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**PURSUANT TO O.R.C. 4117.14(C)
UNDER THE AUSPICES OF THE
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER BETWEEN)	
)	
CITY OF SANDUSKY)	
)	
and)	FACTFINDER'S REPORT
)	SERB CASE NO.
)	2015-MED-08-0736
SANDUSKY FIREFIGHTERS,)	
IAFF LOCAL 327)	

This Factfinding arises pursuant to Ohio Revised Code Section 4117.14(C). The Parties, City of Sandusky (“the City”) and Sandusky Firefighters, IAFF Local 327, representing the bargaining unit of full-time Fire Department employees occupying the positions of Firefighter, Fire Marshal, Fire Lieutenant, Fire Captain, and Battalion Chief (“the Union”), selected Susan Grody Ruben to serve as sole, impartial Factfinder, whose Recommendations are issued below.

Hearing was held May 11, 2016 in Sandusky, Ohio. The Parties were represented by advocates and were afforded the opportunity for the presentation of positions and evidence. The Parties agreed this Report would be due on June 21, 2016.

APPEARANCES:

for the City:

**Marc A. Fishel, Esq., Fishel Hass Kim Albrecht
LLP, Columbus OH**

for the Union:

**Ryan J. Lemmerbrock, Esq., Muskovitz &
Lemmerbrock, LLC, Cleveland, OH**

FACTFINDER'S RECOMMENDATIONS

Statutory Criteria

In reaching Recommendations on the open issues, the Factfinder has reviewed the parties' submissions, and the evidence and positions presented at the Factfinding Hearing. The Factfinder has analyzed this information in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):

- a) Past collectively bargained agreements ... between the parties;**
- b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;**
- c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;**
- d) The lawful authority of the public employer;**

- e) The stipulations of the parties; and
- f) Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Bargaining Unit

There is one bargaining unit consisting of 46 individuals – 33 firefighters, 1 fire marshal, 6 lieutenants, 6 captains, and no battalion chief (“Firefighters”).

Incorporated Articles

The Factfinder hereby incorporates into her Recommendations the following articles, with the changes, if any, agreed to by the Parties:

Article 16 – Facility Standards

Article 28 – Funeral Leave

Article 42 – Duration

Article 45 – Promotional Testing

New Article – Layoff and Recall

Unresolved Issues

1. Article 15 – Contracting Out

Union Proposal

The Union proposes prohibiting the City from contracting out all work currently performed by the bargaining unit. The current Agreement prohibits contracting out only if it results in layoffs or work hour reductions, or cannot “be economically performed” by the bargaining unit. The Union seeks to strengthen the bar on contracting out and remove the ambiguous exception of “could not be economically performed” by the bargaining unit.

City Proposal

The City proposes status quo because the Union’s proposal would prohibit the City from contracting out even if the particular work could not be economically or logistically performed by the bargaining unit. The current language has been in the Agreement for many years and it has not caused any disputes.

Factfinder’s Recommendation

The current language provides the protection that contracting out is prohibited if it would result in a layoff or reduction of hours. The current language permits the City to contract out if the work cannot be “economically performed” by the bargaining unit. Given that the current language has not caused any disputes to date, the Factfinder recommends status quo. If in the future, the Parties disagree as to the meaning of

“economically performed,” that dispute can be addressed by grievance arbitration.

2. Article 19 – Hours of Work

Union Proposal

The Union proposes decreasing Firefighters’ regular workweek from 51 hours to 50 hours.

City Proposal

The City proposes increasing Firefighters’ regular workweek from 51 hours to 53 hours.

Factfinder’s Recommendation

With the Union proposing a decrease in working hours and the City proposing an increase in hours, the equitable conclusion is status quo, which the Factfinder recommends.

3. Article 21 -- Vacations

Union Proposal

The Union proposes the following modifications to Article 21:

21.1 Each employee shall be entitled to annual vacation with pay in accordance with the following schedule:

1-5 completed years of service	2 work weeks
6-11 completed years of service	3 work weeks
12-17 completed years of service	4 work weeks
18 or more completed years of service	5 work weeks

...

21.2 ~~An employee will be eligible for the full amount of vacation leave on the above leave schedule as of January 1 of the year the employee will obtain the applicable years of service must have completed the required years of service to qualify for the amount indicated.~~

21.3 Vacation selection shall be based on the following:

1. ~~Years of completed service prior to January 1 of each year.~~
2. ~~Labor and management will meet in 2013 to determine the mode and manner of selecting vacations for 2014 and 2015.~~

...

21.4 ~~If the employee leaves the service of the City before such vacation is actually earned, the vacation pay shall be deducted from his final paycheck and from any other payments owed to the employee by the City.~~

...

City Proposal

The City proposes the following modification to the last paragraph of Article 21.1:

Employees with who have completed 25 years or more of total fulltime service credit in the Fire Service with the State of Ohio or any of its political subdivisions shall receive an additional one (1) work week of vacation leave.

The City also proposes adding the following language to the end of Article 21.2:

Employees who will reach an anniversary date entitling them to additional vacation leave shall be permitted to schedule the leave as of January 1 of the year of such anniversary date. This additional vacation leave may not be taken prior to the employee's anniversary date.

The City also proposes deleting the language in Article 21.3.2.

Factfinder's Recommendation

Both Parties agree to the deletion of Article 21.3.2.

With regard to the rest of Article 21, the Factfinder recommends status quo¹, with the exception of the following: 1) The Factfinder recommends adoption of the Union's modification to Article 21.2; and 2) The Factfinder recommends deletion of Article 21.5(b)² in order to permit Firefighters, in the calendar year in which they accrue an additional vacation week, to have until their anniversary date of the following calendar year to take that extra vacation week.

4. Article 23 – Holiday/Compensation

Union Proposal

The Union proposes increasing personal time from 24 hours to 48 hours per year and to allow personal time to be taken so long as the minimum staffing level is met at the time the request is made.

City Proposal

The City proposes status quo.

¹ Status quo would include the 2015 arbitration interpretation of the 25-year vacation week bonus.

² Article 21.5(b) currently provides:

The employee must use all vacation accrued during the period being selected and shall not carry over vacation time from one year to the next.

Factfinder's Recommendation

Given that all other City employees receive one day of personal leave per year, the Factfinder recommends status quo.

5. Article 25 – Sick Leave Use and Conversion

Union Proposal

The Union proposes: 1) permitting Firefighters to use sick leave for personal emergencies requiring immediate attention; 2) deleting the reference to examinations being performed by Corporate Health; 3) requiring reasonable cause for the City to order an examination; 4) permitting the cash-out of accrued sick leave at separation (rather than just at retirement); and 5) adding a sick leave incentive under which Firefighters receive modest monetary incentives corresponding to minimal or no sick leave use.

City Proposal

The City proposes status quo, but is not opposed to the deletion of the reference to examinations being performed by Corporate Health.

Factfinder's Recommendation

1) Given that other City employees are not permitted to use sick leave for personal emergencies, the Factfinder recommends status quo.

2) Given that the Parties are in agreement on deleting the reference to examinations being performed by Corporate Health, the Factfinder supports that deletion.

3) Given that ordering an examination is not a management right, the Factfinder recommends adoption of the Union proposal, that the City must have reasonable cause to order an examination.

4) Given that other City employees are not permitted to cash out sick leave at separation, and most comparable jurisdictions do not permit sick leave cashout, the Factfinder recommends status quo.

5) Given that other City employees are not given a sick leave incentive, the Factfinder recommends status quo.

6. Article 32 – Uniform Allowance

Union Proposal

The Union proposes adding Article 32.6:

Any employee that changes rank will be issued three (3) T-shirts and three (3) job shirts.

The Union proposes adding Article 32.7:

The ordering of quartermaster items may be done between January 1 and November 30 of each calendar year. The ordering of quartermaster items will be the responsibility of the Shift Commander or his/her designee from the shift. The Shift Commander or his/her designee will take all order slips from members of their shift and order the items. Any items in question will require the approval of the Shift Commander and/or Fire Chief.

City Proposal

With regard to proposed Article 32.6, the City proposes providing an employee who changes rank with one job shirt.

With regard to proposed Article 32.7, the City proposes status quo of the current practice, with the addition of an October buying period.

Factfinder's Recommendation

The Parties agree to status quo on Article 32.5.

With regard to proposed Article 32.6, the Factfinder recommends that the City will provide one job shirt to an employee who changes rank.

With regard to proposed Article 32.7, the Factfinder recommends the Union's proposal. The City's stated objection to the Union's proposal is that the Union justified it only as being for the Firefighters' "convenience." That is a good enough reason, given that it will not cost the City anything.

7. Article 34 – Wellness Program

Union Proposal

The Union is willing to eliminate the current language. Instead of completely eliminating the corresponding \$700 annual incentive payment, however, the Union proposes the addition of the following language to

Article 34.1:

Each bargaining unit member is eligible for reimbursement by the City of up to \$500.00 annually for expenditures associated with the member maintaining their physical fitness and wellness, such as gym/physical-activity memberships, exercise equipment, etc. The member shall be required to provide proof-of-purchase to the City for reimbursement.

City Proposal

The City proposes elimination of the current language, and does not agree to the additional language.

Factfinder's Recommendation

The Factfinder recommends the elimination of the current language and the corresponding \$700 incentive payment. The Factfinder does not recommend the \$500 physical fitness payment on the basis that the fire stations have exercise equipment.

8. Article 37 – Health and Life Insurance Plan

Union Proposal

The Union proposes effective January 1, 2017, increasing the Firefighters' monthly contributions to \$60 per pay period (family coverage) and \$30 per pay period (single coverage); and effective January 1, 2018, \$70 (family) and \$35 (single).

The Union also proposes establishing a City-wide health insurance committee to review coverage and by majority agreement recommend changes in providers/insurers or modifications to the existing schedule of benefits, with the Parties retaining the right to collectively bargain changes in health insurance benefits.

The Union also proposes incorporating a cost-containment measure under which reopener negotiations on health insurance benefits could be initiated if the City's annual costs to maintain benefits exceeded 15% over the previous year.

City Proposal

The City proposes for the Firefighters the same health insurance plan agreed to by the FOP and AFSCME bargaining units for their 2016-

2018 collective bargaining agreements. This is also the same health insurance plan provided to all non-bargaining unit City employees.

Factfinder's Recommendation

The Factfinder recommends the City-wide health insurance plan. It is just not feasible for the Firefighters to have a different health insurance plan from the rest of the City's employees at this time. The Factfinder also recommends the Union's proposal to establish a City-wide health insurance committee to review coverage and by majority agreement recommend changes in providers/insurers or modifications to the existing schedule of benefits, with the Parties retaining the right to collectively bargain changes in health insurance benefits.

9. Article 38 -- Wages

Union Proposal

The Union proposes:

Effective January 1, 2016	5%
Effective January 1, 2017	5%
Effective January 1, 2018	5%

The Union also proposes Senior Firefighter pay under which Firefighters with 10 years of service with the Sandusky Fire Department receive an additional 4% above Firefighter Class A pay.

City Proposal

The City proposes:

Effective January 1, 2016	2%
Effective January 1, 2017	2%
Effective January 1, 2018	2%

Factfinder's Recommendation

In recognition that this Factfinding Report recommends the City-wide health insurance plan, which has higher health insurance premiums than those proposed by the Union, that the Factfinder has recommended other cost-saving measures, and that the FOP unit has agreed to an 8.5% increase plus a \$500 lump-sum payment over the same 3-year period, the Factfinder recommends:

Effective January 1, 2016	3%
Effective January 1, 2017	3%
Effective January 1, 2018	3%

10. Article 39 -- Longevity

Union Proposal

The Union proposes to increase longevity payments by \$25 per year at each step of the longevity schedule.

City Proposal

The City proposes status quo.

Factfinder's Recommendation

Based on the healthy wage increase recommended by the Factfinder, the Factfinder recommends status quo on the longevity schedule, keeping it in line with all other City employees.

11. Article 43 – Working Out of Classification

Union Proposal

The Union proposes adding Article 43.3:

If a Lieutenant works for at least one (1) hour during any twenty-four (24) hour shift as an Acting Captain/Shift Commander, he or she shall be paid for that period at the higher rate of pay for each hour worked in that capacity. The Fire Chief shall decide assignment based on established guidelines administered by the Chief or his designee.

City Proposal

The City proposes status quo.

Factfinder's Recommendation

The Factfinder recommends the Union proposal. It does not happen often, thereby not costing the City any significant funds, and it is in line with current language whereby a Firefighter receives Acting Lieutenant pay.

12. New Article – Minimum Staffing

Union Proposal

The Union proposes adding minimum apparatus staffing language to the Agreement:

For the safety of the residents of the City of Sandusky and the Sandusky Fire Department's employees, the City shall provide for sufficient staffing of Fire Department apparatus with IAFF bargaining unit personnel as follows:

- a. Squad: Minimum of two (2) bargaining unit personnel**
- b. Engine: Minimum of three (3) bargaining unit personnel**
- c. Ladder: Minimum of four (4) bargaining unit personnel, at least one (1) of which is an officer**

City Proposal

The City rejects this proposal on the basis that staffing is a management right, it would require the hiring of at least 3 additional employees at an annual cost of \$258,000, and it is not supported by internal or external comparables.

Factfinder's Recommendation

At the outset, it must be acknowledged that the Union is proposing a minimum staffing for apparatus, rather than minimum staffing for shifts. Minimum staffing for apparatus is a more reasonable approach to staffing than minimum staffing for shifts, though it is still controversial.

The Factfinder is not persuaded by the City's management rights contention that scheduling is within its exclusive purview. Collective bargaining agreements often have some language regarding scheduling, despite it being a management right.

The Factfinder also is not persuaded by the City's contention that the Union's proposal is not supported by internal or external comparables. Internally, the Firefighters face different hazards from other City

employees. Externally, other municipalities' approaches to staffing and safety should not necessarily dictate the City's approach.

Where the Factfinder is troubled, however, is the necessity for the City to hire 3 additional employees if this proposal is in the Agreement. Hiring is a very basic management right. It is so basic that the Factfinder feels constrained from recommending the City hire 3 additional employees.

The Factfinder, however, believes the Union has raised a real issue with regard to safety. She recommends the Parties address this further in a labor-management meeting.

13. New Article – Outside Employment

Union Proposal

The Union rejects the City's proposal for two reasons: 1) a Firefighter should be able to use accrued sick leave due to an off-duty injury regardless of whether that injury occurred during the course of secondary employment; and 2) it should not be up to the Fire Chief to decide whether a Firefighter may work secondary employment during off-duty time.

City Proposal

The City proposes adding outside employment language to the Agreement:

Upon execution of this agreement and each January 1 thereafter, bargaining unit employees who have off-duty employment shall report the following information to the Fire Chief:

1. The name(s) of the off-duty employment

Any changes in employment during the year shall be reported to the Fire Chief within three days of the new employment.

Factfinder's Recommendation

The City's proposal does not permit the City to prohibit a Firefighter's use of accrued sick leave for an injury incurred during secondary employment.

Not does the City's proposal require the Chief's approval for a Firefighter to work secondary employment.

The City's proposal requires only that a Firefighter notify the Chief of secondary employment. Given that many Firefighters work substantial secondary employment, the Factfinder finds it reasonable for Firefighters to provide notice to the Chief of secondary employment.

If the City attempts to prohibit use of accrued sick leave for secondary employment injuries, or attempts to prohibit a Firefighter's secondary employment, the Union can challenge those actions at that time.

DATED: June 21, 2016

Susan Grody Ruben
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Factfinder

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June 21, 2016

TO: Ryan J. Lemmerbrock, Esq.
Marc A. Fishel, Esq.

RE: Factfinding for IAFF 327 and City of Sandusky
SERB Case No. 2015-MED-08-0736

INVOICE

1 Day of Mediation	...	\$ 950.00
1 Day of Factfinding	...	\$ 950.00
2 Days of Study and Writing	...	\$ 1900.00
TOTAL	...	<u>\$ 3800.00</u>
½ to be paid by the City	...	<u>\$ 1900.00</u>
½ to be paid by the Union	...	<u>\$ 1900.00</u>

Thank you.