

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 18, 2013**

IN THE MATTER OF FACT FINDING BETWEEN:

INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS – AFL-CIO
LOCAL 266

and

THE CITY OF MANSFIELD, OHIO

CASE NO. 2013-MED-01-0013

FACT FINDER: Howard B. Tolley Jr.

APPEARANCES

IAFF LOCAL 266

Kevin Rader, Arnett Rader Consulting, Staff Representative
Daniel Crow, Local President
John Bibish, III, CPA, Governmental Accounting Witness
Kenneth Jones, Account Executive, Employee Benefits International, Witness
Matt Shafley, Vice President
Joe Boebel, Secretary/Treasurer
Roy Hollenbacher, IAFF State Representative

CITY OF MANSFIELD

Mark Lucas, President, Clemans Nelson Associates, Mansfield Chief Negotiator
Dave Remy, Mansfield Human Resources Director
Laura Cope, Safety Service Director, Finance Director
Nita Hendryx, Manager, Local Government Services, Auditor of State
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Introduction

Mansfield IAFF Local 266 currently has 86 bargaining unit members, 75 classified as Firefighter and 11 as Captain. Approximately 40 are state certified paramedics whose duties also include rendering emergency medical services, sometimes accompanied by non-paramedics on EMS runs. Mansfield, the Richland County seat, has a population of about 48,799 and has two other collective bargaining units -- FOP (76 employees) and AFSCME (125 employees).

For the purpose of negotiating a new contract, the parties agreed in 2011 that their agreement effective December 1, 2008 through November 30, 2011 would be considered current language. Effective April 1, 2011 however, the parties implemented revised terms based on union concessions negotiated to address a Fiscal Emergency declared by the Ohio State Auditor in 2010. Those concessions as well as state supervision of the city's recovery plan remain in effect following expiration of the parties' interim agreement on March 31, 2013.

Negotiations for a new three year agreement effective April 1, 2013 through March 31, 2016 produced agreement on all but seven articles to be addressed in this fact finding. On September 29, 2013 the fact finder provided mediation services to the parties, followed by nearly 16 hours of fact finding November 4, 5 and 11 with sworn testimony from four expert witnesses and presentation of over fifty exhibits that addressed the city's fiscal emergency and eleven issues involving seven unresolved articles:

Article 9.9 Overtime

Article 11 Probationary Period

Article 18 Minimum Manning

Article 19.1 Sick Leave

Article 21.1 Lieutenant and Captain

Article 21.1 Wages

Article 21.8 Squad Pay

Article 21.2 Longevity

Article 23.1 Holidays

Article 23.2 Shared Insurance Premiums (agreed to by both parties at the hearing)

Article 24.8 + 24.9 Health Reserve Fund

Budgetary Overview

Revenues: Mansfield's 1.75% income tax comprised 51% of 2009 Operating revenue and intergovernmental funds comprised 29%. (Union Exhibit UX 9) The *General Fund* operates with revenues from income tax, intergovernmental transfers (estate tax and Ohio local government fund) and other sources. The *Safety Services Fund* (Police and Fire) derives 90% of its revenue from income taxes, including a .5% dedicated levy for that fund and most of the 1% levy transferred from the General Fund. The balance of Safety Fund revenue comes from fees, primarily EMS rescue squad services offered by firefighters. A .25 % levy is dedicated to street resurfacing. In November 2013 voters added a .25% levy for the general fund, increasing the total Mansfield income tax to 2% in 2014.

Expenditures: In 2009 the city spent \$21.2 million from the Safety Fund for Police and Fire and \$9.4 million from the General Fund for other departments.

Financial Plan: During its fiscal emergency city council operates under a recovery plan approved by the Financial Planning and Supervision Commission. Each year council must submit the proposed annual budget to the Commission. By Dec. 31 Council shall adopt an appropriations ordinance for the upcoming calendar fiscal year consistent with all modifications set forth by the Commission. The revised Financial Plan approved by the Commission in June 2012 proposed the additional .25% income tax for "stabilizing safety force personnel." Council subsequently specified that 50% of the proposed new tax revenue would go for Public Safety, and a revised Financial Plan requesting termination of fiscal emergency would be requested in December 2013. (EX 9 p 8).

Fiscal Emergency Timeline/History

- 2000-2009 Structural operating general fund deficits in 7 of 10 years
- Dec. 15, 2009 State Auditor places Mansfield on fiscal watch
IAFF agreed to pay 10% of hospital costs
- Aug. 19, 2010 State auditor certifies Mansfield Fiscal Emergency*
- Oct. 4, 2010 First Meeting of Supervisory Commission
- Nov. 2, 2010 Voters reject additional income tax proposal
- Dec. 2010 Unions reject City request for 10% pay cut or 26 furlough days
Arbitrator rules against unilateral health care changes made by city for FOP + AFSCME
- Feb. 1, 2011 Council Approves Recovery Plan, lays off 6 Firefighters
- Feb. 24, 2011 Common Pleas Court enjoins city from IAFF layoffs, enforces contract requirements for 88 firefighters and minimum shift manning level of 21
- March 2, 2011 Commission rejects the Feb. 1 recovery plan submitted by Council
- April 2, 2011 Commission approves revised Recovery Plan submitted by Council
Revised IAFF agreement provides concessions – 18 for minimum manning and total of 73 line firefighters, reduced benefits for new hires, other
- July 12, 2011 State Auditor Performance Audit recommends more significant budget cuts
- June 20, 2012 Commission approves updated recovery plan submitted by Council
- Dec. 31, 2012 City has end of year cash balance of \$3.9 million
- Aug. 15, 2013 AFSCME Agreement approved for May 2012-August 2015
- Nov. 5, 2013 Voters approve additional .25% income tax levy

IAFF Analysis

The union contends that concessions made since 2009, all but one of which it agrees to continue in the next agreement, have helped Mansfield to come out of fiscal emergency enabling the city to grant the first pay increase since 2008, 1% a year. The June 2012 Fiscal Recovery Plan acknowledges overtime savings from minimum manning concessions as well as savings in excess of \$300,000 by allowing open supervisory positions to remain vacant. In response to the city's proposal for additional concessions on minimum manning, overtime, and vacation, the IAFF challenges the employer's budget forecasts for unreasonably low projected income tax revenue and insists that other bargaining units share in the sacrifices being disproportionately carried by the firefighters.

Mansfield Analysis

The city argues that its firefighters' unduly expensive contract includes exceptional provisions on minimum manning, vacation and sick leave not found in labor agreements for comparable public safety employees in other Ohio jurisdictions. The employer's two expert witnesses from the State Auditor's office explained that in order to come out of Fiscal Emergency, Mansfield must project year end cash balances for five consecutive years and can only do so with significant savings in public safety, 75% of annual expenditures. Starting in 2014 Mansfield will no longer receive any Ohio estate tax revenue. The state has cut by 50% city receipts from the local government fund, so that the General Fund will become more dependent on income tax revenues that had been available for public safety. A federal SAFER grant used to add 15 firefighters will end in 2014.

Fact Finder Analysis

In coping with the city's financial emergency, Mansfield's elected Mayor and nine member Council have been constrained by three union contracts and the authority of the elected Finance Director, Law Director, Clerk of Courts and two Municipal Court Judges who control departments outside the General Fund. The Clerk of Courts prevailed in a lawsuit challenging some attempted savings, and all three unions have prevailed in arbitrations and court proceedings when the city's recovery efforts violated their agreements. Prior to the 2013 election, voters rejected proposals for a tax increase.

Nevertheless, Mansfield has successfully balanced its budget by cutting its workforce 25%, including reductions of over one third of the AFSCME and unrepresented staff, with significantly smaller decreases in public safety employees. Recreational services were severely cut, streetlights turned off, equipment replacement deferred, and some cost savings realized by IAFF and FOP concessions. Between 2008 and 2012 Mansfield cut total actual expenses by 17% (\$35,646,960 to \$29,638,640) -- reductions of 14% in fire, 22% in police and 30% in other general fund departments. Despite lost revenue from the state local government fund, Mansfield ended deficit budgets and began to build cash reserves.

The city anticipates budget surpluses for the next five years as a result of the new .25% tax levy approved on November 5 that will bring in an additional \$2,391,249 per year (Employer Exhibit EX I). In addition to projected year end general fund cash reserves through 2018 ranging from \$4 million to \$7 million, Mansfield has set aside \$1,000,000 in a stabilization fund to avoid future deficits, added \$1.3 million from unanticipated estate tax revenue to its separation fund, plans to set aside \$1 million in its health reserve fund, and has pending legislation to accept grants for the police department.

A Fiscal Emergency is declared when deficits exceed one sixth (16.66%) of expenses, but a city can come out the emergency by projecting balanced budgets for five years. Moody's Investors Services recommends a similar level of cash reserves, 15% of expenses. In January 2013 Moody's gave Mansfield a Baa Bond Credit rating, three levels below its top rating; on October 21 the city projected a 2013 year ending cash balance of \$5,219,629. When the \$1 million cash stabilization fund is added to Mansfield's projected cash reserves, in 2018 the city's forecast shows 15.6% of anticipated general and safety fund expenses (\$33,147,712) in cash reserves (\$5,191,035), down from the 2014 forecast of 28% -- \$8,493,058 of \$29,656,261 (EX I, p. 1).

Mansfield's October 2013 five year projection anticipates surplus budgets based on total expenditures in 2018 that will be 92.5% of 2008 expenditures (\$33,147,712 of \$35,646,960) -- overall reductions of 1% in fire, 12% in police and 12% in other General Fund Departments. In order to meet the Ohio requirements to come out of fiscal emergency, Mansfield can not return to deficit spending at 2008 expenditure levels, can not fully restore program cuts, and must take care to avoid unsustainable cost increases in union contracts. Shared sacrifice is still needed to come out of fiscal emergency.

The fact finder's review of the parties' contract proposals, beginning with the critical issues of minimum manning and wages, will follow the Ohio Public Employees Bargaining Statute in Rule 4117-9-05 by considering

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3) The interest and welfare of the public, and 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;

- 4) The lawful authority of the public employer;
- 5) Any stipulations of the parties; and,
- 6) Such other actors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.”

Article 18 MINIMUM MANNING (and Staffing)

IAFF firefighters work a 48 hour week in two 24 hour shifts a week, a total of 2,496 hours a year rather than the standard 40 hour week of 2,080 hours a year. Firefighters currently work at five fire stations and in addition to fire suppression conduct EMS rescue squad runs.

City Proposal

Mansfield seeks to delete Article 18 so that the employer would no longer be contractually obliged to employ 73 line firefighters on staff with a minimum level of 18 on duty for every shift. Eliminating the manning requirement to always have 18 on duty in the **firehouses** would not eliminate the city’s legal obligation under the Ohio revised code to have a minimal number of firefighters deployed to the **fire scene**. Since the city must comply with Ohio’s “2 in 2 out rule” mandated by a state safety regulation on structural fires, a minimum manning provision in the contract is not needed to assure public safety. The required minimums have saddled the city with extraordinary, unnecessary overtime costs exceeding \$600,00 that must be reduced, especially in a period of fiscal emergency. The average overtime earned by individual firefighters in a given year has been as high as \$8,911 in 2012 (EX I p 6).

In five other jurisdictions where IAFF contracts had minimum manning provisions, including one in fiscal emergency, neutral fact finders and conciliators recommended or ordered the elimination of those constraints on management rights, noting that the issue was a permissive but not mandatory subject of bargaining. In two other cities where the IAFF sought to add minimum manning provisions, the fact finder and conciliator sided with the employer.

During Mansfield’s fiscal emergency, the IAFF obtained a court injunction enforcing Article 18 when the city attempted to lay off firefighters. The Judge opined that the city should have been able to implement staff reductions, but was nevertheless bound by contract language that was deemed unreasonable. (EX Q)

Union Position

The IAFF argues that its minimum manning rights have been contractually guaranteed for 30 years and should be continued. The union in 2011 agreed to reduce the total required staffing from 88 to 73, and the shift duty manning from 21 to 18, concessions it accepts for the new three year agreement. The IAFF provided guidelines from the National Fire Protection Association that call for a minimum of four on-duty personnel at each fire company. The state safety regulation of 2 in 2 out is not enforced, and so the IAFF requires a contractual guarantee to assure both firefighters’ and public safety.

Apart from minimum manning contract provisions, the city has no policy in force that would prevent an inexperienced firefighter in training from being assigned to attack a building fire with more experienced personnel whose lives would be put at risk. Apart from minimum manning contract provisions, the city has no policy in force to assure public safety by providing timely responses to fire alarms and the deployment of sufficient personnel to attack major structural fires. EMS emergency runs consume increasingly disproportionate amounts of firefighters’ time, further demonstrating the need for minimum manning. As fire emergencies

have increased, the city should not be contemplating reduced manning. Since 1988 the city has repeatedly asked voters to renew a .5% tax levy to maintain public safety staffing, and the IAFF has agreed that the minimum manning requirement will only remain in force while those tax revenues are available. The union provided tables demonstrating the Mansfield staffing fell below the NFPA minimum as well as staffing levels in comparable fire departments.

Fact finder's Analysis

The parties' disagreement over minimum manning led to the union's successful arbitration in 2009 as well as a 2011 court injunction enforcing Article 18. The State Auditor's Fiscal Emergency 2011 Performance Audit made the negotiated elimination of Article 18 a high priority in order to reduce excessive overtime expenses and to bring Mansfield into line with comparable cities that do not have any contractually mandated minimum manning – Elyria and Warren. Newark's CBA minimum manning provision allows the city in times of financial limitations to lay off employees and revise manning levels. (UX 9, p. 57.)

In this proceeding the union presented the strongest possible case for minimum manning. The fact finder was persuaded that the city in the interests of firefighter and public safety should at a minimum deploy the personnel required by Article 18. Ultimately however the fact finder concluded that staffing levels are a matter of policy rather than contract. Manning levels for duty shifts for Mansfield police should at the discretion of the Fire Chief and elected officials rather than mandated in the FOP contract.

In at least five other cities the IAFF has lost minimum manning after fact finding and conciliation, and in two other cities neutrals rejected IAFF proposals for minimum manning. In this proceeding, the employer has submitted evidence that one county judge and eight experienced SERB neutrals have all expressed strong opposition to contractually guaranteed minimum manning. (EX 7) In the absence of any evidence that a neutral authority endorses a contractual guarantee of minimum manning, and the absence of provisions such as Article 18 in most comparable labor agreements, the fact finder accepts the city's proposal to delete Article 18 and the provisions on minimum manning in Article 11 Section 11.2, Article 21 Section 21.6, and Article 23 Sec 23.5.

Article 18 also includes a requirement for minimum **staffing** – previously 88 firefighters, currently 73. In 2013 and 2014 the city budgeted \$1 million a year to hire 15 additional firefighters paid for with a federal SAFER grant. As a result, the city raised the number of firefighters from 75 to 86, using SAFER funds for both additional and replacement staff. According to the latest projections, the additional staff reduced 2012 overtime expenses by more than \$350,000. Beginning in 2016 after grant funding has ended, the city projections call for using \$1 million a year of income tax revenue to retain the additional staff levels. The COPS grant for additional police officers, requires the city to retain the added positions for at least one budget cycle. The IAFF submission indicates no such conditions in the SAFER grant and the union favors a return to lower staff levels using attrition. By returning to 2012 staff levels the city could save an estimated \$650,000 per year -- \$1 million less for compensating fewer full time staff reduced by \$350,000 for additional overtime. The 2011 Performance Audit recommended eliminating five full time fire FTEs.

The city's recovery plan anticipates savings will result from the elimination of minimum manning but indicates the amount "yet to be determined" (EX J p 4). Given the discretion eliminating Article 18 would give the employer, the fact finder believes those savings in addition to savings achieved by reduced staffing will be more than sufficient to permit funding of his recommendations for increased compensation.

Article 21 WAGES AND FRINGE BENEFITS

Section 21.1 A. and Appendix E Wage Rates Lieutenants

The parties agreed to eliminate the position of Superintendent of Fire Equipment from the pay scale and to create a new rank of Lieutenant to be paid halfway between the firefighter and Captain rates. The city proposed to maintain the current 17% differential between Firefighters and Captains, so that Lieutenants would receive 8.5 % above the firefighter rate. The union proposed raising the differential with Captains to 22% so that Lieutenants would receive 11% above the firefighter rate. Mansfield Police Sergeants receive 17% more than patrol officers and Lieutenants 10% more than Sergeants.

In order to assess the city's argument that Captains should not receive an undeserved windfall wage increase, the fact finder compared Mansfield Captain's compensation with four comparable cities – three used in the State's 2011 Performance Audit (Elyria, Newark and Warren) and one more (Lima) also accepted by the parties. Based on data in Union Exhibit Tab 5 Mansfield captain's pay of \$60,733.86 is below the \$62,526 median for the five jurisdictions including Mansfield. That median is 22% above the firefighter's rate.

The fact finder recommends a 2.7% increase for Captains to bring their pay to \$62,395, near the median and 20% above the Mansfield firefighters. The newly appointed lieutenants would then be compensated at a level 10% above the firefighters. Change 2012 – 2013 Wage Schedule in Appendix E to new rates for April 1, 2013 to March 30, 2015 by adding Lieutenant rank at 4 levels 10% above the wage schedule for Firefighter Step 5 and increasing the Captain's rate by 2.7%. Example: Lieutenant: EMT – B \$57,195.60. Captain: EMT – B \$62,395

Section 21.1 B. and Appendix E Wage Rate Increases, Lump Sum Payments and Reopener

Union Proposal

The IAFF proposed a new Section B providing three years of annual 1% increases beginning April 1, 2013. The union makes a strong case supported by expert testimony that the city's projected flat line for future income tax revenues underestimates likely increases. Projected expenses include compensation for 88 firefighters after the end of a SAFER grant funding 15 positions. In order to make available money to fund its proposal, the IAFF has agreed to return to prior staffing levels, 73, through attrition. The union calculates that its concessions during the fiscal emergency have saved the city over \$2.4 million (UX 18 p. 20) well above the targets set in the 2011 state Performance Audit and far in excess of the nominal concessions given by the two other bargaining units. Past concessions to be continued in the new agreement enable the city to pay the first base rate increase since 2008, a minimal 1% per year.

City Proposal

The city proposed in Section A a single lump sum payment of \$350 effective January 1, 2015. The employer notes that no employees on the Mayor's budget will receive any general base pay increases or lump sums for 2013 and 2014. AFSCME just agreed to a contract providing lump sum payments of \$350 for two years with no increase to base. IAFF employees receive a competitive wage compared to comparable departments. The union's proposal would cost about \$350,000 over three years, adding permanent costs without matching permanent revenues.

Fact Finder Analysis

The city's recovery plan indicates that \$1.5 million has been saved by IAFF concessions (EX J p. 5) and that an increase in EMS transport fees should generate an additional \$200,000 in annual revenue. No cost savings will be realized from AFSCME concessions until the \$85,000 projected from health care changes in 2014. Instead of making monetary concessions, that bargaining unit accepted significant layoffs, over one-third of its members. The recovery plan indicates completed savings from FOP concessions of at least \$621,000. (EX J p. 5).

If the city reduces the number of firefighters through attrition and modifies manning to reduce overtime, wage increases can be granted without adversely affecting the 2018 budget projections. When Mansfield employed 75 firefighters overtime expenses exceeded \$667,000. Projected overtime expenses for 2015 with 85 firefighters are projected to be slightly over \$300,000. That expense would be further reduced by the elimination of minimum manning.

The city can apply for another firefighter grant after a waiting period and has opportunities for federal grants to fund police officers that are not reflected in budget forecasts. Based on 2013 performance, health care premiums for 2014 will increase by 1.5%. The city's forecast of 7% increases in coming years may be high, and the IAFF has agreed to assume 50% of the increased premium expenses.

Mansfield's annual firefighter compensation of \$51,996 exceeds the median of \$51,233 and is the highest rate of the five comparable jurisdictions identified above. While firefighters have received no increase to base compensation since December 2008, all the IAFF members have received longevity lump sum payments that increase by \$100 per year and add about 1% to total compensation for every five years completed. The 2011 Performance Audit found Mansfield firefighter base rates and longevity 3% above the average for three comparable cities. UX 9 p 63).

During the new three year agreement 16 firefighters in probationary status will receive annual 4.7% increases when moving up to Steps 1, 2 and 3, one firefighter will receive a 9% when moving to step 5, and the fact finder has recommended a 2.7% increase for ten captains in 2013. Ten firefighters at step 5 who lost promotional opportunities as a result of the IAFF fiscal emergency concessions, will now receive 10% increases when promoted to Lieutenant in the first year of the new agreement.

The city now has the ability to increase base rates for the first time since December 2008, but since Mansfield has not yet come out of fiscal emergency and economic forecasts remain uncertain, the fact finder recommends lump sum payments of \$500, 1% of base, in the first two years of the agreement and a 1% increase to base in the final year. The fact finder also recommends the same reopener provision granted in a Side Letter of the AFSCME contract so that firefighters can seek larger increases to their base rate if needed to match base rate increases negotiated this year with the FOP.

Section 21.2 Longevity

City Proposal

The employer seeks to freeze annual lump sum longevity payments to the March 31, 2013 level without adding \$100 per year in the future and to eliminate longevity payments for all new hires. That would freeze the city's annual expenses for longevity, saving an estimated \$53,436 over a three year period.

Union Position

In 2011 the IAFF granted a concession that defers payment of any longevity until after a new employee completes five years, when \$500 would be paid. The city's recently completed contract negotiation with AFSCME did not make any change to the longevity payments for those

employed before the fiscal emergency, so for comparable IAFF employees' longevity payments should also continue to increase by \$100 a year.

Fact Finder Analysis

The AFSCME contract longevity provisions persuade the fact finder to accept the union's position on continuing the longevity increases for members hired prior to April 21, 2011 and to accept the city's proposal to eliminate longevity increases for those hired after March 31, 2014. Firefighters hired between those dates should receive longevity payments after five years as provided for in the agreement in effect at the time of their employment.

Section 21.8 Squad Pay

Union Proposal

The IAFF seeks a premium payment of \$1 per hour in recognition of additional responsibilities for advanced life support ambulance work at a manned rescue fire station. Three comparable jurisdictions – Euclid, Lima and Newark pay at least \$1.40 an hour for such squad pay. Mansfield police receive a \$1/hour watch differential for 2nd and 3rd watch and AFSCME staff receive a \$0.75 /hour premium for 2nd and 3rd shift. Between 2004 and 2012 EMS transport services have increased from 5,716 to 7,393 with annual EMS revenues increasing from \$595,838.70 to \$1,295,216.

City Position

The employer strenuously objects to creating a new benefit at a time of fiscal emergency. Mansfield has three rescue squads, and two individuals per squad would receive the new benefit at an estimated extra cost of \$64,123 per year for the same work currently performed.

Fact Finder Analysis

The 2011 Performance audit report strongly recommends that Mansfield reduce the shift differential for police. While the union's comparables and rationale make the strongest possible case for extra squad pay, the fact finder believes that after a three year wage freeze, increased compensation for all should take priority over additional benefits for selected employees. In a period of shared sacrifice when the city can not afford to return to 2008 expenditure levels, adding squad pay would make it more difficult to come out of the fiscal emergency.

ARTICLE 9 - OVERTIME

City Proposal

The City proposes modifying Article 9 so that before an employee is paid a premium overtime rate of time and one half (1.5), he or she must *actually* work the number of hours that he would have been required to work in his or her normal schedule, without getting credit for paid time off, such as sick leave, paid vacation, paid holidays. The federal Fair Labor Standards Act does not require that paid leave such as sick leave or vacation be counted toward hours worked when determining if an employee has reach the threshold for overtime payment. If the Mansfield firefighter is held over during the week in which he took a duty day off for sick leave, the City would not expect him to work that overtime for free. Rather, he would work at straight time until he had actually worked at least that 24 hours that he took off with pay, then 1.5x pay.

Union Position

The IAFF notes that no comparable fire department calculates overtime in the way proposed by the employer. Warren, Elyria, Lima, and Newark all pay 1.5 times the regular rate of pay for any unscheduled hours worked. In Mansfield both the FOP and AFSCME contracts

calculate overtime in the same manner as the IAFF agreement. The recently negotiated AFSCME contract maintained that approach.

Fact Finder Analysis

The 2011 state Performance Audit recommends numerous measures to reduce costs, but does not include the city's proposed change for calculating overtime. In the absence of any internal or external comparable that calculates overtime in the manner proposed by the city, the fact finder accepts the union's position and recommends that Article 9 remain unchanged.

ARTICLE 19 – PAID LEAVES OF ABSENCE

City Proposal

The employer seeks to reduce the accrual rate for sick leave from .0769 per hour to the statutory rate of .0577 granted to other represented employees. The Mansfield firefighter's rate of sick pay generates 20 sick leave days per year, rather than the 15 received by other employees.

Union Position

The IAFF objects to a 33% cut in the benefit that has been granted for years. As a result of dangerous working conditions firefighters experience higher rates of illness and need more sick leave. Other employees only use 8 hours of sick leave for a lost shift, but firefighters must use 24 hours. The city has asked IAFF members to accept a lower accrual rate, but continues to allow three unrepresented employees in the fire division to accrue sick leave at the higher rate.

Fact Finder Analysis

The state's 2011 Performance Audit found that the Mansfield firefighters accrue approximately 192 hours of sick leave a year, while Elyria's CBA allows firefighters to accrue 120 hours, Warren allows 144 hours annually and Newark is similar to Mansfield. At retirement the Mansfield CBA sets no limit on severance payments for sick leave hours. ORC Section 124.39 only allows payment for up to 30 days of sick leave. Elyria limits severance payouts to 105 days, Newark limits the maximum severance payment to \$12,000 after 10 years and \$17,500 after 25 years, and Warren limits severance payouts to 960 hours. UX 9 p. 58. The audit found that in 2010 Mansfield would have saved \$44,000 in severance payments for two retiring employees if Mansfield had a sick leave payout cap provision similar to the peer average (p. 59).

In Mansfield a firefighter retiring with 30 years of service and 144 sick days accrued would receive a severance payment of approximately \$34,400. The average liability for Elyria, Newark and Warren would be \$17,500, and under the ORC formula \$14,300. In 1991 Mansfield severance payments for six retiring firefighters totaled \$270,000 (UX 3 p 27), an average of \$45,000 each. In 2013 Mansfield enjoyed unanticipated estate tax revenue and set aside an additional \$1.3 million in a separation fund in anticipation of forthcoming severance payouts.

Based on the city's extraordinary severance obligations as well as external and internal comparables, the fact finder recommends that sick rate accrual for firefighters be reduced from .0769 per hour to .0577 once the city applies that rate to all unrepresented employees in the fire department.

ARTICLE 23 - HOLIDAYS /EMERGENCY LEAVE

City Proposal

The employer proposes that 48 hour workweek members receive eight 24 hour holidays per year, not eleven. Holiday time off is one of the drivers of overtime. If the Mansfield firefighter does not have as many holidays, he still receives his regular annual pay, if he works the year. He just does not get quite as much time off with pay. The amount of time an employee

receives in this bargaining unit is extraordinary. It is even high by external standards. The City would save somewhere between \$108,000 and \$131,000 per year on that proposal, at today's rates.

Union Position

The IAFF insists that concessions already made have generated savings that exceed targets on holiday pay set in the 2011 state Performance Audit. Nineteen newly hired firefighters were granted only eight paid holidays in their first seven years and can work their way up to eleven over a twenty year period. Paid holidays are a cash benefit negotiated in good faith over many years. No other unit has been asked to sacrifice cash benefits, and after a lengthy wage freeze such a take back is unjust.

The union submitted a written proposal for revised language to make the Holiday Sellback in Section 23.5 more efficient and fair, but did not mention that proposal at the hearing. (In its written submission the city rejected the proposal while acknowledging "There is an equity issue" without making any reference to the disagreement at the hearing).

Fact Finder Analysis

The 2011 state Performance Audit finds that no comparable jurisdiction offers the 264 hours of paid holiday and personal leave enjoyed by Mansfield firefighters. Newark provides a bank of 200 hours, Warren and Elyria 216 hours (UX 9 p. 58). Nevertheless the fact finder accepts the union's position that 11 holidays should be maintained, concluding that the concessions on holiday leave made by the union for new hires are sufficient at this time, considering the member's prospective loss of overtime earnings that will result if Article 18 is deleted. The fact finder accepts the city's position on the current sellback provision.

ARTICLE 24 - INSURANCE

Section 24.1. Medical Insurance Coverage and Exhibit A

24.2 Share Insurance premiums

The parties have agreed on language to share equally in increased plan costs that exceed total base contributions specified in Exhibit A.

Should the plan costs exceed the total base contribution amounts set forth above, effective January 1, 2015, the participating employee shall be required to contribute fifty percent (50%) of the amount in excess of the total base contribution in order to continue participation, *and a similar computation will be calculated for subsequent years.*

NOTE: At the hearing the parties agreed to add an additional clause or sentence to continue the process for subsequent years, and the fact finder's *italicized* addition can be modified if it fails to state clearly the parties' intent.

Sections 24.8 and 24.9 Reserves and Health Care Fund

Union Proposal

The IAFF seeks new contractual requirement that the city maintain adequate reserves to maintain a fiscally sound Helathcare plan certified by an accredited actuary with results accessible to the union. The IAFF has been unable to obtain from the city sufficient information about allocation of health care premiums and needs greater transparency to represents its member's interests.

The union contends that its members experiencing major health care expenses may become personally liable because the city has not maintained adequate reserves or provided sufficient stop loss protection for claims exceeding available funds. Council has set aside restricted funds for separation payments but has not adequately provided for a health reserve fund. The IAFF offered expert witness testimony and data analysis of Self-Insurance Fund revenue, expenses, balance and cash reconciliation to show that the city had negative equity, inadequate assets, and not maintained adequate reserves. The union proposes that all premiums due from the employer that exceed actual expenses remain in the restricted Healthcare Internal Service fund. Any excess fund balances would be used to offset future cost increases.

City Position

IAFF members currently pay only 5% of health care premiums, well below the contribution level elsewhere. There is no instance of a covered employee going out of pocket because there was a lack of money in a fund. ORC 9.833 requires the city to reserve funds necessary for a self-insurance program (EX U), and the State Auditor oversees compliance. The city insists that the management of its health care plan is a matter of management rights.

Fact Finder Analysis

In response to the fact finder's request, the city provided documentation of income and expenditures to its existing internal service "Health Insurance" fund that had a balance of \$608,902 on August 31, 2013 (EX Y p. 2). This fact finder questions whether SERB neutrals have the expertise to enforce a contract clause requiring a determination of whether that balance was sufficient. Clearly that responsibility for oversight belongs with trained accountants in the office of state auditor. The union's best avenue to address its concerns is current Article 24.4 that provides for IAFF representation on an insurance committee that has "the authority to approve program coverage changes, recommend alterations to benefit levels, and/or recommend adjustments to coverage levels through majority vote."

Given the state's oversight responsibility, the employer's successful past performance in managing claims, and in the absence of evidence that any other labor agreement has a provision comparable to the union's proposal, the fact finder accepts the city's position.

FACT FINDER'S RECOMMENDED CONTRACT LANGUAGE

ARTICLE 11 - PROBATIONARY PERIOD

~~Section 11.2. Assignment While in Training. No probationary employee shall be considered for minimum manning purposes until between four (4) and six (6) months after obtaining the certifications listed in Section 11.1. The employee shall be added to minimum manning after evaluation and consensus recommendation to the Chief of Fire by the Captain(s) and Assistant Chief(s) supervising the employee during this period.~~

Delete **ARTICLE 18 - MINIMUM MANNING**

ARTICLE 19 - PAID LEAVES OF ABSENCE

Section 19.1. Sick Leave

A. Accrual. Firefighters shall accrue sick leave at a rate of ~~.0769~~ **.0577** hours for each non-overtime hour in active pay status. For purposes of this section active pay status is a

period when an employee is eligible to receive pay from the City and includes hours worked, vacation leave, wage continuation, holidays, compensatory time, paid military leave, funeral leave and paid union leave. Any sick leave accrued but not used as hereinafter provided in any year shall be accumulated in succeeding years without limitation. Deductions from an employee's accumulated sick leave shall be made whenever, in accordance with the current work schedule, that employee has been scheduled to work but instead takes sick leave as authorized in Section B and C below. (Request for Leave attached at Appendix D)

ARTICLE 21 - WAGES AND FRINGE BENEFITS

Section 21.1. Wages.

A. Wage Rates.

Employees covered by this Agreement shall receive wages in accordance with the provisions and wage schedule set forth in Appendix E (attached hereto and made a part hereof). **The City will slot in the Lieutenant pay halfway between the firefighter rates and the Captain rates.** In the interpretation and application of the terms of this Agreement, the regular rate of pay of an employee assigned to a forty-eight (48) hour work week shall be computed by dividing the applicable rate as set forth in the Schedule of Wages in Appendix E by two thousand four hundred ninety-six (2,496), and the regular rate of pay of an employee assigned to a forty (40) hour work week shall be computed by dividing the applicable wage in Appendix E by two thousand eighty (2,080). This pay specification is subject to enactment of these wage scales into appropriate Ordinance by City Council. ~~The parties hereby agree to re-open negotiations pursuant to the procedure contained in Section 26.4 herein, for the specific, limited purpose of negotiating wage rates for the period from 12/1/09 through 11/30/10 and the period from 12/01/10 through 11/30/11. The parties agree that the position of Supt. of Fire Equipment be removed from the current pay scale.~~

B. Wage Increases and Lump Sum Payments.

For the first year of the agreement the City will pay a lump sum of five hundred dollars (\$500) to all employees, provide a 2.7% base rate increase for Captains, and create a base rate for Lieutenants 10% above the 2012-2013 base rate for Firefighter at Step 5.

For the second year of the agreement the City will pay a lump sum of five hundred dollars (\$500) to all employees as of January 1, 2014 (and paid with the pay for the payroll period that includes that date).

For the third year of the agreement the City will increase the base rate for all employees by one per cent (1%).

C. Reopener.

In the event that another City bargaining unit receives a greater general wage increase (anything added to the base) for the second or third year of their agreement than is provided for in this agreement, the Union may request to open this agreement under 4117. Such reopener will be limited to the wage article only, with all other provisions of this Agreement remaining in full force and effect.

Section 21.2. Longevity.

A. In addition to the salary specified in Appendix E of this Agreement, every employee ~~covered hereunder~~ hired prior to April 1, 2011 shall receive a longevity payment of One Hundred Dollars (\$100) for each year of completed service with the City of Mansfield.

B. Employees hired after between April 1, 2011 and March 31, 2014 who attain five (5) or more years of service with the City of Mansfield shall receive a longevity payment of One Hundred Dollars (\$100) per year of service.

Section 21.6. Training. The City provides various types of on-the-job training, in-service training and seminars and may require and/or approve attendance by employees at job-related training, classes or seminars. All time spent in training required by the City is included in hours worked and shall be paid at the appropriate rate of pay as provided in Article 8. All time spent in training approved but not required by the City is not compensable hours worked. The costs of all tuition and material costs for required and approved training shall be paid by the City. Any travel expenses incurred by employees in attending approved training shall be reimbursed according to the City's travel policy. Attendance at all training seminars and classes that are not mandatory shall be at the discretion of the Chief and must be approved in advance. ~~[t]he City shall provide relief for minimum manning purposes while an on-duty employee is unavailable for service due to attendance at training.~~

ARTICLE 23 - HOLIDAYS /EMERGENCY LEAVE

Section 23.1. Designated Holidays.

- A. Employees hired after April 1, 2011 shall receive paid holidays according to the following schedule:
- i. 0-7 Years: 8 Paid Holidays
 - ii. 8-14 Years: 9 Paid Holidays
 - iii. 15-19 Years: 10 Paid Holidays
 - iv. 20 Years: 11 Paid Holidays

Section 23.5. Holiday / Vacation Sell Back. For those works days in which a "holiday/vacation off" has/would create a situation wherein the City would have to pay time and a half to ~~comply with the minimum manning requirements of Article 18 of this agreement,~~ **bring the full-day staffing level up to the number the City determines is required for the day(s) in question** the following procedure will be implemented: Those bargaining unit members on holiday/vacation will be called first and offered the opportunity to voluntarily sell back their holiday and report for duty. The offers to sell back holidays will be made in order of seniority. The holiday will be paid at the member's hourly rate. The holiday will be paid in the pay period for which it was scheduled.

ARTICLE 24 - INSURANCE

Section 24.1. Medical Insurance Coverage and Exhibit A as TA'd by the parties

All other contract provisions agreed to by the parties are incorporated with the above recommendations to complete a new agreement. Articles 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 25, 26, and 27 and a new article on retirement incentive, including Appendices A, B, C, D and F referenced in those articles.

Respectfully submitted,
Howard Tolley, Jr.,
Professor Emeritus, University of Cincinnati

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Corrected Fact Finding Report has been served via electronic mail to Kevin Rader , Staff Representative, IAFF Local 266 krader@arnettrader.com and Dan Crow dcrow@iaff266.com, Mark Lucas, Mansfield Chief Negotiator, Clemans Nelson & Assoc. MJLucas@clemansnelson.com, David Remy, Mansfield Human Relations Director dremy@ci.mansfield.oh.us and to the State Employment Relations Board, Columbus, Ohio Mary.Laurent@serb.state.oh.us on this 18th day of November, 2013

Howard Tolley

November 18, 2013

Date