

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Eastlake	)	
	)	Case No: 10-MED-10-1552
and	)	
	)	Fact-Finder: Colman R. Lalka
International Association of Firefighters,	)	
Local 2860	)	

HEARING

Date of Hearing: March 23 and April 26, 2011

Location of Hearing: Eastlake, Ohio

ATTENDANCE AT HEARING

For the Employer:

Sandy Conley, Account Manager, Clemans Nelson & Associates

Michael H. Slocum, City of Eastlake Director of Finance

For the Union:

Jim Astorino, President Northern Ohio Fire Fighters Association

Josh Saperstein, President IAFF Local 2860

Michael Kaska, Vice-President IAFF Local 2860

Jason Gvora, Secretary/Treasurer IAFF Local 2860

Paul Moorehead, "A" Shift Representative

Joseph R. Tennyson, "B" Shift Representative

Jason Cahill, "C" Shift Representative

MEDIATION

Prior to the commencement of the fact-finding hearing, mediation was requested by the Parties. The Fact-Finder acted as mediator with all issues being negotiated. Tentative agreement was reached on some issues.

## CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(2). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work giving consideration to factors peculiar to the area and classification involved;

4117-9-05(K)(3). The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## BACKGROUND

The City of Eastlake has recognized the International Association of Firefighters, Local 2860 as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2010.<sup>1</sup>

Formal bargaining between the Parties has been ongoing. When impasse was reached, the Parties requested the Fact-Finder convene a hearing, attain relevant facts, and prepare a report and recommendations in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the dates and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Fact-Finder to render a report and make recommendations on the issues at impasse.

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<sup>1</sup> For clarity, the expired Agreement will be referred to herein as the Prior, Preceding, or Predecessor Agreement or Contract, and the upcoming Labor Agreement will be referenced as the Successor Agreement or Contract.

## ISSUES AT IMPASSE AND RECOMMENDATIONS

Prior to the commencement of Fact-Finding, the Parties extended the date for the filing of the Fact-Finding Report, and entered into a limited waiver of 4117.14(G)(11). All other issues are prospective in nature unless proposed language provides otherwise.

This Report will address the issues in the order presented by the Parties.

### ARTICLE 23 PART-TIME PERSONNEL

#### Permissive vs. Mandatory Subject of Bargaining

The City contends there are two issues before the Fact-Finder regarding the issue of permissive and mandatory subjects of bargaining. The first is minimum manning, which is in the Labor Agreement, and the second is staffing requirements, which is not. The City points out the Union's proposed language of three Battalion Chiefs, three Lieutenants, and eighteen Fire Fighters is new, as is the language regarding minimum staffing levels of twenty-seven or twenty-four full-time Fire Fighters. That is, the City maintains, it never agreed to specific numbers of full-time Fire Fighters, and the issue of the use of part-time Fire Fighters, it follows, is permissive.

Regarding the use of part-time personnel, the City maintains ORC 4117.08(C) provides the subject of adequacy of the work force and staffing are reserved to the City unless it agrees otherwise. In support of its position, the City presents excerpts from Fact-Finding Reports and Conciliation Awards. In those Reports and Awards, the City emphasizes, the Fact-Finders and Conciliators found the issue of staffing and minimum manning to be permissive. The City requests this Fact-Finder determine the issue of part-time personnel to be permissive and decline jurisdiction.

The Union points out the excerpts of Reports and Awards provided by the City in support of its argument involve instances wherein the Unions were requesting minimum manning be placed in the Collective Bargaining Agreement for the first time. Here, the Union continues, minimum manning is in the current Collective Bargaining Agreement, and the Union is requesting a modification of existing language. As such, the Union maintains, the matter is no longer permissive. As did the City, the Union also submits Fact-Finding Reports in support of its position, and, of the Fact-Finding Reports submitted by the Union, one is the Report and Recommendations for these Parties during the last set of negotiations. In that

Report, dated September 4, 2008, Fact-Finder Simmer noted the minimum manning provision first found its way into the Parties' Contract in 2004.

Importantly, pertinent portions of ORC 4417.08(C) provide:

\* \* \*

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

\* \* \*

(4) Determine the overall . . . personnel by which governmental operations are to be conducted;

\* \* \*

(6) Determine the adequacy of the work force;

\* \* \*

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect . . . the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. . . .

In that the Union is proposing language that modifies the minimum manning language of the Parties' Labor Agreement, which encompasses staffing, the subject is mandatory pursuant to ORC 4117.08. The City provided no case law holding a modification of the type proposed by the Union is anything other than a modification as addressed in ORC 4117.08, and the City's attempt to parse words regarding three Battalion Chiefs, three Lieutenants, and eighteen Fire Fighters as rendering the matter permissive is respectfully rejected. The same applies to the City's claim regarding minimum staffing of twenty-four versus twenty-seven full-time Fire Fighters.

In light of the above, the Fact-Finder will consider the Article 23 proposals by both Parties.

#### The Union's Position

The Union maintains that for the Preceding Agreement the City did not enter into negotiations in good faith. Instead, the City engaged in what the Union termed "Trojan Horse" bargaining. That is, the City would state one position at the bargaining table, propose language that appeared to express its stated intent, but which contained enough ambiguity to permit the City to argue an interpretation other than the intent it expressed during negotiations.

Article 22 of the immediately preceding Agreement provided:

The City shall maintain a minimum of seven (7) Fire Fighters on duty at all times.

In the Agreement prior to that, the words "full-time" were inserted between "seven (7)" and "Fire Fighters." At that time the Department only consisted of full-time Fire Fighters, and during negotiations the City indicated a need for the use of part-time personnel to assist in containing overtime costs. The Union expressed concern regarding the erosion of the Bargaining Unit, and to assuage Union concerns the City drafted Article 23, Section 1, setting forth the purpose of part-time personnel and the circumstances under which part-time personnel could be used. The City's then proposed Article 23, Section 1, incorporated into the Predecessor Agreement, provides:

The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of Eastlake and maintain the integrity of fire department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) of regularly scheduled hours of bargaining unit members. Additionally, prior to instituting a layoff among regular full-time Bargaining Unit Members, the Employer will first reduce all part-time firefighters.

It was Union's understanding that anytime the full-time complement dropped below the then current level of twenty-seven full-time Fire Fighters, they would be replaced prior to part-time Fire Fighters being used. At the end of 2010, three full-time Fire Fighters retired, reducing the full-time complement to twenty-four. The City, however, took the stance that as long as the reduction took place through attrition, replacement of full-time Fire Fighters with part-time personnel was permissible.

Prior to the addition of part-time personnel, in addition to two Officers, each shift on the Fire Department was assigned nine members, of which two healthy members were permitted time off, leaving seven Firemen and two Officers for duty. Subsequent to the implementation of part-time Fire Fighters, each shift was manned by seven Fire Fighters, two Officers, and a part-time Fire Fighter. Thus, an overtime situation would not be created by one of the seven Fire Fighters calling off due to illness or injury.

Regarding overtime opportunities and part-time personnel, Article 23, Section 2 provides:

Whenever the Employer determines that overtime work is necessary, it will offer the overtime work to eligible full-time bargaining unit members prior to offering the overtime work to part-time firefighters.

If an overtime opportunity were to come along, for example, two Fire Fighters calling off sick, the overtime is to be offered to a full-time Fire Fighter prior to being offered to a part-timer.

#### The City's Position

The City argues the language of Article 23, Section 1 is clear, and provides the use of part-time personnel will not cause a reduction in force through layoff or job abolishment. Attrition is not a layoff or job abolishment. That is, the City continues, part-time personnel did not cause the three full-time Fire Fighters to retire. The City's proposed language at the previous Fact-Finding, which language was eventually incorporated into the Labor Agreement, protected the then current Bargaining Unit Members, not Members' positions. The City contends it is never a good idea to place staffing requirements in a Collective Bargaining Agreement in that it takes away a City's ability to react to fiscal emergencies.

Continuing on the current course will result in the City being in deficit spending by the year's end. With the Governor's proposed budget cuts, the City will lose twenty-five percent of its Local Government Funds this year, and another twenty-five percent the following year. Prior to the Governor's cuts, the City was projecting a slight carryover into 2012. The City emphasizes the Chief of the Fire Department was ordered to cut his Department's expenses by \$150,000.00, and projects the cost of hiring three new full-time Fire Fighters as totaling approximately \$227,076.00 annually, as compared to the total cost of three part-time Fire Fighters of \$137,164.00, for a savings of \$89,912.00 per year.

The City also proposes deleting Section 2 of Article 23 regarding overtime being first offered to full-time Fire Fighters. This deletion is needed to contain overtime costs, which amounted to \$161,000.00 last year for shift fill and call outs. This \$161,000.00 establishes part-time personnel are needed, and the Section 2 overtime provision is not working.

#### Analysis and Recommendation

In the view of the Fact-Finder, the intent of the Article 23 part-time provision was to provide relief to the City by supplementing the full-time workforce. The use of part-timers

was a concession by the Union for the purpose of containment of some overtime costs. The use of part-time Fire Fighters was not to replace full-time personnel or to replace the regular work hours of full-time personnel, whether through layoff, job abolishment, or attrition.

This point is made abundantly clear by the language used by both the Fact-Finder and the Conciliator regarding the language of the Preceding Collective Bargaining Agreement. In the Report and Recommendations, Fact-Finder Simmer noted:

\* \* \*

The City feels very strongly that to be the most cost-effective steward of the City's finances, and to allow flexibility of scheduling to best manage overtime, holidays, vacations and unscheduled absences, management should have the discretion to augment staffing in the fire service with certified part-time fire-fighters.

...

To allay Union concerns on the impact that hiring part-timers could have on bargaining unit job security, it has proposed tempering its proposal by offering the following protection: the use of part-timers would not cause a reduction in force in the level of full-time employment nor their regularly scheduled hours.

\* \* \*

Further, if the City does eventually opt to employ part-timers this option should be used to augment staffing and not become a back-door attempt to reduce the current number of budgeted fire-fighter FTE's.

\* \* \*

Fact-Finder Simmer expressly noted the City's assurance the use of part-time personnel would not result in a reduction in the regularly scheduled hours of full-time Fire Fighters, and based upon the City's assertions recommended the City's proposed Article 23. The Fact-Finder also noted the use of part-timers was to augment the Department and was not to be used as a "back-door attempt to reduce" the current number of budgeted full-time Fire Fighters. The then current number of budgeted full-time Fire Fighters was twenty-seven, not the twenty-four the City argues is now appropriate in that the reduction occurred through retirements rather than layoffs or job abolishment.

Conciliator Meredith, granting the City's proposed Article 23 language in his Award issued December 30, 2008, was under the belief the City had no "hidden agenda" in the use of part-time Fire Fighters, and their use was to contain overtime costs. In the Award, Conciliator Meredith noted the following:

\* \* \*

The City proposes, and the Fact-Finder recommended, adding new language which recognizes the City's right to hire part-time firefighters, subject to certain restrictions. These include: (1) Part-time employee utilization would not result in a reduction in force of full-time firefighters. . . . (3) Full-time employees would be offered overtime before part-time employees would be offered overtime. . . . The

City stated that it had no "hidden agenda" and that it was not planning to cut back full-time firefighters. However, it hoped to use part-time firefighters, when hired, to cover absences which now cause what, in the City's view, is excessive overtime for full-time firefighters.

\* \* \*

Finally, the Union offered two quotations from the Mayor regarding the implementation of part-time Fire Fighters. The first, as contained in the minutes of a Finance Committee meeting on June 1, 2010:

Remember, this was bargained for. It was put in the contract. It was said by the arbitrator-Eastlake has the right to hire part-time firefighters. We are not substituting part-timers for full-timers. We are adding to the fire department with 9 extra people. Instead of the people of Eastlake having 27 firemen they will have 36 firemen.

The second from the minutes of an Ordinance Committee meeting of the same date:

First of all I have already gone on record by saying my intention in this whole deal is to never-not to replace the 27 firemen...I have no problem with the 21 and 27 because it is not my desire-nor has it ever been-to reduce the full-time firemen. I want to add to our fire department.

It is apparent to this Fact-Finder, despite prior assurances to the contrary, the City is attempting to erode the Bargaining Unit through an interpretation of the language it proposed during the last round of bargaining that is at odds with its stated intent. One of the fundamental bases of Collective Bargaining Agreements is job security. While job security can be difficult in these economic times, and layoffs may eventually ensue as a result of the Governor's budget cuts, full-time Fire Fighters should be at least given protection from erosion of the Unit through their replacement by part-time Fire Fighters.

The Fact-Finder rejects the City's proposed deletion of Article 23, Section 2, and recommends the Union's proposed Article 23 language, to wit:

ARTICLE 23  
PART-TIME PERSONNEL

Section 1. The Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer cannot utilize part-time firefighters unless the full-time bargaining unit consists of 27 full-time fire suppression bargaining unit members (21 Firefighters, 3 Lieutenants and 3 Battalion Chiefs). If overall staffing is reduced below 27 regular full-time fire suppression bargaining unit members (21 Firefighters, 3 Lieutenants, 3 Battalion Chiefs) due to attrition of any kind, the Employer shall have 6 months to fill the vacancy. If this time frame is exceeded, the use of part-time firefighters must be discontinued until such time as the full-time fire suppression bargaining unit is returned to 27 members.

Additionally, prior to instituting a layoff among regular full-time bargaining unit members, the Employer will first reduce all part-time firefighters.

For the life of this Agreement, the City shall be able to maintain a minimum of 24 full-time fire suppression bargaining unit members (18 Firefighters, 3 Lieutenants and 3 Battalion Chiefs). All other language is still applicable. The only intended change is that 27 members will temporarily be reduced to 24.

Section 2. Overtime Work. Whenever the Employer determines that overtime work is necessary, it will offer the overtime work opportunity to eligible full-time bargaining unit members prior to offering the overtime work to part-time firefighters.

Section 3. Ranking Officer Functions. The Employer agrees that part-time firefighters will not be used for supervisory/rank personnel.

## ARTICLE 22 MINIMUM MANNING

### The Union's Position

The Union states it recognizes tough economic times, however, the Union continues, it gave all it can in concessions. That is, in place of the current Article 22 language requiring a minimum manning of seven Fire Fighters on duty at all times, it proposes language providing for six full-time Fire Fighters upon one of two triggering events taking place. Under its proposal, the City would have eight full-time Fire Fighters assigned per shift, and could maintain its two healthy body rule without incurring overtime costs, assuming no one is off sick or injured. Originally, the Union continues, the intent of Article 22 was for seven fire suppression personnel, however, the City has taken the position the Fire Marshal, a forty-hour employee, can be counted toward the seven. The Union's proposed language clarifies the original intent of Article 22.

The Union is not comfortable with its proposal, however, the Union emphasizes, if shift strength is reduced to six, it wants a complement of six full-time Fire Fighters, and not a complement consisting of one or more part-timers. Firefighting is a team effort, and people who work together on a daily basis and know the job well are needed. The Union also points to the list of comparable communities used by the City in the last round of negotiations, and notes Eastlake's minimum manning is in line with comparable communities. It must be noted, the Union states, that not all Collective Bargaining Agreements in those communities provide for minimum manning. That is, the importance of minimum manning is recognized without it being in the Labor Agreement.

The Union also emphasizes the point that the Fire Chief was not in attendance at either of the two days of the Fact-Finding Hearing. The reason, the Union states, is the Chief does

not agree with the City's decisions regarding the Fire Department, and his testimony at the Hearing would not be in support of the City's proposals. For example, when the Chief was instructed to cut \$150,000.00 from the Department budget, he determined the part-timers should be cut and was told that was not an option, make cuts elsewhere.<sup>2</sup> The determination was then made that of the three vacant positions resulting from the three retirements of full-time Fire Fighters, one full-time Fire Fighter would be hired. However, the Union points out, that hire has yet to take place.

The Union believes the City will cut fire staffing before cutting less essential services, and points to the reopening of the City's pool and paying for a fireworks display. These are items the public sees, and, the Union argues, it's politically expedient to make such decisions. The residents do not see staffing cuts, and that is the reason for its proposed language calling for triggering events prior to cuts in manning being implemented.

One of the triggering events is shift fill costs reaching \$80,000.00 in a year, including pension payments. Pursuant to its proposal, the Union indicates, when the \$80,000.00 cap is reached, the Department can operate with six full-time Fire Suppression personnel. Average annual shift fill overtime costs since 2004 have been \$138,000.00. When shift fill costs reach the \$80,000.00 cap, the full-time staffing can be reduced to six full-time Fire Fighters, resulting in an annual shift fill savings of \$58,000.00. The City's savings, the Union states, would be \$1.1 million through the end of 2012 by eliminating the part-time positions, and operating with six full-time fire suppression personnel. That is, by not replacing the three full-time Fire Fighters, the city is saving \$750,000.00<sup>3</sup> through the end of 2012, and savings over the same period will total \$350,000.00<sup>4</sup> by eliminating the part-timers. By not eliminating the part-timers, the savings would total \$924,000.00 through the end of 2012.

The second trigger is the City being placed in Fiscal Emergency. In that event, pursuant to the Union's proposal, the City would be permitted to reduce daily staffing requirements. By setting specific triggers, the Union maintains, reduction in staffing will not be permitted unless economic conditions dictate the requirement to do so.

Notwithstanding the importance of economic factors, the Union continues, safety is

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<sup>2</sup> It is noted the Fire Station is located in the same complex of buildings as the hearing location, and the Fire Chief was not called by the City to refute the Union's assertions, nor was a reason provided for the Chief not being called.

<sup>3</sup> This figure includes roll-ups with the mid-priced, two-person health plan.

<sup>4</sup> This computation was based on 2011 being half over.

paramount and must be considered, and its proposal, keeps the Fire Fighters safe and Eastlake's residents safe. Fire suppression is labor intensive, and the City has an obligation to provide manpower to permit job performance as safely as possible. In support of its position, studies were presented indicating the importance of crew size and response time.

While the City indicated the residents wanted fireworks and access to a swimming pool, the Union points out that in 1981 the residents passed a tax increase providing for a full-time Fire Department as well as additional Police Officers. Additionally, every five years for at least the last fifteen, the residents have renewed the fire levy. Safety, the Union states, is "invisible" compared to a swimming pool and fireworks. That is, the residents do not realize the importance of police or fire personnel until needed, and do not realize how much more difficult search and rescue becomes in a residential fire with one less member. When manning is cut, the City never indicates to the Department what job it no longer wants the Fire Fighters to perform when arriving at the scene.

The Union believes its Article 22 proposal provides for flexibility to get the job done without comprising safety while at the same time providing the City a significant cost savings.

#### The City's Position

The City proposes deleting Article 22 in its entirety, arguing absent mutual agreement minimum manning language should not be continued. The City contends it needs the ability to react when faced with declining revenues. There may come a time, possibly as early as next year, when the City is unable to fund its operations at the current level. When that time approaches, the City must be able to react, and minimum manning prevents this. Years ago, the City emphasizes, it was a different Mayor and Council that placed manning in the Collective Bargaining Agreement. Times have changed, the City continues, and minimum manning now needs to be removed from the Labor Agreement. Of its comparable communities, the City notes only two of the nine jurisdictions surveyed provide for minimum manning in their Labor Agreements.

The Union mentions the costs involved in the pool and fireworks, however, the City points out, these are the types of decisions the Mayor and Council are elected to make. They are not Union decisions to make, and having manning in a Labor Agreement removes the decision from the elected officials, especially in tough economic times.

In addressing the issue of safety, the City contends safety occurs at the scene of the

fire, the City contends, not at the firehouse. That is, seven people at the firehouse does not provide for more safety, it's what happens at the fire. Moreover, the City can rely on Mutual Aid when necessary. Safety doesn't require full-time Fire Fighters, and, the City notes, part-time Fire Fighters are used throughout the state.

The Union has accused the City of deception in the use of part-timers, however, economic times have changed. That's not being deceptive, the City argues, that's being reactive. Eliminating part-timers will not help in providing sufficient service to the residents. The City needs both full-time and part-time fire personnel. To wait until shift fill reaches \$80,000.00 is a guarantee of a minimum amount of overtime the City may not be able to fund. Why, the City queries, must it pay overtime before gaining relief? Why does the City have to go into Fiscal Emergency before gaining relief? Those situations should not be controlled by a Labor Agreement.

Regarding the tax levy mentioned by the Union, Michael Slocum, the City's Finance Director, noted the millage of 1.8 when the levy first passed has been reduced to an effective millage of 0.76 as the result of inflation. Moreover, those proceeds are not placed in a special fund for the operation of the Fire Department, and, in any event, the funds generated are nowhere near enough to cover the operating costs of the Fire Department. Additionally, at the beginning of the year, the City expected to collect \$685,000.00 in Electric Deregulation and Personal Property Reimbursements, however, with the Governor's cuts, those funds are lost, cutting the City's receipts to \$450,000.00.

Mr. Slocum also pointed out that in order for the City to be in Fiscal Emergency, means the Mayor, Council, and the Finance Director failed in passing a balanced budget. Mr. Slocum indicated that requiring him to balance the budget to prevent the City from falling into Fiscal Emergency without considering manpower on the Fire Department places him in a Catch-22. Additionally, Mr. Slocum stated, the City's Recreation Department was closed in 2004 or 2005, and the only City-provided recreation available for residents is the swimming pool, which costs \$50,000.00 annually, and the fireworks at a cost of \$10,000.00. An annual figure of \$60,000.00 out of a \$13 million budget establishes the City is not spending a tremendous amount on recreation. In fact, Mr. Slocum concluded, recreation has taken a back seat to keep the Safety Forces where they are currently.

### The Union's Rebuttal

The relationship between the City and the Union is long-term, and in exchange for items in the Collective Bargaining Agreement the Union made concessions in other areas. The fact the new Administration does not want minimum manning in the Agreement does not mean it should be taken out. The City is not considering what the Union gave up to have minimum manning placed in its Labor Agreement. In response to the assertions minimum manning should be left to elected officials, the Union notes the seven man minimum is in the Labor Agreement as the result of negotiations with previously elected officials.

Also, the Union questions the argument of the City regarding safety beginning at the scene of the fire and not at the firehouse. Staffing on scene arrives from the firehouse, and effective fire suppression and EMS work is based on arrival on scene within four minutes. Mutual Aid cannot arrive within four minutes, it's geographically impossible. Additionally, Mutual Aid assumes the other departments will be available, and the exhibit of comparable communities establishes numerous runs in the other departments. Mutual Aid does not provide for initial response, the Union states, it is a trap providing a false sense of security. Mutual Aid is analogous to starting a football game with six players, with the remainder of the team showing up by the end of the first quarter. By that time, the Union concludes, the game is lost.

The City also states the Union does not want to give up mandatory overtime, yet three retired Fire Fighter have not been replaced. By not paying for the three replacements, the City may have to give up some overtime to keep the Department staffed. For example, to save \$280,000.00 by not replacing the three, the City may have to pay \$80,000.00 in overtime. The City must provide service, and it can fund the service through regular pay for three replacements, or through overtime. The decision rests with the City.

### Analysis and Recommendation

Both Parties raised valid arguments and concerns regarding their respective positions. The Fact-Finder finds compelling the argument of the Union pertaining to minimum manning and initial response to the scene of the emergency. Also compelling is the Union's argument regarding the cost savings if a lack of funds requires a minimum manning reduction to six Fire Fighters.

The Union proposes the following language be included in its Labor Agreement in place of the current language of Article 22:

The City shall maintain a daily minimum of seven (7) fire suppression personnel (Fire Fighter, Lieutenant and Battalion Chief, excluding the Fire Marshal) on duty at all times. If the use of part-time employees is discontinued, the City shall maintain a daily minimum of six (6) fire suppression personnel (Fire Fighter, Lieutenant, Battalion Chief, excluding the Fire Marshal) on duty at all times.

For the Life of this Agreement, it is agreed that should "Shift Fill" overtime costs exceed \$80,000 in any given year, the City shall have the ability to adjust daily staffing levels to 6 for the remainder of the year. On January 1<sup>st</sup> of the following<sup>5</sup> year, staffing shall be returned to the level as deemed by this Agreement and the "Shift Fill" cost shall be reset to \$0. "Shift Fill" costs shall be determined by adding the cost of the hours filled, plus any associated pension costs if applicable.

For the life of this Agreement, the City shall be able to reduce daily staffing requirements if it is placed into "Fiscal Emergency" by the Auditor of the state of Ohio until such time as they are released from "Fiscal Emergency."

Just as compelling as the Union's argument is the City's argument regarding loss of revenue, and its strong desire to remain out of Fiscal Emergency. As Mr. Slocum indicated, should economics deteriorate he would find himself in an untenable position if he were required to submit a balanced budget without considering cuts in the Fire Department.

During this set of the City's labor negotiations, this is the first Collective Bargaining Agreement to be negotiated between the City and its other Labor Unions, and it is assumed this Agreement will serve as a pattern for the City's Labor Agreements with its remaining employees. The City's Contract with the FOP provides for minimum manning, however, it is unknown if the Contracts with other Unions so provide. If minimum staffing is retained in the Fire Contract, and successfully removed from the City's other Contracts, then, in the event reductions in departments are needed to remain out of Fiscal Emergency, Fire personnel would be protected to the detriment of personnel in other departments.<sup>6</sup> If minimum staffing is retained in all Labor Agreements, the City will be unable to react to an impending economic crisis, and could find itself being placed in Fiscal Emergency.

Balancing the concerns of the Parties, the Fact-Finder recommends the Union's proposed language with the exception of a change to the last paragraph. That paragraph should read:

For the life of this Agreement, the City shall be able to reduce daily staffing requirements pursuant to Article 9.

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<sup>5</sup> The Fact-Finder has substituted the word "following" for the word "proceeding."

<sup>6</sup> Of course, the converse is also true.

It is the intent this change in the Union's proposed language will make clear the City, if faced with the dire necessity of layoffs to remain out of Fiscal Emergency due to a lack of funds,<sup>7</sup> it may do so pursuant to Article 9.

ARTICLE 24  
SALARY SCHEDULE

Economic Viability of the City

Mr. Slocum painted a calamitous picture of the City's current economic condition. Four components of the state's impending budget cuts will adversely affect the City's finances:

First, there will be a twenty-five percent cut in Local Government Funds this year, another twenty-five percent the following year, and thereafter Local Government funds will remain at fifty percent of current levels. In terms of dollars, Local Government Funds were budgeted at \$1.8 million, and that figure has now been revised downward to \$1.593 million this year, \$1.1 million next year, and \$910,000.00 in 2013 and beyond.

Second, in 2002 the State wiped out \$100 million in taxable valuation for CEI, with the assurance the State would keep the City whole through 2017. The State is now renegeing on that promise, Mr. Slocum indicated, and Electric Deregulation Reimbursement will disappear the second half of this year. Approximately \$411,719.00 had been budgeted in the General Fund for this revenue source, however, based on what the Governor is now indicating, that number will be \$203,765.00, which the City has already received, and zero dollars next year and beyond.

Third, CAT Tax Reimbursement was to continue through 2018, but is being eliminated. The loss of CAT Tax Reimbursement will decrease revenue from \$126,613.00 to \$23,813.00 in 2011, and down to nothing in the following years.

Fourth, Inheritance Tax will be done away with in 2013. The Estate/Inheritance Tax netted the City \$74,774 in 2010, and that same figure has been projected for 2011 and 2012. In 2013 that source of funding will be lost entirely.

In Addition to the four components above, declining property valuations have adversely affected the City. Total property valuations in the City declined from \$580 million

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<sup>7</sup> Or a lack of work as provided in Article 9.

in 2006 to \$523 million in 2010, and there is nothing to indicate the decline will not continue.

After the Department Heads cut \$150,000.00 from their budgets as directed by the Mayor, Mr. Slocum projected a \$10,000.00 balance in the General Fund at the end of this year. However, as the result of the impending state cuts in the City's revenue, Mr. Slocum is now projecting a deficit of \$538,437.00 in the General Fund at year's end. This deficit assumes no wage increases for City employees.

Mr. Slocum pointed out portions of dollars received from Electric Deregulation and the CAT Tax Reimbursement also go into funds other than the General Fund, as, for example, the Fire Pension Fund, Police Pension Fund, and Bond Retirement Fund. Anytime there are deficiencies in those other funds, the City must make up the difference out of the General Fund. It is anticipated that in 2011 a dollar figure of \$6,828.00 will be transferred from the General Fund to other funds to compensate for the shortfalls, \$34,848.00 will be transferred in 2012, and \$154,504.00 in 2013.

With 2012 projected expenses of \$13.9 million and revenues of \$13.15 million, the City was aware it would need to make up a shortfall of approximately \$750,000.00, but that figure is now compounded. The \$750,000.00 is now \$2.3 million. That is, Mr. Slocum stated, the City needs to raise \$2.3 million next year just to match the current rate of services.

To address Union concerns regarding the safety of employees, Mr. Slocum indicated that while safety is paramount, the City must raise the money from someplace to cover the costs of safety. Moreover, Mr. Slocum continued, he's left wondering how many Police and Fire personnel the City will be able to retain on the payroll. Raises to Fire Fighters of one percent or two percent simply can't happen. Seven years ago Service Department personnel were cut from forty to twenty, and those are the employees who operate the snow plows as well as performing other essential City services. The Union can point to \$10,000.00 for fireworks, but from where, Mr. Slocum asks, does the next \$10,000.00 come? The City received a grant from the State for the operation of the swimming pool, which costs the City \$50,000.00 annually to operate. That is the extent of recreation provided by the City, and constitutes a relatively small amount of the City's budget. The cuts the City is facing will no longer eliminate fat, Mr. Slocum analogized, there is no fat in the budget. Cuts will now be eliminating muscle and bone.

There is a four mill levy being considered by the Finance Committee. Should that

levy be placed on the ballot and pass, that will raise \$2 million, however, that will be insufficient to cover next year's deficit. The City will still be \$300,000.00 short, and the City is hoping to make up the shortfall elsewhere. For example, legislation authorizing Internet Cafés has recently passed and will probably net the City about \$50,000.00. That \$50,000.00 is not reflected in the City's current figures.

Regarding the City's current economic health, the Union noted the City provides a 100% reciprocity for residents working in, and paying income tax to, other communities. Council can eliminate the 100% reciprocity, the Union states, but, in response, Mr. Slocum pointed out that was done once before, and every member of Council was voted out of office as a result. The Union, drawing from the City's earlier argument, stated City officials are elected to make those tough decisions. If the 100% reciprocity were eliminated, \$3 to \$3.5 million would be raised.

#### The Union's Position Regarding Article 24

The Union proposes a wage increase of 0% in the first year of the Collective Bargaining Agreement, 1% in the second year, and 2% in the third. Additionally, in light of Senate Bill 5, the Union proposes an additional 1% increase with a concomitant removal of the 1% Pension Pickup that currently exists.

In support of its proposal, the Union noted that the September 4, 2008 Fact-Finding Report during the last round of negotiations contained the following passage:

. . . the comparables provided by both the Union and the City leave no question that, as to wages alone, the rank and file in this unit substantially trail other, similarly situation fire fighting units in northeastern Ohio, in some case by \$10,000.00 or more.

In 2007 Eastlake's Fire Fighters trailed the average wages of Fire Fighters in the comparable communities of Willoughby, South Euclid, Lyndhurst, Painesville, and Parma Heights by \$6,149.00. As the result of Fact-Finding and Conciliation, in 2011 Eastlake's Fire Fighters trailed by \$3,472.00. The Union's figures include paramedic incentive and Pension Pickup.

The problem with the comparison of wages, the Union emphasizes, is Eastlake's vacation and holiday buy-backs were eliminated, and those buy-backs averaged \$4,373.00. That is, the disparity in salary compared to other Fire Fighters was made up in increased wages but removed in benefits, and Bargaining Unit Members are now in a similar situation

to where they were three years ago. Compared to the average total compensation, including benefits, on the average a ten-year employee in this Unit earns \$2,781.00 less, but works an additional one-hundred-three hours annually. Twenty-year employees earn \$2,660.00 less and work an additional seventy-eight hours annually. This translates to \$2.63 less per hour for Eastlake Fire Fighters.

The projected costs to the City over the life of the Collective Bargaining Agreement for the Union's proposed wage increases total \$91,930.00.

The Union also proposes an increase in the current 10% Rank Differential. Sometime during the last two years, the Union points out, the Mayor determined Officers were no longer eligible for overtime. Prior to Officers being ineligible for overtime, two Officers were permitted on duty, and if a shift on a particular day had only one Officer assigned, and another body was needed, an Officer could be called in on overtime. The ineligibility of Officers for overtime has a negative financial impact on Officers, and the Union's proposed increase in Rank Differential serves as an offset.

Of the Rank Differential in the comparable communities, Painesville has a low of 10% and Parma Heights a high of 16%. Lyndhurst's Rank Differential is 12%, South Euclid's is 11.5%, and Willoughby's 11%. The Union proposes the increase in Rank Differential take effect one year after execution of the Collective Bargaining Agreement, and projects cost to the City in 2012 to be \$8,811.00.

Finally, the Union addresses the matter of Paramedic Incentive. Currently Paramedic Incentive is added directly to the hourly rate of Fire Fighters, but this is not explicitly stated in the Labor Agreement. The Union desires to add language memorializing that portion of Fire Fighter salary that is Paramedic Incentive, and proposes the following language:

Section ( ). Paramedic Premium. A Bargaining Unit Member (except Battalion Chiefs), certified as a paramedic, shall have a premium of 4.5% of the firefighter top rate added to their respective hourly rate. A Battalion Chief who is certified as a paramedic shall receive a premium of 2.25%.

The Union proposes the language take effect two years after execution of the Contract.

While Battalion Chiefs are not assigned to the ambulance initially, Battalion Chiefs are assigned to the ambulance at times as matters unfold during emergencies. Moreover, one of the Battalion Chiefs serves as the EMS coordinator, an additional responsibility for which the Battalion Chief is not compensated. Battalion Chiefs are certified as paramedics,

however, in that they are assigned to the ambulance only part of the time, the Unions proposes the 2.25% Paramedic Incentive as opposed to the 4.5% Incentive received by other Bargaining Unit Members.

The Union points out its proposal still leaves Eastlake Fire Fighters behind comparable communities. All comparable communities provide full Paramedic Incentive to Battalion Chiefs. The cost to the City is projected as \$7,058.00.

#### The City's Position

The City is seeking financial stability, and rejects all increases in salary or other compensation. The City proposes the current wage rates be maintained for the duration of the Agreement, and the steps increased before the top rate for Fire Fighters is reached from two years to five. This increase would apply only to new hires. Additionally, the City proposes language that takes into account those years containing twenty-seven bi-weekly pay periods instead of the usual twenty-six.<sup>8</sup> The City admits the twenty-seven bi-weekly pay periods will not occur during the life of this Successor Agreement, but the City desires this language in the Agreement prior to the situation arising.

Regarding the increase in Rank Differential, the City notes Officers are still eligible for overtime if an Officer's position needs to be filled. It makes little sense, the City maintains, to pay a Lieutenant or Battalion Chief overtime when a Fire Fighter is needed. That is the only change made to Officers eligibility for overtime, and does not justify the increase in Rank Differential. The City also notes the Union is proposing an 11% Rank Differential from Fire Fighter to Lieutenant, another 11% from Lieutenant to Battalion Chief, and a 2.25% Paramedic Incentive to Battalion Chiefs on top of that. That would be an almost \$6,000.00 increase for Battalion Chiefs by the end of the Successor Contract.

The City argues current language regarding Paramedic Incentive and Rank Differential has been in effect for years, and now is not the time for changes. Singling out specific groups for the Union's proposed increases would create ill-will among other City employees at a time when the City is telling all employees there is no money for increases. Also, the City is considering placing a four mill levy on the ballot, and questions how it can

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<sup>8</sup> The City also proposed an entry level rate for Lieutenant and Battalion Chief, however, after discussion with the Union, that proposal was withdrawn.

do so while telling the residents it is providing increases in remuneration to employees. Moreover, even if the four mill levy is passed, the City will still be short about \$300,000.00.

At the current wage schedule, the projected costs for Fire Fighters in 2011 is \$2.5 million at the straight time rate. The City states this Bargaining Unit fared better during the 2007 negotiations than did its counterparts. The average pay increases to Fire Fighters in comparable communities was 3.8%, 2.6%, and 1%. Eastlake Fire Fighters received 3%, 3%, and 3%, however, they additionally received \$0.25 per hour increases in 2008 and 2009, and a \$0.20 per hour increase in 2010. The City also indicates Eastlake is on the lower end of the spectrum at the entry level rate of pay, but points out Eastlake is comparable to other communities at the maximum rate.

Regarding the Pension Pickup and Senate Bill 5, it is the Governor's position the state budget will be balanced, and while money is taken away from counties and cities, Senate Bill 5 is provided as a counter to the cuts to permit counties and cities to decrease their costs. The City indicates it is unknown if Senate Bill 5 will become reality, but believes the state budget will probably go into effect in July.

#### The Union's Response

Regarding increasing the number of steps to the top rate of pay, the Union notes Fire Fighters in comparable communities top out at two or three years. Painesville and Willoughby top out after three years, however, those communities have higher starting rates than Eastlake.

The Union opposes the City's proposal to account for years in which there are twenty-seven bi-weekly pay periods instead of the usual twenty-six. This would result in days being worked without pay in those years, a point the City disputes. In fact, the City counters by stating Fire Fighters receive extra pay in years containing twenty-seven pay periods. The Union noted, however, the change the City proposes will not have any effect during this Contract, and the City has failed to demonstrate any harm under the current manner of calculating pay. The Union requests the City's proposal not be recommended.

Finally, regarding Rank Differential, the Union argues its proposal is to offset ill-will created by excluding Officers from overtime. If there are two Officers on shift instead of one, the Union contends, the City is better served.

## Analysis and Recommendation

During the presentation of the Finance Director, several questions were posed by the Union. Those questions were on the order of an exchange of information, and did not call into question the figures presented by Mr. Slocum. They did, however, emphasize uncertainties regarding the City's presentation. What is highly notable, is the cloud of uncertainty resulting from Senate Bill 5, and it being unknown whether it will take effect; whether the four mill levy will even be placed on the ballot, and, if so, if it will be approved; the uncertainty of the state's upcoming budget, currently pending in the state legislature; and the possible elimination of reciprocity whether politically palatable or not. In light of these uncertainties, it is the view of the Fact-Finder changes in the Parties' Labor Agreement dealing directly with economic issues, should, at this time and for the most part, be avoided.

To begin this analysis, the Fact-Finder recommends against the City's following proposal:

Employees in active pay status will be paid bi-weekly based upon the applicable annual salary divided by twenty-six (26) or twenty-seven (27) pays as applicable for that calendar year.

As noted and argued by the Union, no harm has been established using the current method and payment of wages. Additionally, the situation of twenty-seven bi-weekly pay periods in one year will not arise during the term of this Successor Contract. The Fact-Finder recommends the current manner of bi-weekly calculation and payment be continued.

The Fact-Finder recommends against the Union's proposed language calling for a 2.25% Paramedic Premium for Battalion Chiefs as well as the increase in Rank Differential. The Fact-Finder is mindful of the Union's contention regarding the financial impact on Officers caused by the removal of some overtime opportunities. However, based on the record presented, the Fact-Finder is unable to determine the dollar loss to Officers resulting from the loss of some overtime opportunities, and how the loss compares to the increase in Rank Differential.

The Fact-Finder is also mindful of the Union's arguments that Battalion Chiefs are Paramedics and one Battalion Chief serves as the EMS Coordinator without recompense for performing the duties the Coordinator position entails. However, the Fact-Finder also notes the costs to the City for both increases is projected as \$15,869.00. As the City's finances

currently stand, and given the unknowns as indicated above, this added cost is not within the City's ability to pay.

Additionally, there is an overriding reason which must be considered. That is, if the City is to remain fiscally viable, tax changes appear necessary. These changes are needed to potentially avoid layoffs and meet payroll for all City employees in the near future. As the City noted, it will be difficult to justify placing a four mill levy on the ballot while at the same time explaining to residents that increases were granted to City employees. Moreover, the City emphasized that with the Rank Differential and the 2.25% Paramedic Incentive to Battalion Chiefs, by the conclusion of the next Successor Agreement Battalion Chiefs will have received a pay increase of almost \$6,000.00. Should such an increase be publicized prior to the levy being placed in front of voters, it is the belief of the Fact-Finder the likelihood of the levy passing will be substantially reduced, if not totally eliminated.

The Fact-Finder also recommends against the City's proposed increase in the number of steps for new hires to reach the top pay rate for Fire Fighters from two years to five. The potential savings to the City was not projected, in all likelihood as the result of there being no prospect of new hires in the near future. Additionally such step increase would result in Eastlake's Fire Fighters being out of line with comparable communities in the number of years needed to reach the top rate. To be sure, of the City's nine comparable communities, two required six steps to reach the top rate, and one required twenty years. However, it is noted Eastlake Fire Fighters begin at a starting rate of \$40,749.00 while the two comparable communities requiring six steps begin at \$55,106.00 and \$46,642.00. The community requiring twenty years to the top rate has a starting salary of \$66,174.00.

The Union's proposal a new Section be added to Article 24 providing that in lieu of Paramedic Premium being included in base pay, separate provision be made. Just as argued by the Union against the City's proposed new method of recalculating bi-weekly pay periods during years containing twenty-seven pay periods, no harm has been demonstrated under the current system of Paramedic Premium. The Fact-Finder recommends against this Union proposal, and recommends, instead, the current manner of including the Paramedic Premium in base pay continue.

Regarding the pension pickup, the Fact-Finder is in agreement with the Union's position. Pension pickups are routinely negotiated into Labor Agreement in lieu of wage

increases. Should the Union's 1% pension pickup be removed by the implementation of Senate Bill 5, the 1% pickup should be restored to Bargaining Unit Members in the form of a 1% pay raise.

Regarding wage increases, the City proposes the following language:

Section 2. General Wage Increase. Wage rates will remain unchanged for the duration of this agreement. The actual wage rates are attached and appended to the parties' agreement as Appendix A.

The Union proposes the following:

Section 2. General Wage Increase. The following represents the annual base percentage increases for bargaining unit members for the duration of this agreement. The actual wage rates are attached and appended to the parties' agreement as Appendix A. Effective upon execution of the contract, bargaining unit members will continue at their current rate. Effective the beginning of the second year, bargaining unit members will receive a 1% general wage increase. Effective at the beginning of the third year of the Agreement, bargaining unit members will receive a 2% general wage increase. Also, an additional 1% wage increase will be included at the beginning of the third year of the Agreement with a coinciding removal of the 1% pension "pick-up" which currently exists.

Regarding wage increases, as Mr. Slocum noted, with the current losses in revenue as well as potential losses based upon the Governor's proposed budget both impacting the City's ability to pay its employees, wage increases cannot be recommended at this time. However, as the result of the uncertainties noted above, the Fact-Finder cannot recommend the City's proposed zero percent wage increase over the entire duration of the Labor Agreement. It is the Fact-Finder's view a compromise between the Parties' two positions is called for. To that end, the Fact-Finder recommends the following language be substituted for the current Article 24, Section 2 language:

Section 2. General Wage Increase. The following represents the annual base percentage increases for bargaining unit members for the duration of this agreement. The actual wage rates are attached and appended to the parties' agreement as Appendix A. Effective upon execution of the contract, bargaining unit members will continue at their current rate. A wage reopener will become effective the beginning of the second year of this Agreement, to determine wages for the remainder of this Agreement. Also, an additional 1% wage increase will be included upon a concomitant removal of the 1% pension "pick-up" which currently exists.

ARTICLE 9  
REDUCTION IN FORCE & RECALL

The City's Position

The City proposes a new Section 5 be added to Article 9. The proposed addition reads:

Section 5. Furlough Time. In an effort to avoid or minimize any potential layoffs, the Employer shall have the ability to furlough shift employees for up to ninety-six (96) hours per fiscal year (January through December) and to furlough non-shift employees (forty [40] hour per week employees) for up to eighty (80) hours per fiscal year. For purposes of this article, a "furlough" shall mean unpaid time off from work. Furloughs will be handled in the following manner:

- A. Prior to any furlough days being taken, the Employer will meet with and notify the Union of the number of days that are necessary to be furloughed;
- B. The Employer will offer the most senior employee which days they want to schedule off (and rotate to the next senior within the shift, etc.);
- C. Once scheduled, furlough days cannot be changed;
- D. Any employee who does not choose his days within five (5) days of notification will have his days scheduled by the Employer within the following five (5) day period;
- E. The total number of employees to be off on a certain day will be determined by the Employer.

Should a reduction in force become necessary, the City contends the proposed language, which provides the ability to furlough in lieu of layoffs, would spread the pain. The ability to furlough up to ninety-six hours amounts to a wage reduction for shift employees of 2.5%, but prevents a layoff of two full-time employees and the elimination of all part-timers. Overall costs would be reduced while maintaining service levels. The ability to furloughs is a major issue, the City states, if it does not obtain the flexibility it needs on minimum manning and staffing. The City concludes by noting it has an impending \$0.5 million deficit this year and is facing a greater deficit next year, and points out furloughs are currently available for state employees.

The Union's Position

The Union notes the City's proposed addition begins with, "In an effort to avoid or minimize any potential layoffs . . ." and believes the proposed language grants the City an unfettered ability to furlough employees. That is, the City does not need to prove there will be layoffs prior to issuing furloughs. The Union referred to ninety-six hour furloughs as a

3.5% reduction in wages, and indicated if Senate Bill 5 takes effect the City will be permitted to furlough in any event.

#### Analysis and Recommendation

In keeping with the Fact-Finder's above recommendation under Article 22 to prevent an erosion of the Bargaining Unit, to prevent an erosion of the wage rates of the Bargaining Unit Members during the period of uncertainty also noted above, and to address Union concerns regarding the unfettered right to layoff pursuant to the City's proposal, the Fact-Finder recommends the City's proposed language not be incorporated into the Successor Agreement.

### ARTICLE 20 OVERTIME

#### The City's Position

The City proposes modification of Article 20 to define the work year as containing fifty-two weeks, and thirteen twenty-eight day work periods. The City further proposes average work hours in each twenty-eight day work period be computed at two-hundred-six and eight tenth (206.8) hours. Additionally, the City states, its proposed language bases overtime on work performed, not simply scheduled. Under the current method of operation, an employee can be on vacation for five out of nine scheduled days in a twenty-eight day cycle, work one day, and be paid overtime. The City additionally proposes a reduction in the number of holidays resulting in double time for call-backs from ten to four.

The City is attempting to reduce overtime costs, which, according to its figures, establish approximately \$150,000.00 annually for shift fill and call ins. Total overtime in 2010 was \$245,860.00. Overtime costs decreased in 2010 when part-timers were implemented, the City states, although the relief was probably not that great. The cost to the City for a twenty-four hour shift for a Fire Fighter on overtime is \$872.28, while the cost of a part-timer is \$336.00. In 2010 the average time off due to injury or extended absence was ninety-two days, and, if the same ninety-two day figure holds for 2011, the savings to the City by using part-timers would be \$49,338.00. The City emphasizes it is not proposing all vacancies be covered by part-timers, but there is savings to be obtained if it has some flexibility.

The City explains its proposed change to Article 20, Section 1 is for clarification, and admits its proposed changes to Sections 2 and 3 are Union concessions. In negotiations for eighteen Contracts in which the City's advocate has been engaged in the last twelve to fourteen months, concessions have been included in all. This, the City concludes, is the state of fiscal affairs presently facing public employers.

#### The Union's Position

If the City is successful in obtaining all its proposed concessions and reductions, there may be Fire Fighters who are unable to survive financially. During the last round of negotiations, the City obtained concessions and now wants more. There is only so much the City can get out of a working person. When times were good and the Union requested improvements, the City said it couldn't give the Union everything it wanted. Now during this role reversal the Bargaining Unit Members must say they can't concede everything back to the City they obtained through the give and take of bargaining.

While it is permissible to put numerous concessions on the table, the Union requests the Fact-Finder look at the overall effect of what the City is proposing. If too much is taken from an employee's check, that employee has revenue problems as does the City. After obtaining thousands of dollars in earnings from the Fire Fighters in the last Contract, the City is attempting to obtain too many additional concessions in the Successor Agreement.

#### Analysis and Recommendation

In addition to the above noted uncertainties facing the City regarding its finances, and while remaining mindful that the four mill levy if placed on the ballot and passed still leaves the City short by \$300,000.00, the Fact-Finder also notes the aspect of job security guaranteed by a Labor Agreement. Union concessions in the form of compensation and job replacement through the use of part-timers can only be taken so far, and then cuts must be made elsewhere. As such, layoffs of City employees may be in the future, but further concessions in the compensation package of Fire Fighters will take these Bargaining Unit Members too far out of line with comparable communities. The replacement of full-time hours through the use of part-timers as a method of cost savings creates or adds to a downward slide of compensation for Bargaining Unit Members.

No evidence of a detriment to public safety has been presented by the City in the event layoffs of Fire Fighters are implemented. The City will still have a Fire Department with full

capabilities to respond to emergencies. Obviously the efficiency of the Department will be eroded somewhat, but there is no evidence before the Fact-Finder the Department's protection of the public will be impaired. As Mr. Slocum noted during his presentation of the City's finances, the voters will decide on the level of service desired when considering the four mill levy.

The Fact-Finder recommends against modifying Article 20 as proposed by the City.

#### ARTICLE 46 DURATION

Both Parties agree upon the inception date of the Successor Agreement as the date of completion of the final resolution process. The disagreement centers around the expiration date. The Union proposes the Successor Agreement remain in effect for three years after the effective date, and the City requests the Labor Agreement expire December 31, 2012.

#### The City's Position

Given the uncertainty of the current economic situation and Senate Bill 5, the City feels a shorter duration Agreement is in everyone's best interests. If the four mill levy is not placed before the voters or doesn't pass, the City can't continue, and at that point may be placed in Fiscal Emergency. If the City does not obtain relief in the areas of manning and the issue of part-time Fire Fighters, it cannot live with a three year Contract, and will need to return to the table to readdress those issues.

#### The Union's Position

Both Parties are taking Senate Bill 5 into consideration, with the City looking to benefit, and the Union seeking protection, from its implementation. Three year Labor Agreements are the standard, the Union points out, and the Parties need to spend less time at the bargaining table. With an eighteen month Agreement, the Parties will be returning to the table in short order, with time and resources being wasted. The City arguing it needs flexibility means, in reality, the City wants another, earlier attempt at further concessions. Bargaining Unit Members need some stability in their lives, and, a three year Agreement notwithstanding, the City can and has come back mid-term for more concessions. That is, the flexibility the City claims it needs has always been available.

The City's figures indicate the payroll costs of the Fire Department are approximately \$2.5 million, with operating expenses just under \$14 million. The Fire Department makes up only a portion of City's budget, typically twenty percent of the General Fund. When the City talks about flexibility, there is no need to balance everything on the backs of the Fire Fighters. Yes, the Union agrees, there are some restrictions in the Labor Agreement, but with the Fire Department being only twenty percent of the budget, the City needs to look for concessions in other areas as well.

#### Analysis and Recommendation

The Fact-Finder considers compelling the arguments of the Union, including the point that three year Labor Agreements are the standard, not Agreements of an approximate eighteen month duration as the City proposes. Moreover, public employers have been approaching and obtaining mid-term concessions, and nothing will prevent the City from doing so during the term of the Successor Agreement. While the Parties have been unable to reach final resolution on all issues of the Successor Agreement, this Union has shown a willingness to make concessions in these and in past negotiations.

The Fact-Finder recommends the Union's proposed Article 46, Section 1 language:

Section 1. This Agreement shall become effective upon the acceptance by both parties of a fact-finding report (date of latest acceptance by SERB or expiration of 7 day time period as applicable), or the date of the final dispute resolution, as applicable. This Agreement shall continue in full force and effect, along with any amendments made and annexed hereto, for a period of three (3) years following the effective date.

#### ARTICLE 25 INSURANCES

#### The City's Position

As a cost containment measure, the City proposes a modification of Section 1. The modification would provide more flexibility by allowing for alternate health care coverage. As it stands currently, the City provides coverage under the county's health care plan, and must go along with the coverage provided by the county.

The City also proposes modification of Section 3, and indicates this is the key to its proposals. Union members contribute eight percent toward the cost of health care, and the City proposes increasing the contribution to ten percent. Additionally, the City proposes any increases in the cost of health care over ten percent be paid equally between the City and

Bargaining Unit Members. The City points out this is the same proposal it has in front of the FOP and its various Units, as well as AFSCME. Moreover, the Union is actually behind the statewide average of a thirteen percent contribution for health care.

From 2000 through 2011, the City's costs have increased for Family Health and Dental from \$7,462.00 to \$18,489.00 per employee, while the employee's cost increased from no contribution to \$1,069 in 2004 to \$1,608 in 2011. The City notes the Union's argument that its total package of compensation is lower than other jurisdictions, and while this is true, the City adds, there is a reason. Eastlake, when compared to comparable jurisdictions, ranks eighth out of ten in per capita income of its residents, and eighth out of ten in per capita income tax. Importantly, per capita income of its residents is \$19,905.00, but the salaries of Eastlake's Fire Fighters are at the \$60,000.00 level.

#### The Union's Position

The Union points out that the City has flexibility in the current language regarding health care. Four or five years ago the City changed insurance carriers, which resulted in reduced benefits. The matter was taken to arbitration, and it was held the word "comparable" as found in Article 25, Section 1 allows for flexibility. The City's proposal provides it shall meet and confer with its recognized Bargaining Units regarding levels of coverage, however, the proposal goes on to grant the City the right to make the final determination if consensus is not reached. This, the Union maintains, provides too much flexibility in a negotiated item.

Regarding the statewide average of employee contribution being thirteen percent, that average, the Union emphasizes, includes all employees, not just those doing comparable work in comparable communities. That is, the average includes office workers, county and state employees, and not only Safety Forces performing similar work in comparable cities.

Regarding the City's proposed fifty percent contribution toward health care cost increases above the ten percent contribution, the Union's comparable communities indicate the Eastlake premium share for Fire Fighters to be slightly better than the average, but Eastlake Fire Fighters still trail in total compensation. However, in light of the current economic times, the Union states it is willing to make a concession to a ten percent premium share.

The Union projected costs of health care to the City and each individual employee through 2016. In making the projection, the Union used actual figures from 2007 through

2011. In 2007 under the eight percent cost share, Bargaining Unit Members were paying \$101.83 per month. Had they been at ten percent they would have paid \$127.30 monthly. Under the City proposal of fifty percent, Bargaining Unit Members will go from \$101.83 per month in 2007 to \$560.38 per month in 2016, and the increases will continue exponentially. In terms of percentage increases, the costs of health care will increase seventy-two percent through 2016, costs to Union's membership would increase five-hundred-fifty percent, and the City's costs under its fifty percent cost sharing proposal would increase only thirty-nine percent.

The City presented its chart indicating the cost of Family Plan Health and Dental coverage, however, the City failed to account for its overall health care costs. In 2006, when the City changed health care carriers, its total costs were reduced. Additionally, if the number of City employees declines, total costs are reduced. Overall health care costs, not just those for the Family Health and Dental plan, was actually less in 2010 than in 2006. In 2006 the overall costs were \$1.283 million versus overall costs of \$1.278 million in 2010. In 2007 overall costs were \$1.005 million, in 2008 \$1.288 million, and in 2009 \$1.261 million.

#### Analysis and Recommendation

The City's proposed language granting it the final say in determining the level of health care coverage is too far-reaching. The proposed ten percent contribution, agreed to by the Union, is in line with comparable communities. Moreover, in light of the Union's figures of the City's overall health care costs, which have remained fairly stable since 2006, and it being armed with the Arbitration Award holding flexibility is permitted pursuant to current language, the Fact-Finder cannot recommend the City's proposed language granting it an unfettered right to lower benefits to any level of its choice.

The Union's proposed modification of Article 25, Section 3 is recommended, to wit:

Section 3. Contribution Rates. The Employer shall contribute Ninety percent (90%) and bargaining unit members shall contribute ten percent (10%) for the premium cost of health care coverage under the applicable plan, without reimbursement by the City for co-pays or deductibles. Eligible employees may elect any available coverage (e.g., single, two-party, family, etc.) subject to the plan offerings. Employee participation costs, as may be applicable, shall be made through payroll deduction. Each employee responsible for any health plan costs shall sign a payroll authorization form for the applicable deduction in order to participate in or continue coverage. Upon enrollment/application of an eligible employee, coverage will commence in accordance with the provisions of the plan, plan provider, or administrator, as applicable.

ARTICLE 26  
LONGEVITY

The City's Position

In 2010, the City paid \$21,400.00 to Fire Department personnel for longevity. The payment of longevity is to retain personnel, and the City does not believe longevity is necessary in that people are not leaving the City. Solely as a cost savings measure, the City proposes deleting Article 26.

The Union's Position

The Union disputes the City's claim longevity is to retain personnel. In the fire service, once a person is on a department, that person tends to remain on that department throughout his career. Additionally, unless making a career change, upon reaching a certain age a Fire Fighter cannot move to a different department due to hiring restrictions for Safety Forces. Such age restrictions for hiring in Safety Forces is permitted, and the Union believes the current age limit is thirty-one.

Longevity is contained in Collective Bargaining Agreements to spread out payments, resulting in lower payments early in careers. Moreover, the Union continues, all comparable communities have Longevity in their Collective Bargaining Agreements, and Eastlake's Longevity payments are in line with those communities. Additionally, under the City's proposal, a twenty-five year employee is being asked to relinquish \$2,500.00 per year, while a five year employee loses \$500.00. A two year employee is making no concession other than never achieving longevity. All concessions to which the Union has agreed has all members giving up an equal, or nearly equal, share.

Analysis and Recommendation

Longevity payments are normally included in Collective Bargaining Agreements pertaining to Safety Forces. Removal of same would render Eastlake's fire Contract anomalous when compared to the Labor Agreements of other public employers, would lower the compensation package of Fire Fighters in Eastlake vis-à-vis comparable communities, and, as stressed by the Union, would unfairly take a larger portion of the compensation package from longer term employees.

The Fact-Finder recommends against the City's proposed deletion of Article 26.

ARTICLE 34  
SICK LEAVE

The City's Position

The City proposes modifying the language of Article 34, Section 13 to change the manner in which Sick Leave Conversion is paid. Under the current manner of conversion, there is a three level process, and the City proposes removing the third level. Section 13 currently provides that the third step, which applies to employees with sixteen years service and above, convert all hours over 1,344 at 75% of the hourly rate. Levels one and two convert at the rates of twenty-five and fifty percent, respectively.

This situation came to the City's attention upon the recent retirement of the three Fire Fighters noted above. In terms of the total package, at fifty percent, the payout is \$17,000.00, and at seventy-five percent it is \$25,500.00. A fifty percent payout totals \$17,000.00, eleven tours of vacation on average is another \$6,700.00, ninety-six hours of holiday pay is \$2,400.00. That is, it costs the City \$26,000.00 just for someone to go out the door. That, the City emphasizes, is thirty-eight percent of the year for another employee, and when three employees leave, that's a position that can't be filled. Sick Leave is something that should be available to employees if needed. Payouts for Sick Leave began when wages for public sector employees were low, and the payouts have continued to grow and are now unaffordable.

The City also proposes modifying Section 16 to provide Personal Incentive Time be calculated every quarter instead of every four months, and the Incentive reduced from twenty hours to fifteen. This will result in no loss to Bargaining Unit Members in that the reduction in hours coincides with the four month rolling period being reduced to a three month quarter. The four month rolling period is a tracking nightmare for the City.

The Union's Position

With the exception of Willoughby, Eastlake is in line with comparable communities and there should be no reduction in payouts. The Union notes Parma Heights Fire Fighters annually receive a total of forty-eight hours of Sick Leave Incentive, however, Parma Heights Fire Fighters can use up to forty-eight hours of Sick Leave in a year and still qualify for the Incentive. Lyndhurst Fire Fighters have sixty hours, and Sick Leave hours used are deducted from the sixty. South Euclid has thirty hours per year, but that's based on no unexcused

absences. That is, if a Fire Fighter calls in sick, the absence is considered excused, and the Fire Fighter retains the thirty hours Incentive.

Also, there is a benefit to the City it fails to recognize. There are days an employee may not be feeling that good, and wondering whether or not to call off sick. With the Incentive, it is more likely the employee will report for duty thereby saving the City overtime costs.

The City is using the figures of \$25,000.00 and \$17,000.00 in reducing the Conversion from seventy-five percent to fifty. This benefit accrued over a career, and for the City the reduction is minimal considering its \$14 million budget. However, to one employee it is not minimal. A person ready for retirement suddenly has the funds taken away, and this goes against the stability that is supposed to be inherent in Labor Agreements.

#### Analysis and Recommendation

Regarding the Section 13 Conversion modification, the City admits there is only one employee who could possibly retire in the next three years. The negative impact under the Successor Agreement is, therefore, minimal. Absent no compelling reason to consider modification of Section 13 in the Successor Agreement, the Fact-Finder recommends against the City's proposed modification.

Regarding the City's proposed Section 16 modification, the Union presented no argument in opposition. The Fact-Finder, for the reasons stated by the City in its argument, viz., the tracking difficulty, is in agreement with the City's position. The Fact-Finder recommends modification of Article 34, Section 16, as follows:

For each calendar quarter that an employee works without use of sick time, he will receive fifteen (15) hours of compensatory time or as a cash incentive. A forty (40) hour employee is eligible to earn twelve (12) hours per calendar quarter.

### ARTICLE 32 HOLIDAYS

#### The Union's Position

This issue reverts to the previously noted loss of the ability to cash in holidays. During the last round of negotiations the FOP may not have lost that ability, yet to remove holiday cash-in from this Bargaining Unit, the Union states, internal comparables were presented claiming the FOP did not have the holiday cash-in option. During the period from

2005 through 2007, Bargaining Unit Members received an average of \$2,536.00 from this benefit, and now receive nothing.

A review of the Union's presented comparable communities establishes when a Fire Fighter works a holiday, he receives an additional twelve hours of pay. Painesville has nine such holidays, and the remainder of the Communities, with the exception of Willoughby, have six. Willoughby has no such holidays, and Eastlake now has none. The Union is simply attempting to put itself back with the average, and is proposing twelve hours of additional pay for ten holidays. This costs out to \$17,654 annually. This modification is to take effect one year after the effective date of the Agreement.

#### The City's Position

The City's view of this matter is very different than the Union's, with the City stating it does not believe the Union lost a benefit to the extent it claims. Article 32, Section 1 currently provides employees receive seven tours off per year in recognition of eleven city-wide holidays. This, the City maintains, is a more realistic benefit than was previously contained in the Labor Agreement. Additionally, the Conciliation Award notes the loss in the holiday cash-in benefit was offset by wage increases of 3%, 3%, and 3%, plus \$0.25 per hour in the first two years of the Labor Agreement and \$0.20 in the third.

The City additionally proposes deleting Article 32, Section 3. If the Chief determines he needs personnel, he can call them in and they are compensated. Additional time off as a Holiday Work Option is not needed.

#### The Union's Response Regarding Section 3

Section 3 pertains to the City's "Trojan Horse" bargaining previously discussed. During the negotiations for the Predecessor Agreement, the City, in its Position Statement prior to Conciliation, indicated it was adopting the language of the Fact-Finder. The Fact-Finding Report did not contain the words "not regularly scheduled," nor did the Conciliation Award. Unbeknownst to the Union, the three words were added to the Collective Bargaining Agreement, and the City now maintains the three words mean the Chief can only provide that option to employees not regularly scheduled. That, in the case of the Fire Department, is the Fire Marshall who works a forty hour week. The matter is currently pending in the Court of Common Pleas.

## Analysis and Recommendation

The Conciliation Award dated December 30, 2008, provides at p.12:

The Union did present evidence to show that the impact of the recommended wage increase was materially reduced in the first year by the recommendations to reduce vacation cash-out and abolish holiday cash-out. The Conciliator has already dealt with this concern by rejecting the Fact-Finder's recommendation and adopting the Union proposal for vacation utilization and cash out . . . Along with the enhanced wage issue . . . , this should be sufficient to compensate for loss of the holiday cash-out benefit.

Thus, it is apparent, as argued by the City, the Union obtained increased wages as a trade off for the abolishment of the holiday cash-in benefit. That being the case, the Union contention its proposal for twelve hours pay for working ten designated holidays to bring it to where it was prior to losing the holiday cash-in benefit must fail. The Fact-Finder recommends against modification of Section 3 as proposed by the Union.

Additionally, in the absence of a compelling reason, the Fact-Finder recommends against the City's proposal to remove Section 3.

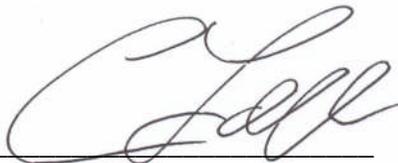
## ISSUES OF TENTATIVE AGREEMENT

In addition to the issues at impasse, the Parties have made proposals, concessions, and withdrawal of proposals in the course of bargaining. Tentative Agreement has been reached on the following issues:

Article 1, Recognition; Article 2, Management Rights; Article 3, Dues Deductions and Fair Share Fees; Article 4, No Strike/No Lockout; Article 5, Non-Discrimination; Article 6, Gender and Plural; Article 7, Seniority; Article 8, Work Rules; Article 9, Reduction in Force and Recall, Sections 1 through 4; Article 10, Disciplinary Procedure; Article 11, Grievance Procedure; Article 12, Arbitration Procedure; Article 13, Probationary Period; Article 14, Promotions; Article 15, Fire Marshall Classification; Article 16, Personnel Files; Article 17, Performance Evaluations; Article 18, Fitness for Duty; Article 19, Physical Training; Article 20, Hours of Work/Overtime Pay (Partial); Article 21, Extended Call Backs; Article 23, Part-Time Personnel (Partial); Article 27, Uniform and Equipment Maintenance Allowance; Article 28, Educational Pay; Article 29, Contribution to the Pension Fund by the City and Member; Article 30, Working Out of Classification; Article 31, Union Time/Activity; Article 32, Holidays, New Section Holiday Separation Pay; Article 33, Vacation Separation; Article

36, Family and Medical Leave; Article 37, Funeral Leave; Article 38, Drug/Alcohol Testing; Article 39 Employee Assistance Program; Article 40, Labor Management Committee; Article 41, Headings; Article 42, Conformity to Law; Article 43, Obligation to Negotiate; Article 44, Total Agreement; Article 45, Mid-Term Bargaining.

At the request of the Parties that the above Tentative Agreements be incorporated into this Report, to which request the Fact-Finder agrees, it is recommended that the above-identified issues of Tentative Agreement be included in the Parties' Labor Agreement. It is further recommended the remainder of the Contract, with the exception of the issues at impasse, and the Tentative Agreements, remain the same as in the immediately preceding Contract.

A handwritten signature in black ink, appearing to read 'C. Lalka', written over a horizontal line.

Colman R. Lalka, Fact-Finder

Dated: June 10, 2011  
Madison, Lake County, Ohio