parties into one unit. Section 2.1. of the parties' collective bargaining agreement, the recognition clause, establishes Local 1521 as the sole and exclusive bargaining agent for a bargaining unit consisting of all sworn firefighters and officers employed by the City below the rank of Deputy Chief. Currently included in the bargaining unit are fire fighters, lieutenants, captains, and battalion chiefs. There are approximately 59 employees in the bargaining unit, including 46 firefighters, 5 lieutenants, 5 captains, and 3 battalion chiefs.

The fact-finder was very impressed with the skill and ability of those in attendance at the hearing and compliments them on their professionalism and the high regard they have for the performance of the fire fighters.

In reporting the conclusion of this hearing the fact-finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in 4117.14(4)(e) and Rule 4117-9-05(a) past collectively bargained agreement 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 considerations to factors peculiar to the area and classification involved; (c) the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard of public service; (d) the lawful authority of the public employer: (se) stipulations of the parties: (f) such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

NEGOTIATION HISTORY

Both parties have worked diligently to reach an agreement but have come to an impasse on many issues, thus the need for a fact-finder. At the beginning of this session it was suggested by the fact-finder as to possible mediation of some issues but both parties agreed that all issues should be presented to the fact-finder. The issues are:

Article 1 – Sections 1.4, 1.5, 1.6 and a proposed 1.7
Article 10 – Section 10.1
Article 12 – Section 12.3 -F

Article 14 – Sections 14.1, 14.6, 14.8, 14.9

Article 16 – Sections 16.1, 16.2, 16.3

Article 18 – Sections 18.2A, 18.3, 18.4

Article 23 – Sections 23.3, 23.4

Article 26

Article 27

Article 28

Article 29

HEARING

The fact-finder received the pre-hearing briefs of both parties in a timely matter. At the hearing both parties introduced a notebook containing an array of information and evidence such as but not limit to current contract, past contracts, budget data, and comparable data and at the hearing both parties presented additional written data.

Depending on the issue being discussed, the designation of moving party shifted between parties. Both parties used team representatives to support their position. Also the City had an expert witness, Brian Galch, Wells Fargo Insurance Service to explain HSA for Article 23. All witnesses were sworn to an oath to tell the truth.

ARTICLE 1, SECTION 1.4 PAST PRACTICES, 1.5 ENFORCEABILITY OF AGREEMENT, AND 1.6 MODIFICATION

City Position:

The City proposes to delete these 3 sections

Section 1.4 Past Practices:

Section 1.5 Enforceability of Agreement:

Section 1.6 Modifications

Union Position:

Current contract language with change in the date in Section 1.4a from January 1, 2005 to January 1, 2008.

Discussion:

The City, in projecting into the future, with the uncertainty of state government, the economy and many issues that inner ring cities, such as Upper Arlington, face need to make operational changes to control costs. The union may use “past practice” to block such changes. The union provided copies of previous contracts between the parties, all containing this clause thus the reason for it not to be changed. The union indicated only one grievance concerning past practice. The City indicated more have been filed. The City stated that sections 1.5 and 1.6 are antique, superfluous and likely predate the Collective Bargaining Act, thus their position that they be deleted. The union indicated these sections are important, thus the need to only change effective date to January 2008.

RECOMMENDATION:

City position to delete sections 1.4, 1.5, and 1.6.

Rationale

The City is facing many economic uncertainties and is proposing changes in the contract to control cost and continue quality service to the community. The union may use “past practices” to block such changes.

ARTICLE 1, SECTION 1.7 MAD

Union Position:

Add a new Section 1.7 MAD

In recognition of the Local’s commitment not to strike or engage in any of the other type of job actions prohibited by Article 12, and in the interest and welfare of the public, thereby preserving sound labor/management relations, the parties hereby agree that if the provisions of Ohio Revised Code 4117.14 and/or Ohio Administrative Code 4117-9-06 change to effectively eliminate the ability of a conciliator (arbitrator) to issue a final settlement award that is a binding mandate to the public employer and the exclusive representative, the parties agree to meet within

thirty (30) days to develop a “mutually agreed dispute resolution process” (MAD). The “MAD” shall provide for impasse in collective bargaining to be settled by an Arbitrator and the written opinion which is promulgated by the neutral shall be final and binding upon the City and the Union. Should the parties find themselves unable to mutually agree to a “MAD”, the issue shall be submitted for resolution utilizing the grievance and arbitration provisions of Article 7.

City Position:

Oppose adding this section.

Discussion:

The union proposes this clause in case state laws on collective bargaining are changed on resolving impasse procedures. The City views that by agreeing, the parties will defy the will of the General Assembly. The City is not required to negotiate something that has been mandated by a higher legislative authority.

RECOMMENDATION

Current contract language.

Rationale

It seems unreasonable to negotiate a clause based upon possible future changes to the present collective bargaining rules.

ARTICLE 10, SECTION 10.1 UNDERSTANDING

City Position:

- A. The City may without restriction enter into contract(s) with other political subdivisions to provide firefighting, emergency medical and paramedic services for the City of Upper Arlington in the form of mutual aid agreements.

- B. The City may also enter into contract(s) with any person to provide firefighting, emergency medical and paramedic services for the City of Upper Arlington.

Union Position:

Current contract language.

Discussion:

The city indicated the need for this language to continue to provide a safe-level of fire service to the community with the ability to control cost such as overtime. Labor contract already recognizes The City’s right to determine methods and presumed to provide city services. This is inherently a management right. The union position is that it does not want outsiders doing this work. These are safety factors, turnover rate, questions of experience and not knowing each other. Also this protects union jobs and provides quality service.

RECOMMENDATION

Current contract language.

Rationale

At this time this seems to be working and The City did not propose ways this would be implemented.

ARTICLE 12 MISCELLANEOUS PROVISIONS

City Position:

Add in Section 3, a new item,

F. The City has the right to abolish and/or not fill vacant positions without having to fill them first, notwithstanding R.C. 124.45.

Union Position:

Current contract language.

Discussion:

Under the present system, if a vacancy occurs The City must hire a replacement, than if not needed, can abolish the position. This new clause will allow The City to abolish a vacant position without not first filling it and then abolish it.

RECOMMENDATION

Add, in Article 12, Section 3 a new item:

F. The City has the right to abolish and/or not fill vacant positions without having to fill them first, notwithstanding R.C. 124.45.

Rationale

In civil service, the safe-harbor method for abolishing a promotional position is to fill it first, then abolish it – and even where there is no one at the top of an eligibility list waiting to fill the position, The City must conduct a test, create a list, fill the position, then abolish the position. Simply not filling the position and/or abolishing it before putting someone in it is much more streamlined and makes sense to the City and the employee. This would provide clarity to the process.

ARTICLE 14.1 RATES OF PAY

Union Position:

Increase rate of pay 4% each year of the three year contract, effective January 1, 2011.

City Position:

Current contract language, no salary adjustment for the three (3) year contract.

Discussion:

The Union presented documentation that The City at each negotiation since 1982 indicated the future uncertainty of revenue, which they have no control, thus limiting how they can meet salary adjustment. The Union demonstrated that The City has in many cases, underestimated projected revenue and over stated expected expenses. The Union showed data that the City has a substandard unrestricted carryover balance. The Union submitted an analysis of the FY09 financial document that indicated the City has a substantial balance which is good for favorable Moody AAA bond rating; the report did indicate that the general fund balance and asset to liability rates decreased from FY08 – FY09. The union provided articles that the economy, national and locally is on the upswing. The comparable information provided by the Union showed the Upper Arlington firefighters ranked 4th out of 5 comparable selected by the Union. The Union indicated that in past years during difficult financial times, positions were lost and to-date has not returned. Data was shared indication the high level of service that has been provided by the firefighters. Also provided were increased salaries negotiated by the FOB of 2.5% in 2010, and 3% per year for 2011 and 2012.

The City indicated that in regard to financial matters it takes a conservative approach which has led to AAA bond ratings and a carryover balance. A major concern in developing financial budget for The City is that revenue in general is flat and there is a concern that the future may bring decreases in revenue in certain areas. One major area of revenue are real estate and property taxes which only increase once every three years due to property reevaluation, but this may change due to the economic downturn in which homes will be evaluated at a lower level, thus the home owner will be paying lower property taxes to the City There is also possibility of taxable property being converted to a non-profit status. An example was given. The second major revenue is income tax which is also flat. This tax is only collected from individuals working in The city. The third source is estate tax which varies from year to year and with a new political climate in Ohio this law may be repealed which could mean an annual 3 to 4 million dollars lose to the City. Due to current interest rates and state rules in how money may be invested and the possibility of a declining carryover balance this is not a large source of revenue and may decrease. Other revenue sources and Police and Fire Pension Tax are flat. Another revenue issue is that the State of Ohio projected a 8 billion dollar deficit and local government such as Cities and schools will be affected. The City emphasized that City expenditures include many areas other than salaries, such as roads, infrastructure, and sewers. The City challenged Union comparables, stating that revenue growth should be included in determining comparables. Other data presented included low inflation 1.3% over the past 12 months and annual wage settlement for firefighter in 2009 from a SERB report was 2.47%. The City indicated that any salary increase must be offset with contract changes to control raising costs for police.

RECOMMENDATION

First year, 2011 an increase of 3 percent in the hourly rate. This increase retroactive to January 1, 2011.

Second year, 2012, an increase of 3 percent on the hourly rate.

Third year, 2013, an increase of 2 percent on the hourly rate.

Rationale

The City, if it can implement cost saving such as overtime and uses some carryover balance can financially support this recommendation. The increase in the first two years matches increased provided to the police. The uncertainty of the future supports the 2 percent increase in the third year. Both parties must understand that the financial future of Upper Arlington is going to be seriously challenged. Increase salaries are just one part of employee cost. In the case of firefighters, an additional cost to the City are 48% fringe benefit cost including retirement, Medicare, workers compensation, health, dental, life, and long term disability insurance.

ARTICLE 14, SECTION 14.6 RETIREMENT ASSUMPTION

City position:

The City's method of payment of salary and the provision of fringe benefits to the members of the bargaining unit covered by this Agreement who are participants in the Police and fireman's Disability and Pension fund (the "Fund") are hereby modified as follows, in order to provide for the assumption of employee contributions to the Fund:

The City will assume and pay to the Fund on behalf of each member the amount of the member's contribution that is otherwise payable by such member each pay period that does not exceed ten percent (10%) of the member's "salary" (meaning, for this purpose, the salary upon which the member is required to pay a pension contribution).

Union position:

Current contract language

Discussion:

The employee share paid into the Police and Fire Pension fund is 10% which The City is paying in addition to the 24% employer's share. If the state increases the employee's 10% The City is willing to continue to pay the 10% but not any increase. The Union position is that the full amount was negotiated and should continue, if the state increases the required employee's share. The City's position is that this is unfair in they have no control over the increase.

RECOMMENDATION

City position:

The City's method of payment of salary and the provision of fringe benefits to the members of the bargaining unit covered by this Agreement who are participants in the Police and fireman's Disability and Pension fund (the "Fund") are hereby modified as follows, in order to provide for the assumption of employee contributions to the Fund:

The City will assume and pay to the Fund on behalf of each member the amount of the member's contribution that is otherwise payable by such member each pay period that does not exceed ten percent (10%) of the member's "salary" (meaning, for this purpose, the salary upon which the member is required to pay a pension contribution).

Rationale

The employees agreed to pick-up the employee 10% share of their retirement cost and any increase imposed by the state should not be responsibility of the employer, in that the City has no control over that increase. This proposal seems fair in that most employees contribute at least part to their retirement plan.

ARTICLE 14, SECTION 14.8 EDUCATIONAL AND INCENTIVE PAY

City position:

A member who has received an educational incentive salary supplement to his/her regular rate of pay prior to the commencement of this Agreement, including Battalion Chiefs who had given up their supplement prior to the commencement of this Agreement, shall not continue to receive his/her entitlement on or after January 1, 2011. No member shall obtain additional incentive salary during the term of this Agreement.

Union position:

Current contract language.

Discussion:

This program was phased out in 1988. It was an incentive for firefighters to improve their education in fire science. Over the year's employees retired or left The City, today only two out of 59 receive this supplement at the cost of \$12,000 to The City. The Union wants this to continue as it could affect the retirement benefits, best 3 year salary of the two employees, one employed in 1978, and the other in 1982, when they retire.

RECOMMENDATION

A member who has received an educational incentive salary supplement to his/her regular rate of pay prior to the commencement of this Agreement, including Battalion Chiefs who had given up their supplement prior to the commencement of this Agreement, shall not continue to receive his/her entitlement on or after January 1, 2012. No member shall obtain additional incentive salary during the term of this Agreement.

Rationale

This is an incentive plan that is not available to present firefighters and only two employees are still receiving it. Changing the date to 2012 provides these employees time to adjust their retirement plan if they so desire.

ARTICLE 14, SECTION 14.9 TUITION REIMBURSEMENTS

City position:

The first paragraph shall read;

Each member shall be eligible for 50 percent (50%) reimbursement of tuition, fees and instructional materials but not application fees for job-related non-Internet courses that are either directly or indirectly related to the fire service; i.e. general management or other general skill building courses would be considered indirectly related to fire service. No reimbursement shall be provided for a member's enrollment in a law school degree program.

The third paragraph shall read;

The City may impose an annual cap of no less than an aggregate of twelve thousand dollars (\$12,000) for all bargaining unit members. If the cap would be exceeded, conflicts would be resolved on a first come first serve basis unless the Labor Relations Team agrees upon an alternative equitable method.

Union position:

Current contract language.

Discussion:

The City proposes to cap its tuition payment exposure. The City needs to be able to control costs, and as it is, this is an open ended benefit. The Union shared that other comparable contracts have tuition reimbursement with various dollar caps per person or grades obtained in a class. This is an incentive for firefighters to improve their skills.

RECOMMENDATION

City proposal

The first paragraph shall read

Each member shall be eligible for 50 percent (50%) reimbursement of tuition, fees and instructional materials but not application fees for job-related non-Internet courses that are either directly or indirectly related to the fire service; i.e. general management or other general skill building courses would be considered indirectly related to fire service. No reimbursement shall be provided for a member's enrollment in a law school degree program.

The third paragraph shall read

The City may impose an annual cap of no less than an aggregate of twelve thousand dollars (\$12,000) for all bargaining unit members. If the cap would be exceeded, conflicts would be resolved on a first come first serve basis unless the Labor Relations Team agrees upon an alternative equitable method.

Rationale

The City proposes to cap its tuition payment exposure. The City needs to be able to control costs, and this was an open ended benefit.

ARTICLE 16.1 HOURS OF WORK

City position:

As of January 1, 2011, the regular work schedule for members shall continue to be as follows, unless and until the City notifies members at least one (1) month in advance of a change in the regular work schedule(s) and the corresponding work period(s) for the affected positions.

A. Forty (40) hour members.

The seven (7) day work period shall consist of five (5) eight (8) hour days or four (4) ten (10) hour days. The rates of pay and ranges prescribed in the pay plan for the respective positions are based on an average work week of forty (40) hours and a typical work year of 2,080 hours.

B. Fifty-six (56) hour members.

The regular workday for members other than Battalion Chiefs shall be twenty-four (24) hours, beginning at 7:30 A.M. of one morning and ending at 7:30 A.M. of the following calendar day. The regular workday for Battalion Chiefs shall be twenty-four (24) hours, beginning at 7:00 A.M. of one morning and ending at 7:00 a.m. of the following calendar day. Each work day shall be followed by at least forty-eight (48) consecutive hours off duty. The work period shall consist of twenty-one (21) consecutive days, and the regular work hours of members assigned to this period shall be 168. The rates of pay and ranges prescribed in the pay plan for the respective positions are based on an average work week of fifty-six (56) hours and a typical work year of 2,912 hours.

If the City elects an alternate schedule for any of the current fifty-six (56) hour members' positions (which may include a different number of normally scheduled hours per week), the new base hourly rate shall not be less than the current base hourly rate for those positions. Furthermore, Holidays, Vacation, Sick Leave, Personal days and any other paid time off accrual use, and cash-in conversion will be pro-rated accordingly.

Union position:

Current contract language.

Discussion:

The City proposes language that will allow it to modify employees work schedules. The ability to control schedule is essential to prudently fiscal managing the division. The City agreed that current 56 hour employees, if schedules are changed will continue to be paid at least the same hourly rate. The union had in negotiations proposed a different schedule that was not accepted by management.

RECOMMENDATION

City proposal

As of January 1, 2011, the regular work schedule for members shall continue to be as follows, unless and until the City notifies members at least one (1) month in advance of a change in the regular work schedule(s) and the corresponding work period(s) for the affected positions:

A. Forty (40) hour members.

The seven (7) day work period shall consist of five (5) eight (8) hour days or four (4) ten (10) hour days. The rates of pay and ranges prescribed in the pay plan for the respective positions are based on an average work week of forty (40) hours and a typical work year of 2,080 hours.

B. Fifty-six (56) hour members.

The regular workday for members other than Battalion Chiefs shall be twenty-four (24) hours, beginning at 7:30 A.M. of one morning and ending at 7:30 A.M. of the following calendar day. The regular workday for Battalion Chiefs shall be twenty-four (24) hours, beginning at 7:00 A.M. of one morning and ending at 7:00 a.m. of the following calendar day. Each work day shall be followed by at least forty-eight (48) consecutive hours off duty. The work period shall consist of twenty-one (21) consecutive days, and the regular work hours of members assigned to this period shall be 168. The rates of pay and ranges prescribed in the pay plan for the respective positions are based on an average work week of fifty-six (56) hours and a typical work year of 2,912 hours.

If the City elects an alternate schedule for any of the current fifty-six (56) hour members' positions (which may include a different number of normally scheduled hours per week), the new base hourly rate shall not be less than the current base hourly rate for those positions. Furthermore, Holidays, Vacation, Sick Leave, Personal days and any other paid time off accrual use, and cash-in conversion will be pro-rated accordingly.

Rationale

The City's ability to adjust employees work schedule is needed to better meet City needs and control overtime cost.

ARTICLE 16 – SECTION 16.2 OVERTIME

City position:

The City will pay members overtime pay at the rate of one half (1-1/2) times the member's regular rate of pay if and when required to do so by the federal Fair Labor Standards Act.

- A. Forty (40) hour members shall be compensated for overtime at the rate of one and one-half (1-1/2) times the forty (40) hour rate.
- B. Fifty-six (56) hour members shall be compensated at the rate of one and one-half (1-1/2) times the fifty three (53) hour rate for time actually worked in excess of one hundred fifty-nine (159) hours to and including one hundred sixty-eight (168) hours in a work period.
- C. If the City elects an alternate schedule under Section 16.1, the City shall pay a member on the new schedule one and one-half (1-1/2) times the member's new regular rate of pay for time worked in excess of the FLSA 207K exemption threshold (which is the equivalent of the current 159 hours in a 21 day period);
- D. Members may, at their discretion, receive compensatory time off in lieu of cash payment at the rates provided in Section 16.2A. and 16.2B or 16.2C. Compensatory time will be paid out by the last pay in December of the year accrued. (the change in this subsection 16.2D is part and parcel of the proposed change in 16.2C.)

No member shall accrue more than four hundred eighty (480) hours of compensatory time. Any member who reaches the four hundred eighty (480) hour limit shall thereafter be paid overtime compensation for overtime hours worked. Any member who requests the use of compensatory time shall be permitted to use the time within a reasonable period of making the request as long as the use of compensatory time does not unduly disrupt the operations of the City. All compensatory time which is not used within the calendar year it is accrued shall be paid in cash to the member at the rate of accrual.

- E. Time worked because of schedules being changed at the request of a member, or trading days at the sole option and by mutual consent of members and with prior consent of the Fire or Battalion Chief, shall be excluded from the hours for which the member is entitled to overtime compensation under this Section.
- F. All overtime shall be approved by the Fire or Battalion Chief. Without limiting the other provisions of this Agreement, the parties acknowledge that

the fire Chief may direct the Battalion Chief in his/her administration of subsections 16.2(E) and (F).

- G. During Leap Years, on February 29th, a three (3)-unit shift shall be used and all members who work during this shift shall be compensated with overtime pay at the rate of one and one-half (1-1/2) times the appropriate rate.

Union position:

Current contract language.

Discussion:

This is a major issue for the City in that some personnel in the bargaining unit are paid 2 times the regular rate of pay for overtime such as when a firefighter call off sick and another employee has to replace him or she, that employee is paid 2 times the normal rate of pay. The other employee in the City of Upper Arlington are paid at a rate of one and one- and half time for overtime. The FLSA does not require paying 2x for overtime. The federal government has determined that 1.5x is a fair rate. The Union indicated that this was negotiated in 1985 and adjusted in 1994. This double overtime rate only pertains to the 56 hour firefighter and is fair to bring their overtime pay equal 40 hour firefighter overtime. The Union suggested that if overtime cost is important to the City there are other ways this can be accomplished.

RECOMMENDATION

City's proposal:

The City will pay members overtime pay at the rate of one half (1-1/2) times the member's regular rate of pay if and when required to do so by the federal Fair Labor Standards Act.

- A. Forty (40) hour members shall be compensated for overtime at the rate of one and one-half (1-1/2) times the forty (40) hour rate.**
- B. Fifty-six (56) hour members shall be compensated at the rate of one and one-half (1-1/2) times the fifty three (53) hour rate for time actually worked in excess of one hundred fifty-nine (159) hours to and including one hundred sixty-eight (168) hours in a work period.**
- C. If the City elects an alternate schedule under Section 16.1, the City shall pay a member on the new schedule one and one-half (1-1/2) times the member's new regular rate of pay for time worked in excess of the FLSA 207K exemption threshold (which is the equivalent of the current 159 hours in a 21 day period);**

- D. Members may, at their discretion, receive compensatory time off in lieu of cash payment at the rates provided in Section 16.2A. and 16.2B or 16.2C. Compensatory time will be paid out by the last pay in December of the year accrued. (The change in this subsection 16.2D is part and parcel of the proposed change in 16.2C.)**

No member shall accrue more than four hundred eighty (480) hours of compensatory time. Any member who reaches the four hundred eighty (480) hour limit shall thereafter be paid overtime compensation for overtime hours worked. Any member who requests the use of compensatory time shall be permitted to use the time within a reasonable period of making the request as long as the use of compensatory time does not unduly disrupt the operations of the City. All compensatory time which is not used within the calendar year it is accrued shall be paid in cash to the member at the rate of accrual.

- E. Time worked because of schedules being changed at the request of a member, or trading days at the sole option and by mutual consent of members and with prior consent of the Fire or Battalion Chief, shall be excluded from the hours for which the member is entitled to overtime compensation under this Section.**
- F. All overtime shall be approved by the Fire or Battalion Chief. Without limiting the other provisions of this Agreement, the parties acknowledge that the fire Chief may direct the Battalion Chief in his/her administration of subsections 16.2(E) and (F).**
- G. During Leap Years, on February 29th, a three (3)-unit shift shall be used and all members who work during this shift shall be compensated with overtime pay at the rate of one and one-half (1-1/2) times the appropriate rate.**

Rationale

The overtime rate of 1 ½ times the hourly rate is Federal standards and is the rate all employees except 56 hour firefighter, who were receiving double overtime pay. Since the overtime is for individuals working beyond their normal work schedule and in overtime are continuing to do the same type of work, rate at 1 ½ times hourly rate is fair.

ARTICLE 16, SECTION 16.3

City Position:

Members shall be compensated for all hours actually worked. Uncertain and indefinite periods of a few minutes duration which are not part of the members fixed or regular working time or practically unascertainable periods regularly required to be spent on assigned duties need not be reported or compensated. Hours worked shall otherwise be construed in conformance with the Fair Labor Standards Act, 29 U.S.C.

201 e. seq. and pertinent regulations promulgated thereunder by the Secretary of Labor.

Union position:

Current contract language.

Discussion:

The City's position is the federal government has determined that it is fair to only count hours actually worked toward the calculation of overtime. The feds do not require counting sick leave, vacation, comp time, holidays not worked, and injury leave as if the employee "worked" those hours. The Union presented figures that if the City proposals on overtime is adopted employees who worked on average amount of overtime could lose 3 to 4% of their annual salary due to less overtime and at rates at 1 ½ times instead of 2 times their hourly rate (56 hour firefighters)

RECOMMENDATIONS

City proposal:

Members shall be compensated for all hours actually worked. Uncertain and indefinite periods of a few minute's duration which are not part of the members fixed or regular working time or practically unascertainable periods regularly required to be spent on assigned duties need not be reported or compensated. Hours worked shall otherwise be construed in conformance with the Fair Labor Standards Act, 29 U.S.C. 201 e. seq. and pertinent regulations promulgated thereunder by the Secretary of Labor.

Rationale

These three sections, 16.1, 16.2 and 16.3 are major changes in how overtime is determined and going from 2 times to 1 ½ times hourly rate for all firefighters. Controlling the cost of overtime, which has been over \$300,000 per year for firefighters, is a big factor in the City's financial position. All changes are within Federal regulation and the same regulations other employees in the City operate under.

ARTICLE 18, SECTION 18.2 AND 18.4

City position:

Section 18.2 Vacation Year

- A. The vacation year shall be January 1 through December 31 of each year. Vacation must be scheduled by January 31. However, vacation days not scheduled by January 31 may be requested and used by the member as vacation after January 31 provided that the maximum of three (3) members are not scheduled off on vacation, prescheduled holiday time, personal time, compensatory time, or prescheduled training time.

And

Section 18.4 Additional Considerations

- J. After January 31st and vacations are scheduled, the Battalion Chiefs will begin to schedule physicals. As they are scheduling physicals, only one each day will be coded EW3, and any other physicals will be EW. Also, the paramedic school students shall not count as one of the three members allowed to be off at any given time.

Union position:

Current language on both Section 18.2A and Section 18.4J.

Discussion:

The City proposes that since Battalion Chiefs are in the negotiation unit they should be counted as part of the 3 employees that can be scheduled off at any one time. It is important for the operations that no more than 3 employees are off at the same time. Including the Battalion Chiefs as one of the three reduces overtime cost and still provides adequate coverage. The Union stated that this clause was prior to when Battalion Chiefs were in the bargaining unit.

RECOMMENDATION

City's proposal for Section 18.2 and 18.4:

Section 18.2 Vacation Year

- A. The vacation year shall be January 1 through December 31 of each year. Vacation must be scheduled by January 31. However, vacation days not scheduled by January 31 may be requested and used by the member as vacation after January 31 provided that the maximum of three (3) members are not scheduled off on vacation, prescheduled holiday time, personal time, compensatory time, or prescheduled training time.**

And

Section 18.4 Additional Considerations

- K. After January 31st and vacations are scheduled, the Battalion Chiefs will begin to schedule physicals. As they are scheduling physicals, only one each day will be coded EW3, and any other physicals will be EW. Also, the paramedic school students shall not count as one of the three members allowed to be off at any given time.**

Rationale

Since the Battalion Chief is in the bargaining unit and can do firefighter work it seems reasonable he/she be considered one of the members scheduled off on prescribed days.

ARTICLE 18, SECTION 18.3, VACATION CARRYOVER

Union position:

Section 18.3 A member, at his or her option, shall be permitted to carry over from one calendar year to another a maximum of one hundred twenty (120) hours.

City position:

Current contract language.

Discussion:

The Union indicated that in 2008 was the first year vacation carryover was denied. In 2007, 2,422 hours were carried over. Also in the 2010-2012 FOB contracts a member was permitted to carryover a maximum of 240 hours. The City would like to pay excessive vacation the year it was earned rather than increasing future liabilities.

RECOMMENDATION

Union proposal:

Section 18.3 A member, at his or her option, shall be permitted to carry over from one calendar year to another a maximum of one hundred twenty (120) hours.

Rationale

Is a reasonable approach to vacation time.

ARTICLE 23 INSURANCE

Union position:

Section 23.3 Coverage second paragraph:

The member contribution shall be up to eight percent (8%) of the monthly premium, not to exceed eighty-five dollars (\$85) per month. The member monthly premium contribution may be modified on or after January 1, 2012 so that a member's monthly premium contribution would be up to nine percent (9%) of the monthly premium, not to exceed ninety dollars (\$90) per monthly thereafter. The member monthly premium contribution may be modified again or after January 1, 2013, so that a member's monthly premium contribution for family coverage would be up to ten percent (10%) of the monthly premium, not to exceed one hundred and five dollars (\$105.00) per month. The member contribution shall not at any time during the life of the contract exceed the amount of contribution that the City requires at that time of all other eligible employees of the City covered by insurance.

City position:

Section 23.3 Coverage second paragraph:

The member contribution shall be up to eight percent (8%) of the monthly premium, not to exceed eighty-five dollars (\$85.00) per month thereafter. The member monthly premium contribution may be modified on or after January 1, 2011 so that a member's monthly premium contribution would be up to nine percent (9%) of the monthly premium, not to exceed ninety dollars (\$90.00) per month thereafter, and again effective January 1, 2012 to nine percent (9%) not to exceed one hundred and five dollars (\$105) per month.

The member monthly premium contribution may be modified again on or after January 1, 2013, provided that the member contribution shall not at any time during the life of the contract exceed the amount of contribution that the City requires at that time (by Ordinance) of all non-represented employees of the City covered by insurance.

Discussion:

The Union proposal is to continue with contribution rate, with a slight increase for the family plan for 2012 and 2013. The city proposes a slight increase in 2011 and 2012 with a me-too clause for 2013. Other Union will be bargaining in 2013 and having a me-too rate for firefighters due to staggered negotiation would be a start to having all employees paying the same premium rate for the same coverage.

RECOMMENDATION

City proposal:

Section 23.3 Coverage second paragraph:

The member contribution shall be up to eight percent (8%) of the monthly premium, not to exceed eighty-five dollars (\$85.00) per month thereafter. The member monthly premium contribution may be modified on or after January 1, 2011 so that a member's monthly premium contribution would be up to nine percent (9%) of the monthly premium, not to exceed ninety dollars (\$90.00) per month thereafter, and again effective January 1, 2012 to nine percent (9%) not to exceed one hundred and five dollars (\$105) per month.

The member monthly premium contribution may be modified again on or after January 1, 2013, provided that the member contribution shall not at any time during the life of the contract exceed the amount of contribution that the City requires at that time (by Ordinance) of all non-represented employees of the City covered by insurance.

Rationale

This is a slight increase from the proposal from the Union for 2011 but the City proposal will put more units at the same level in regard to employee's share of the medical insurance premiums.

ARTICLE 23, SECTION 23.4, ADMINISTRATION

City position:

Change Section 23.4, G:

It is understood that the City may offer a Health Savings Account to members covered by this Agreement, subject to the same terms and conditions and eligibility requirements as are offered to other employees of the City (the City's purpose in proposing the change in this subsection is to make clear that the City may offer the HSA as the only City-provided coverage available to members.)

Union position:

Current contract language.

Discussion:

The City's goal is to move everyone to a HSA plan and is on track to do this with the general employees for 2012. This proposal is to clarify that the City can offer this as the only plan for all employees. This plan has favorable tax advantages, premiums will be less expensive and medical coverage will be the same. The plan encourages participants to control their own health coverage. The deductibles are high, but if an employee does not use health services their premium is placed in their account for their future use. There has been formal discussion with all employees and some have changed to this plan. The Union, at this time is opposed to making this the only plan available to their membership, to many unknowns.

RECOMMENDATION

Union proposal:

Current contract language

Rationale

HSA sounds like an excellent plan but, at the time, more employee education is needed.

ARTICLE 26, MINIMUM MANNING STANDARDS

City position:

To delete Article 26

Union position:

Current contract language.

Discussion:

The City argues that this clause in the contract is determining a level of service which is inherently a management right. The minimum manning standard in the contract is at the fire house, not at the site of a fire in which there are two firefighters outside and two inside a fire, which the City agrees is a safety issue and would be always enforced. If there was not enough firefighters at the site of the fire, a medic, which is a trained firefighter or a firefighter on another truck would be available. In cases of an emergency a vehicle can be taken out of service for a complete shift. That service, if needed would be met by the other firehouse in Upper Arlington or mutual support from area firefighters. The Union strongly opposes this deletion, sighting the health and welfare of the firefighters if three instead of four firefighters are fighting a fire, of which there were six fires last year in Upper Arlington. The Union provides documentation that 66 contracts in the state have this clause. The four personnel minimum rule is derived from several organizations, including the National Fire Protection Association (NFPA), the U.S. Occupational safety and health Administration (OSHA), and the Ohio Bureau of Workers' Compensation (BWC). However, none of the standards promulgated by these agencies are necessarily binding on public employers in

Ohio. Collective bargaining is the only avenue firefighters in Ohio, and particularly in the City of Upper Arlington, has to ensure that the minimum staffing levels provided by OSHA, BWC and the NFPA are followed.

RECOMMENDATION

City proposal to eliminate Article 26 in the contract.

Rationale

The City argument was very strong that this issue is a permissive issue of bargaining, but once in the contract must be bargained. Safety is an extremely important aspect of this clause, but the requirement to have four firefighters and three medics at the firehouse is not the safety factor, safety it is at the scene of the fire. The Union documents that 66 firefighter contracts in Ohio have a minimum standard. The City pointed out that only one of the comparables used by the Union on other issues in this contract has this clause. The City, shared a plan, that if there is a fire, the chief would ensure at least four firefighters would be at the scene of the fire, by using a medic, or a firefighter from the second truck (at the firehouse which has a pumper and fire truck) and if needed, take a vehicle out of service to ensure safety and ensure enough manpower at the fire. The issue, in the mind of this fact finder is that the decision will be made by the fire chief, who has experience and knowledge of what has to be done, and would keep safety as the number one factor.

ARTICLE 27 POLITICAL ACTIVITY

City position:

- A. No member shall take an active part in securing the nomination or election of any candidate for council in the City of Upper Arlington.
- B. No member shall request any member or other employee or appointed official of the City of Upper Arlington to sign any nominating petition for any candidate for any office, or any petition designed to place any issue upon, the ballot in the City of Upper Arlington.
- C. The provisions of this section shall not be construed to prevent any member from:
 1. Exercising his right to vote upon any item appearing on the ballot in the City of Upper Arlington.
 2. Providing access to the electoral process by the signature of any petition designed to provide access for any candidate or issue to the ballot in the City of Upper Arlington.
 3. Expressing his private political views in a private context in such a manner that publication of his views does not result.
 4. Responding to factual questions put to him in his official capacity in areas of his official knowledge or expertise, or to requests for his official opinion in those areas wherein he is required to be able to reach an official opinion.
- D. No member shall do any act that has the effect of precluding or discouraging any member or other employee, officer, etc. from exercising the rights described in Section 27(C) of this Agreement.

Union position:
Current contract language.

Discussion:
The City proposes to restrict active politicking in Upper Arlington City Council elections.. It seems there was a concern at the last election. The Union sites this as another example of the City seeking to undo past contracts and this is not needed.

RECOMMENDATION

Current contract language.

Rationale

It seems to the fact finder that current language, court cases, federal and state laws and possibility of unfair labor practices is sufficient in this area.

ARTICLE 28

City position:

Section 28.1 Terms and Conditions

The City and the Union agree that (1) the parties have had an unlimited opportunity to negotiate concerning any and all matters subject to collective bargaining, (2) the terms and provisions herein contained constitute the entire Agreement between the parties and supersede all previous communications, representations or agreements, either verbal or written between the parties hereto with respect to the subject matter herein, and (3), absent mutual agreement, neither party will be obligated to collectively bargain during the life of this Agreement with respect to any matter covered hereby or referred to herein, nor with respect to any other matter for which collective bargaining is not required by law.

Union position:
Current contract language.

Discussion:
This proposed change by the Employer regarding this Section is part and parcel of the Employer's proposal to delete Section 1.4. If that section is deleted, the Employer's proposal is to retain current language.

RECOMMENDATION

Current contract language.

Rationale

Since Section 1.4 was deleted, both parties agree to current language.

ARTICLE 29, SECTION 29.2

Union position:

Section 29.1 Term

This Agreement shall be effective January 1, 2011, and shall continue in full force and effect until December 31, 2013.

Section 29.2. Successor Agreement

The City and the Union mutually agree that either party may initiate negotiations for a successor Agreement by submitting a written request to negotiate to the other party no sooner than one hundred and twenty (120) days before this Agreement expires. Such negotiations shall be conducted in accordance with the provisions of Section 4117.14 of the Ohio Revised Code except as otherwise provided herein.

City position:

Section 29.1 Term

This Agreement shall be effective January 1, 2011, and shall continue in full force and effect until _____.

Section 29.2. Successor Agreement

The City and the Union mutually agree that either party may initiate negotiations for a successor Agreement by submitting a written request to negotiate to the other party no sooner than one hundred and twenty (120) days before this Agreement expires.

Discussion:

The Union position was to change this Section if the fact finder accepted their proposal in a new section 1.7.

RECOMMENDATION

Section 29.1 Term

This Agreement shall be effective January 1, 2011, and shall continue in full force and effect until December 31, 2013.

Section 29.2. Successor Agreement

The City and the Union mutually agree that either party may initiate negotiations for a successor Agreement by submitting a written request to negotiate to the other party no sooner than one hundred and twenty (120) days before this Agreement expires. Such negotiations shall be conducted in accordance with the provisions of Section 4117.14 of the Ohio Revised Code as amended from time to time.

Rationale

Both parties agreed if Section 1.7 was not accepted by the fact finder this language is accepted by both parties. Section 1.7 was not accepted by the fact finder

Date February 1, 2011

/s/ John Babel JR

John Babel Jr.
Fact finder