

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF
THE FACT FINDING**

Between

CITY OF EAST CLEVELAND

And

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 500**

SERB No. 11-MED-03-0282

Before:

**CHRISTOPHER E. MILES, ESQUIRE
Fact Finder**

APPEARANCES:

**Michael D. Esposito, Esquire
Clemans, Nelson & Associates, Inc.
Representing the City**

**William E. Froehlich, Esquire
Muskovitz & Lemmerbrock, LLC
Representing the Union**

BACKGROUND

This case concerns the fact finding proceedings between the City of East Cleveland (hereinafter referred to as the "City") and the International Association of Fire Fighters, Local 500, (hereinafter referred to as the "Union"). By letter dated May 21, 2013, the undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB). The fact finding proceedings were conducted pursuant to the Ohio Administrative Code Rule 4117 and the rules and regulations of SERB, as amended. The City and the Union mutually agreed to extend the period of fact finding.

The City was represented by Mr. Michael D. Esposito, Esquire, and the Union was represented by Mr. William E. Froehlich, Esquire. Prior to the appointment of the Fact Finder, the parties engaged in extensive negotiations and were able to resolve several provisions for the new collective bargaining agreement. The items which were resolved by the parties during negotiations prior to the fact finding hearing are attached as Appendix "A". The following issues remained unresolved:

Article 3	Recognition
Article 5	Prevailing Rights
Article 7	Hours of Duty
Article 8	Overtime
Article 9	Safety Manning
Article 10	Management Rights
Article 11	Salaries
Articles 12 & 13	Uniform/Shoe Allowance (Amount Only)
Articles 16 & 17	Health Insurance and Dental Insurance
Article 19	Sick Leave
Article 19.03	Injury on Duty
Article 20	Personal Day
Article 21	Vacations
Article 22	Meal Hours
Article 23	Acting Officer's Pay
Article 31	Seniority
Article 31	Layoff and Recall
Article 32	Compensation at Retirement
Article 33	Grievance Procedure
Article 34	Arbitration Procedure
Article 37	Team Leaders
Article 41	Section 41.02 Union Leave
Article 41	Sections 41.04/41.07
Article 42	Term of Agreement
Article 45	Work Rules
New Article	Application of Civil Service Law
New Article	Discipline

New Article	Severance/Mid-Term Bargaining
New Article	Part-Time Employees
New Article	Probationary Periods
New Article	Contracting Out
New Article	Indemnification
New Article	Successor Clause

A fact finding hearing was conducted on July 10, 2013, at the East Cleveland City Hall and was continued on August 1, 2013. The parties reached tentative agreement on several additional issues during the Fact Finding hearings and they are identified at Appendix "B". However, the following issues remain unresolved and the Fact Finder makes the Findings and Recommendations set forth below.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the financial information, the documentation supplied by the parties, as well as their positions and arguments, the Fact Finder makes the following recommendations:

ARTICLE 3 RECOGNITION

The Union proposes language changes for Article 3 in Section 2 to clarify the duties performed by the bargaining unit members

The City has proposed changes to Sections 1 and 2 which it maintains are minor and non-substantive modifications. It also proposes removing the classification of Deputy Chief as the classification has been eliminated by ordinance.

Recommendation

After review of the parties' positions, it is recommended that the current language be retained in the new Agreement. It is found that there have been no substantial problems with the application of the current language.

ARTICLE 5 PREVAILING RIGHTS

The City proposes to rename this article as "Past Practices" and it seeks to codify the parties' prevailing rights and past practices.

The Union wants to maintain the current language.

Recommendation

The Fact Finder recommends no change to the current language in Article 5. It is found that Section 5.02 provides that the City may propose changes to "other" terms and conditions of employment during the term of the Agreement. The Union is to immediately enter into negotiations with the City on such changes and in the event of impasse the matter shall be submitted to expedited interest arbitration on the merits.

ARTICLE 7
HOURS OF DUTY

The City has proposed moving to a FLSA 207(k) work period consisting of two hundred twelve (212) hours of work over the course of a twenty-eight (28) day work cycle. Fire prevention office workers will maintain a forty (40) hour work week. The City also seeks increased flexibility to scheduled "rover" positions and reassign fire prevention officers to meet operational staffing needs.

The Union maintains that the City's proposal amounts to a ten percent (10%) increase in the firefighters' work week with no consideration. The Union points out its members are already the lowest paid firefighters in Cuyahoga County. It also submits that the City has provided no justification warranting twelve (12) hour shifts.

Recommendation

The Fact Finder recognizes that the East Cleveland firefighters are the lowest paid in Cuyahoga County. The Fact Finder also understands that the City has chronically experienced financial distress for over twenty (20) years. Just recently, on January 5, 2012, the City was declared to be in a state of Fiscal Caution. Four months later, May 23, 2012, the City was elevated to Fiscal Watch and on October 9, 2012, the City was again placed in a state of Fiscal Emergency. In my opinion, the City's proposal regarding Hours of Duty and the next issue concerning Overtime, affords some relief in terms of flexibility and increases the number of non-overtime hours, which in turn will decrease the amount of overtime costs while maintaining the minimum staffing requirements as discussed below. Consequently, the Fact Finder recommends the City's proposal, as modified, as follows for Article 7, Hours of Duty:

ARTICLE 7
HOURS OF WORK/WORK ASSIGNMENTS

Section 1. Platoon/Suppression Work Period/Scheduling. For purposes of FLSA compliance, the Employer utilizes a FLSA 207(k) work period consisting of two hundred twelve (212) hours over the course of a twenty-

eight (8) day work cycle. During this work cycle, employees will be scheduled in turns of twelve (12) hours, or twenty-four (24) hours duration as determined by the Employer.

Section 2. Non-Platoon Work Period/Scheduling. For personnel assigned to the fire prevention office, the Employer utilizes a FLSA work period consisting of forty (40) hours of work during a seven (7) day, one hundred sixty-eight (168) hour work period. Fire prevention office personnel will normally be scheduled for eight (8) hours of work each day.

Section 3. Reassignment of Non-Platoon Duties. In the event that operational needs so require, the City may reassign personnel from non-platoon assignments to a twenty-four (24) hour or twelve (12) hour shift and distribute non-platoon functions among other personnel. The City will notify the Union prior to re-assigning employees.

Section 4. Assignment to Rover Positions. The City may assign personnel to rover positions according to the operational needs of the department.

Section 5. Shift Reassignment. The City will be permitted to adjust the assigned shifts of its fire fighters during the established work period in order to meet its operational needs. When a shift reassignment is necessary, the Employer shall attempt to provide members as much notice as is practicable. Prior to making an involuntary reassignment, the Employer agrees to first request volunteers from the shift and classification where the reassignment is to come. In the event that no volunteers are forthcoming, the least senior member on the affected shift and in the affected classification shall be reassigned.

ARTICLE 8 **OVERTIME**

The City has proposed switching to an FLSA 207(k) schedule, and delineate between contractual overtime and FLSA overtime. It also proposes that FLSA overtime be paid based on hours actually worked. In Section 3, the City proposes language which requires that overtime be offered, by seniority, to members of the classification in which the opportunity occurs. In Sections 4 and 5, the City has proposed to revise language that maintains the benefit level and reflects the applicable standard for evaluating compensatory time requests. In Section 6, the City proposes language that would require compensatory time liquidation requests to be subject to the availability of funds and approval of the City.

The Union points out that the City has previously sought to increase the trigger for overtime accrual from forty-eight (48) hours to fifty-three (53) hours. The Union rejects the City's proposal and its position is to maintain the current contract languages.

Recommendation

The Fact Finder recommends the City's proposal, with minor changes, for the parties' new Agreement. This provision will provide some financial relief to the City's well documented financial difficulties. In Cuyahoga County, the City ranks last in income per capita, median family income, and median household income, as well as other economic indicators. It has one of the lowest median home value rates, which leads to low property tax collection and it has one of the lowest per capital income tax collection rates. The City's largest employer and taxpayer, a local hospital, has relocated and the one time infusion of cash linked to that closure has come to an end. It is clear that maintaining the status quo is not sustainable. Article 8 will state as follows:

ARTICLE 8
OVERTIME/COMPENSATORY TIME

Section 1. Overtime. Overtime that is due under the Fair Labor Standards Act (FLSA) shall be paid in accordance with the Act. Overtime that is due under the parties' Agreement shall be paid in accordance with the contract.

Section 2. FLSA Overtime. Bargaining unit members shall receive one and one-half (1 1/2) base FLSA hourly rate (to include longevity and education differential) for all hours worked in excess of two hundred twelve (212) hours in each twenty-eight (28) day work period.

Section 3. Overtime Distribution. When the Employer determines that an overtime opportunity is available, it shall be offered by classification seniority to the member with the greatest amount of seniority in the classification where the opportunity is available. Should no member accept the overtime opportunity, the Employer may order out the member with the least amount of classification seniority in the classification where the opportunity is available not presently working.

Section 4. Compensatory Time. Employees may accumulate a maximum of one hundred twenty (120) hours of compensatory time in lieu of overtime. Upon the approval of the Employer, an employee may be allowed to accumulate compensatory time in excess of the one hundred twenty (120) hour cap.

Section 5. Compensatory Time Approval. The Chief can deny compensatory time requests when allowing the request will create an overtime situation.

Section 6. Compensatory Time Liquidation. Subject to the approval of the Employer, each fire fighter may request to cash out fifteen percent (15%) of his accrued compensatory time. Request shall only be considered on an annual basis and must be submitted in writing to the Fire Chief's Office by January 31 of each calendar year in which payment is to be made. Payment will be made by April 30.

ARTICLE 9
SAFETY MANNING

The City proposes to eliminate the minimum manning requirement from the parties' Agreement. It notes that minimum manning is a permissive topic of bargaining; however, the City maintains that it is not willing to allow the limitation for the future. The City suggests that it has been willing to negotiate over the impact of the removal of this provision but the Union has not been cooperative.

The Union submits that it will not accept any proposal eliminating the Safety Manning article from the Agreement. It contends that there is no justification for the City to sacrifice the safety of its firefighters. Article 9 ensures that a minimum number of firefighters are on duty to safely fight fires and provide emergency medical care. The Union asserts that the City has the highest per firefighter run volume and per capita run volume of any community in Cuyahoga County. The City is not a party to any mutual aid agreements and the firefighters do not have the automatic support from neighboring communities. In addition, the firefighters dispatch their own emergency calls. The Union's position is to maintain the current language.

Recommendation

The Fact Finder recommends that the current language of Article 9, Safety Manning, be retained for the new Agreement. The current language requires twelve (12) fire suppression personnel on shift at all times. Minimum safety manning has been in effect for over 25 years. Despite a significant decline in the City's population, the Fire Department has taken on additional responsibilities including some EMS calls and emergency medical dispatching. In addition, there has been an increasing call volume. The Fire Department answers one (1) emergency call every three (3) residents on an annual basis. Surrounding communities answer approximately one (1) call for every eight (8) residents annually. As noted, there are no mutual aid agreements with neighboring communities. In my view, the recommendations made above concerning Article 7, Hours of Duty, and Article 8 Overtime, will provide the City with flexibility with regard to the Safety Manning.

ARTICLE 10
MANAGEMENT RIGHTS

The City proposes to modify the management rights language to match the text of R.C. 4117.08 as it relates to those matters that are exclusively the City's management rights.

The Union believes that the City's proposal is unnecessary and it believes the current language should remain undisturbed.

Recommendation

The Fact Finder recommends the City's proposal for the new Agreement in accordance with the test of Revised Code 4117.08. It is found that the proposal is reasonable and is consistent with Ohio's Revised Code. Article 10, Managements Rights will state as follows:

ARTICLE 10
MANAGEMENT RIGHTS

Section 1. The City retains the right, subject to the terms of this Agreement, to:

1. direct, supervise, evaluate, or hire employees;
2. determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy such as the functions and programs of the public employer; standards of service, its overall budget, utilization of technology, and organizational structure;
3. determine the adequacy of the work force;
4. determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
5. effectively manage the work force;
6. suspend, discipline, demote, or discharge for just cause, or layoff, transfer, assign, schedule, promote, or retain employees;
7. determine the overall mission of the Employer as a unit of government;
8. maintain and improve the efficiency and effectiveness of governmental-operations;
9. take actions to carry out the mission of the public employer as a governmental unit.

ARTICLE 11
SALARIES

The City proposes that wage rates remain unchanged for the duration of the Agreement. The City also proposes deleting the second pension option which is no longer permitted by OPFDF. The City further seeks to clean up language that reflects the rank structure consolidation, titles and sections, to reflect content, and move vacation scheduling language to the vacation article.

The Union has proposed a two percent (2%) pay raise in 2013, 2014, and 2015 for the fire fighters. It emphasizes that the bargaining unit members are the lowest paid in Cuyahoga County, It asserts that several members have left the department for other higher paying work. The Union proposes to eliminate option two from the pension pick up language and continues the member's 5.3% contribution to the Ohio Policy and Fire Pension Fund. The Union further seeks to increase paramedics compensation and incentivize unit members to achieve their paramedic certification. The Union also proposes to revise the Dispatching Duties. It notes that the bargaining unit members are responsible for dispatching fire and EMS calls, however, not all members are regularly paid for this responsibility.

Recommendation

After review and consideration of all the financial data and documentation submitted by the parties and given the dire financial situation posed by the Fiscal Emergency, the Fact Finder makes the following recommendation concerning salaries:

ARTICLE 11
SALARIES

Section 1. All full-time employees of the bargaining unit represented by the board of East Cleveland Fire Fighters' Association, Local 500, shall receive 0% wage increase in 2013 and a 1.5% wage increase effective January 1, 2014, and a 1.5% wage increase effective January 1, 2015. The annual base salaries created by Section 1 of this article shall be as follows:

RANK/ASSIGNMENT	1/1/2013	1/1/2014	1/1/2015
Captain	\$56,198.55	\$57,041.53	\$57,897.15
Lieutenant	\$47,293.63	\$48,003.03	\$48,723.08
1st Grade	\$42,091.46	\$42,722.83	\$43,363.67
2nd Grade	\$33,651.74	\$34,156.52	\$34,668.87
3rd Grade	\$25,213.09	\$25,591.29	\$25,975.16

Section 2. For the purpose of definition, this section covers members in the permanent or acting positions of Captain, Lieutenant, and 1st Grade Fire Fighter.

Section 3. Pension Pickup. The City agrees to pay 4.7% of the member's present 10% personal contribution to the Police and Fireman's Disability Pension Fund (in addition to the City's required contribution, as specified by state law), for all gross earnings during the term of this Agreement. This is available only to those members holding rank, status, or assignment of 1st Grade Fire Fighter or above, as defined earlier. This shall be referred to as a "pension pick-up."

Under this the City would pay 4.7% of the member's contribution and the member will contribute the remaining amount which will then collectively constitute the member's personal contribution rate.

Section 4. Paramedic Compensation and Vacation Selection. The City will permit paramedics to select vacation based on seniority within rank. The City agrees to pay those employees certified as paramedics an annual lump sum payment by December 31 of each year in an amount equal to two percent (2%) of their base salary.

Section 11.04. Dispatching Duties. All fire fighters will be compensated at the rate of \$15.00 per week for the performance of dispatching duties.

ARTICLES 12 AND 13 **UNIFORM AND SHOE ALLOWANCE**

The parties have agreed to combine Articles 12 and 13. The only remaining dispute is the amount of the allowance. The City proposes no increase and the Union requests a combined maintenance allowance of \$1,000.00 for each bargaining unit member.

Currently, the combined uniform maintenance allowance is \$500.00 annually for each bargaining unit member.

Recommendation

The Fact Finder recommends an increase of \$100 annually for each member. The language will state as follows:

ARTICLE 12 **UNIFORM ALLOWANCE**

Section 1. Initial Hire. The Employer shall provide all newly hired bargaining unit members with an initial complement of the uniform that it designates for members of the fire service.

Section 2. Maintenance Allowance. The annual uniform maintenance allowance shall be six hundred dollars (\$600.00) for each bargaining unit member with more than one (1) year of service. This maintenance allowance shall be used for the maintenance and/or replacement of uniforms and shoes.

ARTICLE 16
HEALTH INSURANCE COVERAGE

The City has proposed that employees be required to contribute twenty percent (20%) of the applicable premium cost for medical and prescription coverage and that the members of this unit contribute in the same fashion as all non-bargaining unit personnel for ancillary benefits. The City also proposes to remove the current language to always provide a plan with identical benefits irrespective of the cost. The City seeks flexibility to address the rising cost of insurance. The City also proposes a spousal carve-out provision in order to better manage its costs.

The Union notes that its members currently pay six percent (6%) of health insurance premiums. The Union seeks to maintain this arrangement. It asserts that its members' health insurance costs cannot be increased without any financial consideration and the City has offered none. The Union agrees to grant the City flexibility to change health insurance plans so long as the insurance plan is equivalent to or better than the current plan.

Recommendation

After review and consideration of the parties' positions, the financial data and documentation, the Fact Finder recommends the following language for Article 16 in the parties' new Agreement:

ARTICLE 16
INSURANCE COVERAGE

Section 1. Medical and Prescription Coverage. The Employer shall make available to all employees comprehensive major medical, hospitalization, and prescription insurance coverage and benefits in the same manner as is offered to non-bargaining unit employees. The Employer shall select appropriate carriers/providers and otherwise determine the method of provision and coverage. The costs and/or terms and conditions of said insurance shall be at the discretion of the Employer and may be subject to change. The Employer will meet with the Union prior to the implementation of a new plan and/or carrier to discuss new plan design. The participating employee may either select single, with spouse, with children, family or other coverage offered under the plan.

Section 2. Employee Contribution Rate. Employees shall contribute the following amounts toward the monthly premium for their health care coverage/program beginning January 1, 2014::

Ten percent (10%) per month

Section 3. Deduction Procedure. Bargaining unit employees shall have their monthly premium amount deducted over two (2) paychecks per month.

Section 4. Spousal Coverage. Spousal coverage will be available only upon proof that the spouse does not have other medical insurance coverage available to him/her through the spouse's employer.

Section 5. 125 Plan. Bargaining unit employees shall have the option of designating their premium contributions and any additional amounts "pre-tax" in accordance with a "Section 125" cafeteria plan, in which all bargaining unit employees shall be eligible to participate in.

ARTICLE 17 **DENTAL INSURANCE**

The City proposes to eliminate Article 17 and include Dental Insurance under Article 16 Health Insurance on the same basis as offered to non-bargaining personnel.

The Union rejects the City's proposal.

Recommendation

The Fact Finder recommends no change to Article 17, Dental Insurance. The record does not reveal the amount of any cost savings and given the above changes recommended for Article 16, Health Insurance above, it is my opinion that no change in this provision is warranted at this time.

ARTICLE 19 **SICK LEAVE**

In Article 19, the City has proposed language to clean up this provision, incorporate new language modeled after R.C. 124.38, and address issues of fitness for duty in a new article. In Section 1, the City has proposed to bring this unit's accumulation into line with more acceptable, standard levels going forward.

In Section 2, the City has proposed language that reflects its obligation to approve sick leave requests for the accepted enumerated reasons. In Section 3, the City has proposed to incorporate language reflecting the parties agreed to definition of medical illness from elsewhere in the contract. The City is proposing to deal with injury on duty issues in a new, separate article.

In Section 4, the proposed language addresses the manner in which sick leave is charged. In Section 5, the City has proposed to limit its exposure for transfers of sick leave time earned elsewhere. In Section 6, the City has proposed to exempt sick leave conversion from resignation, and limit it to the stated criteria in the section titled "retirement." In Sections 7-9, the City has proposed minor, non-substantive clean up language.

Article 19.03, Injury on Duty

The City has proposed the creation of an injury on duty leave as opposed to requiring employees to use sick leave for work related injuries. With the creation of this new leave it is crucial that the sick leave accrual amount be brought in line with what is more standard both internally and externally.

The City's proposal creates a sixty (60) work day IOD leave for high risk injuries and a non-"high risk" injury leave of thirty (30) calendar days of IOD leave. This refines the administration of this benefit so that it can better manage Injury on Duty and worker's compensation leaves and reduce costs. The City is proposing that IOD leaves be contingent upon the injury being approved by the BWC, but that if a member wishes to receive the full pay and benefits that go with IOD, he or she should be required to go to a City-approved physician and sign a medical release. The employee would still have the option to decline to do so and take worker's compensation or go on some other leave.

Given its precarious financial situation and needs elsewhere, the City has elected to attempt to better manage claims through the usage of a provider list that will be managed by its MCO and TPA for the IOD benefit. The City would also like to create a reduced pay, light duty program and make that available, at the employee's option, should he or she not be able to return to duty after the fully paid IOD leave. Again, it is important to note that the level of benefit is continuing even though the City would have adequate grounds to demand rescinding the program entirely. Whether or not the employee wishes to avail himself of these benefits is entirely up to him.

The City's proposal restructures the current benefit but still builds in reasonable safeguards to better manage IOD and Worker's Compensation claims. This revised IOD program has already been recommended by a fact finder and will become part of the City's other police department bargaining unit agreements.

The Union also proposes changes to Section 19.03 of Article 19 with respect to the "Duty Exemption" language. It questions the City's discretion in determining whether a firefighter qualifies for "high risk" duty exemption. The Union opposes the City's proposal to

reduce the amount of duty injury leave by one-third, from sixty (60) shifts to sixty (60) days. The Union also rejects the City's other proposals regarding this Article.

Recommendation

After review and consideration of the parties' presentations, positions and arguments concerning Article 19, Sick Leave, the Fact Finder recommends no change to the current language in this Article. It is found that there were no demonstrated problems by either party as to the application of the current provision to the particular circumstances surrounding any firefighters.

ARTICLE 20
PERSONAL DAY

The City proposes to suspend the personal leave benefit for the duration of the Fiscal Emergency.

The Union does not accept the City's proposal without any economic consideration.

Recommendation

The Fact Finder does not recommend any change concerning Article 20, Personal Day, and it is recommended that the current benefit be maintained for the parties' new Agreement. It is found that continuance of this benefit would not substantially affect the City's financial situation.

ARTICLE 21
VACATIONS

The City proposes the level of holiday benefit be revised so that suppression personnel receive holiday time in proportion to their annual hours of work. It also proposes to clearly state that non-suppression personnel receive eight (8) hours of holiday pay for each holiday.

The Union suggests that the City's proposals seek to 1) reduce allotted vacation time; 2) create a two-tiered vacation system; and, 3) reduce holiday credit. It believes that a two-tiered system will divide the membership and it rejects the City's proposals.

Recommendation

The Fact Finder, after review of the parties' positions surrounding this Article, recommends that no change be made in the current language of Article 21, Vacations, for the new Agreement. It is found that there were no established problems identified with regard to the implementation of this provision as it currently exists.

ARTICLE 23
ACTING OFFICER'S PAY

The City is proposing to revise the manner in which out of classification assignments are made in conjunction with the establishment of a new rank compliment. The rank compliment prior to the abolishment of the deputy chief classification by ordinance was deputy chief (3), captain (4), and lieutenant (6). Under the proposed restructured compliment, the two (2) existing captains will be elevated to the highest rank in the department and the rate of pay for that rank will be that of the former deputy chief rank. Additional lieutenant's vacancies would be created, allowing there to still be thirteen (13) promoted positions, four (4) captains and nine (9) lieutenants for a new baseline rank structure. This results in a nominal savings of about \$8,000 to the City, but gives two (2) unit members a raise (the existing captains) and creates three (3) more lieutenants slots for the larger membership to test into. Overall the rank structure will provide for a better span of control and continuity with the department moving forward.

Under the City's proposal, a commitment is made to test and fill the new rank compliment within ninety (90) days of execution of the parties' agreement. Pending the creation of the lists, the City agrees to fill those vacancies with acting officers, under the terms of the parties' agreement. Going forward, the City has proposed language that reflects the current promotional process for selection and requires those permanent positions that become vacant, if not abolished, to be filled within one hundred eighty (180) days of the vacancy. Acting officer assignments will be made according to operational need or in the case of a permanent vacancy from an active civil service list or by seniority.

The Union opposes the City's proposal. It believes that the proposal provides 1) significant discretion to abolish bargaining unit positions; 2) discretion regarding whether to temporarily fill a vacant position, or pay action officer's pay for performing duties of a higher rank; and, 3) additional discretion in appointing acting officers.

Recommendation

After review of information provided by the parties, the Fact Finder is of the opinion that the City has demonstrated a need for more discretion with respect to Article 23, Acting Officer's Pay. Therefore, the City's proposal is recommended for the new Agreement, as follows:

ARTICLE 23
ACTING OFFICER'S PAY AND PROMOTIONS

Section 1. Permanent Vacancies. When a permanent vacancy occurs in an officer's position due to a resignation, termination or retirement, such vacancy shall be filled by promotional examination, unless abolished.

Where the Employer determines that a permanent vacancy is to be abolished and not filled, it shall provide the union with notice of its decision, and at the union's request, meet to discuss the impact of such decision. No permanent position in a classification above the rank of fire fighter shall remain vacant unless abolished as described in this Agreement. Where a permanent vacancy occurs and a valid promotional list does not exist, it shall be filled on a temporary basis pending the establishment of a list, unless abolished, but not more than one hundred eighty (180) calendar days. All promotions shall be made pursuant to Section 2 of this article.

Section 2. Promotional Procedure. Within one hundred eighty (180) days of a permanent vacancy in a classification above the rank of fire fighter occurring, a permanent vacancy that is not abolished shall be filled according to merit and fitness ascertained through an objective, competitive examination, administered in the manner prescribed by the City of East Cleveland Civil Service Commission. The exam may consist of a combination of elements including, but not limited to, written examination, assessment centers, oral interviews, etc. Upon completion of the exam procedures, the Employer shall award the vacancy to any one (1) of the top three (3) candidates standing on the list certified to the Employer from the Civil Service Commission.

Section 3. Out of Classification Assignments. Pending the filling of a permanent promotional vacancy or when the Employer determines that its operational needs otherwise require, bargaining unit members may be temporarily assigned "Acting officer's pay" for assuming the duties and responsibilities of the vacant position.

Section 4. Out of Classification Assignment Procedure. Where a valid civil service promotional list exists, the Employer agrees to make the assignment to the most senior member on the applicable turn standing highest on the eligibility list. Where no active promotional list exists, the member assigned to fill the temporary position shall be the senior member in the next lower rank in the Department who accepts the assignment, except members may be passed over for reasonable cause.

Section 5. Civil Service Exams. The Employer agrees to use its best efforts to conduct a civil service examination every eighteen (18) month period in order to provide for permanent officer promotions.

SIDE LETTER
RANK COMPLIMENT

Section 1. Rank Compliment. The parties agree that effective upon ratification, the baseline rank structure for bargaining unit positions the promoted ranks of the Fire Department shall consist of the following:

- 4 Captains
- 9 Lieutenants

Section 2. Testing Timeline. The parties agree that civil service testing shall be conducted within ninety (90) days of the execution of the parties' agreement in order to generate promotional lists from which any vacancies in the above described structure will be filled. Pending the generation of the lists, the City shall temporarily fill the vacancies through acting officer status in accordance with the parties' agreement. Thereafter, the parties agree that promotions, abolishment, and out of classification assignments shall be made in accordance with Article ____, Acting Officer's Pay and Promotions, of the parties' agreement and this Side Letter will cease to have force and effect.

ARTICLE 31
SENIORITY AND LAYOFFS

The City has proposed creating definitions for Total Seniority and Classification/Rank Seniority. It also proposes a comprehensive layoff and recall procedure which is modeled after provisions of the Ohio Revised Code, and incorporates the standards for reduction, bumping rights, and expanded recall rights into the Agreement.

The Union believes the City is attempting to remedy a system that is not broken. It rejects the City's proposal.

Recommendation

The Fact Finder does not recommend the City's proposal for the parties' new Agreement. The current language of Article 31 should be retained. It is found that there were no indentified problems in administering the current provision.

ARTICLE 45
WORK RULES

The City proposes language for this Article which acknowledges its right to implement work rule revisions, creates an exception to the normal notice period for emergency situations, and builds in a meet and discuss provision for the Union to discuss work rule changes. The language also contains a commitment that no work rule can violate the Agreement.

The Union opposes the City's proposal as an attempt to vastly expand its authority to promulgate reasonable work rules.

Recommendation

The Fact Finder does not recommend the City's proposal for the parties' new Agreement. In my view, there was no justifiable basis to modify the current language at this time.

**NEW ARTICLE
APPLICATION OF CIVIL SERVICE LAW**

The City proposes language which specifies that the labor agreement must specifically preempt external law, according the Ohio Supreme Court's Batavia decision.

The Union opposes the proposal and believes it is unnecessary.

Recommendation

After review of the parties' positions surrounding this matter, the Fact Finder recommends that the City's proposal be included in the parties' new Agreement, as follows:

**NEW ARTICLE
BARGAINING UNIT APPLICATION OF CIVIL SERVICE LAW**

Section 1. The parties agree that no section of the civil service laws contained in the Ohio Revised Code Sections 9.44, 124.01 through 124.56, nor any local ordinance of the City of East Cleveland or Rules and Regulations of the Civil Service Commission of the City of East Cleveland, pertaining to wages, hours, terms and other conditions of employment, shall apply to bargaining unit employees where such matter has been addressed by this agreement.

Section 2. Notwithstanding the above, Sections 124.388 and 124.57 ORC shall continue to apply to bargaining unit employees. Additionally, in accordance with Revised Code 4117.10(A), laws pertaining to civil rights, affirmative action, unemployment compensation, worker's compensation, the retirement of public employees, residency requirements, and the provisions of 124,34(A) concerning the disciplining of classified employees convicted of a felony prevail over any conflicting provisions of this collective bargaining agreement.

Section 3. In accordance with the provisions of Ohio Revised Code section 4117.10 (A), this agreement covers the wages, hours, and terms and conditions of employment to the extent provided herein. It is therefore the intent of the parties that the terms and conditions of this agreement specifically preempt and/or prevail over the statutory rights of bargaining unit members as set forth below:

<u>Contract Article</u>	<u>Statute/Regulation Preempted</u> <small>(All Statutory References include Corresponding Municipal Ordinances and Municipal Civil Service Rules)</small>
Article __ Discipline	ORC 124.34
Article __ Grievance Procedure	ORC 124.34
Article __ Layoff & Recall	ORC 124.321-124.328; ORC 124.37; ORC 124.45- ORC 124.48
Article __ Probationary Periods	ORC 124.27
Article __ Vacations	ORC 9.44; ORC 325.19
Article __ Holidays	ORC 325.19
Article __ Sick Leave	ORC 124.38; ORC 124.39

Article __ Seniority	ORC 9.44; ORC 124.321-124.328; ORC 124.37
Article __ Acting Officers & Promotions	ORC 124.45- ORC 124.48
Article __ Arbitration Procedure	ORC 124.34

**NEW ARTICLE
DISCIPLINE**

The City proposes a new article to outline the grounds for discipline and disciplinary procedures for the City to follow.

The Union contends that proposal is unnecessary. It believes the City seeks to re-write the disciplinary procedure while the Rules and Regulations that regulate discipline have been in effect for decades.

Recommendation

The Fact Finder does not recommend the City's proposal for his new Article. It is found that the City's Rules and Regulations fairly deal with the disciplinary procedure.

**NEW ARTICLE
SEVERANCE/MID-TERM BARGAINING**

The City proposes a new article which affirms the new Agreement supersedes all prior agreements. It includes a provision for mid-term bargaining regarding mandatory subjects of bargaining. It submits the provision provides for a reasonable procedure for making changes in mid-term to mandatory subjects of bargaining 1) if the parties meet and confer about the change, and 2) if no agreement, the City may implement the provision and the Union may grieve its reasonableness.

The Union asserts that this proposal seeks to eliminate any agreement between the parties which is not included in the Agreement and it gives the City the authority to unilaterally implement changes to terms and conditions of employment. It rejects the proposal.

Recommendation

The Fact Finder does not recommend the City's proposal for the parties' new Agreement. This provision would permit the City to make unilateral changes to mandatory subjects of bargaining.

**NEW ARTICLE
PART-TIME EMPLOYEES**

The City proposes new language which is an acknowledgement of its right to utilize part time personnel. The language is modeled after language that the parties previously agreed to and a Fact Finder recommended, but it never found its way into the Agreement. The language protects current Union Members from arbitrary layoff and requires that PTE are minimally certified in the same manner as full time personnel.

The Union opposes this proposal. It points out that the Cuyahoga County Court of Common Pleas rejected the City's attempt to hire part time employees as recently as 2009.

Recommendation

The Fact Finder does not recommend the City's proposal for inclusion in this parties' new Agreement. It is found that the City has attempted to utilize part time firefighters in the past without success. With the staffing of fifty (50) authorized firefighters and currently 46 employed, it is found that the recommended changes for Hours of Duty and Overtime will make staffing more cost effective for the City.

**NEW ARTICLE
PROBATIONARY PERIOD**

The City proposes to add a probationary period article which reflects the current probationary periods for entry and promotional appointments.

The Union believes the City's proposal is unnecessary. It submits that probationary periods are regulated through the City's Rules and Regulations which have been in effect for decades.

Recommendation

The Fact Finder does not recommend the City's proposal for the parties' new Agreement. It is found that there have been no issues concerning the application of probationary periods as provided in the City's Rules and Regulations.

**NEW ARTICLE
CONTRACTING OUT**

The Union's proposal prohibits the City from shifting fire and EMS service away from the bargaining unit to an independent entity.

The City rejects the Union's proposal as an attempt to restrict its management right to contract out for service.

Recommendation

The Fact Finder does not recommend the Union's proposal for inclusion in the parties' new Agreement. It is found that no compelling reason was advanced for the inclusion of this provision.

**NEW ARTICLE
INDEMNIFICATION**

The Union seeks to add a new article to the Agreement to prevent the City from penalizing bargaining unit members who cause incidental damage to fire equipment during the normal course of performing their work. It asserts that its proposal prevents the City from assessing fines against the firefighters.

The City rejects the Union's proposal as unnecessary.

Recommendation

After review of the parties' positions, the Fact Finder recommends the inclusion of this new Article in the Agreement. It is my opinion that the firefighters should not be held liable financially or otherwise for damage to equipment during the performance of their duties. The Article will state as follows:

**NEW ARTICLE
INDEMNIFICATION**

No bargaining unit member shall forfeit any accrued leave or be assessed any fine for the damage or destruction of firefighting equipment, emergency medical equipment, or other equipment incidental to bargaining unit work unless one of the following conditions apply: 1) the bargaining unit member has acted in a willful, wanton or reckless manner; or, 2) the bargaining unit member failed to take reasonable care and the bargaining unit member's actions were an independent and sufficient cause of the damage or destruction.

**NEW ARTICLE
SUCCESSOR CLAUSE**

The Union seeks to maintain the terms of the Agreement in the event the City's fire services are assigned, consolidated or merged with an alternative jurisdiction. It maintains that a successor clause will not prevent a merger or the creation of a Fire District.

The City opposes the Union's proposal. It believes that the provision would discourage a possible merger or the creation of a Fire District.

Recommendation

The Fact Finder does not recommend the inclusion of the Union's proposal in the new Agreement. It is found that this provision is not necessary for the parties' collective bargaining agreement.

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.

Christopher E. Miles, Esquire
Fact Finder

October 10, 2013

Appendix "A"

Article 1	Preamble/Purpose
Article 2	Union Security
Article 6	Jury Duty
Articles 12 & 13	Uniform/Shoe Allowance (amount remains open)
Article 14	Fire Education Differential
Article 18	Life Insurance
Article 24	Tuition Reimbursement
Article 25	Labor/Management Committee
Article 26	Funeral Leave
Article 27	Family Crisis Leave
Article 28	Emergency Call-Out
Article 29	Protection of Property and Security
Article 30	Personnel Files
Article 36	Trading Shifts
Article 38	Assistant Superintendent of Equipment
Article 39	Training and Safety Coordinator
Article 40	Drug and Alcohol Testing
Article 41	Station Work
Article 43	Savings Clause
Article 44	Incorporation of the Ohio Collective Bargaining Law (delete)
MOU	Records and Arbitration
-	Residency

Appendix "B"

Article 22	Meal Hours
Article 32	Compensation at Retirement or Resignation
Article 33	Grievance Procedure
Article 34	Arbitration Procedure
Article 37	Team Leaders
Article 41	Miscellaneous / EMS Duties
Article 41	Union Leave
Article 42	Term of Agreement and Retroactivity
New Article	Probationary Periods
New Article	Living Quarters