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IN THE MATTER OF FACT FINDING

BETWEEN

IAFF LOCAL 109

AND

THE CITY OF NEWARK, OHIO

SERB CASE # 13-MED-10-1401

Robert G. Stein, Fact-finder

LEAD ADVOCATE(S) FOR THE UNION:

**Henry A. Arnett, Esq.
LIVORNO AND ARNETT CO., LPA
1335 Dublin Road, Suite 108-B
Columbus OH 43215
counsel@oapff.org**

LEAD ADVOCATE(S) FOR THE EMPLOYER:

**Jonathan J. Downes, Esq.
ZASHIN & RICH CO., L.P.A.
17 South High Street
Suite 750
Columbus OH 43215
jjd@zrlaw.com**

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INTRODUCTION

The parties to this matter are IAFF Local 109 (hereinafter “Union”) and the City of Newark, Ohio (hereinafter “Employer” “City,” “Department”). The Employer is located in central Ohio. The bargaining unit is comprised of approximately sixty-six (66) Firefighters, eight (8) Lieutenants, six (6) Captains, and four (4) Assistant Fire Chiefs.

General/State/Local Economic Overview: Caution and disquiet have marked the years since the “great recession” was declared to have ended on a national level. Of course, what is often declared to be ended nationally does not always translate at the local level, particularly in Ohio, which has had more than its share of job losses prior to and as a consequence of the great recession. Recovery has been incremental since 2008 and has been marked by unevenness and has been unaided by considerable national political discord. In spite of this prolonged gridlock in Congress, which added to fiscal uncertainty, the private sector has continued to add jobs (see latest BLS on 215,000 jobs created in November, and 184,000 jobs created in October, again in uneven numbers, but resulting in a lowering of the national unemployment rate to 6.7%), the stock market, which had a banner year in 2013, in January of 2014 has experienced some retrenchment. The index of manufacturing activity continues to rise hitting 57 in December and in stark contrast to 32.5 that existed in December of 2008. This may be “signaling strong demand at home and abroad that could boost growth prospects into next year.” (WSJ, 12-3-13). That remains to be seen as the depth and breadth recovery from the recession has been difficult to predict as to sustainability. One sign of the growing strength of employment is in manufacturing, adding some 27,000 jobs to elevate the factory employment nationally above 12 million for the first time since 2009. Moreover, factory workers are averaging 4.5 hours of overtime per week, which is an increase of 10% over last year. (Josh Boak, Associated Press, 12-9-13) Yet, caution still exists and there is still cause for concern in the number of people unemployed. Currently there are more than 4 million people who have been unemployed for 6 months or more. The number of those who have been unemployed for more than 18 months has not changed significantly in spite of the aforementioned growth. Complicating the future more is the fact that extended unemployment benefits (28 weeks beyond the

average of 26 weeks) for approximately 1.3 million Americans (approximately 40,000 in Ohio) expired on December 28, with the addition of another 800,000 that will see their unemployment benefits expire during the first two months of 2014, unless Congress approves extensions. The fact is for many households income has not changed markedly for several years. ("Incomes are Flat, Reflecting a Slowdown in Job Growth, but Consumer Spending Rises," Associated Press, 2-2-14)

The economy in Ohio has shown slow signs of improvement from a very long and severe national recession, yet in most of 2013 there have been signs that progress has stalled with the rate of job creation slowing down from the rate of growth previously experienced following the declared end of the recession. For example, in 2013, sustained job growth in Ohio never lasted longer than two months and several times in 2013 Ohio experienced the worst or second worst job losses in the country. ("Ohio added jobs in December", Frolik, Dayton Daily News, January 24, 2014) Simply put, 2013 has been a roller coaster ride of gaining and losing jobs. The local economy is plagued by declining revenue, both from the state of Ohio (50% reduction in Local Government Funds, the elimination of the Estate Tax a loss of several hundred thousand per year, loss of Intangible Personal Property Tax and a decline in income tax collections). General Fund revenue having peaked in 2007 at over 30 million dollars is projected in 2014 to be between 24 and 25 million dollars. Approximately forty-four percent (44%) of the households in Newark are rental. The City has been able to maintain a relatively high Bond Rating by Moody's of Aa3, but almost all of the City's debt is General Obligation debt that relies on the General Fund and Capital funding. The City has had to draw on available cash reserves to meet its financial obligations. On the bright side Newark is positioned geographically near the City of Columbus, which has weathered the years of the recession more successfully than the other major cities in Ohio

The fact finder, at the request of the parties, entered into mediation for several hours and was able to gain a better understanding of the issues separating the parties. However, there was a lack of meaningful progress in resolving issues in their entirety. The items specifically addressed by the fact finder in this report are based upon the evidence and

arguments proffered by the Union and the City. The recommendations contained in this report are intended to conform to the statutory criteria that all fact finders must follow.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

The recommendations contained in this report conform with the statutory criteria stated above.

eliminated in the last round of negotiations that ended in conciliation. According to the Union the Department is down to approximately 82 bargaining unit personnel, some 11 members below authorization. The Union also indicated that Medic 1 has been out of service frequently. The **City** argues that 90% of the calls for the Department are EMS calls and that the Union in the instant round of negotiations has failed to demonstrate or identify any compelling reasons to once again include a minimum manning clause in the Agreement. The City also argues that part of the reason some equipment is out of service is because of its condition and a lack of capital funding to replace it. The City argues that not only is the elimination of the minimum manning clause consistent with the vast majority of the Department's business, allowing it greater flexibility to meet the overwhelming content of the Department's work, but it also has reduced overtime costs and "aligned the reductions in expenditures in the Fire Department closer to the reductions in the other departments in the General Fund, notably the Police Department." (See City Ex. 11) The City points out that the Fire Department has more personnel than the Police Department (83 v 71) and has more ranks and rank officers. (See City Pre-Hearing Statement, p. 4, and City Ex. 8) The City argues that the reintroduction of a manning provision would have a disparate impact on other departments.

Discussion: The facts clearly indicate that the vast majority of the work of the Department is EMS related. The business of operating a municipal fire department has changed substantially and contractual language that does not comport with this reality hinders and does not advance service to the public. While the fact finder understands the concern of the Union regarding understaffing, particularly on fire-fighting runs, the evidence in the record ironically indicates that the Union's concern that staffing on an apparatus would fall

below 3 without a manning provision and could be as low as 12 overall is based upon a memorandum written by one of its own members. (SOP# 201, Asst. Chief Clouse) In contrast, the Chief during mediation and in the hearing reaffirmed his commitment to a minimum of three (3) firefighters on a ladder or engine that is on a run. The City is in a difficult economic state and is struggling to come out of a very difficult time. Coupled with the aftermath of a major recession, the state of Ohio has substantially reduced local government funding and eliminated the estate tax. The City has responded by cutting costs and personnel (City Ex. 11), which has had a considerable impact on many city operations including the other safety force, the Police Department. While cutting of personnel in the Fire Department appeared to be avoided, the number of firefighters is below the authorized level and savings have been achieved by running this Department with less personnel. It is not uncommon for Police and Fire Departments to track one another in terms of wages and benefits, in good times and in more difficult economic times, which unfortunately has been the case since 2008. There was insufficient evidence presented to the fact finder to indicate that the Fire Department mans ladders and engines that are on a run with less than three firefighters. The parties are viewing this situation from very different perspectives. The Union continues to emphasize firefighter safety in fighting fires and the City emphasizes EMS work. As previously stated, when only 10% to 15% of the work of the Department is related to fighting fires, staffing emphasis needs to be centered upon EMS activity, but without risk to firefighters who are fighting fires. Service to the public should be the underlying issue for both parties, and the demand for it by the public continues regardless of whether the City is financially strong or struggling. The uncertainty of the national and state economies, particularly when it comes to income disparity and

chronic lack luster job creation (i.e. creating jobs that pay a living wage at the national and state level) cannot be discounted as the reality within which the City must operate. Moreover, the evidence and testimony of City Auditor, Steve Johnson, which demonstrates that the City, not unlike the state of Ohio's economy, while slowly moving in the right direction from where it was during the last round of negotiations, is far from "out of the woods" and must continue on a prudent financial course while providing an affordable level of quality service to the public. (City Ex. 16, 31, 32) The parties are inextricably linked in the employer-employee relationship of mutual dependence to serve the public. And, they are together in this difficult, but slowly improving situation which calls for equity of sacrifice and honest dealing. It is with this in mind that the fact finder views all recommendations in this report.

RECOMMENDATION

ARTICLE 9 STAFFING OF COMPANIES

MAINTAIN CURRENT LANGUAGE

The Employer pledges to make a concerted effort to maintain sufficient staffing of each company, within the financial capability of the City, to provide an adequate number of personnel to effectively protect the citizens of Newark and firefighting personnel.

The Union pledges to make a concerted effort to cooperate with the Employer in reducing the amount of absences in the Fire Department.

This provision shall not be construed as prohibiting the Employer from laying off employees due to lack of work or lack of funds, or from temporarily revising the manning levels due to excessive absenteeism, or financial limitations. Statutory procedures regulating layoffs shall be followed.

pro-rated.

The **Union** argues that according to the conciliation report that settled the current Agreement, the reduction of 48 hours in the holiday bank for 2012 and 2013 was supposed to be a “temporary” reduction of hours from 200 to 152 as a cost savings measure and it should now be restored. The **City** proposes the continuation of current language and of the holiday reduction from 200 hours to 152 hours. It argues that the bargaining unit has the lowest work week hours (48) of any comparable jurisdiction, with 17 Kelly Days/tours. The City points out that bargaining unit can still convert a maximum of 152 hours of vacation and employees only currently schedule “about one-half of their holiday time. The cash conversion has not significantly changed since 2011. (City Ex. 17) No other Department or contract provides for cash conversion of holiday time.

Discussion: The conciliation award that came at the end of the last round of bargaining plainly stated that the reduction in holiday hours was “a temporary reduction of hours” that brought about a savings of approximately \$189,000 for two years. This benefit negotiated by the Union in the past undoubtedly came about through the normal give and take of negotiations and presumably the Union had to give something up in prior negotiations to gain this benefit. It is one thing to temporarily reduce a benefit that assists a City financially in its time of need, and another to argue that now that the benefit is lessened it should simply be continued. The City is proposing that the temporary reduction of hours be continued for another three years. Whether this was a good bargain or a bad bargain for either party when originally negotiated is a matter of future negotiations. And, while the facts indicate that the City has not recovered financially as fast as this fact finder hoped for when he served as the conciliator, temporary means temporary and in fairness to the Union, which secured this benefit in bargaining in the past, it should be restored in the future. However, given the rather fragile recovery in process, restoration should be accomplished over a reasonable period of time, somewhat tracking the slowly improving financial health of the City.

RECOMMENDATION

ARTICLE 13

HOLIDAYS

Section 13.1. *The following holidays are those which shall be recognized and observed by staff personnel in the Fire Department:*

- A. *New Year's Day*
- B. *Martin Luther King Day*
- C. *President's Day*
- D. *Memorial Day*
- E. *Independence Day*
- F. *Labor Day*
- G. *Columbus Day*
- H. *Veteran's Day*
- I. *Election Day (12:00 noon to 5:00 p.m.)*
- J. *Thanksgiving Day*
- K. *Christmas Eve*
- L. *Christmas Day*
- M. *Employee's Birthday*
- N. *Floating Holiday (1)*

Section 13.2. *Members assigned to staff duty shall receive those holidays listed in Section 13.1 off with pay, with the time off deducted from the member's bank of holiday hours accumulated pursuant to Section 13.3, below.—Those members also shall be eligible to work and at their option may work the holiday listed in Section 13.1.—Members working those holidays shall receive their normal pay and no hours shall be deducted from the member's bank of holiday hours, for all hours worked on the holiday.*

Section 13.3. *All members shall receive effective January 1, 2011 year two hundred (200) holiday hours. On January 1, 2014 all members shall receive one hundred and fifty-two (152) holiday hours, and on January 1, 2015 all members shall receive one hundred and seventy-six (176), and on January 1, 2016 all members shall receive two hundred (200) holiday hours providing the annual budget has been balanced for that year, otherwise each employee will receive the ratio proportion directly related to budget that the City is using as the interim budget. (Example: if the city is operating on an interim budget say of 25% then each employee may receive that same amount of eligible hours for that year), until the annual budget has been approved, then the employee will receive the balance of the two hundred (200) holiday hours.*

Holiday hours may be used as time off during the year, cashed in during the year upon thirty (30) days written notice to the City, or carried over to the following year. Holiday hours used as time off may be taken in hourly increments, with a minimum use of three (3) hours. The maximum number of hours that can be cashed in yearly by a member is one hundred fifty two (152) hours. The maximum number of hours that can be carried over to the following year is twenty-four (24). Any holiday hours not carried over to the following year or not used or cashed in during the year shall be cashed in and paid to the member on the last paycheck of the year.

Section 13.4 *An employee that is hired during the year will receive holiday hours on a prorated*

In January all members will receive a uniform inspection by the Quartermaster, specifically recording the required uniform items needed. The Quartermaster will also look for serviceability of the required items. The required items that are not accounted for or serviceable will be ordered through the Quartermaster before any other optional items can be purchased. Fire Division policy will be created to provide for the proper and equitable distribution of uniforms and equipment.

Items to be supplied by the Division of Fire in accordance with Article 25

- *NFPA approved turnout gear including: helmet, gloves, coat, pants, suspenders, boots, heat/flame resistant protection hood*
- *SCBA mask*
- *First two (2) button up shirts (Class B)*
- *First two (2) pairs of pants (Class B)*
- *First jacket*
- *Badge*
- *Rescue rope bag*
- *Portable radios for officers*
- *Any item that becomes a required part of an employee's turnout gear shall be purchased by the City and not come out of quartermaster allotments.*
- *The Division of Fire will provide all the necessary equipment for apparatus and specialty teams as they currently do, and will not require this equipment to come out of individual's quartermaster allotment.*

Section 25.8b Quartermaster Items – Authorized List

General uniform requirements: subject to inspection considered Class B uniform per SOP 102.8.

- *Two (2) button up shirts*
- *Two (2) pairs of pants*
- *One (1) pair of boots*
- *Two (2) t-shirts*
- *One (1) belt*
- *One (1) jacket*
- *One (1) badge*

Additional Uniform Items, optional:*

**These items can be requested once the Quartermaster is satisfied that each member has the required items. It will also be the discretion of the Quartermaster and approved by the Fire Chief to order these items as the individual employees budgeted account permits.*

These items must be approved by the Quartermaster that they meet the Division's standards for use on duty.

Personal Clothing:

- *Additional uniform(s)*
- *Specialty uniform(s) including plain cloths for members that are not required to be in uniform.*

- *Hat/cap with division logo*
- *Toboggan(s) with division logo*
- *Watch*
- *Safety glasses*
- *Sun glasses*
- *Running shoes*
- *Shorts (workout)*
- *Pants (workout)*
- *FR Under Armor heat gear*
- *FR Under Armor cold gear*
- *Long underwear*
- *Gloves (for warmth)*
- *Socks*
- *Insoles for boots/shoes*
- *Re-sole boots/shoes*
- *Class A dress uniform and all accessories*
- *Overcoat for Class A uniform*
- *Shoe polish*

Personal Gear:

- *Knife*
- *Multi-purpose tool*
- *Flashlight (NFPA approved, or at least meets standards for task it will be used in i.e.; special duty)*
- *Flashlight bulbs*
- *Door wedges*
- *Extrication gloves*
- *Tools for turnout gear (screwdrivers, pliers, vice grips, haligan tool, pocket spanner, etc.)*
- *Strobe light (approved for safety)*
- *Leather fire boots*
- *Leather suspenders*
- *SCBA mask bag*
- *Prescription SCBA mask*
- *Portable radio (division use with identifier)*
- *Amateur radio equipment*
- *Public safety communications monitor*
- *Lapel mic*
- *Portable radio strap*
- *Portable radio case*
- *MP3 player*
- *Portable GPA systems and mapping programs*
- *Cell phone (phone only, no monthly fees)*
- *Batteries all sizes (for approved devices)*
- *Gear bag*
- *Bedding (for division beds)*
- *Truck mans belt*
- *Personal escape pack*

- *Ballistic vest*
- *Vehicle organizer*

Department Related Educational Material:

- *Books (including promotional exam study material)*
- *Computer programs*
- *Videos, CDs and DVDs Magazine subscriptions*
- *Magazine subscriptions*

Members of specialty teams or other job specific assignments such as prevention or investigation can purchase specialty items at the discretion of the appropriate division chief, the Quartermaster and the Fire Chief.

Arson Investigators or other lawfully commissioned law enforcement members of the Division of Fire may purchase approved items specific to their duties with the Fire Division from the approved Division of Police Quartermaster with approval of the Fire Chief.

The Union argues that like the Holiday Provision, the reduction that resulted in lowering the amount available for quartermaster under Article 25 was supposed to be temporary in order to aid the City through financial difficulties. The Union argues that in 2007 the City proposed the quartermaster system, which was agreed to by the Union and it should be viewed as a “win-win” for both sides. (See Union Ex. Quartermaster tab) The Union insists that there is a valid need for the quartermaster money for its members and that the Newark Police Department, which also has a quartermaster system at a level of \$1250 per year. The **City** is proposing a continuation of the reduced clothing allowance at \$750 per year. It argues that “employees do not utilize the allowance to purchase uniform items in spite of the extensive 2 page list in the contract of items authorized for purchase.” (See City’s Pre-hearing Statement, p. 5) The City points out that the Agreement provides for a cash conversion of unused uniform allowances and that comparable contracts do not provide for this option. Conversions to cash for the bargaining unit were \$32,715 in 2012 and \$28,915 in 2013, which the City claims is approximately one-half of their allowance, argues the City. Additionally, the City points out that although the Police bargaining unit has a \$1250 quartermaster level, the Police bargaining unit agreed to a reduction of ½ or \$625 in the last two years. The City avers that while cost concessions are modest they “would demonstrate to the public the Union’s

willingness to make or continue reductions at a time the income to the City continues to decline.

Discussion: As the language of the current Agreement states, "At the end of the 2013, this reduction will expire and the \$950 in the preceding paragraph will be reinstated and become effective again." This language is very clear and is more definitive than that which is in Article 13 Holidays. It came about in the last round of bargaining and reasonably should be honored in the subsequent Agreement. As was the case with the good faith need to restore holiday time that was temporarily sacrificed by the Union, the restoration of this benefit as intended in the conciliation report should also be honored in full. However, because the City is experiencing a gradual and weaker than expected financial recovery, full restoration should reasonably be accomplished over the life of the Agreement giving the City more time to reabsorb this financial benefit obligation.

RECOMMENDATION

ARTICLE 25

QUARTERMASTER SYSTEM

*On January 1 of 2010 the City shall create a quartermaster fund consisting of moneys equal to \$750 for the Newark Fire Division. This aggregate amount of money shall be used by the firefighters of the Newark Fire Division to purchase uniforms and equipment approved and used by members of the Division. All allotted monies must be spent between January 1 and November 1 each year. After November 1, any money that a bargaining unit member has remaining of their allotment shall be paid to that member in the form of a payroll check issued in the first pay period in December. The amount of the check shall be \$750 in 2014 minus the cost of any items purchased through the quartermaster system. **For 2015 the amount the quartermaster fund shall be restored to \$850 and for 2016 it shall be restored to \$950.** This money shall only be paid once the bargaining unit member meets the required uniform items criteria as indicated in Section 25.8b of this appendix.*

Any firefighter that is hired on or before July 1 of the previous year shall receive the full yearly allotment placed in the account for the current year. Any firefighter that is hired after July 1 of the previous year shall have an amount of half of the yearly allotment placed in the account for the current year and the full amount for each year after.

Any employee, whose employment with the City is terminated for any reason, shall not be required to repay any of the monies the employee received under the reimbursement procedure of the quartermaster system. The one exception to this would be an employee found guilty of criminal misconduct directly pursuant to the application of this Article.

Any employee, whose employment with the City is terminated for any reason prior to November 1; their allotment payout shall be pro-rated, determined by the number of months they were employed in that allotment year. Example: if an employee terminates employment on January 31 they are due one

twelfth (1/12) of their annual allotment in their final payout.

The City shall supply no less than one-half (1/2) of the funds referred to above by January 1 and will add the balance of the funds upon approval of the full budget each year. The Auditor/Treasurer shall supply to the quartermaster, through the Fire Chief, a monthly report indicating the amount remaining in the fund. This report shall commence January 1.

The position of Quartermaster is created within the Division of Fire. This sworn employee of the rank of Captain or above shall be responsible, in addition to any regularly assigned duties, for the administration of this program. The Quartermaster shall be appointed by the Fire Chief.

In January all members will receive a uniform inspection by the Quartermaster, specifically recording the required uniform items needed. The Quartermaster will also look for serviceability of the required items. The required items that are not accounted for or serviceable will be ordered through the Quartermaster before any other optional items can be purchased. Fire Division policy will be created to provide for the proper and equitable distribution of uniforms and equipment.

Items to be supplied by the Division of Fire in accordance with Article 25

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- *First two (2) pairs of pants (Class B)*
- *First jacket*
- *Badge*
- *Rescue rope bag*
- *Portable radios for officers*
- *Any item that becomes a required part of an employee's turnout gear shall be purchased by the City and not come out of quartermaster allotments.*
- *The Division of Fire will provide all the necessary equipment for apparatus and specialty teams as they currently do, and will not require this equipment to come out of individual's quartermaster allotment.*

Section 25.8b Quartermaster Items – Authorized List

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- *One (1) jacket*
- *One (1) badge*

Additional Uniform Items, optional:*

**These items can be requested once the Quartermaster is satisfied that each member has the required items. It will also be the discretion of the Quartermaster and approved by the Fire Chief to order these*

items as the individual employees budgeted account permits.

These items must be approved by the Quartermaster that they meet the Division's standards for use on duty.

Personal Clothing:

- *Additional uniform(s)*
- *Specialty uniform(s) including plain clothes for members that are not required to be in uniform.*
- *Hat/cap with division logo*
- *Toboggan(s) with division logo*
- *Watch*
- *Safety glasses*
- *Sun glasses*
- *Running shoes*
- *Shorts (workout)*
- *Pants (workout)*
- *FR Under Armor heat gear*
- *FR Under Armor cold gear*
- *Long underwear*
- *Gloves (for warmth)*
- *Socks*
- *Insoles for boots/shoes*
- *Re-sole boots/shoes*
- *Class A dress uniform and all accessories*
- *Overcoat for Class A uniform*
- *Shoe polish*

Personal Gear:

- *Knife*
- *Multi-purpose tool*
- *Flashlight (NFPA approved, or at least meets standards for task it will be used in i.e.; special duty)*
- *Flashlight bulbs*
- *Door wedges*
- *Extrication gloves*
- *Tools for turnout gear (screwdrivers, pliers, vice grips, haligan tool, pocket spanner, etc.)*
- *Strobe light (approved for safety)*
- *Leather fire boots*
- *Leather suspenders*
- *SCBA mask bag*
- *Prescription SCBA mask*
- *Portable radio (division use with identifier)*
- *Amateur radio equipment*
- *Public safety communications monitor*
- *Lapel mic*

agrees to provide alternatives measures to maintain, reduce or limit increases in premiums and/or costs of providing coverage.

Among the measures the City may implement and the parties may discuss will be wellness programs, screening programs, tobacco use programs and well as other measures either the City or Union may identify in discussions regarding the City's plan for health insurance coverage.

The Union understands and agrees that any increase in the premium rates for health, medical, and related insurance premiums shall be a factor considered in the total economic proposals for successive negotiations. Any rate increases which may be implemented during the period of this Agreement shall also remain subject to the wage negotiations of subsequent Agreements.

It is further agreed and understood that during the term of this Agreement that individual carriers/providers may, through no fault of the City, Union, or employees cease coverage. Should such occur, any employee adversely affected shall be given the opportunity to enroll with an alternative carrier with the appropriate premium rates subject to the premium rate applied herein or to waive coverage and receive an appropriate pro-rata amount of the waiver of coverage payment.

The parties agree and understand that the health care coverage is subject to the Affordable Care Act (ACA). Should any provision of the City's plan conflict with the ACA, or other applicable laws or regulations, those provisions of the City plan will be immediately suspended and if a resolution cannot be determined and implemented within 60 days of the suspension such provisions of the City plan will no longer be in effect. In this event the City agrees, if the Union requests, to discuss the impact of those provisions of the City plan determined to be in conflict with the ACA or other laws or regulations. The Union agrees that it will present alternative measures with cost impact a consideration.

Section 27.3. Contributions. *The parties agree that contributions to the premiums for health insurance provided by this Article will be paid as follows:*

<i>City share of monthly premium</i>	<i>880%</i>
<i>Employee share of monthly premium</i>	<i>1220% pre-tax contribution</i>

The employee's premium contribution (individual, double or family) will be deducted bi-weekly in equal increments.

Section 27.4. Non-Pay Status. *An employee in a non-pay status due to their own health related condition or that of an immediate family member will be required to pay the employee's share of the monthly health insurance premium.*

An employee in a non-pay status for reasons other than a health related condition, will be responsible for one hundred percent (100%)

Platoon Employees

<i>48 – 95 hours</i>	<i>=</i>	<i>one quarter of the total monthly premium</i>
<i>96 – 143 hours</i>	<i>=</i>	<i>one half of the total monthly premium</i>
<i>144 – 191 hours</i>	<i>=</i>	<i>three quarters of the total monthly premium</i>
<i>192 plus hours</i>	<i>=</i>	<i>one hundred percent of the total monthly premium</i>

Staff Employees

40 – 79 hours	=	one quarter of the total monthly premium
80 – 119 hours	=	one half of the total monthly premium
120 – 159 hours	=	three quarters of the total monthly premium
160 plus hours	=	one hundred percent of the total monthly premium

Section 27.5. Waiver of Coverage. *An employee who provided satisfactory proof of medical coverage under another employer sponsored insurance plan may waive medical coverage. An employee who waives coverage will receive up to the following maximum:*

Waiver of medical insurance	\$3000.00
Waiver of dental insurance	\$ 150.00
Waiver of both (dental & medical)	\$3150.00

Payments will be made in December of the calendar year coverage is waived. Payments for new hires, terminations, etc., will be prorated.

City employees married to one another are not eligible for the waiver stipend.

Section 27.6. Life & Dental Insurance. *Each bargaining unit employee shall receive, at the expense of the City, a thirty thousand dollar (\$30,000) term life insurance policy containing a double indemnity clause covering accidental death benefits. The City will make available dental insurance coverage for employees at the City's expense and double or family coverage at the expense of the employee.*

Section 27.7. Labor-Management Committee. *Employer and Union agree to establish a joint Labor Management Committee to study medical insurance benefits plans.*

Section 27.8. Spousal Coverage. *If the spouse of a City employee is employed and is eligible for employer sponsored health coverage with said employer, he/she must enroll in the particular health plan. If the spouse cannot obtain coverage through his or her employer until a certain date or open enrollment period, the spouse will be covered under the City's plan until he or she can obtain coverage through his or her employer. The spouse must provide documentation to the City that he/she is not eligible for coverage. Employees whose spouses have health insurance coverage through an employer, which coverage does not provide the same level of benefits as the City plan, are entitled to \$1077 in a flexible spending account or reduced premium, at the City discretion. Spouses can also remain on the City's plan under secondary coverage.*

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The City argues that health insurance is a major cost item for the City and currently

exceeds \$4 million dollars, with the cost of the Fire Department being \$914,427.72 and the Police Department being \$847,165, 79. The City points out that health insurance costs make up more than 10% of the Fire Departments budget. The City points out that its proposal amends the premium share and removes the schedule of benefits, creating a cost savings to the City and greater flexibility in the future. The City asserts it desires to have discussions with the Union to explore meaningful ways to keep health care costs under control. It also points out that the level of benefits that Newark employees are provided exceeds comparable jurisdictions and that most employees pay less than the current 12% cap in the Agreement. The **Union** proposes current language; it argues that the insurance fund is stable, as verified by the insurance broker for the City. However, the Union agrees that a health care committee that has meaningful authority is a viable idea for the future. The Union also opposes raising the employee's share of the premium, which it contends was raised recently in prior negotiations.

Discussion: The year is well underway and the health care plan in place is not up for renewal until 2015. For the past two years and in contrast to the prior decade, health care costs nationally have averaged 4% for family coverage. ("Health Care Costs Climb Moderately, Survey Says," Andrew Pollack, NY Times, August 20 2013) In terms of projected costs health care spending "Over the period of 2015-21, health spending is projected to grow at an average rate of 6.2 percent annually, reflecting the net result of the aging of the population, several provisions of the Affordable Care Act, and generally improving economic conditions." (www.cms.gov/.../NationalHealthExpend, 11/20/13)

In the experience of this neutral it is the double digit increases that hit employers

- A. **The City may implement plan design modifications to the City plan which measures may be made to maintain, reduce, or limit increases in premiums and/or costs providing coverage. The City agrees to provide the Union the opportunity to review and respond to the City’s modifications to the City plan and the Union agrees to provide alternatives measures to maintain, reduce or limit increases in premiums and/or costs of providing coverage. Among the measures the City may implement and the parties may discuss will be wellness programs, screening programs, tobacco use programs and well as other measures either the City or Union may identify in discussions regarding the City’s plan for health insurance coverage.**

The Union understands and agrees that any increase in the premium rates for health, medical, and related insurance premiums shall be a factor considered in the total economic proposals for successive negotiations. Any rate increases which may be implemented during the period of this Agreement shall also remain subject to the wage negotiations of subsequent Agreements.

It is further agreed and understood that during the term of this Agreement that individual carriers/providers may, through no fault of the City, Union, or employees cease coverage. Should such occur, any employee adversely affected shall be given the opportunity to enroll with an alternative carrier with the appropriate premium rates subject to the premium rate applied herein or to waive coverage and receive an appropriate pro-rata amount of the waiver of coverage payment.

The parties agree and understand that the health care coverage is subject to the Affordable Care Act (ACA). Should any provision of the City’s plan conflict with the ACA, or other applicable laws or regulations, those provisions of the City plan will be immediately suspended and if a resolution cannot be determined and implemented within 60 days of the suspension such provisions of the City plan will no longer be in effect. In this event the City agrees, if the Union requests, to discuss the impact of those provisions of the City plan determined to be in conflict with the ACA or other laws or regulations. The Union agrees that it will present alternative measures with cost impact a consideration.

Section 27.3. Contributions. The parties agree that contributions to the premiums for health insurance provided by this Article will be paid as follows:

- City share of monthly premium 88%*
- Employee share of monthly premium 12% pre-tax contribution*
- *Or what the parties agree to through the HCC**

The employee’s premium contribution (individual, double or family) will be deducted bi-weekly in equal increments.

Section 27.4. Non-Pay Status. An employee in a non-pay status due to their own health related condition or that of an immediate family member will be required to pay the employee’s share of the monthly health insurance premium.

An employee in a non-pay status for reasons other than a health related condition, will be responsible for one hundred percent (100%)

Platoon Employees

48 – 95 hours = one quarter of the total monthly premium

96 – 143 hours	=	one half of the total monthly premium
144 – 191 hours	=	three quarters of the total monthly premium
192 plus hours	=	one hundred percent of the total monthly premium

Staff Employees

40 – 79 hours	=	one quarter of the total monthly premium
80 – 119 hours	=	one half of the total monthly premium
120 – 159 hours	=	three quarters of the total monthly premium
160 plus hours	=	one hundred percent of the total monthly premium

Section 27.5. Waiver of Coverage. An employee who provided satisfactory proof of medical coverage under another employer sponsored insurance plan may waive medical coverage. An employee who waives coverage will receive up to the following maximum:

Waiver of medical insurance	\$3000.00
Waiver of dental insurance	\$ 150.00
Waiver of both (dental & medical)	\$3150.00

Payments will be made in December of the calendar year coverage is waived. Payments for new hires, terminations, etc., will be prorated.

City employees married to one another are not eligible for the waiver stipend.

Section 27.6. Life & Dental Insurance. Each bargaining unit employee shall receive, at the expense of the City, a thirty thousand dollar (\$30,000) term life insurance policy containing a double indemnity clause covering accidental death benefits. The City will make available dental insurance coverage for employees at the City’s expense and double or family coverage at the expense of the employee.

Section 27.7. Labor-Management Committee. Employer and Union agree to establish a joint Labor Management Health Care Committee (HCC) to study medical insurance benefits plans and actively manage benefit levels and health care premium costs.

Section 27.8. Spousal Coverage. If the spouse of a City employee is employed and is eligible for employer sponsored health coverage with said employer, he/she must enroll in the particular health plan. If the spouse cannot obtain coverage through his or her employer until a certain date or open enrollment period, the spouse will be covered under the City’s plan until he or she can obtain coverage through his or her employer. The spouse must provide documentation to the City that he/she is not eligible for coverage. Employees whose spouses have health insurance coverage through an employer, which coverage does not provide the same level of benefits as the City plan, are entitled to \$1077 in a flexible spending account or reduced premium, at the City discretion. Spouses can also remain on the City’s plan under secondary coverage.

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coverage does not provide the same level of benefits as the City plan are entitled to \$1077 in a flexible spending account or reduced premium, at the City's discretion. Spouses can also remain on the City's plan under secondary coverage.

ISSUE 5 ARTICLE 32 PARAMEDIC DIFFERENTIAL

The parties made progress in mediation led by the fact finder on this issue. The **Union** was initially seeking elimination of the last sentence in the Article which states, "An employee must serve a minimum of one twenty-four hour shift per month on a transport unit to receive the annual bonus." The **City** argued this requirement needs to be maintained, but showed flexibility on achieving the twenty-four hours. Rather than restating the parties positions, which can be found in the parties' Pre-hearing statements, the following recommendation is based upon understandings reached but not tentatively agreed to in mediation.

RECOMMENDATION

ARTICLE 32

PARAMEDIC DIFFERENTIAL

Firefighter/paramedics shall receive additional pay equivalent to seven (7) percent of their regular hourly rate, as set forth in Article 39, for hours assigned to the medic unit and worked as a paramedic.

*In addition, all employees possessing an EMT-P card shall be paid an annual lump sum of eight hundred dollars (\$800.00). This payment shall be made with the first pay check issued in December. An employee separating from the City prior to the date of annual issuance shall be paid that prorated portion due him/her for time served in that calendar year. An employee hired after the beginning of the year shall be paid that prorated portion due him/her for time served in that calendar year. An employee must serve a minimum of one twenty-four hour shift per month on a transport unit to receive the annual bonus. **Forty (40) hour employees may meet this requirement in three (3) eight (8) hour shifts with scheduling approved by the Chief.***

ISSUE 6, 7, 8 ARTICLE 39 Wage and Rank Differential and Steps

There are three issues being proposed in this article, wages, rank differential and pay steps.

- A. Wages, the **City** proposes that wages be continued or what it calls a soft freeze (wages remain at current levels, but step and longevity increases continue) at their 2013 levels. In general it argues that the decline in state and local revenue, which has continued since 2008, has all but eliminated discretionary spending and that personnel costs consume 90% of the Department's budget. The **Union** is proposing the following:

ARTICLE 39 WAGE TABLE OF BASE WAGE RATES

Section 39.1 *The base wage rates as listed in Appendix B shall be effective ~~October 30, 2011, through December 31, 2013.~~ JANUARY 1, 2014 THROUGH DECEMBER 31, 2016.*

Section 39.2. *Forty (40) hours per week shall be used as base hours when calculating hourly payments under this Agreement. This can be computed by doing the following:*

Annual pay divided by 2080 hours = per hour base rate of pay.

*The wage table (Appendix B) reflects annual increases of 2%% **EFFECIVE FOR EACH YEAR OF THIS AGREEMENT.***

Differential for officers will be calculated using the rank immediately below the affected rank at 12.7%.

THERE SHALL BE THREE PAY STEPS FOR ALL FIREFIGHTERS REGARDLESS OF DATE OF HIRE.

The Union is argues that it is seeking a 6% over the three years of the Agreement. It asserts members of the bargaining unit have not received an increase in salary in the last two contract periods. In 2010, the 2007-2009 contract was extended without an increase for one additional year. In the last round of bargaining the wages went up 2.75% in 2011, 1% in 2012 and 1% in 2013; however, according to the Union these increases were offset by

giving back a pension pick-up and an increase in the health care premium. The Union points to SERB data that indicates average salary increases of 1.21% in 2012, 1.23% in 2011, and 1.74% in 2010. The Union also submitted into the record SERB data demonstrating how the average of top wages in the state of Ohio by position (Battalion Chief, Captain, Lieutenant, and Firefighter) compares with the top wages in Newark. They are clearly below the SERB average in every classification.

B. Rank Differential. The **Union** points out that the rank differential between ranks is 10.7% while in the Police Department it is 12.7%. The Union argues that an increase in pay differential would reflect the increased responsibilities that rank officers are asked to undertake, similar to what has occurred in the Police Department. The Union points out that “currently Sergeants in the Police Department have an 18% step above patrol with Captains earning 20% more than Sergeants, a 38% differential from patrol to Captain (2 ranks), which is what the Union is proposing. The **City** opposes any increase in this differential for the same reasons it opposes any wage increases. The City also contends the Union failed to supply any rationale for this increase.

C. Pay Steps. The **Union** is proposing reduction of pay steps from 5 steps to 3 steps. It argues that in the past the Union had agreed to concessions in increasing the number of pay steps from 3 to 5 and that this was a concession in an effort to have more personnel hired to replace members who left in prior years by lessening the financial burden on the City as employees moved through the pay schedule. According to the Union this change has been a contributing factor to bargaining unit employees going to other departments, after only a few years on the job. In other

words, the concession did not result in increasing the size of the Department. The **City** for the same financial reasons cited above is opposed to this change.

Discussion. Through December 31, 2013 the national economy appeared to be in sustained recovery, until the month of January 2014 when there was a string of bad news that has returned the chronic uncertainty and concern that has been the hallmark of a weak recovery. The manufacturing sector is growing, but ever so slowly and continued gridlock in Washington over the debt limit is doing little to improve the situation. As previously stated, Ohio's economy in 2013 appears to have stalled particularly as it relates to weak job creation numbers. As recently as Monday, United Airlines announced that approximately 500 employees would be laid off as it closes its Hub at Cleveland Hopkins Airport. These are the good paying jobs that are hard to replace. The data provided by the City Auditor does little to indicate that the trend locally represents a departure from what is occurring at the state level, although the proximity of the City to Columbus may in the long run provide an advantage to the City. However at this time, that extent of that advantage is unknown. The City's comparable data (City Ex. 20) for all classifications in the bargaining unit overall demonstrates a lower starting salary than the average of the City's comparable group, but slightly higher than the average regarding the top salary. At the level of Lieutenant the starting salary is higher than average and the top salary is slightly below the average. At the level of Captain, both starting salary and top salary in the bargaining unit are above the average of the City's comparable cities. While the Union considers a larger number of comparable cities, the City takes a more targeted approach. Of course the problem with using comparable data is a matter of knowing whether they are truly

comparable to Newark. First there is the matter of hours of work, then other monetary remunerations, and of course benefits, all of which must be included in creating valid comparisons. And, when comparing cities, areas such as demographics, cost of living, tax base, industrial/commercial development and debt play a significant role in finding true comparable cities. For example to compare Newark with Delaware would be to compare cities that are somewhat close in population, but have very different demographic profiles and predicted financial futures. Health care recommendations, a major cost item for employees and the City are to maintain the status quo for 2014, which must be considered in any determination regarding wages. From an aggregate view of the data, the salaries of the bargaining unit are close to average for many like jurisdictions offered into evidence. The City is not in a financial position to elevate the status of its employees to above average, however, if the City has more certainty regarding health care costs (provided in the recommendations herein) there is justification for wages to maintain their purchasing power in terms of keeping pace with inflation. The rank differential proposal by the Union is based upon internal equity, which is a more persuasive argument, particularly when it is customary to treat safety forces under one employer similarly. At this time of financial difficulty there is insufficient justification for decreasing the number of pay steps.

RECOMMENDATION

ARTICLE 39

WAGE TABLE OF BASE WAGE RATES

Section 39.1 The base wage rates as listed in Appendix B shall be effective October 30, 2011, through December 31, 2014.

Section 39.2. Forty (40) hours per week shall be used as base hours when calculating hourly payments under this Agreement. This can be computed by doing the following:

Annual pay divided by 2080 hours = per hour base rate of pay.

**Effective January 1, 2015 the wage table (Appendix B) shall reflect annual increase of 1.5%.
Effective January 1, 2016 the wage table (Appendix B) shall reflect annual increase of 1.5%.**

Effective January 1, 2015 Differential for officers will be calculated using the rank immediately below the affected rank at **11.6%** and **Effective January 1, 2016 the differential shall be 12.7%.**

ISSUE 9 ARTICLE 42 Paramedic Certification

The **Union** proposes the following changes to Article 42:

ARTICLE 42 PARAMEDIC CERTIFICATION

Section 42.1. *All Employees hired after November 19, 2002 shall be required to obtain paramedic certification within three years of his or her hire date as a condition of employment, provided that the City shall pay for and enroll the employee in a paramedic program within one year from the employee's date of hire. ~~All employees hired after January 1, 2007 must retain their paramedic certification unless given chief's approval.~~*

Section 42.2. *~~Non-officer~~ Bargaining unit members who are certified paramedics may drop or not renew their paramedic certification so long as there remain forty-six (46) other non-officer certified paramedics below them in seniority on the Department. ~~For every two (2) employees' hired after October 11, this number forty six (46) shall increase by one.~~*

Section 42.3. *Employees requesting to rescind, not re-certify or regain paramedic certification shall do so in accordance with procedures, rules and regulations established by the Department.*

The Union argues it wants greater flexibility for members to drop their paramedic certification. The City argues that with 90% of its business being EMS related, paramedic certification is fundamental to the vast majority of its work.

Discussion. Simply put, the interest and welfare of the public drives between 85% and 90% of the business of the Fire Department, a fact apparently not in dispute given the fact that the Union had in past collective bargaining agreed that all employees hired after November 19, 2002 are required to obtain paramedic certification. This is where the business is and to weaken the skill level of the Department threatens the job security of the

employees who are in demand because of their skill to save lives.

RECOMMENDATION

Maintain Current Language.

ARTICLE 42 PARAMEDIC CERTIFICATION

Section 42.1. *All Employees hired after November 19, 2002 shall be required to obtain paramedic certification within three years of his or her hire date as a condition of employment, provided that the City shall pay for and enroll the employee in a paramedic program within one year from the employee's date of hire. All employees hired after January 1, 2007 must retain their paramedic certification unless given chief's approval.*

Section 42.2. *Non-officer bargaining unit members who are certified paramedics may drop or not renew their paramedic certification so long as there remain forty-six (46) other non-officer certified paramedics below them in seniority on the Department. For every two (2) employees' hired after October 11, this number forty-six (46) shall increase by one.*

Section 42.3. *Employees requesting to rescind, not re-certify or regain paramedic certification shall do so in accordance with procedures, rules and regulations established by the Department.*

ISSUE 10 NEW ARTICLE Hour Employee Wage Differentials

The **Union** proposes the following new language:

Article ____. *Bargaining Unit members assigned to 40 hour positions shall receive additional pay equivalent to 7% of their regular hourly rate, as set forth in Article 39, for the hours in which they work in those positions. No bargaining unit member may earn this differential and paramedic differential concurrently.*

The Union argues that if you take a 40 hour position you end up taking a 7% pay cut. The City argues that employees in these positions have regular hours and voluntarily chose to take these positions.

Discussion. When the fact finder asked for clarification as to whether employees were forced to move or stay in these positions, or whether they voluntarily bid on them, the advocates in doing their due diligence investigated the matter. They then provided the fact

finder with two divergent versions of the situation, giving the fact finder little direction on this issue. The burden of proof is the Union's and without additional evidence the fact finder cannot support a recommendation for new language.

RECOMMENDATION

No new language is recommended

ISSUE 11 NEW ARTICLE Hazmat Duty

The **Union** proposes the following new language:

Article __. *Personnel assigned to Station 3 shall receive pay at one and one-half (1-1/2) times the employee's regular hourly rate for hours worked on a "working has mat incident." Hours shall be from official start of the incident to a situation contained.*

In addition, those members shall receive a lump sum payment of five hundred dollars (\$500.00). This payment shall be made with the first pay check issued in December. A member who is assigned or drops their assignment through the year shall receive a prorated payment of 1/12th for each month assigned to Station 3.

Should the Fire Chief and/or the City determine the need and require other stations or members to be specialized in water rescue, technical rescue, confined space, etc, those members assigned to those positions shall be covered by this article.

The Union points out that hazmat work and the training of bargaining unit employees, particularly at Station 3 are increasing and these bargaining unit members are "more likely than other bargaining unit members to encounter more hazards above and beyond the normal firefighting or EMS duties. (See Union's Ex. Special Duty Pay) The pay the Union is seeking is for extra training, additional responsibilities, and additional exposure to hazardous materials. The City opposes any new cost related proposals and argues the Union did not provide sufficient rationale to justify additional pay.

Discussion. While there is considerable reason to be concerned regarding hazmat

incidents and what is required of the City in addressing an accident, the Union did not support its proposal with data demonstrating the extent to which the employees at Station 3 have to respond to hazmat incidents. Based upon statements from the Chief, it is unclear what is expected of fire fighters in a hazmat situation versus what other agencies (federal or state) would be responsible for in case of a hazmat incident. It is also unclear as to how often serious hazmat incidents occur in the City. This appears to be an evolving situation and if fire fighters are expected to respond to hazmat spills, then this issue should definitely be revisited in future negotiations. However, at this time there is insufficient data to make any meaningful recommendations to the parties.

RECOMMENDATION

No new language is recommended

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this ____ day of February 2014 in Portage County, Ohio.

Robert G. Stein, Fact finder

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this 5th day of February 2014 in Portage County, Ohio.



Robert G. Stein, Fact finder