

Received Electronically @ SERB Oct 17, 2011 8:30am
(oob)

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard To The Matter Of The Fact-Finding Between:

THE CITY OF MENTOR)	Case No:
)	10-MED-10-1604
-AND-)	
MENTOR PROFESSIONAL)	
FIREFIGHTER'S ASSOCIATION,)	
IAFF, LOCAL 1845)	

ATTENDANCE:

For The City:

Thomas Grabarczyk	Labor Relations Management, Inc.
Kenneth Filipiak	City Manager
David Malinowski	Finance Director
Anthony J. Zampedro	Assistant City Manager
Richard Harvey	Fire Chief
Robert Searles	Deputy Fire Chief
Rosanne Graham	Human Resources Administrator

For The Union:

Ryan J. Lemmerbrock, Esq.,	Attorney
David Zalba	President
Bill Malovrh	Vice President
John Loparo	Secretary
Brent C. Lothaden	Treasurer
Gene McElhaney	Trustee
Frank A. Suponcik, CPA	Financial Consultant

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The City of Mentor is located on the southern shore of Lake Erie, approximately twenty-five miles east of downtown Cleveland, Ohio, and occupies some twenty-eight square miles. With a resident population of 51,894, it is the largest City in Lake County.

The City has attracted both small businesses and diversified industries, ranking ninth in manufacturing employment and seventh¹ in sales volume within the State.

Of the City's approximately 358 full-time employees, 226 are members of one of the City's six Collective Bargaining Units. The Ohio Patrolmen's Benevolent Association represents three of those Units - the ninety-three member Patrol Officers Unit, the Communications Technicians and Correction Officers Unit and the Sergeants and Lieutenants Unit. The American Federation of State, County and Municipal Employees Union, Public Works Employees Local 1099 represents sixty-five non-uniformed employees.

The City's Fire Division provides both fire suppression and emergency medical service.

¹The City is home to an estimated 1,700 businesses. The Great Lakes Mall is the sixth largest retail center in Ohio.

The Fire Division has received one of the highest ratings in the State from the Insurance Services office - an ISO Class III Public Protection Classification - allowing commercial concerns to realize significant savings on their fire insurance premiums.

The Fire Division is supported by an earmarked 1.5 mill levy which is estimated to bring \$1,311,000.00 into the City in 2011.

The City also receives EMS transport fees which are not earmarked and deposited in the General Fund. In 2011 the total fee revenue is expected to reach \$1,100,000.00. As of June 30, 2011, \$754,000.00 had been collected.

There are sixty-nine ² full-time employees of the Fire Division - fifty Firefighters (all of whom are Paramedics), sixteen Lieutenants and three Battalion Chiefs.³ These employees are all members of a Bargaining Unit exclusively represented by the Mentor Professional Firefighters Association, IAFF Local

²In 2011 the authorized complement of full-time Firefighters was reduced from eighty in 2008 to seventy-five in 2011. The actual peak staffing was seventy-three. The Fire Chief believes that there will likely be four retirements during the next three years.

³The Fire Chief and two Deputy Fire Chiefs are excluded from the Bargaining Unit.

1845. There are some forty, part-time Firefighters who are members of a separate Bargaining Unit represented by the Part-Time Firefighters Association.

The City and Local 1845 are signatories to a Collective Bargaining Agreement entered into as of March 31, 2008 for an initial term which expired on March 27, 2011.

The negotiations for a successor Collective Bargaining Agreement began on March 3, 2011, and bargaining proposals were exchanged on March 29, 2011. Negotiations continued during five more sessions, but the parties were unable to agree upon all of the provisions for a successor Contract.

Impasse was declared on May 6, 2011, and the parties requested the State Employment Relations Board to appoint a Fact-Finder.

On May 10, 2011 the undersigned was appointed sole Fact-Finder.

The Fact-Finder conducted mediation sessions with the parties on June 8th and July 11, 2011.

The negotiations and mediation efforts resulted in the parties reaching tentative Agreements on provisions of the following Articles:

Article 4- "Union Representation";
Article 6 - "Grievance and Arbitration Procedure"
Article 8, Section 8.14 - "Staff Assignment";
Article 15 - "Family and Medical Leave Act";
Article 17 - "Injury on Duty ('IOD') Pay";
Article 21 - "Seniority";
Article 22 - "Promotional Procedure";
Article 27 - "Discipline", and
Article 29 - "Rules and Regulations"

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

The parties tentatively agreed to carry-forward and incorporate into the new Agreement, mutatis mutandis, all the Articles, Appendices and Memoranda of Agreements from the 2008 Agreement except those listed below.

A series of proposals by the parties to add new provisions and to amend other Articles and Sections of Articles of the subsisting Contract were withdrawn, and are deemed to have been abandoned.

Remaining unresolved were proposals submitted by one or both parties to make changes in, or add Sections to, the following Articles:

Article 8, Section 8.1 - "Rates of Pay" (Wages);
Article 8, Section 8.11 - "Rates of Pay" (Longevity);
Article 8, Section 8.14 - "Rates of Pay" (Paramedic Pay);
Article 9 - "Hours of Work and Overtime";
Article 10 - "Educational Incentive Pay";
Article 12 - "Uniform Allowance";
Article 13 - "Sick Leave";
Article 14 - "Holidays";
Article 16 - "Vacation Leave";
Article 20 - "Employee Group Insurance";

Article 21A - (New) - "Layoffs";
Article 37 - "Substance Testing and Assistance";
Article 39 - "Duration", and
Addendum A - "Performance Incentive Program"

At the direction of the parties an evidentiary hearing was held on August 8, 2011.

Timely in advance of the hearing the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code, Section 4117.14(C)(3)(a).

At the hearing the parties introduced into evidence a combined total of sixty-nine documentary exhibits.

Testimony was presented on behalf of the Union by Mr. Frank A Saponcic, C.P.A. C.F.E., and several of the Union's Officers offered explanatory comments.

For the City, Finance Director David Malinowski, Fire Chief Richard Harvey; City Manager Kenneth Filipiak and Assistant City Manager Anthony Zampedro responded to questions and provided helpful supplementary information.

At the instruction of the Fact-Finder the parties submitted post-hearing briefs, and on September 13, 2011 the Fact-Finder declared the evidentiary portion of the hearing closed.

In consideration of the proceedings on the Fact-Finder's docket which closed earlier, the parties graciously consented to

extend the time within which the Fact-Finder might issue his Report and Recommendations.

In making his analyses of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K) namely:

"(a). Past collectively bargained agreements, if any, between the parties;

"(b). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c). The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). The lawful authority of the public employer;

"(e). Any stipulation 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment."

THE FACT-FINDER'S REPORT:

PREFACE:

Several of the most contentious issues in dispute involve Firefighter compensation in one form or another. In resolving these issues, special consideration must be given to (1) The City's prospective financial condition as it bears upon its ability to pay the Union's requested increases or the City's prospective need for concessions in order to provide the services its residents require, and (2) the compensation offered to Firefighters in comparable jurisdictions.

ABILITY TO PAY:

The "2010 Comprehensive Annual Financial Report" (CAFR) prepared by the City's able Director of Finance, David W. Malinowski, reveals that the City's financial condition is not only sound, but superior to that of most municipalities in Ohio.

Mentor's General Fund revenues fueled by a rise in municipal income tax collections increased by \$1,806,000.00 or 4% from \$45,054,000.00 in 2009 to \$46,860,000.00 in 2010.⁴

The 2010 revenues exceeded the City's final budget forecast of \$43,969,000.00 by \$1,894,000.00.

⁴ The City's present 2% income tax requires a periodic vote of authorization at a rate of above 1%. On November 6, 2007 the voters in the City renewed the 2% income tax for a five year period through December 31, 2012, and the levy will be up for renewal in November, 2012.

Expenditures increased only by \$309,000.00 from \$44,770,000.00 in 2009 to \$45,079,000.00 in 2010, increasing the General Fund carry-over by \$1,781,000.00.

In consequence the unreserved General Fund balance as of December 31, 2010 rose to \$19,200,000.00 or some 42.7% of 2010 General Fund expenditures. With credit rating agencies requiring a General Fund carry-over of at least 10% of current expenditures to maintain a quality rating, Mentor's General Fund available balance as a percentage of its annual governmental spending ranks among the very highest in the State.

In 2010 the City received an upgraded bond rating from Moody's of Aa1.

The City's improved revenue prospect is consistent with the general slow economic recovery experienced in Ohio and, indeed, elsewhere in the Country.

Along with these favorable developments, the Finance Director reports that the City's total debt and other long-term obligations decreased by \$1.2 million or 3.3% during 2010.

There are, to be sure, several negative aspects, reflected in the CAFR.

Property Tax revenues decreased from \$1,785,000.00 in 2009 to \$1,534,000.00 in 2010. The 14% decrease was "principally due

to reallocating 0.1 mills of available inside millage to the General Obligation Bond Retirement Fund from the General Fund, and from the effect of the County Auditor's revaluation of residential property values."

Inter-governmental revenues, chiefly from the State Local Government Fund and the Local Government Revenue Assistance Fund amounted to \$4,902,000.00 in 2010.⁵ However, receipts from the Local Government Fund are scheduled to decrease significantly in 2012, and by 50% in 2013. The Estate Tax is scheduled to be phased-out in 2013.⁶

In consequence, the estimated General Fund revenue loss from the reduction in inter-governmental transfers and real estate tax reductions is expected to approximate \$191,000.00 in 2011; \$1,057,000.00 in 2012 and \$1,416,000.00 in 2013 or a total loss of revenue for the period as compared with 2010 of \$2,664,000.00. On an "all funds" basis, the City projects a revenue loss of \$321,000.00 in 2011; \$1,295,000.00 in 2012 and

⁵ The public utility deregulation replacement payments are being phased-out and will end as of December 31, 2011. So also, the tangible personal property tax reimbursement made to the City will end in 2011. On the other hand, it is estimated that in 2013 Ohio will begin to distribute casino revenues collected by political subdivisions to offset the loss of public utility deregulation and tangible personal property tax funds.

⁶ The loss of Estate Tax receipts in 2013 is estimated at \$400,000.00.

\$1,908,000.00 in 2013 or an aggregate loss over the three year period of \$3,292,000.00.

The City also points-out that the 2010 real and public utility property tax revenues were increased by approximately \$500,000.00 as the result of a one time overfunding of the bond retirement fund.

The City estimated that General Fund revenues for 2011 would decline by \$1,130,000.00 due to a projected 2% decline in income tax receipts of \$612,000.00; a 17.5% drop in State Shared Revenues of \$740,000.00, a 45% reduction in investment income of \$333,000.00. On the other hand, the City projected a \$550,000.00 increase in property taxes.⁷

But, the City's budget consistently understated General Fund revenues by an average of \$1,200,000.00 over the three year period 2008-2010, while it has overstated General Fund expenditures by an average of \$1,200,000.00 over the same period.

⁷Beginning in 2013, however, Mentor will likely begin to realize a reduction in real estate receipts because of the re-evaluation of real property which affects the inside millage assessed by the City. Based upon an estimated 10% decline in average property values, the City is likely to realize a real estate tax revenue loss of approximately of \$200,000.00 in 2013.

For the first six months of 2011, General Fund revenues continued to increase and were \$2,000,000.00 or 8.4% higher than for the equivalent period in 2010.

The favorable result was attributable in relevant part to an increase of \$1.1 million or 7.24% in income tax receipts, and a non-occurrence of the projected 17.5% decline in Local Government Funds which will be experienced in 2012-2013.⁸ End f

On the other side of the ledger, General Fund Expenditures for the first six months of 2010 were \$2.6 million or 9.6% less than for the corresponding period in 2009. These 2010 expenditures represented 46% of the year's appropriations, whereas for the same period in 2009 expenditures constituted 52% of the annual appropriations.

The largest shares of General Fund expenditures went to support the operations of the Police Division (25.45%) and the Fire Division (21.36%). The Police portion of the total

⁸The Local Government Fund reduction will affect Mentor beginning with the August, 2011 payment which is calculated at 75% of the August, 2010 Local Government Fund payment to the City. The 25% monthly reduction format will continue through December, 2011.

For the first six months of calendar year 2012, the City will realize a 25% monthly reduction of the Local Government receipts revised in the corresponding months in 2011. For the last half of 2012, the City will realize just 50% of the Local Government Fund payments received in the same months of 2010. For the first six months of 2013, Local Government Fund receipts will be 50% less than the payment made in those same months in 2011.

expenditures increased by 2.33% and the Fire Division's share increased by 4.40%.

A five year summary of the amounts spent by the Police and Fire Divisions along with the 2011 budgeted expenditures for these operations is set forth below:

	<u>2006</u> <u>Actual:</u>	<u>2007</u> <u>Actual:</u>	<u>2008</u> <u>Actual:</u>	<u>2009</u> <u>Actual</u>	<u>2010</u> <u>Actual</u>	<u>2010</u> <u>Budget</u>	<u>2011</u> <u>Budget</u>
<u>Police:</u>	10,420,429	10,692,007	11,219,158	11,719,197	11,462,154	11,862,269	11,809,107
<u>Fire:</u>	8,376,608	9,758,729	9,237,325	9,368,030	9,423,097	9,538,361	9,315,836

The total salaries and wages paid by the City to its employees from the General Fund declined in 2010 to \$25,058,000.00 from \$25,619,000.00 in 2009.

The total compensation paid to Fire Division employees amounted to \$6,423,000.00, \$79,400.00 less than the final budget allowance of \$6,502,000.00.

Looking ahead, the consensus outlook is for continued slow economic growth in 2012 and 2013. Mentor's long-range budget estimates, as expected, assume a worst case scenario, and, as in 2010 and 2011, are likely to prove too pessimistic, despite scheduled losses in inter-governmental funding and legislatively abolished tax sources.

Compared to other cities in Ohio, Mentor's financial condition is significantly more favorable, and appears well able to withstand a possible recessionary relapse.

COMPARABLE COMMUNITIES:

The Fact-Finder must also consider Mentor's Firefighters' economic position vis a vie that of Firefighters in comparable communities.

In identifying "comparable communities", the Fact-Finder considers the following seven factors: (1) location; (2) population; (3) area size; (4) median family/personal income; (5) real property valuations; (6) department size; and (7) number of runs per year (fire suppression/EMT).

The City proffers the following communities as comparable because they are located within the immediate geographic area: Willoughby Hills; Wickliffe; Willoughby; Painesville and Eastlake. Considering cities with populations similar to Mentor's 52,000, those with between 40,000 and 60,000 residents, the City adds to its list Cleveland Heights; Cuyahoga Falls; Euclid; Kettering; Fairborn; Elyria; Findlay; Mansfield; Middleton; Strongsville; Newark and Warren. Finally, the City augments its list by adopting the State Employment Relations

Board's twenty cities ⁹ which pay Firefighters the highest salaries: Beachwood; Mayfield Heights; Solon; St. Bernard; Shaker Heights; Rocky River; University Heights; Whitehall; Brooklyn; Middleburg Heights; Fairview Park; Richmond Heights; Westerville; Warrensville Heights; Norwood and Aurora.

Many of the selected communities satisfy one of the criteria but fail to make the grade as "comparable". For example, Painesville which is within Lake County must be ruled out because its population is 17,503, one-third of that of Mentor, and its median household income of \$34,545.00 is approximately half of that enjoyed by families in Mentor. Moreover, Painesville is only one-quarter of the size of Mentor, its Fire Division has less than one-third the number of Firefighters and makes approximately one-half of the number of runs in 2010 that the Firefighters in Mentor did.

⁹ The twenty Cities having the highest wage scale are, in descending order: Willoughby; Beachwood; Mayfield; Mentor; Solon; St. Bernard; Shaker Heights; Kettering; Rocky River; University Heights; Whitehall; Brooklyn; Middleburgh Heights; Fairview Park; Richmond Heights; Wickliffe; Westerville; Warrensville Heights; Norwood and Aurora. Willoughby's top wage of \$74,736.00 became effective on April 27, 2011. Aurora's wage rate of \$63,924.00, effective as of January 1, 2011, ranked as the number twenty.

As of the date of the evidentiary hearing, Beachwood; Brooklyn; Middleburg Heights; Fairview Park; Richmond Heights; Wickliffe and Westerville had not agreed upon wages for 2011 and beyond.

The Union proposes a pared-down list of comparables, including some suggested by the City, as follows: Eastlake; Painesville; Willoughby; Wickliffe; Beachwood; Euclid Heights; Euclid; Lakewood; Parma; Shaker Heights; Solon; Westlake; Cuyahoga Falls and Twinsburg.

In this group, the population ranges from a low of 11,036 in Beachwood to a high of 77,274 in Parma and averages 33,633.00 compared with Mentor's 51,894 residents.

In land area size, Wickliffe is the smallest containing only 4.6 square miles within its municipal corporation limits. The average of the group is 12.29 square miles compared to Mentor's 26.8 square miles.

In terms of proximity to Mentor, the closest is Willoughby some 4.3 miles away. The furthest is Cuyahoga Falls at 42.71 miles. On average, the municipalities are 21.90 miles distant from Mentor.

The Union's suggested communities are more similar to Mentor in terms of median household income. Shaker Heights leads the list with \$74,746.00. Painesville ranks last, reporting \$34,060.00. The average compensation of the Union's group is \$55,186.00 compared with Mentor's \$61,622.00.

Property valuation ranges from a low of \$107,354.00 in Euclid to a high of \$286,632.00 in Beachwood. The average residential property valuation is \$162,127.00 compared to Mentors' \$176,343.00.

In terms of Division size the Union's group ranges from a low of twenty in Wickliffe to a high of ninety-eight in Parma. The average number of full-time Firefighters is fifty-seven compared to Mentor's sixty-nine.

Finally, in terms of the number of runs that are made by the Division annually, Wickliffe has the lowest number - 2,100 while Parma has the highest - 9,300. The average for the fourteen Union selected communities is 4,785 fire suppression and EMS responses a year. Mentor Firefighters' make 6,500 runs per year.

In sum, Mentor occupies a larger area, has a significantly larger population, a substantially larger median family income, a greater aggregate residential property value, and a larger Fire Division which is called upon to make significantly larger number of responses than the cities proposed by the Union.

Reviewing data from all the cities suggested by the parties Mentor has no "twin".

Nevertheless, in choosing between the parties proffered list of "comparables", the Fact-Finder believes the Union's list of fourteen cities is better suited for computational purposes and will be referred to in his Report.

CONTRACT PROVISIONS AT ISSUE:

I. Article 8, Sections 8.1, 8.2 and 8.3 - "Rates of Pay":

A. The 2008 Contract:

The expired Contract provides:

"a) Retroactive to March 31, 2008, employees shall receive a 3.00% wage increase and be paid at a bi-weekly pay rate in accordance with the following schedule:

...

"b) Effective March 30, 2009, employees shall receive a 3.00% wage increase and be paid at a bi-weekly pay rate in accordance with the following schedule:

...

"c) Effective March 29, 2010, employees shall receive a 3.00% wage increase and be paid at a bi-weekly pay rate in accordance with the following schedule:

Bi-weekly and Annual Rates of Pay Effective
March 29, 2010

<u>Classification</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
Firefighter (Bi-Weekly)	\$ 2,119.48	\$ 2,233.96	\$ 2,326.45	\$ 2,436.53	\$ 2,552.50	\$ 2,675.79
(Annual)	\$55,106.48	\$58,082.96	\$60,487.70	\$63,349.78	\$66,365.00	\$69,570.54
Fire Lieutenant (Station Officer) (Bi-Weekly)	\$ 2,860.22	\$ 2,990.20				
(Annual)	\$74,365.72	\$77,745.20				
Battalion Chief Shift Commander) (Bi-Weekly)	\$ 3,169.44	\$ 3,341.62				
(Annual)	\$82,405.44	\$86,882.12"				

...

"Section 8.3 New Employees:

"Original appointment to any position shall be made at the lowest step within the salary range; however, the City Manager may make an appointment above the lowest step based on an employee's qualifications specified in the class. Advancement shall be within range according to the ordinance. Any employee in original appointment at the lowest step within range for the classification of Firefighter shall be considered for

advancement within range from one step to the next step after successfully completing six months of service. After successfully completing the one (1) year probationary period, as determined by his performance evaluation, an employee in original appointment to the classification of Firefighter will be advanced to the next step within range."

B. The Union's Proposal

The Union proposes no wage increase until March 1, 2012 on which date it seeks a 3% wage increase. Effective March 1, 2013 the Union asks for an additional 3.0% wage increase.

C. The City's Proposal:

The City offers a one year Contract with the rates of pay in effect as of March 29, 2010 remaining without change for incumbent Firefighters. Firefighters hired following the execution of the Contract would receive a starting rate 10% less than the present starting rate and advance to Step 1 after completing twelve months of service instead of six:

"Section 8.1: Effective upon execution of this agreement, employees shall be paid at a bi-weekly pay rate in accordance with the following schedule:

<u>Classification</u>	<u>Starting Rate:</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
Firefighter							
(Bi-Weekly)	\$ 1,907.53	\$ 2,119.48	\$ 2,233.96	\$ 2,326.45	\$ 2,436.53	\$ 2,552.50	\$ 2,675.79
(Annual)	\$49,595.78	\$55,106.48	\$58,082.96	\$60,487.70	\$63,349.78	\$66,365.00	\$69,570.54
Fire Lieutenant (Station Officer)							
(Bi-Weekly)		\$ 2,860.22	\$2,990.20				
(Annual)		\$74,365.72	\$77,745.20				
Battalion Chief (Shift Commander)							
(Bi-Weekly)		\$ 3,169.44	\$ 3,341.62				
(Annual)		\$82,405.44	\$86,882.12				

....

"Section 8.3 New Employees:

"Original appointment to any position shall be made at the lowest step within the salary range; however, the City Manager

may make an appointment above the lowest step based on an employee's qualifications specified in the class. Advancement shall be within range according to the ordinance. Any employee in original appointment at the lowest step within range for the classification of Firefighter shall be considered for advancement within range from one step to the next step after successfully completing twelve (12) months of service. After successfully completing the one (1) year probationary period, as determined by his performance evaluation, an employee in original appointment to the classification of Firefighter will be advanced to the next step within range."

"Thereafter, advancement within range for the above classification from one step to the next step shall be based on successful completion of one year of satisfactory service as determined by performance evaluation. However, the aforementioned shall not preclude the City from advancing an employee more than one step as determined by performance evaluation at the City's discretion."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The parties agree to maintain the 2010 wage levels without change for 2011. The City, however, which seeks only a one year Contract, indicates that it is willing to offer 2% wage increases in 2012 and 2013, but only as a part of an "acceptable" total Contract package. But, it also seeks to establish a "starting rate" of 10% below the current level and increase the amount of time from six months to twelve months of service before a newly hired Firefighter advances to Step I under the current Contract structure.

The Union which looks for a three year Contract, proposes 3% wage increases to become effective as of March 1, 2012 and a second 3% wage increase to become effective as of March 1, 2013.

Effective on March 29, 2010, Firefighters received a 3% wage increase which resulted an annual salary of \$69,570.54 for Firefighters at the top Step VI.

By way of an internal comparison, the City's Police Officers have an identical six step wage structure and wage rate sequence.

The City concluded a "Tentative Agreement" with the Ohio Patrolmen's Benevolent Association representing the Police Officers Unit for 2% wage increases for the years 2012 and 2013.

There are several powerful reasons to recommend the same 2% wage increases for the Firefighters.

First of all, there appears to be a settled history of parity in the wage rates between the two uniformed forces.

In the second place, Mentor's Firefighters' top wage rate is the fourth highest in the State exceeded only by that offered by Willoughby, Beachwood and Mayfield Heights.

There are few reported Contracts covering wages for both 2012 and 2013. Depending upon which cities are selected, the raises so far negotiated for 2012 average between 2% and 3%. Two percent increases will likely maintain the Firefighter's relative position.

The Consumer Price Index, taking into account the volatile food and energy components, is not expected to go rise above 2% in 2011-2012 so that the 2% wage increases, coupled with other

compensation enhancements which will be recommended by the Fact-Finder, will mean that the Firefighters' real income, will at the very least, remain stable.

In making his compensation package recommendations, the Fact-Finder notes that the Firefighters are in a special position because the Division is partially supported by an earmarked levy and Firefighters' EMS operations generate revenues for the General Fund.

Nevertheless, the Fire Division's 2011 budget allocation is \$107,000.00 or 1.1% less than actually spent in 2010. By way of comparison, the Police Divisions's 2011 budget allowed 3% more than expended in 2010.

As the Fact-Finder has stated the recession's effects were felt most keenly in 2009 when General Fund revenues plummeted by some \$3.4 million. But, revenues not only stabilized in 2010, they increased by approximately \$1,797,000.00, and are on track to exceed that increment in 2011.

The 2% annual increases are estimated to cost the City approximately \$250,000.00 over the life of the Contract.

Should the economy flounder into a "double dip" recession so that revenues are reduced by \$3 or \$4 million, Mentor looks to be able to withstand the storm intact because of its more

than \$19,000,000.00 unreserved and available General Fund balance.¹⁰

It is precisely for this purpose that significant General Fund balances are kept.

The City seeks to create a new "starting rate" at 10% below the current Step I rate effective upon the execution of the new Agreement, and to delay the advancement of such newly hired employees to Step I until they have completed twelve months of service.

This proposal is modeled after the Tentative Agreement on Wages reached with the Police Officers Unit.¹¹

The Fact-Finder allows that the Fire Division is staffed below the authorized maximum. Lowering the starting rate of new hires may serve as an inducement to recruit additional personnel. A lower salary during a probationary period is a practice often followed in both public and private employment, and is not unreasonable here.

Accordingly, the Fact-Finder finds appropriate and recommends that Sections 8.1 and 8.3 of Article 8, "Rates of

¹⁰ With bond rating agencies requiring between 8% and 15% of unreserved General Fund balances to maintain superior credit ratings, Mentor's present balance of over 40% is viewed as outstanding

¹¹ The Police Contract requires completion of eighteen months of service after original appointment before the Officer can be advanced to the next Step within range.

Pay" be revised as follows, and as so revised, carried forward and incorporated into the successor Agreement:

"Section 8.1:

"a. Effective March 29, 2011 employees shall receive a 0% wage increase and be paid in accordance with the following schedule:

Bi-weekly and Annual Rates of Pay Effective
March 29, 2011:

<u>Classification</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
Firefighter						
(Bi-Weekly)	\$ 2,119.48	\$ 2,233.96	\$ 2,326.45	\$ 2,436.53	\$ 2,552.50	\$ 2,675.79
(Annual)	\$55,106.48	\$58,082.96	\$60,487.70	\$63,349.78	\$66,365.00	\$69,570.54
Fire Lieutenant (Station Officer)						
(Bi-Weekly)	\$ 2,860.22	\$ 2,990.20				
(Annual)	\$74,365.72	\$77,745.20				
Battalion Chief (Shift Commander)						
(Bi-Weekly)	\$ 3,169.44	\$ 3,341.62				
(Annual)	\$82,405.44	\$86,882.12"				

...

"b. Effective March 1, 2012, employees shall receive a 2.00% wage increase and be paid at a bi-weekly pay rate in accordance with the following schedule:

Bi-weekly and Annual Rates of Pay Effective
March 1, 2012:

<u>Classification</u>	<u>Starting Rate</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
Firefighter							
(Bi-Weekly)	\$ 1,945.68	\$ 2,161.87	\$ 2,278.64	\$ 2,372.98	\$ 2,485.26	\$ 2,603.55	\$ 2,729.31
(Annual)	\$50,587.68	\$56,208.62	\$59,244.64	\$61,697.48	\$64,616.76	\$67,692.30	\$70,962.06
Fire Lieutenant (Station Officer)							
(Bi-Weekly)		\$ 2,917.42	\$ 3,050.00				
(Annual)		\$75,853.03	\$79,300.10				
Battalion Chief (Shift Commander)							
(Bi-Weekly)		\$ 3,232.83	\$ 3,408.45				
(Annual)		\$84,053.55	\$88,619.76				

....

Bi-weekly and Annual Rates of Pay Effective
March 1, 2013:

"c. Effective March 1, 2013, employees shall receive a 2.00% wage increase and be paid at bi-weekly pay rate in accordance with the following schedule:

Classification	Starting Rate	I	II	III	IV	V	VI
Firefighter (Bi-Weekly)	\$ 1,984.59	\$ 2,205.11	\$ 2,324.21	\$ 2,420.44	\$ 2,534.97	\$ 2,655.62	\$ 2,783.90
(Annual)	\$51,599.34	\$57,332.86	\$60,429.46	\$62,931.44	\$65,909.22	\$69,046.12	\$72,381.40
Fire Lieutenant (Station Officer) (Bi-Weekly)		\$ 2,975.77	\$ 3,111.00				
(Annual)		\$77,370.09	\$80,886.10				
Battalion Chief (Shift Commander) (Bi-Weekly)		\$ 3,297.48	\$ 3,476.62				
(Annual)		\$85,734.62	\$90,392.16				

....

"Section 8.3 - "New Employees":

"Original appointment to any position shall be made at the lowest step within the salary range; however, the City Manager may make an appointment above the lowest step based on an employee's qualifications specified in the class. Advancement shall be within range according to the ordinance. Any employee in original appointment at the lowest step within range for the classification of Firefighter shall be considered for advancement within range from one step to the next step after successfully completing twelve (12) months of service. After successfully completing the one (1) year probationary period, as determined by his performance evaluation, an employee in original appointment to the classification of Firefighter will be advanced to the next step within range."

II. Article 8, Section 8.11 "Longevity":

A. The 2008 Contract:

The expired Contract provides in Article 8, Section 8.11 as follows:

"Section 8.11 "Longevity Compensation:

"In addition to regular compensation, longevity pay increments will be paid to the employee according to the following schedule:

<u>"Years of Service:</u>	<u>Annual:</u>	<u>Bi-Weekly:</u>
"5	\$ 400.00	\$15.39
	...	
"19 or more	\$1850.16	\$71.16

"Continuous service shall be based on the employee's anniversary date of employment as a regular full-time employee of the City. Longevity compensation shall commence with the first day of the bi-weekly pay period following such anniversary."

B. The Union's Proposal:

The Union seeks to increase Longevity by \$100.00 per year of service and extend the annual increments to twenty-five years of service rather than the present cap of "nineteen or more".

C. The City's Proposal:

The City seeks to eliminate Longevity supplement for employees hired after the effective date of the successor Agreement.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Longevity is a key component of a Firefighter's compensation. The Fact-Finder does not recommend that the payment be discontinued for new hires, while all incumbents receive the automatic increase. Instead, in consideration of limitations and concessions recommended elsewhere, the Fact-Finder believes that the periodic increase be standardized at one hundred dollars and continued through a Firefighter's first twenty-five years of service as recommended by the Union. Annual Increments after the fifth year of service, and through the twenty-fifth year has been adopted in the Contracts in seven of the fourteen jurisdictions suggested as comparable by the Union - (e.g., Eastlake; Painesville; Cleveland Heights; Lakewood; Parma Wickliffe and Westlake).

According to the seniority ledger introduced by the Union, twenty-two employees would have accumulated twenty or more years of service by 2013 and therefore be eligible for the extended compensation. The total additional cost of the Union's proposal over the successor Contract is estimated to be only \$6,400.00.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section 8.11 and as amended and incorporated into the successor Agreement:

"Section 8.11 - "Longevity Compensation":

"Effective as of the date of the execution of this Contract, in addition to regular compensation, longevity pay increments will be paid to the employee according to the following schedule:

Years of Service:	Annual:	Bi-Weekly:
5	\$ 400.00	\$19.23
6	\$ 500.00	\$23.08
7	\$ 600.00	\$26.92
8	\$ 750.00	\$30.77
9	\$ 900.00	\$34.62
10	\$1000.00	\$38.46
11	\$1100.00	\$42.31
12	\$1200.00	\$46.15
13	\$1300.00	\$50.00
14	\$1350.00	\$53.85
15	\$1450.00	\$57.69
16	\$1500.00	\$61.54
17	\$1650.00	\$65.38
18	\$1700.00	\$69.23
19	\$1850.00	\$73.08
20	\$2000.00	\$76.92
21	\$2100.00	\$80.77
22	\$2200.00	\$84.62
23	\$2300.00	\$88.46
24	\$2400.00	\$92.31
25	\$2500.00	\$96.15

"Continuous service shall be based on the employee's anniversary date of employment as a regular full-time employee of the City. Longevity compensation shall commence with the first-day of the bi-weekly pay period following such anniversary date."

III. Article 8, Section 8.13 - "Paramedic Pay":

A. The 2008 Contract:

The expired Agreement provides in Article 8, Section 8.13 in pertinent part:

"Section 8.13 Paramedic Assignment:

...

"b) Certified employees assigned to work in a paramedic capacity, who are actually working in such capacity, and who are full-time employees hired before May 1, 1993 shall receive certification pay as follows:

"Beginning with the first month of paramedic service:
"\$15.39 per bi-weekly pay period;

"Upon completion of one (1) year of paramedic service:
"\$30.77 per bi-weekly pay period, and

"Upon completion of two (2) years of paramedic service:
"\$46.16 per bi-weekly pay period

"c) Certified full-time employees hired after may 1, 1993, shall receive certification pay of thirteen dollars and forty-seven cents (\$13.47) per bi-weekly pay period up to a total of three-hundred and fifty dollars (\$350.00) annually."

B. The Union's Proposal:

The Union wishes to increase Paramedic pay for employees hired after May 1, 1993 from the current \$350.00 per year to \$775.00 per year.

C. The City's Proposal:

The City offers to maintain the existing schedule of Paramedic pay without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Firefighters hired prior to May 1, 1993 receive \$1200.00 annually in "medic pay". Until 2008, Bargaining Unit members hired after May 1, 1993 were not eligible for the supplemental Paramedic pay. The expired Contract restored Paramedic pay for forty-eight members of the Bargaining Unit who had been hired since May 1, 1993, but at the reduced rate of \$350.00 per year.

The Union seeks to increase the pay for post-May 1, 1993 hires from \$350.00 to \$775.00 per year.

Among the list of jurisdictions the Union proposes as comparable to Mentor, only Eastlake; Painesville; Cuyahoga Falls and Twinsburg do not provide for additional pay for Paramedic certification. (Westlake includes \$500.00 in the base compensation rate).

The remaining eight jurisdictions offer a premium of between \$1210.00 (Shaker Heights) to \$2950.00 with the average of the nine being \$2080.00.

Here again, the Fact-Finder concludes that a modest increase in Medic pay for the post-1993 employees of \$250.00 is both equitable, and within the City's capacity to pay, amounting to some \$18,000.00, including roll-ups.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 8, Section 8.13, Subsection "c" be amended to read as follows and as so amended carried forward and incorporated into the successor Agreement.

Article 8 , Section 8.13:

...

(c): Effective as of the date of the execution of this Contract, certified full-time employees hired after May 1, 1993, shall receive Certification pay of twenty-three dollars and eight cents (\$23.08) bi-weekly pay period up to a total of six-hundred dollars (\$600.00) annually."

IV. Article 9, Sections 9.6 and 9.10 - "Hours of Work and Overtime"

A. The 2008 Contract:

The expired Contract provides:

"Section 9.6:

"Employees who have earned overtime at either time and one-half (1 ½) the regular base hourly rate of pay or at the regular base hourly rate of pay may credit such overtime to compensatory time-off at the same rate it was earned up to a maximum of one hundred forty four (144) hours for line employees and a maximum of one hundred (100) hours for staff duty employees. Upon being credited with the maximum amount of hours allowable for the position, the employee must take compensatory time-off before any additional overtime may be accumulated and credited as earned compensatory time-off. The employee must request compensatory time-off in writing at least forty-eight (48) hours in advance of the period such time-off shall be desired. No compensatory time may be taken without the approval of the Fire Chief. Compensatory time shall be taken only in segments authorized by the Fire Chief. (A maximum of forty-eight (48) hours of compensatory time per workday will be allowed.) The creation of overtime will not be grounds for denial of compensatory time.

....

"Section 9.10:

"In the event that there has been or is occurring an 'emergency condition' as declared by the City Manager which includes but is not limited to tornadoes, conflagration, or community disaster, any employee may be ordered to work overtime in order to secure the peace, health, safety and welfare of the citizens and the properties of the City. In such cases compensation shall be at regular base hourly rates for hours worked unless the magnitude of the event would exhaust the budgetary capacity of the City. In such cases, compensation for hours worked or compensatory time-off would be at the discretion of the City Manager."

B. The Union's Proposal:

The Union demands an increase in the current maximum hours of compensatory time members can earn from 144 hours to 240 hours for Line Firefighters and from 100 hours to 160 hours for Staff Duty employees.

The Union also seeks to permit members to sellback unused compensatory time each year, up to 120 hours a year for Line Firefighters and up to 80 hours a year for Staff Duty employees.

The Union would prohibit the City from requiring employees to take compensatory time-off.

Finally, the Union proposes to amend the text to "clarify that overtime work in 'emergency conditions' is still paid at the applicable overtime rate."

The text as revised by the Union would read as follows:

Section 9.6:

"Employees who have earned overtime at either time and one-half (1 ½) the regular base hourly rate of pay or at the regular base hourly rate of pay may credit such overtime to compensatory time-off at the same rate it was earned up to a maximum of two hundred forty (240) hours for line employees and to a maximum of one hundred sixty (160) hours for staff duty employees. Upon being credited with the maximum amount of hours allowable for the position, the employee must take compensatory time-off before any additional overtime may be accumulated and credited as earned compensatory time-off. The City shall not force employees to take their accumulated compensatory time-off beyond the terms set forth herein. The employee must request compensatory time-off in writing at least forty-eight (48) hours in advance of the period such time-off shall be desired. No compensatory time may be taken without the approval of the Fire Chief. Compensatory time shall be taken only in segments authorized by the Fire Chief, or his designee. (A maximum of forty-eight (48) hours of compensatory time per workday will be allowed.) The creation of overtime will not be grounds for

denial of compensatory time. Unused compensatory time may be cashed-in once per year during the first full pay period in December, up to a maximum of one hundred twenty (120) hours for line employees and up to a maximum of eight[y] (80) hours for staff duty employees.

Section 9.10:

"In the event that there has been or is occurring an `emergency condition' as declared by the City Manager which includes but is not limited to tornadoes, conflagration, or community disaster, any employee may be ordered to work overtime in order to secure the peace, health, safety and welfare of the citizens and the properties of the City. In such cases compensation shall be at time and one-half (1 ½) the regular base hourly rate of pay for hours worked."

C. The City's Proposal:

The City seeks to maintain the current provisions with respect to the maximum amount of hours in the compensatory time bank and rejects the Union's proposal to limit the City's ability to schedule compensatory time-off.

The City opposes the Union's request to allow the annual "cash-out" of compensatory time and annual leave.

On the other hand, the City is willing to amend Section 9.10 dealing with emergency conditions, but proposes, instead, that such compensation "shall be based on the Fair Labor Standards Act requirements."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Public safety employees are permitted under the Fair Labor Standards Act to accrue up to 480 hours of compensatory time instead of overtime pay. (29 U.S.C. Section 207(o)(3)(A).) The

average compensatory time accrual in the municipalities the Union proposes as comparable is 213 hours. Only Willoughby (96 hours); Lakewood (100 hours), and Solon (100 hours) offer less than Mentor, while Eastlake; Painesville; Wickliffe; Beachwood; Cleveland Heights; Euclid; Parma; Shaker Heights; Westlake; Cuyahoga Falls and Twinsburg offer more, ranging from 156 hours to 480 hours.

The City is opposed to the Union's proposal because it believes that "compensatory time-off can be problematic by causing a pyramiding effect of accumulating time-off for the group as a whole. ... Every time comp time is approved ... and someone calls-in sick or other minimums have been met, the time may be filled with overtime again."

A modest increase in the amount of "comp time-off", for Line Firefighters to 180 hours - the amount allowed by Painesville - should not create a significant additional cost to the City and would move Mentor more towards the average of the Union's group of fourteen.

As to Staff Duty Firefighters, a proportionate increase from 100 to 124 hours is also practical.

The Union also seeks to permit Firefighters to sellback a portion of accrued compensatory time - 120 hours for Line Firefighters and 80 hours for Staff Duty personnel - in December of each year.

The City complains that such a cash-out provision "places an unknown expense to which the City will be obligated to pay at the end of the fiscal year, requires the City to be a banker for the employees and is contrary to the concept upon which compensatory time is granted in the first place."

With the exception of Parma, Shaker Heights and Solon, all of the Union's list of comparable Fire Divisions allow employees to sellback accrued compensatory time. While Westlake allows all compensatory time to be cashed-out annually, the other communities limit the amount from 48 hours in Willoughby to 240 hours annually in Cleveland Heights.

Allowing a "sellback" of compensatory time has the potential for decreasing overtime costs. Capping the sellback amount at 20 hours a year for all employees would, assuming the unlikely event that all employees banked and sold 20 hours, the annual cost to the City would approximate only \$36,000.00.

While the Fact-Finder agrees that the purpose of compensatory time is to minimize overtime costs by allowing time-off as a substitute for overtime compensation, allowing cash-out of unused compensatory time at straight-time rates, does not do violence to this principle.

The Union finally proposes to amend Section 9.10 "to clarify the overtime work in 'emergency conditions' is still paid at the applicable overtime rate".

The City agrees, but proposes instead of the Union's language - "compensation shall be at time and one-half the regular base hourly rate of pay" - that the text refer to the "Fair Labor Standards Act requirements". The difference eludes the Fact-Finder.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 9, Sections 9.6 and 9.10 be amended to read as follows, and as so amended carried forward and incorporated into the successor Agreement:

"Article 9 - "Hours of Work and Overtime:"

...

"Section 9.6:

"Employees who have earned overtime may credit such overtime to compensatory time-off at the same rate it was earned up to a maximum of one-hundred eight hours (180) for Line employees and to a maximum of one-hundred, twenty-four (124) hours for staff duty employees. Upon being credited with the maximum amount of hours allowable for the position, the employee must take compensatory time-off before any additional overtime may be accumulated and credited as earned compensatory time-off. The employee must request compensatory time-off in writing at least forty-eight (48) hours in advance of the period such time-off shall be desired. No compensatory time may be taken without the approval of the Fire Chief. Compensatory time shall be taken only in segments authorized by the Fire Chief, or his designee. A maximum of forty-eight (48) hours compensatory time for workday will be allowed. The creation of overtime will not be grounds for denial of compensatory time. Unused compensatory time may be cashed in once per year during the first full pay period in December up to a maximum of forty-hours (40) for Line employees and up to a maximum of twenty-hours (20) for Staff duty employees.

...

Section 9.10: "In the event there has been or is occurring an 'emergency condition' declared by the City Manager which includes, but is not limited to tornadoes, conflagration or community disaster, any employee may be ordered to work overtime in order to secure the peace, health, safety and welfare of the citizens and the properties of the City. In such cases compensation shall be at time and one-half (1 ½) the regular base hourly rate of pay for hours worked."

V. Article 10, Sections 10.3 and 10.7 - "Tuition Reimbursement and Advanced Education Pay":

A. The 2008 Contract:

The 2008 Contract provides:

"Section 10.3 - Tuition Reimbursement:

"A tuition reimbursement program shall be established for the purpose of encouraging employees to upgrade their competence in work related functions in order to increase the effectiveness and efficiency of City services. Courses eligible under the tuition reimbursement program shall be limited to those offered by an accredited institution and related to the employee's position with the City unless otherwise authorized by the Fire Chief and City Manager. Such courses shall not interfere with the proper and effective performance of the employee's duties.

....

"Section 10.7:

"In addition to tuition reimbursement provided for in Section 10.3, a regular full-time non-probationary employee eligible for tuition reimbursement shall be entitled to advanced education credits as follows:

"a) An annual payment of \$300.00 when the employee is awarded an official training certificate in a fire technology or fire administration course of study approved by the City Manager and awarded by an accredited degree-granting institution of learning, said certificate to require successful completion of at least forty (40) credit hours. (In lieu of the official training certificate, an employee may present an official letter of verification from an accredited college or university attesting to the employee's completion of all fire technology/fire administration courses required for an Associate's degree, along with an official transcript detailing said courses and the grades attained for each.)

"b) An annual payment of \$600.00 when the employee is awarded an Associate's Degree in a fire technology or fire administration course of study approved by the City Manager and awarded by an accredited degree-granting institution of

learning, and such course of study shall require successful completion of at least ninety-six (96) credit hours.

"c) An annual payment of \$1200.00 when the employee is awarded a Bachelor's Degree in a fire technology or fire administration course of study approved by the City Manager and awarded by an accredited degree-granting institution of learning, and such course of study shall require successful completion of at least one hundred ninety-two (192) credit hours.

"d) For purposes of this Agreement, 'successful completion' shall mean a grade of 'C' or above.

"Advanced education payments provided for in this Section shall be paid in two payments in each calendar year based on the date of verification of completion of the applicable Degree, one on the first pay date in December and one on the first pay date in June. Applicable credits verified after January 1 of each year shall be paid on a prorated basis. Employees are eligible to receive prorated certificate/degree pay upon leaving City employment, provided the employee leaves in good standing."

B. The Union's Proposal

The Union wishes to maintain Article 10, Sections 3 and 7 without change.

C. The City's Proposal:

The City proposes to require that a Firefighter receive a grade of "B" in order to be entitled to reimbursement and would limit the amount of reimbursement to that which Cleveland State University charges for twelve credit hours.

The City would also re-write Article 10 by eliminating Sections 10.1 and 10.2, renumber Sections 10.3 and 10.4, and amend renumbered present Sections 10.5 and 10.6 to read as follows:

"Section 10.3:

...

"c. Successfully complete the course with a grade of 'B' or higher and submit an official written record of the grade attained and work completed"

"Extent and Type of Reimbursement Tuition reimbursement shall be made in the following manner:

"a) Fifty percent (50%) of employee tuition costs only shall be reimbursed by the City upon successful completion of a course when such course work is in an approved degree program and such course work is deemed by the City Manager to have an indirect value to the employee and the City in performance of the employee's duties.

"b) One hundred percent (100%) of employee tuition costs shall be reimbursed by the City upon successful completion of a course when such course work is deemed by the City Manager to have a direct value to the employee and the City in the performance of the employee's duties.

"In all cases reimbursement shall be for tuition only and shall not include the cost of books or other educational materials. Tuition reimbursement shall be capped at the current cost per credit hour as that being charged by Cleveland State University for undergraduate tuition/instruction only. The City will only reimburse up to twelve (12) credit hours completed per employee calendar year."

"Section 10.4:

...

"Section 10.5:

"All regular full-time employees employed by the City of Mentor prior to March 28, 2011, shall be entitled to advanced incentive pay as follows:

...

"a. An annual payment of \$1,200.00 shall be made to any employee who, prior to March 28, 2011, was awarded a Bachelor's Degree in a fire technology or fire administration course of

study approved by the City Manager and awarded by an accredited degree granting institution of learning.

"Advanced education payments provided for this Section shall be paid in two payments in each calendar year, one on the first pay date in December and one on the first pay date in June.

"b. Employees hired after March 27, 2011 shall not be entitled to any educational incentive pay (degree pay).

...

"d) Advanced education payments provided for in this Section shall be paid in two payments in each calendar year one on the first pay date in December and one on the first pay date in June.

...

D. THE FACT-FINDER'S FINDINGS, ANALYSIS AND RECOMMENDATIONS:

The City urges that the Police Bargaining Units have accepted changes which require a minimum passing grade of "B" for tuition reimbursement, and limit the amount of reimbursement to the current cost per credit hour charged by Cleveland State University for undergraduate tuition, up to a maximum of twelve credit hours per calendar year.

On the other hand, the City's proposal would render eligible all full-time employees, not just those appointed after March 9, 1980. (There is apparently only one such employee).

The City also proposes to eliminate the Advanced Education Pay for employees hired after March 28, 2011.

As of the present date, only twelve members of the Fire Division receive the Educational Incentive stipend (ten have Associate Degrees and two have obtained Bachelor Degrees).

Acknowledging the "grade inflation" which has taken place in higher education over the past few years, the Fact-Finder finds the City's demand that tuition reimbursement be contingent upon the Firefighter successfully completing an accredited course with a grade of "B" or higher to be eminently reasonable. The grade of "B" provides some assurance that the employee has actually learned and benefited from the course materials.

The present annual cost to the City of stipends to those Firefighters who have earned an Associate or Bachelor Degree runs to some \$9,000.00 and advantages only a handful of members of the Division. Elimination of the incentive payment for new hires represents a judgment that the City does not benefit sufficiently from the earning of advanced degrees to warrant encouraging its employees to earn them. The Fact-Finder has no basis to disagree.

The Fact-Finder notes that of the fourteen (14) Fire Departments cited as comparable by the Union, seven (7) do not provide degree pay.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 10 to be amended as follows and as so

amended be carried forward and incorporated into the successor Agreement:

Article 10 - Education Incentive Payments and Tuition Reimbursement:

Sections 10.1 and Section 10.2 are to be omitted in their entirety. Section 10.3 is to be renumbered as Section 10.1 and carried forward without change. Section 10.4, is to be renumbered as Section 10.2, and Subsection (c) is to be amended to read as follows:

"Successfully complete the course with the grade of `B' or higher and submit an official written record of the grade attained and work completed."

The remainder of original Section 10.4 as renumbered as Section 10.2 shall be carried forward without change.

Section 10.5 is to be renumbered as Section 10.3 and shall be amended to read as follows:

"a. ...

"b. ...

"In all cases reimbursement shall be for tuition only and shall not include the cost of books or other educational materials. Tuition reimbursement shall be capped at the current cost per credit hour as that being charged by Cleveland State University for undergraduate tuition/instruction only. The City will only reimbursement up to twelve (12) credit hours completed per employee per calendar year."

The original Section 10.7 is to be renumbered as Section 10.5 and is to be amended to read as follows:

"All regular full-time employees employed by the City of Mentor prior to the effective date of this Agreement shall be entitled to advanced education incentive pay as follows:

"(a) An annual payment of twelve-hundred (\$1200.00) dollars shall be to any employee who, prior to the execution date of this Agreement, was awarded a Bachelor's Degree in a fire technology or fire administration course of study approved by the City Manager and awarded by an accredited degree-granting institution of learning."

"(b) Advanced education payments provided for in this Section shall be paid in two (2) payments in each calendar year - one (1) on the first pay date in December and one (1) on the first pay date in June.

"(c) Employees hired after the execution date of this Agreement shall not be entitled to an educational incentive pay (degree pay)."

VI. Article 12 - "Uniforms":

A. The 2008 Contract:

The expired Contract provides in Section 12.3 as follows:

"Section 12.3:

"If an employee terminates employment with the City after receiving a cash uniform allowance for that year, the City may withhold a prorated portion of said cash uniform allowance from his final paycheck, said proration to be calculated based on the employee's termination date."

B. The Union's Proposal:

The Union wants to retain Article 12 without change.

C. The City's Proposal:

The City would amend Section 12.1 to provide that employees who are on an unpaid leave status for extended periods of time would have their next year's uniform allowance reduced proportionately.

The City would amend the text to read as follows:

"Section 12.3:

"If an employee terminates employment from the City after receiving a cash uniform allowance for that year, the City may withhold a prorated portion of said cash uniform allowance from his final paycheck, said proration to be calculated based on the employee's termination date.

"An employee's uniform allowance shall be reduced in the following year as a result of an unpaid leave in excess of thirty (30) days, calculated as one-twelfth (1/12) for each thirty (30) days of unpaid status during the prior years, March through April."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union and the City agree that the amount of the Uniform Allowance should be maintained at \$1550.00, the amount in effect as of March, 2011.

But, the City proposes to proportionately adjust Uniform payments in the year subsequent to the year in which an employee has been off-duty on an extended unpaid status.

The City argues that the payment is "made annually to purchase uniforms based on wear and tear. ... If ... [an employee is] off for extended periods in an unpaid status, a pro-rated amount will allow replacement based on need."

In the first place, as a practical matter, the Uniform Allowance is an integral part of an employee's total compensation, and is paid regardless of whether or not an employee actually had purchased uniform components. Moreover, an employee's measurements and clothing sizes for shorts, trousers, shirts and shoes vary over time. What may fit one year may not in the next.

The City fails to identify any of the jurisdictions it believes comparable as making such a proration. The City's Police Bargaining Units have no such limitation.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 12 should be amended as set forth below and as so amended carried forward and incorporated into the successor Agreement:

"Section 12.1:

"...

"(a) ...

"(b) ...

"(c) For newly hired employees, at the completion of six (6) months, the City shall provide two hundred and fifty (\$250.00) dollars for the maintenance of uniforms. The City will provide payment in the following amount for each non-probationary, full-time employee for the maintenance of uniforms:

"March, 2011 - \$1550.00

"March, 2012 - \$1550.00

"March, 2013 - \$1550.00

"Such payments, when due, shall be included in the employee's regular paycheck for the second pay period of March."

VII. Article 13 - "Sick Leave":

A. The 2008 Contract:

Article 13, Sections 13.1, 13.2, 13.4, 13.6, 13.8 and 13.9 of the expired Contract provides as follows:

"Section 13.1:

"Authorized sick leave shall be considered to be absence from duty authorized by the Fire Chief for the following reasons:

"a) Non-occupational illness, physical incapacity, pregnancy, or non-compensable bodily injury of the employee.

"b) Quarantine because of contagious disease upon presentation of a certificate from the attending physician.

"c) Illness of a member of the employee's immediate family requiring the presence of the employee up to a maximum of ninety-six (96) hours of accumulated sick leave in a calendar year. Additional sick leave for this purpose in special cases may be authorized by the City Manager. The Fire Chief shall present such recommended authorization to the City Manger for his consideration before such leave is granted. For purposes of this provision, immediate family shall be taken to mean spouse, child, step-child, parent, step-parent or sibling living in the employee's home.

"Section 13.2:

"a) Sick leave will not be allowed when absence is due to the use of narcotics, intoxicants or willful misconduct.

"b) An employee who is self-employed or who works for another employer while on sick leave or disability leave will be considered as having terminated his employment with the City of Mentor.

"c) Any abuse of sick leave shall be just and sufficient cause for disciplinary action.

....

"Section 13.4:

"The City may require proof of illness for any authorized sick leave. In the judgment of the Fire Chief, proof of sick leave may include a signed doctor's certificate or other proof of illness or injury from the physician of the employee or physician of a member of his immediate family as defined in this Article whichever is applicable indicating the nature and duration of the illness or injury. Proof of illness or injury will not normally be required for sick leave of less than two (2) consecutive working days unless determined otherwise by the Fire Chief. Proof of illness or injury will be required to be submitted to the City Manager for approval of sick leave for two (2) or more consecutive working days, unless the illness or injury is of such a nature that the City Manager waives the requirement to furnish a qualified doctor's certificate. When required by the City Manager such doctor's certificate shall be submitted to the Manager no later than six (6) days after the commencement of illness or injury stating the nature and probable length of disability.

...

"Section 13.6:

"Unless prohibited by law, the City Manager reserves the right to require an employee to submit to a physical or psychological examination by a doctor of the City's choice, the cost of the physical or psychological examination to be at the City's expense.

...

"Section 13.8:

"Any employee who retires or terminates his employment with less than ten (10) years of full-time service to the City of Mentor will not be entitled to accumulated sick leave, except due to death in the line of duty, in which case the employee's estate shall be paid fifty percent (50%) of the value of his unused accrued sick leave credit at his current base rate of pay.

"Section 13.9:

"In the event an employee with more than ten (10) years of full-time service to the City of Mentor dies in the line of duty, the employee's estate will be paid fifty percent (50%) of the value of his unused accrued sick leave credit to a maximum of fifty percent (50%) of two thousand and seven hundred hours (2,700) at

his current base rate of pay. Upon retirement or death (not in the line of duty) of a regular full-time employee with ten (10) or more years of full-time service to the City of Mentor, one-third (1/3) of the value of his unused accrued sick leave credit to a maximum of one-third (1/3) of two thousand seven hundred (2,700) hours, shall be remitted on the basis of his current base rate of pay to the employee or his estate. In all cases, payment shall only be made once and shall eliminate all sick leave credit accrued by the employee.

..."

B. The Union's Proposal:

The Union would amend Section 13.1 so as to enlarge the definition of the employee's immediate family for whose illnesses an employee is entitled to use accumulated sick leave.

The Union would also like to eliminate from Section 13.2 the disallowance of sick leave when absences are due to "misconduct", and the automatic termination of an employee on sick leave who is found working for himself or another employer.

Next, the Union proposes to amend Section 13.4 to provide that illnesses or injuries requiring sick leave of less than two consecutive working-days would not be subject to a "proof of illness" requirement.

The Union also seeks to amend Section 13.6 to require "reasonable cause" for directing an employee to undergo a "fitness for duty examination", and, in the event of a finding by the City's physician that the employee is not fit for duty, to allow the employee to have an opportunity to present a

contrary opinion from his own physician. In the event of conflict between the two medical opinions, the issue would be determined by a mutually agreed upon third physician.

Section 13.8 would be amended to require the City to pay all of the employee's accumulated sick leave to an employee's estate if the employee dies in the line of duty.

Finally, the Union would allow employees who resign their employment, as well as those who retire, with more than ten years of full-time service to receive one-third of the value of their unused, accrued sick leave.

The Union's proposals are set forth below:

"Section 13.1:

"Authorized sick leave shall be considered to be absence from duty for the following reasons:

....

"c) Illness of a member of the employee's immediate family requiring the presence of the employee up to a maximum of ninety-six (96) hours of accumulated sick leave in a calendar year. Additional sick leave for this purpose in special cases may be authorized by the City Manager. The Fire Chief shall present such recommended authorization to the City Manager for his consideration before such leave is granted. For purposes of this provision, immediate family shall be taken to mean spouse, child, parent, parent-in-law, grandparent, granddaughter, grandson, daughter-in-law, son-in-law, step-parent, brother, sister, brother-in-law, sister-in-law, daughter or son of the employee's spouse or domestic partner, and any relative living in the household of the employee.

"Section 13.2:

....

"c) Any abuse of sick leave shall be just and sufficient cause for disciplinary action.

"Section 13.4:

"The City may require proof of illness for any authorized sick leave. Proof of sick leave may include a signed doctor's certificate or other proof of illness or injury from the physician of the employee or physician of a member of his immediate family as defined in this Article whichever is applicable indicating the nature and duration of the illness or injury. Proof of illness or injury will be required for sick leave of less than two (2) consecutive working days. Proof of illness or injury will be required to be submitted to the City Manager for approval of sick leave of two (2) or more consecutive working days, unless the illness or injury is of such a nature that the City Manager waives the requirement to furnish a qualified doctor's certificate. When required by the City Manager such doctor's certificate shall be submitted to the City Manager, when possible, no later than six (6) days after the commencement of illness or injury stating the nature and probable length of disability.

"Section 13.6:

"Unless prohibited by law, the City Manager may require an employee to submit to a physical or psychological examination by a doctor of the City's choice so long as reasonable cause exists for such an examination. The cost of the physical or psychological examination by the City's doctor is to be at the City's expense. An employee subject to a physical or psychological examination by the City has the right to an examination by their physician of choice, at the employee's expense. In the event of a difference of opinion as to the employee's fitness for duty, the issue shall be submitted to a mutually agreed upon third physician whose decision shall be final and binding. Fees and expenses of the third physician shall be borne equally by the City and the employee.

"Section 13.8:

"Any employee who retires or terminates his employment with less than ten (10) years of full-time service to the City of Mentor will not be entitled to accumulated sick leave, except due to death in the line of duty, in which case the employee's estate shall be paid one hundred percent (100%) of the value of his

unused accrued sick leave credit at his current base rate of pay.

"Section 13.9:

"In the event an employee with more than ten (10) years of full-time service to the City of Mentor dies in the line of duty, the employee's estate will be paid fifty percent (50%) of the value of his unused accrued sick leave credit to a maximum of fifty percent (50%) of two thousand and seven hundred hours (2,700) at his current base rate of pay. Upon retirement, resignation, or death (not in the line of duty) a regular full-time employee with ten (10) or more years of full-time service to the City of Mentor, one-third (1/3) of the value of his unused accrued sick leave credit to a maximum of one-third (1/3) of two thousand, seven hundred (2,700) hours, shall be remitted on the basis of his current base rate of pay to the employee or his estate. In all cases, payment shall only be made once and shall eliminate all sick leave credit accrued by the employee."

C. The City's Proposal:

The City opposes all of the Union's proposed amendments.

It proposes to reduce the maximum payout of unused, accrued sick leave in the case of an employee who retires, or dies other than in the line of duty, with ten or more years of full-time service from 2,700 to 2,538 hours to equilibrate the authorized amount with that available to similarly situated Police Officers.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union demands to extend the definition of "immediate family" to include "grandparents, domestic partner and other relatives living in the employee's home". The City is opposed to the change because it deviates from the current City-wide

policy, and goes beyond what is available in most comparable Fire Departments.

The evidence presented at the hearing did not attempt to quantify the number of "relatives who live in an employee's home" or the number who have domestic partners or living grandparents and, in the latter case, did not attempt to explain why the employee's parents or other children of the grandparents are incapable of providing care if the grandparents become ill.

Without such information it is difficult to assess the potential increase of the use of sick leave which might result from an expanded definition of "immediate family" and the associated additional cost to the City. The Fact-Finder cannot recommend the change.

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The Union also seeks to remove the prohibition from Section 13.2.(a) against using sick leave to cover absences attributable "to the use of narcotics, intoxicants or willful misconduct." Instead, the Union would allow employees to use sick leave to attend recognized treatment centers (not including AA meetings) should they become addicted to narcotics or intoxicants.

The evidence presented at the hearing does not indicate that any present member of the Division is addicted to narcotics or alcohol. That is one reason why the Union opposes the

Employer's proposal to amend Article 37 so as to conduct random drug and alcohol testing.

The Union's request to recognize substance abuse treatment programs is sensible, but, as the City concedes, is presently allowed by the Contract which only disallows sick leave for use of narcotics or alcohol.

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The Union also proposes to amend Section 13.2, Subsection (b) to limit disciplinary action against employees who are self-employed or who work for another employer while on sick leave or disability leave to situations where the work or employment is inconsistent with the employee's illness or injury.

The City is willing to amend the language to allow that an employee who works while on sick leave or disability leave will be "subject to termination of his employment" rather than "considered as having terminated his employment".

Obviously, an employee absent on "disability leave" as "temporarily and totally" incapacitated is guilty of an "abuse of sick leave" if he works elsewhere, but an employee unable to perform the duties of a Firefighter may still qualify to perform other work.

The Fact-Finder believes that the Union's demand for a due process procedure, rather than automatic termination, is sound, and that disciplinary action should be taken only if an

employee's work while on sick leave is incompatible with his illness or injury.

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The Union would further alter Section 13.4 to remove the discretion of the Fire Chief to require when a doctor's certificate is required and that, if so, the submission to the City Manager must be made not later than six-days after the commencement of the illness or injury.

No evidence was offered at the hearing that the administration of this Section has caused problems, or that the Fire Chief had exercised his discretion in an unreasonable manner. Obviously, if an employee is unable to obtain a doctor's certificate within six-days, and the delay is not attributable to the employee's fault, the City Manager can be expected to waive that requirement.

The Fact-Finder is un-persuaded that change is appropriate.

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The Union next seeks to condition the City Manager's right to require an employee to submit to a physical or psychological examination only upon having "just cause" to do so. The Union would allow an employee found to be "unfit for duty" to present a contrary medical opinion, and, in the event of such conflict, to have the matter submitted to an impartial medical expert jointly selected by the Employee and the City.

Section 13.6 says nothing at all about "fitness for duty", and, so far as the presentation at the fact-finding went, this provision has not been the focus of concern.

The Fact-Finder, nevertheless, believes the Union's "prophylactic argument" has merit, and agrees that the City Manager must have "reasonable cause" to require a Firefighter to submit to such an examination. The Fact-Finder also agrees that if the examination finds that the subject employee is "unfit for duty", the employee should have the right to present a physician's opinion contradicting that finding and have the issue resolved by a qualified medical authority jointly selected by the parties.

The use of an impartial physician to determine the outcome in such cases, avoids necessity of going through the grievance and arbitration procedure.

X X X X

The Union wants to increase the amount of unused sick leave paid-out to an employee's family upon the employee's death in the line of duty from 50% to 100%. The Union would also amend Section 13.9 to allow the payout of unused sick leave to go to employees who resign as well as those who retire or die.

The Fact-Finder observes that the City offers life insurance for members of the Bargaining Unit to provide income protection to their families in the event of their death, and is

not convinced that employees ought to have a "cash-out" incentive to resign from the City's employ.

City Manager Kenneth J. Filipiak estimated that a sick leave cash-out to employees who resign their post after ten years could cost the City an additional \$25,000.00.

The City proposes to reduce the maximum payout of unused sick leave from 900 hours as allowed in Section 13.9, to 846 hours to correspond to the Police Officers are entitled.

When it suits their needs, both parties seek to adopt provisions in the newly negotiated Police Officers Agreement, and when it does not fit in with their proposals, they both seek to ignore the provisions of that Agreement.

Sick leave cash-out is not one of the provisions as to which there has been a history of parity between the Police and Fire Divisions. Moreover, the present 900 maximum payout is within the range of payouts available to Firefighters in comparable communities.

The Fact-Finder sees no reason to adopt the City's proposal to cutback the sick leave cash-out by 54 hours.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 13 be amended as follows, and as so amended, be carried forward and incorporated into the successor Agreement:

Section 13.2:

"...

"(b) An employee who is on sick leave or disability leave who is self-employed or works for another employer and who, in either case, performs work which is incompatible with his sick leave or disability leave status is subject to disciplinary action up to and including discharge.

...

Section 13.6:

"Unless prohibited by law, the City Manager reserves the right, upon reasonable cause to require an employee to submit to a physical or psychological examination by a doctor of the City's choice, and at the City's expense. In the event of a finding that the employee is 'unfit for duty', the employee shall have the right to submit a report of a doctor selected and paid by the employee which offers an opinion that the employee is 'fit for duty'. In the event of such submission by the employee the City and the employee shall agree upon a third doctor to make an independent evaluation. The opinion of the mutually selected doctor as to the employee's 'fitness for duty' shall be final and binding upon both the City and the employee."

VIII. Article 14, Sections 14.1 - "Holidays":

A. The 2008 Contract:

The expired Contract provides in Section 14.1, Subsections "d", "e". and "f" as follows;

"d) To be eligible to receive the holiday an employee must work his scheduled shift before and after the holiday. For purposes of this Section, a regular full-time employee on authorized leave shall be considered to have worked.

"e) In the event that an employee is on authorized sick leave the day prior to or following compensatory time-off as specified in this Article, proof of illness shall be required unless otherwise determined by the Fire Chief.

"f) Line employees may, at their discretion, sell back up to three (3) tours of holiday time and staff employees may, at their discretion, sell back two (2) City holidays, to be paid in December of each year."

B. The Union's Proposal:

The Union proposes to delete clauses "d" and "e" in their entirety and thereby remove both the requirement that employees must work the shift before and after a holiday in order to receive holiday pay, and the requirement that employees must submit proof of illness if on sick leave prior to, or following, the use of holiday/compensatory time-off.

The Union rejects the City's proposal, however, to delete Section "f".

C. The City's Proposal:

The City proposes to permit Line Firefighters hired after March 28, 2011 to sellback only one tour of holiday time and

Staff Duty Firefighters hired after that date to sellback only one holiday.

D THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Subsection "d" and "e" of Article 14, Section 1 of the expired Contract are designed to prevent an employee from "extending a holiday" by claiming an illness or inability to work the shift scheduled immediately before or immediately after the holiday. Employees who are on authorized leave, other than sick leave, are automatically considered to have worked, but employees who are on sick leave on the day before or the day following the holiday are required to submit proof of illness unless the Fire Chief waives the requirement.

These provisions have not been the subject of dispute, and the Union acknowledges that no employee has been denied holiday pay because of inability to meet these requirements.

The Fact-Finder is inclined to "let sleeping dogs lie."

The City seeks to curtail the right of new employees to sellback the holiday time and instead require them to take the time-off.

The City has not estimated the amount of cost savings, if any, expected over the term of the Contract if its proposal were to be adopted. Indeed, since the City does not plan to engage

in wholesale recruitment, any such savings are likely to be minimal.

Beyond that, the Fact-Finder believes that creating this particular differential between existing and new employees is likely to promote unnecessary friction and dissatisfaction within the workforce.

The present sellback option is well within the parameters of the options available in Fire Departments the City has selected as comparable, and the City's data for the years 2008 through 2010 show that only between eighteen and twenty Firefighters have participated in the holiday sellback at a total cost, according to Union estimates, of only \$25,000.00 without considering an offset for the amount of overtime saved by employees having worked the holidays.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 14 be carried forward and incorporated into the successor Contract without change.

IX. Article 16, Sections 16.1 and 16.2 - "Vacation Leave":

A. The 2008 Contract:

The expired Contract provides for variable amounts of vacation leave to be paid at the applicable regular wage rates on the basis of time earned and accrued.

Line Firefighters with up to five years of service are allowed five, twenty-four hour tours earned at the rate of 4.615 hours bi-weekly. The number of tours progresses for each additional five years of service reaching a maximum of fifteen, twenty-four hour tours, earned at the rate of 13.846 hours bi-weekly for Line Firefighters with twenty-five or more years of service.

Staff Duty employees having up to five years of service earn vacation at the rate of 3.08 hours bi-weekly. The rate of earned vacation time increases every five years thereafter reaching 9.23 hour bi-weekly after twenty-five or more years of service.

Employees may carry-over a maximum of one calendar week of his earned vacation from one year to the next and accumulate vacation leave to a variable maximum based upon the number of years of service.

Line Duty Firefighters who have up to five years of service may accumulate 185 hours, while those having twenty-five or more years of service may accumulate 417 hours.

Staff Duty employees having from one to five years seniority may accumulate 120 hours of vacation leave. The carry-over amount increases every five years thereafter to reach a maximum of 280 hours after twenty-five or more years of service.

B. The Union's Proposal:

The Union proposes to maintain Articles 16, Sections 16.1 and 16.2 without change.

C. The City's Proposal:

The City would reduce vacation leave for Line Duty Firefighters in amounts which correspond proportionately to the amounts received by other City employees. It further proposes to reduce the amount of hours of accrued but unused vacation time that an employee may cash-out from 442 hours to 398 hours.

It offers the following the schedule:

"Section 16.1:

"All regular full-time employees shall be eligible for vacation leave paid at the regular base rate on the basis of time earned or accrued in accordance with the following schedule:

"LINE DUTY EMPLOYEES:

<u>"Length of Continuous Service</u>	<u>Rate of Earned Vacation:</u>
"Up to five (5) years	3.831 hours bi-weekly
Five (5) years up to ten (10) years	5.746 hours bi-weekly
Ten (10) years up to Sixteen (16) years	7.662 hours bi-weekly
Seventeen (17) years	8.427 hours bi-weekly
Eighteen (18) years	8.811 hours bi-weekly
Nineteen (19) years	9.194 hours bi-weekly
Twenty (20) years up to	

Twenty-five (25) years	9.577 hours bi-weekly
Twenty-five (25) years and over	11.492 hours bi-weekly

"Section 16.2:

"h) For cash out purposes only, an employee with twenty (20) or more years of service with the City of mentor will be permitted to cash out three hundred, ninety eight (398) hours of accrued but unused vacation time (if available)."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City contends that Line Firefighters at all seniority levels accrue disproportionate amounts of vacation compared to all of its other employees.

The City insists that Line Firefighters should be entitled to the same vacation allowances as other City employees, i.e., from two weeks to six weeks per year. That is what Staff Duty Firefighters receive. But, Line Firefighters who have a workweek of 49.8 hours accrue 61.2 hours in excess of six weeks (359.996 hours) which is equivalent to seven and one-half weeks of vacation. The disparity first originated, according to the City, when the vacation accrual rate was not adjusted after the Line Firefighters' workweek was reduced to the present 49.8 hours.

The Union responds that from 1998 through March of 2008, the Firefighters' vacation schedule remained the same, ranging from 4.46 hours per bi-weekly period for Line Firefighters with less than five years service up to 13.38 hours per bi-weekly

period for Line Firefighters with twenty-five or more years of service. And then, in 2008, the vacation schedule was changed to "correspond to an exact number of tours per schedule step, increasing the bi-weekly accrual rate to match the whole tours", and thus eliminate fractional tour vacation "leftovers".

X X X X

The work schedule of Firefighters on twenty-four hour tours is not readily made proportionate to the eight-hour day, five-day a week schedule of Police and other City employees. Line Firefighters' sick leave, holiday and other leave provisions do not translate proportionately to those of other City employees. Moreover, as with other subjects, there is no history of "pattern bargaining" making vacation leave proportionately consistent with that available to Police Officers.

The present method of calculating Line Firefighters' vacation leave either by tours or by total hours is employed by a majority of the Fire Departments deemed comparable by the City as well as by the Union. The bi-weekly accrual method is utilized only by a small number of Departments.

Only Painesville; Cleveland Heights; Findlay and Newark use a bi-weekly accrual method of calculating vacation leave entitlements.

As to the amount of vacation entitlements of the City's list of comparables, Painesville (240 hours); Kettering (280

hours); Fairborn (240 hours); Middleton (280 hours); Strongsville (288 hours); Warren (260 hours) set a lower maximum number of hours than proposed by the City. Newark (312 hours); Mansfield (336 hours); Finlay (330 hours); Willoughby (336 hours); Wickliffe (312 hours); Cleveland Heights (335 hours); offer more than the 298.8 hours which the City now proposes, but less than the current Firefighter vacation schedule of 360 hours for Firefighters with twenty-five or more years of service.

Inspecting the Union's list of fourteen comparable Fire Departments for vacation leave entitlements, Mentor's maximum of fifteen tours is exceeded by Willoughby (20.5); Cleveland Heights (20); Cuyahoga Falls (18) and equaled by Eastlake. But Mentor allows more than available in Painesville (10); Wickliffe and Beachwood (13); Euclid, Lakewood, Parma, Shaker Heights, Westlake, and Twinsburg (12).

However, when all time-off - vacation, holidays, personal days - is considered, Mentor's present allowance of twenty-two tours off-duty exceeds by only one-half tour the average of 21.5 tours of total time-off available in the fourteen listed Departments.

The Fact-Finder is not convinced that the reduction proposed by the City is necessary.

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The City further seeks to reduce the amount of vacation time an employee may cash-out to eight weeks of vacation based on a 49.8 hour workweek which is equivalent to the amount which forty-hour workweek employees are entitled to cash-out. The Police Division has agreed to this schedule.

Neither party presented evidence on the availability of vacation cash-out options in other comparable jurisdictions, and the Fact-Finder finds no basis for change.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 16 be carried forward without change and incorporated into the successor Agreement.

X. Article 20 - "Employee Group Insurance":

A. The 2008 Contract:

The City is obligated to provide hospitalization and medical benefits to Firefighters which are substantially comparable to those provided under the City of Mentor Health Care Plan.

Under the present plan employees are responsible for paying 5% of the monthly health care premium cost up to \$40.00 for single coverage and \$82.50 for family coverage. There is an annual deductible of \$200.00 for single coverage and \$400.00 for family coverage, and a 10% co-insurance obligation up to an annual maximum of \$400.00 for single coverage and \$800.00 for family coverage. There are additional co-payments of \$15.00 for office visits, \$20.00 for visits to any medical specialist and \$75.00 for visits to an emergency room.

The plan requires a co-payment of \$15.00 for generic prescription drugs, and \$25.00 for name brand drugs, subject to increased co-payments if the medication is to be taken for a period of ninety-days or longer and the employee elects to fill the prescription at a retail pharmacy.

In January of 2006 a Committee was established to review health care proposals. It recommended increases in employee out-of-pocket responsibility which reduced monthly premium costs.

B. The Union's Proposal:

The Union proposes to retain the Article 20 without amendment.

C. The City's Proposal:

For calendar year 2011 the City proposes to continue the employee's obligation to pay 5% of the monthly health care premium cost. Effective on January 1, 2012, however, but, the "cap" on the maximum amount of the employee contribution would be removed.

As of January 1, 2013, employees would be required to pay 10% of the monthly health care premium cost without a dollar limitation.

Effective July 1, 2011, employees would be required to pay 100% of the cost of coverage for over-age dependent children.

The City further proposes to retain the co-payment for generic drugs of \$15.00, of \$25.00 for covered formulary drugs and of \$60.00 for covered non-formulary drugs. If medication is to be taken for ninety or more days, and the Firefighter elects to fill the prescription at a retail pharmacy the co-payment increases to \$30.00 for covered generic drugs, \$50.00 for covered formulary drugs and increases to \$120.00 for covered non-formulary drugs.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City proposes to have the Firefighters accept the health care terms agreed to by the Police Units and apparently agreed to by other of the City Bargaining Units.

The Union opposes these increases in employee contributions which it contends are the equivalent of a 1% reduction in Firefighters' pay.

The escalation of health care costs, far in excess of increases in the cost of living index, has been a central issue not only in collective bargaining, but also in the State and National political scene.

The 2008 Contract increased employees' out-of-pocket expenses which resulted in a decreased monthly premium. In 2008 the monthly premium for Medical Mutual single coverage was \$381.93. In 2011 it was \$376.76. In 2008 the family coverage premium was \$992.64. In 2011 it was only \$980.84. But, the monthly employee premium contribution obligation decreased far more substantially. The single coverage monthly cost decreased from \$38.20 in 2008 to \$18.84 in 2011, while the monthly employee contribution for family coverage decreased from \$99.26 in 2008 to \$49.04 in 2011.

The Fact-Finder observes that changing the terms of health insurance for different Units of employees is undesirable because it increases the cost of administration. Further, variations in premium contributions foster overutilization of

benefits by the favored Unit, and subsidation by the disfavored group.

The Fact-Finder is aware, as the Union points-out, that the 10% employee contribution towards insurance premium charges as agreed to by the Police Units, and sought to be extended to other Units, exceeds the average contribution by Cities of similar size in Ohio, and, more specifically, in Northeast Ohio.

However, the Fact-Finder has considered the economic impact upon Firefighters in making his recommendations for improvements in their compensation.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 20 be amended as follows and as so amended carried forward and incorporated into the successor Agreement:

"Section 26.01, Subsections (c) and (d):

"...

"c. Effective January 1, 2012, the City shall provide a prescription drug plan that has a co-payment of fifteen dollars (\$15.00) for covered generic drugs and twenty-five dollars (\$25.00) for covered formulary drugs and sixty dollars (\$60.00) for covered non-formulary drugs.

"Effective January 1, 2012, for all maintenance type prescription drugs (i.e., the prescription drug is required to be taken for 90 days or more), and the covered individual does not use the mail order process for that prescription, the co-payment required at the time of purchase at a retail pharmacy for the prescription will be thirty dollars (\$30.00 for covered generic drugs and fifty dollars (\$50.00) for covered formulary drugs, and one hundred, twenty dollars (\$120.00) for covered non-formulary drugs, effective at the time of the third, 30-day

fill of the prescription (i.e., the first two 30-day maintenance type prescriptions at a retail pharmacy will be at the regular co-payment rates and the third 30-day maintenance type prescription at a retail pharmacy will be at the increased co-payment rate). The City will take steps to ensure that covered individuals are notified of the applicability of this provision to their individual prescriptions and when failure to use the mail order prescription drug plan will result in increased co-payments."

Section 26.03 is to be amended to read as follows:

Section 26.03:

"Upon execution of this agreement, the City will provide health insurance under the following provisions:

"a. The Employer will pay ninety-five percent (95%) and the employees will pay five percent (5%) of the monthly health care premium cost up to the following caps, whichever is less:

"Effective January 1, 2011 forty-dollars (\$40.00) for single and eighty-two dollars and fifty cents (\$82.50) for family coverage.

"b. Effective January 1, 2012, the employer will pay ninety-five percent (95%) and the employee will pay five percent (5%) of the monthly healthcare premium cost without a cap.

"c. Effective January 1, 2013, the employer will pay ninety (90%) and the employee will pay ten percent (10%) of the monthly healthcare premium cost without a cap.

"d. An annual deductible of two hundred dollars (\$200.00) for single coverage and four hundred dollars (\$400.00) for family coverage. The deductibles will not be applied to healthcare services defined as 'preventative' by the healthcare provider.

"e. Ten percent (10%) coinsurance for all services up to a maximum of four hundred dollars (\$400.00) for single coverage and eight hundred dollars (\$800.00) for family coverage per year.

"f. A co-pay of fifteen dollars (\$15.00) per visit for office visits to any provider of medical services and twenty dollars (\$20.00) per visit to any medical specialist.

"g. A co-pay of seventy-five dollars (\$75.00) per visit for the employee and each covered individual to an emergency room.

"h. Effective January 1, 2012 one hundred percent (100%) of the additional cost for healthcare coverage for over age dependent children shall be at the employee's expense."

XI. Article 21, Sections 21.10, 21.11 - "Reduction in Force, Layoffs and Recall":

A. The 2008 Contract:

The expired Contract provides in Section 21.10 and 21.11 as follows:

"Section 21.10 - "Reduction in Force, Layoff and Recall":

"a) In the event of a reduction in force, employees in the Fire Department will be laid-off in inverse order of their seniority within the Department.

"b) Except as provided in Section 21.9(h) length of continuous service will accrue during periods of layoff.

"c) An employee will be considered recalled to work, if he is notified by telephone, in person, or if notice is sent either by registered letter or telegram or other reliable means, to the last address on record with the City. It is the responsibility of the employee to provide the City with his current address and telephone number.

"Section 21.11:

"Nothing in the above shall limit or be construed to limit the right of the City to continue its use of and determine the number of part-time Fire Department personnel that may be required to provide maximum fire protection service."

B. The Union's Proposal:

The Union seeks to limit the grounds for layoff to those enumerated under R.C. Section 124.37, and provide that all part-time personnel would be laid-off before any Bargaining Unit members are furloughed.

The Union would delete Sections 21.10 and 21.11 "Reduction in Force, Layoff and Recall" from Article 21 - "Seniority", and

adopt a new Article, tentatively numbered as "22" to deal with layoffs as follows:

"Section .1:

"When it becomes necessary in the Fire Department, through lack of work or lack of funds to reduce the force in said department, part-time employees of the Fire Department shall be laid-off prior to the layoff of any full-time employees of the Fire Department. In the event full-time employee(s) of the Fire Department are laid-off, the full-time employee with the least amount of Department seniority shall be the first to be laid-off.

"Section .2:

"In the event that a position in the Fire Department above the classification of Firefighter is abolished, the incumbent with the least amount of classification seniority within the affected classification shall be reduced to the next lowest classification and shall displace a member with less classification seniority residing in the lower classification. Displacement by classification seniority shall continue until the rank of Firefighter is reached through the displacement process.

"Section .3:

"The Employer shall notify the affected employee(s) in writing by certified mail at least fourteen (14) calendar days prior to the date of the layoff or abolishment. The Employer and the Union shall meet, upon the request of either party, to discuss possible alternatives.

"Section .4:

"Full-time Fire Department employees who have been laid-off under the provisions of this section shall be placed on an appropriate 'recall list' in order of their classification seniority and department seniority for a period not to exceed two (2) years. Whenever discontinued positions are re-established or other cause for layoff is terminated and a request is made for certification of those eligible, former employees of the department who have been laid-off and whose names appear on the 'recall list' shall be the first to receive appointments. It shall be the responsibility of the employee to

keep the Employer advised, through written notice, of his current and accurate mailing address.

"Section .5:

"Affected employees shall be notified in writing by the Employer of their eligibility for reinstatement upon the Employer determining to recall such employees. Written notice shall be given by certified mail. Affected employees shall have ten (10) calendar days from date of receipt within which to notify the Employer, in writing, of their acceptance or rejection of the offer of reinstatement. Failure of the employee to notify the Employer of his decision shall be considered a rejection of the offer of reinstatement.

"Section .6:

"In the event that a promoted position in the Fire Department is abolished and made unnecessary, and it is found necessary to re-establish the position within two (2) years from the date of abolishment, the employee who previously held that position shall be entitled to return to the position. The names of individuals holding promoted positions in the classified service who have been demoted shall be placed on an appropriate 'recall list' in order of their original date of promotion.

"Section .7:

"An employee who does not exercise the option to displace under this Article shall be entitled to reinstatement or reemployment in the classification from which the employee was displaced or laid-off.

"Section .8:

"Any employee reinstated or reemployed under this Article shall not serve a probationary period upon reinstatement or reemployment except that an employee laid-off during an original or promotional probationary period shall continue their probationary period."

C. The City's Proposal:

The City also proposes to create a new "Layoff" Article as a substitute for current Sections 21.10 and 21.11:

"Whenever the City determines to reduce the force in the Fire Division based on a lack of work or funds, reasons of economy, reorganization for an efficient operation, abolishment of positions or for other causes, such changes shall be made in accordance with the following provisions:

"a) The City shall determine the rank and/or classification and number of employees to be laid-off. The Employer will notify the Union and affected employees fourteen (14) calendar days prior to the effective day of displacement of layoff. During the fourteen (14) day period, the Employer and the Union shall meet to discuss the City's action, upon request of either party.

"b) In the event of a reduction in force, employees in the Fire Department will be laid-off in inverse order of their seniority with the Department.

"c) Except as provided in Section 21.9(h) length of continuous service will accrue during periods of layoff.

"d) In the event that a position in the Fire Department above the rank/classification of Firefighter is to be laid-off or displaced, the incumbent in the higher rank with the least amount of seniority within the Department shall be reduced to the next lowest rank/classification and shall displace the employee with the least seniority within the Department in such rank/classification. Displacement by rank/classification shall continue based on seniority within the Department until the rank of Firefighter is reached through the displacement process.

"e) The Employer shall notify affected employee(s) in writing either by hand delivery or certified mail at least fourteen (14) calendar days prior to the date of displacement and or layoff.

"f) Employees who have been reduced in rank or laid-off shall be placed on a recall list in order of prior rank and seniority within the Department for a period of two (2) years. If within a two (2) year period of an employee's reduction in rank or layoff, the City determines to re-establish and fill vacated ranking positions, demoted employees will be placed into the next ranking position that becomes available based on seniority within the Department or recalled.

"g) Affected employees shall be notified in writing by the Employer of their eligibility for reinstatement upon the Employer determining to re-establish a ranking position or recall to such positions. Written notice shall be hand

delivered or sent certified mail. Affected employees shall have ten (10) calendar days from the date of receipt within which to notify the Employer, in writing, of their acceptance or rejection of the offer of return to a ranking position or reinstatement. Failure of the employee to notify the Employer of his decision shall be considered a rejection of the offer of return to a ranking position or reinstatement. Employees shall be required to return to service within fourteen (14) calendar days of notice to return to service.

"h) Any employee reinstated or reemployed under this Article shall not serve a probationary period upon reinstatement or reemployment except that an employee demoted or laid-off during an original or promotional probationary period shall continue their probationary period.

"Nothing in the above shall limit or be construed to limit the right of the City to continue its use of and determine the number of part-time Fire Department personnel that may be required to provide maximum fire protection service."

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Mentor's Fire Department was originally staffed entirely by part-time employees. When full-time staff were added so that the City inaugurated a "combination Department", and began Collective bargaining with the full-time Firefighters, the reduction of staff issues did not arise probably because the Department was in the continuing process of adding personnel to keep pace with its growing population and revenues.

The continued use of part-time employees allowed the City great flexibility in staffing, and some of the present part-time Firefighters have been with the Department longer than some of the full-time Firefighters.

The part-time Firefighters are members of a separate Bargaining Unit represented by the Mentor part-Time Firefighters' Association. This Unit entered into a Collective Bargaining Contract with the City effective as of March 30, 2009, for an initial term expiring on March 25, 2012. Article 18 of that Contract does speak to the issue of layoffs, but, allows the subject to be governed by "departmental policy". The present full-time Firefighters Contract, as did its predecessors, grant the City the right to determine the number of part-time personnel that may be required to provide fire protection service.

Mentor's need for the ability to determine the most effective and efficient means of providing its Fire Division services is not the only consideration before the Fact-Finder. The need for employment stability of full-time Firefighters who have made the Division their career choice must also be respected. Part-time employees typically have additional employment elsewhere, and are not using part-time employment as a stepping stone to achieve full-time employment with the Mentor Division.

The Union points-out that the Collective Bargaining Agreements with Firefighters in twelve Cities in the area - Painesville; Mentor-on-the-Lake; Eastlake; Wickliffe; Willoughby Hills; Madison; Concord; Perry; Geneva; Ashtabula; Conneaut and

Strongsville provide that part-timers are to be furloughed first in the event of a reduction in force.

The staffing of those Divisions and the relation of their staffing to the maintenance of firefighting and EMS service was not explored at the hearing. Whether these jurisdictions represent appropriate models for Mentor remains uncertain.

The presentation at the hearing on this issue was generalized and superficial. Whether the Department has developed contingency plans to assure maintenance of adequate services to the public in the event of major funding cutbacks, is unknown. How staffing would be affected should the contingency come to pass is an important part of the debate.

At the moment, there is no immediate threat of a reduction in the Firefighter force. The present staffing is less than authorized, and there is likely to be some attrition in the full-time complement as a result of four potential retirements. Those slots need not be filled if the City should face the necessity of reducing staffing.

Accordingly, the Fact-Finder will recommend that the issue be revisited in the form of a reopener in the third year of the Contract.

X X X X

Turning to consider the issues of the grounds for layoff and the procedure to be furloughed, the Union proposes that the

reasons justifying a layoff of full-time employees mirror the grounds assigned under R.C. Section 124.37 which allows the implementation of a reduction in force "[w]hen it becomes necessary ... through lack of work or funds, or for causes other than those [constituting grounds for discipline]"

The City would amend the provision to list the grounds for layoff as including "lack of work or funds, reasons of economy, reorganization for an efficient operation, abolishment of positions [or] for other causes..."

The present text does not speak to the causes for reduction in force. The subject is left to the Managerial prerogatives of the City.

"Reasons of economy" and "reorganization for an efficient operation" are subsumed under the more general and understood topic of "lack of funds" and "lack of work". "Abolishment of positions" is not a cause for reduction of force it is a means of reducing the force. And of course, "other causes" is entirely open-ended.

The Union's proposal which is based upon the long existing and judicially interpreted statutory language is to be preferred.

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The City's proposal to establish a layoff procedure is either identical or similar to that proposed by the Union and can be recommended.

Accordingly, the Fact-Finder finds appropriate and recommends that Sections 21.10 and 21.11 be deleted from the Contract, and all other Sections of Article 21 be renumbered accordingly and that a New Article, to be sequentially numbered as the parties may direct, and for present purposes identified as Article 21.A - "Reduction in Force, Layoffs and Recall" be adopted and carried forward and incorporated into the successor Contract as follows:

"Whenever the City shall determines to reduce the force in the Fire Division based on a lack of work or funds, such changes shall be made in accordance with the following provisions:

"a) The City shall determine the rank and/or classification and number of employees to be laid-off. The Employer will notify the Union and affected employees fourteen (14) calendar days prior to the effective day of displacement of layoff. During the fourteen (14) day period, the Employer and the Union shall meet to discuss the City's action, upon request of either party.

"b) In the event of a reduction in force, employees in the Fire Department will be laid-off in inverse order of their seniority with the Department.

"c) Except as provided in Section 21.9(h) [to be renumbered] length of continuous service will accrue during periods of layoff.

"d) In the event that a position in the Fire Department above the rank/classification of Firefighter is to be laid-off or displaced, the incumbent in the higher rank with the least amount of seniority within the Department shall be reduced to the next lowest rank/classification and shall displace the employee with the least seniority within the Department in such

rank/classification. Displacement by rank/classification shall continue based on seniority within the Department until the rank of Firefighter is reached through the displacement process.

"e) The Employer shall notify affected employee(s) in writing either by hand delivery or certified mail at least fourteen (14) calendar days prior to the date of displacement and or layoff.

"f) Employees who have been reduced in rank or laid-off shall be placed on a recall list in order of prior rank and seniority within the Department for a period of two (2) years. If within a two (2) year period of an employee's reduction in rank or layoff, the City determines to re-establish and fill vacated ranking positions, demoted employees will be placed into the next ranking position that becomes available based on seniority within the Department or recalled.

"g) Affected employees shall be notified in writing by the Employer of their eligibility for reinstatement upon the Employer determining to re-establish a ranking position or recall to such positions. Written notice shall be hand delivered or sent certified mail. Affected employees shall have ten (10) calendar days from the date of receipt within which to notify the Employer, in writing, of their acceptance or rejection of the offer of return to a ranking position or reinstatement. Failure of the employee to notify the Employer of his decision shall be considered a rejection of the offer of return to a ranking position or reinstatement. Employees shall be required to return to service within fourteen (14) calendar days of notice to return to service.

"h) Any employee reinstated or reemployed under this Article shall not serve a probationary period upon reinstatement or reemployment except that an employee demoted or laid-off during an original or promotional probationary period shall continue their probationary period.

"i) Nothing in the above shall limit or be construed to limit the right of the City to continue its use of and determine the number of part-time Fire Department personnel that may be required to provide maximum fire protection service."

XII. Article 37 - "Substance Testing and Assistance":

A. The 2008 Contract:

The expired Contract provides in Article 37 for drug and alcohol screening to be conducted upon "reasonable suspicion" that the employee has recently engaged in the illegal use of controlled substances or improper use of alcohol. In addition, the City is given the right to test drivers of City vehicles who are involved in accidents.

B. The Union's Proposal:

The Union wishes to retain the current provisions for substance abuse testing without change.

C. The City's Proposal:

The City seeks to incorporate "random" drug testing into the program for the purpose of detecting "improper" use of a controlled substance in place of the current language requiring detection of "illegal" use of a controlled substance.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

No "random testing" program has been proposed for members of the Police or other Divisions, and there is no current concern that members of the Fire Division are illicitly using controlled substances or abusing alcohol.

The Fire Chief states that in the past two employees were identified as having "serious drug abuse problems". Obviously,

the present provisions proved adequate to detect the misuse of controlled substances.

As noted previously, treatment for addiction is available under the health insurance policy.

Accordingly, the Fact-Finder does not find any need to incorporate a random drug and alcohol screening program, and instead, recommends that Article 37 be carried forward and incorporated into the successor Contract without change.

XIII. Article 39 - "Duration:"

A. The 2008 Contract:

The expired Contract provides for an initial term of three years which ended on March 27, 2011.

B. The Union's Proposal:

The Union seeks a three year successor Contract.

C. The City's Proposal:

The City wants a one year Agreement. Citing the current economic uncertainty, it seeks to reevaluate its position based upon conditions at the end the one year Contract term.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City, while seeking a one year Contract term, is amenable to a three year term provided its recommendations were accepted as a "package deal".

The City has agreed to a three year successor Agreement with other of the City's Bargaining Units.

The Fact-Finder does not believe it feasible to recommend a one year Contract which would require the parties to resume negotiations within the space of perhaps three or four months.

Accordingly, the Fact-Finder finds appropriate and recommends the parties adopt a three year successor Labor Agreement subject to reopener effective as of April 1, 2013, limited to the terms of the "Layoff" Article.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 39 - "Duration" to read as follows:

"This Agreement shall be effective upon execution and shall remain in full force and effect through March 31, 2014, except that Article entitled 'Reduction in Force, Layoffs and Recall' shall be subject to being reopened for negotiations and potential amendment as of April 1, 2013. Either party may invoke the right to reopen this Article by giving the other party notice as of March 1, 2013 of its intent to reopen the Article for negotiations. If either party wishes to renew or modify this Agreement other than the said 'Reduction in Force Layoffs and Recall Article', the parties shall give written notice to the other party no later than one-hundred (180) days prior to the termination date of this Agreement of its wish to renew or modify the Agreement and to negotiate such modification. If the request is to modify, notification shall include a list of the Articles to be modified and the modifications requested, as well as any new proposals. The requesting party shall also send a copy of the request to modify and a copy of the existing Agreement to the State Employment Relations Board.

"The parties shall meet at a mutually agreeable time thereafter to discuss the proposals and to establish negotiation procedures to be followed.

"If fifty (50) days before the expiration date of this Agreement, the parties have been unable to reach agreement, either party may request the State Employment Relations Board to intervene as provided in Section 4117.14(C)(2) and succeeding paragraphs for the parties may develop mutually agreeable procedure to resolving outstanding issues and disputes."

XIV. Addendum "A" - "Performance Incentive Program":

A. The 2008 Contract:

The expired Contract provides:

"1. The measurement period for this Plan shall be pay periods having dates from January 1st through December 31st. Payment to employees qualifying under this program shall be made the second pay date in March of each year.

"2. Each qualifying line duty member would be eligible to receive up to the amount in the following schedule:

"Performance Bonus Based on Average Workweek of 49.8 Hours:

Accumulated Hours of Sick Leave As of the Last Pay Date in December	Shifts of Sick Leave Taken in Current Year	
	0	1
961 or more	\$200.00	\$150.00
481 - 960	\$150.00	\$100.00
240 - 480	\$100.00	\$ 50.00

"3. Each qualifying staff duty member would be eligible to receive up to the amount in the following schedule:

"Performance Bonus Based On Average Workweek of 40 Hours:

Accumulated Hours of Sick Leave As of Last Pay Date in December	Hours of Sick Leave Taken in Current Year			
	0	<8	<16	<24
961 or more	\$200.	\$150.	\$100.	\$50.
481 - 960	\$150.	\$100.	\$ 50.	\$25.
240 - 480	\$100.	\$ 50.	\$ 25.	\$ 0.

"4. An employee must be rated as standard or above on his/her performance evaluation to be eligible for this program.

"5. Catastrophic illness shall not be taken into consideration when computing this performance incentive plan. For purposes of this policy, catastrophic illness shall be defined as ten (10) consecutive working days of excused sick leave absence."

B. The Union's Proposal:

The Union asks to expand the incentive program as set forth below:

"Performance Bonus Based on Average Workweek of 49.8 Hours:

"Accumulated Hours of Sick Leave As of Last Pay Date in December	Shifts of Sick Leave Taken in Current Year			
	0	1	2	3:
961 or more	\$300.	\$250.	\$200	\$150.
481 - 960	\$250.	\$200.	\$150.	\$100.
240 - 480	\$200.	\$150.	\$100.	\$ 50.

"3. Each qualifying staff duty member would be eligible to receive up to the amount in the following schedule:

"Performance Bonus Based on Average Workweek of 40 Hours:

"Accumulated Hours of Sick Leave As of Last Pay Date in December	Hours of Sick Leave Taken in Current Year			
	0	<8	<16	<24:
961 or more	\$300.	\$250.	\$200.	\$150.
481 - 960	\$250.	\$200.	\$150.	\$100.
240 - 480	\$200.	\$150.	\$100.	\$ 50.

..."

C. The City's Proposal:

The City prefers to maintain the existing text without change.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The present incentive benefit program has been in place since 1999 and has cost the City approximately \$1,500.00 in incentive benefits per year. It is an addition to the sick leave retirement "cash-out" available under Article "13".

The problem, as the Union sees it, is two-fold. First, if a Line Firefighter has taken off just one shift on sick leave during the year, he has less financial incentive to regularize his attendance. Second, the award for not using sick leave is too low.

The Fact-Finder believes that the Union's proposal goes too far in extending the number of absences which would still qualify an employee for the incentive bonus, and in increasing the amount of the payouts. A more measured liberalization is appropriate.

The Fact-Finder therefore finds appropriate and recommends that Addendum "A" - "Performance Incentive Program" be amended as set forth below, and as so amended, carried forward and incorporated into the successor Contract:

"Performance Bonus Based on Average Workweek of 49.8 Hours:

Accumulated Hours of Sick Leave As of the Last Pay Date in December	Shifts of Sick Leave Taken in Current Year	
	0	1
961 or more	\$250.00	\$175.00
481 - 960	\$200.00	\$150.00
240 - 480	\$150.00	\$100.00

"3. Each qualifying staff duty member would be eligible to receive up to the amount in the following schedule:

"Performance Bonus Based On Average Workweek of 40 Hours:

Accumulated Hours of Sick Leave As of Last Pay Date in December	Hours of Sick Leave Taken in Current Year			
	0	<8	<16	<24

961 or more	\$250.	\$200.	\$125.	\$75.
481 - 960	\$200.	\$150.	\$100.	\$50.
240 - 480	\$150.	\$100.	\$ 75.	\$25.

Report signed, dated and issued at Cleveland, Ohio this 14th
day of October, 2011.

Alan Miles Ruben
Fact-Finder

AMR:l jg

October 14, 2011

Ryan J. Lemmerbrock, Esq.,
Muskovitz & Lemmerbrock, LLC
820 W. Superior Avenue, #800
Cleveland, OH 44113

Mr. Thomas Grabarczyk
Labor Relations Manager, Inc.
6800 W. Central Ave., #L-2
Toledo, OH 43617

RE: SERB Case No: 10-MED-10-1604
The City of Mentor -and- Mentor Professional
Firefighters, IAFF Local 639

For Services Rendered:

Mediation and Hearing Dates:

- 6/8; 7/11 & 8/8/11

3 days at \$950.00 per day \$2850.00

Mileage - Bratehahl, OH/Mentor, OH

36 miles x 3 trips = 108 miles

@ \$.50 per mile \$ 54.00

Travel Time - No Charge \$ 0.00

Duplication - No Charge \$ 0.00

FedEx - No Charge \$ 0.00

Meals - No Charge \$ 0.00

Consideration and Preparation of Report
And Recommendations

6 days at \$950.00 per day \$5700.00

Total Amount Due: \$8604.00

The City's Share: \$4302.00

The Union's Share: \$4302.00

Respectfully submitted,

Alan Miles Ruben

Fact-Finder

TAX ID NO: 189-24-1171

AMR:ljb

