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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
(MAD)

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

THE CITY OF SOLON ) 12-MED-05-0559  
 )  
 -AND- )  
 )  
 SOLON FIREFIGHTERS ASSOCIATION, )  
 INTERNATIONAL ASSOCIATION OF )  
 FIREFIGHTERS, LOCAL 2079, )  
 AFL-CIO )

ATTENDANCE:

For The City:

Jack L. Petronelli, Esq.,	Labor Counsel
Tom Lobe, Esq.,	Director of Law
Dennis G. Kennedy	Finance Director
Tom Cornhoff	Director of Human Resources
Bill Shaw	Fire Chief

For The Union:

Susannah Muskovitz, Esq.,	Attorney
James Nix	President
Garry Nemeth	Vice President
Michael Sager	Secretary

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BEFORE ALAN MILES RUBEN, FACT-FINDER  
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**BACKGROUND:**

The City of Solon is a chartered municipality occupying twenty-two square miles in the south-east quadrant of Cuyahoga County, fifteen miles from downtown Cleveland, Ohio. It is governed by a Mayor and a seven member City Council. As here relevant, it provides fire protection and emergency medical services for its approximately 23,000 residents and its commercial and industrial enterprises.

Pursuant to a 1994 State Employment Relations Board certification, the City's Fire Department's fifty-five full-time members in the ranks of Firefighter, Lieutenant and Battalion Chief form a Bargaining Unit exclusively represented by the Solon Firefighter's Association, Local 2079, International Association of Firefighters.

The City and the Union are signatories to a Collective Bargaining Agreement effective as of January 1, 2010 for an initial term which expires on December 31, 2012.

The parties met on six occasions to negotiate a successor Contract - March 15<sup>th</sup>, and 16<sup>th</sup>, June 5<sup>th</sup>, and 13<sup>th</sup>, July 27<sup>th</sup> and August 1<sup>st</sup>, - but were unsuccessful in resolving all issues.

The parties did reach agreement to amend Article 23 - entitled "Duration" so as to begin the term of the successor Contract on January 1, 2013 for an initial term expiring on December 31, 2015, and to continue its provisions from year-to-

year thereafter in accordance with the provisions of Article 15, entitled "Modification and Negotiation Procedures".

The parties concurrently agreed to amend Article 15 to require a party to give written notice to the other party and to the State Employment Relations Board, on or before May 15, 2015, of a desire to terminate, modify or amend the Agreement.

On substantive issues the parties agreed to amend Article 6 - "Compensation" - to increase the Base Rate of Pay by 2.25% effective as of January 1, 2013 and by additional 2.25 percents as of January 1, 2014 and again as of January 1, 2015.<sup>1</sup>

The parties further agreed that except for the provisions of the Articles set forth below, all other Articles of the expired Contract are to be carried forward and incorporated into the new Agreement, mutatis mutandis.

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

A series of proposals to add new provisions and to amend other Articles and Sections of Articles of the 2010 Contract were withdrawn, and are deemed to have been abandoned.

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<sup>1</sup>The City had previously reached agreement with four of its other Bargaining Units, specifically those of the Police Department represented by the Ohio Patrolmen's Benevolent Association, to provide a 2.25% increase in every year of successor three year Contracts.

The parties were unsuccessful in resolving proposals to amend:

1. Article 6, Section (A)(2) - "Overtime Calculation" and "Sick Time Buyout";
2. Article 8, Section (B)(1) - "Time-Off";
3. Article 8, Section (B)(2) - "Holiday Compensation";
4. Article 9, - "Health Insurance";
5. Article 13, Section (A) "Subcontracting Labor";
6. Article 13, Section (F) - "Promotions";
7. Article 22, - "Drug Testing";

Impasse was declared, and on July 17, 2012, the undersigned was appointed Fact-Finder to conduct a Fact-Finding hearing pursuant to a mutually agreed upon dispute settlement procedure.

At the parties' direction, the Fact-Finder convened an evidentiary hearing on August 8, 2012.

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

The evidentiary hearing was held as scheduled. The Fact-Finder attempted mediation, but his efforts were unsuccessful in resolving any of the issues.

Prefacing their respective evidentiary presentations, the parties jointly offered their current Collective Bargaining Contract into the record.

The Union presented excerpts from the City's Comprehensive Annual Financial Report (CAFR) for the year ending December 31,

2011; the 2013 Contract between Solon and the Ohio Patrolmen's Benevolent Association (Patrol Officers Bargaining Unit); a Memorandum of Understanding between the City and the Union requesting the Solon Civil Service Commission to extend the Civil Service Eligibility List for promotion to Battalion Chief; minutes of Solon Civil Service Commission meetings extending the current Battalion Chief Eligibility List through July 15, 2012 and subsequently to September 5, 2012; Fact-Finding Reports issued on January 26, 1998 and November 22, 2003, and Conciliation Awards issued on September 7, 1998 and August 30, 2010, all with respect to earlier bargaining impasses between the City and the Union; a July 13, 2012 Memorandum from Union President James Nix to Mayor Susan Drucker concerning Union proposals on wages, health care and the years during which promotional examinations would be conducted; a January 27, 2012 Memorandum to members of the Department from Fire Chief Shaw concerning reorganization of the Department and the possible elimination of the Battalion Chief rank; a February 3, 2012 request to the Solon Civil Service Commission by Union President James N. Nix, Jr., and twelve Lieutenants requesting that the current Civil Service eligibility list for promotion to Battalion Chief be extended for one year instead of conducting a new examination for Battalion Chief, and a February 21, 2012 request to the Solon Civil Service Commission from President Nix

and thirty-two Firefighters requesting that the current Civil Service Eligibility List for promotion to the rank of Lieutenant be extended for one year instead of conducting a new qualifying examination for promotion to the rank of Lieutenant.

The City, in its turn, offered the State Employment Relations Board's Research and Training Section's 2012 Twentieth Annual Report on the Cost of Health Insurance in Ohio's Public Sector; a series of charts listing for thirteen Cities<sup>2</sup> their holiday hours, and work hour bases used for the calculation of overtime rates; the total compensation paid Firefighters with five, ten, fifteen and twenty year longevity and contributions towards insurance premiums; an annual wage settlement report from the State Employment Relations Board covering the period 2002 to 2011 and showing (1) the State-wide average percentage wage increases; (2) the average percentage wage increases in each of eight regions; (3) the average percentage wage increases in four types of political subdivisions and (4) the average percentage wage increases in four occupationally determined categories of Bargaining Units.

Following the close of the evidentiary hearing the Fact-Finder sent the parties a draft Report and asked for their comments. Counsel for each party replied with suggested modifications.

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<sup>2</sup> Avon; Bay Village; Beachwood; Cleveland Heights; Independence; Mayfield Heights; Mentor; Middleburg Heights; North Royalton; Shaker Heights; Strongsville; Twinsburg and Westlake.

The Fact-Finder considered their commentary in formulating his Report.

In making his analysis 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 4117-9-05(K) namely:

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

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

**PREFACE:**

With the exception of suggested amendments relating to Article 9, "Health Insurance", Article 13, Section (F) "Promotions" and Article 22 "Drug Testing", none of the parties' proposals submitted to fact-finding were presented during the course of the negotiation sessions. Instead, they appeared in their respective statutorily required position statements, and were exchanged the day before the Fact-Finding hearing.

Presenting Contract issues for the first time for disposal at the Fact-Finding hearing subverts the statutory policy of promoting voluntary agreement on the terms and conditions of public employment through collective bargaining.

Moreover, the raising of additional issues at this step of the statutory process materially handicaps the other party in making an evidentiary response.

Baring unanticipated developments, each proposal should be put on the table and subjected to good faith negotiations looking towards the mutually satisfactory resolution of the encapsulated issue, and only in the event of the apparent futility of continuing the bargaining process should a proposal be submitted for fact-finding recommendation.

In light of these considerations, the Fact-Finder believes it is inappropriate to recommend the adoption of any of these last minute proposals unless the evidence is clear and

compelling that adoption of a proposal is both necessary and fair.

**UNRESOLVED PROPOSALS PRESENTED AT NEGOTIATION MEETINGS:**

**1. Article 9 - "Health Care Insurance":**

**A. The 2010 Contract:**

The current Contract provides two "preferred provider" plan options offering medical, prescription drug and vision care coverage through Medical Mutual of Ohio, and dental care coverage through Humana. Those who enrolled in the greater benefit, higher cost "PPO Plan A" are required to contribute to the premium cost of the Plan as of February 1, 2010 in a maximum amount equal to four (4%) percent of the 2009 COBRA rates for medical and prescription drug coverage.<sup>3</sup> As of February 1, 2011 the maximum mandatory contribution increased to 3% above the 2010 employee contribution amount, and, as of February 1, 2012, to 3% above the 2011 employee contribution amount.

Pursuant to this formula the maximum employee contributions in 2012 are \$23.30 a month for single coverage and \$61.29 a month for family coverage.

Prescription drug coverage co-payments for a thirty-day (retail pharmacy) supply are established at \$10.00 for a generic drug, \$25.00 for a "formulary" listed prescription and \$50.00

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<sup>3</sup> The COBRA rates were capped at 12.5% of the 2009 rates for purposes of calculating the 2010 employee contribution amount.

for a non-formulary prescription. For a ninety-day (mail-order) supply, the generic prescription drug co-payment is \$15.00, the formulary drug co-payment amounts to \$37.50 and the non-formulary prescription requires a \$75.00 co-payment.

**B. The City's Proposal:**

The City would change the provider of vision care from Medical Mutual of Ohio to "VSP", and dental care insurance from Humana to Aetna.

It would increase prescription drug co-payments for non-formulary prescriptions from \$50.00 to \$65.00 for a thirty-day supply and from \$75.00 to \$97.50 for a ninety-day supply.

Commencing on February 1, 2013 it would increase the current employee premium contributions to 5% of the COBRA rates for medical and prescription drug coverages (without limitation) and increase the amount by 1% of the applicable COBRA rates in each of the two succeeding Contract years. (The 2012 COBRA monthly rates are \$488.11 for single coverage and \$1,283.74 for family coverage).

**C. The Union's Proposal:**

The Union does not object to the change of carriers for vision and dental insurance, but it rejects the increases in employee responsibility for premium contributions and non-formulary prescriptions.

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

The State Employment Relations Board Research and Training Section's 2012, 20<sup>th</sup> Annual Report on the Cost of Health Insurance in Ohio's Public Sector reveals that more than 85% of public employee medical plans require employees to contribute to the cost of health insurance. The average Ohio public employee's monthly premium contribution is \$63.00 for single coverage and \$173.00 for family coverage.

The present monthly contributions of Firefighters are \$23.30 for single coverage and \$61.29 per month for family plan enrollment. These contributions are thus significantly below the State-wide average of payments made by public employees despite the fact that the Solon Firefighters' compensation is well above the State average.

The SERB study shows that in cities with populations of between 25,000 and 99,999, employees pay, on average, 8.4% of the premium charges for single or family coverage. In the Cleveland region, the average employee contribution towards the cost of single medical and prescription drug coverage is \$45.00, and \$113.00 for family coverage. These totals represent 8.8% of the average total premium for single coverage and 8.3% for family coverage.

The proposed increases in employee responsibility for payment of prescription drug orders exceed the State-wide averages, viz:

**Retail:**

**Mail Order:**

Generic \$10.00	\$20.00
Brand (Formulary) \$20.00	\$40.00
Brand (Non-Formulary) \$40.00	\$70.00

However, giving effect to the increases sought by the City is not likely to materially diminish Firefighters' economic status.

Despite the proposed increases in employee payments, the Firefighter contributions towards health insurance premiums would still remain well below the relevant averages.

The increases in employee premium contributions and co-payments for prescription drugs here at issue have already been negotiated and accepted by the Ohio Patrolmen's Benevolent Association (OPBA) representing Bargaining Units covering Patrol Officers, Dispatchers and Police Supervisors.

The Fact-Finder believes that it is preferable for the City to maintain a uniform health insurance program for all City employees, unionized or unrepresented alike. When plans are Balkanized with respect to coverages, premium payments and other features, not only are administrative costs increased, but, more importantly, the disparities promote over-utilization by the favored groups and subsidization by the disfavored units.

Consequently, the Fact-Finder finds appropriate and recommends that Article 9 be amended so that its health insurance program mirrors that which is contained in the current Contract with the OPBA represented Units.

**2. Article 13 - "Personnel and Security Rights":**

**A. The 2010 Contract:**

Article 13, Section (F) provides:

"F) Promotions:

"1) Promotional exams shall be given no later than March 1<sup>st</sup> of every even year commencing in 2012.

"2) A reading list shall be posted sixty (60) days prior to the posted exam date.

"3) A copy of each item from the reading list for said examination shall be placed in each station at the time the examination notice is published. Items from the reading list shall be provided by the city."

**B. The City's Proposal:**

The City wishes to retain Article 13, Section (F) without change.

**C. The Union's Proposal:**

The Union asks to revise Clause (1) of Article 13, Section (F) to read as follows:

"Promotional exams shall be given no later than March 1<sup>st</sup>, of every odd year commencing in 2013. The promotional list shall be valid until the next odd year exam is certified unless mutually agreed upon by both the Union and the City".

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

The Union's demand to move up the date of the next promotional examinations to 2013 arises under the following circumstances:

1. The Battalion Chief Promotion Controversy.

The Civil Service Eligibility List for promotion to the rank of Battalion Chief had been issued in 2010 and was scheduled to expire on April 15, 2012.<sup>4</sup> During this period there was one vacancy in the position. Union Vice President Garry Nemeth was eligible for the promotion, and was expected to receive the appointment. Instead, however, the vacancy was covered by Lieutenants through a series of rotational "acting" appointments.<sup>5</sup>

On February 3, 2012, twelve Lieutenants who were eligible to take the 2012 Battalion Chief examination, as well as Union President James N. Nix, Jr., petitioned the Solon Civil Service Commission to extend the current Civil Service Eligibility List for Battalion Chief for one year and to postpone the prospective 2012 examination.

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<sup>4</sup> As a result of an Ordinance passed by City Council the Department's complement was altered by authorizing one less Battalion Chief and one more Lieutenant.

Fire Chief Bill Shaw issued a Departmental Memorandum on January 27, 2012, informing Firefighters that the Mayor was considering restructuring the Department to improve administrative efficiency. One proposal called for the elimination of the Battalion Chief rank through attrition, and its replacement with a forty-hour Administrative Officer position.

<sup>5</sup> Upon the City's failure to promote Mr. Nemeth, the Union filed an Unfair Labor Practice Charge alleging a violation of Ohio Revised Code 4117.11(A)(1) and (A)(5).

As events turned-out, when none of those eligible for promotion to Battalion Chief signed-up to take the examination, it was cancelled.

In consequence, the City and the Union jointly requested the Solon Civil Service Commission to extend the preexisting 2010 Battalion Chief's Civil Service Eligibility List through July 5, 2012.<sup>6</sup>

On June 26, 2012 the Civil Service Commission unanimously adopted a resolution further extending the current Battalion Chief Eligibility List through September 5, 2012.

On September 4, 2012, as the parties subsequently advised the Fact-Finder, Vice President Nemeth was promoted to fill the Battalion Chief vacancy.<sup>7</sup>

Currently there is no Battalion Chief Eligibility List, and under the existing Contract provision, no promotional examination could be scheduled until 2014.

Although there is no present vacancy in the Battalion Chief rank, and the City does not contemplate an opening to occur "for

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<sup>6</sup> At the April 16, 2012 meeting of the Solon Civil Service Commission, Commissioner Doberstyn "questioned how the extension [of the eligibility list for Battalion Chief] would affect the even numbered year provision for promotional examinations in the contract. [Human Resources] Director Cornhoff noted the Union and the City are hoping to change that requirement within these current negotiations."

<sup>7</sup>The Union's Unfair Labor Practice Charge was withdrawn.

some time", nonetheless, sometimes the "unexpected" comes to pass.

It makes sense, therefore, to provide for an examination in 2013, as the Union would have it, so that should a vacancy develop the City would have the option of filling the position through "acting" appointments as it has done for the past two years, or by making a permanent appointment from the Eligibility List.

## 2. The Lieutenant Promotional Controversy.

While the Battalion Chief promotion controversy was ongoing, vacancies in the rank of Lieutenant for both the "C shift" and "A shift" had developed, and it was expected that Firefighters Shawn Toth and Amanda Matheny-Horvath would be promoted to fill them from the 2010 Eligibility List. Neither was appointed and the openings remained.

With the approaching expiration of the 2010 Eligibility List and facing the prospect of a successor promotional examination, President Nix and thirty-two Firefighters signed another petition on February 21, 2012 to the Solon Civil Service Commission requesting that the 2010 Civil Service Eligibility List for Lieutenant be extended for an additional year. Instead, however, the Commission scheduled a new promotional examination.

The position of the Union leadership was that the examination for promotion to Lieutenant should be boycotted, as in the case of the test for promotion to Battalion Chief, so as to protect the eligibility status of the existing certified candidates.

Most of the Firefighters who were potential candidates for promotion respected the position of the Union, and did not sign-up to take the examination.

This exam was, nevertheless, scheduled and held.

Four Firefighters did take the examination; three passed and became eligible for promotion to the rank of Lieutenant.<sup>8</sup> An Eligibility List was published as of June 26, 2012, valid, the Fact-Finder is told, for an initial term of one year.

In the meanwhile, the two Lieutenant openings were filled from the extended 2010 Eligibility List.

By holding a promotional examination for Lieutenants in 2013, the Union seeks to allow those Firefighters who followed the recommendation of Union leadership, and abstained from taking

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<sup>8</sup> The Union has challenged the validity of this Lieutenant examination because it was not given by March 1<sup>st</sup> in accordance with the Contract deadline, and because a list of the books from which the examination questions were to be drawn included a volume not provided. Although this book was subsequently removed from the list and did not provide a basis for any of the examination questions, those who had managed to obtain the book, were said to have been prejudiced because they wasted some of their limited study time. This issue cannot be resolved in fact-finding, but is cognizable by the Civil Service Commission under its authority to revoke an Eligible List, inter alia, when "deemed appropriate in the public interest."

the 2012 Lieutenant promotional test, to compete to fill future vacancies.

Although at present there is no vacancy in the Lieutenant rank, the Fire Chief stated that there may be two or more vacancies in 2013 as a result of potential retirements.

The City contends that it is manifestly unfair to the Firefighters who successfully passed the 2012 Lieutenant promotional examination to now amend the Contract so as to permit a rescheduling of the examination in 2013. The eligible Firefighters who declined to take the 2012 promotional exam should bear the consequences of their decision.

The Union rejoins that it is unfair to the great number of eligible Firefighters who declined to take the 2012 Lieutenant promotional examination because they followed the recommendation of the Union leadership, and recourse to the Eligibility List generated from that examination would breed widespread resentment and disaffection among the members of the Bargaining Unit.<sup>9</sup>

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<sup>9</sup>Further, the Union asserts that in March, 2012 at a meeting with Union Officers, Mayor Susan Drucker, Human Resources Director Tom Cornhoff, City Finance Director Dennis Kennedy and Fire Chief Bill Shaw, discussions were held with respect to changing the date of the Civil Service Examination from even years to odd year. The Mayor was alleged to have represented to the Union that she would agree to support the change, but that it would not be necessary to put it in writing because "my word is my word". The Fact-Finder does not find it profitable to develop further this unfortunate misunderstanding.

Both "fairness" arguments made by the parties have merit.

Originally, the Fact-Finder believed that the concerns of both parties could be satisfactorily addressed by adding to Article 13, Section "F" of the Contract a direction that an examination for promotion to the rank of Lieutenant be given in 2013, and having the parties enter into a Memorandum of Understanding that in the event two or more vacancies in the rank of Lieutenant were to occur and were to be filled, at least one would be filled from the 2012 Eligibility List whose initial term would expire on June 25, 2013, and one or more be filled from a successor, 2013 Eligibility List.

This solution, however, was flawed as the parties' advocates pointed-out, because it would not resolve the issue if only one vacancy were to develop. Moreover, an additional troubling problem would arise if the Civil Service Commission were to extend the 2012 List for another one year term, thereby creating two co-existing Eligibility Lists, a situation not contemplated under the Solon Civil Service Rules.

The promotional situation for vacancies in the rank of Lieutenant differs from that of the rank of Battalion Chief. There is a viable Eligibility List whose initial one year term expires on June 25, 2013. While there are no immediate

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vacancies in the rank, it is possible that several may develop in 2013. Appointment from the June 26, 2012 Eligibility List is controversial since only four Firefighters took the exam, and the majority of those who were qualified for the promotion boycotted the examination upon the recommendation of Union Leadership so as to induce the City to appoint two candidates from the 2010 Eligibility List to the then existing vacancies.

It is in the interest of both the City and the Firefighters that supervisory positions be filled from the most highly qualified eligible candidates. This interest is best served by fostering the broadest participation in the promotional process.

Offering a Lieutenant promotional examination in 2013 would permit all those qualified Firefighters who did not participate in the 2012 examination to compete for appointment to future vacancies.

At the same time, it is "fair" to those on the June 26, 2012 Eligibility List since, should a vacancy arise prior to the effective date of a 2013 Eligibility List, the City would retain the option of making a permanent appointment from the three eligible candidates.

For these reasons, the Fact-Finder finds appropriate and recommends the Article 13, Section "F", Clause 1 be amended to

read as follows, and as so amended carried forward and incorporated into the successor Agreement:

"1. Promotional exams shall be given no later than March 1<sup>st</sup> of every odd year commencing in 2013."

**3. Article 22 - "Drug Testing":**

**A. The 2010 Contract:**

Article 22 contains the City of Solon's "Implementation Policy and Rules Governing Controlled Substance and Alcohol Testing for Firefighter Paramedics." The policy prohibits being at work while under the influence of alcohol or non-medically prescribed controlled substances, or possessing or consuming alcoholic beverages on-duty or while in uniform.

The policy provides for both post-accident and "reasonable suspicion" testing for the purpose of discovering possible drug or alcohol abuse.

The detailed testing procedure contains the customary safeguards, and calls for the appointment of a Medical Review Officer, the collection of urine samples for the detection of controlled substances and "Evidentiary Breath Testing" for the determination of alcohol consumption. Standard laboratory procedures are specified for blood and urine testing and "cut-off levels" are set forth which determine whether test results are "positive" or "negative".

An employee who has tested "positive" for alcohol consumption or use of a controlled substance is given the opportunity to participate in, and satisfactorily complete a rehabilitation treatment program, and is subject to re-testing at random times once every quarter for the following twenty-four months. Employees who refuse to participate in the Employee Assistance Program, or who test positive again within a twenty-four month period following their initial entry into the Employee Assistance Program, are subject to discipline.

**B. The City's Proposal:**

The City proposes the adoption of the random drug and alcohol testing procedure which is currently found in all the other City's collective bargaining contracts and in the City-wide policy applicable to non-bargaining unit employees.

**C. The Union's Proposal:**

The Union seeks to maintain the current provisions of the post-accident and reasonable suspicion drug and alcohol testing program without change.

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

The City had proposed a similar random drug and alcohol testing policy in the negotiations for its 2004 Collective Bargaining Agreement. After impasse, the issue was presented to a Fact-Finder who found that the City had presented insufficient evidence to justify the implementation of a random drug and

alcohol testing program. The Fact-Finder noted that the Fire Chief testified that there had been no evidence of a need for random testing, no proof of on-duty use of drugs or alcohol by Bargaining Unit members and no finding that any Firefighters had been under the influence of drugs or alcohol during the course of performing their duties.

Instead, the Fact-Finder recommended the adoption of a reasonable suspicion and post-accident testing policy.

The same issue was presented to a Conciliator in 2010, who while acknowledging that "uniformity in administration of the drug testing policy among all City employees is certainly reasonable and proper", nevertheless concluded that "given the intrusive and involuntary nature of random testing, when at all possible, the objective of uniformity should be secured through negotiation rather than imposition. Submission to random testing, as has been achieved with other Units and in other jurisdictions, should be by agreement. This is not to state that random testing can never be imposed through the process of conciliation; but, any neutral who is asked to impose a random drug testing policy on an unwilling bargaining unit would endeavor to off-set the personal intrusion with some compensatory remuneration."

The present unwillingness of the City to offer a quid pro quo for the adoption of a random drug testing program leads this

Fact-Finder to also reject the City's proposal, particularly, in view of the fact that the City has offered no evidence of the detection of drug or alcohol abuse among Bargaining Unit members in the intervening years since 2010.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 22 be carried forward and incorporated into the successor Contract without change.

**UNRESOLVED PROPOSALS PRESENTED IN THE PARTIES' POSITION**  
**STATEMENTS:**

**I. Article 6, Section (A), Clause (2) - "Overtime**

**Calculation:**

**A. The 2010 Contract:**

The current Contract provides:

"2) The basic hourly rate of pay for purposes of overtime calculation and sick time buy out shall equal the respective individual's annual compensation, including longevity, divided by 2080 hours."

**B. The City's Proposal:**

The City would reduce the overtime compensation paid to employees working a fifty-one and seven-tenths (51.7) hour workweek by increasing the divisor in the formula from 2080 hours to 2688 hours as follows:

"(A)(2) The basic hourly rate of pay for purposes of overtime calculation and sick time buyout shall equal the respective individual's annual compensation, including longevity, divided by two thousand, six hundred eighty-eight (2688) hours for employees working a fifty-one and seven-tenths (51.7) hour week."

**C. The Union's Proposal:**

The Union seeks to retain Article 6(A) Clause (2) without change.

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

The City argues that the current formula inflates the hourly overtime rate by approximately thirty (30%) percent for employees who actually work a fifty-one and seven-tenths (51.7) hour workweek or 2680 hours a year, rather than 2080 hours. It points-out that all other employees of the City have overtime calculations based upon their actual annual work hours.

In further support of its position, the City asserts that none of the thirteen cities it designates as comparable to Solon base overtime calculations upon a 2080 annual work schedule. But, on the other hand, only two - Avon and Beachwood - calculate overtime as proposed by the City. Four of them use a 2496 annual work hour total.

The extent to which many of these communities can be considered as "comparable" to Solon is unknown since the applicability of such generally accepted comparability criteria as labor market identity, territorial size, population density, Department size, number of annual fire suppression and emergency medical runs, and tax base and revenue resources were not explored.

The circumstances under which the City agreed to adopt the current overtime formula were not presented of record. Neither was it clear what concessions the Union may have made in order to win the City's consent to the formula.

What is clear is that the City offers no accommodation to the Union in exchange for its consent to the City's proposal.

The Solon Firefighters have traditionally been close to the top of the compensation range of the thirteen cities proposed as comparable. When base wage rates, longevity, uniform allowance, and the paramedic supplement are considered, the present total compensation of Solon Firefighters of \$71,089.53 is exceeded only by Mayfield Heights (\$71,556.00), Mentor (\$72,720.84) and Beachwood (\$75,592.24).

In seeking to reduce the overtime compensation paid to its Firefighters, the City does not claim financial necessity.

Indeed, the City's "Comprehensive Annual Financial Report for the Year Ended December 31, 2011" relates that the City's tax receipts rebounded in 2010 to \$37.5 million from their recessionary low of \$34 million in 2009, and reached \$38.7 million in 2011.

Solon's total revenues for 2011 increased to \$61,287,000.00 compared with the \$58,342,000.00 received in 2010.

The Report concluded:

"The success of our economic development program and the attractiveness of our City and services to members of the business community were rewarded in 2011 with the highest level of municipal income tax collections in the City's history. Our net income tax collections in 2011 were \$38.7 million, an amount which is indicative of the financial strength of our business community and their resilience to the crushing impact of the most recent recession and the strong presence Solon maintains in Northeast Ohio as a leader in retail and industry.

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"With respect to finances, the City has successfully negotiated through a very difficult economic climate and has instituted strict budgetary controls that have allowed staff to continue to maintain and expand services. Challenges the City has faced with respect to the continued decline of funds we received from the State and limited growth in property tax revenue due to the strain on the current housing market, have been offset by belt tightening and improving the level of investment in the City's economic development program."

In consequence, the City's General Fund ended 2011 with an unassigned Fund balance of \$20,647,000.00 representing a remarkable 75% of the year's total expenditures.<sup>10</sup>

The City's proposal had been made as early as the 1998 Contract negotiations where this Fact-Finder pointed-out in his Report that "the City does not plead 'inability to pay'. Indeed, its economic condition is exceptionally strong, with increasing revenue streams and unencumbered balances in its General Fund."

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<sup>10</sup> The Fire Department accounted for \$6,339,000.00 of Solon's total expenditures. Outlays for personal services accounted for \$5,839,000.00 of the Department's spending.

Then, as now, the City did not present evidence that its total overtime hours had been significantly increasing over the life of the expired Contract or that its overtime costs expressed as a percentage of the Departmental budget was greater than that obtaining in any of its cities it proposes as comparable to Solon.

Then, as now, the City offered no "quid pro quo" for its proposal to diminish the overtime compensation of Bargaining Unit members.

The 1991 Fact-Finding Report recited:

"The motivation behind the City's proposal is a concern for the future when economic conditions may not be so favorable, and the City could be faced with unsupportable levels of expenditures.

"But no such clouds appear upon the horizon. Perhaps this is a case for the application of the precept: 'sufficient unto the day is the evil thereof.'

...

"The 2080 hour method of calculating ... [Firefighters] overtime compensation ... [has] co-existed for over twenty-five years and antedates the inception of the bargaining relationship between the parties. This ... overtime calculation method ... [was] incorporated into the original collective bargaining agreement, and carried forward in each of the ... succeeding contracts.

...

"Since the Chief of the Department maintains some control over overtime through approval of scheduling of vacations and other days-off, and may re-schedule training, ... the Fact-Finder finds no persuasive reason at this time to change the past practice in Solon and reduce the overtime premium available to members of the Bargaining Unit."

The City rejected the 1999 Fact-Finding Recommendation and carried this issue to Conciliation where the Conciliator concurred with the Fact-Finder, and awarded the Union's final offer to maintain Article 6, Section (A), Clause (2) without change.

The City has once again failed to make out a case for decreasing Firefighter compensation through reduction in the overtime rate.

The Fact-Finder finds appropriate and recommends that Article 6, Section (A), Clause (2) be carried forward without change and incorporated into the successor Agreement.

**II. Article 8, Section (B), Clauses (1) and (2) "Holidays":**

**A. The 2010 Contract:**

Article 8, Section (B), Clause (1) of the 2010 Contract offers Firefighters "a shift off-duty for ... eleven (11) [designated] holidays."

Section (B), Clause (2) provides that Firefighters who "begin work on Thanksgiving Day, Christmas Day and New Year's Day ... [are] compensated at the rate of one and one-half times their base rate of pay for the full tour of duty."

**B. The City's Proposal:**

The City seeks to reduce the amount of holiday off-duty time allowed personnel working on twenty-four (24) hour shifts from 264 hours to 132. Accordingly, Solon would amend Article 8,

Section (B), Clause (1) to provide that Fire Department members scheduled on a forty-hour (40) workweek be allowed one tour of eight (8) or ten (10) hours off-duty on each of the eleven holidays, while employees working a fifty-one and seven-tenths (51.7) hour workweek scheduled on twenty-four hour tours would be allowed only twelve-hours off-duty for each of the eleven holidays.

**C. The Union's Proposal:**

The Union rejects the City's proposal.

The Union seeks to change Article 8, Section (B), Clause (2) to provide "All members of the Fire Department who are scheduled to work on a designated holiday as outlined in Section (1) above shall be compensated at the rate of one and one-half (1 ½) times their base rate of pay, for the full tour of duty."

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

The City supports its proposal by claiming that the current total of 264 holiday hours available to Firefighters who are scheduled on a 51.7 hour workweek is excessive compared with the holiday time-off enjoyed by members of the Solon Police Department and by Firefighters in the thirteen cities asserted as comparable to Solon.

Police Officers are entitled to only 108 holiday hours per year, costing the City \$3,684.58 for each Officer. In contrast,

the City calculates the First Class Firefighter's holiday entitlements costs almost twice as much - \$6,967.83.

The work schedule of Firefighters is of course, unique and not comparable to that of Police Officers.

No bargaining history was introduced as would identify the concessions offered by the Union which induced the City to agree to the current holiday time-off, and the Police Officers may have had different bargaining priorities.

It is true that none of Solon's "comparable thirteen cities" provide Firefighters with as much holiday time-off. The average holiday time-off in the thirteen is only 155 hours.

On the other hand, no information was introduced as to the comparative total time-off, including vacation allowances, available in these other cities.

The City presents no financial reason to reduce the number of holiday hours currently enjoyed by its Firefighters, nor has it offered any concessionary exchange to achieve the reduction.

The Fact-Finder finds no compelling reason to recommend the City's proposal.

The Fact-Finder turns next to consider the Union's proposal that Firefighters be paid at the premium rate on all eleven of the Contractual holidays.

In support of its proposal the Union points-out that Police Officers enjoy thirteen holidays and receive time and one-half

their base wage rate for working on each of them, whereas the Firefighters receive that rate only for tours commencing on three of their eleven holidays.

The Fact-Finder has already noted that the scheduling of Police Officers and, indeed, of all other City employees, differs markedly from that of Firefighters.

As the City has pointed-out, the Firefighters currently enjoy significantly more holiday hours than other Solon employees, and their counterparts in all of the thirteen cities suggested as comparable. To provide the Firefighters with premium pay for all holiday hours would represent a very substantial increase in their total compensation which is already among the highest of the thirteen, and would likely create demands for commensurate increases by the other Bargaining Units in the next round of negotiations.

The Fact-Finder finds no compelling reason for recommending the Union's proposal.

With these considerations in mind, the Fact-Finder recommends that Article 8, Section (B) - "Holidays" be carried forward and incorporated into the successor Contract without change.

**III. Article 13, Section (A), Personnel and Seniority Rights**  
**("Sub-Contracted Labor"):**

**A. The 2010 Contract:**

Article 13, Section (A) provides that the City "shall not use volunteer or part-time personnel to take the place of any full-time Fire Department Employee."

**B. The City's Proposal:**

The City seeks to remove the restriction on use of volunteer, part-time personnel and expressly permit the City to use such part-time or volunteer Firefighters in lieu of full-time Fire Department employees.

**C. The Union's Proposal:**

The Union wishes to continue Article 13, Section (A) without change.

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

The City argues that having the flexibility to replace full-time employees with part-time employees would enable it to reduce overtime costs.

As previously observed, the City offered no evidence to indicate that its overtime costs were excessive and burdensome, nor did it provide information as to which, if any, of the thirteen cities it presents as comparable, allow the use of volunteer and part-time personnel to take the place of full-time Firefighters.

On this issue, too, the Fact-Finder fails to perceive sufficient evidentiary support for adoption of the City's proposal.

Furthermore, the City's proposal raises the concern that it would permit erosion of the Bargaining Unit which is limited to "full-time members of the Fire Department excluding the Fire Chief and the Assistant Chief."

The Fact-Finder observes that the City's proposal to allow the use of volunteer or part-time personnel was made as early as negotiations for the 2004 Contract.

The City carried the issue to Conciliation where the Conciliator awarded the Union's final offer to maintain the existing prohibition on the use of volunteer and part-time Firefighters.

The Fact-Finder finds no basis for recommending otherwise today.

Therefore, the Fact-Finder finds appropriate and recommends that Article 13, Section (A) be carried forward without change and incorporated into the successor Contract.

Fact-Finding Report signed, dated and issued at Cleveland, Ohio this 14<sup>th</sup> day of September, 2012.

Respectfully submitted,

Alan Miles Ruben  
Fact-Finder

AMR:ljb



September 14, 2012

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SERB Case No: 12-MED-05-0559  
The City of Solon -and- IAFF, Local 2079

For Services Rendered:

Hearing - 8/22/12	
1 day at \$1200.00	\$1200.00
Mileage - Bratenahl, OH/Solon, OH	
42 miles at \$.55 per mile	\$ 23.10
Meals - No Charge	\$ 0.00
Duplication - No Charge	\$ 0.00
Postage - No Charge	\$ 0.00
Consideration and Preparation of Report and Recommendations	
3.5 days at \$1200.00 per day	<u>\$4200.00</u>
Total Amount Due:	\$5423.10
The City's Share:	\$2711.55
The Union's Share:	\$2711.55

Respectfully submitted,

Alan Miles Ruben  
Fact-Finder  
TAX ID NO: 189-24-1171

AMR:ljb