FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 20, 2015

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| In the Matter of: | ) | |
| International Association of Firefighters, Local 136 | ) | SERB Case No. 15-MED-03-0179 |
| vs. | ) | |
| The City of Dayton | ) | |

Fact Finder: Dennis M. Byrne

APPEARANCES

For the City of Dayton:

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For the IAFF, Local 136:

Susan Jansen, Employee Advocate

Gaylynn Jordan, President Local 136

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Ryan Launder, Firefighter

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Bradford Nickels, Firefighter

Cole Niewonger, Local 136

Eric Sylwestrak, Local 136

**Background**

This fact-finding involves the members of the Dayton Fire Department represented by the International Association of Firefighters, Local 136 (IAFF/Union) and the City of Dayton (City/Employer). There are three hundred members of the bargaining unit covering every job category in the Department. Prior to the Fact Finding, the parties held seven (7) negotiating sessions, and reached two total tentative agreements but the membership voted overwhelmingly to reject both of these agreements.

The parties were able to reach agreement on a number of issues, but fourteen issues remain on the table. These issues are 1) Article 7 (1): wages; 2) Article 7: EMT Wage Scale - Addendum #7; 3) Article 16: Health Insurance, Article 16 (1) (B) Employee Contributions; 4) Article16 (D): (New) Employee co-pays; 5) Article 16 (9): (New) Spousal Carve Out; 6) Article 18 (1): Uniform Allowance; 7) Article 18 (2): Furnished Safety Equipment; 8) Article 24: Miscellaneous, Payroll Deduction; 9) Article 24 (5): Tuition Reimbursement; 10) Article 35: (3) Lieutenant plus 1; 11) Article 35 (7): Captain plus 1; 12) Article 35 (9): Promotional Training; 13) Article 36: Duration; and 14) Retroactivity. Before the formal Fact Finding Hearing, the Fact Finder attempted to mediate the dispute, but the mediation effort was unsuccessful.[1]

The Hearing was held on November 6, 2015 at Sinclair Community College campus located in downtown Dayton, Ohio. The hearing started at 10:00 A.M. and ended at approximately 1:30 P.M.

[1] There are fewer issues than the parties' position statements indicate for two (2) reasons. First, on a number of issues the parties do not actually have a disagreement because one or the other changed its position before the hearing. Second the main disagreement is over a pattern settlement that encompasses a number of issues.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

(1) Past collectively bargained agreements, if any.
(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
(3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
(4) The lawful authority of the public employer.
(5) Any stipulations of the parties.
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

**Introduction:**

The dispute between the parties has a single root cause, pattern bargaining. The City and its Unions have followed a pattern bargaining methodology for years. Under the parties' system, wages and medical insurance are negotiated with the pattern setting bargaining unit, usually the Fraternal Order of Police (FOP) unit, then all other City bargaining units accept the pattern agreement on these issues. After the pattern is set, each unit negotiates separately over issues that have importance to its membership.

In this round of negotiations the City desired to 1) negotiate a general wage increase for all of its employees, and 2) control its health care costs. Similar to many health insurance plans, the cost of providing insurance continues to rise, and the City believes that it must find a way to rein in costs. The City testified that it was self-insured because no insurance company would bid for its business. In addition, there has been no general wage increase for a number of years, and the City believes that its employees

deserve a raise. The City's strategy for this negotiation was that it would bargain for changes in the health plan (decrements) that would increase the cost of insurance to the employees. However, the revenue generated by the cost-saving changes to the insurance plan would be used to help fund a general wage increase. The City testified that the decrements in the health insurance plan would cover approximately fifty percent (50%) of the cost of the general wage increase.

For this strategy to be effective, the City needed one of its bargaining units to accept the idea of changing the health insurance plan as a tradeoff for a general wage increase. The City testified that it approached both the FOP bargaining unit and the Dayton Public Service Union (DPSU) Local 101 represented by the American Federation of State County and Municipal Employees (AFSCME) with a deal for certain changes in the health plan as a tradeoff for a general wage increase of two percent (2.0%) per year of the proposed contract. The AFSCME unit accepted the City's offer with the modification that in the first year of the proposed contract the wage increase would be three percent (3.0%). Therefore, the agreement between the DPSU was for changes (decrements) in the health insurance plan and a general wage increase of three percent (3.0%) in the first contract year and two percent (2.0%) in the second and third contract years. In addition, the DPSU and all other City bargaining units would negotiate over other issues unique to each separate unit.

The FOP unit was debating over whether to accept the City's offer. However, after the DPSU agreement, the FOP accepted the City's offer (the pattern settlement); and after negotiating some language changes on other issues, the parties signed a contract. When both the DPSU and the FOP units signed their contracts, the City's other smaller

bargaining units accepted the City's pattern offer and signed their contracts. Finally, the only bargaining unit that was still in negotiations was IAFF Local 136.

The IAFF bargaining committee signed a tentative contract with the City, and the membership voted it down. As a consequence, the bargaining committee surveyed its membership and found that the changes in the Health Insurance plan contained in the pattern agreement were unacceptable to the membership. The spousal carve-out (decrement) provision that required that the spouse of a City employee who worked for an Employer that offered heath insurance to buy insurance from her/his Employer was the provision that caused the greatest problems. It must also be noted that under the terms of the pattern agreement that the Dayton employee and all children would still be covered by the City's insurance. In addition, the City would provide secondary coverage for the spouses who were dropped from the plan.

The pattern also included an increase in the co-pays for physician's office visits, an increase in the cost of visits to the Emergency room, and an increase in the monthly premium share for the employees from one hundred and eighty dollars ($180.00) per month to two hundred dollars ($200.00) per month. The Local 136 membership also objected to these changes in their health insurance.

The IAFF and the City returned to the bargaining table and reached a second tentative agreement. However, the membership rejected this second tentative agreement, and the parties decided to avail themselves of the dispute resolution procedures found in ORC 4117 and scheduled a Mediation/Fact Finding hearing.

**City Position:**

The City's position can be summed up in one word, Pattern. The City strenuously argues that there has always been a pattern settlement with regard to wages and health insurance; and when the DPSU signed its agreement, the pattern was established. Furthermore, the City testified that every other City bargaining unit agreed to the pattern settlement. Therefore, Local 136 is the only group of employees in Dayton that is still contesting the proposed changes in the health insurance plan. The City believes that the fact that union membership rejected two tentative agreements that contained some improvements in other issues that were important to the Local 136 members shows that the membership was trying to break the pattern settlement.

The City also signed a "Me Too" agreement with the DPSU unit with respect to health insurance. Consequently, the City argued that if the firefighters did not sign the pattern agreement, then the City would have to have to change its agreements with all other City bargaining units and with the non-unionized employees who are also covered by the health insurance plan and given the same raise found in the DPSU contract. Therefore, the City claimed that any change to the health insurance plan that did not include the pattern decrements would cost the City millions of dollars that it did not have. The result, according to the City's negotiating team, would be layoffs throughout the City.

The City also refused to sign a G (11) waiver in this case, which is unusual for these parties according to the testimony at the hearing. The City repeatedly stated that the negotiations between the IAFF and the City have dragged on for six months (6) and that the Union voted down two (2) tentative agreements. The City argues that the Union

membership should realize that their actions have a disruptive impact and that they must accept the fact that their actions have caused the process to continue for an unreasonably long time and put a strain on the relationship between the Union and the City.

In addition, the City is rejecting the Union's position that any agreement be retroactive to May 31, 2015, the termination date of the parties' expired contract. The City also amended its position with respect to the total tentative agreements reached with Local 136 and now wants all other contract clauses to be unchanged (the same) as the language contained in the parties' previous agreement. This means that any language changes found in the tentative agreements are also off the table. The City claims that the Union's rejection of the two (2) tentative agreements was "beyond the Pale" of accepted industrial relations practice and that the Union should bear the consequences of its bad behavior. In this vein, the Fact Finder notes that neither side accused the other of bad faith bargaining and that no ULPs were filed with SERB.

**Union Position:**

The Union agrees with the facts listed above, but its interpretation of those facts is much different. The Union made a number of arguments in support of its position. First, the Union stated that the DPSU bargaining unit was rarely the pattern-setting unit. The parties agree that the FOP unit is the "bell cow" for the City, i.e., the pattern-setting unit.[2] According to the Union, the only time that the DPSU unit is the pattern setter is when the City needs some unit beside the FOP or the IAFF units to agree to the pattern setting

[2] The term bell cow refers to a farmer who trained one cow to return to the barn each night. That cow wore a bell and all of the other cows were conditioned to follow the bell cow.

agreement. The Union contends that the DPSU unit did the City a service by going first and agreeing to the health insurance decrement.

With respect to the DPSU contract, the City admits that it needed some bargaining unit to agree to its pattern offer in order to make the cost-saving changes in the health insurance plan that it needed to control the rising cost of insurance. The City also admits that the spousal carve-out provision had less impact on the DPSU unit than any other City bargaining unit.

The Union also strongly argued that the parties have a Health Care Containment Committee and that any changes in the health care plan should have been discussed and recommended by the Committee. In response, the City stated that it was trying to make the Health Care Committee more relevant, but that currently each bargaining unit had a de-facto veto on any decision reached by the Committee. Therefore the City contends that it could not work through the Health Care Committee to get the required decrements in the insurance plan.

The Union also argued that the current employee contribution to the health plan is greater that the contribution made by other comparable jurisdictions and that the City's position on the employee contribution is unreasonable. The change in the premium contribution is twenty dollars ($20.00) per month or two hundred and forty dollars ($240.00) per year. It is true that a twenty four hundred dollar ($2,400.00) premium share is high when compared to other jurisdictions throughout Ohio.[3] However, the actual plan design is somewhat unique in that the Employer makes a HSA contribution

[3] See 23rd Annual Report on the Cost of Health Insurance in Ohio's Public Sector. SERB Research and Training Section. Exhibit 37 in the Employer's Fact Finding submission. The Union uses information from the Ohio Big 8 Cities. Data is found behind Tab 23 in the Union's Exhibit Book.

for the employees at the beginning of the calendar year that moderates the financial impact on the employees.

Next, the Union argues that the pattern plan causes financial problems for many of its members. The Union presented a number of exhibits that show the impact of the changes in the health insurance plan, especially the spousal carve-out, would have on its members (Union Exhibits 23 – 25 in the Union Exhibit Book). This information shows that the entire wage increase part of the pattern may be used to pay for the changes in the health insurance plan. In some cases the average firefighter may be worse off economically under the prospective contract than he/she was under the terms of the old contract. The Union believes that the firefighters should have the right to make this point during negotiations.

Finally, the firefighters argue that the pattern agreement is not always followed. The Union presented evidence that during the negotiations that took place in 2009 Local 136 went first and made a concession to help the City out of a financial morass and that agreement did not lead to a pattern settlement. Factually, in 2009 the economy was in the midst of the Great Recession. The City approached its unionized employees and asked that they forego a scheduled three percent (3.0%) raise for 2009. The firefighters agreed to give up their base rate increase and also agreed that only those individuals scheduled to receive step increases would receive any raise. The City promised that it would get the same concession from all other City employees.

However, the City then awarded all nonunionized employees a slightly more than one percent (1.19%) raise. The City claimed that this was a step increase for the nonunionized labor force. However, only two (2) individuals did not get the raise, and

the Union observed that if everyone gets step increase it is not a step increase; it is a raise.

Learning of this "raise," the FOP unit did not agree to the City's demand and went to Fact Finding and Conciliation over the City's demand. The Fact Finder and Conciliator both found that the FOP bargaining unit should receive a one percent (1.0%) raise. The Conciliator also awarded the City's position that the bargaining unit members should take four (unpaid) furlough days. However, the testimony at the hearing was that the furlough day language in the Conciliation award was not enforced. Regardless, the Union points to this as an example of a situation where the pattern agreement was not a pattern throughout the City (Tabs 6 and 9 in the Union Exhibit book). Therefore, the firefighters believe that they had valid reasons for questioning and voting down the tentative agreements reached with the City.

**Issue:** Article 7 (1): Wage Rates

**Union Position:** The Union is demanding four percent (4.0%) in the first year of the contract and two percent (2.0%) in the second and third years of the agreement.

**City Position:** The City is offering three percent (3.0%) in the first year of contract and two percent (2.0%) in the second and third years of the agreement.

**Discussion:** The difference in the parties' positions is one percent (1.0%) in the first year of the prospective contract. That difference is really the Union's demand to "make up" for the one percent (1.0%) that the firefighters did not receive in the 2009 contract year.

This is the point where finances usually are discussed. However, both parties agree that the City can afford to fund the increase sought by the Union. There was

voluminous financial data presented by the parties in their prehearing submissions. While that data does not show that the City has fully recovered from the financial crisis caused by the Great Recession, it does show that the City can afford an extra one percent (1.0%) in the first year of the prospective contract (Tabs 8, 9, and 10 in the City Exhibit Book, and Tabs 17, 18, and 19 in the Union Exhibit Book).

**Finding of Fact:** The City's financial condition does not preclude an extra one percent (1.0%) wage increase in the first contract year.

The City contests this analysis based on the fact that if the firefighters receive an extra one percent (1.0%), then according to the City's pattern bargaining paradigm, all other City employees would have to receive an extra percent because there would be a new pattern agreement. The need to change the benefits in other agreements is reinforced by the fact that the City negotiated a "Me Too" clauses into the DPSU contract. However, that result is caused by the City's bargaining strategy, not the City's financial condition.

However, given all of the information on wage settlements and average percentage base rate increases throughout Ohio and the Nation based on published SERB and Bureau of Labor Statistics data, the Fact Finder believes that the City's wage offer is fair.

**Finding of Fact:** The City's position of three percent (3.0%) in the first contract year and two percent (2.0%) in the second and third years of the agreement is a reasonable increase given the wage increases negotiated by other units in Ohio and around the Nation.

**Suggested Language:** The wage rates contained in the parties' agreements shall be increased by three percent (3.0%) in the first contract year and two percent (2.0%) in the second and third contract years.

**Issue:** Article 16: Insurance

**Union Position:** The Union believes that the City's position, based on a pattern argument, is not reasonable.

**City Position:** The City demands that the same language found in other labor agreements throughout Dayton be included in the firefighters' prospective agreement.

**Discussion:** The parties' different positions on this issue is the major area of disagreement between the parties. The Union believes that there are numerous problems with the City's position (see the Introduction to this report). However, the Union's position can be summed up in two contentions. First, the parties' Health Care Containment Committee is the venue that the parties have agreed will recommend changes in the health insurance plan, and that Committee was not involved in the decision to change the plan. The plan was negotiated with the DPUS bargaining unit and imposed on other units. The firefighters strongly argue that this is not what the parties intended when they set up the Health Care Cost Containment Committee. Second, the Union claims that the changes negotiated between the City and the DPUS *and accepted by all other City employees* (emphasis added) are not reasonable for the firefighters.

The City dismissed the Union's first proposal by stating that the current operating procedures of the Health Care Cost Containment Committee give each Union a veto and that necessary changes to control health insurance costs could not survive a system that

allows each bargaining unit veto power over any proposed changes in the plan. The City testified that it is trying to make the Health Care Cost Containment Committee a workable forum for discussions about the insurance plan, but at this time the Committee's rules do not allow the City to make necessary changes in the insurance plan.

Parenthetically, the Fact Finder notes that he has been involved with numerous health care committees over the years; and in general, the committees work well. The common factors seem to be that each bargaining unit, the unorganized employees of the jurisdiction, and the political subdivision's management all have representation on the committee. Second, the committee membership must be selected in such a way that individuals who are willing to work hard and learn about insurance are on the Committee. Third, the Committee must meet at least quarterly to review the performance of the health plan with regard to utilization and cost. Fourth, everything related to the health insurance plan is open for discussion. Fifth, the Committee must ultimately make a recommendation on changes to the plan either by consensus or by a majority vote of the membership. Finally, the management of the political subdivision must agree (within reason) to implement the Committee's recommendations. The Fact Finder is only aware of one or two instances when a Committee's recommendations were not implemented, and those situations involved an event (a serious illness costing a significant amount that occurred after the Committee completed its work, or a significant change in the financial outlook of the jurisdiction) that was not considered by the Committee. The Fact Finder would urge the parties to resuscitate the Health Care Committee and try to make the Committee meetings the forum for discussing all changes in the health insurance plan.

However, for this round of negotiations, the changes in the health insurance plan were negotiated between the City and the DPUS. The Union's second point deals with this issue. The firefighters and the City agree that the impact of the change in spousal coverage, the major area of disagreement, had a smaller effect of the membership of the DPUS bargaining unit than it had on the firefighters or the police bargaining units. The exact reasons were not given in the hearing, although it can be surmised that the age and service distribution of the different bargaining units is one of the main causes of the different impacts. The IAFF believes that the DPSU should never be the pattern setting union because of its lack of bargaining power, i.e., it is a non-conciliation unit.

In support of its reliance on the pattern bargaining model, the City presented previous Fact Finding reports by this Fact Finder and other Neutrals that discuss the place of pattern bargaining in contract negotiations. Most of the discussion centers around the principles enumerated by Fact Finder Dworkin in *State of Ohio v. Ohio State Troopers Association (SERB No. 97-MED-04-0536 (37)* (Tabs 16, 17, 18,19,and 20 in t the Employer's Exhibit Book). The principles listed are:

1. Does the Employer's position derive from a true pattern?

2. Is the pattern argument an attempt to abolish unique rights and privileges achieved by a bargaining unit?

3. Patters should not be imposed if they are antithetical to the functions or history of the bargaining unit. Mere inappropriateness is not enough to overcome a practice.

4. A genuine pattern should not be recommended if it ruins the integrity, privacy, or power of a bargaining unit or its chosen representative.

5. An economic offer that is strikingly insufficient to compensate a particular group of employees equitably will not supplant a fair settlement no matter how many other units have ratified the pattern.

This Fact Finder is on record as agreeing with Fact Finder Dworkin's analysis. However this Fact Finder has also stated that ORC 4117 requires that each bargaining unit has the right to bargain for itself and that the existence of a pattern does not negate that right. In this case the parties' bargaining history shows that there is a long history of pattern agreements over wages and health insurance; however other clauses differ because of unique conditions facing each unit that have led to different contract language over time.

Consequently, the City claims that its bargaining position is supported by the five (5) factors outlined above. Having read all of the material in the City's prehearing submission and given the testimony of the parties in the hearing, the Fact Finder believes that the Union made a strong argument that the fifth factor listed above does not apply. That is, the Union's position, supported by the evidence that it placed in the record, could support a finding that the City's offer does not compensate a particular group (the firefighters) equitably (Tabs 20, 23, 24, and 25 in the Union's Exhibit Book). It should also be noted that the Fact Finding Awards submitted by the City all concern situations where the bargaining units involved are not being asked for concessions.

The City also presented a power point presentation by its Health Insurance consultant (Tab 23 in the Employer's Exhibit Book) to prove that the City had to make changes in the health insurance plan. That presentation showed that the main drivers of the City's health insurance cost increases are 1) spousal coverage, 2) high cost claims (over $200,000.00), 3) high prescription cost, 4) seemingly excessive use of emergency rooms, 5) limited competition for the City's insurance business and 6) a need to cut the demand for services that is achieved by changing the current co-pays and deductibles. The Spousal carve-out was the single largest cost saving to the City. The City's data

show that the carve-out affects all bargaining units equitably (Tab 23 in the Employer's Exhibit Book). The firefighters disagree.

The Fact Finder is troubled by the difference in the parties' perceptions of the cost of the proposed changes. The firefighters believe that the proposed changes will cause a number of now employed spouses to quit their jobs and that many other families will suffer a decline in their take home pay regardless of any wage increase when the cost of spousal insurance and increased co-pays and deductibles are factored into the equation. The City disagrees. The Fact Finder understands that both parties strongly believe in their respective positions, but there is a disconnect somewhere.

The City also argues that it could not afford to change the proposed pattern agreement because of the "Me Too" clauses' effect on other bargaining units. That is, if the firefighters' position is accepted, then all other City employees will get the firefighters' settlement, and the City cannot afford that outcome. The City has guaranteed that all City employees will follow the pattern set by the DPUS and has acted accordingly, i.e., it has increased the salary of all other City employees by three (3.0%) and changed the cost of insurance throughout the City. The City argues that any changes in the pattern will so negatively affect the City's finances that layoffs will occur.

The Fact Finder believes that the firefighters' position is reasonable based on their analysis of the situation. Their position, at a minimum, was based on enough evidence that the unit had the right to raise it in negotiations. However, the City's Pattern Settlement stance seems to have precluded any discussion of the wage and insurance issues. Moreover, the City is asking the employees to help fund their wage increases. It is not unreasonable for a bargaining unit to demand the status quo under these

circumstances. At a minimum, the issues raised by the firefighters required some discussions. That does not seem to have occurred.

Regardless, the Fact Finder is recommending the City's position on this issue. The reasons are 1) the City did prove that the cost of insurance is rising and its financial condition is such that it must try to control insurance costs. This is especially true given the uncertainty caused by the Affordable Care Act (Obamacare). 2) There is a long history of pattern bargaining within the City of Dayton, and the City was following established practice when it signed a pattern agreement with one of its bargaining units. However, the fact that the DPUS unit set the pattern is troublesome when all parties agree that the FOP unit is the "bell cow" for the pattern within the City. The City admits that it needed some unit to set the pattern, and the "bell cow" unit was balking. 3) There is no indication that either side acted in bad faith. 4) All agreements affect different bargaining units differently. In that sense the membership of Local 136 is no different than the membership of any other union. That is, the changes proposed in the health plan would affect different units differently based on the age distribution of the unit, the service distribution, the percent of married v. single employees, etc. Statistically speaking those changes should even out. Realistically speaking, there are demographic differences between different bargaining units that lead to different utilization of health insurance. Therefore, it is almost a certainty that any pattern settlement will have somewhat different effects on each bargaining units.

However, the City's bargaining strategy of signing a pattern agreement with the DPUS and then ceasing discussions with the firefighters was, at a minimum, going to cause problems with Local 136. It must also be noted again that a properly functioning

Health Insurance Cost Containment Committee would have alleviated this problem for both the City and its Unions.

**Finding of Fact:** The City signed a pattern agreement with one City bargaining unit and then did not deviate from that settlement with any other group of either unionized or nonunion employees. This follows the parties' long-standing bargaining practice.

**Suggested Language:** The City's proposed changes to the health insurance program shall be added to the Local 136 contract.

**Issue:** Article 7 (10): Wages, EMT Wage Table Adjustment – Addendum #7

**Union Position:** The Union demand is for an adjustment to the EMT wage table (steps) to achieve internal parity with other positions in the Operations Division.

**City Position:** The City agrees that there is (might be) a problem with the EMT wage table and has agreed to have the parties' Labor Management Committee study the problem and make a recommendation on the issue.

**Discussion:** The situation regarding the EMT wage scale is confusing. The goal was a career path that led the EMT to a job as a firefighter/paramedic. The City's original program worked well, and most of the newly hired EMTs were in the process of working toward a full-time firefighter/paramedic positions when a discrimination lawsuit was filed in Federal Court. That lawsuit resulted in a consent decree between the Justice Department and the City that required the City to hire a more diverse labor force. An unintended result of the consent decree was that the personnel in the EMT job category are now "stuck" and cannot move into other positions in the Fire Department. This has created problems with the pay rates for the EMTs.

The parties recognize that the problem exists. The Employer believes that there needs to be more discussion between the parties because of all of the moving parts associated with the issue. The Union indicated during the mediation phase of the hearing that it understood the Employer's position. Therefore, the Fact Finder is recommending that the parties' Labor Management Committee discuss the issue.

The Fact Finder understands that this may lead to a situation where the parties ultimately disagree and cannot come to a resolution of their problem. Therefore, the Fact Finder will maintain jurisdiction over this issue until the parties either come to an agreement or reach impasse. Given the nature of these negotiations, the Fact Finder does not believe that the best result for either party is an impasse that would require further recourse to the dispute resolution procedures of ORC 4117. However, this issue clearly falls under the "wages, hours, terms and other conditions of employment" language in ORC 4117 and, as such, requires the Fact Finder to make some recommendation if an impasse exists.

**Finding of Fact:** The parties have agreed to discuss the EMT wage scale in a Labor/Management setting. If the parties are unable to reach a amicable agreement, the Fact Finder will reconvene the hearing to discuss this single issue.

**Suggested Language:** Current Language

**Issue:** Retroactive Pay Increase

**Union Position:** The Union is demanding retroactive pay and benefit increases from the date of the expiration of the last contract, i.e., June 1, 2015.

**City Position:** The City rejects the Union's proposed language and demands that the terms of the successor agreement take place at the time the contract is ratified and signed by the parties.

**Discussion:** Given the evidence contained in the record, the Fact Finder does not find the Employer's position on this issue to be meritorious (See Tabs 4 and 5 in the Union 's Exhibit Book). There are numerous reasons for this conclusion. First, the firefighters had a reasonable position on the health insurance issue. Ultimately, that position did not convince the Fact Finder to recommend the Union's position on either the wage or health insurance issues, but there was a reasonable rationale for the Union's actions. The Fact Finder agrees with the City's contention that it is almost unheard of for a bargaining unit to vote down two separated tentative agreements, but the circumstances surrounding this negotiation are somewhat unusual. For example, it is not the usual practice for a unit to help fund its own raise. This is especially true when the status quo as an alternative is off the table.

Next, the Fact Finder believes that ORC 4117 necessitates that the parties negotiate over wages, hours, terms and other conditions of employment. The Fact Finder does not find that the Union's insistence of bargaining over these issues is unusual. The Fact Finder was not persuaded by the Union's arguments, but he believes that the ORC 4117 gives the Union the right to use the dispute resolution procedures found in the Act (See Tab 18 in the Employer's Exhibit Book).

The City argued that the Union's bargaining stance caused the negotiations to drag on for months for no reason. This is an unusual argument given that most of the other negotiations lasted as long as these negotiations. Five or six months was the norm

according to the testimony at the hearing. The City tried to explain the reason that all other negotiations took months by stating that there were changes in the City's negotiating personnel during the negotiations with its other bargaining units and these changes might have caused some problems. That is, the City's Human Resource Director, Kenneth Couch, conducted the negotiations for the City rather than the outside Counsel. That undoubtedly caused some slow down in the process as the parties got to know each other. In addition, there were a number of changes in the upper City Administration during this time, and that would also cause a slow down in the negotiating process. However, this is as true for the Local 136 negotiations as it is for all other City negotiations.

The City's position is that once the pattern was set, the Union membership was responsible for any delays. The City stated a number of times that the Union membership should be responsible for their actions. The Fact Finder has already stated that it is extremely unusual that two tentative agreements were rejected by the Union. However, pattern bargaining is probably responsible for the first rejection. That is, the Union negotiating team was attempting to follow the usual procedure by accepting the pattern, and then attempting to make gains elsewhere in the contract. The membership rejected that agreement based on their evaluation of the costs and benefits of changes in the health insurance article.

After the first rejection, the Union negotiating team surveyed the membership and got an understanding of the depth of the problem. Returning to the bargaining table, they found that the City was unwilling to move off the pattern. They then tried to get the membership to accept the pattern, but were unsuccessful. The second rejection could not

have been a total surprise to either management or the bargaining committee. However, voting on a "last, best, and final offer" is not unusual, especially since a rejection would lead to the parties invoking the dispute resolution procedures found in ORC 4117.

Finally, to accept the City's position on this issue might have a "chilling effect" on future negotiations. The City claims that its position is not punitive. However, it may be seen as such, and have unintended effects on future negotiations. Moreover, according to the parties' submissions, retroactivity and a G (11) waiver are common features of the parties' negotiations. Therefore, a conclusion that the City's negotiating stance is aimed at punishing the Union for availing itself of the dispute resolution procedures found in the Collective Bargaining Statute is not unreasonable. Such an implicit threat, either intended or unintended, is not conducive to a good working relationship between the City and Firefighters.

**Finding of Fact:** The usual practice between the parties is that new contracts are retroactive to the end of the prior contract.

**Suggested Language:** The contract shall be retroactive to June 1, 2015.[4]

**Issue:** Article 18: - Uniform Allowance

**Union Position:** The Union demands that the annual uniform allowance payment be increased to twelve hundred dollars ($1,200.00) per year from the current eight hundred and thirty six dollars ($836.00) per year payment.

**City Position:** The City rejects the Union's demand and counters with current language.

[4] Tabs 4 and 5 referred to in the body of the report are factfinding reports by other Neutrals who also found that the City's rejection of retroactivity in other negotiations was not reasonable.

**Discussion:** The Union pointed out that the allowance had not been changed for a number of years and that both the cost of uniforms and cleaning services continue to rise. In addition, the Union presented evidence from other jurisdictions to show that the current uniform allowance is lower than the amount paid in comparable jurisdictions. The City, on the other hand, stated that the Union did not prove that the current allowance was unreasonable; and given the cost of the demand, the City rejected it. The City further stated that the allowance is an economic issue and that the City did not have the money to meet the Union's demand.

**Discussion:** The parties did not discuss this issue at length and made their submission in the documents that they submitted in their prehearing submissions and Exhibit books. The Fact Finder notes that the Union's data compares Dayton to the other "big 8" cities in Ohio. According to that information, the payment in Dayton is somewhat low. In addition, the Union testified that the police uniform allowance was $1,200.00 and that firefighters were asking for parity with the other local safety forces. The City did not directly respond to this information. However, the City did state that most of the firefighter uniform allowance was spent on pants and shirts and that the current allowance was, in its view, sufficient. The City iterated that it did not have the money to change the allowance.

An examination of the evidence shows that Dayton is behind with regard to both internal and external comparables. However, most of the larger cities in Ohio pay a uniform allowance in the one thousand dollar ($1,000.00) range.[5] Therefore, the Fact Finder believes that the Union proved that it is behind other comparable jurisdictions

[5] It should be noted that the comparables cited by the parties are for the "big 8" large cities in Ohio, i.e., the parties' lists of comparable jurisdictions are the same.

with respect to the uniform allowance. Based on all of the evidence in the record, the Fact Finder believes that the uniform allowance should be raised to a level comparable with other fire departments. Therefore, the Fact Finder is recommending that the Local 136 uniform allowance be raised to one thousand and fifty dollars ($1,050.00). This is comparable to the amount paid by other "big 8" fire departments.

**Finding of Fact:** The Union did not prove that there was a need for an increase in the uniform allowance.

**Suggested Language:** The uniform allowance amount shown in Article 18 (1) shall be increased to $1,050.00.

**Issue:** Article 18 – Furnished Safety Equipment

**Union Position:** The Union demands that the City provide a second set of Bunker Gear for the firefighters.

**City Position:** The City rejects the Union's demand.

**Discussion:** The City agreed in one of the rejected tentative agreements that it would furnish another set of bunker gear. The Union negotiating team testified that the research on firefighting showed that wearing the same gear to two separate fires without cleaning was the cause of numerous medical problems. In addition, the firefighters stated that wearing the same sweaty, dirty, and unsanitary equipment made fighting a second fire on a shift more onerous than was necessary. Therefore, the Union argued that this was a real problem for the firefighters (Tabs 28, 29, 30, and 31 in the Union's Exhibit Book)

The City claimed that this was an economic issue and that it could not afford to pay for an extra set of bunker gear. Given the City's earlier agreement to supply new

bunker gear in an earlier tentative agreement, this statement is somewhat disingenuous. The Fact Finder understands that the City has the right to modify its positions for fact finding. However in this instance, the Fact Finder believes that the Union has a valid position. The evidence put into the record shows that there is an increased risk of cancer associated with wearing gear that has been contaminated by smoke and other chemicals to a second fire. The City's position may be "penny wise and pound foolish" if the lack of clean gear ultimately causes even one serious illness. In addition, five of the other "big 8" comparable cities supply a second set of gear to their firefighters.

**Finding of Fact:** The Union proved its contention that wearing soiled bunker gear to a second fire could cause severe health problems.

**Suggested Language:** Article 18 (2)

> Section 2. Furnished Safety Equipment
>
> 1. Employees covered by this agreement will have the following items furnished by the Department: Helmet, Nomex Hood, Bunker Coat, Bunker Pants, Boots, Gloves, Goggles, and Suspenders. Employees assigned suppression duties shall be provided a second set of Bunker coat, Bunker pants and Suspenders.
>
> 2. One third (1/3) of the Department shall receive the second set of gear by June 1, 2016. The second one third (1/3) of the Department shall receive their second set of gear by June 1, 2017. The remainder of the Department shall receive their second set of gear by May 31, 2018.

**Issue:** Article 24: Miscellaneous (Payroll Deduction)

**Union Position:** The Union demands a payroll slot so that its membership can invest in the OAPFF 457 plan.

**City Position:** The City rejects the Union's demand.

**Discussion:** A 457 plan is the analogue to a 401K for private sector or 403 B for public sector employees with some additional benefits related to tax savings for early

withdrawals and increased contribution caps under certain conditions. The plans are retirement plans, and the employee must elect where to put the money. In this instance the employees are demanding the right to put the money into a OAPFF fund(s). The City rejected the demand claiming that the employees did not prove a need for the payroll slot.

The cost to the City is related to the cost of setting up a payroll deduction that would put the money deducted from the employees' paychecks into the OAPFF plan. The cost is not substantial, but it would involve some new computer code. The benefit to the employees is that they have another investment vehicle to save for retirement. Given that the firefighters are covered by the Ohio Police and Fire Pension Fund, they are already "saving" for their retirement. However, given the uncertainty about the cost of medical care and other expenses faced by older Americans, addition resources that can be used to defray expenses after a person leaves the labor force are always beneficial.

Under any cost/benefit calculation, the cost to the Employer is small and less than the benefit to the employees. Moreover, on this issue the Employer did not claim that it could not afford to meet the Union's demand. Therefore, the Fact Finder is recommending the Union's position on this issue.

**Finding of Fact:** The benefit to the employees of having another vehicle to save for retirement may be substantial.

**Suggested Language:** Section 4. Payroll Deduction

> Management shall provide, at no cost to the Union, an additional payroll deduction field for any employee who is a member of the Local 136 FirePAC deduction, as provide for in a written authorization. Such authorization must be executed by the employee to the Union, and may be revoked by the employee at any time be giving written notice to the Union, with a copy to the City. The expenditure of funds shall be in accordance with Federal, State, and Local Laws.

**Issue:** Article 24: Miscellaneous Section 5 – Tuition Reimbursement

**Union Position:** The Union demands tuition reimbursement for any course that is job related or required as part of a degree program that is directly related to the employee's current of foreseeable position or assignment.

**City Position:** The City is offering to reimburse the cost(s) of paramedic certification for any firefighter and/or EMT who has not been scheduled for mandated paramedic training if the employee seeks the paramedic certification on their own time.

**Discussion:** The parties currently do not have tuition reimbursement language in their contract. Moreover, both parties agree that either through mandatory training or by a firefighter and/or an EMT voluntarily signing up for a paramedic certification, the cost of the certification shall be borne by the City. The difference between the parties relates to the cost of other education that is in someway job related. The Union wants the City to reimburse the cost(s) of any education that leads to a degree and that is job related to be reimbursed. The City rejects this demand because of the unknown cost of the demand. The City believes that the cost may be substantial.

The Union demand is based on language in the City's Personnel Policy and Procedures Manual for mid-level managers. This is an unusual group for a comparison. The firefighters did not present any evidence of internal comparables with the exception of pages from the City's Personnel, Policies, and Procedures Manual (Tab 33 of the Union's Exhibit book). The Union did present external comparables from Canton, Cincinnati, Columbus, and Youngstown. These jurisdictions require that any courses taken must be job related and approved by either the Fire Chief or some other City

Official. The Fact Finder must assume that only four (4) of the "big 8" cities have tuition reimbursement language.

The City proposal also contains approximately one typed page of policies and procedures related to the request for and payment of any approved tuition reimbursement. This language appears to be some mixture of the Cincinnati and Columbus contracts. As such it is unobjectionable.

The Fact Finder notes that tuition reimbursement is a new benefit; and according to the evidence presented at the hearing, it is not a universal benefit for comparable cities. Therefore, the Fact Finder believes that this is an issue where the Union has made strides toward getting a tuition reimbursement article in the contract. In this instance based on the evidence in the record, the Fact Finder does not believe that the Union proved that there is a need for the expansive benefit that it is demanding. This negotiation was successful in opening the door to a tuition reimbursement scheme. Future negotiations are the place to expand the tuition reimbursement article.

**Finding of Fact:** The Union did not prove that either internal of external comparability proved a need for its tuition reimbursement demand.

**Suggested Language:** Section 5: Tuition Reimbursement

> Each full-time employee who is in the rank of firefighter and/or EMT who obtains paramedic certification and who has not been scheduled for the Department mandate training will have the option of having all paramedic certification fees reimbursed by Management, if the employee seeks the paramedic certification on their own time.
>
> The paramedic certification courses must be taken at accredited colleges, universities, technical and/or business institutes or their established extension centers. The Ohio Fire Academy courses are acceptable for the purposes of this article.

Approval of institutions and/or courses shall be obtained in writing form the Fire Chief or his designee at least ten (10) workdays prior to the first day of scheduled courses. The scheduled courses shall be attended on non-work time and shall not conflict with the employee's work schedule. The classes are not eligible for overtime payment.

Reimbursement shall only include the cost of tuition, lab fees, and required textbooks. Enrollment fees and other service charges shall be the responsibility of the employee. The city shall not reimburse fees for any course receiving a scholarship, grant or subsidy to the extent of such aid. Reimbursement will be made after an employee satisfactorily completes the semester or semester equivalent, and presents an official certificate, or grade report or equivalen,t receipt for necessary textbooks, a fee statement, and a receipt of payment or a copy of the fee bill from the institution.

Any employee participating in this reimbursement program who resigns must repay the City for courses taken in accordance with the Personnel Policy 5.10.

Any employee's participation in this tuition reimbursement program does not automatically entitle them to a higher-level position in the Dayton Fire Department and/or to the additional paramedic pay.

**Issue:** Article 35 (9): Promotional Training

**Union Position:** The Union demand is for promotional candidates who are required to work out of rank receive an additional sixteen percent (16.0%) above their current wage rate.

**City Position:** The City rejects the Union's demand and counters with current language.

**Discussion:** The Union demand is for a significant increase in the wage paid to employees who work out-of-rank. The demand is based on comparables with the "big 8" cities in Ohio. According to the Union's data, most other jurisdictions pay a firefighter working out-of-rank at the rate of the rank that he/she is working. This is a standard way to compensate individuals who are working at a higher rank.

In addition, the language in question is somewhat unusual. That is, the current language states that an individual who works out-of-rank for 1 to 20 periods will receive

a four percent (4.0%) increase per period worked. An officer who works 20 or more periods out of rank receives an eight percent (8.0%) increase. A period is defined as more than three hours (3) and less that twenty-four hours (24). The Fact Finder is unsure how the parties reached this agreement.

In general, any individual who works out-of-rank receives the pay of the higher rank for all time worked in that rank. This is based on the concept of equal pay for equal work. However, this is not the way that Dayton has handled out-of-rank assignments over the years. The Fact Finder is unsure what tradeoffs, etc., were negotiated between the parties to come to agreement on the current language. However, the current pay scale is low by any standard.

The City contends that this is an economic issue and that its finances cannot stretch to cover any extra payment. The Fact Finder believes even though the financial data submitted by he parties does show that the City is recovering from the Great Recession, the fact remains that the City must maintain controls on spending. Consequently, the Fact Finder is recommending a change in the way that out of rank pay is calculated. That is all time worked out of rank be paid at a higher rate. The Fact Finder is also recommending that all out of rank hours be paid at twelve percent (12.0%) above the officers' standard rate.[6]

**Finding of Fact:** The working out-of-rank pay scale is substandard when compared to other jurisdictions throughout Ohio and the Nation.

[6] The Fact Finder notes that the 12.0% is less than the amount mentioned in the parties Second Total Tentative Agreement, but given the other changes recommended in this Report, the Fact Finder believes that 12.0% is a fair and reasonable rate.

**Suggested Language:** Section 9: Compensation

> Promotional Candidates who are working out of classification in a higher rank in accordance with the provisions herein shall be paid an assignment pay above their present wage rate of 12.0%.

**Note:** The City also demands current language in Section 39 (3) and Section 39 7y (7) of the parties' contract. While the parties may not have agreed on new language in negotiations, the Union made no demand on these issues in its prehearing submission. Consequently, the Fact Finder finds that there is no disagreement on these issues and current language will remain in the contract.

The City also recommended a language change in Article 35 (9). There was no discussion on this issue and the City's language change is recommended.

**Issue:** Article 36: Duration

The Fact Finder recommends that the prospective contract start on June 1, 2015 and run through May 31, 2018. This seems to be the parties' position based on their prehearing submissions.

All other tentative agreements between the parties are incorporated in this report by reference.

Signed this 20th day of November 2015, at Munroe Falls, Ohio

*/Dennis M. Byrne/*

Dennis M. Byrne, Fact Finder