

STATE EMPLOYMENT RELATIONS BOARD

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF BEACHWOOD

AND

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2388

Case No. 2017-MED-07-0842
Firefighters, Lieutenants and Captains

Before Fact Finder Thomas J. Nowel, NAA

PRESENTED TO:

Robin L. Bell
Regional Manager/H.R. Director
Clemans, Nelson & Associates, Inc.
2351 South Arlington Rd., Suite A
Akron, Ohio 44319

Ryan J. Lemmerbrock
MUSKOVITZ & LEMMERBROCK, LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, Ohio 44115

Donald M. Collins
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215

INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the case as captioned on the cover page by the State Employment Relations Board on March 6, 2018 in accordance with Ohio Revised Code Section 4117.14 (C) (3). The parties scheduled two days with the Fact Finder. The parties met with the Fact Finder on April 20, 2018 in an attempt to mediate issues at impasse. While no tentative agreements were reached on this date, the parties agreed to a number of issues prior to the scheduled evidentiary hearing which was conducted on May 31, 2018 at Beachwood City Hall.

The bargaining unit is comprised of 33 Firefighters, 6 Lieutenants and 3 Captains. The term of the prior collective bargaining agreement was November 1, 2014 to October 31, 2017. The parties met in negotiations on five occasions and reached a tentative agreement on all issues on December 6, 2017. A retroactivity agreement had been executed by the parties. The Union membership ratified the tentative agreement on December 13, 2017. Beachwood City Council tabled the tentative agreement and then voted to reject the tentative agreement on January 8, 2018. The parties met on February 13, 2018. The Employer submitted a number of proposals which deviated from the original tentative agreement and placed a new proposal on the table regarding health insurance issues. Following this meeting, the parties proceeded to fact finding although they attempted to resolve issues in mediation on April 20.

At fact finding, the parties agreed on a number of provisions which had initially been submitted for the Fact Finder's consideration. The parties agreed to develop language for these issues following the fact finding hearing to be incorporated in the Report and Recommendation.

Other issues remained at impasse. The parties agreed to the issuance of this Report and Recommendation on July 5, 2018.

OUTSTANDING ISSUES:

1. Article 3, Wages and Overtime
2. Article 4, Longevity Pay for Years of Service
(Work week reduction, SDO Days and Paramedic Pay increase)
3. Article 5, Leave (holiday pay)
4. Article 5, Leave (vacation cash-out)
5. Article 6, Medical Benefits
6. Article 8, Uniforms and Equipment
7. Article 10, Leave of Absence (sick leave maximum hours)
8. Article 10, Leave of Absence (cash out sick leave)
9. Article 10, Leave of Absence (Bereavement Leave)
10. Article 31, Duration

Those participating at hearing for the Employer included the following:

Robin L. Bell, Clemans, Nelson & Associates
Martin S. Horwitz, City of Beachwood Mayor
Patrick Kearns, Fire Chief
Larry Heiser, Finance Director
Diane Calta, Law Director
Shawn Lutz

Those participating at hearing for the Union:

Ryan J. Lemmerbrock, MUSKOVITZ & LEMMERBROCK
Mark A. Russo, President, IAFF Local 2388
Nick Ricco, Secretary, IAFF Local 2388
Rick Gromck, Treasurer, IAFF Local 2388
Adam Dodson, Sergeant-at-Arms, IAFF Local 2388

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then developing a recommendation, the Fact Finder is guided by the principles which are outlined in the Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained agreements, if any, between the parties.
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or private employment.

During the course of the evidentiary hearing, the parties had full opportunity to advocate for their respective positions, submit exhibits, present testimony and discussion, and engage in rebuttal of the submissions and arguments of the other party.

ANALYSIS AND RECOMMENDATIONS

1. Article 3, Wages and Overtime

The Union proposes wage increases as follows. Effective November 1, 2017, 2.5% wage increase; effective November 1, 2018, 2.5% wage increase; effective November 1, 2019, 2.5% wage increase.

The Employer proposes wage increases as follows. Effective November 1, 2017, 2.25% wage increase; effective November 1, 2018, 2.25% wage increase; effective November 1, 2019, 2.25% wage increase.

UNION POSITION: The Union emphasizes that its proposal on the table at fact finding had been successfully negotiated, and agreement was reached by the parties. Although City Council rejected the tentative agreement and the package which had been negotiated by its bargaining committee, there has been no change in the financial condition of the Employer. The Union states that, if anything, finances have improved since the tentative agreement was reached. The Union states that the financial health of the City of Beachwood is enviable. The Union states that the unexpensed balance of the general fund has increased over the past three years. Likewise, there has been an increase in revenue during the past three month period. The Union states that, since the tentative agreement was reached by the parties on December 6, 2017, there has been an increase in the general fund balance every month. In a comparison to 20 city jurisdictions in the region, the City of Beachwood projects some of the highest fiscal health indicators in the region (Union Exb. 8). The Union states that Firefighter wages rank 4th among the same comparable jurisdictions, but, the Union argues, wages are actually less, compared to

other jurisdictions, due to the work week schedule at the City of Beachwood. This is an issue the Union proposes to rectify with its proposal regarding work week. The Union states that there was justification for its wage proposal going into the tentative agreement, which had been reached between the parties, as call volume has increased significantly since 2007 (Union Exb 10). The Union states that its proposal is in line with increases received by firefighters in comparable communities, and, clearly, there is no issue regarding the City's ability to pay. The Union states that its proposal at fact finding is what the parties agreed as part of an overall tentative agreement on all issues during negotiations and should, therefore, be the Fact Finder's recommendation as the only factor that has changed has been improvement in the financial condition of the City. The Union states further that, while other bargaining units settled their negotiations with an agreement for three 2.25% wage increases during the terms of the Agreements, the two FOP collective bargaining agreements include "me-too" provisions regarding wages. The Union argues that the Employer should not be rewarded for bad faith bargaining by a recommendation of its proposal at fact finding and argues further that its wage proposal was, at one time, supported by and found acceptable by the City.

EMPLOYER POSITION: The Employer, in response to the Union's statement that it bargained in bad faith, reminds the Fact Finder and Union that the statute requires the legislative body, in this case Beachwood City Council, to approve the economic provisions of the negotiations. The Employer states that the negotiations process is not concluded until this occurs. The Employer refutes the suggestion that it bargained in bad faith. The Employer states that Beachwood Firefighters are highly paid compared to their peers in surrounding communities. Its wage

proposal enhances that standing (Employer Exb. 5 and 6). The Employer states that its proposal to increase paramedic pay by 1% further enhances Beachwood wages compared to area communities.

The Employer emphasizes the principle of pattern bargaining. There are six bargaining units at the City Beachwood, Dispatchers (OPBA), Police Patrol (FOP), Police Promoted (FOP), Service Department (Laborers' Union), Building and Housing (Laborers' Union) and the Firefighters' unit. All bargaining units, with the exception of Firefighters, have settled for the three 2.25% wage increases which the Employer proposes now in the instant matter. The Employer cites a variety of Fact Finder Reports from neutrals which emphasize the significance of internal comparables including a number written by this Fact Finder. The Employer argues that the pattern must be given significant consideration in the instant matter. In addition, the Employer states that the Mayor and City Council have emphasized the importance of limiting the total package increase to between 3% and 3.25% for this bargaining cycle. The Employer states that this goal has been met with all other bargaining units, and the Fact Finder should, therefore, recommend its three year wage proposal.

RECOMMENDATION: Each party to the disputed wage issue puts forth compelling arguments. The Employer emphasizes the pattern of bargaining which has occurred during this bargaining cycle, and this is a factor which must be given significant consideration. The Union, on the other hand, states that a tentative agreement had been reached between the parties, and three 2.5% wage increases were part of the overall settlement. The Union asks how the Employer is now able to justify its proposal at fact finding following the tentative agreement.

The Union states that the Employer bargained in bad faith. The Employer's response is that the bargaining process, based on the statute, is not concluded until the legislative body approves the financial aspects of any negotiated settlement. Both arguments resonate with this neutral.

The City of Beachwood possesses the financial capacity to grant the Union's proposed wage increases. The reality is that it was part and parcel of the tentative agreement, and the Employer certainly analyzed its ability to afford the three wage increases at the time the matter was settled. Evidence indicates that the wages of bargaining unit employees are some of the highest in the area based on what is paid Firefighters in comparable jurisdictions in the region. There is no argument by the parties regarding this fact. It is also true that the Employer's financial stability and outlook are excellent. This is due to a strong tax base and very sound fiscal management on the part of City administration.

The Employer's argument regarding pattern bargaining is critical. While the Employer introduced certain proposals just prior to the fact finding process, in the case of wages, the parties engaged in the give and take of the bargaining process prior to the ratification process. Evidence indicates that the Employer's current proposal at fact finding was on the table at one time during bargaining. Knowing this, and the fact that all other bargaining units agreed to three 2.25% wage increases, compels this Fact Finder to recommend the Employer's proposal and not break parity with other bargaining units' wage increases over the next three years. The impact on the Union of a failed ratification by City Council is not lost on this Fact Finder, but the parties must move beyond this disappointment as the relationship is long term. The recommendation is the Employers' wage proposal, 2.25% effective and retroactive to

November 1, 2017; 2.25% effective November 1, 2018; and 2.25% effective November 1, 2019.

The parties will calculate wage rates pursuant to Article 3 of the new Agreement.

2. Article 4, Longevity Pay for Years of Service

The Union proposes, effective January 1, 2019, to reduce the workweek from 50.4 hours to 49.7 hours. In conjunction with this proposal, the Union proposes an increase in Special Days Off (SDO hours) from 300 to 336 hours. This would be reflected in Article 5, Section 8.

The Employer proposes a reduction in the workweek from 50.4 hours to 50.2 hours, and a corresponding increase in SDO hours from 300 to 312 is part of the proposal. The proposal includes a limit to the taking of SDO time during a 28 day period. The Employer proposes an increase in paramedic pay from 4% to 5% of the base rate.

UNION POSITION: The Union states that its proposal at Fact Finding reflects the tentative agreement reached by the parties during negotiations, 49.7 workweek and 336 SDO hours. The Union states that the Fire Chief was in agreement with the Union's position when the parties reached tentative agreement. Following the rejection of the tentative agreement, the Employer submitted a modified package proposal, in an attempt to conclude negotiations. This proposal included the 49.7 hour workweek (Union Exb. 25). The Union states that there is no good argument now to reject its proposal. The Union states that, since the rejection of the tentative agreement, the Employer has hired two new Firefighters, and cash reserves have increased. The Union argues that the reduction in hours will not decrease shift staffing. In respect to the companion proposal of 336 hours SDO hours, the Union states that Beachwood

Firefighters lag behind their peers in the region in total time off (Union Exb. 13), and the proposed 49.7 hour workweek is very comparable to what exists in various regional jurisdictions (Union Exb. 12). The Union rejects the proposal to limit the use of SDO hours. The Union states that this proposal was never made during negotiations, and it was not a part of the package proposal submitted by the Employer following rejection of the tentative agreement. The Union argues that there is no reason to not recommend its proposal on workweek and SDO hours. The Union generally did not submit comment regarding the Employer's proposal to increase the paramedic certification supplement.

EMPLOYER POSITION: The Employer states that it would prefer to maintain the current hours of work, but, as a compromise, is offering a reduction to 50.2 hours and an increase in SDO hours to 312. The Employer argues that the Union's proposal increases potential overtime costs as each bargaining unit member will work 12 hours less each year. The reduction in hours also has an impact on vacation and holiday pay as such hours will be at a higher rate. The Employer argues that the Union's proposal is equivalent to a 1.5% pay increase. The Employer states that, in analyzing comparable work hours in regional jurisdictions, while it appears a number of Fire Departments enjoy work hours which are equivalent to the Union's proposal, it must be noted that not all paid leave time is counted in overtime calculation in most other jurisdictions in the region (Emp. Exb. 9). All non-worked paid time counts for overtime purposes in the Beachwood Fire Department. The Employer proposes an increase in SDO hours which corresponds to its proposal to reduce the work week to 50.2 hours.

The Employer proposes that SDO hours must be used monthly, 28 day cycle, in order to reduce the overtime liability. The Employer argues that the work schedule is burdened with an employee's ability to utilize SDO time, vacation and comp time off. In addition, the cash payout at the end of the year becomes excessive. The Employer urges the Fact Finder to consider this modification to the SDO provision of the Agreement.

The Employer proposes an increase in paramedic pay from 4% of base pay to 5% as a way to off-set its proposal to reduce the health care allowance. The Employer believes that its proposals are reasonable and realistic; maintain the overall spending limit suggested by City Council; and should, therefore, be recommended by the Fact Finder.

RECOMMENDATION: Consideration must be given to the negotiations leading up to the decision of Beachwood City Council to reject the new Agreement and then discussions between the parties prior to fact finding. During the evidentiary hearing, the Employer related the many problems it would face if the Union's proposal regarding a reduced work week and corresponding increase in SDO hours was adopted. In spite of these concerns, the Employer and Union had agreed to the reduction and increase. Certainly, the Employer's bargaining team, including the Fire Chief, closely analyzed the compromise reached by the parties and found it acceptable and affordable. Following City Council's rejection of the tentative agreement, the Employer submitted a package proposal in an attempt to conclude negotiations prior to fact finding. This proposal included the previous agreement to reduce the work week to 49.7 hours with the companion increase in SDO hours to 336 hours. In addition, comparables from regional jurisdictions support the Union's argument for its proposal. There have been no

changes in the economic health of the City since the conclusion of negotiations in December 2017. The Employer's argument, regarding its concerns over the proposal to incorporate the prior tentative agreement regarding workweek, is therefore, not compelling. The Union's proposal to reduce the work week to 49.7 hours and increase SDO hours to 336 is recommended effective January 1, 2019.

The Employer proposed 312 SDO hours as a part of its companion proposal regarding work week. An additional proposal was attached which would place limitations on the use of such hours based upon a 28 day period. While the Employer argues that the proposal is essential in controlling its overtime costs, the Union has expressed its opposition stating that the proposal was first submitted at fact finding. While the proposal may appear to be reasonable, the parties never had an opportunity to negotiate or discuss the matter. The issue may have impacted the tentative agreement had the Employer submitted a proposal and discussed the matter during the give and take of negotiations. Additionally, the Employer's proposal, which is now at fact finding, was not included in the package presented to the Union in January 2018 in an attempt to conclude negotiations. Based on this evidence, the proposal to limit the use of SDO hours within a 28 day period, is not recommended.

The Employer proposes an increase in paramedic pay as an off-set to its proposal to reduce the health care allowance over the term of the new Agreement. The Union generally made little or no response to the proposal based on its opposition to the reduction. The proposal to increase the paramedic pay supplement is not recommended.

The recommendation to reduce hours of work to 49.7 per workweek and increase SDO hours to 336 effective January 1, 2019 as follows.

Article 4, Longevity Pay for Years of Service

Hourly Rate of pay shall be at annual rate divided by 2,620.8 except those working a forty (40) hour week, wherein rate shall be divided by 2080. Effective January 1, 2019, the hourly rate of pay shall be at annual rate divided by 2,584.4 except those working a forty (40) hour week, where rate shall be divided by 2080

Regular workweek is fifty and four-tenths (50.4) hours. Effective January 1, 2019, the regular workweek shall be forty-nine and seven-tenths (49.7) hours. All fire fighters shall work four (4) tours of duty in a thirteen (13) day work period. A tour of duty shall consist of twenty-four (24) consecutive hours, and they shall be paid one twenty-sixth (1/26) of their annual rate each bi-weekly pay period. A workweek begins with the day shift starting on Monday morning at 0700 hours.

Article 5, Leave

8. The City and the Union shall agree upon policies and procedures for the creation of a bank of hours of leave time for each employee for each calendar year. Such bank of time shall be in lieu of Special Days Off presently provided pursuant to the provisions of the Fair Labor Standards Act (“SDO Days” or “SDO Bank”). There shall be three hundred (300) hours in the SDO Bank for 2018. Effective January 1, 2019, there shall be three hundred thirty-six (336) hours in the SDO Bank for each calendar year. Said policies and procedures shall provide that each employee will take the entire three hundred (300) hour SDO Bank as time off in 2018, and the entire three hundred thirty-six (336) hours in 2019 and each year thereafter. No cash payment will be made in lieu of such SDO time. Each employee shall also take at least six (6) full tours of duty of holiday or vacation time off each year. The creation of such an SDO bank will not affect the regular work week or the calculation of the rate for overtime pay as provided elsewhere in the Agreement.

The Employer’s proposal to limit the use of SDO hours to a 28 day period is not recommended.

The Employer’s proposal to increase paramedic pay is not recommended.

3. Article 5, Leave (Holiday Pay)

The parties had discussed a modification to Section 2 of Article 5 regarding employees who work for those who are required to work on a holiday. At the evidentiary hearing, the

parties agreed to the language in Section 2. This agreement is hereby incorporated in the Report and Recommendation as follows.

Article 5, Leave

2. Each full-time member of the Bargaining Unit, hired prior to May 1, 2011, shall be entitled to and receive compensation for the following six (6) holidays - New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, and Christmas Day, to be computed on the basis of twenty-four (24) hour tours of duty, each calendar year. Each full-time member of the Bargaining Unit, hired after May 1, 2011, shall be entitled to and receive compensation for holidays each calendar year, to be computed on the basis of twenty-four (24) hour tours of days, pursuant to the following schedule:

CALENDAR YEARS OF SERVICE	TOURS OF HOLIDAY PER YEAR
Year Hired	One (1)-Prorated Based on Hire Date
One (1) Year	Two (2)
Two (2) Years	Three (3)
Three (3) Years	Four (4)
Four (4) Years	Five (5)
Five (5) Years	Six (6)

If a firefighter is scheduled and works one of the above listed holidays, he/she will be entitled to utilize that day at another time or be paid the time during the calendar year. Holiday time compensation shall be in accordance with Fire Department Policy in order to meet full manpower requirements. Holiday time may be added to "compensatory time" at the option of the fire fighter but not to exceed the maximum allowed in Article 5. Should an employee be scheduled, and in fact work, on the Easter, Memorial Day, New Year's Day, Christmas, Thanksgiving, Fourth of July or Labor Day holidays, he shall be paid at the current overtime rate. Should an employee be scheduled, and in fact work Christmas Eve or New Year's Eve, he/she shall be paid at the current overtime rate for twelve (12) of the hours worked. ~~Provided, that an employee who starts work with the department shall have such holidays computed on a pro rata basis for that first partial year.~~

In the event that a member is "forced" to work overtime on a Holiday *or agrees to work*

for the employee “forced” to work the Holiday, the member shall be compensated, for the hours or fraction thereof actually worked, at the rate of two and one-half (2½) times the member’s straight time hourly rate. For purposes of this section, “forced” shall mean that the member did not volunteer to work the Holiday. Members who are scheduled to work on a Holiday as their regular duty day or are working a pre-arranged trade of time are not “forced” to work for purposes of this section.

An employee who terminates his service with the City shall be entitled to a pro rata share of such holidays based on the percentage of time spent during the payroll period. If an employee who terminates his employment with the City used more than the pro rata share of holidays, that excess will be offset from any final payment due the employee.

4. Article 5, Leave (Vacation Cash Out)

At the evidentiary hearing, the parties agreed to a modification to Section 4 of the Leave article regarding cash out of unused vacation. This agreement is hereby incorporated in the Report and Recommendation as follows.

Article 5, Leave

4. Employees may **request to** cash out unused vacation hours at the end of each year only. Payments of such unused vacation time will be made in **January of the following year** ~~the last payroll period of the then-current payroll year.~~

5. Article 6, Medical Benefits

During negotiations and leading to fact finding, the parties agreed to a number of modifications to Article 6 including the updating of dates, a change in the primary bank utilized for employee HSA contributions and other housekeeping matters. In addition, the parties

agreed to a wellness program which includes nicotine usage cessation. The parties agreed to employee insurance opt-out payments based on proof of alternative coverage.

The Employer proposes a roll back of the health care allowance which is paid monthly to bargaining unit members to cover their monthly cost of the health insurance premium (15%). The Union is opposed to a roll back of the allowance and proposes current contract language in Section 4 of the Medical Benefits article.

The parties agree to the opening statement and Sections 1, 2 and 3 as follows and these sections are hereby incorporated in the Report and Recommendation.

Members of the Fire Department shall be entitled to medical coverage, including vision, dental, hearing and prescription drug coverage as set forth in the attached Exhibit A.

The City may contract (if possible) with another Company and/or alternative coverage to maintain substantially similar benefit levels at lower rates.

The City agrees to discuss such changes with IAFF, Local 2388 prior to its final decision.

In the event that non-Bargaining Unit employees receive a materially better health care insurance plan, the Union may elect that coverage in lieu of the above plan and adopt the contributions that the non-Bargaining Unit employees are required to make, if any, that are part of the structure of such plan.

Section 1. ~~Effective January 1, 2015~~ Members of the Bargaining Unit shall be entitled to medical coverage, including vision, dental, hearing, and prescription drug coverage, as set forth in the attached Exhibit A. Employees may select from a Health Savings Account Option, **or** a Health Reimbursement Account Option, ~~or remain on the City's current Super Med Plus Plan with the current deductibles, co-insurance, and co-pays.~~ All Bargaining Unit members will be required to contribute 15% of the premium cost toward their health care **through payroll**

deductions. The City will maintain an IRS §125 Plan (premium only plan) to make employees contributions pre-tax. ~~Prior to January 1, 2015 the City's current coverage and benefits will remain unchanged~~

Section 2. Under the Health Savings Account Option the City will contribute annually to the members Health Savings Account **in the amounts of** \$1,900.00 for Individual Coverage and \$3,800.00 for Family Coverage to help offset the deductibles of \$2,600.00 per individual and \$5,200.00 per family. Once the money is deposited in this account the money belongs to the employee. Should an employee go from family coverage to individual coverage during the year the city cannot reclaim money already provided to the member. If an employee is hired or increases coverage during the year the City will deposit funds or additional funds at the following percentages, 100% if in the first quarter, 75% in the second quarter, 50% in the third quarter, and 25% in the fourth quarter. If an employee reduces coverage during the year or leaves the employment of the City during the year, a portion of the City's or employee's contribution may become taxable and subject to possible penalties based on IRS limitations. In addition to the amount funded by the City, the employee has the option of depositing additional funds up to the limits established by the IRS. The Health Savings Account shall at all times be subject to the prevailing tax and pension laws. Employees must open a Health Savings Account prior to the City being able to deposit funds. ~~The City will arrange for PNC Bank to come to the City to assist employees with opening this account. PNC Bank has an arrangement with Medical Mutual to provide this account without an account fee (checks and other items may have a cost). However, employees are not required to use PNC Bank and are free to use any bank they desire, however they must provide that banking information to the City.~~ **Park National Bank has an arrangement with the City to provide this account without an account fee (checks and other items may have a cost) and the City will assist employees with opening an account with Park National Bank. However, employees are not required to use Park National Bank and are free to use any bank they desire, however they must provide that banking information to the City.**

Section 3. The Health Reimbursement Account is only recommended if the member does not qualify for a Health Savings Account under IRS rules; the City's consultant will work with members with special circumstances that may disqualify them from having a Health Savings Account. Under the Health Reimbursement Account the deductibles are \$2,500.00 per individual and \$5,000.00 per family. However, the City will reimburse the member up to \$1,800.00 per individual and \$3,600.00 per family for cost incurred.

The parties are at impasse regarding Section 4. Their respective positions are outlined below followed by the recommendation of the Fact Finder.

EMPLOYER POSITION: The Employer states that the current health care allowance, paid to employees, is actually more than the cost of the employee share of the insurance premium. The Employer argues that its proposed monthly payments would continue to cover employee premium costs except in the third year of the Agreement. The Employer believes that any increase in health care costs would be minimal during the term of the new Agreement. The Employer states that the maximum loss for a family with multiple children is only \$1350.00 over the term of the Agreement. The Employer states that the City provides an overall health care plan which exceeds those found in other regional jurisdictions (Emp. Exb. 13). The Employer states that employees are expected to contribute to the cost of health care in the public and private sectors. The Employer argues that it is time for its employees to make such contribution as this is the reality of work life in the current economic environment. Additionally, the Employer argues internal comparables. Four of six bargaining units at the City have recently agreed to the proposal which is on the table in the instant matter. Only the Dispatchers bargaining unit retains the City's old contribution rate as negotiations had been

concluded at an earlier time. The Employer argues the importance of internal comparables and urges the recommendation of its proposal.

UNION POSITION: The Union states that the health care allowance was bargained by the parties and this includes the current amounts contained in Section 4. The negotiated amounts have been intended to cover the cost of the employee share of the insurance premium but also the deductible. The Union states that the Employer's proposal to reduce the allowance was not a part of the tentative agreement which was reached in December. The proposal was never made by the Employer during negotiations. The parties never discussed or bargained over a reduction in the health care allowance. The Union states that the proposal was submitted after the tentative agreement was rejected by City Council and the parties were preparing for fact finding and that no negotiations ever occurred. The Union argues that the Employer has not bargained in good faith and, therefore, there is no basis to adopt its proposal. There has been no change in the financial health of the City. The cost of insurance has not increased since the parties concluded negotiations in December. The Union states that the health care allowance is a fixed amount for the duration of the collective bargaining agreement, but, going forward, health insurance costs will certainly increase impacting both the Employer's costs as well as each employee. The Union states that the parties have agreed to a number of cost savings features which impact the overall cost of the bargaining unit's health care plan going forward. The Union emphasizes that the roll back proposal was never placed on the bargaining table until the tentative agreement was rejected and the parties were preparing for fact finding.

RECOMMENDATION: The Union argues a failure of good faith bargaining in its position statement and at hearing. The fact finder is without the authority to make any such determination and would defer in any event as the goal of crafting a recommendation which brings a satisfactory conclusion to the fact finding process is paramount. There are a number of points to be considered in the development of this recommendation. The Employer argues internal comparables, and this is a compelling argument in that four of the six bargaining units have recently agreed to the Employer's roll back proposal. The Union states that the Dispatchers' bargaining agreement does not include the roll back. It is clear, therefore, that internal comparables are not completely consistent. It appears the Employer never proposed a roll back during negotiations with the Ohio Patrolmen's Benevolent Association, representing Dispatchers. The Employer states that these negotiations occurred at an earlier time in 2017. But evidence suggests that both negotiations, Dispatchers and Firefighters, occurred fairly close to one another. The Dispatchers new collective bargaining agreement was executed on March 6, 2018 by the new Mayor, who had suggested changes to the Firefighters tentative agreement and who also advocated for employees to pay for a portion of their health insurance. City Council approved the new Dispatchers Agreement. The term of the Dispatchers' collective bargaining agreement is the same as the Firefighters Agreement, November 1, 2017 through October 31, 2020. The Dispatchers' new Agreement was bargained prior to the Employer's goal of negotiating a roll back of the health care allowance for members of all City of Beachwood bargaining units. The Employer must now wait until the next negotiations to bring its proposal forward for the Dispatchers' bargaining unit. In the instant matter, the Employer did not propose a roll back of the health care allowance during negotiations, and the parties concluded

negotiations without discussion or bargaining over the issue. As the Union suggests, had the proposal been on the table, the tentative agreement may have been modified, or there may not have been a tentative agreement at all. It is difficult for a neutral to give full consideration to an issue at fact finding or conciliation which had not been discussed or bargained by the parties and which is submitted just prior to or during the fact finding process following the close of negotiations. There may be exceptions. Finances have changed. The status quo at the time bargaining concluded had changed. This is not the case at the City of Beachwood. As the Union has demonstrated, the financial health of the City is excellent and has improved since the parties concluded negotiations. The recommendation, therefore, is current contract language. Just as with the Dispatchers, the Employer will have an opportunity to place the issue of roll back on the table during the next negotiations. Of the six negotiations, the Dispatchers and Firefighters commenced bargaining prior to the Employer's decision to submit a proposal to roll back the health care allowance. The Employer should wait until the next cycle of negotiations with the Firefighters Union to bring the issue to the bargaining table, approximately two years from now. Internal comparables will play a significant role during the next bargaining cycle. Again, the recommendation is current contract language in Article 6, Section 4.

The parties have agreed to a minor modification in Section 5 as follows.

Section 5. Supplemental Health Care Allowance. In the event that after January 1st an individual is hired or an employee adds dependent coverage and either incurs a loss in excess of the amount the City contributed to their H.S.A. or provided to the employee as part of their Health Care Allowance, **said employee** may be eligible for a Supplemental Health Care

Allowance up to the maximum amount of their “in network” out of pocket costs upon proper verification of the expense and approval of the City.

The parties have agreed to delete old Section 6 and substitute it with a new provision regarding a wellness program and insurance buyouts. New Section 6 is incorporated in the Report and Recommendation as follows.

Section 6. Wellness Visits/Nicotine Use and Insurance Buyouts. Wellness: The City Health Insurance will remain the same for the next 3 years except for the following:

The Wellness Program will be implemented by introducing three (3) programs to employees in an effort to decelerate the increasing cost of healthcare. The three (3) programs are:
1) Yearly routine/preventive wellness checkups; 2) Nicotine usage/cessation; and
3) Insurance buyouts.

A. Yearly routine/preventive checkups: Beginning August 1, 2018 each employee and spouse (if applicable) will have submitted to a wellness exam during the prior year. The form documenting completion from the Doctor’s office will go directly to the insurance broker for verification; no information will be forwarded to the City of Beachwood. If an employee and spouse (if applicable) do not submit to a wellness exam by the August 1st deadline, the employee contribution for health care will increase \$100 per person per month. This increase will be removed the following month in which the documentation is provided that the person went for a wellness check. The City will hold a wellness clinic at least one (1) time per year in order to assist employees in getting their most vital health statistics. Beginning August 1, 2019, employees will be required to have the following tests performed: Cholesterol levels, Glucose levels, and Blood Pressure.

B. Nicotine use/Cessation: Beginning August 1, 2018 each employee and spouse (if applicable) will be subject to a \$100 per person per month increase to the employee contribution for health insurance if the employee and/or spouse use nicotine products. All employees and spouses (if applicable) will be required to complete an affidavit confirming they are not nicotine users.

For nicotine users, the City will support any smoking cessation alternatives that are under

the direction of the employee's physician.

C. Insurance buyouts: An employee may elect to opt out of coverage under the City's healthcare benefits plans. The City shall pay \$600 per month for any married employee who waives City healthcare benefits completely. The City shall pay \$300 per month to a married employee whose spouse waives City health care benefits completely. The City shall pay \$300 per month to any single employee who waives City healthcare benefits completely. Proof of alternative coverage for the employee must be submitted to the City in order to qualify for the payments.

6. Article 8, Uniforms and Equipment

The parties agreed to modify Section 1 and add new Section 2. These modifications to Article 8 are incorporated in the Report and Recommendation as follows.

1. Members of the Fire Department shall wear such uniforms as directed by the Chief of the Fire Department, and approved by the Mayor, and shall be ***provided with such uniforms in the first year of service. Thereafter, each member shall be*** entitled to a clothing allowance of one thousand two hundred dollars (\$1,200.00) per year, payable \$300.00 in January, \$300.00 in April, \$300.00 in July, and \$300.00 in October. Turn-out gear, i.e., bunker coat, bunker pants, helmet and all accessories required shall be furnished by employer.

2. ***In addition to the above, after the completion of a member's third year of service with the City, the member shall be entitled to be reimbursed for the purchase of a "Class A" uniform. The member shall be entitled to be reimbursed for the "Class A" uniform if the member bought his or her own prior to the completion of the third year. The member shall be required to submit receipts for reimbursement. The items included as part of the "Class A" uniform for reimbursement shall be designated by the Chief and the standard for the "Class A" uniform shall be set by the Chief.***

7. and 8. Article 10, Leave of Absence (sick leave maximum hours); Article 10, Leave of Absence (cash out sick leave)

The parties agreed to modify Section 1 regarding maximum sick leave accumulation and also agreed to a new second paragraph covering cash out options. These modifications and additions to Article 10, Section 1 are hereby incorporated in the Report and Recommendation as follows.

1. **Sick leave.** Sick leave shall accumulate at the rate of 4.6 hours for every eighty (80) hours worked in active pay status, up to a maximum of ~~one thousand nine hundred thirty-nine (1,939)~~ **two thousand four hundred (2,400)** hours. ~~At the end of the 2007 payroll year, any firefighter who has in excess of one thousand nine hundred thirty-nine (1,939) hours will receive a lump sum cash payment of thirty-three and one-third percent (33-1/3%) of the hours in excess of one thousand nine hundred thirty-nine (1,939) hours, except that members who presently exceed the 1,939 hours may remain under the payment schedule providing for a final lump sum payment consisting of thirty-three and one-third percent (33-1/3%) of the accumulated but unused sick leave upon death, retirement or resignation after twenty (20) years of service. Such annual payment will made for calendar year 2007 at a date to be agreed upon between the City and the Union.~~ On an annual basis, any firefighter who has in excess of ~~one thousand nine hundred thirty-nine (1,939)~~ **two thousand four hundred (2,400)** hours at the end of each payroll year shall be entitled to convert thirty-three and one-third percent (33-1/3%) of the excess hours into a lump sum cash payment, or transfer the excess balance to his/her compensatory time bank. Upon death or retirement, a firefighter (or his/her estate) shall be entitled to convert fifty-five percent (55%) of the accumulated but unused sick leave into a lump sum cash payment. Retirement shall be defined to mean eligibility to receive retirement benefits after twenty (20) years of service to the City.

Three (3) payments option: *An employee who has qualified for a service pension under the rules from the Police and Fireman's Disability and Pension Fund by reason of age and length of service, is within his/her last three years of employment with the City, may elect to cash out fifty-five percent (55%) of his accrued sick time up to two thousand four hundred (2,400) hours in three (3) equal and annual payments of up to four hundred forty (440) hours during any three (3) subsequent years of employment with the City.*

A. *These payments shall be based on the employee's rate of pay at the time of each payment.*

B. *The eligible employee must notify the Fire Chief and the Director of Finance of this election at least thirty (30) days prior to the first distribution of funds.*

C. *All hours paid under this provision shall be deducted from the payment of accrued sick leave as provided under this agreement. Any remaining sick leave credit may be used until the employee's retirement date at which time all remaining sick leave balance shall be deemed exhausted and no further sick leave payment will be allowed.*

D. *Funds paid to the employee on an annual cash-out basis may be rolled over into an employee's deferred compensation account as allowed by plan rule or paid in cash as requested by the employee.*

E. *For the purpose of funding this sick leave cash out payment, the Finance Director shall establish a fund and annually deposit a sum sufficient to cover the anticipated payout(s) under this provision. Money set aside in this fund shall only be used for the purpose of paying the benefit set forth in this section and for no other purpose.*

9. Article 10, Leave of Absence (Bereavement Leave)

The parties have agreed to modify Section 4 which covers the Bereavement Leave benefit. These changes are incorporated in the Report and Recommendation as follows.

4. **Bereavement leave.** Bereavement leave shall be granted for up to three (3) tours of duty *unless extended by the Fire Chief for exceptional circumstances or travel time for the* after death of a member of immediate family. ~~or one (1) tour for other family members.~~

~~A. Immediate family shall mean the parent, spouse, child (legal or natural), brother or sister of employee or the parent or child (legal or natural) of the spouse of the employee.~~

~~B. Other family members shall mean grandparents or spouse's grandparents, sister-in-law or brother-in-law.~~

- ~~C. The Fire Chief may extend the leave for immediate family members for exceptional circumstances or travel time.~~
- ~~D. The employee shall be paid for the shift or shifts that the employee normally would have been scheduled to work. This leave shall not be deducted from the employee's accrued sick leave.~~

Immediate family shall mean the employee's or employee's spouse's parents, step parents, child (natural, adopted or foster), brother, sister, grandparent, the employee's spouse, son-in-law, daughter-in-law, grandchildren, or siblings-in-law. Bereavement leave shall not be deducted from annual sick leave accrual.

10. Article 31, Duration

The parties agreed to simply modify the date of the Duration provision of the Agreement, and this is incorporated into the Report and Recommendation as follows.

This Agreement represents a complete and final understanding on all bargaining issues between the City and the I.A.F.F., Local 2388, and it shall be effective and remain in full force and effect until October 31, ~~2017~~ **2020** and thereafter from year to year unless at least sixty (60) days prior to said expiration date, either party gives timely written notice to the other of an intent to negotiate on any or all of its provisions, pursuant to O.R.C. Section 41117.14. If such notice is given, negotiations shall be promptly commenced and each party shall have the right to negotiate on any provision of the Agreement, but this Agreement shall remain in full force and effect until an amended Agreement is agreed to.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties and all facts presented at hearing including all exhibits. The Fact Finder has carefully reviewed the positions presented by each party and the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

The recommendations contained in this Report and Recommendation include those issues which were at impasse and those agreements reached by the parties just prior to and during the evidentiary hearing which are set forth in this document. All unopened articles of the Agreement are hereby incorporated in this Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 5th Day of July 2018.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

Thomas J. Nowel, NAA
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th Day of July 2018, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Robin L. Bell, Clemans, Nelson & Associates, representing the City of Beachwood; Ryan J. Lemmerbrock, MUSKOVITZ & LEMMERBROCK, LLC, representing the IAFF Local 2388; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel, NAA
Fact Finder

