STATE EMPLOYMENT RELATIONS BOARD

FACT FINDER'S REPORT AND RECOMMENDATION

IN THE MATTER OF:

CITY OF GREEN

AND

GREEN FIREFIGHTERS ASSOCIATION
IAFF LOCAL 2964

Case Number: 2013-MED-09-1091

Before Fact Finder: Thomas J. Nowel
September 2, 2014

PRESENTED TO:

Michael D. Esposito, Esq.
Clemans, Nelson & Associates, Inc.
2351 S. Arlington Road, Suite A
Akron, Ohio 44319
Mesposito@clemansnelson.com

Ryan J. Lemmerbrock, Esq.
Muskovitz & Lemmerbrock, LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, Ohio 44115
Lemmerbrock@mllabor.com

Donald M. Collins, General Counsel
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215
med@serb.oh.us

INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on April 3, 2014 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

The Union, Green Firefighters Association, represents all full-time employees in the City of Green Fire Department occupying the positions of Firefighter, Firefighter/Engineer, Firefighter/Paramedic and Fire Captain/Paramedic. There are approximately forty employees in the bargaining unit. The City of Green is located in Summit County and is a suburb of the City of Akron. Green has seen steady population growth which currently exceeds 25,000 residents. A number of large corporations are located in the City of Green.

The parties engaged in negotiations for a renewal collective bargaining agreement and met a number of times into 2014. An impasse in the negotiations caused the State Employment Relations Board to appoint a fact finder, and the parties agreed to a full day of mediation with the appointed neutral on May 20, 2014. During this session, a number of proposals for settlement were discussed in good faith by the parties, but the negotiations remained unresolved. The evidentiary hearing was therefore convened on June 23, 2014 and it continued on July 18, 2014. The parties submitted pre-hearing statements in a timely manner.

Those participating at hearing for the Employer included the following:
Michael D. Esposito, Employer Advocate (Clemans, Nelson & Associates)
Kevin Shebesta, Senior Consultant (Clemans, Nelson & Associates)
Dick Norton, Mayor
Jeffrey Funai, Fire Chief

Jeanne Greco, Human Resources Manager
Larry Rush, Finance Director

Those participating at hearing for the Union included the following:
Ryan J. Lemmerbrock, Union Advocate (Muskovitz & Lemmerbrock)
Matthew R. Craddock, President
Michael T. Mohr, Vice President
Mary Schultz, Financial Consultant

OUTSTANDING ISSUES:
1. Article 1, Union Recognition
2. Article 4, Nondiscrimination
3. Article 11, Grievance and Arbitration Procedure, Section 5, Selecting an Arbitrator
4. Article 12, Corrective Action
5. Article 17, Hours of Work/Overtime
6. Article 18, Shift Trades
7. Article 19, Compensatory Time
8. Article 20, Minimum Staffing
9. Article 21, Wages
10. Article 22, Longevity
11. Article 23, Health Coverage
12. Article 25, Wellness/Fitness for Duty
13. Article 26, Special Certification Pay
14. Article 28, Tuition Reimbursement
15. Article 31, Vacation Leave
16. Article 32, Holiday Leave
17. Article 33, Sick Leave
18. Article 40, Residency
19. Article 42, Promotions
20. Article 46, Duration

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles which are outlined in Ohio Revised Code Section 4117.14 (G) (F) (a-f) as follows.

1. The past collectively bargained agreement between the parties.

2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.

4. The lawful authority of the public employer.

5. The stipulations of the parties.

6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their position on each outstanding issue, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions of the other party. The Fact Finder will transmit the Report and Recommendation, by way of electronic mail and by agreement of the parties, on September 2, 2014.

DISCUSSION AND RECOMMENDATIONS

Prior to the commencement of negotiations for the renewal collective bargaining agreement, a dispute between the parties arose regarding the use of part time employees for the performance of bargaining unit work. The Union filed an unfair labor practice charge, and the State Employment Relations Board concluded,

on February 20, 2014, that the Employer had in fact violated ORC 4117 when it assigned part time firefighters to perform bargaining unit work without negotiating with the Union and ordered the City to cease and desist in using part time firefighters, who are non bargaining unit employees, to perform bargaining unit work. The Employer appealed the decision of the Board to the Summit County Court of Common Pleas which stayed the order of SERB. Hearing on the matter at court has been pending. The Employer discontinued the use of part time firefighters while the matter is pending court decision. This issue has complicated these negotiations, and has impacted a number of unresolved articles and proposals. The Employer argues that its proposals are based on an attempt at fiscal responsibility. The stability of the City of Green's finances are based on good management, and the Employer, in these negotiations, strives to improve its management rights. The Employer states that the City's Fire Department is generally one of the most expensive to operate in the area with fewer fire calls than other jurisdictions. Nevertheless, the use of part time employees is critical in the expansion of services to the public. The Union states that the Fire Department is held in high regard for the services it provides the community. This is a senior work force with employees averaging seventeen years of service in the Fire Department. The Union states that the Employer unilaterally utilized part time firefighters to perform bargaining unit work, and the State Employment Relations Board sustained the Union's unfair labor practice charge. Now the Employer wishes to implement its part time proposals as part of the current negotiations. The Union states that overtime costs are the result of the loss of full time employees who, over the past number of years, have not been

replaced. The Union's financial consultant, Mary Schultz, stated that the City of Green has experienced continual economic and financial health. She states that the 2013 year-end carry-over in the General Fund was $21,386,000. This is a 98% carry-over reserve. She stated that the Employer could operate for one year without additional revenue. She stated that the Government Finance Officers Association recommends a carry-over reserve of no less than 16% of the overall budget. She stated that, based on her analysis, the City is able to afford the economic proposals the Union has submitted to the Employer. The Employer responded by stating that it does not possess sufficient finances to reach a AAA bond rating, and the Union's consultant did not consider the significant debt held by the City of Green. There is significant outstanding debt for the current administration building. In addition, the City must improve its infrastructure in order to attract business and new residents. Significant spending is needed to improve roads throughout the City. The Employer states that it must continue to manage its financial resources in a responsible manner. Its policy is to maintain a six month carry-over in order to maintain a responsible and healthy economic future. Its proposals in these negotiations are based on these principles.

A brief description of each issue at impasse and recommendation of the Fact Finder follows.

1. Article 1, Union Recognition

The Union proposes to add language to Section 1 which declares that only bargaining unit employees will perform "all emergency medical response, fire

response, fire and EMS inspection/training, and/or related fire and EMS services in the City." The Employer opposes the proposal.

UNION POSITION: The Union states that this modification is required to protect the bargaining unit based on the history of disputes between the parties regarding the stability of the bargaining unit which is comprised of full time employees. This speaks directly to the dispute between the City and Union regarding the utilization of part time employees.

EMPLOYER POSITION: The Employer opposes the proposal and wishes to maintain current contract language. The Union is not an equal partner in managing the business of the Department, and, the Employer states, the State Employment Relations Board has rejected this concept in the past. The Union's proposal would usurp the duties and responsibilities of the Fire Chief. In a survey of eleven city jurisdiction in the region, no collective bargaining agreements contain restrictions of this nature.

RECOMMENDATION: The argument of the Employer, that the language proposed by the Union is inappropriate, is meritorious. It infringes on management rights, may not be supported by SERB precedent and is not supported by comparables. The issue regarding part time employees will be addressed in other recommendations and forums. The recommendation is to maintain current contract language.

2. Article 4, Non Discrimination

The Employer proposes to modify this provision of the Agreement by adding the word "unlawful" to the prohibition against discrimination. The Union opposes the change and wishes to maintain current language.

EMPLOYER POSITION: The Employer argues that this modification clarifies its responsibility regarding the prohibition against discriminatory acts. It is important that this provision reflects a legal definition.

UNION POSITION: The Union argues that current contract language be maintained. It states that there have been no claims of discrimination involving the bargaining unit. The Union references previous negotiations in which the parties agreed to move the non discrimination provision to its own article. There have been no problems or disputes regarding this Article in the past.

RECOMMENDATION: The first sentence states that the parties agree to all laws pertaining to equal employment opportunity. This legal definition currently exists. And the language currently provides a specific list of discriminatory acts. The Union's argument, that a change is not necessary as there have been no claims of discrimination against the Employer, is meritorious. The recommendation is to maintain current contract language.

3. Article 11, Grievance and Arbitration Procedure, Section 5, Selecting an Arbitrator

The Employer proposes to modify the process by which an arbitrator is selected to hear a grievance at the arbitration step of the Grievance Procedure. The proposal includes the deletion of language which allows for a modification to the listed permanent panel. The Employer proposes further that, if the parties are unable to agree on an arbitrator from the permanent panel, they will submit a request to FMCS for a list of fifteen arbitrators who are members of the National Academy of Arbitrators, and each party will strike any name to which it objects and then rank order acceptable names. Additional panels of arbitrators may be requested of FMCS. The Union wishes to maintain current contract language.

EMPLOYER POSITION: The Employer states that one or the other party should not be bound to the utilization of the arbitrators on the permanent panel and should have the flexibility of considering a broader range of neutrals to hear a dispute. The Employer' states that its proposal represents an unbiased system of arbitrator selection, and most jurisdictions in its list of comparables do not utilize permanent panels in any event. Neither of the other two collective bargaining agreements at the City include permanent panels of arbitrators.

UNION POSITION: The Union states that the current panel of arbitrators was developed for the 2008 collective bargaining agreement. Then in 2011 the Union agreed to a one time modification, during the term of the Agreement, to adjust

members of the permanent panel. The Union states that the current system has worked well, and there is the ability to substitute up to four new arbitrators to the current panel during the term of the Agreement. The Union argues that there is no need to make changes to the current process and wishes to maintain current contract language.

RECOMMENDATION: The existence of permanent panels of arbitrators is generally based on mutual agreement. And the ability to modify the panel periodically is also important to protect the integrity of the arbitration process. The Employer proposes to maintain the current list of arbitrators on the panel but proposes to delete the process of modification while including the ability of by-passing the panel, for any one case, and obtaining up to three lists of fifteen arbitrators from FMCS. The proposal of striking and ranking from a maximum of three lists of fifteen arbitrators (a total of 45 arbitrators) for any one appeal to arbitration is cumbersome, time consuming and unnecessarily complex. The resolution of grievances at the arbitration step in a timely and efficient manner is important to the parties and grievants. The recommendation includes the permanent panel and current list of arbitrators; a process of modifying the list following execution of the new collective bargaining agreement; and an additional opportunity, if one or both parties so desire, to modify the names on the panel one additional time during the term of the Agreement. In order to expand the list of qualified arbitrators, the requirement for northeast Ohio arbitrators is modified to include those from across the entire state. Recommended language is as follows.

Article 11, Grievance and Arbitration Procedure
Section 5. Selecting Arbitrator. No later than ten (10) days after a notice to arbitrate is given, representatives of the City and the Local shall meet to mutually agree upon an arbitrator selected from the following panel of seven (7) agreed upon arbitrators who are located in Ohio: 1. Patricia Thomas Bittel; 2. Paul F. Gerhart; 3. Linda DeLeone Klein; 4. Alan Miles Ruben; 5. Susan G. Ruben; 6. Robert G. Stein; 7. Gregory Van Pelt. Within sixty (60) days following the execution of this Agreement, upon the request of either party, the parties may modify the above panel in the following manner. Each party may strike up to two (2) of the above arbitrators from the panel. The parties will request a list of fifteen (15) arbitrators, who are members of the National Academy of Arbitrators, from the Federal Mediation and Conciliation Service (FMCS). Each party shall have fourteen (14) days from date of receipt of the list from FMCS in which to strike any name to which it objects, numbering the remaining names in order of preference, and return the list to the FMCS. Each party may reject one list and submit a request for another list. The party requesting the new list will be responsible for the cost of said list. If either party wishes to modify the permanent panel of arbitrators one additional time during the term of the Agreement, it shall notify the other party and this process will be repeated no earlier than eighteen months from the date of the execution of the Agreement.

Section 6. Steps. Within ten (10) days after receipt of the notice to arbitrate, the parties shall meet and select an arbitrator. If they cannot mutually agree on an arbitrator to hear the dispute, each party shall alternately strike one name from the list. The party striking first shall be determined by a coin toss.

4. Article 12, Corrective Action

The Employer proposes that only suspensions, reductions in pay or position, fines or discharge are subject to the just cause standard. The Union opposes the proposal.

EMPLOYER POSITION: The Employer states that the just cause standard should apply only to disciplines which include monetary penalties. The modification would make for efficient management of low level disciplinary cases.

UNION POSITION: The Union states that the current disciplinary procedure has been contained in the Agreement since 1988, and the Union argues that there is no history of frivolous grievances. The Union argues that it is important that employees have the right to grieve and arbitrate any disciplinary action which is unjust and not based on fact. The Union proposes to maintain current contract language.

RECOMMENDATION: One of the foundations of collective bargaining is the principle of just cause. While it may not appear in every collective bargaining agreement, it is a term and condition of employment almost universally. While some Agreements preclude the ability to arbitrate certain low level disciplines, the just cause standard is nevertheless a cornerstone. The recommendation is to maintain current contract language.

5. Article 17, Hours of Work/Overtime Pay

Both parties submitted proposals regarding this provision of the Agreement. The Employer proposes to modify the standard work year from 2600 hours to 2704. This would impact the overtime rate for employees in the bargaining unit.

The Union proposes to delete the use of non traditional shifts. The Union also proposes to delete the overtime calculation of response shift overtime based on the 212 hours in a long cycle and 192 hours in a short cycle and insert instead overtime payment in excess of the regular shift. The Union proposes to modify the provision under mandatory overtime assignments which considers failure to work or obtain alternate coverage. The Union proposes progressive discipline as opposed to the existing practice of docking employees. Finally, the Union proposes an increase from one hour of guaranteed pay for a call-back to three hours.

EMPLOYER POSITION: The Employer states that its proposal regarding in increase in an employee's annual schedule for overtime calculation from 2600 to 2704 hours reflects actual hours worked and is consistent with the Fair Labor Standards Act. The cost of overtime based on a 2600 hour annual schedule is the most expensive approach, and most comparable city jurisdictions base overtime costs on actual hours worked.

The Employer opposes the Union proposal to delete the language in Section 2 (c) which allows for the use of non traditional shifts. Although not generally utilized by the Employer, the potential for cost savings exists.

The Employer is opposed to the Union proposal which deletes the basis of response shift overtime on long and short cycles. The Employer argues that an employee could potentially earn overtime without working due to illness or other leave.

The Employer opposes the Union proposal which subjects an employee to discipline for failure to work mandatory overtime or find a replacement employee as opposed to the four or eight hour docking provision. The Employer argues that the current language was put in place to avoid low level discipline, and it fairly shifts the burden to the employee to work the overtime assignment or substitute with a replacement.

The Employer rejects the Union proposal to increase the minimum overtime pay of one hour for call-backs to three hours. The Employer states that, with more call-backs due to safety issues, this proposal would increase its cost significantly.

UNION POSITION: The Union rejects the Employer's proposal to change the annual overtime calculation from 2600 to 2704 hours. The Union states that 2600 hours became the standard during the 2008 negotiations and has worked well since that time. It argues that bargaining history supports its position to maintain current contract language, and the Union's list of comparable city fire departments indicates that current contract language is consistent with other jurisdictions.

The Union states that its proposal regarding section 2 (c), the elimination of non traditional shifts, is made because it has not been utilized by the Employer. The Union agreed to this provision to reduce overtime costs in the last negotiations, but it was never implemented by the Employer. Therefore the provision should be deleted from the Agreement.

The Union proposes in Section 5 (c) to delete the long and short cycles and revert to overtime for a response shift following the regularly scheduled shift. The

Union states that its list of comparable jurisdictions supports the proposal to move to the regular work schedule.

The Union states that its proposal to substitute progressive discipline for docking employees for missed mandatory overtime assignments is reasonable as the docking provision is bad policy. The current provision was bargained during the previous negotiations, but it has forced other employees, who have worked for twenty-four hours, to remain on duty even longer. Discipline should be the preferred remedy for both parties.

The Union states that its proposal to increase from one hour to three minimum overtime payment for a call-back is a reasonable standard for the inconvenience.

RECOMMENDATION: The Union argues that the parties agreed to 2600 hours as the annual schedule for purposes of overtime calculation during 2008 negotiations. Evidence indicates that the standard had been 2704 hours which is the Employer's proposal in these negotiations. The Employer argues that its proposal establishes a standard based on actual hours worked. Essentially the parties agreed to a negotiated benefit for the bargaining unit in 2008. There was no evidence at hearing to suggest that the benefit is not affordable, and no data to illustrate hard number savings was presented. The Union's argument of "history of bargaining" is noted. The recommendation is to maintain current contract language in Section 5 (a).

The Union states that it agreed to the language regarding the use of non traditional shifts as a way to control overtime costs during the last negotiations, but the Employer never utilized the opportunity and no benefit was realized. The Employer argues that the new Fire Chief plans to control overtime costs, and current contract language is key. The Employer's argument is meritorious. More time is required for the implementation of the provision. Current contract language is maintained in Section 2 (c).

The Union admitted that its proposal, regarding the deletion of the long and short cycle language in Section 5 (c) would increase the Employer's overtime costs for response shift overtime calculation. There was no persuasive evidence to compel a recommendation to support the modification. The recommendation is to maintain current contract language in Section 5 (c).

The Union argues that progressive discipline is the remedy for failure to work a mandatory overtime assignment or failure to obtain coverage. This is a reasonable position as opposed to the automatic docking which is contained in the provision currently. But there was no documentation or evidence to indicate that there has been a history of problems, disputes or grievances regarding the administration of the current policy. Therefore, the recommendation is to maintain current contract language for Section 8 (b).

The Union proposal, to increase from one hour to three hours minimum overtime pay for call-backs, was not a priority issue during bargaining. The recommendation is to maintain current contract language in Section 12 (a).

The overall recommendation for Article 17, Hours of Work/Overtime, is to maintain current contract language for all sections which have been at impasse.

6. Article 18, Shift Trades

The Union proposes to delete references in this article to city and fire department policies and procedures and inserting language which would declare that shift trading is administered exclusively based on provisions of the Agreement.

UNION POSITION: The Union argues that the collective bargaining agreement is the vehicle which must control shift trades as opposed to City policy which may change over time. The modifications as proposed are therefore necessary.

EMPLOYER POSITION: The Employer states that current contract language is adequate, and it must have the flexibility to manage shift trades as the policy allows. The Employer is concerned regarding the potential for increased overtime costs.

RECOMMENDATION: There was no evidence at hearing that there have been grievances or issues regarding this provision of the Agreement. Likewise, there was no evidence that overtime costs have increased. In the absence of specific and identifiable problems during the term of the current and previous Agreements, there is no compelling reason to recommend modification of the article. The Union stated that using shift trades for attendance at training could become an issue. It is recommended to utilize the joint labor management committee provision, Article

39, to resolve potential concerns regarding city policy, and, as the parties understand, any policy conflict with specific provisions of the Agreement is resolved based on expressed terms of the collective bargaining agreement. The recommendation is to maintain current contract language.

7. Article 19, Compensatory Time

The Employer proposes to delete compensatory time entirely and therefore Article 19 from the collective bargaining agreement. The Union is opposed to the Employer's proposal.

EMPLOYER POSITION: The Employer states that it makes this proposal in an attempt to reduce the amount of time off received by members of the bargaining unit. The amount of off time in the Green Fire Department is excessive and in particular when compared to regional jurisdictions as illustrated by the Employer's comparables. The Employer states that the Fair Labor Standards Act (FSLA) allows for the cash payment of all overtime, and compensatory time is allowable by mutual agreement of the parties. The Employer asks the Fact Finder to recommend this cost savings proposal.

UNION POSITION: The Union states that employees in the bargaining unit have enjoyed the option of compensatory time off in lieu of cash payment for twenty-five years. And, while the Employer claims potential cost savings, compensatory time off is actually the real cost saver. The Union states that it agreed to a number of

modifications to this Article during 2011 negotiations which met the Employer's interest of efficiency and cost savings. The Union list of comparable jurisdictions indicates that many Firefighter collective bargaining agreements in the region include compensatory time benefits. The Union wishes to maintain current contract language.

RECOMMENDATION: As the Union suggests, bargaining history indicates that compensatory time has been a benefit enjoyed by the bargaining unit for at least twenty-five years. The Employer's proposal represents a dramatic change. A change of this impact requires significant negotiations between the parties, and a neutral would have to be convinced that the benefit has created a significant fiscal problem for the Employer in order to recommend the proposition. This is not the case here. The recommendation is to maintain current contract language.

8. Article 20, Minimum Staffing

The Employer proposes modifications to this article to reflect the ability to utilize part time employees who would possess the same certification and licensure as bargaining unit staff. The Employer proposes the deletion of any reference to full time employees in provisions which specify manning requirements for each shift. The Employer's proposal includes a core staffing level of forty full time bargaining unit employees. In addition, if the Employer is placed in fiscal watch, the core staffing level is waived. The proposed language makes it clear that the Employer

may utilize part time employees to supplement shift strength, avoid overtime, cover time off and call offs, and perform other duties as determined to be necessary.

The Union opposes the use of part time employees, and its proposal inserts language to ensure that only full time employees will perform duties which have traditionally been bargaining unit work.

Prior to negotiations for the renewal agreement, the Employer commenced utilizing part time employees to perform bargaining unit work. The Union brought an unfair labor practice charge against the Employer, and the State Employment Relations Board made a finding on February 20, 2014 that the City had in fact violated provisions of ORC Section 4117 when it utilized part time employees without bargaining with the Union. The Employer appealed the order of SERB to cease and desist to the Summit County Common Pleas Court. The court stayed the order of SERB pending hearing on the matter. At the writing of this Report and Recommendation, the court has not heard the matter.

EMPLOYER POSITION: The Employer wishes to supplement the Fire Department work force with part time employees. It feels that it has the inherent management right to do so and believes it met its obligation to bargain with the Union prior to the unfair labor practice charge. At the same time, the Employer has proposed, in these negotiations, a guarantee of forty full time bargaining unit employees, and this is the floor and not the ceiling. And if the City is placed in fiscal watch by the state, part time employees would not replace full time employees. A City ordinance, which was passed in 1992, allows for part time employees. The Employer argues that it has

bargained in good faith over this issue during these negotiations submitting a number of proposals and has, in fact, ceased from utilizing part time employees during bargaining. The Employer states that it has the lowest call volume per full time employee in Summit County but is willing to establish the forty full time employee staffing level in the Agreement. The Employer's list of comparable jurisdictions illustrates that five of twelve collective bargaining agreements contain minimum manning provisions. A number do not. And of the twelve jurisdictions, only two restrict the use of part time firefighters. The Employer cites a number of fact finding and conciliation decisions in which neutrals have recommended the use of part time employees and a number of cases in which neutrals have declared staffing and the use of part time employees to be permissive subjects of bargaining. The Employer argues that, although the issue of part time employees is currently pending court hearing, the Fact Finder in these negotiations must make a recommendation regarding its proposals for the new Agreement.

UNION POSITION: The Union states that, at one time, part time employees were permitted to perform bargaining unit work. They were generally utilized for second alarm calls. Then the City decided to move to a full time Fire Department. Staffing provisions have evolved over time to a full time department. When the parties finalized the 2001 – 2004 collective bargaining agreement, language regarding part time employees was eliminated and only full time fire fighters performed bargaining unit work by agreement. The Union states that the history of bargaining supports its position in these negotiations. During the 2011 negotiations, the Employer

attempted to modify this provision of the Agreement. The Employer rejected the fact finder's recommended compromise, and the Conciliator suggested a compromise which reduced from ten to nine full time employees under a set of limited conditions. The parties accepted the compromise, and the Union states that it believed the issue of part time staffing was permanently resolved. The Union states that following the conclusion of the 2011 negotiations and the execution of the new Agreement, the Employer unilaterally assigned part time employees to perform bargaining unit work. The unfair labor practice charge was filed, and the State Employment Relations Board found for the Union. The Union states that the compromise reached during the 2011 negotiations reduced overtime costs. The Union states that it has bargained over this issue during these negotiations in good faith, but the Employer's proposal of forty core staff is not a workable number. The Employer has failed to fill full time positions, and this has exasperated overtime costs. The Union argues that the Fact Finder must not be in a position to develop a recommendation which could potentially nullify the SERB order. This is especially true while the decision of the Court of Common Pleas is pending. The Union argues that the cost of utilizing part time employees is actually greater than the maintenance of a full time staff. There is high turn over, repeat of training and a lack of reliability. The Union asks the Fact Finder to recommend its proposal to maintain a Fire Department composed of full time Firefighters.

RECOMMENDATION: Both parties have presented reasonable arguments for their positions, and the large number of exhibits on both sides of the issue are compelling.

A number of neutrals have expressed their opinions that the issues of part time employees and manning are permissive subjects of bargaining, but in this case the parties agreed during past negotiations to establish full time employee staffing levels and to move away from a combined part and full time Fire Department. The parties also agreed to minimum staffing levels in the collective bargaining agreement. The fact finder during the 2011 negotiations essentially rejected the Employer's proposal to allow for part time employees, and at conciliation the Employer withdrew its proposal regarding the use of part time employees as the parties reached a compromise settlement regarding full time staffing levels. Based on this bargaining history, the State Employment Relations Board determined that the Employer was required to bargain over the use of part time employees as they are not bargaining unit members. The SERB decision concludes that the Employer refused to bargain with the Union over this issue, and it therefore issued a cease and desist order and directive that the Employer must "return to the *status quo ante* the bargaining unit work of the full-time firefighters in the City of Green Fire Division prior to October 1, 2012." (SERB Order, Case Number 2012-ULP-11-0301) The Employer's appeal is now pending in the court. The Employer argues that this is a new negotiations, and the fact finder has every right to recommend all or part of its proposal. The Union suggests that the Employer continues to not bargain in good faith and argues that the fact finder not make a recommendation which could potentially invalidate the order of the State Employment Relations Board especially in light of the fact that the decision of the court is pending. The Fact Finder is placed in a difficult position. Based on the analysis of the Administrative Law Judge, the

Employer clearly refused to bargain with the Union. And the Union has invested significant legal and other resources in the matter as has the Employer. The Union's argument, that the Fact Finder should not support the Employer's proposal based on the history of the litigation, is compelling. On the other hand, the Employer submitted comprehensive proposals regarding the issue during the current negotiations. If the recommendation includes all or portions of the Employer's proposal, the Union will certainly reject the Report and Recommendation. It has a significant investment in the SERB decision. If the recommendation includes the Union's proposal or the maintaining of the status quo, the Green City Council may reject the Report and Recommendation. This is an emotional issue. One city official stated at hearing that, if the Fact Finder did not support the Employer's position, he was "biased against the City of Green." But this is not about who is right or wrong or about being biased, it is about the collective bargaining process as the State Employment Relations Board decided. In light of the interests involved and the positions taken by the parties while the litigation on this matter is pending, the recommendation is to maintain current contract language but it also includes a contract reopener by way of Side Letter to the collective bargaining agreement. The Fact Finder, in an attempt to mediate a settlement early in the process, feels that the parties may have some flexibility regarding their positions, some "wiggle room." In addition, the court decision may negatively impact one or the other of the parties making further negotiations over these issues preferable. The Side Letter would therefore read as follows and is part of this Report and Recommendation.

SIDE LETTER

The parties agree to reopen negotiations on Article 20, Minimum Staffing, following the decision by the Court of Common Pleas, Summit County, Ohio or eighteen months from the date the new collective bargaining agreement is signed by the parties whichever date occurs later. If the decision of the court occurs later, negotiations will commence thirty (30) days following the issuance of the court order.

The parties agree to utilize the mediation services of the State Employment Relations Board or Federal Mediation and Conciliation Service following the second negotiating session. Negotiations regarding this reopener will be conducted pursuant to ORC Section 4117.

The parties are strongly encouraged to utilize an interest based negotiations approach with the assistance of SERB or FMCS.

9. Article 21, Wages

The Union's wage proposal is as follows. Effective January 1, 2014, 3.5%. Effective January 1, 2015, 3.5%. Effective January 1, 2016, 3.5%. In addition, the Union proposes to increase the differential for Lieutenants and Captains from 10% to 12% effective January 1, 2014.

The Employer's wage proposal is as follows. Effective with the start date of the new Agreement, .5%. Effective one year from the effective date of the new Agreement, 1%. Effective one year later, 1%. The Employer rejects the Union's proposal to increase the differential for Lieutenants and Captains.

UNION POSITION: The Union states that the Employer is able to afford its proposal. The Union's consultant, Ms. Schultz, made it clear that the Employer possesses the

financial resources to meet its economic proposals. Employees in the bargaining unit work one hundred more hours per year than other Fire Departments. This must be considered when comparing bargaining unit wages to other jurisdictions. Green Fire Department wages are currently sixth in a comparison with eleven regional Fire Departments. The Union states further that Green ranks third when total compensation, minus health care, is included. The Union argues that, if adopted, the Employer's proposal regarding health care would eliminate the positive impact of any wage increase over the term of the new Agreement. The Union states that ambulance billing has increased, and the General Fund, as reported earlier in these proceedings, has a significant carry-over reserve.

EMPLOYER POSITION: The Employer states that the wages of bargaining unit employees are in the middle range of its list of comparable jurisdictions. The Employer's wage proposal improves that standing in a comparison with twelve regional city Fire Departments. When total compensation is compared, bargaining unit employees rank fourth in the twelve jurisdictions. Employees in the bargaining unit have enjoyed wage increases every year since 2001. This places Green significantly ahead of the state-wide average according to SERB statistics. The Employer states that its investment income and property tax revenues have decreased during the last several budget years, and, of course, local government funding from the State of Ohio has decreased significantly. While income tax revenue has increased, other sources of income have decreased. In addition, costs for longevity, sick leave and other personnel costs have increased. The cost of the

Union's three year proposal, including roll-up, is $734,143.24. The Employer states that its proposal compares favorably with area jurisdictions, and it allows the City of Green to improve the delivery of services to the public.

RECOMMENDATION: Both parties presented credible data and arguments. The Employer has the ability to provide a reasonable wage increase based on its financial standing, and its year-end carry-over reserve is more than adequate. The Employer's argument, that bargaining unit employees have not missed a wage increase, especially during the economic collapse of the past several years, is compelling. Internal comparables are particularly important in the development of a recommendation. Dispatchers and service workers are represented in two bargaining units by AFSCME. Based on bargaining between the Employer and the representative of the other bargaining units, including a Fact Finder's Report and Recommendation, employees in the other units received three annual wage increases of two percent (2%) for each year. The instant recommendation is based in part on those earlier negotiated settlements as follows. Employees in the bargaining unit will receive two percent (2%) wage increases on January 1 of the first and third years of the new Agreement and a two and one-half percent (2.5%) wage increase in the second year of the Agreement. This greater increase in 2015 is based on the recommendation for Article 22, Longevity (freezing longevity). There was no compelling evidence at hearing that the differential between Green Firefighter Lieutenants and Captains and other firefighters is out of line or inadequate. This portion of the Union's proposal is not recommended.

Article 21, Wages
Section 1. Steps/Differentials. Effective upon approval of this Agreement by the City and the Union, the annual pay for employees in the bargaining unit shall be:

Effective January 1, 2014	2%
Effective January 1, 2015	2.5%
Effective January 1, 2016	2%

The parties will develop the new wage scale with steps as listed in the current agreement. Lieutenant and Captain differential will continue at the 10% level.

10. Article 22, Longevity

The Employer proposes to modify the current longevity pay plan by setting a fixed amount as opposed to the percentage basis as outlined in the current Agreement. Employees would continue to receive the amount currently earned, but it would not increase. The Union opposes the proposal.

EMPLOYER POSITION: The Employer states that this proposal would freeze longevity for bargaining unit employees which is a reasonable approach as no other city employees receive a longevity benefit. The current benefit unjustifiably compounds wage increases. Of the twelve regional comparable jurisdictions used by the Employer, only one longevity benefit is percentage based. The Employer urges the Fact Finder to recommend its proposal while noting that no other city employees receive a longevity benefit.

UNION POSITION: The Union opposes the proposal to freeze longevity benefits. The Union argues that the Employer agreed to increases in the longevity benefit during the 2008 and 2011 negotiations. The Union states that a review of its list of comparables indicates that Green Fire Department employees are ahead of their peers in the first twelve years of the benefit plan, but they fall behind in longevity earnings from year thirteen through thirty. The Union argues that there is no justification to freeze longevity benefits.

RECOMMENDATION: The Employer makes a number of credible arguments regarding its proposal. No other city employees receive longevity benefits. Percentage longevity benefits increase roll-up costs of negotiated wage increases. The Union's position, that the Employer agreed to increase the longevity benefit during the last two negotiations, is also compelling. The Employer's proposal is to freeze longevity but not to reduce or eliminate the benefit. This is a reasonable approach, and the recommendation is to support the proposal effective January 1, 2015. The recommendation of a 2.5% wage increase in 2015, as opposed to the 2% negotiated by the other City bargaining units, is based on the recommendation to freeze longevity. Please see the recommendation for Article 21, Wages. The longevity recommendation is as follows.

Article 22, Longevity
Section 1. Schedule. Employees in the bargaining unit shall be entitled to longevity remuneration consistent with the following schedule. This longevity payment shall be made in a separate payment on the first pay date in December of each year, minus all deductions required by law. This benefit will be provided for completed years of service with the City.

YEARS	1/1/2014	1/1/2015
5	1.5%	Convert to Fix $ Figure
10	2.0%	Convert to Fix $ Figure
15	2.5%	Convert to Fix $ Figure
20	3.0%	Convert to Fix $ Figure

11. Article 23, Health Coverage

Both parties have proposed significant changes to this provision of the Agreement. The Employer proposes language to make actual benefits consistent with those provided to non bargaining unit employees. The Employer also proposes to increase the employee share of the premium cost from 5% to 6% in the first year of the new Agreement, 8% in the second year of the Agreement and 10% in the third year of the Agreement. The proposal includes a provision that an employee, who does not participate in the annual health fair, will pay 15% of the health care premium. The proposal also includes language which indirectly ties the employee contribution to the Affordable Care Act. The Employer proposes to delete language which maintains substantially similar coverage and will instead submit changes to the insurance committee with the ability to implement modifications following notification.

The Union proposes to establish in-network deductibles at $323 for single coverage and $647 for family coverage. The proposal includes in-network annual maximum out of pocket costs at $1620 for single coverage and $3240 for family. Co-payments are capped at $20 for office visits, $150 for emergency room and $20 for urgent care. Prescription co-payments are capped at $5 for generic, $15 for brand and $25 for non-preferred.

EMPLOYER POSITION: The Employer argues that its proposal is based on what now appears in the collective bargaining agreements of the other city bargaining units. Pattern bargaining is an important aspect of the fact finding process. The other bargaining units have agreed to the employee contributions of 6%, 8% and 10%, and these are modest amounts. Participation in the health fair is an important cost saving feature of the proposal. Health insurance costs have increased significantly for the bargaining unit which is an aging work force. The Employer states that it is willing to comply with provisions of the ACA as employees may notify the City if their premium costs exceed those allowed by federal regulation. The Employer argues that its proposals for employee premium share are in line with regional comparables and the Report on the Cost of Health Insurance in Ohio's Public Sector which was published by the State Employment Relations Board. The Employer requests that the Fact Finder consider the pattern which has been established at the City with its other unionized employees and the escalating costs of health insurance in developing a recommendation.

UNION POSITION: The Union argues for the status quo except in those areas in which it has made proposals. The Union argues that linking benefit levels to those provided to non bargaining unit employees eliminates its bargaining rights. This is a major stumbling block for the Union, and this proposal was rejected by a fact finder during 2011 negotiations and in other reports by neutrals. The Union states that the Employer has the ability to finance the current health insurance program

with the 5% employee contribution, and it has the financial capacity to meet its new proposals. Additionally, the Union's proposals are not out of line with regional comparables. The Union states that language regarding the ACA should not be included in this provision. Employees do not have sufficient knowledge to compare their costs to the ceilings established by the law. Employer proposals reduce take home pay for bargaining unit employees and should be rejected by the Fact Finder.

RECOMMENDATION: While the AFSCME Agreements reflect language which allows the Employer to pattern benefits after those provided to non bargaining unit employees, this provision was reached by agreement of the parties. In the instant matter, the Union is opposed to abandoning the right to bargain over these issues, and, although pattern bargaining is often a deciding factor for SERB neutrals, this is not necessarily true of an issue of this nature. The Union's position is therefore supported in the recommendation. The Employer's proposal to increase the cost of the employee share of the health insurance premium is meritorious. The increase is in line with regional and state-wide comparables, and, in this case, internal comparables and pattern bargaining are critical factors in the development of a recommendation. The Employer's argument, that its health insurance costs have escalated significantly over the past several years, is meritorious, and the Employer's Human Resources Manager testified that co-insurance was improved from 80/20 to 90/10 with additional enhancements to the dental plan. More than half of the first year of the new Agreement has passed. Therefore the recommendation includes the 5% employee contribution for the remainder of 2014,

an employee contribution of 8% effective January 1, 2015 and 10% effective January 1, 2016. The Employer's proposal regarding its annual health fair is reasonable and should be viewed as a win-win for the parties. In any event, members of the bargaining unit must maintain a level of good health and fitness to perform their duties with the City. This portion of the Employer's proposal is made part of this recommendation. The Employer's proposal, which states that employee contributions should not exceed the maximums permitted by the ACA, is meritorious, but the proposal does not clearly indicate a solution if contributions exceed the bronze plan. The Union's argument, that employee premium contributions should not be linked to the ACA due to a lack of information, is also reasonable. Information regarding provisions of the ACA is not completely clear at this stage, and it would be difficult for the individual employee to make such determination. Nevertheless, the Affordable Care Act may impact the health care plan at the City of Green during the term of the Agreement. The recommendation includes language which refers any conflicting portion of the Employer's plan with the ACA to a labor management meeting or the Insurance Committee. Union proposals to establish new caps on annual deductibles, new limits to employee costs for office visits, emergency room and urgent care are not realistic in the current health insurance environment, and they are not consistent with insurance benefits provided other City employees. They are not included in the recommendation. This is also not the time to include new proposals regarding the prescription drug plan. Finally, current contract language is recommended for Section 8, Insurance

Committee. The overall recommendation for the Health Coverage article is as follows.

Article 23, Health Coverage

Section 1. Coverage. The City agrees that it will continue insurance coverage, in effect on August 1, 2014 (or substantially similar), group hospitalization, life, dental, vision, prescription, and accidental death and dismemberment insurance benefits for the duration of this Agreement, except as modified by this Agreement. If both spouses are employed by the City, they shall be offered one (1) family coverage, but they may select the spouse that will make the premium contribution.

Section 2. Provider Changes. Such group insurance plan may be provided through a self-insured plan or an outside provider. In the event the City changes insurance or the manner in which it partially self-insures the benefits referenced in this article, or modifies any articles, it will first meet with the Union to discuss same prior to implementation.

Section 3. Contribution Rates. Employees, who participate in the City's health insurance and fully participate in the City Health Fair, shall contribute a sum equal to the below listed percentages of the total monthly premium (COBRA cost less administrative fees as calculated by the City's stop/loss carrier) in effect for single or family coverage as elected by the employee as follows:

Full Health Care Fair Participants	
2014 Contract Year	5.0%
January 1, 2015	8.0%
January 1, 2016	10.0 %

Less than Full Health Fair Participation/Non-Participants	
2014 Contract Year	5.0%
January 1, 2015	15.0%

For purposes of the phrase "full participation," an employee will be considered a full participant by voluntarily undergoing screening, testing, and other medical services offered at the City health fair. In the event that an employee does not wish to receive testing, screening, or services through the City health fair, he shall be able to be considered as being a full participant if he undergoes all screening, testing, or other medical services provided at the health fair through his private physician. In order to certify alternative participation, the employee shall be required to complete

a City form certifying that the screening, testing, or other medical services have been provided and complete a release that will permit the Employer to verify with the health provider the date/time when completed (not the results).

If the increase in individual or family premium or self insurance costs for the benefits set forth in this article exceed fifteen (15%) percent per year in any year of this Agreement, the City and Union (or the joint committee referenced in this article) will meet to discuss whether to (1) revise the benefit coverage to reduce the cost of coverage and/or (2) increase the deductibles and/or cost sharing by additional employee participation in same. Failing mutual agreement, the City may implement such changes to recoup the cost increases over fifteen percent (15%) per annum.

If it is determined that an aspect of the health coverage plan is not in compliance with the Affordable Care Act during the term of the Agreement, the parties will develop appropriate adjustments in a labor management meeting or the Insurance Committee pursuant to Section 8 of this article.

Section 4. Week-end Admission. Weekend hospital admissions for non-emergency care will not be covered unless prior approval is obtained by the City's designated insurance plan administrator.

Section 5. Prescription Drugs. Prescription drugs will be provided as a separate benefit from group hospitalization pursuant to an independent plan, which provides that all non-emergency prescriptions are to be provided through mail order by the City designated provider. No prescriptions filled by other than mail order shall be for duration in excess of thirty (30) days. All emergency drugs shall be purchased from City designated participating pharmacies and be subject to the established deductible for generic drugs and/or non-generic drugs.

Section 6. Insurance Opt-Out. Any bargaining unit employee who elects non-coverage under the City's group insurance plan will receive a stipend of fifty ($50.00) dollars per month, for each full month that the employee was not covered by the plan and the City was not required to pay a premium for the employee's coverage. Any employee who elects non-coverage must submit an affidavit attesting to other insurance coverage, or provide other competent evidence of other insurance coverage. Any employee who elects non-coverage may resume coverage during any open enrollment period or at any time if other insurance coverage is lost.

Section 7. Coordination of Benefits. Upon execution of this Agreement and as needed thereafter, all employees will cooperate in executing a standard coordination of benefits agreement with the City's designated prescription provider.

Section 8. Insurance Committee. The City will establish a joint committee on health care benefits which includes representative(s) from each of its bargaining units. The joint committee will evaluate, periodically, the benefits and costs and make recommendations to the City for cost containment measures.

12. Article 25, Wellness/Fitness for Duty

The Employer proposes to delete references to age regarding certain wellness assessments. In addition, the Employer proposes that all testing be conducted every two years as opposed to the age based criteria as currently found in this provision. As the Employer proposed the health fair in the health coverage provision of the Agreement, it proposes that tests conducted during the wellness and fitness for duty program need not be repeated at the health fair for the year during which the wellness testing occurs.

The Union proposes that all medical examinations, conducted pursuant to this provision, must occur while an employee is on duty. The proposal states that the health care provider must administer tests and exams required by this provision. The Union also proposes, as does the Employer, to eliminate age based references and require all testing every two years.

EMPLOYER POSITION: The Employer states that, regardless of age, all employees must have the capacity to perform essential functions of the position. The age based schedule is therefore obsolete. The Employer has advocated for the employee

health fair, but it would be redundant to repeat the same tests as those conducted pursuant to this provision, during the annual fair.

UNION POSITION: The Union argues that the age based schedule of testing may be discriminatory. And it is fair to employees that all testing be conducted while on duty. The Union opposed the health fair provision in the health coverage article.

RECOMMENDATION: The parties are in agreement with most modifications with the exception of the health fair language which appears in the Employer's proposed Section 7. The parties agreed to maintain as current language Section 1 (a). The recommendation therefore includes Employer and Union proposals and also includes the Employer's proposed Section 7 as follows. The Employer's section numbering is recommended.

Article 25, Wellness/Fitness for Duty
Section 1. Assessment. The City agrees to maintain a "Health and Wellness" program through a contracted health care provider, which includes the following tests. The initial medical examination will be conducted while the employee is on duty.

Section 2. Fitness for Duty Exam. The health care provider will provide the necessary scheduling and notifications of testing to employees and will provide the Fire Chief certification showing that the employee is medically certified to function as a firefighter. Each employee will be provided with a copy of the results for all tests performed by the health care provider.

Section 3. Annual TB Testing. All employees will receive TB testing on an annual basis.

Section 4. Fitness for Duty. The health care provider shall administer the tests and/or exams listed herein to assess employees' fitness for duty. The health care

provider will immediately notify the HR Manager and the employee by written report should the testing procedure identify a health condition that would prevent the employee from functioning as a firefighter. This notification will include the health care provider's recommendation as to whether the employee is unable to work, or is permitted to work under restriction (light duty).

Section 5. Follow-up Testing. The City will pay for any additional testing, which is listed in this article, regardless of the employee's age, should an employee be referred by the contracted health care provider to undergo further diagnostic testing as a result of the findings of the initial testing procedure(s).

Section 6. Testing Criteria.
(a) Fitness testing will be conducted every two (2) years as listed below:

1. Firefighter physical exam.
2. Pulmonary functions testing (including proof of passing OSHA respirator and NFPA SCBA testing requirements).
3. Chest X-ray, PA-LAT.
4. Urinalysis.
5. Complete blood count w/diff.
6. Audiometric testing.
7. Lipid profile.
8. Prostate Antigen Test.
9. Health risk assessment survey.
10. Comprehensive Metabolic Panel.
11. Electrocardiogram.
12. Titmus Vision Test.
13. Maximal Cardiovascular Stress Test.

(b) Firefighter Physical testing shall include:

1. Height and weight measurements.
2. Body fat composition analysis.
3. Vital signs monitored.
4. Cardiovascular risk factor and analysis.
5. Muscle strength and endurance testing.
6. Review of medical history and exercise habits.
7. Flexibility and range of motion testing.
8. Personalized summary of results and recommendations.
9. Customized individual exercise prescription.

10. Training guidelines.
11. Recommendations to reduce risk factors.
12. Dietary analysis and recommendations through a certified dietitian.

Section 7. Health Fair Screenings. Employees subject to screening under this article shall not be required to undergo medical screening as part of the City health fair or take equivalent action to be eligible for certain participatory benefit levels in years that they are screened as part of this Article. This does not mean that an employee is exempt from other fair participation activities only that the screening requirement is not mandatory for that year.

13. Article 26, Special Certification Pay

The Union proposes to move the Tactical Paramedic and Haz Mat Technician positions to the Technical Rescue Operations Teams. The proposal includes a $500.00 hazard duty stipend for all members of the Technical Rescue Operations Teams. The Employer opposes the proposal.

UNION POSITION: The Union states that the Tactical Paramedic and Haz Mat Technician perform work of a hazardous nature, and any hazardous duty deserves a greater level of compensation.

EMPLOYER POSITION: The Employer states that employees holding the various special certifications qualify for a stipend of $30.00 per month. The addition of hazard pay represents a double payment, and the Employer opposes this proposition.

RECOMMENDATION: The Employer's position is reasonable. There was no evidence at hearing to suggest the need for additional hazardous duty pay for employees who hold special certifications and receive a monthly stipend. The Employer suggested a minor adjustment to this provision. But the recommendation is to maintain current contract language.

14. Article 28, Tuition Reimbursement

The Union proposes an increase in tuition reimbursement, which is provided by the Employer, from $2500.00 annually to $10,000.00. The Employer opposes the proposal.

UNION POSITION: The Union states that, at one time, the Employer provided unlimited tuition reimbursement. At a later time, the $2500.00 cap was negotiated. The Union argues for an increase in the new Agreement.

EMPLOYER POSITION: The Employer states that there is no justification for an increase in the benefit. One other bargaining unit receives a tuition reimbursement benefit of $2500.00 per employee, and external comparables do not support the Union's proposal.

RECOMMENDATION: There was no evidence at hearing to suggest the need to increase tuition reimbursement based on the cost of course offerings or the

individual needs of employees in the bargaining unit. The recommendation is to maintain current contract language.

15. Article 31, Vacation Leave

16. Article 32, Holiday Leave

The Employer proposes a complete revamp of the vacation and holiday provisions of the Agreement. The proposals are also tied to the Employer's proposal regarding the use of part time employees to perform bargaining unit work under certain circumstances including coverage for full time employees who are on leave status. The Employer proposes that shift employees are paid thirteen hours for a holiday, which is taken off, and then are paid overtime at the rate of time and one-half for hours actually worked on a holiday. Day shift employees would receive eight or ten hours of holiday pay. Holiday accrual would be eliminated. The proposal includes the requirement of working the day before and after a holiday in order to receive holiday pay. The provision regarding the selection of holidays in the vacation article would be eliminated. All language in the article which is tied to the accrual process would be eliminated. Language which references holiday scheduling in Article 16, Shift Bidding/Conversion, would also be deleted.

The Union opposes the proposals and advocates for current contract language.

EMPLOYER POSITION: The Employer states that bargaining unit employees currently enjoy an excessive amount of time away from the job, and this proposal

begins to rein in a portion of the leave time. The Employer emphasizes that it is important that bargaining unit employees take off on negotiated holidays as do other City employees, and it is willing to pay for overtime if a bargaining unit employee is assigned to work on a holiday. The Employer argues further that it is important that employees work the day before and after a holiday in order to receive holiday pay. The current system allows employees to be unaccountable. The Employer states that it cannot continue to pay for twenty-four hours of holiday pay, and the current system allows for excessive overtime costs. The Employer states that its proposal has the potential of higher costs, but it allows for more control over scheduling and overtime. Internal and external comparables support the position of the Employer.

UNION POSITION: The Union states that bargaining unit employees who are assigned to response shifts receive only 240 hours of time off for the ten negotiated holidays. They do not receive time and one-half for work on holidays. The Union argues that the firefighter bargaining unit cannot be compared to a standard forty hour department or bargaining unit. The Union states that this is a concessionary proposal, one which will result in a loss of income for firefighter staff.

RECOMMENDATION: The Employer's proposal would significantly alter the holiday provisions of the Agreement and would have an impact on the vacation and shift bidding provisions. Both parties make credible arguments for their positions. The Employer suggests that its proposals regarding the utilization of part time

employees are tied to these issues. Placing employees on fixed holiday schedules would allow the Employer to utilize part time employees in lieu of paying full time employees overtime. The Union, of course, objects to this outcome. A proposal of this nature requires comprehensive and hard bargaining between parties due to the significant changes being envisioned. A recommendation or award of a neutral regarding an issue of this nature is far less desirable as opposed to a mutually agreed outcome. Good faith and hard bargaining should produce an outcome acceptable to both parties. This has not occurred regarding the holiday proposals. At hearing, Fire Chief Funai advocated for the Employer's proposal and stated the importance of making the desired changes, but he also stated that the issue "was not discussed thoroughly in negotiations. This could have been worked out." This compels the neutral to maintain current contract language and suggest a return to the bargaining table. The Union argument, that the Employer's fiscal health precludes the necessity of an immediate modification of the holiday pay system, is noted and is compelling. As the Employer sees the holiday issue as being tied to the part time issue, and the recommendation of the Fact Finder, regarding Article 20, Minimum Staffing, is a reopener, it is suggested that the parties re-visit the holiday issue during the recommended mid-term bargaining.

The recommendation regarding Article 31, Vacation Leave, Article 32, Holiday Leave, and Article 16, Shift Bidding/Conversion, is current contract language.

17. Article 33, Sick Leave

The Employer proposes additional language to substantiate proof of sick leave usage. It proposes also to modify the accrual process and reduce the accrual rate to 13.65 hours for each month in active pay status and 10.5 hours for day shift employees. The Employer proposes to delete sections of this article regarding proof of illness, falsification, notification and childbirth. The Employer proposes current contract language in response to Union proposals.

The Union proposes the cash out of sick leave for all separations of employment as opposed to limiting the benefit to retirement. The Union also proposes to delete the hourly cap regarding this benefit. The Union proposes to convert the time off incentive for non use of sick leave to a cash bonus. Finally the Union proposes that the use of funeral leave will not have a negative impact on incentive benefits, and the Employer agreed with this change in the Agreement.

EMPLOYER POSITION: The Employer states that its proposals regarding accumulation rates are consistent with all other employees of the City. Administrative consistency is a reasonable proposal, and it simplifies the tracking of sick leave balances. The Employer states that both internal and external comparables support its proposals. The Employer also argues that the use of sick leave among bargaining unit members has escalated and is excessive. Total sick leave hours used in 2013 spiked at 6213 hours for the bargaining unit, and usage was already at 5107 hours in July 2014. The Employer argues that the proposals of

the Union are excessive with no justification and urges the Fact Finder to reject them.

UNION POSITION: The Union opposes the reduction of sick leave accumulation as proposed by the Employer. It states that most of the sick leave provisions have been included in the Agreement since the 1988 collective bargaining agreement. The Union states that current accumulation rates were negotiated as a package agreement during 2008 negotiations and argues that there is no justification to reduce these levels of the benefit. The Union states that the current accumulation rate is tied to hours worked, and it is fair that the more an employee works, the greater amount of accumulated sick leave. The Union argues that sick leave use has not been excessive, and on-duty injuries are common among firefighter bargaining units. Union proposals regarding separation of employment and cash payments for non use of sick leave are legitimate incentives and should be considered by the Fact Finder.

RECOMMENDATION: Evidence indicates that the sick leave accumulation rate is in excess of internal and external comparables. Although the Union disagrees, the Employer's assertion, that bargaining unit sick leave use is high, is supported by numbers from 2013 and the first half of 2014. The Employer's argument regarding internal consistency is compelling. The Employer's proposal regarding sick leave accumulation rates is recommended effective January 1, 2015. There is no compelling reason to recommend Employer proposals to delete other provisions of

the sick leave article. Conversion of sick leave benefits are generally limited to retirement. The Union's proposal is not supported, and there is no compelling reason to convert the time off incentive to a cash bonus as proposed by the Union. The parties agreed that funeral leave will not be counted against an employee for purposes of determining sick leave incentive benefits. The recommended language is as follows.

Article 33, Sick Leave

Section 1. Requirements for Use. Each full-time employee shall accumulate sick leave, which may be utilized, upon the approval of the Fire Chief, for absences due to personal injury, illness, or medical procedure; illness, injury or medical procedure of an employee's immediate family; or as otherwise specified in this article.

Section 2. Accrual. Sick leave shall be accumulated as follows:
(a) Response Shift employees shall receive .1065088 hours of sick leave for each hour in active pay status.
(b) Day Shift employees shall receive .0605769 hours of sick leave for each hour in active pay status.
(c) Response shift employees shall receive 13.65 hours of sick leave for each month in active pay status effective January 1, 2015.
(d) Day shift employees shall receive 10.5 hours of sick leave for each month in active pay status effective January 1, 2015.
(e) Employees must be on active pay status to be eligible for sick leave accrual. Active pay status includes vacation, sick, personal, Union leave, funeral leave, compensatory time, jury duty, and training or school leave. Overtime hours worked, earned days off, unpaid leaves of absence, and suspensions are not considered active pay status for the purposes of sick leave accrual.
(f) When an employee is moved from days to response or response to days, he shall be credited with his existing accrued sick leave balance in accordance with Article 16, Shift Bidding/Conversion, Section 4 (C).

Sections 3 – 11. Current contract language.

Section 12. No Penalty for Utilization of Sick Leave for Work Related Illness/Injury or Funeral Leave. Sick leave utilized for work-related illness/injury on an initial BWC approved claim or for funeral leave shall not be counted against full-time

employees for purposes of determining the employee's entitlement to sick leave incentive benefits under this Article.

18. Article 40, Residency

The Union proposes that bargaining unit employees, who reside in the City of Green, will receive an annual bonus payment of $500.00. The Employer opposes the proposal.

UNION POSITION: The Union states that the Employer has historically expressed a desire to have firefighters living in or near the City, and this is a benefit that will impact call-back response.

EMPLOYER POSITION: The Employer states that no other jurisdiction in Summit County provides a residency bonus payment, and the proposal should be rejected.

RECOMMENDATION: This article currently states that bargaining unit members are not required to maintain residence within the City limits. The IAFF was in the forefront in Ohio regarding the appealing of residency laws which existed in many jurisdictions throughout the state (City of St. Bernard). Finally SERB determined this to be a mandatory subject of bargaining, with concurring court decisions, and firefighters and other public employees gained the legal right to live outside the jurisdictional limits. In light of this history, the Union's proposal seems out of place. The recommendation is to maintain current contract language.

19. Article 42, Promotions

The Union proposes that its member of the promotional selection committee will be responsible for writing and forwarding the recommendation to the Mayor. The Employer had no objection to the proposal.

RECOMMENDATION: The last paragraph of this section of Article 42 will read as follows.

The member representing the Bargaining Unit will be responsible for reducing the recommendation to writing and forwarding it to the Mayor within five (5) working days.

20. Article 46, Duration

The Employer's proposal is a three year agreement which commences on the date of execution and expires three years from that date. The Union proposes a three year agreement commencing on January 1, 2014 and terminating on December 31, 2016.

EMPLOYER POSITION: The Employer argues that its proposal provides for greater budgetary certainty as more than half of 2014 will have passed before the execution of the new Agreement.

UNION POSITION: The Union states that the parties moved the start and end dates of the collective bargaining agreement to January 1 and December 31 two contract negotiations ago, and it was based on the Employer's fixed fiscal calendar. The Union proposes the current structure of the article.

RECOMMENDATION: The Union's argument, that the parties found the January 1 and December 31 dates more efficient, is reasonable and compelling. The recommendation incorporates those dates as follows.

Article 46, Duration
Section 1. This Agreement entered into this January 1, 2014, shall continue in full force and effect until midnight, December 31, 2016.

Section 2. No more than one hundred fifty (150) and no less than ninety (90) days prior to December 31, 2016, either party may give written notice to the other of its desire to reopen and renegotiate this Agreement. Upon giving of a timely notice to negotiate, the parties shall meet and negotiate in accordance with the statutory provisions of Section 4117 of the Ohio Revised Code and the negotiating procedures of this Agreement.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties, all facts presented during a day of mediation and two days of evidentiary hearing, and the extensive number of exhibits submitted by the parties at hearing. In addition, the Fact Finder has given consideration to the positions and arguments presented by each party regarding the issues at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (a-f).

In addition to the specific recommendations contained in this Report and Recommendation, any tentative agreements, which may have been reached by the parties prior to fact finding, are hereby incorporated in this Fact Finding Report and Recommendation. Any issues or sub-issues not addressed during negotiations are also intended to remain current contract language for purposes of this Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 2nd Day of September 2014.

_____
Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd Day of September 2014, a copy of the foregoing Report and Recommendation of the Fact Finder was served by way of electronic mail upon Michael D. Esposito, Esq. representing the City of Green; Ryan J. Lemmerbrock, Esq. representing Green Firefighters Association, IAFF Local 2964; and Donald M. Collins, General Counsel, State Employment Relations Board.

_____
Thomas J. Nowel
Fact Finder