

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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In the Matter of)	
Fact-Finding Between:)	
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CITY OF SIDNEY)	Case No. 2016-MED-08-0747
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)	
-and-)	
)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL NO. 912)	

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For the Union:

John D. Harvey- Representative, Ohio
 Association of Professional Firefighters
 Dallas Davis- President, IAFF Local 912
 Mark Pleiman- Representative, IAFF Local 912
 Mike Utz- Negotiations Team, IAFF Local 912
 Chance Guisinger- Treasurer, IAFF Local 912
 Bryan Ramge- Representative, IAFF Local 912

For the Employer:

Daniel G. Rosenthal, Esq.- Jackson Lewis
 P.C.
 Emily Gelhaus, Esq.- Jackson Lewis P.C.
 Ginger Adams- Finance Officer
 Gary Clough- Asst. City Manager/ Public
 Works Director
 Brad Jones- Fire Chief
 Kelly Holthaus- Human Resources
 Coordinator
 Vickie Allen- Human Resources Manager
 Cameron Halker- Deputy Chief Fire

Date of Issuance: March 9, 2017

I. PROCEDURAL BACKGROUND

This matter came on for hearing on February 16, 2017, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on December 8, 2016. The hearing was conducted between the City of Sidney, Ohio (“Employer” or “City”), and the International Association of Firefighters, Local 912, AFL-CIO-CLC, OAPFF (“Union”), at the Sidney City Hall located at 201 W. Poplar Street, Sidney, Ohio 45365. The Union is the sole and exclusive bargaining representative of all fire Division personnel, except the Fire Chief, Deputy Fire Chief, and the Assistant Fire Chiefs as set forth in Article I of the collective bargaining agreement. (Employer Ex. 1). At the time of the hearing, the bargaining unit was comprised of approximately 24 full-time firefighters and six full-time Firefighter lieutenants (Union’s Position Statement, at 2). The Sidney Fire Department consists of three divisions: Administration; Operations; and Prevention.

The parties reached several tentative agreements regarding the following articles contained in the collective bargaining agreement: Article XI, Health and Safety- Section 4(B); Article X, No Discrimination - Section 1; Article XI, Dues Deduction - Section 2; Article XVI, Overtime Pay - Section 4(a); Article XIX, Education Bonus; and Article XXV §5, Workers’ Compensation. As of the fact-finding hearing, the following five (5) issues remained open and are properly before the fact-finder for resolution:

- Issue 1: Article XIV, Miscellaneous- Sections 5 and 6
- Issue 2: Article XIV, Miscellaneous- Section 7
- Issue 3: Article XV, Wages
- Issue 4: Article XVI, Overtime Pay
- Issue 5: Article XXIX, Kelly Time

The fact-finder incorporates by reference into this Report and Recommendations any provision of the current collective bargaining agreement not otherwise modified during negotiations, as well as the abovementioned Tentative Agreements. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Issue 1: Article XIV, MISCELLANEOUS- Sections 5 and 6

Position of the City

The current language contained in Article XIV, Sections 5 and 6 of the collective bargaining agreement provides as follows:

5. Negotiations. Unless otherwise agreed between the IAFF Negotiating Team and the City for a specific series of negotiations, all negotiations will be on City-paid time, provided, however, in the event that negotiation sessions are scheduled at times when one or more of the IAFF Negotiation Team members are not scheduled to work, or that a session or sessions extends beyond any team member's regular working hours, then the City will provide compensatory time off, on a one hour for one hour basis, subject to scheduling this time off with the approval of the appropriate supervisor. No overtime will be paid to any team member because of time spent in negotiations and the Fair Labor Standards Act will not be applicable because negotiations are not considered to be City business. The City will accommodate a total maximum of 45 hours of compensatory time for the entire IAFF Negotiation Team. It is also understood that this provision will only apply to the negotiation process, and not to any impasse resolution proceedings (mediation, fact-finding, and conciliation).
6. The bargaining unit shall be allowed a total of 36 hours leave annually to conduct union business. This would include seminars, meetings and conferences. Excluded are

time associated with the negotiation process and regular monthly meetings.

The City maintains that the current language is not “crystal clear,” and it proposes that time spent by bargaining unit members at fact-finding, conciliation and arbitration hearings should not be “City-paid.” It asserts that the time is not spent by bargaining unit members on City business and the Union’s positions at such hearings are adverse to the interests of City management. According to the City, the provisions afforded both internal and external comparable bargaining units are strongly in its favor. (City Ex. 2). It notes that the contract for the City’s patrol officers provides compensation for straight-time hours lost by union representatives in meetings at specified steps of the grievance procedure. However, the applicable language in the patrol officers contract excludes “attendance at any arbitration” and states that it does not apply “to any impasse resolution proceedings.” (City Ex. 3).

At hearing, the City reiterated its position and asserted that bargaining unit members should not be paid for their time spent at the aforementioned hearings as they are not conducting City business. According to the City, its proposed language does not preclude employees from attending hearings under the grievance/arbitration procedure. However, it “does not want to pay for time at fact-finding, conciliation and arbitration.” Contrary to the Union’s assertion, the City maintains that there is no past practice regarding this issue as the last fact-finding hearing occurred approximately 15 years ago. The City requests that the fact-finder recommend its proposal “. . . to clarify this issue with the language from the patrol officer agreement.” (City

Position Statement, 2). The City has proposed to “[i]nset as a new section 5, Article 5, §1 from the patrol officer’s agreement. Renumber the following sections.” (City Ex. 4).

Article 5, Section 1 of the contract between the City and the Fraternal Order of Police, Ohio Labor Council, Inc, representing the patrol officers, effective July 1, 2015 through June 30, 2018, provides as follows:

1. All Union business will be conducted outside paid working time. The only exception is for the following:
 - a. Minimal use of time and equipment (phone, e-mail, fax) at the discretion of the Chief, or his designee, for the investigation and/or resolution of potential grievances and grievances; and
 - b. Straight-time hours necessarily lost by Union representatives in meeting at the specified steps of the Grievance Procedure with representatives of the City at a mutually agreed upon time. This does not include attendance at any arbitration.

Position of the Union

The Union agrees with the City that the applicable language is ambiguous. However, “[f]or over twenty years the IAFF local 912 officers have been allowed time [off] for union business as it pertains to contract negotiations and processing discipline and grievances.” (Union Position Statement, 5). The Union would like to maintain the current practice as it “. . . serves the local and city better.” (Union Position Statement, 8). Furthermore, it is part of the Union’s job for its officers to attend these proceedings. According to the Union, the City’s proposed language “will interfere with the right of representation” in the event that officers are “not

allowed to leave work.” The Union asserts that the City “would have the ability to exclude employees from hearings” under its proposal. Additionally, “firefighters work entirely different shifts and the language in the patrol officers contract won’t fit how they operate.” The Union proposes the following language in Sections 5 and 6 of Article XIV of the new contract:

5. Negotiations. Unless otherwise agreed upon between the IAFF Negotiating Team and the City for a specific series of negotiations, all negotiations will be on City-paid time, provided, however, in the event that negotiation sessions are scheduled at times when one or more of the IAFF Negotiation Team members are not scheduled to work, or that a session or sessions extends beyond any team member's regular working hours, then the City will provide compensatory time off, on a one hour for one hour basis, subject to scheduling this time off with the approval of the appropriate supervisor. No overtime will be paid to any team member because of time spent in negotiations and the Fair Labor Standards Act will not be applicable because negotiations are not considered to be City business. The City will accommodate a total maximum of 45 hours of compensatory time for the entire IAFF Negotiation Team. It is also understood that this provision will only apply to the negotiation process, and not to any impasse resolution proceedings (mediation, fact-finding, and conciliation). Members of the negotiations team that are on duty during mediation, fact-finding, and conciliation hearings, shall be given sufficient time off to attend such hearings at no loss in pay.
6. The bargaining unit shall be allowed a total of 36 hours leave annually to conduct union business. This would include seminars, meetings and conferences. Excluded are time associated with the negotiation process (Outlined in section 5 of this article), regular monthly meetings, contract administration, grievance investigation and representation of members, in which IAFF local 912 representatives, who are on duty, shall be given sufficient time off at no loss in pay.

Final Recommendation

Based upon the evidence of record presented regarding this issue, the fact-finder determines that the language afforded the firefighters bargaining unit regarding time spent in negotiations should be comparable to the provision contained in the City's agreement with the police officers' bargaining unit. Further, the Union's proposed language is not supported by the provisions contained in the majority of the contracts of firefighters employed in comparable jurisdictions cited by the parties. The fact-finder recommends a clarification that differs slightly from the City's police bargaining agreement in that while attendance at arbitration is excluded, investigation and grievance handling should be paid time when part of the regular work day. The fact-finder recommends that the language contained in Sections 5 and 6 of Article XIV of the collective bargaining agreement provide, as follows:

Section 5. Negotiations. Unless otherwise agreed upon between the Union and the City for a specific series of negotiations, all negotiations will be conducted on City-paid time for representatives of the Union, provided; however, in the event that negotiation sessions are conducted at times when one or more of the IAFF Negotiation Team members are not scheduled to work, or that sessions extend beyond regular working hours, the City will provide compensatory time off, on a one hour for one hour basis, subject to this time off being approved by the appropriate supervisor. No overtime will be paid to any team member because of time spent in negotiations and the Fair Labor Standards Act shall not apply to any negotiation time. The City will accommodate a total maximum 45 hours of compensatory time for the entire IAFF Negotiation Team. It is also understood that this provision will apply only to negotiations and not to any impasse

resolution proceedings. Impasse resolution proceedings shall include any proceedings beyond mediation (i.e., fact-finding and conciliation).

Section 6. The bargaining unit shall be allowed a total of 36 hours leave annually to conduct union business. This would include seminars, meetings and conferences. Excluded is time associated with the negotiation process and regular monthly meetings.

Time spent by a Union representative, and the aggrieved employee (if not a class action or “policy” grievance), in grievance handling including investigation and meetings with the City shall be paid at the straight time rate, providing the time spent is part of the representative’s and aggrieved employee’s regular work day. Such time shall require approval by the Chief, which approval shall not be unreasonably withheld. Excluded from this time is attendance at any arbitration.

Issue 2: Article XIV, MISCELLANEOUS- Section 7

Position of the City

Article XIV, Section 7 of the current collective bargaining agreement provides as follows:

All new firefighters hired after January 1, 1996, shall be required to obtain certification as a Paramedic within 36 months of the date of employment and shall be required to maintain this certification for a period of 15 years from the initial date of certification. Firefighters employed prior to January 1, 1996 will not be required to become paramedics. Any firefighter that is not a paramedic is required to obtain and maintain certification as an EMT. The City shall pay for all associated costs to certify and recertify as a paramedic. The Chief may grant a request for an extension of up to six months to recertify as a paramedic.

The City proposes to modify the aforementioned provision by requiring firefighters to maintain paramedic certification for the duration of their careers. The current language which

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requires firefighters to maintain their paramedic certification for 15 years was negotiated at a time when this was close to the typical career life of a firefighter. According to the City, firefighters currently work up to 30 years. At the present time, there are dozens of firefighters who have been employed by the City for more than 15 years. The City acknowledges that those firefighters with more than 15 years of experience have not dropped their paramedic certifications, however, “they have the right now under the contract.” There is a possibility that a significant part of the department could give up their certification and become EMTs only. The City points out that EMTs cannot administer advanced life support care which comprises approximately 55 to 60 percent of the medical calls.

The City notes that current bargaining unit members will be “grandfathered” under the contract and its “. . . proposal would change this for future hires only, requiring them to maintain paramedic certification for the length of their career.” (City Position Statement, 2). The City proposes the following modification to Section 7 of Article XIV: “. . . After the first sentence add the following: ‘All new firefighters hired after January 1, 2017, shall be required to obtain certification as a Paramedic within 36 months of the date of employment and shall be required to maintain this certification for the length of their career with the City.’” (City Ex. 4).

Position of the Union

In its position statement, the Union stated that it “. . . opposes this language for the fact that the city has not offered any reasonable reasoning for such change. Currently this is not an issue and the union does not foresee this to be an issue anytime soon.” (Union Position

Statement, 9). At hearing, the Union indicated that there is no reason to oppose the City's proposal, however, it is "a non-issue because all the firefighters are paramedics." There is "no problem" at the present time and "historically those who get it [paramedic certification] don't drop it." The Union points out that it is "hard to re-certify," and a firefighter "in his last couple of years may make the choice" not to maintain his paramedic certification. The Union acknowledges that firefighters enjoy their certification and receive a bonus for maintaining it.

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder recommends that the City's proposed language should be contained in Article XIV, Section 7 of the new collective bargaining agreement. The Union does not dispute the City's position that the current language was negotiated at a time when the average career of a firefighter was approximately 15 years. The testimony establishes that a significant number of firefighters have been employed by the City for more than 15 years. The fact-finder notes that a paramedic certification is necessary for a firefighter to administer the advanced life support care which is required on many calls. Although there is no evidence that any firefighters with more than 15 years of seniority have decided not to maintain their paramedic certification, the fact-finder determines that the City's proposal will allow the Fire Department to continue providing the current high level of service to the public in the future. The final recommended language for Article XIV, Section 7 is as follows:

7. All new firefighters hired after January 1, 1996, and prior to January 2, 2017, shall be required to obtain certification as a Paramedic within 36 months of the date of employment and shall be required to maintain this certification for a period of 15 years from the initial date of certification. All new firefighters hired after January 1, 2017, shall be required to obtain certification as a Paramedic within 36 months of the date of employment and shall be required to maintain this certification for the length of their career with the City. Firefighters employed prior to January 1, 1996 will not be required to become paramedics. Any firefighter that is not a paramedic is required to obtain and maintain certification as an EMT. The City shall pay for all associated costs to certify and recertify as a paramedic. The Chief may grant a request for an extension of up to six months to recertify as a paramedic.

Issue 3: Article XV, WAGES

Position of the City

The City proposes two percent (2%) wage increases each year under the new contract with the first increase effective upon the signing of the agreement. The City is opposed to the recruitment and retention bonus sought by the Union. It asserts that firefighters employed by the City fair well compared to those in external comparable jurisdictions. For comparison purposes, the City surveyed the following full-time fire departments in the Sidney job market:

Bellefontaine; Celina; Greenville; Piqua; St. Mary's; Troy; Urbana; Van Wert; and Wapakoneta. (City Exhibits 5 - 9). According to the City, “[a] 12-year firefighter currently receives base pay, longevity pay, education bonus and paramedic bonus totaling \$67,561, which is 17.5% higher than the other survey cities’ average of \$57,514.” (City Position Statement, 1-2; City Ex. 6).

New firefighters hired by the City also receive wages which are 18.3% higher than their

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counterparts in comparable jurisdictions. The City's “. . . new hires receive \$53,394 for base pay, education and paramedic bonus, while the other survey cities' average is \$45,126.” (City Position Statement, 3; City Ex. 7). Additionally, the base pay, longevity, education and paramedic bonus of \$75,564.00 received by the City's lieutenants outpaces the survey average of \$65,690.00 by 15 percent. (City Ex. 8).

The City further asserts that its proposed annual wage increases of two percent are consistent with the marketplace. It points out that firefighters in comparable jurisdictions received an annual wage increase of 1.90% under the most recent collective bargaining agreements for those departments. (City Ex. 9). Additionally, SERB data reflects an average wage increase of 1.93% for firefighters in 2015. (City Ex. 10).¹

The two percent annual wage increases proposed by the City are also consistent with increases received by internal bargaining units. The City points out that the public works' employees represented by AFSCME received one percent wage increases in 2017, and police officers and sergeants represented by the FOP received two percent wage increases in June 2016. The police officers and sergeants are also scheduled to receive two percent increases again in June 2017. Dispatchers represented by the FOP received one percent wage increases in June 2016 and will receive one percent increases once again in June 2017. City employees who are not represented by unions received two percent wage increases in January 2017.

1. The fact-finder notes that the most recent SERB Annual Wage Settlement Report indicates that the average wage increase for fire units in 2016 was 2.34 percent.

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According to the City, the wage increases received by firefighters since 2005 have totaled 30.25 percent. The City maintains that “[t]his is consistent with FOP-Patrol and FOP-Sergeants whose increases over the same period of time total 30.16% and 30.71%, respectively.” (City Position Statement, 3). It notes that wage increases received by public safety forces since 2005 have outpaced the increases of all other internal bargaining units and non-represented employees. (City Ex. 11).

The City’s firefighters are paid comparably to its police officers. The average bonus paid to firefighters is \$3,230.00, while the average bonus received by police officers is \$2,070.00. (City Ex. 12). The City points out that “[w]hen added to the proposed top pay step for firefighters, the firefighter pay is \$65,745, compared to \$64,567 for police officers, a difference of \$1,178.” (City Position Statement, 4). The Union falsely argues that its proposed additional bonus for firefighters is necessary in order to compete with the pay received by police officers. The Union’s proposal ignores two important facts. First, firefighters already receive over \$1,000.00 more per year in bonus pay than the police officers. (City Ex. 12). As such, “there is no need for another bonus on top of that.” Second, the City claims that “. . . senior officer pay was added in part to offer police officers a bonus comparable to the firefighters’ EMT/Paramedic bonus.” (City Position Statement, 4). The City points out that police officers are required to have at least 12 years of service to be eligible for this bonus and a “number do not receive it.” Additionally, the police department’s physical fitness bonus available to officers has a “negative component” which may result in a six-day suspension.

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According to the City, the average gross pay received by fire department lieutenants in 2016 was \$92,039.00. This amount was \$8,857.00 more than the average gross pay afforded the City's police sergeants. Similarly, the average gross pay for firefighters in 2016 was \$75,625.00, as compared to an average gross pay received by patrol officers of \$71,685.00. (City Exhibit 14). The City asserts that there is "nothing internally or externally for the firefighters to receive more than two percent annual wage increases or to receive more bonus pay than they are already receiving." It claims that the "2016 income tax revenues were aberrational based upon a new withholding payment imposed by House Bill 5, and excluding the timing difference the increase would have been about 1.9 percent." Finally, the City also maintains that "infrastructure needs have been put off."

Position of the Union

The Union proposes wage increases of 2.5 % for the first year (2017); 2.75 % for the second year (2018); and 3.0 % for the third year (2019) of the contract. The Union maintains that the City's proposed wage increases are below the current SERB average. It asserts that the firefighters ". . . currently lag behind in regard to comparables with the Sidney PD and area IAFF Departments." (Union Position Statement, 9). According to the Union, its wage rate proposal is reasonable, fair and necessary for bargaining unit members to maintain their ranking with firefighters employed by Fire Departments in comparable municipalities in the area. The Union maintains that its proposal is supported by the positive economic growth and outlook for the City. The Union is also proposing to add the following language to Article XV regarding recruitment and retention "[w]hich is based off of the Sidney PD contracts . . .":

3. Retention and Recruitment Incentive - Bargaining unit members having two (2) or more of the following certification, and with less than 15 years on SFD shall be compensated with an additional 1% of the top firefighter pay. Those with two (2) or more certifications and with 15 years or more on the SFD, shall receive an additional 2% of the top firefighters pay. Recognized certifications: Haz Mat Technician, Rescue Technician Level 1, Honor Guard participation, fire investigator, fire instructor, fire inspector, EMS instructor, PALS, ACLS or CPR.

As it concerns external comparables, the Union's Position Statement ". . . proposes utilizing two criteria to form the basis of the comparisons: The first criteria would include departments with similar governing bodies in close geographical location to Sidney that comprise a IAFF local. The second criteria takes into account departments in Shelby County or adjacent counties that have similar population[s], run volume[s] and staffing to Sidney." (Union Position Statement, 4). The Union cited fire departments in the following jurisdictions as comparable external bargaining units in connection with the unresolved issues before the fact-finder: Beavercreek; Bellefontaine; Celina; Defiance; Greenville; Kettering; Piqua; St. Mary's; Tiffin; Troy; Wapakoneta; Urbana; and Van Wert.²

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2. Each of the fire departments identified by the Union as externally comparable bargaining units were also contained in the City's list of external comparables with the exception of Beavercreek, Defiance, Kettering and Tiffin. The fact-finder notes that Beavercreek (pop. 45,193 in 2010) and Kettering (pop. 56,163 in 2010) have populations which are more than twice the size of Sidney (pop. 21,229 in 2010). Additionally, Tiffin and Defiance are not located within the same geographic area as the other comparable jurisdictions identified by the parties. (City Ex. 5).

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At the hearing, the Union indicated that the “comps between the parties are different, but a few are the same.” According to the Union, the average wage increases “continue to rise” and a “three percent increase could be the average in year three.” The Union reiterated that the City is “doing well,” and it pointed out that income tax revenues have increased. (Union Exhibit 1, at 4). As of December 31, 2016, the City’s general fund balance was \$7.1 million, compared to \$4.2 million at the end of 2013.

The recruitment and retention part of its proposal is similar to the City’s contract with the patrol officers and is intended to provide “extra pay for employees going above and beyond and getting certifications.” The Union maintains that it proposed language will enable the City to “get and keep younger people” as firefighters. The Union notes that the gross pay earned by firefighters reflected in City Exhibits 13 and 14 includes a “ton of overtime due to illness and injury.” The City acknowledges that its gross pay figures contained in the aforementioned exhibits include overtime pay. According to the Union, the top pay for the City’s police officers is \$67,972.00, plus longevity, while the top pay for the firefighters is \$66,029.00. The Union’s proposed wage increases will still place it behind the Police Department.

Final Recommendation

For the following reasons, the fact-finder recommends the City’s wage proposal. The evidence of record presented in this case establishes that a 12-year, full-time firefighter employed by the City received \$67,561.00 (\$61,289.00 - base pay; \$1,532.00 - longevity pay; \$1,800.00 - education bonus; \$2,940.00 - paramedic bonus) in 2016. The total sum is approximately

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\$10,000.00 more per year than the compensation afforded 12-year firefighters at comparable jurisdictions. (City Ex. 7). The fact-finder notes that twelve-year firefighters employed at only one of the nine comparable jurisdictions (Troy) are paid more than the City's twelve-year firefighters. The record also reveals that only newly hired firefighters in Piqua received a total wage package in 2016 which was more than the compensation afforded the City's new hires. (City Ex. 7). Additionally, only the supervisors of the Troy and Piqua Fire Departments were paid more than the lieutenants in the City's Fire Department. (City Ex. 8). In sum, the record establishes that the City's firefighters receive higher wages than firefighters employed at a majority of the comparable jurisdictions cited by the parties.

The fact-finder determines that the two percent annual wage increases proposed by the City will allow bargaining unit members to maintain their relative standing regarding compensation as compared to their counterparts employed at other area fire departments. The fact-finder notes that the evidence presented by the Union reveals that firefighters employed by Troy will also receive two percent wage increases in 2017 and 2018. In fact, the available data presented by the Union and/or contained in the SERB database establishes that two percent wage increases scheduled to be received by firefighters at comparable jurisdictions in 2017, 2018 and 2019 are more common than any other percentage increase. (Union Ex. 3).³³

3. Bellefontaine: 2% wage increase in 2017; Greenville: 2% wage increases in both 2017 and 2018; Piqua: 2% wage increase in 2017, 2018, and 2019, respectively; St. Mary's: 2% wage increases in 2017, 2018 and 2019, respectively; Troy: 2% wage increases in both 2017 and 2018; Wapakoneta: 2% wage increases in 2017, 2018 and 2019, respectively.

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The fact-finder further notes that the City's police officers are also scheduled to receive a two percent wage increase in July 2017. A City firefighter at the top step will receive a base wage of \$62,514.78 in 2017 under the City's proposed two percent wage increase, while City police officers at the top step received a base wage of \$62,497.24, effective June 26, 2016. The fact-finder notes that police officers at the top step will receive \$63,747.19 per year, effective June 25, 2017. Under the City's proposal, the base wage rate of firefighters at the top step will increase to \$63,765.08 in 2018 and \$65,040.38 in 2019. It is clear that the base wage rates afforded the City's firefighters and police officers are relatively comparable. Additionally, no other internal bargaining unit will receive more than a two percent wage increase in 2017 (AFSCME - 1%; FOP Sergeants - 2%; FOP Dispatch - 1%; Non-bargaining unit employees - 2%). (City Ex. 11).

As it concerns the retention and recruitment incentive bonuses proposed by the Union, the fact-finder determines that the Union presented insufficient evidence to support recommendation of its proposed language. The record establishes that the average total bonus received by a firefighter in 2016 was \$3,087.00, as compared to the average bonus of \$2,070.00 received by a patrol officer that year. (City Ex. 12). The fact-finder notes that no evidence was presented regarding the City's inability to either recruit new firefighters or retain those that have already been hired.

For each of the aforementioned reasons, the fact-finder recommends that the wage increases under the new collective bargaining agreement should be as follows: 2017 - 2.0% (effective January 1, 2017); 2018 - 2.0%; 2019 - 2.0%.

Issue 4: Article XVI, OVERTIME PAY

Position of the City

Article XVI of the current collective bargaining agreement provides, in part, as follows:

“1. Overtime pay shall be provided to all employees, except as exempted in the following sections, at a rate of one and one-half times the normal rate for all hours worked in excess of the normal work day, or in excess of the basic work week.” The City proposes that overtime should be paid exclusively as required by the Fair Labor Standards Act. According to the City, “current overtime in the [Fire] Department is excessive as compared to other City departments.” The City has proposed that the overtime rate for 24/48 hour firefighters should be determined by dividing their annual salary by 2,912 hours. Currently, the overtime rate is determined by dividing their annual salary by only 2,080 hours. As a result, the City maintains that the current overtime rate is excessive and constitutes a windfall. The City points out that firefighters are paid for 2,912 hours and the current approach to paying overtime results in bargaining unit members receiving more than double time for overtime work. It also notes that its proposal is consistent with the manner in which overtime is calculated for all other City employees.

The City also proposes paying overtime only for those hours worked in excess of 212 during a 28-day work period as permitted by the Fair Labor Standards Act. The Fire Department received \$377,241.00 in comp time and overtime in 2016, as compared to \$181,289.00 by the Police Department during the same period. The City notes that 52 percent of the total comp time and overtime was paid to the Fire Department in 2016. (City Ex. 15). For each of the aforementioned reasons, the City has proposed the following overtime pay language:

- a. Section 1. Replace this and the other inconsistent provisions with the following: ‘For purposes of the Fair Labor Standards Act, a 28-day work period will be used for determining overtime. Overtime of one and one-half hours times the regular rate shall be paid only for hours worked in excess of 212 hours during the 28-day work period. Paid time off will not be considered hours worked for purposes of overtime. The basic rate for overtime for 24/48 firefighters will be determined by dividing the annual salary by 2,912 hours.’

(City Ex. 4).

Position of the Union

The Union asserts that “. . . the city has posed no viable reason for the local to go backwards in the way overtime is paid. Currently the department has difficulty filling overtime [spots]. This change would exacerbate that situation.” (Union Position Statement, 9). At hearing, the Union indicated that the decision to pay overtime is “solely up to the City” and it is “not mandated in the contract.” The Union maintains that it is “up to the city to control overtime and number of people on the job.” Furthermore, “no comps pay the way the City is proposing.” The language at issue is a “long-term provision in the contract” and the City’s proposal “punishes employees who come in and work their days off.”

Final Recommendation

Based upon the evidence of record presented regarding this issue, the fact-finder determines that the City presented insufficient evidence to warrant a modification of the overtime pay language contained in the current contract. A review of the manner in which overtime

compensation is calculated for firefighters employed in comparable jurisdictions reveals that a majority of the contracts presented to the fact-finder contain provisions favorable to the Union's position to retain current contract language. Additionally, the schedules worked by firefighters are different than those of other City employees. Therefore, the manner in which overtime is calculated for those employees does not provide support for the City's position. The fact-finder also notes that the use of overtime in the Fire Department is subject to some control by the City. As such, the City has the ability to reduce costs which it deems to be excessive. Accordingly, the fact-finder recommends that the overtime pay language contained in Article XVI should remain unchanged in the new collective bargaining agreement.

Issue 5: Article XXIX, KELLY TIME

Position of the Union

Article XXIX entitled "Kelly Time," currently provides, in part, as follows:

Fire personnel assigned to a shift will work a 56 hour week. Each 24 hour shift is followed by 48 hours off. During a 21 day cycle this work schedule averages 56 hours per week. However, contractually the work week has been reduced to 54 hours per week. Each calendar week, an employee assigned to the shift would earn two hours of "Kelly" time to compensate for the difference between the actual hours worked and the contractual hours required to work. This totals 104 hours of "Kelly" time each calendar year. If an employee earns two weeks of vacation per year, this amount is reduced by four hours. If the employee earns three weeks vacation, it is reduced by six hours. If the employees earns four weeks vacation, it is reduced by eight hours. If the employee earns five weeks vacation, it is reduced by 10 hours.

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The City recently discussed the “. . . idea of changing the hours of the s[h]ift including starting times.” (Union Position Statement, 7). The Union notes that it has “. . . consistently opposed such changes in large part because the city has failed to provide an[y] meaningful data that would indicate how this would benefit the crews or the city.” (Union Position Statement, 7). It asserts that this is a mandatory subject of bargaining under ORC Section 4117.08 and it “should have the opportunity to bargain changes.” According to the Union, “should the city arbitrarily make the changes they seek, the current contract language is ambiguous, not adequately defining the employees’ current hours of work and Kelly day.” (Union Position Statement, 7-8). The collective bargaining agreement provides the number of hours per week that an employee will work and those hours are bargained. The Union points out that “all of the comps do not allow the city to arbitrarily change schedules.” Additionally, “all of the comps state something about hours of work.”

The Union proposes changing the heading of Article XXIX from “Kelly Time” to “Hours of Work and Kelly Day,” and modifying the first paragraph to provide as follows:

Fire personnel assigned to operations shall work a 56 hour week. Each shift will commence at 0700 and consist of a 24 hour shift, followed by 48 hours off. During a 21 day cycle this work schedule averages 56 hours per week. However, contractually the work week has been reduced to 54 hours per week. Each calendar week, an employee assigned to the shift would earn two hours of “Kelly” time to compensate for the difference between the actual hours worked and the contractual hours required to work. This totals 104 hours of “Kelly” time each calendar year. If an employee earns two weeks of vacation per year, this amount is reduced by four hours. If the employee earns three weeks vacation, it is reduced by eight hours. If the employee earns five weeks

vacation, it is reduced by 10 hours. Any variation to the operations (shift) schedule shall be bargained with the union.

Position of the City

Although “wages are important, equally important to the City is the ability to maintain management’s right to schedule.” The City indicates that it is “. . . implementing a peak schedule to mitigate the excessive overtime.” (City Position Statement, 6). At hearing, the City expressed its desire to “bring on two, twelve-hour bargaining unit firefighters during peak hours.” The City discussed this issue with the Union on eight or nine occasions although it was not contractually obligated to do so. The City points out that it has the unrestricted right to schedule employees pursuant to Article 3 of the contract. The Union has proposed to lock in hours of operation and require mid-term bargaining over any change in the schedule. The City is opposed to the Union’s proposal which it characterizes as a “huge change in the status quo and not a past practice.” According to the City, the Union’s proposal is also contrary to external comparables as “only one does not give the city the right to set schedules.” (City Ex. 16). The Union’s proposal if recommended would result in an “erosion of management rights.” For each of the aforementioned reasons, the fact-finder should recommend the status quo.

Final Recommendation

The fact-finder recommends that Article XXIX of the new collective bargaining agreement should not be modified as proposed by the Union. The Union presented insufficient evidence to warrant a change in the current contract language. A review of the applicable

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contract provisions regarding hours of work which are contained in the collective bargaining agreements of comparable external jurisdictions does not support the Union's proposal to lock in shift starting times for the duration of the new agreement subject to mid-term bargaining if the City seeks a scheduling change regarding this matter for operational purposes. Accordingly, the current contract provision should remain unchanged in the new collective bargaining agreement.

/s/ Jonathan I. Klein
Fact-finder

Dated: March 9, 2017

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Jon D. Harvey, Representative for Union, at the Ohio Association of Professional Firefighters, 333 South Cherry Street, Germantown, Ohio 45327, Jharvey3@woh.rr.com; and upon Daniel G. Rosenthal, Esq., at Jackson Lewis P.C., PNC Center, 26th Floor, 201 E. Fifth Street, Cincinnati, Ohio 45202, Daniel.Rosenthal@jacksonlewis.com; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, donald.collins@serb.state.oh.us; each by electronic mail this 9th day of March 2017.

/s/ Jonathan I. Klein
Fact-finder