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July 11, 2011

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Richmond Heights, Ohio)	
)	Case No: 10-MED-12-1811
and)	
)	Fact-Finder: Colman R. Lalka
International Association of Firefighters,)	
Local 2009)	

HEARING

Dates of Hearing: June 9 and June 29, 2011
Location of Hearing: Richmond Heights, Ohio

ATTENDANCE AT HEARING

For the City:
Marc J. Bloch, Esq.
Sara J. Fagnilli, Esq.
Lynda Rossiter, Director of Finance
Beverly Vitaz, CPA

For the Union:
Don Reis, Staff Representative, Northern Ohio Fire Fighters Association
Phil Salvia, Local 2009 President
Jason Buss, Local 2990 Vice-President

MEDIATION

Prior to the commencement of the fact-finding hearing, mediation was requested by the Parties. The Fact-Finder acted as mediator with all issues being negotiated. While one Party or the other did not oppose its counterpart's proposal, none of the issues was resolved in the form of a Tentative Agreement.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules

4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

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

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

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

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

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

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

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

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

BACKGROUND

The City of Richmond Heights recognizes the International Association of Firefighters, Local 2009 as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2009. On December 15, 2009, the Parties entered into a Tentative Agreement through December 31, 2012 providing for a wage freeze in 2010, reopens on all issues as provided in ORC 4117.14 *et seq* in the second and third year of the Tentative Agreement, an increase in the contribution of Bargaining Unit Members to their Health Savings Accounts, and the incorporation by reference of a Memorandum of Understanding.

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

manner that would allow the Fact-Finder to render a report and make recommendations on the issues at impasse.

THE CITY'S ECONOMIC STATUS

Lynda Rossiter, the City's Director of Finance, described the City's current economic condition as being almost to the point of Fiscal Watch. All fund balances are low, and since the inception of the recession in 2007, expenses incurred in providing services have been greater than revenues. During negotiations for the Labor Agreements that expired in 2009, the City's five Unions were awarded retroactive wage increases of 2% for 2007, 3% for 2008, and 4% for 2009. The City passed along the same wage increases to its non-Union employees. The City originally offered 0%, 3%, and 4%, which offer was subsequently reduced to 0%, 3%, and 3%. After the last of the retroactivity was paid in 2009, Ms. Rossiter explained, most of the City's 2009 budget was depleted, and she reported to the Mayor that the City was in fiscal difficulty.

The Union noted the Conciliation Award provided for a total of 9% in wage increases, while the City offered a total of 6%, or two-thirds of the amount awarded. The total cost of the payment citywide was \$1.2 million, Ms. Rossiter stated, of which the City offered approximately \$750,000.00. That is, the Union questions how the difference of \$450,000.00¹ between the amount the City offered and what the Conciliator awarded placed the City in economic calamity.

Additionally, the Union points out, in 1992, 77% of the operating budget of the Fire Department came from the existing Fire Service levies, and in 2006 that figure was reduced to 46% as the result of increased manpower, longevity, and other expenses. During the round of negotiations for the Collective Bargaining Agreement that expired December 31, 2009, the Parties took an eleven month hiatus, a three mill levy for the operation of the Fire Department was placed on the ballot, and approved. As the result of the levy being passed, in 2008, the first year of the levy, 90% of the Fire Department operating budget came from Fire Service Funds. That is, the Union emphasizes, while the City is struggling with its finances, the Fire Department currently has more dedicated money than at any time in its history.

¹ The Union was using conservative figures. In actuality, two-thirds of \$1.2 million amounts to \$800,000.00, or a difference of \$400,000.00, not \$450,000.00.

Approximately one week after the levy was approved by the City's residents, the Administration met with Officials from the City's five Unions, and requested concessions. All the City's Unions, with the exception of the Police and Dispatchers Unions, agreed to the City's request. Non-Bargaining Unit employees were also required to make concessions. The lack of concessions by the Police and Dispatchers Units resulted in the layoffs of five Police Officers, three Corrections Officers, and one Dispatcher. IAFF Local 2009 worked closely with the City in attempting to accommodate its request for concessions, however, while the dollar amount of this Union's concessions came close, Ms. Rossiter explained, they did not reach the total amount needed.

According to the Union's calculations, layoffs in the Police and Dispatchers Units resulted in an expenditure decrease to the City of \$750,000.00, the decrease in salaries to Service Department employees resulted in another \$100,000.00 decrease in expenditures, and this Union's concessions amount to a savings of \$300,000.00 to the City. These amounts, the Union points out, offset the wage increases awarded by the Conciliator. Ms. Rossiter added, however, those decreases only enabled the City to get through 2009, and still left the Fire Service Fund with a negative balance of \$500,000.00. The decreases in expenditures, Ms. Rossiter emphasized, did not restore financial health to the City.

Absent the decreases in expenditures and had the three mill levy failed, Ms. Rossiter indicated, the City would have been placed in Fiscal Emergency. Additionally, Ms. Rossiter stated, the City is not hiding funds from anyone; there are no savings accounts or reserves. The City has budgeted concessions from all its Unions into the 2011 budget, and even assuming it obtains all the concessions it is requesting, absent those concessions being made retroactive, the City will run out of funds by this year's end.

Most of the expenses incurred in the operation of the City's Fire Department, including capital improvements and pensions, are derived from three funds, the City's Fire Service Fund, Fire Pension Fund, and Ambulance Billing Fund. Currently, approximately 5% of the City's General Fund is used to cover the expenses of operating the Fire Department.

The City is currently seeking \$350,000.00 in concessions from this Union, pointing out this Union has been very cooperative with the City in agreeing to concessions, however, the City maintains, there are operating requirements in the Union's Collective Bargaining

Agreement that cause extraordinary expenses for the City. Those operating requirements have been set forth in the City's issues before this Fact-Finder, and are discussed below.

The Union pointed out that ending balances in the Fire Service Fund for the years 2008 through 2011 decreased from deficits of \$438,716.00 and \$508,936.00 in 2008 and 2009 respectively, to positive balances of \$28,940.00 and \$43,674.00 in 2010 and as projected in the 2011 budget. During the current round of negotiations for Contract years 2010 through 2012, all Unions agreed to continuing forward through at least 2010 all provisions in their expired Collective Bargaining Agreements.

The City's budget for 2011, based on projected revenue and expenditures, takes into account the \$350,000.00 amount of its desired concessions from this Union. The 2011 Budget reflects a beginning General Fund balance of \$114,129.80, total revenues to the General Fund in the amount of \$7,103,710.00, total expenditures of \$7,095,822.51, and an ending carry forward balance of \$122,017.29. This ending carry forward of approximately 1½%, according to Ms. Rossiter, is well below the range of 15% to 17% recommended by the three rating services.

All issues at impasse, the City states, involve economics. The City has attempted to remove expenses from a variety of sources, however, the source of the reduction in expenditures is not as important as reducing total Fire Department expenditures by \$350,000.00. The City's proposed concessions, the Union points out, amount to an annual \$22,000.00 decrease in wages and benefits to each of its member.

Beverly Vitaz, Certified Public Accountant, currently serves on the Audit Committee for the State of Ohio, previously served on Advisory Boards for the state, and has conducted over one-hundred audits. It is Ms. Vitaz' opinion the financial state of the City is poor, and it comes as a surprise to her the City did not go into Fiscal Watch after the last audit. It was Ms. Vitaz' further opinion that until the City builds up its fund reserves, it will not get ahead fiscally, and a carry forward in 2008 of \$28,000.00 in a \$7 million budget is inadequate to meet contingencies. The carry forward must be increased to improve the City's economic situation.

In that the concessions the City is proposing are included in the 2011 budget, if the concessions are not obtained, Ms. Rossiter explained, the City will be required to look into other areas, such as furlough days and layoffs, to cut back on expenditures.

ANALYSES

The Fact-Finder is convinced the City currently finds itself in a dire financial situation. However, the Fact-Finder must also take into consideration all concessions sought by the City result in a reduction in wages and benefits to individual Bargaining Unit Members in an amount of \$22,000.00.

Taking into account the presentations of the Parties in their entirety, and considering all factors enumerated in the Ohio Administrative Code to be considered, and balancing especially the City's ability to finance its operations, while also taking into account the welfare of the public, especially in light of the levy approved by the residents, which levy, the residents were informed, was dedicated to providing for the services of the Fire Department, and past Collective Bargaining Agreements, the Fact-Finder will attempt to find a middle ground. That is, the Fact-Finder cannot recommend all concessions the City proposes, but will recommend relief where the evidence of record establishes such relief to be appropriate.

ISSUES AT IMPASSE AND RECOMMENDATIONS

ARTICLE 20 WORK PERIOD AND WORKWEEK

The City's first issue involves a modification of the practice that arose a number of years ago wherein the calculation of any type of payouts, vacation time, comp time, acting officer premium, or any other type of additional time paid out, is based on the calculation of salary divided by 2,080 hours. Article 20.3 provides the divisor to be 2,688.4 hours, and the City proposes a return to that figure. Ms. Rossiter explained the change to 2,080 was an error in calculation that occurred approximately twenty years ago, was brought to the attention of the Administration by the previous Finance Director, who was with the City approximately two years before Ms. Rossiter assumed the position in 2004.

After the previous Finance Director left the City, Ms. Rossiter continued to pursue the matter, and in October 2004 the manner of calculation was unilaterally changed to the divisor of 2,688.4 hours. The Union grieved, and, by Arbitration Award dated May 10, 2005, prevailed. In that Award, the Arbitrator noted Article 20.3 provided overtime is to be based on the divisor of 2,688 hours, however, the Labor Agreement was silent on the divisor to be used for other calculations such as comp time cash-outs, and further noted comp time banks are funded not just by overtime worked, but by holiday hours as well. The Arbitrator

determined an ambiguity existed in the Labor Agreement, noted the duration of the practice of using the divisor of 2,080 hours, and held the practice must continue. However, the City points out, the Arbitrator also noted that if the City desired the practice be discontinued, the proper time to raise that issue is during Contract negotiations, which, the City emphasizes, it is now doing.

The City also seeks modification in the manner in which vacations and holidays are selected and used. Currently, twelve hours of comp time are awarded for each of the eleven holidays, which comp time is placed into the Fire Fighters' comp time banks and paid out at the end of the year or the beginning of the following year, depending on whether or not the pay-out is to be pensionable. Additionally, the City has permitted employees to elect not take the holidays, and instead be compensated monetarily at the end of the year. Ms. Rossiter indicates a return to 2,080 hours as the divisor and the elimination of the twelve hours comp time per holiday results in a savings to the City of \$115,482.00 for wages only, exclusive of pension and payroll taxes.

The Union indicates the use of 2,080 hours as the divisor occurred twenty-four years ago, and was not the result of an error. The use of 2,080 as the divisor was the result of a conscious decision of the then Finance Director to pay overtime to Fire Fighters commensurate with the manner in which overtime was paid to Police Officers, that is, after forty hours at straight time.

Phil Salvia, Local 2009 President, explained Fire Fighters do not take comp time off if doing so results in another Fire Fighter being called in on overtime. The use of comp time in this fashion, Mr. Salvia continued, removes comp time from the books and results in a savings to the City. Additionally, Mr. Salvia continued, during the last round of negotiations, there was a modification of the manner in which the Fire Fighters were remunerated for actually working a holiday. Previously, Fire Fighters who worked a holiday received twelve hours of additional comp time. That was modified to a payment of overtime at time-and-a-half their rate of regular pay. This also reduced the total cost to the City.

ANALYSIS AND RECOMMENDATION

The Fact-Finder finds convincing the Union's contention the use of the divisor of 2,080 hours instead of 6,688.4 hours as provided in Article 20.3 was purposeful, not

accidental, and was done to place the Fire Fighters on an equal footing with other City employees, that being, overtime to be paid for hours worked over forty. The Fact-Finder notes the use of 2,080 hours has been in effect for twenty-four years, through at least three Finance Directors, and probably more, including Ms. Rossiter's predecessor who brought the use of 2,080 hours to the attention of the Administration.

Yet it was not until Ms. Rossiter attempted to modify the practice shortly after beginning her tenure with the City that the matter came to a head. This use of 2,080 hours over an extended period does not convince the Fact-Finder it was done in error. The Fact-Finder is convinced of the opposite, that 2,080 hours were used as the divisor to, as the Union contends, place the Fire Fighters on an equal par with other City. That point notwithstanding, the Fact-Finder also notes the time to modify a long standing past practice that bestows a benefit is during Contract negotiations, as the City is now proposing.

The Fact-Finder notes the change to a divisor of 2,688.4 hours as expressly provided in Article 20.3 will generate a saving to the City in an amount of \$115,482.00 in wages alone. While this savings results in a decrease in wages and benefits to Bargaining Unit Members, the Fact-Finder also notes the use of 2,688.4 hours was expressly agreed by the Parties, and was unilaterally changed to 2,080 hours by a previous Finance Director during a favorable economic climate.

In that the economic climate has spiraled downward, resulting in a fiscal dilemma for the City, it is the belief of the Fact-Finder the unilateral change to 2,080 hours must now be rescinded, and the use of 2,688.4 hours as provided in Article 20.3 reinstated. The Fact-Finder recommends against the Union's proposal that Article 20.3 be modified to substitute 2,080 hours for 2,688.4. The Fact-Finder recommends the City's proposal, that is, using a time divisor of 2,688.4 hours for cashed-out comp time, holiday pay, acting officer pay, and vacation pay.

ARTICLE 21 OVERTIME

The City has been calculating overtime based on the time paid rather than time actually worked in excess of the one-hundred-ninety-two hour work cycle. Stated somewhat differently, paid time off has been included as time worked in the one-hundred-ninety-two hour cycle. The City proposes modifying Article 21.1 to provide payment of overtime be

based only on actual hours worked as permitted pursuant to the FLSA. This modification results in a savings of \$44,000.00 based on the 2011 budget.

The Union maintains that every Fire Department in the State of Ohio includes time off for holidays, vacation, and so forth, in the calculation of overtime, and notes that it has been the past practice of this City to do so. The Union proposes adding language at the end of Article 20.1 of the Collective Bargaining Agreement protecting the current and past practice of counting all time paid as hours worked.

ANALYSIS AND RECOMMENDATION

As noted by the Union, it is common practice in the Fire Service of most, if not all, communities to count all time, including time off, as part of the work cycle in determining overtime, and the Fact-Finder is in agreement with the Union's position. However, the Union proposes the following sentence be added to the end of Article 20.1, "For the purpose of computing overtime, all hours paid shall be considered as hours worked." In the view of the Fact-Finder, the proposed language can lead to an anomalous, and probably unintended, situation of an employee being on paid sick leave during a portion of the one-hundred-ninety-two day cycle, and having the sick leave count as hours worked. Obviously, if an employee is on sick leave, whether due to his own illness or injury or to attend to a family member, the employee is unable to work, and such sick leave should not be counted in computing overtime.

The Fact-Finder recommends the Union's proposed language with modification. The Fact-Finder recommends the following be added to the end of Article 20.1, "For the purpose of computing overtime, all hours paid, with the exception of sick leave, shall be considered as hours worked."

ARTICLE 22 SALARY SCHEDULE

The City proposes a wage reduction of 3% retroactive to January 1, 2011, and, in that the Union seeks the duration of the successor Agreement be through the end of 2012, the City proposes the reduction be frozen through 2012.² The wage reduction will save the City

² In light of the November referendum on SB5, the City opposes a multi-year Agreement, as will be discussed further below.

\$36,864.00 based on the 2011 budget. The retroactivity of the wage reduction is to be accomplished by deducting the decrease from future paychecks.

The City also proposes the paramedic premium be ended beginning January 1, 2012. The Paramedic Premium, the City maintains, is a relic of a time when there were both paramedics and Fire Fighters, however, currently, being a paramedic is a prerequisite to becoming a Fire Fighter in the City. The elimination of the paramedic premium would save the City approximately \$30,000.00 annually.

The Union points out the same 3% retroactive wage decrease was advanced by the City in the recent Fact-Finding involving the Police, and was rejected by the Fact-Finder. The 3% reduction will be advanced again in the upcoming Police Conciliation. In its Position Statement prior to the present Fact-Finding Hearing on June 9, 2011, the City had requested a wage freeze. The change from a freeze in the City's June 9 Position Statement to the 3% reduction, the City indicates, is to maintain consistency with the Police.

Regarding the paramedic premium, the Union points out that for the last three years it discontinued the use of overtime for thirty hours per year continuing education to maintain certification, and each member pays out-of-pocket the registration fees incurred in attending continuing education. This results in an annual savings to the City of approximately \$17,000.00 to \$18,000.00. Paramedic premium, the Union adds, is the norm throughout the state. The Union opposes relinquishing paramedic premium.

ANALYSIS AND RECOMMENDATION

Pursuant to the Article 22.1 Salary Schedule, in 2009 a Fire Fighter 1st Class earned, and continues to earn pursuant to the agreement freezing wages, a salary of \$66,045.00, and, pursuant to Article 22.4, earns a paramedic premium of \$2,000.00. A 3% reduction in the wages of a 1st Class Fire Fighter, amounts to \$1,981.35. That is, the City is seeking a reduction in compensation totaling approximately 6%, of which 3% is to be retroactive to January 1, 2011.

Notwithstanding the City's characterization of paramedic premium as a relic, and by implication no longer needed, paramedic premiums have become an integral part of the pay structure for Fire Fighters throughout the state. A total salary reduction of 6% for 1st Class

Fire Fighters, more for Fire Fighters of a higher rank, is, in the opinion of the Fact-Finder, too far of a deviation from the pay structure of the predecessor Collective Bargaining Agreement.

The Parties have already entered into an agreement for a wage freeze through 2010, and the Union's proposal of no wage increases for the years 2011 and 2012 is recommended, and the Fact-Finder additionally recommends against the City's proposal of eliminating the paramedic premium.

ARTICLE 24 SICK LEAVE

The City proposes elimination of the sick leave bonus for perfect attendance as provided in Article 24.13. If an employee does not use sick time in a quarter, the employee is paid eight hours as a bonus in the next quarter's first payroll. Eliminating the sick leave bonus would save the City \$8,000.00 annually.

The Union opposes the City's proposal, and counters by pointing out one sick day costs the City a little over \$1,000.00. If the bonus saves eight sick days in a year, it pays for itself. The City responds by stating the Union's claim establishes the mendacity of the situation. That is, employees are paid for what they are supposed to do, not use Sick Leave in an inappropriate fashion and report for work. This \$8,000.00 is not a large item, but it is \$8,000.00 that must come from someplace. Recently the air conditioning unit in the Police Station malfunctioned, requiring the purchase of a \$4,500.00 compressor. That's \$4,500.00 the City doesn't have. While this issue is not a large ticket item, the City concludes, the savings of \$8,000.00 pays for a compressor-and-a-half.

ANALYSIS AND RECOMMENDATION

While the savings to the City is not great, the Fact-Finder finds convincing the City's argument that payment to employees for coming to work, as they should unless genuinely ill, should be eliminated. That the City's financial situation begs relief from multiple areas, further convinces the Fact-Finder the City's proposal is reasonable and appropriate.

The Fact-Finder recommends Article 24.13 be deleted from the successor Agreement.

ARTICLE 27
HOLIDAYS

The City proposes eliminating two of the twelve holidays³ and payment of time-and-a-half for working a scheduled holiday. Holidays are cashed-in and not used, and are tantamount to additional compensation. Additionally, the City states the value of the holidays is exaggerated as the result of the practice of calculating the value at 2,080 hours rather than 2,688.4 hours as provided in the Contract. The annualized savings of eliminating one holiday is \$14,000.00, and the cost of paying overtime for working a holiday is approximately \$25,200.00 on an annualized basis. The Union opposes the removal of any holidays.

ANALYSIS AND RECOMMENDATION

The Fact-Finder's recommendation above of a return to the divisor of 2,688.4 hours will remove the exaggerated effect about which the City expresses concern. However, the Fact-Finder is mindful that the payment of twelve hours for each of the twelve holidays has become a part of the remuneration package for Fire Fighters. When a Fire Fighter actually works the holiday,⁴ the Fire Fighter, pursuant to Article 27.3, is additionally paid at the rate of time-and-a-half. Safety Forces, unlike employees engaged in the performance of most other City services, must be scheduled to work holidays. That is, working holidays is a necessary prerequisite for employment as a Fire Fighter.

Balancing the City's need for fiscal relief against reduction in remuneration as provided in the predecessor Labor Agreement, the Fact-Finder is of the opinion two of the twelve holidays not be removed as proposed by the City, however, the provision for payment of time-and-a-half for actually working the holiday should, in the successor Agreement, be eliminated.

The Fact-Finder recommends against the City's proposal of removing two holidays from the successor Agreement, but recommends the City's proposal that Article 27.3 be deleted.

³ The Collective Bargaining Agreement provides, at Article 27, for eleven holidays and one personal day. The enumerated holidays are New Year's Eve, New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day, Employee's Birthday, Martin Luther King, Jr. Day, and Personal Day. The Labor Agreement treats the personal day as a holiday with the exception that an employee is not paid at the overtime rate for working the personal day. The difference in the treatment of the personal day from the eleven remaining enumerated holidays accounts for the reference to eleven holidays in the Parties' discussions in Article 20, and to twelve holidays in this discussion of Article 27.

⁴ With the exception of the personal day, as previously noted.

ARTICLE 28
INSURANCE

It is proposed by the City that employee contributions for the current health savings account be increased, and dental and vision coverage be offered at the option and expense of the employee. In 2009 the City proposed changing to high deductible health care coverage with a health savings account component. The City's proposal was accepted by the City's employees, and the change proved effective in reducing the cost of health care coverage. In 2009 the City funded the health savings account at 100%. In 2010, the City proposed, and the Union accepted, reducing the contribution from \$4,000.00 to \$3,500.00 for family coverage, and from \$2,000.00 to \$1,750.00 for individual coverage.⁵ The City's current proposal is to reduce its contribution to \$2,000.00 for family coverage, and to \$1,000.00 for individual coverage.

Additionally, the City points out, premiums for dental and vision are paid by the City. That coverage would still be offered, but the employee, under the City's proposal, would bear the cost of the premiums. The reduction in the City's contribution to the health savings account would annually save the City \$24,750.00, and the elimination of payment of the dental and vision premiums by the City would save \$25,000.00 annually.

The Union proposes, for 2012, increasing employee contribution from \$250.00 to \$500.00 for individual and from \$500.00 to \$1,000.00 for family coverage, provided, however, the remaining Units in the City agree to the same increase. With 2011 half gone, the Union questions how the contribution can be changed at this time. Additionally, the cost of coverage in 2012 is currently unknown, and the Union feels changes at this time, before costs are known, are inappropriate.

Mr. Salvia noted that in 2009 the change saved the City approximately 18%, including its 100% contribution to the health savings account. Last year, the wage freeze notwithstanding, the Union agreed to a \$500.00 contribution to the health savings account, and is agreeable to another increase in 2012. The Union feels that with the 18% savings in 2009, and its willingness to increase contributions in 2012, it has assisted the City in containing health care costs, and opposes additional employee contributions.

⁵ There is only one Fire Fighter with individual coverage.

ANALYSIS AND RECOMMENDATION

The Fact-Finder is in agreement with the Union's position that, at this time with the costs of health care for 2012 being unknown, now is not the time to change dental and vision to be at the option and expense of the employee. Additionally, the Union's willingness to accept an increase in employee contributions in 2012 will serve to provide some relief to the City.

The Fact-Finder recommends against the City's proposal of offering dental and vision at the option and expense of the employee, and recommends the Union's proposal for an increase in employee contribution, provided, however, the increase in contribution applies to the City's other employees. That is, the Fact-Finder recommends employee contribution be increased in 2012 to \$1,000.00 for family coverage and \$500.00 for individual coverage, provided the same increases apply to all City employees.

ARTICLES 31 and 38, and new MEMORANDUM OF UNDERSTANDING VACATIONS and MISCELLANEOUS, and SCHEDULING OF PART-TIME FIRE FIGHTERS

The City states that Fire Department employees have enjoyed the benefit of cashing-in the entirety of unused vacation on anniversary dates. All other City employees are restricted to cashing-in one-third of unused vacation. The City proposes vacation time must be taken, with no cash-in of vacation time permitted. The City is making this proposal to all its Unions, not just the Fire Department personnel.

Also, time off for vacations and holidays are selected every thirty days. The City proposes time off be selected in November for the entirety of the upcoming year, and permitting only one person off at a time for vacation or holidays. Selection in November and only one person off at a time, the City maintains, resolves a number of issues including manning, and prevents situations of most employees being slotted for time off in the premium summer months and the Fire Department being overstaffed in the less desirable months. In many cities time off is selected for the year by seniority, and, the City emphasizes, it is not suggesting employees will no longer be permitted to trade time. The City adds that as with other issues it raised, these benefits were provided during good economic times, and in the face of the current economic situation, must be changed.

The Union counters by pointing out that selecting time off in November will still result in everyone selecting days during the prime summer months. Additionally, the Union previously considered the City's proposal of permitting only one employee on vacation or holiday at a time, and was willing to agree on a temporary basis in an MOU to enable the City to address its current cash shortfall. On this issue the Union is unwilling to accept a permanent change to the Labor Agreement.

Regarding cashing in one-third of vacation, the Union notes 2011 is half over, and some members still have unused vacations. It will be problematic for those employees to use their vacations by year's end. Moreover, the Union continues, the City cannot state it is double-paying for vacations in that it had the benefit of the employee working rather than being off. This resulting increase in manpower, the Union also points out, reduces the City's exposure to overtime costs. The City admits that at this time it is unable to determine the amount of savings, and that it will be necessary to wait until its proposals have been in effect for a year before that determination can be made. In an effort to accommodate the City, the Union proposes a language change permitting one-half of unused vacation be cashed-in for payment in 2011, and one-third in 2012.

The City further indicates Articles 31 and 38 must be considered in conjunction with one another in that manning is, in reality, a second part of the same problem facing the City. In good economic times the City ceded its management right regarding manning. In these difficult times, the City needs that right returned. The City proposes it be permitted two part-time employees on duty at all times, regardless of the number of full-timers. The Union points out the City is currently operating in that fashion, but, the City counters, only with a five man minimum. The City desires to be able to operate with a four man minimum on occasion if it chooses, without having to be in a layoff situation.

The practice in the Fire Department for the past twenty years is that the employees work out among themselves when they will take off, the Union states, and there is no problem regarding too many employees being off during premiums months. About 95% of the time, Mr. Salvia continued, when employees put in for off time thirty days in advance, part-timers sign up to fill the vacancy. That is, the part-timers are receiving sufficient lead time to sign up. Mr. Salvia further indicated the Union is proposing that if a part-timer signs up for work and then must call off, it be incumbent upon the part-timer to find a part-time replacement.

The part-time coverage of 95%, the Union maintains, is about all that can be obtained given this type of Department with full-time Fire Fighters augmented by part-timers. Those part-timers, the Union emphasizes, are full-time employees from other cities. This Unit's Fire Fighters signing up for time off a year in advance will not provide the part-timers the ability to sign up to fill vacancies that far in advance. That is, they will continue to sign up thirty days in advance. Officially, overtime is supposed to go to the full-timers, however, pursuant to the Union's proposal, if a part-timer is unable to report for work after being scheduled, it is incumbent on that part-timer to find another part-time employee to take his place prior to the overtime being offered to a Bargaining Unit Member. This saves the City overtime costs. The City is willing to agree to this last proposal.

Regarding manning and overtime costs, the Union states that in 2004 when minimum manning was awarded, there were eight employees in the station, the Chief and seven Fire Fighters, and there are currently just over five without a Chief. The Department is responding to more calls than in 2004, and there is almost \$1 million more in levy funds generated to the City. Going below the current manning requirement of five will require a complete rewriting of the operating guidelines, and, the Union points out, the Department does not have a Chief to do so. Importantly, the Union concludes, about 20% of the time two ambulance calls are received concurrently and each ambulance run requires three employees.

ANALYSIS AND RECOMMENDATION

Regarding the Union's proposed Memorandum of Understanding, which the City does not oppose, the Fact-Finder recommends it be accepted, and an MOU entered into which provides:

If a part-time Fire Fighter calls off sick or is unable to work as scheduled, he must go through the list of part-time Fire Fighters before said time can be offered to a member of Local 2009 for overtime.

The Fact-Finder is not convinced selection of time off in November for the upcoming year will aid the City in finding any financial relief. It is noted that part-timers fill vacancies 95% of the time under the current manner of operation, and it was never adequately explained how November selections will improve that figure. The Fact-Finder recommends against the City's proposal that time off for the upcoming year be selected in November.

To provide relief to the City, and to bring this Unit into internal comparability with the City's other Units, the Fact-Finder recommends the Union's proposal of one-half unused vacation cash-in for 2011, and one-third for 2012. The Fact-Finder recommends Article 31.2 be modified to read:

Vacation time shall accrue to the employee upon each successive annual recurrence of the anniversary date of his employment. Vacation shall be taken by the employee during the year after which it has accrued and prior to the next recurrence of the anniversary date. An employee shall be paid for any unused vacation time, up to one-half (1/2) of the total time accrued in 2011 and for one-third (1/3) in 2012, remaining at the conclusion of the vacation year within thirty (30) calendar days after the anniversary date of his or her appointment.

Given the 95% figure discussed above, and the recommendation of the Union's proposed MOU regarding part-timers, the Fact-Finder is not convinced the City's proposed increase of the ratio of three part-timers to every four full-time Fire Fighters will serve any purpose other than erode the full-time Bargaining Unit. The Fact-Finder recommends against the City's proposed modification of Article 38.2.

Regarding the manning requirement of Article 38.3, in the view of the Fact-Finder, the five man minimum manning requirement is for the protection of the full-time Unit, and was granted in exchange for the City being no longer obligated to recall personnel during out-of-the-City hospital transports. The Fact-Finder recommends against the City's proposed deletion of Article 38.3.

ARTICLE 16 LAYOFFS AND RECALL

The Union proposes Contract language providing that in the event of layoffs in the Fire Department, all part-time Fire Fighters be laid off prior to full-time Fire Fighters. This proposed language is not dissimilar to language in Collective Bargaining Agreements in surrounding communities. The City questions that in the event of layoffs and a need for part-timers, does it reduce full-time Fire Fighters to part-time status?

ANALYSIS AND RECOMMENDATION

Article 16.1 of the predecessor Agreement only addresses the order in which Bargaining Unit Members are to be laid off. The Union's proposed language, which the Fact-

Finder views as reasonable, clarifies the treatment of part-timers in the event of layoffs, and provides some protection against the erosion of the Bargaining Unit by part-timers.

The Fact-Finder recommends Article 16.1 be modified to read:

Whenever it becomes necessary to lay off employees with the Fire Department, all part-time Fire Fighters and seasonal employees shall be laid off prior to any full-time Fire Fighters, then those full-time persons who have been appointed last shall be first to be laid off from the Department.

ARTICLE 41

DURATION

In light of the upcoming referendum on SB5, the City proposes the duration of the successor Agreement be for one year, and points to the agreement entered into by the Parties on December 15, 2009. That agreement, in part, provides:

All subject matters shall be available to be "reopened" in the second and third year of the Agreement. Provided, however, that the parties may agree that negotiations in 2010 may cover both 2011 and 2012. The "reopener" negotiation shall take place pursuant to Ohio Revised Code 4717.14⁶ *et seq* as if the negotiations were for a new collective bargaining agreement.

The City maintains the second sentence limits the Fact-Finder's authority to recommend an agreement to no more than the one year it proposes. The Union disagrees, stating simply that Fact-Finding may go forward pursuant to ORC 4117.14, and the Fact-Finder's authority to recommend a duration longer than one year is not limited. The Union proposes a three year successor Agreement.

ANALYSIS AND RECOMMENDATION

The December 15, 2009 agreement provides that during negotiations the Parties may agree to cover both 2011 and 2012. Negotiations reached impasse, that is, concluded, and the matter is now in Fact-Finding. The December 15 agreement was never intended to limit the Fact-Finder's recommendation regarding duration to only 2010.

Three year Labor Agreements are the standard, not Agreements of one year as the City proposes. Moreover, public employers have been approaching and obtaining mid-term concessions, and nothing will prevent the City from doing so during the term of the Successor Agreement. While the Parties have been unable to reach final resolution on all issues of the

⁶ An obvious typographical error, which should read 4117.14.

Successor Agreement, this Union has shown a willingness to make concessions in these and in past negotiations.

The Fact-Finder recommends the Union's proposed three year Successor Agreement, and that Article 41.1 provide for the expiration of the Successor Agreement on December 31, 2012.

MISCELLANEOUS

The City proposes changing the payout of annual allowances from the first payroll in January to the end of January. This is strictly a cash flow issue for the City. The Union agrees to the proposal.

RECOMMENDATION

Accordingly, the Fact-Finder recommends the payout for annual allowances be changed from the first payroll in January to the end of January.



Colman R. Lalka, Fact-Finder

Dated: July 11, 2011
Madison, Lake County, Ohio