STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN

NORTHFIELD CENTER - SAGAMORE HILLS FIRE DISTRICT	)	
	)	**CASE NO. 2016-MED-01-0059**
AND	)	
OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO	)	**FINDING AND RECOMMENDATIONS**

MELVIN E. FEINBERG, FACT FINDER

July 22, 2016

APPEARANCES

For the Employer:

Michael P. Harvey, Esq.
Michael P. Harvey Co., L.P.A.
(Also Attorney for Northfield Center Township)

Jeffrey J. Snell, Esq.
Snell & Ferfolia, LLC
(Also Attorney for Sagamore Hills Township)

For the Union:

Michael A. DeLuke, Staff Representative
AFSCME Ohio Council 8

SUBMISSION

This matter concerns the fact-finding proceeding between Northfield Center - Sagamore Hills Fire District and Ohio Council 8, AFSCME, AFL-CIO, also collectively known as the Parties. The State Employment Relation's Board (SERB), in accordance with Ohio Revised Code § 4117.14 (C) (3), duly appointed the undersigned Fact Finder in this matter. The fact-finding hearing in this case occurred on June 20, 2016 at the Federal Mediation and Conciliation (FMCS) offices in Independence, Ohio.[1] Prior to the hearing and in accordance with SERB rules, the Parties timely filed their position statements with the Fact Finder. The proceeding was conducted pursuant to the rules and regulations of SERB. The hearing closed on June 20, 2016.

The Parties were permitted to file briefs on June 30, 2016, for limited purposes. The Fact Finder has discretion to permit the filing of such post-hearing briefs. The Union filed no such brief. The Employer's brief was served on and received by the Fact Finder via e-mail on July 1, 2016, one day later than the directed due date. The Union thereafter, via e-mail to the Fact Finder, objected to any consideration by the Fact Finder of the Employer's brief because, among other things, it was untimely filed. Under the circumstances and in view of the fact that the Employer showed insufficient reason for its late filing of its brief, the Fact Finder did not consider the Employer's brief in making his Findings and Recommendations in this matter.[2]

The Parties did agree at hearing that the Fact Finder would be permitted to issue his report containing his Findings and Recommendations on July 22, 2016.

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[1] The Parties permissibly waived SERB's strict time limitations set forth in its April 18, 2016, letter, which would have required that the Fact Finder conduct a hearing and serve Parties with a written report no later than May 2, 2016.

[2] The Parties were notified via e-mail on July 5, 2016, of the Fact Finder's decision not to consider the Employer's untimely filed brief. The Employer in writing requested that the Fact Finder reconsider his decision and that request was denied on July 7, 2016. The Employer renewed its request for reconsideration of the untimely filing on July 11, 2016. However, the rejection of that brief still stands and it was not considered herein.

BACKGROUND

The Union, pursuant to SERB certification in Case #2015-REP-07-0067, is the sole and exclusive bargaining representative for the purposes of collective bargaining in any and all matters regarding wages, hours, benefits, terms and all conditions of employment for the approximately twenty (20) employees in the following Unit:

Included: All part-time Firefighters, Lieutenants, and EMS Coordinator of the Northfield Center-Sagamore Hills Fire District.

Excluded: All management-level employees and supervisors as defined in the Act, all seasonal and casual employees as defined by the State Employment Relations Board, and Administrative Officer, District Clerk, Fire Captain, Fire Chief, and Operations Officer.

The Parties engaged in extremely limited negotiations prior to the actual day of fact-finding. They met once for the purpose of negotiations on January 27, 2016 when the Union delivered its formal proposal. There was no evidence that the Employer ever, in writing, presented the Union with its counterproposals.[3] Prior to the Fact-Finding Hearing, the Parties basically failed to reach formal tentative agreement on any provision of what would have been their first collective bargaining agreement.

The Employer, prior to the Fact-Finding Hearing, filed a Motion To Dismiss Notice To Negotiate with SERB in which it requested SERB to dismiss the Union's Petition to Bargain with the Employer.[4] The Union had earlier filed a Notice to Negotiate on January 21, 2016. The Employer, a Joint Fire District, argued that it was going to dissolve and cease to exist at some

[3]The Employer, at hearing, insisted that it would have entertained further proposals from the Union by letter or e-mail. However, the evidence taken at hearing reveals that after January 27, 2016, it never again agreed to formally meet and/or did not meet with the Union for the purposes of negotiating a collective bargaining agreement, although it was requested to do so.

[4] Although the Motion filed by the Employer upon SERB was entitled NORTHFIELD CENTER-SAGAMORE HILLS JOINT FIRE DISTRICT MOTION TO DISMISS UNION'S PETITION AND ALL RELATING UNION FILINGS, it was filed by "Michael P. Harvey, Esq., Attorney for Northfield Center Township." At the Fact-Finding Hearing, Jeffrey J. Snell, Esq. indicated that he represented Sagamore Hills Township and Michael P. Harvey, Esq. indicated that he represented Northfield Center Township, but that for the purposes of this case they were appearing together. Harvey apparently filed all written documents in connection with this matter.

time in the future. The Union opposed the Employer's Motion. On June 7, 2016, SERB issued a Directive Denying Motion To Dismiss Notice To Negotiate in which it denied the Employer's Motion for lack of supporting evidence, but indicated that it might "…entertain such a Motion in the future, but…will require some evidence including a more certain date of action."

On June 8, 2016, the Employer served upon SERB the EMPLOYER'S MOTION FOR RECONSIDERATION ON THE MOTION TO DISMISS in which it argued, *inter alia*, "…the resolution made by Sagamore Hills Township to withdraw from the Fire District thereby triggering Revised Code §505.37 and §505.371 … required automatic termination and dissolution of the Fire District."[5] In support of its contentions, the Employer attached a copy of Sagamore Hills Township's Resolution 16-15, adopted March 14, 2016, entitled SAGAMORE HILLS TOWNSHIP WRITTEN NOTICE OF WITHDRAWAL FROM THE OPERATION OF THE NORTHFIELD CENTER-SAGAMORE HILLS JOINT FIRE DISTRICT. Said Resolution by its terms appeared to notify Northfield Center Township of Sagamore Hills Township's withdrawal from the Joint Fire District.

The Union on June 10, 2016, filed a "RESPONSE OF OHIO COUNCIL 8, AFSCME, AFL-CIO TO EMPLOYER'S MOTION FOR RECONSIDERATION" in which it argued, *inter alia*, that "No evidence has been submitted to SERB establishing the date that any written notice was provided by Sagamore Hills to Northfield Center…" of Sagamore Hills Township's withdrawal from the Fire District. Moreover, the Union argued that Sagamore Hills Township, subsequent to its adoption of Resolution 16-15, was still not permitted to actually withdraw until "On or after the first day of January of the year following the adoption of the Resolution of withdrawal.…"

[5] As with the original Motion, the Motion for Reconsideration was filed by "Michael P. Harvey, Esq., Attorney for Northfield Center Township."

SERB, as of June 20, 2016, the date of the Fact-Finding Hearing, had not ruled on the Employer's Motion for Reconsideration. However, on July 5, 2016, 2016, SERB denied the Employer's Motion for Reconsideration and noted, *inter alia*, "A plan for dissolution of the employer does not obviate the employer's collective-bargaining obligations. As of this date the employer is still the Northfield Center-Sagamore Hills Fire District."[6]

The Union timely filed its Position Statement in this case in which it set forth specific contract language for each Article at issue in this matter. It contended that language it submitted for each of the thirty-seven (37) Articles of its proposed contract was similar and/or comparable to language found in most Labor Agreements as modified for this particular Unit.[7] In many of those Articles of its proposed contract, the Union cited to specific comparable example contracts, which were placed into and received into evidence at hearing, containing the same or similar language as to that found in its contract proposals. (U-1through 6 and U-8). At the Fact-Finding hearing, the Union presented no witness testimony in support of its arguments, but verbally argued its positions and/or relied on what it presented in its Position Statement and on its documentary evidence (including U-9, SERB Annual Wage Settlement Report).

The Employer timely filed its Position Statement which consisted, among other things, of its Motion To Dismiss Union's Petition filed with SERB (including a copy of Sagamore Hills Township's resolution dated March 14, 2016, withdrawing from the Fire District involved in this case); the April 29, 2016, letter from the Employer's attorney, Michael P. Harvey, to the Union's representative, Michael DeLuke, allegedly responding to the Union's earlier request to meet and to its demand for requested information; the May 10, 2016, letter from Attorney Harvey to Union Representative DeLuke setting forth the Employer's written responses to the

[6] The Fact Finder was served with a copy of SERB's action on July 5, 2016.
[7] The Union made this verbal and written argument in support of every Article of its Position Statement.

Union's previously submitted specific written contract proposals. The Employer, in the April 29, 2016, letter clearly stated to the Union that "…there is no employer anymore but there is not going to be an employer anymore because you cannot have a Fire District with one community and so, the firefighters in that district are going to be terminated by operation of law." In its May 10, 2016, letter, the Employer clearly stated to the Union, "First of all, we do not have a contract and we are not likely to get one in the short amount of time this Fire District has before it is legally terminated. And, second of all, we are not transferring employees anywhere. By operation of statute, …the Fire District will cease to exist. All the employees will be fired by operation of law." However, the Employer's May 10, 2016, letter also contained the written opinions, observations, objections, and suggestions regarding each Article contained in the Union's previously submitted specific contract proposals. The May 10 letter did not, for the most part, contain counterproposals written in contract language form that appeared to meet SERB's Fact-Finding Hearing and Report guidelines. However, that letter was later submitted by the Employer to the Fact Finder as part of its "Position Statement." The Employer made verbal arguments at the Fact-Finding Hearing in support of many of its contentions, but presented no witnesses and no comparable contract evidence or any other kind of evidence in support of its assertions regarding the Union's written contract proposals contained in its Position Statement. The Employer insisted that none of the comparable contracts submitted by the Union into evidence were in fact comparable since they did not deal with a situation where an employer was undergoing or had undergone dissolution. It made clear that, in its opinion, the Fire District had gone through dissolution and was merely winding up its business affairs, and the bargaining unit had, or would shortly, cease to exist. It noted that Sagamore Hills Township had already contracted with Macedonia for fire services; that some bargaining unit employees were, or were

to be, employed as firefighters/EMS employees in Macedonia; and Sagamore Hills and Northfield Center Township were in the process of dividing up the assets and equipment of the joint Fire District. Moreover, the Employer asserted that it believed that neither Northfield Center Township nor Sagamore Hills Township had any obligation to recognize and/or bargain with the Union as the representative of the Unit employees who were or had been employees of the independent entity known as the Northfield Center-Sagamore Hills Fire District.

The Union, at hearing, argued that under the facts and law in this case, the Fire District still had an ongoing obligation to recognize and bargain with the Union as the representative of the certified Unit in this case.

Initially, only SERB has the authority to deal with the legal issues raised by the Parties in this case regarding the Employer's possible continuing obligation to recognize and to bargain with the Union as the representative of the Unit employees.[8] The undersigned Fact Finder, in arriving at his Findings and Recommendations, only has the authority to deal with the Parties' Position Statements defining all unresolved issues and summarizing their respective positions with regard to those unresolved issues, insofar as those Position Statements complied with SERB guidelines for fact-finding. SERB has mandated that "Positions are to be written in contract language form and indicate the effective date of the provisions." (U-9). Moreover, the Fact Finder must consider all record evidence and arguments advanced by the Parties at hearing in light of the criteria set forth below.

CRITERIA

The Fact Finder has taken into consideration, as he is mandated to do, the following factors pursuant to Ohio Revised Code §4117.14(C)(4)(e) and (G)(6)(7)(a)-(f) and Ohio Administrative Code §4117.9-05(J)(K), which more specifically are as follows:

[8] SERB appeared to have done so in its June 7, 2016, and its July 5, 2016, "Directives."

(1) Past collective-bargaining agreements, if any, between the Parties;

(2) Comparison of unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

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

(4) The lawful authority of the public employer;

(5) 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder, in making his Findings and Recommendations, has also been guided by and has considered the Parties' oral and written presentations on the issues, documentary evidence presented during the proceedings, and the record as a whole. The Fact Finder has examined all of the collective bargaining agreements submitted by the Union in support of its proposals and has also based his recommendations upon his experience and knowledge of what is contained in other collective bargaining agreements maintained by SERB. As was previously noted, neither the Employer nor the Union presented witness testimony at the fact-finding hearing. The Employer did not introduce or rely upon any comparable collective bargaining agreements in support of its written counterproposals on those limited occasions when it made such proposals.[9]

[9] The absence of the submission of specific written proposals from the Employer in its Position Statement, in accordance with SERB guidelines, for the overwhelming majority of the Articles of the proposed contract and/or

Additionally, in making the foregoing recommendations, the Fact Finder has been mindful of the fact that the Northfield Center-Sagamore Hills Fire District has been attempting to undergo, is in the process of undergoing or has undergone dissolution. At this point, in view of SERB's June 7, 2016, Directive Denying Motion to Dismiss Notice to Negotiate and of its July 5, 2016, denial of the Employer's Motion for Reconsideration of that Dismissal, the Fact Finder is required to issue this Fact-Finding Report.

ISSUES

The unresolved issues in this case, which in effect constitute every provision of the proposed collective bargaining agreement, are as follows:

Article 1 PREAMBLE (PURPOSE)
Article 2 RECOGNITION
Article 3 CHECK OFF
Article 4 MANAGEMENT RIGHTS
Article 5 UNION RIGHTS & REPRESENTATION
Article 6 NON-DISCRIMINATION/SEXUAL HARRASSMENT
Article 7 BULLETIN BOARDS
Article 8 DISCIPLINE
Article 9 GRIEVANCE PROCEDURE
Article 10 GRIEVANCE MEDIATION
Article 11 EMPLOYEE LIABILITY
Article 12 UNIFORM AND PERSONAL EQUIPMENT
Article 13 PROBATIONARY PERIOD
Article 14 SENIORITY
Article 15 LAYOFF AND RECALL
Article 16 PROMOTION/TRANSFERS/TEMPORARY TRANSFERS
Article 17 MONTHLY SHIFT SIGN-UP
Article 18 OVERTIME
Article 19 SICK LEAVE WITH PAY
Article 20 HOLIDAYS
Article 21 PAYMENT OF UNION NEGOTIATING COMMITTEE
Article 22 SUBCONTRACTING
Article 23 INJURY PAY

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the Employer's failure to introduce into evidence and rely upon language from comparable collective bargaining agreements in support of its few written proposals and/or assertions served as important determinants in the Fact Finder's selection and recommendation of most of the Union's specific written proposals. The Union's proposals, as was noted, were supported in large measure by its introduction into evidence of comparable contracts containing the same or similar language as those proposals. The Employer's submission, in most instances, made it difficult, if not impossible, to determine exactly what its specific complete position was on the Articles at issue herein.

1. ARTICLE 1 PREAMBLE (PURPOSE)

The Union's Position:

The Union proposed utilizing the Article 1, PREAMBLE language contained in the collective bargaining agreement (2013-2015) that The City of Streetsboro has with the IAFF for its unit of part-time firefighters (U-1). That language, modified by the Union herein to reflect the name of the Employer and the Union, is as follows:

> This agreement is hereby entered into by and between the Northfield Center-Sagamore Hills Fire District, hereinafter referred to as the "Employer" and Local and AFSCME Ohio Council 8, AFL-CIO, hereinafter referred to as the "Union." It is the purpose of this Agreement to achieve and maintain harmonious relations between the Employer and the Union; to provide equitable and peaceful adjustment of differences which may arise; and to establish proper standards of wages and other conditions of employment. Accordingly, this Agreement constitutes the entire Agreement between the Employer and the Union, and it supersedes all prior and contemporaneous understandings (both written and oral) not specifically incorporated herein.

The Union contended that the language it proposed was the same or similar to that found in the collective bargaining agreement between The City of Streetsboro and Streetsboro Part-Time Firefighters, IAFF (U-1).[10]

[10] The Union in all of its arguments for all of its proposals stated as follows: "Due to Management's continued refusal to meet we were unable to provide language that may have been acceptable to both parties so we ask the Fact Finder to grant the Union's position."

The Employer's Position:

The Employer proposed to eliminate from the Union's Article 1 submission the second paragraph of Section 1 and substituted the following language:

> It is the intent and purpose of this Agreement to promote and maintain a harmonious relationship between the Northfield Center-Sagamore Hills Fire District and its employees; to set forth a full and complete understanding and agreement between the employer and the union with respect to wages, hours of work, working conditions, benefits and other terms and conditions of employment for Bargaining Unit employees; to ensure orderly uninterrupted and efficient service to the citizens and taxpayers served by Northfield Center-Sagamore Hills Fire District; to assure a fair day's work for a fair day's pay; to provide the procedures for prompt and equitable adjustment to proper grievances regarding the terms and conditions of this contract. The parties recognize and agree that the safety, health and well-being of the citizens served by the Northfield Center-Sagamore Hills Fire District is of paramount importance to all involved.

The Employer proposed to eliminate Section 2 of Article 1 of the Union's submission. It contended that "... it is implicit in the final contract reached that the parties each had the right to submit proposals." It further asserted that it did not "...want to restrict the Fire District from any past practices that are applicable to the relationship. The Fire District, of course, is a separate legal entity. Its existence is approximately six years. But, the Fire District's origins go back to Northfield Center Township. The Employer would rather not engage in protracted grievances or mediation over issues that are part of the culture of the Fire Department."

FINDINGS AND RECOMMENDATIONS: ARTICLE 1

After examining all of the collective bargaining agreements submitted by the Union in support of its proposals (U-1, 2, 3, 4, 5 and 6) and based upon my experience and knowledge of what is contained in other collective bargaining agreements maintained by SERB, I recommend the adoption into the proposed contract of the Union's Article 1 proposed language exactly as it appears herein.[11] I note that while this Unit was certified by SERB on October 29, 2015, there is little evidence that the Employer participated in significant negotiations thereafter. Perhaps if

[11] The recommended language for proposals, herein and throughout the Fact-Finding Report, reflects the necessary "typo" corrections, spelling corrections, punctuation corrections, word corrections, Article and Section number corrections, and/or more appropriate word substitutions made by the Fact Finder.

such negotiations had occurred, the Parties might have explored the Fire Department "culture" the Employer apparently wishes to preserve. It is not unusual for parties to a new collective bargaining agreement to include language, either in the preamble or in other articles, which seeks to make certain that its provisions supersede "…all prior and contemporaneous understandings.…"[12]

2. ARTICLE 2 RECOGNITION

The Union's Position:

The Union proposed the following language for this Article:

Section 1. The Employer hereby recognizes the Union as the sole and exclusive bargaining representative of employees of Northfield Center-Sagamore Hills Fire District for the purpose of collective bargaining in any and all matters relating to wages, hours, benefits, terms and all other conditions of employment in the certified bargaining unit as follows:

INCLUDED:
All part-time Firefighters, Lieutenants, and EMS Coordinator of the Northfield Center-Sagamore Hills Fire District.
EXCLUDED:
All management-level employees and supervisors as defined in the Act, all seasonal and casual employees as defined by the State Employment Relations Board and Administrative Officer, District Clerk, Fire Captain, Fire Chief, and Operations Officer.

Section 2. The Employer shall notify the Union within ten (10) days of the establishment of any newly created job classification and the parties shall meet for the purposes of negotiating a wage rate and job description. In the event agreement is not reached within thirty (30) days, the unresolved issues may be submitted to arbitration in accordance with the provisions of this Agreement.

Section 3. The Employer agrees that employees in classifications excluded from the bargaining unit shall not be reclassified, re-entitled or reemployed or recalled into any bargaining unit classification unless agreed to by the Union.

Section 4. Work normally performed by employee (s) of the bargaining unit shall not be performed by supervisors, forepersons, or other personnel unless:

a) Qualified bargaining unit employees are not available to perform the work; or

[12] The Employer argued at hearing that the comparable contracts submitted by the Union into evidence in support of its specific contract proposals as cited in the Union's Position Statement did not apply in this case. The Employer noted that those contracts covered different bargaining units, different types of bargaining units, and, in any case, did not cover parties facing a legally mandated dissolution. The Employer did not at hearing present any comparable contracts to support any of its contentions. It instead argued that the "dissolution" issue was unique to the Employer.

b) Supervisors, forepersons, or other non-bargaining unit personnel and excluded classifications have normally and previously been performing the work on a normal basis; or
c) It is for the purpose of instructing or demonstrating proper methods of work procedures.

The Union maintained that the Article 2 language was comparable to that which is found in the contract between The Summit County Sheriff's Office and Ohio Council 8, AFSCME Local 1229 (2014-2017). (U-2).

The Employer's Position:

The Employer asserted that the Parties should jointly petition SERB for the Amendment of the Certification should there be new classifications agreed to by them. Furthermore, it proposed that any dispute over the establishment of job classifications be resolved pursuant to Ohio Revised Code §4117 rather than arbitration, although it indicated arbitration could be included in that process but would prefer to use the §4117 procedures.

The Employer also asserted that the Union's proposed Article 2, Section 4 constitutes an "…effort to preserve the union work [and] is not appropriate…" to the Union's proposed (a), (b), and (c) categories. Additionally, the Employer argues that category (b) is subject to too much interpretation. It maintains that it "… is overly limiting that we have to look for qualified Bargaining Unit employees to do the work at a fire [if] someone is sick or is unavailable."

The Employer contended that the staffing of personnel at a fire is up to the officer in charge at the scene, that all personnel decisions at the scene must be adhered to without question, and that challenges to the determination after the fact may be done through the normal grievance procedure.

The Employer proposed that a "mutual aid" section be added to Article 2, which would read as follows:

Mutual Aid. The decision to call for or to respond to a mutual aid call outside the boundaries of the Fire District shall be with the sole discretion of the Fire Chief or his designee, giving due consideration first and foremost to the ability to provide adequate emergency services to the Northfield Center-Sagamore Hills Fire District, the safety of its employees and the availability of Bargaining Unit employees. Minimum manning for each apparatus used in responding to a mutual aid call shall be determined by the Fire Chief or his designees solely.

FINDINGS AND RECOMMENDATIONS: ARTICLE 2

Although I am mindful of the Employer's concerns with respect to the Union's proposed language for Article 2, I must note that for the most part it has not proposed specific alternative language of its own. Under the circumstances and without the testimony from Employer witnesses or the submission by the Employer of preferable comparable examples, I recommend that the Union's proposal for Article 2 be included in the proposed contract and that the language of the proposal be exactly the same as set forth above in the Union's position regarding Article 2, Sections 1-4. I note that most of what the Union proposes does appear in The Summit County Sheriff's Office contract. (U-2). The Union's proposal for this case is to submit job classification issues to arbitration rather than to rely on O.R.C. §4117 and SERB rules and regulations. That solution would appear to be more expeditious. The Employer's specific written proposal with respect to "Mutual Aid" does not appear to properly belong in the Recognition article as it deals with the matter of authority to designate work assignments.

3. ARTICLE 3 CHECK OFF

The Union's Position:

Section 1. The Employer agrees to deduct Union dues, initiation fees, and assessments from the pay of employees within the unit upon receipt of a voluntarily written authorization executed on an Authorization for Checkoff of Dues Form provided for that purpose. The Union shall notify the Employer of the amounts to be deducted.

Section 2. Deductions will be made from the pay of employees each month. Should deductions not be made in such pay period, a double deduction shall be made in the next deduction period. Dues in arrears shall continue until the employee is current.

Section 3. The Employer's obligation to make such deductions shall terminate automatically upon termination of the employment of the employee who signed the authorization or upon his transfer to a

job with the Employer not covered by this Agreement, or upon his layoff from work or upon his absence due to an unpaid approved leave. Such deduction shall be resumed if an employee who is on layoff status is recalled, or an employee who is on an approved unpaid leave of absence returns to work, or an employee transferred to a job not covered by this Agreement is later transferred to a job covered by this Agreement or a job to which an employee has been transferred becomes covered by this Agreement.

Section 4. Deductions provided in this Article shall be transmitted to the Comptroller of Ohio Council 8 no later than the tenth (10^{th}) day following the pay dues are deducted. The Employer will furnish together with its check for Union dues, an alphabetical list by job classification of all employees whose dues have been deducted showing the deductions and the employee's name, address[, and] social security number. A copy shall be submitted to the Ohio Council 8 Akron Regional office and the Local Union at the same time.

Section 5. FAIR SHARE FEE. All bargaining unit employees who are not members in good standing of the Union are required to pay a fair share fee to the Union as a condition of continued employment.

All bargaining unit employees who do not become members in good standing of the Union, shall pay a fair share fee to the Union, as a condition of employment. This condition is effective sixty-one (61) days from the employee's date of hire or the date this agreement is signed by the parties, ~~wherever~~ [whichever] is later.

The fair share fee amount shall be certified to the Employer by the Union. The deduction of the fair share fee from any earnings of the employee shall be automatic and does not require a written authorization for payroll deduction.

The deduction of fair share fees will not be made until the Employer receives written notice to begin deductions from the Controller of Ohio Council 8.

Payment to the Union of fair share fees shall be made in accordance with regular dues deductions as provided herein. A separate listing of those employees paying the fair share fee shall be submitted to the Union along with the check for the fair share fees, in accordance with Section 4 of this Article.

Any employee, as defined in paragraph 1 of this Article, who fails to meet the requirements of this Article shall not be retained in the employ of the Employer, provided the Union had notified the Employer and the employee in writing, by certified mail, of such default and said employee shall have failed to remedy the same within ten (10) days after receipt of such notice.

Section 6. The Union hereby agrees to indemnify the Employer from any and all claims, suits, and judgments and other forms of liability, including all costs of proceedings, arising out of the Employer's agreement with the Union contained in Section 5 of this Article.

The Union contended that this proposal contained comparable language as that found in the collective bargaining agreement between The City of Kent and Local 379 AFSCME, Ohio Council 8. (U-3).

The Employer's Position:

The Employer asserted that a copy of the Authorization Agreement should be in the Appendix to the collective bargaining agreement. Additionally, it maintained that should an employee's pay be insufficient to cover "union deductions" in a pay period, there should not be any "... double deductions for the next pay." Moreover, the Employer insisted that the Fire District will assume no obligation, financial or otherwise, "…arising out of the provisions of Article 3 regarding the deduction of union dues." Furthermore, it insisted that if the collective bargaining agreement "lapses," the Employer should have no further obligation to continue deducting Union dues from an employee's pay.

FINDINGS AND RECOMMENDATIONS: ARTICLE 3

Under the circumstances, in the absence of a specific written proposal from the Employer, I recommend the adoption of the Union's Article 3 CHECKOFF proposal exactly as it appears in the Union's Position Statement. There is ample contractual precedent for including the language of this Article in the proposed contract rather than have it appear in an appendix to the contract. That language is supported by similar and or comparable provisions contained in various articles dealing with dues deduction in the collective bargaining agreements in evidence, including The Summit County Sheriff's Office contract. (U-3). Although the Employer insists on language emphasizing that it assumes no obligations "financial or otherwise" arising out of the deduction of Union dues, the Union's proposal to indemnify the Employer from any and all claims arising from this Article, I believe, is sufficient to meet that objection.

4. ARTICLE 4 MANAGEMENT RIGHTS

The Union's Position:

> **Section 1.** The Employer's exclusive rights include, but shall not be limited to the following, except as expressly limited by the terms set forth in this Agreement:

a. Determine matters of inherent managerial policy, including areas of discretion of policy such as functions and programs, standards of service, overall budget, use of technology, and organizational structure;
b. Direct, supervise, evaluate, or hire Employees;
c. Maintain and improve efficiency and effectiveness of operations;
d. Determine the overall methods, process, means, or personnel by which operations are to be conducted;
e. Suspend, discipline, demote, or discharge, for just cause, layoff, transfer, assign, and schedule, promote, or retain Employees;
f. Determine the adequacy of the work force;
g. Determine the overall mission of the Department;
h. Effectively manage the work force including hours and nature of assignments; and
i. Take actions to carry out the mission of the Department as a governmental unit.

Section 2. In addition, the Union agrees that all of the functions, rights, powers, responsibilities and authority of the Employer in regard to the operation of its work and business and the direction of its workforce which the Employer has not specifically abridged, deleted, granted or modified by the express and specific written provisions of this Agreement are, and shall remain, exclusively those of the Employer. Those Rights listed above affecting the Employee's rights as provided by this Agreement or conditions of the Employees may be challenged through the Grievance and Arbitration procedures of this Agreement.

This language, according to the Union, was comparable to language found in the collective bargaining agreement between The City of Kent and Local 379 AFSCME, Ohio Council 8. (U-3).

The Employer's Position:

The "Preamble" to Article 4 should read as follows:

The management of the Fire District and the direction of the employees including, but not limited to, the rights to hire, classify, promote, transfer, layoff, recall, discipline, discharge for just cause, suspend, direct, control and determine the qualifications of employees; to maintain order and efficiency, and to establish and enforce rules and regulations as well as absentee[/]tardiness, policies, safety standards, workloads and schedules of production; to determine ~~to~~[the] location [and] extent of the Fire District operation; to decide on and select, introduce or discontinue, eliminate or change equipment, machinery, processes and procedures, and to schedule and assign work to the employees shall remain vested exclusively with the Fire District.

Additionally, Section 3 of the Union's proposed language should read as follows:

The Fire District has and retains without regard to frequency of exercise, all rights to operate and manage its affairs and employees which are explicitly or implicitly conferred upon the employer by the Ohio Constitution, Ohio Statutes and other sources of Ohio law. The Fire District shall have the right to promulgate and amend reasonable policies, procedures, directives and work rules. This right includes, but is not limited to, the right to promulgate or amend policies, procedures, directives and work rules as deemed appropriate by the employer to comply with applicable laws and regulations of

the State of Ohio. The reasonableness of the policy, directive or work rule or any application of the same may be subject to review via the grievance procedure.

Section 4 to the Union's Article 4 proposal should read as follows:

No policy, procedure or work rule may be changed without first notifying the union ten (10) days prior to any change. Notification shall be in writing and either posted on the bulletin board or made to AFSCME. The employer and the Bargaining Unit may need to review and discuss the proposed changes before they are put into effect if time permits.

FINDINGS AND RECOMMENDATIONS: ARTICLE 4

The Union's written proposal for Article 4 is supported by most of the language contained in the Summit County Sheriff's Office contract (U-2) dealing with management rights. The Employer's proposal with regard to establishing work rules appears to have been dealt with in the Union's Article 2. Most of the Employer's "Section 4, Preamble" is also dealt with in the Union's Article 4 proposal. On balance, I recommend adoption into the proposed contract of the Union's Article 4 proposal regarding management rights as it deals with most of the Employer's concerns regarding this issue. The recommended proposal for Article 4 should read exactly as does the language in the Union's Article 4 Position Statement submission as set forth herein.

5. ARTICLE 5 UNION RIGHTS & REPRESENTATION

The Union's Position:

Section 1. It shall not be a violation of this agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to enter upon any property involved in a lawful primary labor dispute, refuses to go through or work behind any lawful primary picket line, or refuses to do work normally done by primary striking members of another union.

Section 2. Any alleged violation of Union rights is subject to immediate review at Step 3 of the Grievance Procedure.

Section 3. Upon the employee's request, the appropriate Union representative may represent said employees when requested by such employee in grievances in accordance with the grievance procedure outlined in this Agreement. Where an employee has initiated a grievance and does not elect to be represented by the Union, the Union shall have a right to be present at all formal discussions between the Employee and the Employer concerning the grievance. All grievances presented under such circumstances shall be resolved consistent with the terms and conditions of this Agreement.

Section 4. A steward or the appropriate Union officer shall have a right to represent the Employee when disciplinary penalties are imposed. Stewards and Union officers may also attend other meetings upon request of management. Union representatives shall have the right to represent employees when such representation is needed at meetings or on matters concerning safety and health, pursuant to and consistent with the aims and provisions of the Agreement.

Section 5. With prior approval, the Employer will allow the Union the use of the Fire Station to hold Union membership meetings and conduct other Union business as long as it does not interfere with the operations of the department.

Section 6. When, pursuant to this Agreement or as may be mutually agreed between the parties to this Agreement, Union representatives who participate in negotiations with the Employer shall be paid for not more than thirty (30) hours per person per month for time lost (if any) from their regular work hours. A maximum of four (4) such Union representatives in addition to the Union President and Staff representative may be designated by the Union.

Section 7. The Staff Representative and the President of the Union, or written designee, may consult with employees in the work area before the start of and at the completion of the day's work and during working hours upon advance approval of the Division Head, which shall not be arbitrarily denied. They shall have access to work areas only when authorized by the Administration at reasonable times and only for the purpose of adjusting grievances, assisting in the settlement of disputes, or carrying into effect the provisions and aims of this Agreement. This right is extended subject to the understanding that such access will not interfere with work assignments.

Section 8. Accredited representatives of the Union shall have access to the Employer's facilities for the purpose of investigating grievances, meeting with local union representatives and/or Employer representatives, and employees concerning matters covered by terms of the Agreement.

Section 9. It is understood that the rights listed above do not authorize "Union" officials to be absent from their jobs without proper authorization pursuant to the terms of this Article.

Section 10. UNION MEETINGS With prior approval the Employer will allow the Union, the use of the Fire Station to hold Union membership meetings, and conduct other union business as long as it does not interfere with the operations of the department.

Section 11. UNION ORIENTATION Each biweekly pay period the Local Union President and/or a Representative of Ohio Council 8 shall be permitted to meet with newly hired employees to review Union matters and benefits of the contract.

According to the Union, this language was comparable to language found in the collective bargaining agreement between The City of Kent and Local 379 AFSCME, Ohio Council 8. (U-3).

The Employer's Position:

The Employer furnished no written proposal of its own concerning Article 5, but instead

submitted suggestions, criticism, and opinions more appropriate as a predicate for engaging in collective bargaining than for Fact-Finding. Nevertheless, a summary of some of the Employer's observations concerning Article 5 follows:

The Employer objected to the wording in Article 5, Section 1 of the Union's proposal. It maintained that firefighters cannot be permitted to refuse any type of emergency service because there may be some type of labor dispute where the services are needed. Moreover, the Employer argued that the wording of the Union's Section 1 proposal could be interpreted to mean that firefighters could refuse service even if the labor dispute was on the property of the Fire District itself and that the "Union" could be required by the Union's proposed language "…to not even send the trucks out."

The Employer maintained that the Union's Article 5, Section 2 situation, i.e. "… alleged violation of union rights…" should be subject to "…the normal grievance process and should begin at Step 1."

With respect to the Union's Article 5, Section 3 proposal, the Employer suggested it would be more productive if at the "…early steps…", matters would be handled informally between an employee and a Fire District representative to try to resolve matters without a Union representative present. The Employer insisted that "…it is the employee who holds that right, and it should not be a collective process." The Employer stated, "And, finally, with respect to Section 3 of Article 5, again, the circumstances giving rise to the determination will be procedural with respect to the contract but substantively involves potentially other issues, including Ohio positive law found in the Constitution, statutes and state regulations and procedures, as well as state common law, and past practices applicable to the situation."

The Employer, commenting on the Union's Article 5, Section 5 proposal asked that the

Union submit the names of its Union officers and of two or three bargaining unit employees who would act as Union stewards for the purpose of processing grievances. It proposed that these names be posted on the Union's bulletin board, that any changes be made in writing, and that such lists be current. No Union representative would be recognized by the Fire District until it was notified by the Union of that person's official status. Furthermore, the Employer objected to the Union holding any meetings on its premises for anything other than matters related to the grievance and arbitration process.

The Employer proposed that under Article 5, or a separate Article, some provision should be made for meetings/consultations between the Union and Employer to discuss "...the administration of the contract, [for the purpose of] disseminating general information of interest, [to] give each side the opportunity to share views or suggestions on subjects of interest to their members; to discuss efficiencies and work performance in general; and to consider and discuss health and safety matters. This can be done by email or in person."

The Employer observed that under Section 6 "…it should be the union who pays its representatives for any lost time that can be documented."

Article 5, Section 7 was "over broad" and "…we cannot have people not focusing on their job responsibilities." The Employer took no written position on Article 5, Sections 8, 9 or 10 of the Union's proposals contained in its Position Statement. It maintained that the Union's Section 11 was "redundant." The Union's Statement of Position contained no proposal for a Section 12. However, the Employer maintained (presumably in a proposed new Section 12) "There should be a process notifying the union of any new hires, and then the process can go from there."

FINDINGS AND RECOMMENDATIONS: ARTICLE 5

The Employer submitted no written counterproposal to the Union's Article 5 proposal. Its criticisms of that proposal are extensive. Upon consideration of the Union's language, I find that I am in agreement with the Employer with respect to the Union's Section 1 submission. That language would appear to condone the actions of firefighters who might refuse to perform their duties on property that is the site of a primary labor dispute. Under the circumstances, such language might unjustifiably discourage emergency responders from performing their important tasks. Consequently, I recommend the elimination of the language in that Section.

I am mindful of all of the Employer's specific objections to the language contained in most of, if not all of, the Sections in the Union's proposal on this Article. However, I believe that language is reasonable and recommend its adoption into the proposed contract. Much of the language appears in various Articles of similar and/or comparable contracts that are in evidence in this case. Accordingly, I recommend the adoption of the exact language in the Union's Article 5 as it appears herein, with the exception of the eliminated language contained in Section 1. (The Union's Article 5 Section should be renumbered to reflect the absence of that language, *i.e.* Section 2 shall become Section 1, Section 3 shall become Section 2, etc.)

6. ARTICLE 6 NON-DISCRIMINATION/SEXUAL HARASSMENT

The Union's Position:

> **Section 1.** Both the Northfield Center-Sagamore Hills Fire District and the Union recognize their respective responsibilities under the Federal and State Civil Rights Laws or employment practice acts, and other similar constitutional and statutory requirements. Therefore, both the Township and the Union hereby reaffirm their commitments, legal and moral, not to discriminate in any manner relating to employment on the basis of race, color, creed, national origin, sex, age or disability.
>
> **Section 2.** The Northfield Center-Sagamore Hills Fire District recognizes the right of all Employees to be free to join the Union. The Northfield Center-Sagamore Hills Fire District agrees there shall be no discrimination, interference, restraint, coercion, or reprisal by the Township against any Employee or any applicant for employment because of Union membership.

SEXUAL HARASSMENT

Section 1. The Employer agrees that employees shall not suffer sexual harassment at the work place.

Section 2. The Employer agrees that complaints of sexual harassment may be brought directly to the Employer by the Union. Such [a] complaint shall be investigated within five (5) days and a resolution of the complaint shall then be submitted to the Union, in writing, within five (5) days of the investigation. In the event the matter is not satisfactorily resolved, the Union can submit such complaint directly to Step 3 of the grievance procedure.

Section 3. Sexual harassment is defined as including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a) Submission to the conduct is either an explicit or implicit term or condition of employment.
b) Submission to, or rejection of the conduct, is used as the basis for employment decisions affecting the person who did the submitting or rejection.
c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Section 4. Sexual harassment includes a wide range of unwanted sexually directed behavior, including, but not limited to:

a) assault
b) physical abuse (touching, pinching, cornering)
c) verbal abuse (propositions, lewd comments, sexual insults)
d) visual abuse (leering or display of pornographic material designed to embarrass or intimidate an employee).

Section 5. Sexual harassment is not a consenting relationship between adults.

The Union asserted that this language was comparable to language that was found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Union's language for this proposal could be simplified as follows:

6.1 The employer and the union agree not to engage in discrimination against any employee because of race, religion, age, sex, disability, color, citizenship, or national origin.

6.2 Neither the employer nor the union will interfere with the rights of employees to become members of the union or to refrain from such membership.

6.3 All references to employees in this Agreement designate both sexes and whenever the male gender is used, it shall be construed to include male and female employees.

6.4 The law applicable to any type of discrimination will be first and foremost that promulgated by SERB and secondly by the Ohio Supreme Court and/or General Assembly.

FINDINGS AND RECOMMENDATIONS: ARTICLE 6

The Union and the Employer have both submitted written proposals on this issue and both proposals contained elements that have merit. Most collective bargaining agreements contain provisions that deal with nondiscrimination and/or sexual harassment. Many of the comparative contracts in evidence also contain such provisions, but their language varies greatly. (U-3, 4, 5, 6). All contain less detail than the Union's Article 6 proposal. Sometimes specificity in such a provision discourages potential perpetrators of prohibited conduct from engaging in that conduct. Moreover, it gives the Employer specific guidance as to what constitutes impermissible conduct and makes administering rules against such conduct clearer. Accordingly, I recommend the adoption of the Union's proposal concerning Article 6.

7. ARTICLE 7 BULLETIN BOARDS

The Union's Position:

Section 1. The Employer shall provide the Union with a Bulletin Board provided that: Such Bulletin Board shall be used only for posting notices bearing the written approval of the Union or an official representative of the Union and shall be solely for Union business; and no notice or other writing may contain anything controversial or critical of the Employer or any other institution or of any Employee or other person; and upon request from an appropriate official of the Employer, the Union will remove any notice or other writing that the Employer believes to be inflammatory or derogatory.

Section 2. The Union Bulletin Board shall be kept separate from any other Bulletin Board which the Employer may have for ~~their~~ [its] purposes.

The Union contended that the language of this provision was comparable to language that was found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer agreed, for the most part, with the Union's Article 7 regarding bulletin boards. However, additionally, it proposed language requiring that bulletin boards should be locked and that the Union must assume any and all responsibility and liability for any notices posted on those boards.

FINDINGS AND RECOMMENDATIONS: ARTICLE 7

The Union and the Employer both agree that the Union shall be permitted to have bulletin boards on the Employer's premises. However, as was usual in this case, the "devil is in the details." Comparable contracts in evidence contain bulletin board provisions which vary somewhat from the Union's proposal, including, for example, those seen in U-2 and U-3. Inasmuch as the Employer failed to submit a written proposal on the matter and the Union's written submission provides the Employer with a modicum of reasonable input over what appears on the bulletin board, I recommend that the exact language of the Union's Article 7 written submission be adopted in the proposed contract.

8. ARTICLE 8 DISCIPLINE

The Union's Position

> **Section 1.** Whenever it becomes necessary to discipline its employees, the Employer shall retain all of those rights which are traditionally reserved thereto, subject only to those other procedures, limitations and options which are set forth in this Article.
>
> **Section 2.** All disciplinary action which is taken against a non-probationary employee shall be for just cause, and no non-probationary employee shall be reduced in pay or position, suspended, or removed, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other failure of good behavior.
>
> **Section 3.** No disciplinary action shall be taken against [a] non-probationary employee unless and until the employee is first notified of the basis for the action, which notification shall include a statement of the alleged facts upon which the disciplinary action is based. Such notification shall be in writing and served by personal service or certified return receipt mail to the employee and copy to the Union President within five (5) working days from the day the Employer has completed the investigation of the event(s) necessitating the disciplinary action.

Section 4. Upon receipt of the notice served upon the employee in Section 3 above, the employee or the Union shall have five (5) working days to appeal any such action by appealing through the Grievance Procedure beginning at Step 3. Disciplinary actions may only be appealed to arbitration through the written demand of the Union.

Section 5. Progressive discipline shall be used in all cases except those, where, in the opinion of the Employer, the circumstances of an offense or violation are of such a serious nature that prior progressive discipline is not required.

Section 6. If a holiday, as defined in this Agreement, falls while an employee is under suspension, the holiday shall count as one of the suspension days and the employee shall not be paid for a holiday falling during the suspension period.

Section 7. Disciplinary actions more than twelve (12) months old shall not be used for purposes of imposing discipline.

Section 8. When an employee is called in regarding any disciplinary matter, or the investigation thereof, or when being served notice of disciplinary action, the employee shall have the right to Union representation. The Employer shall so inform the employee and shall call an appropriate Union representative to be present prior to said meeting or when notice of disciplinary action is being served on the employee.

Section 9. Any employee disciplined with suspension or discharge shall not be required to leave the premises until the employee has an interview with the employee's Local Union President.

The Union asserted that the language of this provision was comparable to language found in collective bargaining agreement between The City of Kent and Local 379 AFSCME, Ohio Council 8. (U-3).

The Employer's Position:

The Employer maintained that the Union's proposal for Article 8 "…is a good start."

Section 1 of the Union's Article 8 proposal should also contain the following:

"…the employer shall have the right to discharge or otherwise discipline any employee for just cause, including any violation of the employer's work rules."

Section 3 of the Union's Article 8 proposal should also contain the following additional language:

"When the employer determines that a serious offense has occurred and it is in the best interest of the employer to temporarily remove the employee, the employee may be removed pending a predisciplinary conference provided the conference must be held within five (5) days of written notice concerning the situation."

Section 5 of the Union's Article 8 proposal should additionally contain the following language:

> "The parties recognize and agree that the discipline imposed in any given instance will depend on the facts and circumstances, including the severity of the misconduct, the employee's seniority and overall work record."

Section 8 of the Union's Article 8 proposal additionally should contain the following language:

> A new Bargaining Unit employee who is on probation may be removed from the service of the Fire District at any time and for any reason without recourse to the grievance or arbitration process and set forth in the labor agreement.
>
> Each probationary employee shall be evaluated on a quarterly basis by the employer state certified training officer. These evaluations shall be in writing and shall be maintained in the employee's personnel file. An employee's probation period may be shortened to some period less than one (1) year at the employer's discretion solely. The decision to shorten an employee's probation period will be in the Fire Chief's sole discretion. A former employee of the Fire District of Northfield Center Township who is rehired may have his [or her] one (1) year probationary period shortened by the Fire Chief, depending on the circumstances of his or her rehire.

Section 9 of the Union's Article 8 proposal should be eliminated from the collective bargaining agreement.

A Section 10 should be added to the Union's Article 8 proposal, which should read as follows:

> The Fire District shall maintain one (1) official personnel file for every Bargaining Unit employee. This excludes, specifically, fair share employees. An employee shall be permitted to examine his [or her] official file at any reasonable time in the presence of a Fire District representative and may copy any documents contained therein. Should an employee believe there is an inaccuracy in documents contained in the personnel file, he or she may place any rebuttal material, including a statement from him or her~~self~~ regarding any matter. All letters of support, commendation and discipline, comment or concern from the public shall be permanently placed in this personnel file.

FINDINGS AND RECOMMENDATIONS: ARTICLE 8

The Union presented comparable contract language contained in The City of Kent

Agreement in support of its Article 8 proposal. The Employer, as noted above, did present some specific written proposals to the Union's Sections 1, 3, 5, 8, 9, and added a Section 10. The Employer presented no comparable contract language in support of its position. The Employer's suggested language for Section 8 contains language regarding probationary employees which does not appear pertinent to this Article. The Employer's proposed additional Section 10, Article 8 language regarding personnel files would appear to be out of place in Article 8. On balance, I believe that the Union's proposed language for this Article, as is supported by comparable language in its submitted evidence, is more appropriate to the proposed contract. Accordingly, I recommend the adoption of the exact language of the Union's Article 8, Sections 1 through 9 Position Statement submission, with the exception of the additional "just cause" language I have added to Section 1 and the language I have substituted below for the Union's Article 8, Section 9. I believe that there may be a circumstance when an employee might be suspended or discharged and the Local Union President is not available for a meeting with that employee. In summary, I recommend that the Union's Article 8, Sections 2, 3, 4, 5, 6, 7, and 8 be adopted as they appear herein in the Union's proposal. Additionally, I recommend the adoption and inclusion of the following language for Article 8, Sections 1 and 9.

> **Section 1.** Whenever it becomes necessary to discipline its employees, the Employer shall retain all of those rights which are traditionally reserved thereto, subject only to those other procedures, limitations and options which are set forth in this Article. However, the Employer shall only discipline, suspend or discharge employees for just cause.
>
> **Section 9.** Any employee disciplined with suspension or discharge shall not be required to leave the premises until that employee has had an interview that day with the Local Union President, or a Union Steward should the Local President be unavailable.

9. ARTICLE 9 GRIEVANCE PROCEDURE

The Union's Position:

Section 1. It is the intent and purpose of the parties of this Agreement that all grievances shall be settled at the lowest step possible pursuant to the grievance procedure specified herein. It is understood by the parties that any Employee shall have the right to have a Union representative present at all steps of this procedure.

Nomenclature

Grievance - A grievance shall be deemed as a written claim arising under the terms of this Agreement with regard to the interpretation or application of this Agreement, including any and all disciplinary action.

Grievant - The "grievant" shall be defined as any Employee or group of Employees allegedly harmed as a result of a violation of this Agreement.

Day - A "day" as used in this procedure shall mean calendar days, excluding Saturdays, Sundays, or Holidays as provided in this Agreement.

The following procedure shall apply to the administration of all grievances filed under this procedure.

Section 2. All formal grievances shall be reduced to writing and shall include the name and position of the grievant, the provisions of the Agreement allegedly violated, the time and place where the alleged events or conditions giving rise to the grievance took place, and a general statement of the nature of the grievance and the relief sought by the grievant.

All formal decisions shall be rendered in writing at each step of the grievance procedure and copies of the answer shall be submitted to the grievant and his representative. Nothing contained herein shall be construed as limiting the right of any Employee having a grievance to discuss the matter informally with any appropriate member of the administration and having such matter informally adjusted without the intervention of the Union, provided that the adjustment is not inconsistent with the terms of this Agreement. Any such informal adjustment shall not be precedent setting or binding upon either the Union or the Employer with regard to future proceedings.

Any Employee opting to waive representation at any step in this procedure shall do so in writing prior to the commencement of the grievance hearing. However, this does not preclude the right and obligation of the Union to have a Business Agent present at all grievance hearings if it so chooses.

The time limits specified herein may be waived at any step by mutual Agreement of the parties. Any such waiver shall be reduced to writing and signed or initialed by both parties.

If the Employer fails, at any step, to answer a grievance filed pursuant to this procedure within the specified time limits, said grievance shall be deemed settled at that step in favor of the grievant. In the event any grievance is not filed at the appropriate step within the time limits specified, said grievances shall be considered dismissed with prejudice.

Section 3 - Grievance Procedure Steps

Step 1: Any Employee who believes that he has a claim arising under the term of this Agreement with regard to the interpretation or application of this Agreement including any and all disciplinary actions shall reduce said grievance to writing as provided herein and submit the same within seven (7) days of the date of occurrence or within fifteen (15) days of the date the Employee gains knowledge of the occurrence of said grievance to the Fire Chief. The Chief shall schedule a meeting with the Employee and his Union representative ~~with~~ [within] ten ~~(1)~~ [(10)] days from the date the Chief is informed of the grievance.

Step 2: If the grievance is not satisfactorily resolved at Step 1, the grievance shall proceed to Step 2 by the grievant notifying the Fire District Board of Trustees of said Appeal within ten (10) days from the date of the written response. A meeting on said grievance shall be held within five (5) days from the date the grievance is submitted to the Board of Trustees. The Board of Trustees shall respond in writing to the grievant and the Union representative within ten (10) days from the date of Step 2 meeting.

Step 3: If the grievant is not satisfied with the decision rendered by the Board of Trustees, the Union shall then have the choice to proceed to arbitration pursuant to Section 4 of this Agreement.

A non-probationary Bargaining Unit Employee who is suspended or discharged shall be given written notice immediately regarding the reason for disciplinary action. Any disciplinary action taken by the Employer shall only be for reasonable or just cause.

Within ten (10) days of notice of suspension or discharge, a hearing shall be held with the Township Board of Trustees. The Board of Trustees shall make a decision on said suspension or discharge within ten (10) days from the date of hearing. If the Union is not satisfied with the decision rendered by the Board of Trustees, then the same may proceed to arbitration pursuant to Section 4 of this Agreement.

Section ~~3~~ [4.] Grievance Mediation Prior to proceeding to Step 4 Arbitration, the Union and Employer may mutually agree to submit the dispute to grievance mediation pursuant to the terms and conditions enumerated in Article 10 Grievance Mediation.

Section ~~4~~ [5.] Arbitration Procedure In the event that the Grievance is not resolved at Step 3, or in the event that the Union objects to a disciplinary action, the Union may request arbitration within thirty (30) working days of receipt of the decision of the Employer's Chief Labor Representative. Such request shall be in writing.

a) Within thirty (30) working days after Arbitration is requested, the parties shall attempt to select an Arbitrator by mutual agreement. If such agreement is not reached, a list of seven Arbitrators may be requested by the Union from the Federal Mediation and Conciliation Service. Within five (5) working days following receipt of said list, the Employer and the Union shall discuss and select an Arbitrator from the list. The selection of the Arbitrator shall be done by mutual agreement of the parties or, if no agreement can be reached, by each party alternately striking one name from the list until only one name remains. The side to strike the first name shall be chosen by lot.

b) The fees and expenses of the arbitrator shall be borne equally by both parties. The arbitrator shall have jurisdiction only over disputes arising out of grievances as defined herein. The arbitrator shall not have the power to add to, subtract from, or modify any terms or conditions of

this agreement. All decisions of arbitrators consistent with their jurisdiction, power and authority as set forth herein, and all pre arbitration grievance settlements reached by the Employer and Union shall be final, conclusive and binding on the Employer, the Union and the employees. The arbitrator shall render a written decision to the parties within thirty (30) days ~~of~~ [after] the close of the ~~hearing~~ [record].

Section ~~5~~ [6.] Employee Union witnesses, the grievant and employee Union representatives shall not lose pay for attendance at arbitration proceedings.

According to the Union, the language of this Article was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer took no verbal or written position on any part of the Union's Article 9 proposal with the exception of Section 4, Arbitration Procedure. It believed that Section 4 should read as follows:

4.1 All procedures relating to the Hearing before the Arbitrator shall be conducted pursuant to the rules of the Federal Mediation and Conciliation Service then in force by that organization.

4.2 The Arbitrator's Award shall be final and binding on the parties. The cost of the Arbitration shall be borne by the losing party as designated by the Arbitrator. Cost does not include attorney's fees. The fees of the court reporter shall be paid for by the party requesting the court reporter because one is not normally used by an FMCS Arbitrator. The court reporter fees shall be split equally if both parties request the court reporter's recording of the Hearing.

4.3 The FMCS Arbitrator shall have no power or authority to add to, subtract from, or in any manner alter the specific terms of this Agreement or to make any Award requiring the commission of any act prohibited by law or to make any Award that itself is contrary to law or violates any of the terms or conditions of this Agreement. The Arbitrator shall determine only whether there has been a violation of the Agreement within the allegations set forth in the grievance. The Arbitrator shall not substitute his or her judgment for that of the Employer unless he or she expressly finds that the Employer's judgment or actions violate the written provisions of this Agreement. The Arbitrator's Decision and Award will be in writing and shall be delivered within thirty (30) days from the date that the Record is closed by the Arbitrator.

4.4 It is agreed that, except as otherwise expressly provided in this Agreement, the grievance and Arbitration provisions of this Agreement are the exclusive remedy for a Bargaining Unit employee's resolution of any dispute arising under this Agreement.

FINDINGS AND RECOMMENDATIONS: ARTICLE 9

The Employer took no verbal or written position on the Union's Article 9, Sections 1, 2, 3, 4, and 6 as they appear herein. It did submit a written counterproposal to the Union's Section 4, which by my correction is actually the Union's Section 5.[13] The Employer's Section 4 proposal differs in a number of respects from the Union's proposal. It is a "loser pays" proposal which also mandates that the "... Arbitration provisions of this Agreement are the exclusive remedy for a Bargaining Unit employee's resolution of any dispute arising under this Agreement." It thereby forecloses the grievant from seeking redress in any other form. Presumably these provisions were intended to discourage grievances and to waive a grievant's important legal rights to alternative redress in other forms, *i.e.*, appropriate agencies and/or courts.

Elements of the Union's Article 9 proposal appear in many of the comparable agreements it submitted as evidence. Moreover, it is a complete written proposal that was submitted in its Position Statement and is less "draconian." Accordingly, I recommend that the language set forth in the Union's Article 9 proposal, as corrected, in this Fact Finder's Report be adopted into the proposed contract.

10. ARTICLE 10 GRIEVANCE MEDIATION

The Union's Position:

Section 1. All grievances which have been appealed to arbitration will be referred to mediation unless either party determines not to mediate a particular grievance. Arbitration scheduling will give priority to cases which have first been to mediation.

a) The parties shall request a mediator from the Federal Mediation and Conciliation Service which provides free grievance mediation.

[13] The Union's Article 9, Section 5 is now Section 6.

b) The mediator will be asked to provide a schedule of available dates and cases will be scheduled in a manner which assures that the mediator will be able to handle multiple cases on each date unless otherwise mutually agreed. The parties agree not to hear more than five (5) cases a day.

c) The grievant or steward, as designated by the Union, shall have the right to be present at the mediation conference. Each party may have no more than two representatives as a participant in the mediation effort. Persons representing the parties shall be vested with full authority to resolve the issues being considered.

d) The mediator may employ all of the techniques commonly associated with mediation, including private caucuses with the parties, but the taking of oaths and the examination of witnesses shall not be permitted and no verbatim record of the proceeding shall be taken. The purpose of the mediation effort is to reach a mutually agreeable resolution of the dispute and there will be no procedural constraints regarding the review of facts and arguments. There shall be no formal evidence rules. Written materials presented to the mediator will be returned to the party at the conclusion of the mediation meeting.

e) Mediation efforts will be informal in nature and shall not include written opinions or recommendations from the mediator. In the event that a grievance that has been mediated is appealed to arbitration, there shall be no reference in the arbitration proceeding to the fact that a mediation conference was or was not held. Nothing said or done by the mediator may be referenced or introduced into evidence at the arbitration hearing. Nothing said or done by either party for the first time in the mediation conference may be used against it in arbitration.

f) At the mediation conference the mediator shall first seek to assist the parties in reaching a mutually satisfactory settlement of the grievance which is within the parameters of the collective bargaining agreement. If a settlement is reached, a settlement agreement will be entered into at the mediation conference. The mediator shall not have the authority to compel the resolution of a grievance.

g) If a grievance remains unresolved at the end of the mediation session[,] the mediator will provide an advisory opinion as to how the grievance is likely to be decided if it is presented at arbitration. This opinion is non-binding and inadmissible in any subsequent arbitration proceeding.

h) If the parties do not accept the advisory opinion of the mediator, the Union may appeal the grievance to arbitration. All applicable time limits for appealing a grievance to arbitration contained in the party's collective bargaining agreement shall commence on the day the Union receives the mediator's advisory opinion.

i) The dates, times and places of mediation sessions will be determined by mutual agreement of the parties.

The Union argued that this language was comparable to language that was found in most Labor Agreements and had been modified for this particular Agreement.

The Employer's Position:

The Employer believed that grievance mediation generally is a "good process." It, however, did not, either verbally or in writing, offer its own specific proposal on the matter. In summary, it believed that Section 1(h) and Section1(i) should be eliminated from the final contract recommendation. It contended, among other things, that the discussions during mediation should not be reduced to writing and that a Mediator should not be permitted to issue any type of written opinion. It argued that mediation should be "… completely confidential and not subject to inspection by any third party." It maintained that if the Parties failed to reach agreement in mediation, the Union could appeal the matter to Arbitration.

FINDINGS AND RECOMMENDATIONS: ARTICLE 10

The Employer's desire to eliminate paragraphs "h" and "i" from the proposal is perplexing. Those paragraphs simply require that the Parties proceed to arbitration if they cannot resolve an issue in mediation. Furthermore, they empower the Parties to select the dates, times and places of mediation sessions by "mutual consent." Slightly different provisions for mediation are found in comparable contracts in evidence. (U-4, U-8). In accordance with the "CRITERIA" and the rationale set forth in footnote 9 above, I recommend the adoption into the proposed contract of the Union's Article 10 language exactly as it appears herein.

11. ARTICLE 11 EMPLOYEE LIABILITY

The Union's Position:

Section 1. Consistent with Ohio Revised Code, Chapter 2744.07, ~~and~~ the Employer shall provide for the defense of an employee in any civil action brought against him by reason of his [/her] employment with the Northfield Center-Sagamore Hills Fire District.

Section 2. The employee shall be represented, to the extent that he [or she] was acting within the scope of his [/her] employment or official responsibility. Should the Employer decline to represent the employee pursuant to this paragraph, the employee shall have available the remedy guaranteed at O.R.C. §2744.07(C).

Section 3. Representation and defense by the Employer shall be limited to the extent that it shall not indemnify said employee for punitive damages, but only those compensatory damages where the employee was acting within the scope of his employment.

Section 4. In the event an employee has to resort to litigation to determine whether the Employer is obligated to defend such employee and prevails in such litigation, the Employer shall reimburse the employee for reasonable attorney fees and costs incurred by such litigation.

The Union contended that the language of this proposal was comparable to that found in the collective bargaining agreement between The City of Streetsboro and Streetsboro Part Time Firefighters (U-1).

The Employer's Position:

The Employer asserted that the Union's Article 11 proposal "…is too broad…[so as] to require the Employer to defend an Employee in any civil action by reason of his employment." The Employer believed that the party should simply follow the requirements of O.R.C. §2744.07(A)(1) and (A)(2). It contended that the first three Sections of the Union's Article 11 proposal should be replaced by the language in Ohio Revised Code §2744.07(C). The Employer insisted that "In no way does the statute require or permit the Trustees for the Townships involved in this Fire District to reimburse the employee for reasonable attorney's fees and costs, and none shall be undertaken."

FINDINGS AND RECOMMENDATIONS: ARTICLE 11

Although the Union contends that its Article 11 language is supported by the The City of Streetsboro collective bargaining agreement (U-1), an examination of that agreement fails to support the Union's contention. Nevertheless, the Union did submit a complete written proposal concerning this Article. The Employer basically maintains that the Parties should be guided by the language contained in Ohio Revised Code §2477.07 in dealing with "Employee Liability." On balance, I believe that the Union's Article 11 language, in large measure, is supported by the language and intent of O.R.C. §2744.07 and §2744.07(C). Moreover, the Union's Section 4

proposed language of that Article simply enables an employee to enforce his/her rights under the Article. Accordingly, I recommend that the Union's Article 11 language, exactly as it appears herein, be adopted into the proposed contract.

12. ARTICLE 12 UNIFORM AND PERSONAL EQUIPMENT

The Union's Position:

Section 1. The Employer shall furnish each newly hired ~~employees~~ [employee] with the following items of uniform and personal equipment which shall be worn in ~~according to~~ [accordance with] the dress code of the Fire Division.

a) Two (2) tee shirts
b) Two (2) pair work pants
c) Two polo style shirt[s]
d) One job shirt
e) One pair safety shoes or boots, initial issue only

All specialized, required, combat (firefighting or EMSO clothing, shall be provided and replaced by the Employer, on an as needed basis, including but not limited to:

a) Bunker gear (Coat & Pants) ~~Hemet~~ [Helmet], Gloves, and Hood
b) Bunker boots
c) Blood borne resistant jackets, Masks, Glasses, Goggles

Section 2. In addition, employees shall receive a uniform allowance in the amount of [forty-one cents] ($.41) per hour to a maximum of $775.00 per year, payable by December 1st of each contract year by a separate check.

The Union argued that the language of this proposal was comparable to language found in the collective bargaining agreement between The City of Streetsboro and Streetsboro Part Time Firefighters. (U-1).

The Employer's Position

Although it drafted no specific proposal on Article 12, the Employer maintained that with respect to the Union's Article 12, Section 1 proposal, it did not "…have any problem with Section 1 with respect to the equipment being sought. Obviously, the Fire District will provide not only what is being asked but what is necessary to do their job, including cap badges, regular badges, belt, and that makes sense." However, with respect to the Union's Article 12, Section 2 proposal, the Employer asserted that "… $700.00 to $750.00 for yearly clothing allowance is not

out of line although there are other ways to provide it, including having firemen grab what they need as they need it or requisition it. 3. Also, if we have an initial firefighter who is promoted but still in the Bargaining Unit, we might have to provide some dress uniforms and a dress hat. 4. And, if anything has been damaged during a fire, including civilian clothes if somebody has been called via radio or pager and they come without their clothes on, normally the Employer pays for those things. 5. There should also be some type of provisions for testing provisions and, of course…any issued equipment, articles, manuals, clothing that is paid for by the Employer should be returned if somebody quits or moves on for whatever reason."

FINDINGS AND RECOMMENDATIONS: ARTICLE 12

The Union submitted a complete written proposal concerning Article 12, which is substantially similar to the language contained in the comparable contract in The City of Streetsboro. (U-1). Even the Employer agrees that the monetary yearly clothing allowance in the Union's proposal is not "out of line." Therefore, I recommend the adoption into the proposed contract of the exact language in the Union's Article 12 proposal as it appears herein.

13. ARTICLE 13 PROBATIONARY PERIOD

The Union's Position:

> **Section 1.** New hired employees shall be considered on probation for a period [of] three hundred sixty-five (365) calendar days.
>
> **Section 2.** The Employer will furnish the Union a list of new hires each week showing name, address, date of hire, social security number, starting rate, department and classification. The Employer shall also furnish this same information to the Union each week, for employees who have completed this probationary period, been terminated, promoted or transferred.

The Union argued that this language was comparable to language that was found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer submitted no specific written proposal to this Article. It did, however, maintain that "1. After the first year of hire and the probation period is met, seniority should be lost only when the employee discharged for just cause is laid off or not recalled within 18 months, resigns or retires. 2. Each year, the Employer should determine the seniority list from the date of hire which is a year after probation has ended. Seniority normally does not accrue during approved unpaid leaves, but there may be some circumstances such as military or disability under the ADA that qualify for this. But, the issue that really needs to be addressed is termination of seniority is lost if you are there in another capacity because the important aspect of an Employer is to reward length of service, and it is the Employer who hires the labor and needs seniority to make sure we retain good people and very little interest in whether or not someone is Bargaining Unit or not Bargaining Unit with respect to that seniority."

FINDINGS AND RECOMMENDATIONS: ARTICLE 13

The Union's written proposal for Article 13 does contain language which is similar to the language contained in probationary provisions of the comparable contracts in evidence when that language is considered in aggregate. (U-1,2,3,4,5,8). Again, the Employer, as was previously noted, submitted no written proposal on this Article. Its assertions might have provided a predicate for negotiations. Accordingly, I recommend that the exact language of the Union's Article 13 as it appears herein be adopted.

14. ARTICLE 14 SENIORITY

The Union's Position:

> **Section 1. DEFINITION** Seniority is an employee's uninterrupted length of continuous service within the Employer including any approved leaves of absence. Newly hired probationary employees who have completed their probationary period shall be entered on the seniority list, with seniority retroactive to date of hire.

Section 2. SENIORITY POSTING The Employer shall post a copy of the seniority list showing the seniority of each employee listed by job classification and department on each Employer's bulletin boards. The seniority list shall be reviewed or updated every ninety (90) days with copies being furnished to the union at such time.

Section 3. LOSS OF SENIORITY An employee shall lose all seniority rights for any one or more of the following reasons:

a) Retirement (this is not to be construed to mean that the retiring employee loses benefits to which he is entitled at the time of his retirement).
b) Voluntary resignation.
c) Discharge for cause when such discharge is not reversed by way of the grievance and/or arbitration procedures.

Section 4. An employee who leaves the bargaining unit into a non-bargaining unit position shall lose all seniority. If such employee returns to the bargaining unit, such employee shall maintain credit for vacation, retirement, sick leave, and other ~~type~~ benefits of this type that are accrued by seniority or hours worked.

Section 4 [5]. Employees of the Employer who are employed in classifications outside the bargaining unit, who become employed in bargaining unit[-]covered classifications, shall be considered as ~~a~~ new employee[s] for purposes of seniority under provisions of this agreement. However, such [an] employee shall receive credit for accumulated Sick Leave, Vacations, Retirement or other type [of] benefits that are accrued.

The Union maintained that the above language of this Article was comparable to language found in the collective bargaining agreement between The City of Kent and Local 379 AFSCME, Ohio Council. (U-3).

The Employer's Position:

The Employer submitted no written proposal on Article 14 SENIORITY. It, among other things, insisted that new firefighters "…should not have any association representation or benefits as defined in the agreement. Nor any recourse of the grievance procedure probationary discharge." Moreover, it maintained that firefighters who were employed by other employers should not be required to serve in the probationary period in the Fire District or they should only serve a reduced probationary period.

FINDINGS AND RECOMMENDATIONS: ARTICLE 14

Although the Employer submitted no written proposal concerning the Union's Article 14 SENIORITY, it did have the unusual observation that newly hired employees should not have the right to Union "...representation or benefits as defined in the Agreement." Moreover, the Employer seemed to have dealt with the Union's Article 14 proposal in its Article 14 and Article 15 observations.

I recommend that the exact language contained in the Union's written Position Statement proposal for Article 14 SENIORITY be adopted into the proposed contract as it contains many similar elements to those found in seniority provisions from other comparable contracts that are in evidence in this case, including portions of The City of Kent's contract. (U-3).

15. ARTICLE 15 LAYOFF AND RECALL

The Union's Position:

Section 1. LAYOFF NOTICE Reasons for layoff shall be for lack of work only. Should layoff become necessary, the union and the Employer shall meet to discuss alternatives to layoff.

Whenever it becomes necessary to reduce the work force, the Employer shall layoff in the following manner:

a) Any temporary, casual or seasonal employees within the department and classification shall be first to be laid off.

b) Any probationary employees within the department and classification shall be next to be laid off.

c) Next to be laid off will be non-probationary employees, starting with employees with the least seniority, within the classification affected.

d) To avoid layoff, an employee may elect to bump an employee with less seniority in the next lower classification; bump a less senior employee in the same pay range, provided the employee has the skill and ability to perform the work in the same pay range classification into which the employee elects to bump. As a last resort, an employee may also bump into a temporary, seasonal or part time position and maintain seniority, if any such position exists. Such position will be held at the appropriate rate of pay and with the appropriate benefits that inure to the position.

e) The Employer will provide thirty (30) days advance notice of a layoff to those employees affected by the layoff. Any such notice shall be provided simultaneously to the union. Such notice shall contain effective date of layoff and reason for layoff.

f) When affected employees have a tie in seniority date, layoff shall be determined by the initial of the last name. Layoff shall commence from Z through A.

Employees shall have two (2) working days from receipt of notice of layoff to inform the Employer, in writing, of their election under Section I.E. The Employer shall have two (2) working days to confirm or deny the employee's option to bump in conformance with Section 1(E) of this Article.

An employee shall have the option of either accepting work in any classification into which the employee can bump or accepting the layoff at the employee's discretion.

The Employer and/or its representatives will not challenge an employee's right to unemployment compensation who chooses to take layoff rather than bump, unless the employee refuses a recall to a bargaining unit position in the classification from which the employee was originally laid off.

In event of layoff, such layoff shall not occur until after all bump and layoff options have been exercised and completed.

No new employees in the bargaining unit job classifications shall be hired, nor shall any promotions be made until all employees on layoff status have been recalled.

Employees on layoff shall be notified of openings occurring, in classifications other than the classification from which the employee was laid off, and shall have the right to submit a bid pursuant to Article. It is further agreed that no new employee shall be hired into such classification ahead of laid off employees as long as the laid off employee has the skill and ability to perform the job in question.

The Local Union President and Stewards shall remain at the top of seniority lists for layoff and recall purposes. Such Union representatives shall have "Super Seniority" in the appropriate bargaining unit. Such Union representatives shall be designated in writing to the Employer.

Section 2. RECALL

a) Recall of employees on layoff status shall be in the reverse order of layoff. Notification of recall shall be first by telephone (to be confirmed the same day by certified mail).

b) Employees shall have recall rights for three (3) years or employee's seniority, whichever is greater.

The Union asserted that the language of this proposal was comparable to that found in many Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer provided no specific written proposal for Article 15, Layoff and Recall. It maintained that it did not agree with the Union's Article 15, Section 4 concerning "…losing seniority for switching positions." Moreover, it contended that "…under Section 3, loss of seniority should also be for being on a recall list but not being called back within 18 months or not returning from an approved ~~lease~~[leave] when they are supposed to return." The Employer asserted that it already discussed the issue of seniority in its positions on other Articles.[14]

Furthermore, the Employer appears to have mistakenly considered the Union's Article 15 proposal under its discussion of Article 16 of its Position Statement. However, in doing so, as was previously mentioned, it failed to follow SERB's Fact-Finding guidelines that require, among other things, that "Positions are to be written in contract language…." Nevertheless, the Employer's Article 15/Article 16 submission contained much discussion, opinion, and suggestion regarding the Union's proposal.

A summary of some of the Employer's additional contentions are as follows: 1. It suggested that meetings with the Union prior to implementing any reduction of employees in the bargaining unit should be optional. It did not agree with the Union's proposal as to which employees should be laid off or in what order that layoff should occur. 2. It did not agree with the Union's proposal regarding bumping rights. 3. It argued that the Union's proposal requires that employees to be laid off receive too many days' notice prior to being laid off. 4. The Employer believed that employees being recalled should only receive notification by cell phone or email and should only have five days to notify the Employer of intent to return to work. 5. It further argued that the Employer must have the authority to determine the size and scope and use

[14] The Employer's position on Article 15 of the Union's written proposal regarding Sections 3 and 4 was very confusing inasmuch as there were no Sections 3 and 4 in the Union's proposal.

of part-time fire rescue employees, and when their services are no longer needed for whatever reason a certain amount of notice of that fact might be given to those employees and to the Union. 6. Moreover, the Employer insisted that it cannot be restricted from subcontracting Fire District work, especially in a mutual aid situation.

FINDINGS AND RECOMMENDATIONS: ARTICLE 15

The Union's written proposal on Article 15 LAYOFF AND RECALL appeared to be straightforward and dealt only with issues characteristic of that Article's subject. Many of the comparable contracts in evidence contained Layoff and Recall provisions with similar elements, when considered in aggregate, to those in the Union's proposed Article 15. (U-1,2,3,4,6,8). The Employer chose not to submit a complete written proposal on the matter in its Position Statement. Instead, in its treatment of the topic in its Article 16, the Employer "brainstormed" numerous ideas about the issue. The Union's Article 15 proposal is both appropriate and complete. I recommend the adoption into the proposed contract of the Union's Article 15 LAYOFF AND RECALL language as it appears herein.

16. ARTICLE 16 PROMOTION/TRANSFERS/TEMPORARY TRANSFERS

The Union's Position:

Section 1. All Bargaining Unit members will be placed in the appropriate classification upon achieving the appropriate EMT, or Paramedic certification.

JOB POSTINGS Where there is a vacancy in the Lieutenant Classification, or a new Classification, employees desiring to bid on such job may do so as follows:

Notice of vacancy or new job shall be posted on all Union bulletin boards for five (5) working days from the date the job opening has been posted.

During this five (5) day period, employees who wish to apply for posted opening[s] may do so by submitting a bid application. The bid application must be in writing, signed by employees, dated and ~~be~~ submitted to the Employer. Upon submission, the form shall be time stamped. Forms used for this purpose shall be provided by the Employer. The employee and Union shall receive a copy of such bid application.

Open vacancies or new jobs being posted shall indicate the classification, rate of pay, shift, department and duties of said position. The Employer will provide the Union with a copy of the posting.

If there is no qualified bidder, the Employer may fill the vacancy by hiring a new employee.

The Employer will provide each employee who bids on the posted position and was not selected a written notification within two (2) working days subsequent to the selection, listing the reasons why such employee was not selected for the posted position.

The qualifications for the Lieutenant Classification must be a paramedic with five (5) years of service with the department. The Fire Chief will consult with the Union when establishing any additional qualifications.

Section 2. PROMOTIONAL SELECTION

a) The Employer shall fill the opening within five (5) working days, by selecting the employee with the most seniority who has the necessary skill and ability to perform the job.

b) The Employer will provide a notice to the Union showing the name of the employee, seniority date and classification, selected to fill the position, or that no employee was selected to fill the position. This notice shall be provided to the Union within two (2) working days subsequent to the decision to select or not to select an employee.

Section 3. PROMOTIONAL TRIAL PERIOD The employee shall have a trial period of six (6) months. During this trial period, the employee shall have reasonable help and supervision. If the successful bidder fails thereafter to qualify during the trial period, he shall have the right to revert to his former job and this right shall in turn apply to other[s] who changed jobs as the result of filling the posted position.

Section 4. TEMPORARY TRANSFERS The senior employee on duty will receive the Lieutenant's classification rate of pay when there is no Lieutenant on duty.

This language, according to the Union, was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer appeared to have dealt with the Union's Article 16 PROMOTIONS/ TRANSFERS/TEMPORARY TRANSFERS under the discussion of its Article 17.

Again, it did not really present its position in "… written contract language form..." in response to the Union's Article 16 proposal. In its submitted Position Statement, which was

originally sent in a letter to the Union on May 10, 2016, as a bargaining position, the Employer set forth many objections, suggestions, and opinions on the Union's proposal.

A summary of some of the Employer's objections to the Union's specific Article 16 proposals are as follows: 1. It maintained the new classifications do not open up "… unless the classifications exist at the time that the contract is signed and in force." 2. The Employer did not believe "…that all Bargaining Unit members will be placed in an appropriate classification upon achieving certain EMT/Paramedic certifications." 3. With respect to Section 1, Job Postings, the Employer did not "…think it is feasible for the Employer to be listing the reasons to an employee why he or she was not selected for the posted position that allowed the Employer to seek someone from the outside. That is not the way it should work." 4. It did not "…think the union should be setting forth requirements for the positions." 5. With respect to Article 17 (the Union's Article 16), Section 3, the Employer did not "…think that an unsuccessful person can automatically bump someone out of his position…" if "…he or she…washes out for whatever reason." It believed that "…creating a whole series of bumping does not make any sense either." 6. Moreover, the Employer argued that the Union's suggested six-month trial for those who are promoted is excessive and should be three months. It noted that "… if after three (3) months they do not seem to get it, that should be the end of it." 7. Additionally, with respect to Section 4, Article 17 (the Union's Article 16) the Employer asserted "…there should be an increase in rank and no increase in pay…" unless the person filling the position to which he/she is promoted is actually performing the level of work in that higher ranked position.

FINDINGS AND RECOMMENDATIONS: ARTICLE 16

The Employer had numerous objections to the Union's written contract proposal, but, ultimately, failed to present any cogent written counterproposal on the matter. Similar language,

when considered in aggregate, regarding that which appears in the Union's Article 16 proposal, also appears in comparable contracts in evidence. (U-2,3,4,6). I recommend that the exact language of the Union's Article 16 written proposal as it appears herein is appropriate and should be adopted into the proposed contract.

17. ARTICLE 17 MONTHLY SHIFT SIGN-UP

The Union's Position:

Section 1. All active members are required to sign up for a minimum of four (4) twelve-hour shifts. One of the four required [shifts] shall be a weekend shift as defined below.

a) Members are required to select one weekend shift out of every four shifts selected. Example: if eight shifts are selected, two must be weekend; if twelve shifts are selected, three must be weekend.

b) Officers will sign up for their shifts on the 1st and 2nd of each month. Officers can take up to twelve shifts. (Weekend rules apply)

c) **Group 1** will sign up for their shifts on the 3rd and 4th of each month. Group 1 can take up to nine shifts. (Weekend rules apply)

d) **Group 2** will sign up for their shifts on the 5th and 6th of each month. Group 2 can take up to nine shifts. (Weekend rules apply)

e) During the 8th - 10th of each month, all remaining shifts are open to Groups 1 & 2. Each member may select three additional shifts. (Weekend rules apply)

f) On the 12th of each month the schedule will be reviewed to check for proper shift selection.

g) Total shift hours per pay period without approval are 106 hours.

h) The shift selection officer may allow six (6) hour shift selection (half a normal shift) when necessary, at his discretion.

After the 15th of the month, any shift ~~you have~~ selected [by the employee] is ~~your~~ [that employee's] responsibility and ~~you~~ [he/she] is responsible for finding coverage for ~~a~~ [any] shift that ~~you can't~~ [that employee cannot] work. ~~You~~ [Employees] may trade shifts as long as this does not cause a member to exceed the 106 hours per pay period.

Weekend Shifts

Friday 1800 - 0600

Saturday 0600 - 1800, 1800 - 0600, 1000 - 1800 (at least one 12 hour shift shall ~~he~~ [be] selected)

Sunday 0600 - 1800, 1800 - 0600, 1000 - 1800 (at least one 12 hour shifts shall be selected)

The following are the only reasons to page out an open shift:

a) Full time department mandates or calls the employee in for an unexpected shift.
b) Full time occupation requires the employee to work an unexpected or extra shift.
c) Family emergency or unexpected circumstance.
d) Personal illness or injury.

Section 2. HOLIDAY SHIFT SIGN UP GUIDELINES Regular shift sign up groups (Officers & Group 1) will have twelve (12) days to sign up for their (minimum) eighteen (18) hours of required time. Regular shift sign up groups (Groups 2 & 3) will have twelve (12) days to sign up for their (minimum) eighteen (18) hours of required time. During these two (2) rounds, any member can take up to a (maximum) of thirty-two (32) hours which includes the eight (8) hour shifts.

After these two (2) rounds are complete, the schedule will be reviewed. Any member who has not chosen their holiday time will be contacted to see what they may be available to sign up for. Once all current members have been contacted, the schedule will be frozen until 2/15/of the current year. This will give any member who has not signed up the opportunity to do so.

The schedule will be opened back up 2/16/of the current year; at this time, any member wanting to take additional holiday time must contact the Fire Chief's designee to see how many additional hours would be available to take. The department will work with any member who may not be able to commit this early in the year, but each member is required to try and obtain a minimum of eighteen (18) hours and any member can do 6, 12 or 24 hour shifts.

The Union maintained that the language in this proposal was what the Fire District currently uses to schedule Department shifts.

The Employer's Position:

The Employer submitted no specific written counterproposal to the Union's Article 17, MONTHLY SHIFT SIGN-UP, which it dealt with in its Article 18. It asserted, among other things, that the Union's proposal infringes "…upon the protected management rights of the Fire District."

FINDINGS AND RECOMMENDATIONS: ARTICLE 17

The Union's Article 17 MONTHLY SHIFT SIGN-UP proposal seems straightforward and appears, as the Union noted, to follow the Fire District's current policy in scheduling shifts. The Employer did not challenge this assertion. Accordingly, I recommend the adoption into the proposed contract of the exact language of the Union's written Article 17 proposal as it appears herein.

18. ARTICLE 18 OVERTIME

The Union's Position:

Section 1. Bargaining Unit Employees shall receive overtime in the amount of one and one-half 1½ times the Employee's regular pay rate and shall be paid for actual hours worked in excess of ~~F~~ eighty (80) hours in a two (2)week, fourteen (14) work day period.

Section 2. Whenever approved by the Employer, any Employees called in to work for any time period shall be paid not less than three (3) hours or actual time spent, whichever is greater.

Section 3. When an Employee is appearing for any reason other than a duty assignment, including training and staff meetings on behalf of the Employer, they shall be paid not less than three (3) hours or actual time spent, whichever is greater at the regular pay rate.

Section 4. Whenever an employee is required to appear on off-duty time in his or her capacity as a Northfield Center-Sagamore Hills Fire District Fire fighter before any official court or before the Prosecutor in pretrial conference, on matters pertaining to or arising from the employee's official duties, the employee shall be compensated a minimum of two (2) hours at one and one-half (1½) times the employee's regular hourly rate of pay, if any employee appears before a court or at a pretrial conference for more than two (2) hours during any given off-duty day, such excess time shall be compensated at one and one-half (1½) times the employee's regular hourly rate of pay for all time spent in such appearance or appearances.

The Union argued that this language was comparable to that found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer in its Article 19 dealt with the Union's Article 18 OVERTIME proposal. It called for discussions, set forth opinions, and made objections in its submission. A summary of some of the Employer's assertions in its Article 19 submission is as follows: 1. It did not

believe that the Fire District "…should have any trouble with all federal law on overtime…." 2. It asserted "…there needs to be some discussion about call in periods…" which it thinks are "excessive." 3. It argued that if "… training is not necessary for the continued licensure of ~~that~~ [a] particular firefighter…", it should not be paid for by the Employer. 4. Additionally, it insisted that "People are not normally paid for showing up in court."

FINDINGS AND RECOMMENDATIONS: ARTICLE 18

Neither the Employer nor the Union introduced any evidence as to the current policies of the Employer regarding overtime or the issues raised in the Union's Article 18 OVERTIME proposal. The Union relied on its written proposal contained in its Position Statement and on its assertion that the language contained therein is to be found in most labor agreements. Comparable contracts in evidence contain similar provisions which address similar issues, when considered in aggregate, to those found in the Union's Article 18. (U-2,3,4,5,6,8). The Employer relied on its written Position Statement containing objections to the Union's proposal without offering any written counterproposal in contract form. The Employer may be correct in its assertion that a proposal to pay Bargaining Unit employees (firefighters or EMS employees) for going to court on official appearances may be something more characteristic of a police contract than a firefighter's contract. Nevertheless, if a firefighter is never required to make such a court appearance, such compensation by the Employer will never be required. The Employer's assertions regarding training and "shared responsibility" appear to be vague and unworkable. Again, the Employer never drafted a written counterproposal to this Article and instead offered a plethora of ideas which were not helpful in the fact-finding context. The proposals raised by the Union in Article 18 did not appear to be particularly unreasonable and also appear, in aggregate, in other collective bargaining agreements. Accordingly, under the circumstances of this case, I

recommend the adoption and inclusion in the proposed contract of the exact language of the Union's written Article 18 proposal as it appears herein.

19. ARTICLE 19 SICK LEAVE WITH PAY

The Union's Position:

Section 1. Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to a contagious disease communicable to other employees; and/or 3) illness, injury or death in the employee's immediate family, which reasonably requires the employee's attention.

Section 2. All employees shall earn sick leave at the rate of four and six-tenths (4.6) hours for every eighty (80) hours in active pay status and may accumulate such sick leave to an unlimited amount.

Section 3. An employee who is to be absent on sick leave shall notify the Employer of such absence and the reason therefore at least one (1) hour before the start of his[/her] work shift each day he[/she] is to be absent.

Section 4. Before an absence may be charged against accumulated sick leave, the Fire Chief may require proof of illness, injury or death, or may require the employee to be examined by a physician designated by the Employee and paid by the Employer. In any event, an employee absent for more than three (3) consecutive tours* of duty must supply a physician's report to be eligible for paid sick leave if requested by the Chief. (*A tour of duty is defined as a period of duty at one place or in one job.)

Section 5. If an employee fails to submit adequate proof of illness, injury or death upon request, or in the event that upon such proof as is submitted or upon the report of medical examination, the Fire Chief, in his[/her] discretion, finds there is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may, at the Fire Chief's discretion, be considered an unauthorized leave and shall be without pay.

Section 6. When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children, parents, siblings, or relative actually residing with the employee. When the use of sick leave is due to death in the immediate family, "immediate family" shall be defined to only include the employee's parents, grandparents, spouse, spouse's parents, child, brother, sister, or person in loco parentis.

Section 7. Employees shall at the time of retirement from active service with the Employer, and with ten (10) or more years of continuous service with the Employer, be paid in cash for one-half (½) of the employee's accrued but unused sick leave, up to a maximum accrual of one hundred eighty (180) days. The dollar value on a sick day shall be based on employee's hourly wage at time of retirement. For this calculation paid vacation days and holidays are considered work days. Payment for sick leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. Such payment shall be made by the Employer only once to any employee during his lifetime. The estate of an employee who at the time of his or her death would have qualified for payment hereunder shall be entitled to the payment provided herein.

This language, according to the Union, was comparable to that found in the collective bargaining agreement between Ohio Council 8 AFSCME, AFL-CIO and AFSCME Local 2845B and The City of Nelsonville, Ohio Fire Department. (U-4).

The Employer's Position:

The Employer, as in previous Articles, offered no specific written proposal in its Article 20 written submission to the Union's written Article 19 proposal. Again, in its Position Statement it suggested discussions, offered opinions, and delivered criticisms to the Union's written contract proposals.

A summary of some of its observations include the following: 1. "…definition of contagious disease subject to discussion because it is a bit broad." 2. "…there has to be a cap on the amount of sick leave [that] can be banked." 3. "…the employees should know well in advance of an hour whether they are going to have to get somebody for them." 4. The Employer was not "…sure that a tour of duty should be defined as one place at one job for a shift." It wanted to make certain "...somebody is not working one place and calling off sick to work there at our place." 5. "…somebody who is absent without pay on unauthorized leave after three (3) days is subject to termination." 6. Section 6, Article 19 of the Union's proposal must be discussed as it is overly broad and "…expands the FMLA quite a bit." 7. Article 19, Section 6 of the Union's proposal is a "Golden Parachute Section" which must be discussed.

FINDINGS AND RECOMMENDATIONS: ARTICLE 19

The Employer, as was indicated in its position on this matter, raised a number of objections to the Union's written Article 19 proposal, but, as previously noted, failed to submit a counterproposal of its own. The Employer objected, among other things, to the Union's formula for paying a retiring employee's accrued but unused sick leave and to the Union's asking for paid

sick leave for employees exposed to contagious diseases communicable to other employees. The Union's written proposal is not an FMLA proposal, as such, inasmuch as it provides for paid sick leave and not unpaid sick leave. The Union submitted The City of Nelsonville Fire Department contract as evidence of a comparable collective bargaining agreement. (U-4). That contract does contain a sick leave proposal that has similar elements to the Union's Article 19 proposal, but is not exactly the same in all respects. It is not unusual to find somewhat similar "Sick Leave with Pay" proposals in collective bargaining agreements. (Also see U-2,3,6). On balance, I recommend that the exact language of the Union's Article 19 written proposal as it exists herein be adopted and included in the proposed contract.

20. ARTICLE 20 HOLIDAYS

The Union's Position:

Section 1: All Employees shall be entitled to wages at the rate of time and one-half (½) for actual hours worked during the following holidays but no hours of work on such holidays shall be guaranteed:

a) Martin Luther King Day
b) Easter
c) Columbus Day
d) Memorial Day
e) 4th of July
f) Labor Day
g) President's Day
h) Veteran's Day
i) Thanksgiving
j) Christmas Eve
k) Christmas Day
1) New Year's Eve
m) New Year's

Employees must work the holiday in order to be eligible for the Holiday pay.

This language, according to the Union, was comparable to that found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer discussed the Union's Article 20 HOLIDAYS provision under its Article 21 submission. Again, it offered no specific written counterproposal in its Article 21 discussion. It agreed that employees should be paid "time and a half" if they are working holidays. However, it maintained that the Union's Article 20 proposal lists too many holidays. The Employer gave no written or verbal indication of what or how many holidays it would agree to.

FINDINGS AND RECOMMENDATIONS: ARTICLE 20

A review of all of the Union's comparable contracts in evidence reveals that collective bargaining agreements contain differences in the variety and number of holidays for which bargaining unit employees are compensated. The holidays for which the Union seeks compensation are not unusual either in variety or in number. It should be noted that while the Employer believes that there are too many compensated holidays in the Union's proposal, it did not submit a counterproposal identifying the holidays it did believe should be compensated. Accordingly, I recommend the adoption and inclusion in the proposed contract of the exact language in the Union's Article 20 proposal as it appears herein.

21. ARTICLE 21 PAYMENT OF UNION NEGOTIATING COMMITTEE

The Union's Position:

Section 1. Employee members of the AFSCME Negotiating Committee shall be permitted reasonable time off, during working hours, without loss of pay, for the purpose of participating in meetings related to the collective bargaining process with the Employer.

Section 2. The Union shall notify the Employer, in writing, of the members of the AFSCME Negotiating Committee and the Employer shall notify the Union, in writing, of members of the Employer's Negotiating Committee.

According to the Union, the language proposed herein, was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer discussed the Union's Article 21 proposal under its written Position Statement in Article 22. Although it had no written contract proposal of its own, a summary of some of its written observations and suggestions are as follows: 1. The Union should have no more than two (2) identified representatives to deal with Fire District representatives. They cannot interfere with normal work duties and the Fire District reserves the right to designate the appropriate meeting place for their activities. 2. The Employer did not believe that employees should receive time off with pay to participate in Union meetings related to the collective bargaining process with the Employer – those employees doing so should not be paid. 3. Monthly Union membership meetings may take place at the fire station, but cannot disrupt Fire Department or Fire District business or prevent employees from performing their required assigned duties. 4. A Committee consisting of two (2) Employer and two (2) Union representatives should meet in closed-door session periodically to discuss resolving work-related problems. However, the Union members of the Committee should not receive time off with pay during work hours.

FINDINGS AND RECOMMENDATIONS: ARTICLE 21

It is not unusual to find provisions such as the Union's Article 21 proposal in collective bargaining agreements. The Summit County Sheriff's Office contract, for example, contains a very similar provision. (U-2). The City of Kent collective bargaining agreement also contains a provision that provides for payment to employees acting as union representatives. (U-3). The City of Nelsonville contract covering firefighters also has a provision that provides for payment

for bargaining unit employees acting as Union representatives who are engaged in collective bargaining duties during working hours. (U-4). After due consideration, I recommend that the exact language of the Union's Article 21 proposal, as it appears herein, should be adopted and included into the proposed contract.

22. ARTICLE 22 SUBCONTRACTING

The Union's Position:

> **Section 1.** The Employer agrees that work normally performed by bargaining unit covered employees shall not be contracted and/or subcontracted to any outside sources.

The Union asserted that this language proposal was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer, in its Article 23 discussion of the Union's Article 22 proposal, did not agree to refrain from contracting out or subcontracting out the Unit's work. The Employer asserted that it "…must have the right to use mutual aid as necessary for its operations without question." Again, it offered no specific written counterproposal on the matter.

FINDINGS AND RECOMMENDATIONS: ARTICLE 22

Article 22 of the Union's subcontracting proposal prohibits contracting out and/or subcontracting of bargaining unit work. The Employer refuses to agree to any limitation on subcontracting and/or contracting out of bargaining unit work. The Summit County Sheriff's Office contract contains a comparable provision to the Union's proposal regarding subcontracting. I am mindful that the Employer, at hearing, maintained that it has difficulty in attracting and maintaining part-time firefighters. However, the Union is rightfully concerned with what might happen to the bargaining unit's work inasmuch as the Employer has indicated that the bargaining unit may soon be dissipated. Accordingly, I recommend the adoption into the

proposed contract of a modified form of the language contained in the Summit County Sheriff's Office subcontracting provision to somewhat address the Employer's and the Union's concerns in this case. That modified language for Article 22 is as follows:

ARTICLE 22 SUBCONTRACTING

The Employer agrees that work normally performed by employees in the bargaining unit shall not be contracted and/or subcontracted out unless there are insufficient employees at work or on call to perform the necessary work, or those employees do not have the equipment to perform such work.

However, in such event, such contracting and/or subcontracting shall only occur if it is temporary in nature, does not jeopardize the employment of the current bargaining unit employees, does not shorten their work hours and/or workweek, and does not cause a reduction of their total pay during a pay period.

23. ARTICLE 23 INJURY PAY

The Union's Position:

Section 1. At no cost to the employee, the Employer shall provide each employee a time loss weekly benefit equal to seventy (70) percent of weekly earnings up to a maximum weekly benefit of $325, pursuant to guidelines promulgated by the Employer in consultation with the Union. The time loss weekly benefit is payable for a maximum of twenty-six (26) weeks.

This language, according to the Union, was comparable to that found in the collective bargaining agreements between The Madison Fire District and The Madison Fire Fighters Organization Part Time (U-5) and The City of Kent and The Ohio Association of Professional Fire Fighters and The IAFF Local 721 (U-6).

The Employer's Position:

The Employer, in its Article 24 written discussion of the Union's Article 23 INJURY PAY proposal, among other things, suggested that injured employees should immediately "…through the union, obtain workers' compensation and that should be one of the benefits of union membership." It also suggested that the Parties might negotiate over "…some type of group life insurance...or some type of disability insurance over and above workers' comp." The

Employer claimed it "…can certainly see paying 55% or so of the earned income during the first twenty-eight (28) days after the injury because workers' compensation takes time to kick in." As was indicated above, the Employer offered no specific written counterproposal on this issue.

FINDINGS AND RECOMMENDATIONS: ARTICLE 23

Injury pay provisions do exist in the comparable contracts submitted by the Union into evidence in The Cardinal Joint Fire District and two City of Kent contracts (U-8, U-3, U-6 respectively).[15] The provision in the Kent contract is more expansive than the Union's Article 23 proposal. The Cardinal injury provision seems a bit more limited than the Union's proposal herein. After considering the arguments and evidence, I recommend that the following Article 23 INJURY PAY provision be adopted and included in the proposed contract:

> If a bargaining unit employee becomes ill or injured while and as a result of performing his/her assigned duties and is certified by a licensed physician as being unable to work, the Employer shall provide that employee with 70% of his/her weekly earnings up to a maximum weekly benefit of $325.00. The time lost weekly benefit is payable for a maximum of twenty-six (26) weeks. Any payment hereunder shall be reduced by any amount received by that bargaining unit employee from Workers' Compensation benefits for any part of that 26-week period.

24. ARTICLE 24 JOB DESCRIPTIONS

The Union's Position:

> **Section 1.** ~~Union~~ [Unit] job descriptions shall be those in effect at the beginning of this contract and shall not be changed by the Employer.
>
> **Section 2.** In the event a new job classification is to be established, the Employer shall meet with the Union for the purpose of negotiating a job description and wage rate.

The Union's rationale for this proposal was that this language was comparable to that found in many Labor Agreements and had been modified for this particular Unit.

[15] The City of Kent contract U-6 and the Cardinal Joint Fire District contract U-8 cover units of firefighter/EMT employees.

The Employer's Position:

The Employer in its general Article 25 discussion of the Union's specific Article 24 proposal noted, among other things, as follows: 1. "The Employer must have the right to decide what the job description will be for every employee, including those in the Bargaining Unit." 2. "…the Employer reserves the right to create written job descriptions." 3. "... Any changes to the job description should be management prerogative, subject to any input by the Union."

FINDINGS AND RECOMMENDATIONS: ARTICLE 24

After considering the Union's written proposal on Article 24, the Employer's objections, and the recommended Article 4 MANAGEMENT RIGHTS provision, I recommend the adoption and inclusion in the proposed contract of the following language that is a modification of the Union's proposal for this Article:

Article 24 Job Descriptions

Section 1. During the life of this Agreement, the change in any job description and its rate of pay must be negotiated between the Employer and the Union.

Section 2. In the event a new job classification is to be established, the Employer must meet with the Union and negotiate a job description and wage rate for that proposed job classification.

25. ARTICLE 25 PERSONNEL RECORD

The Union's Position:

Section 1. Personnel files are considered public records as defined in the Ohio Revised Code. Bargaining Unit Members shall have access to their records, including training, attendance and payroll records, as well as those records maintained as personnel file records.

Section 2. Every Bargaining Unit Member shall be allowed to review the contents of his[/her] personnel file at reasonable times upon written request, except that any Bargaining Unit Member involved in a grievance or disciplinary matter shall have access at any reasonable time in order to adequately prepare for such process. Memoranda clarifying and explaining alleged inaccuracies of any document in said file may be added to the file by the Bargaining Unit Member.

Section 3. All entries of a disciplinary or adverse nature shall be maintained solely in the personnel file which shall be maintained in the office of the Fire Chief or his designee. The affected Bargaining Unit Member shall be notified of any such entry and shall be afforded a copy of the entry and an

opportunity to attach a dissenting statement. No unfounded complaint shall become part of any Bargaining Unit Member's personnel file.

Section 4. Records of written warning and reprimands shall cease to have force and effect eighteen (18) months from the date of issuance. Any record of discipline of any kind shall cease to have force and effect eighteen (18) months from the date of issuance, barring ~~no~~ [any] reoccurrence of the same incident.

Section 5. An accredited "Union" representative of AFSCME shall have the right to inspection of an employee's personnel record.

The Union's rationale for this language was that it was comparable to that found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer generally discussed the Union's Article 25 written contract proposal in its Article 26, without presenting a written counterproposal. A summary of some of the Employer's observations and suggestions regarding Article 25 are as follows: 1. Most but not all of the personnel file is considered a public record. Medical records should be maintained in other files which are not public records. 2. Under Section 2 there should be some process for clarifying issues, but not a lengthy process. If an employee disagrees with assessments, opinions, or discipline, that is their prerogative, but that disagreement should not be subject to unending discussion. 3. Under Section 3, it is too cumbersome and too much work to notify a bargaining unit employee each time there is an entry in his or her personnel file. 4. The Employer believed that an employee's record of discipline of any kind should have full force and effect in that bargaining unit employee's personnel file for two(2) years. 5. The Employer's representative did not think that the Employer "…would have any problems with the Union inspecting an employee's personnel file at reasonable times and with prior notice and also with the employee's understanding." However, the Employer insisted that "…just because they [the Union] are

representing them does not mean they should have access to all records and certainly no copies of those records."

FINDINGS AND RECOMMENDATIONS: ARTICLE 25

Many of the comparable contracts in evidence contain provisions dealing with "Personnel Files" (U-1,2,5,6). The terms of those provisions vary from the less complex to the more expansive (U-6). After examining the language of those contracts in aggregate and considering the objections of the Employer to aspects of the Union's Article 25 proposal, I recommend the adoption and inclusion in the proposed contract of the Union's Article 25 proposal exactly as it appears herein.

26. ARTICLE 26 LABOR MANAGEMENT COMMITTEE

The Union's Position:

> **Section 1.** The Labor Management and Safety Committee shall consist of the Township Trustee or their designee, the Fire Chief or designee, ~~and~~ a Member of the Bargaining Unit, and the Union Representative, if needed. It is mutually agreed that this Committee shall meet on a quarterly basis, or as mutually agreed, after a written request from either party for the purpose to discuss pending issues and to promote a more harmonious Labor/Management relationship; to discuss ways to improve efficiency within the Department; [and/or] to discuss safety and health issues of the Department. The Employer and the Union shall comply with all applicable Federal and State laws, rules and regulations with regard to safety.

This language, according to the Union, was comparable to that found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

In addressing the Union's written Article 26 proposal, the Employer asserted in its Article 27 comments that it already had discussed the concept of a Labor-Management Committee in an earlier Article (Article 22). It insisted that it was "…up to the Employer how to implement safety protocols. There is a lot of potentially conflicting information and safety protocols. One source should be selected if there is going to be one at all."

FINDINGS AND RECOMMENDATIONS: ARTICLE 26

The concept of establishing a Labor-Management Committee to reduce labor strife and to avoid grievance/arbitration procedures is increasingly popular. The City of Kent contract (U-3), for example, contains such a provision. Both the Employer and the Union appeared receptive at the fact-finding hearing to the establishment of such a Committee. Accordingly, after considering the Employer's concerns, I nevertheless recommend the adoption and inclusion into the proposed contract of the Union's Article 26 proposal as it appears herein.

27. ARTICLE 27 MAINTENANCE OF STANDARDS

The Union's Position:

> **Section 1.** All rights, privileges affecting wages and benefits, and working conditions enjoyed by the Bargaining Unit Members at the present time which are not included in this Agreement shall remain in full force, unchanged and unaffected in any manner, during the term of this Agreement unless changed by mutual consent.
>
> **Section 2.** The Employer agrees to furnish the Union with a written notice of the Employer's changes in Fire Department rules, regulations, or policies and procedures that would affect the working conditions of the bargaining unit members or equipment.
>
> **Section 3.** The Employer agrees to meet and confer with the Union in order to freely exchange information, opinions and proposals relating specifically to the changes. Upon request, the Employer shall at its option provide the Union with or access to available resource materials[,] studies or data relating to the merits of the changes prior to said meeting with the Employer. However, such materials shall remain the property of the Employer until such time as the Employer may choose to relinquish its rights thereto.
>
> **Section 4.** If the parties are unable to reach an agreement on the proposed change in terms and conditions[,] the parties will follow the process as outlined in O.R.C. §4117.

The Union's rationale for its submitted proposal was that the language, therein, was comparable to language found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

A summary of some of the Employer's assertions, objections and criticisms of the Union's Article 27 written proposal (discussed in its Position Statement under its Article 28) are as

follows: 1. In Section 1, the Union "…wants to maintain all rights, privileges and benefits that are not included in the Agreement…." However, the Union does not wish to give the Fire District the right to use past practice in its operations. Moreover, the Union insists on language in the Agreement indicating that all specific language in the agreement "supersedes" all unwritten rights, privileges and benefits. 2. With respect to Section 2, the Employer was only willing to give the Union ten (10) to fourteen (14) days' written notice of any proposed change. 3. With respect to Section 3, the Employer noted that it did not think that the "… Employer should provide the union with any materials supporting its decisions." The Employer maintained that the "... Union has to do their own work." 4. With respect to Section 4, the Employer stated that it did not believe in the "status quo" and asserted "...change needs to be made." It argued that if the Union believes that the Employer "… has exceeded its mandates under Ohio statutory and common law, [it] can engage the SERB process and interest bargaining or whatever it is that the union thinks is necessary."

FINDINGS AND RECOMMENDATIONS: ARTICLE 27

The Employer is concerned with redundancy in many aspects of the Union's Article 27 proposal. It also believes that certain Sections contain language that is in conflict with the language of other Articles of the proposed contract. Comparable contracts in evidence contain similar language, when considered in aggregate, which address the issues contained in the Union's proposed Article 27. After having considered the Employer's assertions and other record evidence, under the circumstances of this case, I recommend the adoption into the proposed contract of the Union's Article 27 proposal exactly as it appears herein.

28. ARTICLE 28 WORK RULES

The Union's Position:

Section 1. Prior to implementation of work rules and/or policies or changes in existing work rules and/or policies such rules, policies and/or changes shall be negotiated with the Union.

The Union's rationale was that its language was comparable to that in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer asserted in its discussion of its Article 29 that the Union's Article 28 proposal was "redundant," as it had been addressed in other "Sections." It did not object to the Union having "input as they deem appropriate" on proposed changes in work rules and/or policies, but insisted that the final decision about such changes rests with the Employer.

FINDINGS AND RECOMMENDATIONS: ARTICLE 28

Contracts sometimes contain separate provisions regarding work rules. The Summit County Sheriff's Office comparable contract in evidence contains such a provision. (U-2). After considering the Employer's arguments concerning the redundancy of the provision and of its concerns regarding the authority to implement changes in work rules and/or policies, I recommend the adoption of the following language for Article 28 into the proposed contract:

Article 28 Work Rules

Prior to the implementation of new work rules and/or policies or changes in existing work rules and/or policies, the Union shall be notified of the exact language of any proposed revisions fourteen (14) days before the implementation of any such changes and afforded the immediate opportunity to discuss those changes prior to their implementation.

29. ARTICLE 29 SAFETY AND HEALTH

The Union's Position:

Section 1. The Employer shall make reasonable provisions for the safety and health of the employees on the Employer's premises during hours of employment. All departments and equipment operated by the employees shall be provided with adequate first aid equipment, and the employees

informed as to who shall administer such first aid equipment. Proper heating, ventilation and sanitary facilities shall be provided and kept in good condition by the Employer. All equipment shall be maintained in safe operating conditions at all times.

Section 2. In the event an employee becomes ill or injured during working hours, any medical treatment and medication provided the employee shall be without cost to the employee.

Section 3. The Employer agrees to provide a safe and healthful work place. Unsafe and/or unhealthy conditions that are brought to the attention of the Employer will be corrected immediately.

The Union's rationale was that this language was comparable to language in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer in its Article 30 dealt with the Union's written proposal for the Contract's Article 29, SAFETY AND HEALTH. Some of the Employer's observations are as follows: 1. In its discussion of Section 1, Article 29, the Employer noted that it is "understood," but observed "…it is the Fire District's responsibility, in conjunction with its employees, to make certain that all of the equipment is in good operation and all the equipment necessary for the safety of residents is in place." It asserted that "Each shift should be responsible for making sure who can and will administer first aid equipment and there should be policies and procedures to maintain safe operating conditions…." 2. The Employer maintains that Section 2 is covered by Worker's Compensation. 3. In commenting on Section 3, the Employer believed that when employees are aware of alleged unsafe or unhealthy conditions, they should bring it to the attention of the Employer and "…discussion should take place to see whether or not it is something that needs to be done and in what timeframe and with what monies and pursuant to what rules, regulations and/or statutes."

FINDINGS AND RECOMMENDATIONS: ARTICLE 29

Safety and health provisions do appear in the Summit County Sheriff's Office and in The City of Nelsonville Fire Department comparable contracts in evidence (U-2, U-4). Those

provisions contain similarities and differences to the Article 29 provision proposed herein by the Union. I have also considered the Employer's concerns, especially regarding possible conflicting workers' compensation issues. Accordingly, I recommend that the language of the Union's Article 29 proposal, with the exception of the language in Section 2, which should be deleted, be adopted into the proposed contract. (The language of Section 3 becomes the language of Section 2.)[16] The recommended Article 29 proposal should read as follows:

Article 29 Safety and Health

Section 1. The Employer shall make reasonable provisions for the safety and health of the employees on the Employer's premises during hours of employment. All departments and equipment operated by the employees shall be provided with adequate first aid equipment, and the employees informed as to who shall administer such first aid equipment. Proper heating, ventilation and sanitary facilities shall be provided and kept in good condition by the Employer. All equipment shall be maintained in safe operating conditions at all times.

Section 2. The Employer agrees to provide a safe and healthful work place. Unsafe and/or unhealthy conditions that are brought to the attention of the Employer will be corrected immediately.

30. ARTICLE 30 TRAINING PROGRAM

The Union's Position:

Section 1. EMT STATE CERTIFICATION AND CERTIFICATES OF EDUCATION
Certification Maintenance; Continuing Education. All employees will maintain certifications or professional designations currently in effect at the time of execution of this contract and any certification or designation obtained after the execution of this contract.

a) Emergency Medical Technician-Basic (EMT-B)
b) Emergency Medical Technician-Paramedic (EMT-P)
c) State of Ohio Firefighter 2

The employee will attend all continuing education or training necessary for the maintenance of the above certifications. The Employer will pay for the education and training of the above certifications annually if (1) the Employer hires the firefighter based on his[/her] having the certification or (2) the Employer requires the employee at the time he[/she] is hired to keep or to obtain the certification as a condition of employment.

[16] I note that, under the Union's originally proposed Section 2 language, "the Employer" is not specifically responsible for the medical treatment and medication costs of the employee. Presumably, as the Employer suggests, those costs might be covered by Ohio Workmen's Compensation benefits or other health insurance.

It will be the responsibility of the employee to maintain certification levels and provide proof of such certification annually or semi-annually or at the request of the Fire Chief or his designee. The employee will enroll in Employer offered courses, at no cost to the employee, when such courses are made available. Employees shall receive their regular rate for all time spent in Employer-offered courses or training. Employees who do not enroll or choose not to attend Employer-offered courses or training required to maintain certifications, such employee shall be held responsible for payment and expenses of the training.

Continuing education or training not offered by the City and necessary to maintain the above certification will be paid by the City. In such circumstances, the City shall be responsible only for the payment of the tuition/cost of the course and for the employee's regular rate of pay for time actually spent in the course or training. The City shall not be responsible for travel time, mileage or any other expense.

Section 2. New Training Employee[s] may request to obtain new or enhanced training not required by the Employer and not held at the time of the execution of this contract. Such requests must be submitted to the Fire Chief. The Fire Chief has the sole discretion in approving or denying new training. Denials of employee requests shall be non-grievable and ~~no~~[not] subject to any grievance or appeal procedure. In the event the Fire Chief approves new training, the Employer shall be responsible only for the payment of the tuition/cost and for the employee's regular rate of pay for time actually spent in the course training.

Section 3. Any current employee or employee hired after the effective date of this Agreement shall maintain any certifications or professional designation the employee has at the time of hire and any certifications or designations thereafter obtained. Failure by the employee to maintain certification or professional designation he/she has at the time of hire or thereafter obtained shall be grounds for dismissal.

The Union's rationale was that this language was comparable to that found in the collective bargaining agreement between The City of Streetsboro and Streetsboro Part Time Firefighters. (U-1).

The Employer's Position:

The Employer dealt with the Union's Article 30 written contract proposal in its Article 31 discussion. Some of its observations were as follows: 1. The Fire Chief "has to decide this." The Employer believed that any employee of the Fire District who fails to maintain proper certifications (whether Firefighter 2, EMT Basic, EMT Paramedic) should be subject to a non-disciplinary removal from employment. Moreover, if the Chief finds an employee unfit for duty or an employee is unable to return to service after exhausting an authorized leave of absence, that

employee should also be subject to a non-disciplinary removal from employment. (Pursuant to O.A.C.§123:1-33-01). An employee separated for those reasons should have a right of appeal, exclusively pursuant to the arbitration provision of the proposed contract. 3. The Fire District should be a drug-free work environment and bargaining unit employees could be subject to "some testing procedure." 4. The Fire District and the Union "…are going to have to figure out what it is that needs to be accomplished by ongoing training…who is going to pay for this… ~~S~~[s]o there is no sense of redundancy." 5. Finally, the Employer asserted that it "Obviously" agreed with the Union's Article 31, Section D, which, according to the Employer, indicated that "…failure to maintain the certification or professional designations at the time of hire or thereafter as is paid for by the Employer results in a potential discharge. (Article 31 of the Union's written proposal dealt with the "Savings Clause" and not training certification. Moreover, there is no Section D in the Union's Article 30 Training Program proposal).

FINDINGS AND RECOMMENDATIONS: ARTICLE 30

An examination of a number of the comparable contracts in evidence in this case (U-4, 5, 6, 8) reveals that they contain a variety of provisions dealing with "Training." Many elements of those provisions appear in the Union's Article 30 proposal. After considering the Employer's observations and suggestions concerning that provision, I recommend the adoption into the proposed contract of the exact language of the Union's Article 30 proposal as it appears herein.

31. ARTICLE 31 SAVINGS CLAUSE

The Union's Position:

> **Section 1.** Should any Article, Section or portion thereof of this agreement be held unlawful and unenforceable by a final court of competent jurisdiction, such decision shall apply only to the specific Articles, Sections or portion thereof directly specified in the decision. The parties agree to immediately meet and negotiate [a] substitute for the invalidated Article, Section or portion thereof.

Section 2. In [the] event that appeals to any such decision are filed, such specific Article, Section or portion thereof affected by the decision shall continue in effect until the ~~appeals process is void~~ [appeal is finally granted or denied.]

The Union's rationale was that the language in this proposal was comparable to that found in other Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

In its Article 32 the Employer commented on the Union's written Article 31, SAVINGS CLAUSE proposal that it did not "…see any problem with that clause or the Sections therein." However, although it appears that the Employer had no criticism of the Union's language on this proposal, there is no evidence that it had actually tentatively agreed to that proposal. (The Employer's representative appeared to argue that since the Fire District is in dissolution, he has no authority to enter into any collective bargaining agreement with the Union.)

FINDINGS AND RECOMMENDATIONS: ARTICLE 31

Although the Employer ostensibly verbally agreed at hearing to the Union's Article 31 SAVINGS CLAUSE proposal, I am nevertheless including it as an open issue due to the fact that it was never formally agreed to or initialed off on by the Employer**.** Therefore, I recommend that the exact language of the Union's Article 31 SAVINGS CLAUSE as it appears herein be adopted into the proposed contract.

32. ARTICLE 32 SUCCESSOR CLAUSE

The Union's Position:

Section 1. This agreement shall be binding upon the successors and assignees of the parties hereto and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, sales, transfer, or assignment of either party hereto, or affected, modified, altered, or changed in any respect whatsoever by any change of any kind in the legal status, ownership, or management of either party hereto.

The Union asserted that the language of this proposal was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer submitted a written proposal in its Article 33, SUCCESSOR CLAUSE (which is the counterproposal to the Union's Article 32, SUCCESSOR CLAUSE) and it reads as follows:

> To the extent permitted by law, the Agreement shall be binding on any and all successors and assigns of the employer, whether by transfer, merger, subcontract, acquisition, consolidation or otherwise. To the extent permitted by law, the Employer shall make it [a] condition of the transfer, merger or subcontract that the successor shall be bound by the terms of this Agreement and that the transferee is obligated to continue the contract provisions and employ the Bargaining Unit employees in accordance with the terms of the Agreement.

Moreover, the Employer asserted that if the Fire District "…were to assimilate another community and that community had already a contract of labor that somehow affected or interacted with this particular contract, it would be the obligation of the Unions to get together and figure out how to merge these contracts and make them work in conjunction."

FINDINGS AND RECOMMENDATIONS: ARTICLE 32

Both the Union and the Employer appeared to agree that some type of "Successor Clause" should be in the proposed contract. Both have proposed specific, albeit different, written language for that provision. The Employer believes that if the Fire District "...were to assimilate another community..." which already had a collective bargaining agreement with another union, "…it would be the obligation of the Unions to get together and figure out how to merge these contracts...." Successor clauses sometimes appear in SERB collective bargaining agreements, and one such provision appears in The City of Kent contract in evidence herein.

(U-3). After considering the Parties' proposals for Article 32, I recommend that the following language be adopted into the proposed contract:

Article 32 SUCCESSOR CLAUSE

It shall be a condition of any transfer, merger, subcontract, acquisition, consolidation, sale or otherwise by the Employer that the succeeding entity must continue to employ all current bargaining unit employees in accordance with the terms of the Agreement; and that the Agreement in force shall be binding upon and adopted by the successors and assignees of the Employer and cannot be affected, changed, modified, altered in any respect by any change of any kind in the legal status, ownership, or management of the Employer.

33. ARTICLE 33 P.E.O.P.L.E. DEDUCTIONS

The Union's Position:

Section 1. The Employer agrees to deduct voluntary contributions to Public Employees Organized for Political Legislative Equality (P.E.O.P.L.E.). Deductions shall be submitted to the Union pursuant to the authorization card no later than the tenth (10th) day following deductions. The Union shall be furnished an alphabetical listing of employees having political deductions made at the time the contributions are submitted to the Union.

This language, according to the Union, was comparable to that found in the collective bargaining agreement between The Ohio Council 8 AFSCME, AFL-CIO and AFSCME Local 2845B and the City of Nelsonville Ohio Fire Department. (U-4).

The Employer's Position:

The Employer dealt with the Union's written Article 33 proposal in its Article 34 comment which states "Article 34 (meaning the Union's Article 33) appears pretty standard."

FINDINGS AND RECOMMENDATIONS: ARTICLE 33

Although the Employer maintains that the Union's Article 33 proposal is "pretty standard," it never formally agreed to or initialed off on that proposal. I have therefore treated the proposal as an open issue. I recommend that the language of the Union's Article 33 proposal be adopted, as it appears herein, into the proposed contract.

34. ARTICLE 34 WAGES

The Union's Position:

Section 1. All Bargaining Unit Employees will receive a two and a half percent (2.5%) pay increase beginning January 1, 2016 and a two and a half percent (2.5%) pay increase beginning January 1, 2017.

Classification	Current Rate/Hour	1/1/2016 Rate/Hour 2.5%	1/1/2017 Rate/Hour 2.5%
Probationary	14.50	14.86	15.23
Firefighter EMT	15.50	15.88	16.27
Firefighter Paramedic	17.05	17.47	17.90
Lieutenant EMT	18.29	18.74	19.20
Lieutenant Paramedic	19.84	20.33	20.83
Acting OIC Firefighter Paramedic	18.60	19.06	19.53
Acting OIC Firefighter EMT	17.05	17.47	17.90
Firefighter Paramedic Inspector	17.82	18.26	18.71
Firefighter EMT Inspector	16.27	16.67	17.08
Lieutenant EMT Inspector	19.07	19.53	20.00
Lieutenant Paramedic Inspector	19.62	21.12	21.64

Section 2. LONGEVITY PLAN The ~~e~~[E]mployer shall compensate all employees with a longevity program based on continuous completed years of service. Retroactive to date of hire.

5 years	6 years	7 years	8 years	9 years	10 years	15 years
2.00%	2.25%	2.50%	2.75%	3.00%	6.00%	9.00%

Said compensation shall be added to the employee's rate of pay.

This proposal, the Union contended, was comparable to that found in most Labor Agreements and had been modified for this particular Unit. The Union asserted that it had not

been provided with the financial information that it requested, so it reviewed the Wage Settlement Report from SERB (U-7) and concluded that a two and one-half percent (2.5%) pay increase in each of the contract years was a reasonable request. Comparable Longevity Pay language can be found in The Cardinal Joint Fire District Contract and The Madison Fire Fighters Association – Part Time. (U-8).

The Employer's Position:

The Employer submitted no written counterproposal to the Union's Article 34. Some of its observations in its Article 35 are as follows: 1. The proposed January 1, 2016, "…rate across the board is generally on the high side." 2. The Fire District "…is in favor of rewarding seniority…." However, "…it might also be useful to consider an incentive allowance based on the number of station duty hours, actual training hours, call back and civic hours worked in a certain three (3) to five (5) months' work schedule …." Furthermore, to qualify for incentives, all part-time firefighters would have to have at least met the training requirements and minimum license requirements.

FINDINGS AND RECOMMENDATIONS: ARTICLE 34

Although the Union put forth a specific written proposal for a 2.5% across-the-board wage increase for 2016 and another 2.5% across-the-board wage increase in 2017 – the Employer simply indicated that the Union's proposal "...is on the high side" without submitting a counterproposal of its own. The Employer did not rely upon an "inability to pay" argument and it placed no financial evidence into the record. The Union asserted that it was unsuccessful in securing financial information from the Employer. Consequently, it could not rely on financial evidence to support its proposal. Instead, it introduced SERB's 2006-2015 "Annual Wage Settlement Report" into evidence to support its argument. (U-7). The Employer, at hearing,

maintained that such financial evidence was public record and that the Union mistakenly directed its request for financial information to Sagamore Hills Township and to Northfield Center Township, instead of to the Employer.

The Employer, at hearing, asserted that Sagamore Hills Township had withdrawn from the Fire District and had contracted with Macedonia, Ohio, for its fire services. It noted that Sagamore Hills Township's withdrawal would cost the Fire District a substantial amount of revenue. It also noted that in August 2016, Northfield Center Township residents would be asked to approve a monetarily significant special levy for future fire department services. The Employer's Representatives indicated at hearing that the Northfield Center Township had not yet determined whether to reinstitute its own fire services.

With respect to the Union's Article 34 longevity proposal, I note, as was previously observed, that the Employer maintains it faces a "revolving door problem" when it comes to holding onto bargaining unit employees. Contractual longevity provisions have long been used to maintain unit stability. The comparable collective bargaining agreement in the Cardinal Joint Fire District (U-8) contains such a longevity provision. The Employer had many other suggestions with respect to incentivizing longevity. However, it never submitted those numerous and varied ideas in a formal written contract proposal.

At this juncture, one might presume that Sagamore Hills Township and Northfield Center Township are currently both responsible for the ultimate funding of the still existing Fire District. No evidence was introduced of their financial impairment. The Union's Article 34 proposal, from my experience, does not seem particularly exorbitant for 2016 and 2017. Accordingly, I recommend that the Union's exact proposal for Article 34 WAGES (covering Wages and Longevity), as it appears herein, be adopted and included in the proposed contract.

35. ARTICLE 35 POLITICAL ACTIVITY

The Union's Position:

Section 1. Recognizing the right of all citizens to engage in the electoral process and/or political activity, the Employer agrees that it shall not be considered a violation of this Agreement nor cause for discipline or termination because of involvement of bargaining unit covered employees in the electoral process and/or political activity.

This language, according to the Union, was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer in its observations in its Article 36 of the Union's Article 35 proposal noted that it did not "…know why that would even be in there."

FINDINGS AND RECOMMENDATIONS: ARTICLE 35

After having considered the Employer's limited objections to the inclusion of the Union's Article 35 and finding precedent for it in The Summit County Sheriff's Office contract (U-2), I recommend that the Union's Article 35 proposal be adopted, as it appears herein, into the proposed contract.

36. ARTICLE 36 NO STRIKES – NO LOCKOUT

The Union's Position:

Section 1. The organization agrees that, during the term of this Agreement, there shall be no strikes, work stoppages, picketing, job actions, slowdowns or other cessations of the full and faithful performance of duties for any purpose whatsoever. In the event of any such concerted activity, organization representatives will continue to carry out their duties as employees and will take positive action to bring the activity to an end.

Section 2. The Employer agrees that it will not ~~lock-out~~ [lock out] any employee during the term of this Agreement.

Section 3. For the purpose of this Agreement, the meaning of the term "job action" shall include but not be limited to any interruption of operations by employees; absence from work upon any pretext or excuse, such as illness or group sickout call, which is not founded in fact; or interruption of the operations of the Employer by the organization and/or its members.

The Union maintained that this language was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer considered the Union's Article 36 proposal in its Article 37. It proposed an additional paragraph (presumably to the Union's Article 36, Sections 1, 2, and 3) which reads as follows:

> There shall be no interruption of the work for any cause whatsoever. Nor shall there be any work slowdown or other interference with public services. It is expressly recognized by the Union that any strike by members of the bargaining unit is a violation of Revised Code §4117 et seq. of the Ohio Revised Code. If a strike or other interruption of work is engaged in by members of the Bargaining Unit, whether it is a secondary strike or a primary strike, said Bargaining Unit employees will be subject to immediate termination. If the grievances filed by a member of the Bargaining Unit for his termination in violation of this Article, the sole question to be resolved in a grievance Arbitration procedure is whether or not the member engaged in conduct violative of this particular Article of the contract. If it is determined that the conduct occurred, the discipline imposed by the Employer will not [be] altered. Furthermore, it is recognized that the Employer has the right to seek an injunction against the Union and/or other employee in the Summit County Court of Common Pleas. The Union recognizes that in accordance with §4117.15(b) that the Union or its members cannot rely upon any alleged unfair labor practice by the Employer in support of any strike activity.
>
> In the event any employee covered hereunder is engaged in any violation of this Section, the Union shall, upon notification of the Employer, immediately order such employee or employees to resume normal work activities and to certify same to the Employer as well as take appropriate action with anyone who continues to engage in a violation of this Section. If the Union discharges its obligation, it shall not be liable for the unauthorized and uncondoned acts of any individual Bargaining Unit employee.

FINDINGS AND RECOMMENDATIONS: ARTICLE 36

I have considered the Union's and the Employer's Article 36 NO STRIKE-NO LOCKOUT proposals and examined similar provisions in comparable contracts in evidence exhibits (U-2, 4, 5, 8). I conclude, based on the evidence, that the Employer's proposal is a bit "draconian" and harsh for a first contract in a part-time firefighters/EMS unit. Accordingly, I

recommend the adoption of the Union's Article 36 proposal into the proposed contract exactly as it appears herein.

37. ARTICLE 37 DURATION OF AGREEMENT

The Union's Position:

> This agreement shall be effective from January 1, 2016 through December 31, 2017, unless either party gives written notice to the other party not less than ninety (90) days prior to the termination date of the desire to terminate, modify, or negotiate a successor Collective Bargaining Agreement.
>
> In witness whereof, the parties have set their signatures on the _____

The Union contended that this language was comparable to that found in most Labor Agreements and had been modified for this particular Unit.

The Employer's Position:

The Employer in its Article 39 verbally agreed that the language contained therein was "fine." However, there is no evidence that the Parties actually formally tentatively agreed to the language in the Union's Article 37 proposal and, consequently, it is being included as an open issue.[17]

FINDINGS AND RECOMMENDATIONS ARTICLE 37

Although the Employer verbally agreed to the Union's Article 37 DURATION OF AGREEMENT proposal at hearing, I have included it herein as an open issue inasmuch as the Parties did not formally agree in writing to Article 37 and/or did not indicate their assent by initialing the proposal. Accordingly, I recommend that the Union's Article 37 proposal be adopted and included exactly as it appears herein in the proposed contract.

[17] The Employer included in its Position Statement the discussion of its Article 38 MUTUALLY AGREED UPON DISPUTE SETTLEMENT PROCEDURE. It asserted in its observations, "I think that the procedure has to be tweaked in and of itself, but I think that we already have a procedure in Article 9 and 10, and if there is some reason to weave a part of this into those then we can do that. But, I do not think it is really necessary." The Union's Position Statement contained no such "Article 38 MUTUALLY AGREED UPON DISPUTE SETTLEMENT PROCEDURE" and, consequently, in view of the Employer's acknowledgment concerning the fact that such a procedure already exists elsewhere in the proposed Contract, I find any further discussion or inclusion of the Employer's Article 38 proposal to be unnecessary in this Fact-Finding Report.

CONCLUSION

In conclusion, the undersigned Fact Finder hereby submits the above recommendations on the outstanding issues presented in this matter. The Parties did not formally and/or in writing enter into any tentative agreements regarding any Articles of the proposed Contract and, accordingly, none are incorporated by reference herein.

Melvin E. Feinberg, Fact Finder

Cuyahoga County, Ohio
July 22, 2016