

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between

Marysville Firefighter Association,  
IAFF Local 3032

Employee Organization

Case Nos. 2013-MED-04-0539

and

The City of Marysville, Ohio

Fact-Finder: Jerry B. Sellman  
Date of Report: October 22, 2013

The Employer

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**FACT FINDERS REPORT AND RECOMMENDATION**

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APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Kevin Rader – Principal, ArnettRader Consulting, Inc. representing the Marysville Firefighter Association, IAFF Local 3032

FOR THE EMPLOYER:

Brian R. Dostanko – Human Resources Director, representing the City of Marysville, Ohio  
John Gore – Mayor of the City of Marysville, Ohio  
Jenny Chavarria – Finance Director for the city of Marysville, Ohio

**I. INTRODUCTION**

This matter concerns a Fact-finding proceeding between the City of Marysville, Ohio (hereinafter referred to as the “Employer” or the “City”) and the International Association of Fire Fighters, Local 3032 (hereinafter referred to as the “Firefighters” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on September 18, 2013 at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The Parties engaged in mediation and were close in mutually agreeing on all of the unresolved issues, but the inability to mutually agree on a wage package and EMT-P certification issues prevented resolution of a global agreement on all issues. The open issues identified and discussed by both parties included:

- Article 13 – Layoff and Recall
- Article 17 - Holidays
- Article 25 – Education and Training
- Article 27 – Insurance
- Article 30 – Hours of Work and Overtime
- Article 34 – Wages/Pension Pickup
- Article 38 – Application of State Civil Servant Laws

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder’s consideration. The Parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issues before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargaining agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, 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 public service or in private employment.

## **II. BACKGROUND**

The International Association of Firefighters, Local 3032 represents all full-time uniformed employees of the Marysville Fire Department holding the ranks of firefighter and lieutenant. There are approximately 32 members in the bargaining unit.

The City of Marysville, Ohio is a municipality located on U.S Route 33 approximately 25 miles Northwest of Columbus. The city has a population of 17,483.

The current Collective Bargaining Agreement expired on June 30, 2013 and Extension Agreements have been executed by the parties to allow for Fact-finding on unresolved issues. The parties tentatively agreed to language in all but eight (8) negotiated articles in the new proposed Collective Bargaining Agreement prior to the Fact-finding Hearing. The issue of

Duration was agreed to by the Parties at the hearing; seven (7) issues were presented to the Fact-finder for resolution.

As the Fact-finder made his findings and recommendation on the disputed issues, each issue was given consideration in relation to an overall solution as opposed to addressing each issue independent of the other.

### **III. UNRESOLVED ISSUES**

#### **1. ARTICLE 13: LAYOFF AND RECALL**

##### The Union's Position

The Union proposes to add additional language to this Article that it believes is necessary to clarify the recall procedure. It seeks language to make it clear that, in the event of a reduction in force, the Employer would be required to layoff and all temporary intermittent, part-time or seasonal employees in the division prior to any bargaining unit employees.

It argues that, since the City has followed this procedure in the past, adopting the new language mirrors the practice of the parties. If the new language is recommended by the Fact-finder, it will drop its request to modify Article 38 – Application of State Civil Servant Laws.

##### The City's Position

The current language in Article 13 provides that the Employer has the right to determine in which classification(s) layoff or job abolishment will occur. It further provides that layoff shall be in order of seniority, beginning with the least senior and progressing to the most senior up to the number of employees that are to be laid off. The City maintains that the current contract

language should be maintained. The City has not had a single grievance regarding layoff and recall in at least the last twenty years, if not longer. That includes the City's first ever successful reduction in force (RIF) in 2009 when the current language was in place. This is an inherent management right which it has executed without incident.

It argues that the entire City of Marysville Civil Service workforce (including IAFF and FOP) is covered under home rule, Civil Service Ordinance 30-13, which states, "*the Director (City Administrator) shall have the power to designate the classification, divisions and departments to be affected by such layoffs;*" this is the local law reflected in the current Agreement. The City's management rights and local law allows it to layoff in classification so that it has the flexibility to layoff either fulltime Firefighters, or part-time Firefighters, which are defined as two separate classifications; this right becomes compelling when you note that all part-time Firefighters must be EMT-P qualified, while some fulltime are not and can drop the EMT-P after 6 years according to language in the last CBA. The City points out its responsibility to provide its citizens and businesses with the best possible safety services, which means it must consider the EMT-P certification if it ever was required to enter another RIF (highly unlikely) in the future.

#### Discussion, Findings and Recommendation

While the City has maintained its management rights and acted pursuant to authority given to it under Home Rule in the past, it appears to have exercised its discretion in the past by laying off employees and recalling employees in the manner as proposed by the Union. Evidence indicates that it has represented that it intends to do so in the future. Since this has been the manner in which it has handled a reduction in force in the past, the Fact-finder sees no reason to

deny the clarification that the Union seeks. While the City argues that it needs to retain its current rights to maintain flexibility, there is no evidence to indicate that additional clarifying language in the Agreement would diminish its flexibility to handle layoffs as it has done in the past.

### **RECOMMENDATION**

**It is recommended that new language be added to Section 2 of ARTICLE 13, LAYOFF AND RECALL, to reflect that all City funded temporary, intermittent, part-time or seasonal employees in the division shall be laid off prior to any bargaining unit employees.**

#### **2. ARTICLE 17 - HOLIDAYS**

##### The Union's Position

Language in the current agreement provides for eleven recognized holidays for which the employees receive eight (8) hours of pay for each holiday. The Union proposes to add additional language to the Article 17 providing that if any employee is required to work on any of the eleven (11) recognized holidays, the employee would receive additional compensation at 1 ½ times the hourly rate for all hours worked on any of the recognized holidays.

Currently, each Firefighter now receives straight time (forty-hour rate) of eight (8) hours per each holiday or 88 total hours and is given a check for the holiday pay in the second pay period of November. If any employee works that day, they would get their normal 53-hour payment for such time. In addition to being paid for the Holiday, the Union seeks to be paid an additional 1 ½ times the hourly rate for the hours worked.

The Union argues that its proposal is identical to the language in the FOP contract. The Union is only seeking similar treatment by the City. While the FOP is paid 12:00 to 12:00, the Union is asking to be paid 7:00 to 7:00. The City of Marysville also pays its non-bargaining unit employees 1 ½ times the normal hourly rate in addition to the Holiday pay.

Other communities pay their Firefighters 1 ½ times their wage rate in addition to Holiday pay when the Holiday is worked. In Ashland, overtime is paid for hours worked on designated holidays. In Athens, additional compensation is provided. In Avon City, Firefighters are paid 1 ½ times the hourly rate in addition to time worked on Holidays. There are few communities that do not pay premium pay for working the Holidays.

#### The City's Position

The City proposes retaining current language. If the Union's proposal is accepted, it would equate to double time and one half; they are already receiving the equivalent of double time. The current language has existed for over seven (7) collective bargaining agreements (21 years) and the Union provided no reasonable data to change this practice. If an increase is to be given to these employees, it should be in wages and benefits, not double time and one half for overtime.

While the Union argues that the FOP has this language in its contract, the FOP does not have the 240.8 hours of overtime scheduled each year that the Firefighters have.<sup>1</sup> This is not a valid comparable.

If this provision is accepted, it would create an overall pay structure problem regarding our executive/exempted, non-Union Battalion Chiefs. The City created the position of Battalion Chief (BCs) in 2012 in order to place an executive/manager on each traditional shift and prepare

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<sup>1</sup> The Union points out that the Firefighters do take time off so it is inaccurate to use the full 240.8 hours as a comparison.

for our up-coming two-station model. In order to create this, the City had to set a reasonable wage. All City exempted employees get holidays off (paid) and do not work them. BCs would have to work them. The City factored into the BC wage equation 88 more hours each year at the rate we created from comparable studies and set it as such as to create a sound, overall Marysville Fire Division pay scale. An increase in these wages for the Union places them closer to the BC wages.

Although the Union never presented a cost analysis of their request, management had to create it in order to understand the financial implications of this request. The City estimates that adopting this proposal would result in an additional cost of \$27,601.

This request also has to take into consideration the raises the Firefighters received in the past in relation to the Fire Chiefs. As a result of current wages and overtime worked under the current language, eighteen Firefighters earned more than the Assistant Chief in 2010 and twelve Firefighters earned more than the Assistant Chief in 2011. This could not be fixed until the City finances became slightly better in late 2011. Even with a healthy 12% raise for the Assistant Chief that was primarily used to establish the three (3) Battalion Chief wages of \$80,000 (plus consideration to holiday pay as we noted), the City still had two (2) Lieutenants that would have made more than a BC, if the BCs existed all year. An increase now in Holiday pay without a raise in wages for three (3) Battalion Chiefs and the Fire Chief would further exasperate this wage structure problem. There is a further “domino effect” in that Fire Chiefs are paid comparable with the Police Chief and two (2) Deputy Chiefs. Increasing Holiday pay sets off a wage ripple that will cost the City much more than the pure holiday pay increase already noted.

Discussion, Findings and Recommendation

While the City argues that the requested increase for overtime paid for Holidays worked has been in place for 21 years, the Union makes a compelling argument that Firefighters in other comparable communities have adopted the practice of paying an additional 1 ½ times the normal hourly rate, in addition to Holiday pay received, for Holidays worked. The amount of additional cost to the City for adopting this provision is minimal in light of the benefit to the Firefighters and their families of working on the Holidays. It is my recommendation that the Union's proposal be adopted.

**RECOMMENDATION**

**It is recommended that ARTICLE 17 – HOLIDAYS be amended to provide that bargaining-unit members shall receive time and one half pay as compensation for duty performed on any holidays mentioned Article 17 or a time period specified by the Mayor or Designee as a “City Holiday” or “Offices Closed” where any city employee is compensated. This does not apply when the City recognizes one of the above mentioned eleven (11) holidays on the nearest business day for a holiday that lands on a weekend. Any employee required to work on a holiday which is not the employee's normal shift shall receive an overtime rate of two and one half times their normal hourly rate for such overtime hours. Hours worked on the above holidays shall be the hours between 0700 hours the day of the actual holiday until 0700 hours of the day after the actual holiday. The remainder of the language in Article 34 should remain the same.**

**3. Article 25 – Education and Training**

The City's Position

The City proposes to modify the absolute right of a firefighter to drop their paramedic certification after six years. The City proposes to modify the language in Article 25 to provide that all firefighters hired after January 1, 2013, must hold a current and valid state of Ohio paramedic certification (EMT-P) as a condition of employment for their length of employment

with the City of Marysville. Additionally, no Firefighter (those hired before January 1, 2013) can drop any EMT-P certification after holding it for six years (current contract language), if that action takes the Fire Department below a 65% rate of certified full-time paramedics.

The City sees no valid basis for continuing to allow Firefighters the right to drop his/her EMT-P certification six years after the date of employment with only 20-days' notice. The City has grown significantly over the last several years and, with the opening of a second fire station, there is a drastic increase in the number of EMT runs with an increased critical need for paramedics to sustain a valuable safety service to the community. An average of 62-69% of the Fire Departments runs involves EMT with EMT-Ps doing the bulk of the care.

The following chart demonstrates this:

Year	Total# Runs	Total Non EMS	Total EMS	Total Patients (annual projection)	Total Transport	#ALS Runs
2013 *	1,376	522 (38%)	854 (62%)	851 (1,702)	753 (1,506)	392 (784)
2012	2,926	952 (33%)	1,974 (67%)	1,706	1,512	761
2011	2,890	904 (31%)	1,986 (69%)	1,699	1,488	679

Many of these runs require advance airway management, such as endotracheal intubation, electrocardiographs (ECGs) procedures, defibrillations, the introduction of intravenous lines, and the administration of numerous emergency medications. Only EMT-Ps can perform these functions. In addition, EMT paramedics have extensive training in patient assessment and are exposed to a variety of clinical experiences during training. There are numerous other reasons supporting the City's position.

Firefighters that have applied and have been hired over the past 10 years did so with the knowledge (from the job postings and interviews with the City) that the EMT-P certification was a requirement; they became aware that they could drop the certification only after they were on

the job. Since new hires started the job with the expectation that they needed EMT-P certification to be hired, it is not unreasonable to seek to have them maintain and reinforce that expectation. This is a condition of employment and they should be required to keep the certification. Further, if a Firefighter wants to advance he/she must have EMT-P certification.

The City has a responsibility to provide its citizens and businesses with the best possible safety services. To provide the best possible medic safety services to citizens the City requires two EMT-Ps per EMT run. This model would require a minimum of six (6) EMT-Ps per shift, and preferably eight (8). If the City could not count on part-time Firefighters, it would need 18-24 Firefighters (of the 33) to be EMT-P. This is a percentage range of 54.5% - 72.7%.

Splitting that percentage almost in half, while rounded to a number, is how the City arrived at the conclusion that 65% of the EMTs would need paramedic certification to serve the community adequately

EMT-Ps are paid a higher wage (incentive) when they are hired, so the City should have the right to maintain a certain level of these qualified individuals in providing a needed service to the public.

#### Union's Position

The Union proposes to retain current language where Firefighters hired after January 1, 2001, can drop their paramedic certification after six years with an added qualifier: in the event the number of bargaining unit members with a paramedic certification drops below fifty percent of the available pool then the right to drop the paramedic certification is suspended until such time the pool of Paramedics rises above the fifty percent threshold.

Section 1 provides that members hired after January 1, 2001 must hold a current

paramedic certification for a minimum period of 6 years from their hire date. After this six year period members may then drop their certification. The Union asserts that few firefighters drop their EMT-P certification, but it wanted to maintain a failsafe position for those employees who lost their certification after six years and, but for the continuation of this provision, would not be able to keep their job. This provision was negotiated into the Agreement in 2002 initially and the bargaining unit members want to maintain this right.

The Union recognizes the concern of the City to maintain sufficient paramedics on emergency runs. It is willing to consider a compromise, but not on the terms proposed by the City. The Employer in its initial proposal discussed increasing the six year interval. To address the Employer's concern regarding a sufficient reserve of paramedics the Union suggested it would consider accepting a proposal that a pool of fifty (50%) percent of the bargaining unit members would be required to maintain their paramedic certification prior to any bargaining unit member exercising a right to drop the EMT-P after a six year period. It further agreed that new hires after July 1, 2013 would be required to maintain EMT-P certification, but only if the City agreed to other proposed changes. It was not willing to apply the non-drop provision to employees hired before July 1, 2013.

The requirement for new hires to have an EMT-P is a condition of hire, not a condition of employment. The condition of employment is subject to bargaining. This, therefore, is a bargaining subject and the Union desires to protect its Firefighters in the event they lose their EMT-P.

The City has not demonstrated that there is a staffing problem for EMT-Ps. The City can provide sufficient EMT-Ps on their current runs. There is no reason to change the current

contract language which permits a Firefighter to drop the “P” after a number of years. The Union also challenges the City’s position that a Firefighter needs to be a paramedic in order to advance. Employees only have to be an EMT-B (basic) to advance under the City’s current job description requirements.

There are other communities where EMT-Ps can drop the paramedic certification under some circumstances. In Avon Lake, a Firefighter can drop the “P” after 15 years. In Norwood, the employee must maintain the EMT-P certification until promoted to another position. In Painesville, the “P” can be dropped if the percentage of paramedics in the department does not drop below 50%. In South Euclid, a Firefighter who loses his paramedic certification has 90 days to reinstate. This has been shown not to be a condition of employment.

The Union believes the City can meet its operational needs under the existing language. It was willing to consider maintaining a pool of EMT-Ps as a percentage of the number of Firefighters, but only if its other bargaining demands were met.

#### Discussion, Findings and Recommendation

This Article single handedly derailed the Parties’ ability to agree on all of the unresolved issues. Because of the City’s assessment of the need for more certified EMT-Ps to respond to emergency runs, it hires new Firefighters with the understanding that they must have and maintain a paramedic certification. It sees the possibility of diminished service to the community if current EMT-P certified Firefighters have the option to drop their paramedic certification.

The Union is of the opinion that few of the EMT-Ps drop their certification after six years, even if they have the right to do so, and service to the community will not be diminished if the current language is retained. It has the obligation to protect those Firefighters who

inadvertently lose their certification, although the Union is receptive to some modification to this Article if the rights of its members are protected.

The City has demonstrated that more than one paramedic is needed on emergency runs. If a member of the public is injured in an accident, it would be a disservice to the community if sufficient paramedics could not be provided to immediately take action to treat injuries. Here it is not a matter of cost. The City pays Firefighters with a paramedic certification more money. It is a matter of delivery of an adequate service. The Fact-finder recognizes the failsafe position in which the Union desires to place its members, but if such action is contrary to the best interest and welfare of the public, it cannot be adopted without limitation.

Since a formula has been presented by both parties indicating the number of EMT-Ps that need to be maintained in order to adequately serve the public, an adaptation of those formulas makes sense. The City should be able to provide the services it desires and the Union will be able to provide some flexibility to its members holding an EMT-P certificate who desire to drop it after a number of years.

With the growing demands of the Marysville community and the need to maintain EMT-Ps, the Fact-finder sees no basis for providing a right to newly hired Firefighters to drop their EMT-P certification, if they are hired with the understanding that they must have and maintain the certification. The Union is correct that maintaining certain certifications is more a condition of hire than a condition of employment, which is subject to the bargaining process, but provisions that are not in the best interest of the public welfare will be difficult to get past Fact-finders and Conciliators.

It is the recommendation of the Fact-finder that employees hired after January 1, 2013,

must hold a current and valid state of Ohio paramedic certification (EMT-P) as a condition of employment for their length of employment with the City of Marysville. Additionally, no Firefighter (those hired before January 1, 2013) can drop any EMT-P certification after holding it for six years, if that action takes the Fire Department below a 50% rate of certified full-time paramedics. If the Union's argument proves correct that most of the Firefighters holding a paramedic certification do not drop it, Firefighters hired in the past will be able to take advantage of the "failsafe" provisions in the agreement. New hires who were hired with the understanding that they must have and maintain a paramedic certification should have no problem accepting the provisions of the recommended language.

#### **RECOMMENDATION**

**It is recommended that ARTICLE 25 – EDUCATION AND TRAINING, be modified to provide that all firefighters hired after January 1, 2013, must hold a current and valid state of Ohio paramedic certification (EMT-P) as a condition of employment for their length of employment with the City of Marysville. Additionally, no Firefighter (those hired before January 1, 2013) can drop any EMT-P certification after holding it for six years, if that action takes the Fire Department below a 50% rate of certified full-time Firefighters. The remainder of the language in Article 25 should remain the same.**

#### **4. ARTICLE 27 – INSURANCE**

##### The Position of the City

The City proposes only minor changes to the Insurance Plan originally proposed to the Union. In essence, it proposes to add a 4<sup>th</sup> year to the City's contribution to the HSA Plan, which

year reflects a diminished contribution.

The expired Collective Bargaining Agreement addressed the addition of a health reimbursement account (HRA) and a health savings account (HSA), to which the parties agreed. The current plan resulted from a joint effort between the IAFF and city that ushered in a new era to managing medical insurance costs through the use of two great consumer-driven products. Because it was a new process, the City did not have all the “bugs” ironed out. Any and all proposed changes to the current insurance plan reflected actual operations over the last three years. The Union found the initial proposed changes acceptable, but not the addition of the 4<sup>th</sup> year.

After a tentative agreement was reached, the City’s insurance broker (CBIZ) discussed the ramifications of the Patient Protection and Affordability Care Act (PPACA) and its impact on the City’s medical insurance. Much of this is still unfolding. The City was informed that future premiums will go up because of the PPACA regardless of our use (experience). The City did not want to place this burden back on employees so it looked at its coverage and determined that it should look to reduce the city's pledge (funding) to the HSA. As a result of this, the City is proposing a small decrease in its contribution to the HSA in the fourth year of the current plan.

#### The Position of the Union

The Union only seeks to have the employer sign off on the original proposal to which parties agreed, which did not include any agreement in regard to the fourth year decrease.

#### Discussion, Findings and Recommendation

The City and the Union have cooperated with each other in fashioning a new approach to handling sky-rocketing increases in health insurance. It is understandable that changes will be

necessary on an ongoing basis. An initial new package was presented after careful thought and preparation and tentatively agreed to by the parties. The Fact-finder sees no reason to make a last minute change, which does not fundamentally change the cost of the insurance package throughout the duration of this new collective bargaining agreement. As such, it is my recommendation that the initial proposal between the parties, which did not include a fourth year treatment of the HSA account, be adopted.

### **RECOMMENDATION**

**It is recommended that ARTICLE 27 - INSURANCE, be modified as initially reviewed by the parties, which proposal does not include a fourth year treatment of decreases in contributions to the HSA account. The remainder of the language in Article 27 should remain the same.**

#### **5. ARTICLE 34 – WAGES/PENSION PICKUP**

##### Position of the City

The City proposes a 1% wage increase for each year of the Agreement. It also proposes to roll a 7% pension pick -up into the wage rate of the Employee, as opposed to paying a separate 10% pension pick -up, which it had done in the past. It proposes to incorporate the raises and pension move to start on January 1 of each of the following years, which it is attempting to do with the other bargaining units and rest of the City employees.

The City points out that the proposed annual wage increase of the City will actually result in a deficit for the City over the life of the Contract, but the City is supportive of passing on increases as the City's financial condition is improving and it is committed to the community to keep its Firefighters paid at a level necessary to attract well-qualified employees.

While it is proposing increases for each year of the contract, it believes those increases should be modest in light of the economic rollercoaster the City experienced beginning in 2009. In 2009 the City experienced for the first time a need to reduce its workforce. Finances were an issue for most cities across the nation due to the economic downturn and the City of Marysville was no exception. This was compounded by a reduction in revenues from the State of Ohio. The City found itself facing a \$1M shortfall in the budget. As a result of numerous cuts in expenses and a ½ percent income tax increase in 2010, the City's economic condition started to improve.

Much of the income tax increase was earmarked for the building of a second fire station, the building of a new Police/Court facility and the hiring of nine additional Firefighters, all of which has taken place. The capital expenditures were financed through bonds and the income tax increase was needed to pay off the bonds. Covenants in the bonds required the City to maintain a minimum \$3.5M reserve even though the City itself has a \$5M targeted reserve requirement. Some of the funds were also used to address the deficit.

Employees shared in the cuts. No raises were given for two years. Revenues to expenditures improved in 2010 and 2011, but with the loss of almost \$600,000 in 2012 due to the reduction of state government revenues for tangible personal property tax, estate tax and local government funds, the increased cost of the nine new Firefighters, the interest and principal payment of the bond reduction and the increases in health care costs, the City was faced with a deficit budget of \$3,593,311 in 2012. Due to sound fiscal management and income from the city income tax increase, the deficit is projected to be around (\$1,434) in 2013. By 2016 ,the city projects a positive balance of revenues over expenditures, but, based upon the proposed costs to the City reflected in its current wage and benefits proposals, the City projects a negative balance

of revenues over expenditures in the amount of (\$489,435) in 2014 and (\$135,107) in 2015.

The City had an unencumbered cash carry-over balance reserve at the end of 2012 in the amount \$3,819,673. The city projects an unencumbered cash balance of \$3,818,239 at the end of 2013, \$3,328,805 at the end of 2014 and \$3,193,697 at the end of 2015. This is in line with its covenants on its bond obligations but below the target reserve the City believes it needs to maintain for its sound financial health.<sup>2</sup> With these financial projections taken into consideration, the City argues that it would be unwise to consider increasing its proposed wage package.

The wage package, including the pension pick-up to be rolled into the wages, will keep the Firefighters in range with comparable wage increases paid to other Marysville city employees and unions, and will result in comparable wages paid to Firefighters in other cities similar to Marysville. Since 1995, the top Firefighter has accumulated a 78.8% increase in wages over that period, second only to Lieutenants who received an 83.9% increase in wages. During this same period of time, the rest of the city employee's wages only increased 48% in comparison. SERB's Annual Wage Settlement report shows that the average wage increase for firefighters over the same period was 54.84%. When one factors in the base wage, the pension pick-up, the extra pay for EMT-P certification and the overtime available, Lieutenants in Marysville are placed as the second highest paid Lieutenants on a SERB comparison of other cities and the Firefighters are second only to the comparable city of Norwood. With this in mind, the City's wage and pension pick-up proposal is reasonable.

The City believes that rolling the pension pick-up at 7% into wages is more beneficial to the Firefighters than a pension pick -up. The 1% per year and the 7% pension pick -up creates a

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<sup>2</sup> The Union points out that the City's audited statements show a higher carry-over balance at the end of 2012 than reflect here, but the City's Finance Director pointed out that the City's audited statements are prepared on a GAAP basis (accrual) and not a cash basis. These financial projections are reflected on a cash basis.

full 10% increase over the life of this Collective Bargaining Agreement. If the pension pick -up is rolled into the wages, the Firefighters will earn more in overtime and would factor into future Cost of Living increases in the future. Additionally, the wage increase will result in greater retirement benefits, particularly for those Firefighters closer to retirement.

The City has done well over the last several years. The City went from a 1% to a 1.5% income tax increase in 2009, which increased the revenues of the City. The City promised its citizens that it would build a new fire stations and hire an additional nine Firefighters, which it has done with the .5% increase.

When considering the wage increase and the pension pick up, the Firefighters are at the top end in comparison to comparable bargaining units. A few years ago, the City went from a 7% pension pick up to 10% to be more even with packages offered by neighboring communities, even though those communities are more affluent and their ability to increase revenue through increased taxes was and is greater than the City's. It is now time to go back to the 7% wage increase, which is more in line with communities of Marysville size.

The increase of the nine new Firefighters resulted in a cost to the City of an additional \$665,663. Factoring in the new Firefighters in the proposed increases, the cost of the increases will be approximately \$172,605 under the new Agreement.

#### The Position of the Union

The Union proposes a 2.5% increase in wages for each year of the agreement, effective July 1 2013, July 1, 2014 and July 1, 2015. It proposes to roll up a 7.2% pension pick -up into the wage rate of the employee, as opposed to paying a separate pension pick up.

Because of 0% increases over several years, and the Firefighters' help in getting the

community to back the income tax increase, the Union argues that it deserves more than 1% across the board wage increases proposed by the City.

The City has never taken the position that it does not have the ability to pay wage increases; it is a matter of the appropriate amount. The City argues that its financial obligations prevent the wage increases sought by the Union, but the City did not need to rebuild the fire station downtown and build a new city building.<sup>3</sup> That money could have been spent on wages to the Firefighters. The original bond was \$14M and they actually paid \$25M. They are not really deficit spending; they are spending their reserves on capital expenditures. The City also chose to accelerate the repayment of its debt. If it chose not to pay off the debt faster, additional funds would be available for the payment of wages and benefits.

The Audited Statements for the City shows that it ended 2012 with a General Fund balance of over \$5M as opposed to the \$3.8M presented by the City.<sup>4</sup> This is far greater than reflected by the City. It has the additional funds to pay the requested increases.

The Union disputes the City's analysis of wages paid to Firefighters in cities comparable to Marysville. The FOP bargaining unit members make more than the Firefighters from an internal comparison, approximately \$2,000 more per year. On their external comparables, the City tends to "cherry pick" those communities with which it can have the most favorable comparison of wages. Collective bargaining agreements from Firefighter units in actual comparable cities shows that this bargaining unit is falling behind and is not paid on a comparable basis. Wages paid to Firefighters in Avon City, Avon Lake, Broadview Heights, Forest Park, Lebanon, Painesville, Piqua, Sidney, Steubenville, Trotwood, Troy, Wadsworth,

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<sup>3</sup> The City pointed out that it only cost a few more million dollars to rebuilt, rather than to remodel or renovate the buildings, and the small additional expenditure made more sense in the long run.

<sup>4</sup> As noted previously, this variance is due to the method of accounting.

Willoughby, and Xenia all have an hourly rate above that paid to the Marysville Firefighters. Most of the top base wages paid to their Firefighters was more than paid to the Firefighters in Marysville.

#### Discussion, Findings and Recommendation

The City agrees that a wage increase is appropriate for this bargaining unit. Both parties are receptive to rolling in the City's proposed pension pick-up into the wage base. The disagreement is in the amount.

The evidence shows that the City of Marysville is deficit spending. The Union may argue that expenditures should be reallocated, particularly as they relate to debt repayment or underlying payments for capital improvements, but the fact is expenses have been, and are projected to be, more than anticipated revenues during the term of this collective bargaining agreement. Fortunately, the City has maintained a positive General Fund balance and sufficient carry-over reserves to absorb these deficits, as well as pay first quarter expenses in the new year. The Union pointed out that audited financials revealed that the fund balances were greater than those relied upon by the City. The Fact-finder would note that the City has to operate on a cash basis, even though it reports its revenues and expenses on an accrual basis. As a result, the cash basis figures are most reliable in determining the ability of the City to meet its expenses as they are due.

When an employer is deficit spending, it must be cautious in committing to wages over a three year period. It must also make sure, however, that it delivers emergency and protective services to the community or residents will not be willing to live in the community, let alone pay additional taxes for those services.

The City has been cautious here, but the Fact-finder believes that an increase is warranted

to provide competitive wages for the Firefighters. Both parties are in agreement with the pension pick -up being included in the wage scale. In regard to the wage increase, since the City is coming out of the economic downturn and projects gradual improvement, the wage package should follow that trend. Therefore, it is my recommendation that wages should be increased 1% in the first year, 1.5% in the second year and 2% in the third year of the Agreement. I agree with the Union, based upon the analysis submitted by the City, that the appropriate pension pick-up rolled into wages should be 7.2% and not the 7% proposed by the City. That is in line with the same economic value given to the Firefighters when the 10% pension pick-up was provided separately. The Pension pick -up should be rolled into the wages of each member of the Local on January 1, 2014, prior to raises being assessed. The City requested that wages be increased in January of each year to assist in the calendar year budgeting of the City. This is the current schedule. The Union proposes to change the wage increase to coincide with the start of the contract year. I see no reason to change the current start date. An increase in wages should occur at the beginning of January 1 of each year.

#### **RECOMMENDATION**

**It is recommended that under ARTICLE 34 – WAGES/PENSION PICK-UP the wages of the firefighters should be increased 1% in the first year, 1.5% in the second year and 2% in the third year of the agreement commencing on January 1 of each year. Further, a pension pick-up in the amount of 7.2% should be rolled into the wages on January 1, 2014, prior to wages being assessed.**

6. **ARTICLE 30 – HOURS OF WORK AND OVERTIME**

The Position of the Union

The Union proposes to amend the language in Section 3 by providing that overtime at 1 ½ times the regular rate should be paid to all employees who work over their regularly scheduled twenty-four hour shift. It proposed to amend the language in Section 5 to provide that overtime should be defined as the actual hours an employee is in active payroll status, as opposed to actual hours an employee works.

When minimum staffing is required or an employee is called back to work over his/her regularly scheduled 24 hour shift, that employee should be paid at the rate of 1 ½ the regular hourly rate. Currently, the Employee is not paid overtime until he/she works over 106 hours in a fourteen day period. Additionally, employees who are on leave should have those hours counted toward the overtime calculation. Currently, if an employee takes compensatory time, sick leave, funeral leave or the like, his hours are not counted in the threshold for the overtime calculation. The Employee must be physically working at the workplace. The Union wants those hours counted in the calculation of overtime.

All other employees in the City have a forty hour weekly threshold; the FOP is entitled to overtime if they work over eight hours. The Union is seeking parity with the other City employees.

The Union presented language contained in Firefighter contracts in comparable jurisdictions. Ashland provides for overtime pay if the employee works over a forty hour shift and is paid overtime pay if called back to work. Athens pays their Firefighters overtime for all hours worked over their normal work schedule. Avon City calculates overtime for all hours

assigned. Avon Lake provides for overtime over 40 hours. Broadview Heights allows time off for funerals, holidays and compensatory time to be counted toward their employee's threshold of calculating overtime. Forest Park, Lebanon, Sidney, Steubenville, Trotwood, Troy, Wadsworth, Willoughby and Xenia have similar clauses.

### The Position of the Employer

The City seeks to maintain current contract language.

It is not sellable to the public, nor affordable to pay employees for days or hours they do not work. Throughout the City, employees are subject to the FLSA requirements. City employees are only paid for hours worked.

If one looks at the comparables of other cities, even considering those cited by the Union, of 18 cities canvassed, 10 (55%) use hours worked for payment of overtime.<sup>5</sup> This is consistent with FLSA requirements that actual hours worked are to be used by employers when calculating overtime.

The City bargained for the current language during the 2001-2003 CBA process when (in return) the IAFF received a 30% cost-of-living (COL) increase over those 3 years and an increase from 7.75% to 10% for the employee share of retirement picked up by the City. The City gave the IAFF Union a change from 56 to 53 hour for calculating overtime starting in January, 2004. This increased the City's overtime costs by 69% (\$51,726 or about \$1,990 per Union member). The lower 53 hour standard already gives the Union a great benefit regarding overtime compared to other cities and it should not be changed.

The City cannot afford to adopt the Union's proposal. Even with the current calculation of "hours worked" under the FLSA approach, Firefighters are already accounting for 47% of the

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<sup>5</sup> The Union disputes this. It provided collective bargaining agreements of these communities and alleges that the practice has changed since viewed by the City.

entire City's overtime budget. This overtime cost skyrocketed in 2004 when the City already had given the Union a change from a 56 to a 53 hour workweek. This means that each Firefighter gets 240.8 "scheduled" hours annually that are already overtime.

If the Union's proposals were adopted, the City would pay an additional \$142,042.60 over the life of this contract. If the City only included sick leave in overtime threshold calculation, it would cost the City an additional \$115,187.03.

#### Discussion, Findings and Recommendation

The Fact-finder must give consideration to this proposal in light of the other wage, overtime, and benefits sought herein. Considering the past history of bargaining, which placed the Union in its current position in regard to the treatment of overtime (which has been gains for the Union), and the cost to the City of implementing the proposal of the Union, a recommendation cannot be given supporting "redefining" the calculation of overtime at this time. The additional cost associated with the Union's proposal, in light of the other wages and benefits recommended in this Report, is unwarranted when considered in light of the projected economic condition of the City over the life of this new collective bargaining agreement.

#### **RECOMMENDATION**

**It is recommended that the language in ARTICLE 30 remain the same as in the prior contract.**

7. **ARTICLE 38 – APPLICATION OF STATE CIVIL SERVANT LAWS**

The Position of the Union

The Union proposes to have language included in the Contract, referencing Civil Servant law that would require the City to lay off part-time and seasonal workers before full-time employees in the event of a lay off. It is willing to delete this provision if such language is included in the Layoff and Recall Section.

The Position of the City

The City proposes no change in the current contract language.

While the Civil Service Laws do not require the City to specifically hire full-time employees back from layoff before part-time or seasonal employees, it has followed this procedure in the past. The City sees no need to modify the current language in Article 38.

Discussion, Findings and Recommendation

Since the Fact-finder recommended the Union's proposal to add clarifying language to Article 13, there is no need to make any changes to this Article.

**RECOMMENDATION**

**It is recommended that the language in ARTICLE 38 remain the same as in the prior contract.**

**CONCLUSION**

In conclusion, this Fact-finder hereby submits the above referenced recommendations on the outstanding issues presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

October 22, 2013

  
JERRY B. SELLMAN, FACT-FINDER

**CERTIFICATE OF SERVICE**

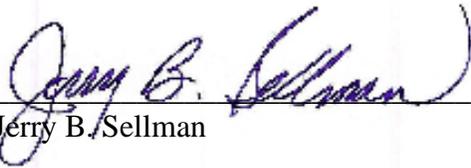
The undersigned certifies that a true copy of the Fact Finder's Report was sent via email, receipt confirmed, on October 22, 2013 to:

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