

**Jared D. Simmer, Esq., MLIR**  
**Mediator/Arbitrator**

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June 25, 2016

Stanley J. Okusewsky, Esq.  
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Youngstown, OH 44501

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Clemans Nelson & Associates  
2351 South Arlington Road, Suite A  
Akron, OH 44319

Case No. 2015-MED-10-1129

Mr. Okusewsky and Ms. Bell:

Attached, please find my award in the above-captioned case.

Many thanks for your efforts to get most of the open issues wrapped up in mediation. I trust you'll find that I dealt with the remaining issues fairly and reasonably.

It was a pleasure. I trust our paths will cross again.

Best wishes,

***Jared D. Simmer***

Jared D. Simmer, MLIR, JD. EdD

Fact-finder

Attach.

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- INVOICE -

**Invoice:** June 25, 2016

**Case No.:** Case No. 2015-MED-10-1129

**Service:** Fact-finding hearing

**Parties:** IAFF Local 1220 and the City of Girard, OH

**Location:** Girard, OH

**Fees:** 1 day fact-finding hearing/mediation \$950  
3 days case-related time (study & writing) = \$2850

**Expenses:** \$0 **Total fees + expenses:** **\$3800.00**

**Allocation:** *City responsible for 50% (\$1900)*  
*Union responsible for 50% (\$1900)*

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**Invoice is due and payable upon receipt.**

**Thank you for your prompt payment.**

Jared Simmer's TIN: 251795966

**Request for Taxpayer  
Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

c page r. 2.  c page r. 2.  Print or type Specific instructions  Se e	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>Jared D. Simmer</b>	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input checked="" type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) <b>P.O. Drawer 397</b>	Requester's name and address (optional)
	6 City, state, and ZIP code <b>Ingomar, PA 15127</b>	
	7 List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number										
Or Employer identification number										
2	5	-	1	7	9	5	9	6	6	

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign	Signature of U.S. person <i>Jared D. Simmer</i>	Date	<b>6-25-16</b>
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted. Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN. If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2. By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

## FACT-FINDING REPORT

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS (Local 1220)

(UNION)

- and -

CITY OF GIRARD, OHIO

(EMPLOYER)

SERB Case No: 2015-MED-10-1129

June 25, 2016

Proceedings before Jared D. Simmer in the role of Fact-Finder in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was officially appointed to hear this case by the State Employee Relations Board of Ohio (SERB).

### **I. APPEARANCES**

#### Union

Stanley Okusewsky III, Esq.

Luke Grunder, Union President, Local 1220

Bryan Iceman, Vice President, Local 1220

#### City of Girard

Robin Bell, Esq.

Jerry Lambers, Director of Public Service

## **II. BACKGROUND**

This proceeding involves collective bargaining negotiations between the International Association of Firefighters, Local 1220 (hereinafter “Union”), and City of Girard, Ohio (hereinafter “City”).

The City of Girard, located in Trumbull County and part of the Youngstown–Warren–Boardman, OH–PA metropolitan area, has a population of approximately 10,000 residents. Its firefighter local, members of IAFF Local 1220, is comprised of three captains and nine firefighters.

The parties are operating under the provisions of a three year labor contract which expired at the end of December 31, 2015. Between the expiration and the May 25, 2016 fact-finding hearing, the parties had met for three negotiating sessions and were able to resolve Articles 7 (Discipline) and 21 (Life Insurance). However, they were unable to resolve other issues and filed for fact-finding.

In accordance with the Ohio Revised Code Section 4117.14 and Ohio Administrative Rule 4117-9-05(F), both parties filed pre-hearing submission statements. The parties differed on the issues that they believed remained unresolved.<sup>1</sup> More particularly, the Union reported that Articles 10 (Personnel Reductions/Layoff), 19 (Uniform Allowance), 22 (Hospitalization and Health Care), 32 (Salaries), 40 (Certification Pay), Side Letters #3 and 4, and Appendix B remained at issue. While the City agreed that the parties had reached impasse on Articles 10, 19 and 22, its list included Articles 12 (Vacation), 17 (Longevity), 23 (Personal Day), 32, Article 39 (On Call Pay), 40 (Certification Pay), and 41 (Attendance Incentive Program). A summary of the open issues as reported by both parties, and any requested changes, if any, is as follows:

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<sup>1</sup> Whenever parties in their pre-hearing submissions are unable to even agree on which articles remain unresolved, one has to question if they have actually met the statutory definition of bargaining to impasse.

Open articles	Title	Employer	Union
10	Personnel Reduction/Layoffs	Make language consistent with the OPBA contract	No change
12	Vacation	No change	Receive 7 weeks of vacation after 25 instead of 30 years
17	Longevity	No change	-----
19	Uniform allowance	No change	Increase the allowance from \$660 to \$800/year and up to \$30/year for damaged or worn equipment
22	Healthcare	Increase contributions and bring into conformity with all other employee groups	No change in contributions and speed up claims payment
23	Personal day	No change	-----
32	Salaries	Three year wage freeze; keep current rank differential at 17%	3%-3%-3% increase; remove paramedic pay freeze; increase the wage rate for captains to 20% above the top rate for firefighters
39	On Call Pay	No change	-----
40	Certification Pay	No change	Increase from \$.10/hour for each certification up to two, to \$.20/hour up to two
41	Attendance Incentive Program	No change	-----
42	Duration	-----	3 year

The parties met with the Fact-finder on May 25, 2016 at the administrative offices of the City. Prior to commencing the fact-finding hearing, the parties agree to engage in mediation in an attempt to resolve the remaining outstanding issues.

During the mediation session, the parties were able to resolve everything but Wages (Article 32) and Certification Pay (Article 40).<sup>2</sup> Having agreed with the parties that further attempts to mediate these issues would not be productive, the mediation session ended,

<sup>2</sup> Suffice it to say, the particulars of the resolution of these issues are beyond the scope of this Fact-finding Report.

and the parties were sworn in and the fact-finding hearing commenced.

In addition to their pre-hearing submission statements, both parties introduced additional supporting background documentation during the course of the hearing. All documents were examined and discussed in great detail before the hearing was closed. After the hearing, all evidence of record was given due consideration in the writing of this Report and Recommendations.

### **PARTY'S POSITIONS**

#### **City's position**

During the hearing, regarding the issue of the Union's request for enhancements to wages and classification pay, Girard countered that its tenuous financial condition and the need for all City employees to absorb similar sacrifices,<sup>3</sup> made it fiscally irresponsible, and unfair, to agree to any improvements in either. Among the reasons it provided in support of its position were:

- The city emerged from fiscal emergency in 2012, and had a negative general fund balance of \$178,650.91 at the end of 2015.
- Girard's population has been in a steady decline since the 1970's; more than 2/3 of its families earn less than \$50,000/year, more than 40% of its residents don't work, and 32% are on a fixed income.
- One of the City's largest employers, V&M Star, has endured significant layoffs; since 2012, tax revenues from this company alone decreased by approximately \$235,000.
- Between 2013 and 2015 income tax revenues declined by more than \$470,000, and tax revenues are only slightly higher than

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<sup>3</sup> It pointed out that its AFSCME local had agreed to wage freezes in its new contract (1-1-2016 through 12-31-2019), as had its OPBA patrol and dispatch local (1-1-2013 through 12-31-2015).

in 2008 when the City was in the midst of a prior fiscal emergency.

- Between 2013 and 2015, the City's general fund revenues decreased over \$820,000, or 14%.
- General fund revenues have outpaced general fund expenditures in both 2014 and 2015, and the decline in the general fund carryover balance by more than 120% over the last contract term.
- The City has experienced reductions in local government funding nearly every year since 2010.
- Because income tax revenue accounts for over 70% of general fund revenues, and with income tax growth not only non-existent, but V&M Star's declining health at issue, the City cannot commit to raising expenditures in a firefighting department which is dependent upon the City's general fund for to do so would push the City to the brink of fiscal emergency yet again.
- In terms of base pay, this bargaining unit already compares favorably to comparable departments outside the City.

Union's position:

The Union contends that the City can afford the enhancements to wages and certification pay that it has proposed, and provides the following in support of its position:

- The Union has already accepted little to no wage increases over the years.
- The City successfully emerged from fiscal emergency back in 2012.
- The Union has already moderated its demands; it reduced its original proposed wage increases (4-3.5-3.5%) down to 3-3-3%.
- It points out that City Council found the money to increase its pay, effective 1-14-16, raising costs by \$138,000 over three

years, or within \$10,000 of the Union's wage certification proposal.

- As of 12-31-15, the City projected total revenue to increase 4.7% when it actually ending up increasing 5%. Further, salaries came in at 2.1% less than projected, and total departmental expenditures 2.83% less.
- An upcoming \$108.4 million I-80 widening project will bring more economic activity to the City, thus leading to future revenue increases.
- Council passed an ordinance to allow the mayor to negotiate a contract to merge Girard Health Department with the Trumbull County Health District, thus saving the City approximately \$50,000.
- Sewer users will see rates increase by 15% in 2016.
- Even though the City knew that Trinity Steel was laying off 43 of its 113 employees, Council still voted themselves a pay increase.
- Vindy.com reported on 1-12-16 that Girard had a total positive fund balance, aggregated from all funds, of \$762,000.
- Vindy.com reported on 1-26-16 that Girard was considering raising water rates by 10%, generating more than \$300,000 in more income, and that income tax collections increased by more than .14%.
- On 4-13-16, City council approved a manned speed camera program, with 70% of any revenue to be dedicated to the general fund.
- In a 1-13-16 Vindicator article, the City auditor detailed a \$96,197 general fund deficit, but predicted that it could be erased within two years.
- The workers' comp rates for public employers has dropped by 26.5% since 2011, including a 9% drop effective January 1, 2016.

## **DISCUSSION**

Before addressing the two open articles, the Fact-finder would first like to commend the parties for the efforts they expended in mediation to settle the contract. Because of their hard work and flexibility, they were able to settle all the open issues but two: Article 32 (Wages) and Article 40 (Certification Pay).

While the City proposed no changes to Article 32, including a 3-year wage freeze,<sup>4</sup> the Union asked for wage increases of 3%-3%-3%, eliminating the pay freeze on paramedic pay by deleting Section 4, and increasing the pay differential between Captains and firefighters from 17% to 20%.

Under Ohio law, fact-finders are charged with reviewing the evidence of record and making impartial recommendations to parties in the public sector how they might settle unresolved terms and conditions in a new collective bargaining agreement. When faced with making recommendations on items that incur additional demands on the employer's budget, the fact-finder must take various factors into consideration, not the least of which is its ability to pay.<sup>5</sup> This is, at best, an inexact science as it involves taking into consideration not only the state of the employer's current finances, but the fact-finder's educated guess what will be the state of its budget in subsequent years.

With these considerations in mind, and from his review of the record, the Fact-finder takes note of the following important considerations<sup>6</sup> in these contract negotiations:

- Up until 2012, the City's deteriorating financial health caused enter into financial distress status. Then, only recently it was

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<sup>4</sup> Appendix B.

<sup>5</sup> Along with internal equity concerns, outside comparables and effects on the employer's other bargaining units.

<sup>6</sup> None of which were seriously questioned by the Union.

able to move back into fiscal health largely because of the increased economic activity arising from an unexpected boom in an emerging shale oil and gas industry. Unfortunately, because of an oversupply of product, this industry is now undergoing a retrenchment and the City's budget is now seeing the effect of the substantial loss of jobs and revenue that is a result of this industry shakeout.

- Based on the City's projections, both now and into the foreseeable future, it seems safe to assume that it will have to wrestle with the budgetary impact of uncertain and declining revenues.
- In addition to the effects of a downsized Marcellus shale industry, in the last few years many of the major employers in the Girard area, predominantly in manufacturing, have either closed or downsized, leading to the loss of hundreds of jobs, unquestionably a major blow given the City's small population base.
- While the union did reference a number of potential business developments that could lead to increased City revenues, their effects remain either highly speculative, or can be expected to generate relatively insignificant amounts of revenue relative to the City's projected budget deficit over the next two years.
- In the article the Union provided to question the prudence of City Council granting itself a pay increase in the midst of its budget difficulties,<sup>7</sup> the article went on to mention that Trinity Steel Mill was in the process of laying off more than 1/3 of its workforce, on top of the 500 jobs lost in 2007 with the closing of the Indalex Plant.

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<sup>7</sup> Union Ex.-4 (Girard Mill to Lay Off 43 Workers)

- In another Union exhibit,<sup>8</sup> a January 2016 online article, it quotes the City Auditor as reporting a \$96,000 fund deficit which he expected would take two years to eliminate,<sup>9</sup> and a \$460,000 deficit in the water fund.
- In Union Exhibit-6, during a finance committee meeting, officials predicted a decrease in City revenues for 2016, and the possible need to raise water rates to help address the shortfall.
- In a subsequent Indy.com article (April 13, 2016),<sup>10</sup> the City Auditor substantially revised the projected general fund deficit to \$250,000, just three months after predicting it would be less than \$100,000.
- In consideration of its deteriorating finances, the City reported that the OPBA (Patrol and Dispatch Unit) agreed to a wage freeze for the duration of its new 3-year agreement, as did AFSCME in the 3-year deal it just inked with the City.
- While the Union is correct that it agreed to modest wage improvements in its prior 3-year agreement with the City, it should be noted that other City employees shared similar sacrifices a wholly appropriate response given that Girard had emerged from fiscal emergency status just months beforehand.
- In looking at the wage comparables provided by both parties, While members of this local do not lead the pack, overall, at least as regards base pay, this unit still remains generally competitive with other, similarly situated municipalities.
- While it may be true that firefighters in other Ohio municipalities may earn more than those in Local 1220, it is an unpleasant reality that public sector employees who work for municipalities with older residents, declining manufacturing-

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<sup>8</sup> Union Ex.-5 (Facing Assault Charge)

<sup>9</sup> In other words, during the first two years of the expected new 3-year contract between these parties.

<sup>10</sup> Union Ex.-7 (Girard Council Approves Manned Speed Camera Program)

based economies, and shrinking tax bases like Girard's simply cannot afford the pay and benefits that can be offered by these more prosperous cities.

After taking these factors into consideration, the Fact-finder offers the following recommendation:

1. A wage freeze for each of the three contract years, modeling the sacrifices made by the City's OPBA Patrol/Dispatch and AFSCME locals in their most recent contracts.
2. However, similar to what was included in the new AFSCME contract, it is recommended that a reopener clause be added to Local 1220's new contract in the event either of these two locals receive a general pay increase for any reason during Local 1220's 3-year contract term. Mirroring the language in the AFSCME contract, it should be worded as follows:

"In the event that a wage improvement is awarded to any other City bargaining unit (i.e., wages, lump sum/bonus, or longevity) in any calendar year of this Agreement, either the Union or the City may reopen on the issue of wages by serving written notice to the other party."

3. The Fact-finder does, however, recommend eliminating the current paramedic pay freeze so that any firefighter who makes the effort to maintain paramedic certification would receive the same paramedic pay as those hired on/before Decemb 2003.<sup>11</sup> This is not only a matter of fairness (internal equity) but the cost of ending this freeze would be de minimus. And, if for no other reason, the City should want to recognize and reward firefighters who take the time to earn this important certification which, in the event of medical

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<sup>11</sup> In other words, eliminate the Article 32, Section 4 language found in the current agreement, and Side Letter #3.

emergencies, provides an important benefit to all City residents.

4. At this time, the Fact-finder does not recommend increasing the wage differential for Captains from 17% above the top rate for firefighters to 20%. This is not only in reflection of the City's current and projected fiscal constraints, but the City pointed out that while the OPBA contract provides for a 20% differential for police captains, unlike firefighter captains, police have to first have supervisory experience before being promoted to captain. And, last but not least, increasing the differential would also potentially trigger a wage reopener under Article 27, Section 8 of the AFSCME agreement which would inject an element of uncertainty into a contract that was only recently concluded.
5. Again, because of the triggering of AFSCME's wage reopener, at this time the Fact-finder also does not recommend an increase in firefighter certification pay from \$.10/hour to \$.20/hour. However, the Union's argument in support does appear to have some merit and can be revisited in the next contract.
6. In light of the parties' prior agreement to waive 4117.114(G)(11) should this dispute end up in conciliation,<sup>12</sup> the Fact-finder also recommends a 3-year agreement, with the effective date of January 1, 2016, with full retroactivity back to that date of any and all changes.
7. While the Fact-finder is not unmindful that the above recommendations may not meet the Union's expectations, he would like to point out that in mediation, this local was able to achieve some non-wage enhancements that it does not enjoy under the current contract. And, while many unions are

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<sup>12</sup> Union Ex.-I.

not necessarily enamored of pattern agreements<sup>13</sup> which to some extent these recommendations are, it would appear to be in everyone's best interests to have shared sacrifice in order to avoid the City's potential reentry into fiscal emergency and the return of supervision of the Ohio Auditor's Office and the State Oversight Commission.

### **CONCLUSION**

While this Fact-Finder realizes that neither party may be fully satisfied with this Report and Recommendations, he believes that it is consistent with his statutory obligations, flows logically from the evidence of record, help the City stabilize its budget, calls for shared sacrifice by the OPBA, AFCSME and IAFF locals, and provides a workable and mutually equitable solution to the current contract impasse.

Issued: June 25, 2016

Respectfully submitted,  
*Jared D. Simmer, Esq.*  
Fact-Finder

### **CERTIFICATE OF SERVICE**

I, Jared D. Simmer, Esq., hereby certify that the above Fact-Finding Report was served upon the following parties, to wit, the IAFF, Local 1220, by its representative, Stanley J. Okusewsky III, and the City of Girard, Ohio via its representative, Robin Bell, Esq., by both electronic mail this 25<sup>th</sup> day of June 2016, and similarly upon the Ohio SERB via electronic mail this same day.

*Jared D. Simmer, Esq.*

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Jared D. Simmer, Esq.

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<sup>13</sup> Though, understandably, this distaste largely disappears when the pattern benefits the local.