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STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding :
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 Between :
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 CITY OF GRANDVIEW HEIGHTS, OHIO : SERB Case No: 95-MED-09-0805
 :
 and : Fact-Finder: Howard D. Silver
 :
 : Fact-Finding Session:
 LOCAL 1792, INTERNATIONAL : January 12, 1996
 ASSOCIATION OF FIREFIGHTERS, :
 AFL-CIO :

REPORT OF FACT-FINDER

APPEARANCES

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STATE OF OHIO
 DEPARTMENT OF REVENUE
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This matter came on for fact-finding on January 12, 1996, within the Grandview Heights Municipal Building, 1016 Grandview Avenue, Grandview Heights, Ohio. The parties declined mediation

and the session proceeded in the manner of a formal fact-finding hearing. Both parties were afforded a full and fair opportunity to present facts and arguments in support of their respective positions. The fact-finding session convened on January 12, 1996 concluded on the same day and by mutual agreement of the parties the time for the fact-finder to prepare and issue a report was extended to the close of business on January 26, 1996.

BACKGROUND

The City of Grandview Heights Fire Department is led by a fire chief who reports directly to the mayor. The fire chief is served by an assistant fire chief who, like the chief, is exempt from the collective bargaining unit comprised of all other full-time employees of the City of Grandview Heights Fire Department, including employees classified Firefighter EMT Ambulance, Firefighter, Firefighter EMT Paramedic, and Fire Captain. As of January, 1996, the City of Grandview Heights Fire Department employed fifteen employees among sixteen positions in the bargaining unit, a Fire Captain position vacancy having resulted from a disciplinary discharge in December 1995.

The parties operated under a predecessor collective bargaining agreement that was in effect from January 1, 1993 through December 31, 1995, an agreement that was enacted retroactively in April, 1994 subsequent to a process of conciliation.

Effective December 1, 1995, in compliance with Ohio Revised Code section 4117.14(C)(3), the Ohio State Employment Relations Board appointed the undersigned as fact-finder to provide fact-finding to the parties and to present to the parties and the State Employment Relations Board a written report of findings of fact and recommended contract language no later than a mutually agreed date to be established by the parties pursuant to Ohio Administrative Code section 4117-9-05(G), that mutually agreed date in this case being January 26, 1996. A formal fact-finding session was convened and completed on January 12, 1996, at a location and time mutually agreed by the parties. At this fact-finding session the parties presented facts and arguments in support of their respective positions and participated in a process of fact-finding overseen by the fact-finder.

ISSUES AT IMPASSE

The fact-finder presents the issues about which the parties have been unable to reach agreement in the order in which they were presented to the fact-finder at the fact-finding session on January 12, 1996.

Article 14: LEAVE PROVISIONS

Section 14.5 - MINIMUM CHARGE TO SICK LEAVE

The parties agreed at the fact-finding session to change the language of Article 14, section 14.5, to permit bargaining unit

members to use sick leave in increments of one-quarter hour, a change from previous contract language which required that sick leave be used in increments of one hour. Because of this change in the minimum increment of sick leave which may be used by bargaining unit members, the language within section 14.5 which refers to charging for actual "hours" absent is recommended changed to actual "time" absent.

Proposed contract language: Article 14-Leave Provisions ¹

Section 14.5 - Minimum Charge to Sick Leave

Absence for a fraction of a day that is chargeable to sick leave in accordance with these provisions shall be charged in increments of not less than **one-quarter (1/4) hour**. Employees who, after reporting to work, are then sent home on sick leave shall be charged for actual **time** absent.

Section 14.9 - Pay for Accumulated Sick Leave

In the parties' predecessor collective bargaining agreement there is a provision which addresses bargaining unit members who have been employed in good standing for ten or more years. Such long-term employees are eligible, upon retirement or resignation, to receive payment for accrued but unused sick leave at their latest rate of pay. This form of compensation, under the prior agreement, paid one-fourth (1/4) of the employee's accrued unused

¹ Changes in language from the parties' predecessor agreement proposed by the fact-finder are presented in bold.

sick leave up to a maximum of two thousand hours (2000), and a payment of one-third ($1/3$) of the accrued but unused sick leave in excess of two thousand (2000) hours up to a maximum of two thousand eight hundred (2,800) hours. The Union urges that this section be changed so that the payment would be one-fourth ($1/4$) of unused sick leave up to a maximum of one thousand (1000) hours, plus a one-third ($1/3$) payout of accrued but unused sick leave in excess of one thousand (1000) hours up to a maximum of three thousand (3000) hours.

The Employer contends that in the absence of an economic or comparative justification for this proposed modification to the payout, something beyond simply a desire to increase the amount of this benefit, no modification to this section is warranted. The Employer proposes that the language contained within the predecessor agreement concerning sick leave payout be retained.

The fact-finder considered the case of a retiring employee within the bargaining unit with an accumulation of three thousand (3000) hours of unused sick leave. Under the language of the parties' predecessor agreement, the employee would receive a payout for seven hundred sixty seven (767) hours [one-quarter ($1/4$) times two thousand (2000) plus one-third ($1/3$) times eight hundred (800)]. A similarly situated employee who cashes out three thousand (3000) hours of accrued unused sick leave under section 14.9 under the Union's proposal would receive a payout for nine hundred seventeen (917) hours [one-quarter ($1/4$) times one thousand (1000) plus one third ($1/3$) times two thousand (2000)], an increase of one

hundred fifty (150) hours or nineteen percent (19%) over the benefit as it existed in the predecessor agreement.

The question presented to the fact-finder is whether the benefit accorded long-term employees through cashing out accrued unused sick leave should increase, and if so, whether it should increase to the extent urged by the Union.

The fact-finder does not recommend a change in the language between the parties addressing pay for accumulated sick leave as contained within section 14.9 of the parties' predecessor agreement. The Union's proposal increases this allotment in two ways, first by reducing the number of hours which must be exceeded at a payout of one-quarter to reach the premium one-third level of payout [from two thousand (2000) hours to one thousand (1000) hours], and second, through increasing the maximum number of hours to be paid at one-third (1/3) from eight hundred (800) hours to two thousand (2000) hours.

Without some basis in support of what the fact-finder finds to be a substantial increase, the fact-finder declines to recommend the expanded payout proposed by the Union. The fact-finder refrains from making minor adjustments in the formula which, without some discernible basis, would only alienate both parties. The fact-finder therefore recommends the retention of language as to pay for accumulated sick leave contained within section 14.9 of Article 14 within the parties' predecessor contract.

Proposed Contract Language: Article 14 - Leave Provisions

Section 14.9 - Pay for Accumulated Sick Leave

The fact-finder proposes that the language of Article 14, section 14.9 within the parties' predecessor agreement be carried forward into the parties new collective bargaining agreement.

Section 14.10 - Bereavement Leave

The parties reached agreement at the fact-finding session as to changes in language within section 14.10 addressing bereavement leave, namely that what had been referred to in terms of "duty days" would be presented in the form of twenty-four (24) hours for each duty day listed.

Proposed Contract Language: Article 14 - Leave Provisions

Section 14.10 - Bereavement Leave

In the event of death of an employee's mother, father, sister, brother, current spouse, child, current mother-in-law, current father-in-law, current step children, current daughter-in-law, current son-in-law, current step mother or step father, the employee shall be granted up to **forty-eight (48) duty hours** off with pay, the second **twenty-four (24) duty hours** to be charged to accumulated sick leave. A forty (40) hour employee shall be granted up to **twenty-four (24) duty hours** off with pay, the last **eight (8) hours** to be charged to accumulated sick leave.

In the event of the death of an employee's grandparents, grandchildren, current brother-in-law, current sister-in-law, or any other relative of the employee residing in the employee's home, the employee shall be excused for **twenty-four (24) duty hours** [eight (8) in the case of a **forty (40) hour employee**] with pay. The City may request proof of death and of the relationship in question.

Article 15: Injury Leave

The Union recommends that section 15.1 of Article 15 be amended to provide express language making it clear that an employee who exhausts injury leave is entitled to use other accrued time off such as sick leave, vacation leave, or compensatory time. The Union contends that while not presently expressed in contractual language, this has always been the case in actual practice and points to similar language in a collective bargaining agreement between the City of Grandview Heights and the Fraternal Order of Police, the employee organization representing police officers employed by the City of Grandview Heights. The Union does not view its proposal in this instance as requiring a change to current practices and urges that these practices be expressed in contractual language in the parties' new agreement.

The Employer does not deny that a bargaining unit employee has the right to use accrued sick leave after injury leave has been exhausted. The Employer points out that an employee who has exhausted his injury leave is already entitled to be paid pursuant to section 14.8 of Article 14 and may be paid sick leave following the exhaustion of injury leave pursuant to section 14.2(A) of Article 14, a provision addressing the use of sick leave. Thus, argues the Employer, so far as the Union is proposing a change to section 15.1 related to sick leave, the Employer considers this part of the proposal to be redundant and unnecessary. The Employer also emphasizes that there has been no indication that any

bargaining unit member has ever been denied the use of additional accrued paid leave having exhausted injury leave, and in the absence of any actual problem there is no need to clutter the agreement with redundant, unnecessary provisions.

The Employer opposes the language suggested by the Union for section 15.1 as it relates to vacation leave and compensatory time for a different reason. In this regard, the Employer argues that such a provision would diminish the Employer's discretion in determining how long a bargaining unit member who is no longer capable of physically performing the requirements of his position, shall remain an employee of the department. The Employer points out that by guaranteeing bargaining unit members the right to use vacation, compensatory, and other leaves (beyond sick leave) after injury leave has been exhausted, such a right empowers an absent employee to retain a claim upon the vacated position for so long as the absent employee possesses accrued leave. Such a circumstance would allow an employee to remain on some form of leave and delay the Employer's exercise of discretion in making a determination, following the exhaustion of injury leave and sick leave, about when an incumbent of a position, due to inability to perform, must be separated from the employment rolls of the department. As expressed by the Employer within its written presentation at the fact-finding:

...For example an employee may be injured severely and thereafter utilizes all injury and sick leave. The issue of granting additional paid time to the employee may very well turn on the likelihood the employee will be able to return to work before exhausting these paid leaves. If it is likely he will return, then granting such leave

would be reasonable. However, if the employee's injuries are such that he will not likely return to work at all or not for an extended period of time, the City may be forced to terminate the employee (and pay off all accrued vacation and compensatory time) in order to free up the position for hiring a new employee. The labor agreement should not foreclose the City's exercise of such fundamental, discretionary management decisions.

Fact-finding Arguments of City of Grandview Heights, pg. 7.

In response to the Employer's arguments, the Union contends that limitations on vacation and compensatory time accrual keep these leaves limited in duration. The Union also points out that there are occasions when there is uncertainty as to when and if an employee may return to work and the accrued leave which the employee wishes to use under the Union's proposal would ensure additional time for the employee to make such an important decision.

In response to these arguments, the Employer contends that conferring leave for the purpose intended under the Union's proposal would convert such leave to a purpose not intended by the leave when it was negotiated and agreed. It was also pointed out that if additional leave is needed, employees are permitted to make such requests directly to the City Council of the City of Grandview Heights.

The fact-finder recommends the language suggested by the Union in amending Article 15, section 15.1. First, the fact-finder notes that the use of sick leave after injury leave is exhausted is a practice that is traditional among the bargaining unit and, as exhibited by the evidence presented, has never been a benefit

denied by the Employer. Language to this effect may be redundant but it neither increases nor diminishes actual practices within the bargaining unit approved by the Employer.

Second, the inclusion of the proposed language would extend leave time only for those employees who suffered from work related injuries or occupational illnesses incurred in the course of and arising out of employment. If there is greater discretion permitted to these employees in terms of remaining on the employment rolls of the City following the exhaustion of injury and sick leave, it is discretion only exercised by an employee who has suffered a work related injury or occupational illness. This denotes a particular class of deserving employees and such leave may be essential in gaining sufficient time to make an informed decision about whether to return to work following a work related injury.

Third, vacation leave or compensatory time may be used only after it has been accrued and comprises leave which would otherwise be used at the discretion of the employee, with the approval of the Employer. The use of said leave does not increase the financial liability otherwise owed by the Employer to the injured employee and therefore this proposal is not viewed by the fact-finder as increasing a financial burden upon the Employer.

Finally, the fact-finder is not persuaded that the potential extension of a leave formerly compensated through injury leave and sick leave, by vacation leave and/or compensatory time, would so significantly interfere with managerial prerogatives associated with retaining or dismissing injured employees as to militate

against the Union's proposal. The language within the contract between the City of Grandview Heights and the Fraternal Order of Police contains language with similar import. The fact-finder is not persuaded that such language would create obstacles which could not be addressed reasonably and efficiently.

In summary, the Employer's arguments concerning the limitation of its discretion in terminating the employment of injured employees does not overcome the fact-finder's belief that the language proposed by the Union is, in most cases, a recitation of what has been a longstanding past practice within the bargaining unit and should be enforceable through contractual language.

Proposed Contract Language: Article 15

Section 15.1 - Injury Leave

In the event of work related injuries or occupational illnesses incurred in the course of and arising out of employment, the City shall pay the affected employee, while absent from work due to such injury, the difference between his workers' compensation allowance and his regular salary for the first twenty-six (26) weeks following the injury without loss of accumulated sick leave. Such injury shall be reported to the chief designee immediately. Such leave shall be granted pursuant to the initial diagnosis and certification of a duly licensed physician that the employee is unable to perform the duties and responsibilities of his position. Such initial diagnosis and certification may, at the City's option, be made either by the employee, the employee's physician, at the employee's expense, or by a physician appointed by the City at City expense.

Diagnosis and certification demanded by the City thereafter shall be paid for by the City. Additional injury leave may be granted to the employee by the City Counsel upon formal request. After all available injury leave is used, the employee may elect to use accumulated sick leave, vacation leave, and/or compensatory time.

Article 16: Military Leave/Jury Leave

The Union proposes two new sections to be included within Article 16, an article addressing military leave and jury leave. The Union proposes that the first of these sections, section 16.3, be entitled Unpaid Disability Leave and provide language describing an employee who is unable to perform his/her job or such light duty work as may be made available in the department. Such an employee, upon expiration of all the employee's paid leave, is to be placed on an unpaid disability leave under this proposed language.

The Union also recommends that a new section, section 16.4, entitled Special Leave, be included that provides that in addition to other leaves authorized by the collective bargaining agreement between the parties, the chief of police, at his sole discretion, may authorize special leaves of absence without pay. This language would declare that the chief's decision as to special leave is not grievable.

The Employer opposes both of the additions proposed by the Union for Article 16. As to section 16.3 as proposed, the section guaranteeing unpaid disability leave, the Employer notes that such

a proposal is unlimited as to time. An employee who had accumulated hundreds or even thousands of hours of paid leave could be off work in paid status for many months. If follow-up mandatory unpaid leave required the Employer to keep that position available for the employee during an unlimited period of unpaid disability leave, such a situation, argues the Employer, would place a great strain on the management of the department, on remaining bargaining unit members, and upon minimum staffing.

The Employer also opposes section 16.3 as proposed by the Union because it refers to "light duty work" a term not addressed in the parties' predecessor agreement. The Employer is concerned that even a passing reference to light duty work or an acknowledgement that light duty work exists could form the basis for an assertion that the Employer has an obligation to provide or attempt to provide light duty assignments to injured employees. The Employer argues that this is not presently the case and should not be installed in the contract through the Union's proposed language concerning Article 16. The Employer argues that bargaining unit members already accrue vacation leave, sick leave, injury leave, compensatory time, and personal emergency leave, and an additional form of leave is not justified and not needed.

As to the Union's proposed section 16.4 which empowers the chief of police, at his sole discretion, to authorize special leaves of absence without pay, the Employer argues that no justification for this provision has been put forward by the Union and notes that the Union failed to provide a single example of a

bargaining unit member who had been denied leave for a purpose not already addressed by the agreement. In the absence of an existing and articulable need, the Employer believes that generic leave provisions are unwarranted and should not be included in the parties' collective bargaining agreement.

The fact-finder does not recommend the language concerning unpaid disability leave as proposed by the Union for Article 16. The fact-finder notes that this language, as proposed by the Union, is mandatory, which means that when an employee is unable to perform his/her job or perform light duty work (otherwise undefined within the contract) that employee "shall, upon expiration of all of the employee's paid leave, be placed on an unpaid disability leave." The Employer's concerns that such a mandatory paid disability leave has no time limit associated with it and no other limiting provisions applicable to it and therefore represents a form of leave that is neither defined nor limited is well-taken and restrains the fact-finder from recommending this proposal.

As to the special leave provision urged by the Union which would permit the chief of police, at his sole discretion, to authorize special leaves of absence without pay, this proposal is recommended by the fact-finder. While the Employer pointed out that, in a technical sense, it is the Mayor of the City of Grandview Heights who is the appointing authority who may grant such special leaves of absence without pay, this provision proposed by the Union seeks to establish an emergency outlet for requests for special leaves of absence without pay. Empowering the chief of

police to approve or deny such requests without the possibility of a grievance appears to the fact-finder to provide the Union with its channel of request without imposing any duty or mandatory provision upon the chief or the Employer. The fact-finder therefore, with a slight modification to the language proposed by the Union, recommends that Article 16 be amended to include section 16.3, entitled Special Leave.

Proposed Contract Language: Article 16 - Military Leave/Jury Leave/Special Leave

Section 16.3 Special Leave

In addition to other leaves authorized within this contract, the chief may authorize special leaves of absence without pay. The chief's decision as to special leave is not grievable.

Article 23: Health and Safety

The Union recommends that a new section, section 23.4, be added to the language of Article 23 within the parties' predecessor agreement. The proposal by the Union would include language within the collective bargaining agreement between the parties which mandates a staffing level of at least four bargaining unit platoon members at all times.

In support of this proposal the Union notes that the staffing level required by the Union's proposal is the level of minimum staffing contemplated by current departmental policy. The Union emphasizes that it does not propose to increase the number of

members on duty beyond that currently established as a minimum by the department itself.

Second, the Union stresses that the staffing level addressed by its proposal directly affects the safety of bargaining unit members and the public. The Union notes that as staffing decreases, injuries among firefighters tend to increase both in number and severity. The Union contends that rescuing potential fire victims occurs faster among a four firefighter crew than occurs among a three firefighter crew. The Union emphasizes that the present staffing policy in effect within the Grandview Heights Fire Department requires four members on duty as a bare minimum needed to respond to any type of emergency situation.

The Union contends that language requiring minimum staffing levels should be incorporated into the parties' collective bargaining agreement because the City of Grandview Heights has shown a willingness to drop below this four person minimum staffing level. In this regard the Union points to a memorandum from the fire chief of the Grandview Heights Fire Department dated December 5, 1995, wherein the chief notes that he may designate, during short periods (less than three hours) that a crew may be permitted to be staffed by less than four persons.

At the fact-finding session, representatives of the bargaining unit noted that five bargaining unit members are normally assigned to a shift. These representatives agree that it is the current policy of the City of Grandview Heights that staffing shall not be below four bargaining unit members but under certain circumstances

the City has shown a willingness to drop below the minimum four staff members. The bargaining unit representatives who presented this information at the fact-finding session claim that by dropping below the four person minimum, safety has been affected.

The Union points out that response time, search and rescue efficiency, and the imperatives of addressing a fire quickly and effectively requires at least four bargaining unit members to be on duty at any time. It was noted that when a four-person engine company arrives at a site, two firefighters enter the structure for purposes of search and rescue, one of the outside officers assumes control of the scene, and the other officer serves as a pump operator. The Union stresses that the lives of firefighters and members of the public are at stake and noted as well that there are some apparatus, such as large ladders, which require at least three people to operate.

The Union notes that some thirty years ago it was commonly the case that engine companies were staffed by seven people, then it was reduced to six, then it was reduced to five, and there are occasions today when an engine company may have as few as four staff members. The Union contends that more injuries can be expected when only three staff members are on duty and available to respond to an emergency.

The Employer opposes adding a new provision to the contract between the parties which would establish a minimum staffing level. The Employer argues that minimum staffing comprises an inherent management right and points to Article 7 of the parties'

predecessor agreement entitled "Management Rights" wherein the City of Grandview Heights retains and reserves to itself the sole and absolute right and authority to operate and manage the business of the fire department and to direct employees in the discharge of the department's duties. These management rights include section 7.1(F) which refers to determining the adequacy of the work force and section 7.1(J) which refers to determining work schedules and the methods and processes by which such work is performed.

The Employer points out that the present minimum staffing level utilized by the City of Grandview Heights originated in 1986-87 and there has been no mismanagement of this policy. The Employer argues that the Union has failed to cite any incident wherein minimum staffing levels have been breached and that there is already a work rule in place promulgated by the Employer which refers to the four-person minimum as a policy of the City. The Employer points out that during recent negotiations one occasion was cited when the four-person minimum staffing level was lowered for a brief time, and that was only for the purpose of granting emergency vacation to a staff member with the concurrence of all other employees on the shift. The Employer claims that the language proposed by the Union does not address a real problem that exists, argues that no correction to minimum staffing policies is needed, notes that there are mutual aid response pacts among other political subdivisions in the general vicinity of the City of Grandview Heights, and notes that only two other communities in Franklin County, among a total of twelve, presently provide for

minimum staffing language within collective bargaining agreements with firefighters.

The fact-finder does not recommend the language proposed by the Union which would incorporate into the collective bargaining agreement between the parties a minimum staffing level. While the Union's arguments concerning the necessity of maintaining a minimum staffing level for purposes of safety and for purposes of completing the department's mission as it relates to search and rescue are well-taken, the fact-finder is not persuaded that the inclusion of such a minimum staffing level within the contract would solve more problems than it creates.

First, there is a work rule promulgated by the City of Grandview Heights which mandates that the minimum staffing level be four staff members on duty per shift and, with a single exception, there is no evidence presented that this work policy has been violated. The fact-finder is not persuaded that the City of Grandview Heights's interest in the safety of its firefighters and the safety of the public is anything less than that which has been articulated by the Union in this proceeding.

But placing contractual language involving minimum staffing levels within the collective bargaining agreement between the parties would produce a change in how the City and the bargaining unit operate as it relates to those apparently very few situations when assigning less than four staff members to a shift is contemplated. The one occasion which was referred to by both parties occurred when a particular bargaining unit member was in

need of emergency vacation at that particular moment and other staff members on duty concurred in this request. This does not reflect a cavalier or insensitive attitude toward minimum staffing levels within the department, nor does it reflect a routine or frequent breach of the minimum staffing level required by the Employer's work rule. If language as to minimum staffing were to be placed within the parties' contract, however, the desire to grant the emergency vacation to the employee would have necessitated the call back of another firefighter. Any consent by other staff members during the shift would have been of no consequence in determining how this situation was to be handled; no flexibility could be exercised in addressing the situation under contractual language.

To require calling in additional firefighters as a matter of contract, to impose upon the management of the fire department the obligation to provide four staff members under any circumstances would, in the opinion of the fact-finder, reshape the contractual obligations of the Employer in this management area in a way that is not warranted by the past history of this bargaining unit and this employer as it relates to minimum staffing levels. While the memorandum of the chief of the fire department dated December 5, 1995 does refer to allowing less than four members on duty (albeit for short periods of time), this memorandum apparently addressed a time period when budgetary constraints were particularly pressing on the department. There is otherwise no evidence to conclude that the minimum staffing which both the City and the Union agree is

necessary for safety and efficiency will be breached as a matter of practice or routine.

Minimum staffing is an important issue and one which addresses both safety and the mission of the Grandview Heights Fire Department. Minimum staffing is not a topic which produces substantial disagreement between the Union and the Employer about the level of minimum staffing. What is in dispute in this instance is whether minimum staffing should become a matter of contractual obligation imposed upon the Employer or whether it should remain a subject addressed by a work rule which sets minimum staffing at a level which is agreeable to both the Employer and the Union.

The fact-finder declines to recommend the language proposed by the Union as to minimum staffing, not because the fact-finder has any quarrel with the Union's arguments about the importance of minimum staffing, but because the fact-finder is persuaded that minimum staffing, considered in light of the history of this Employer and this bargaining unit, should not be included within the collective bargaining agreement between the parties.

Proposed Contract Language: Article 23-Health and Safety

The fact-finder proposes that no language as to minimum staffing levels be included within the collective bargaining agreement between the parties and the language of Article 23, as expressed within the parties' predecessor agreement, be carried forward into the parties' new collective bargaining agreement.

Article 24: Insurance

Each of the parties proposes a single change to Article 24, an article which addresses the group health and dental care coverage offered by the City of Grandview Heights to bargaining unit members. The Union urges that the only change to Article 24 be the inclusion of language within section 24.1 that would require the City of Grandview Heights to provide to bargaining unit members the same level of benefits and coverage as was in effect and provided to bargaining unit members on July 1, 1995.

While the Employer expressed no intention to change the benefits or coverage which had formerly been provided to bargaining unit members, it referred to the difficulty in securing for bargaining unit members, in the event a change in coverage is required, the "same level of benefits and coverage" as that which was previously provided.

The fact-finder understands the Employers's reticence about promising to provide the "same level of benefits and coverage" as was in effect at a prior time, if only because alternative coverage which may be required to be secured may not provide what is considered the same. Providing identical benefits and identical coverage may be impossible in the event alternative coverage is required.

The Union, however, has been clear in its arguments that it is not looking for identical coverage, but is intending to insure through the contract between the parties that there will be no

wholesale reduction in benefits and coverage under the new contract between the parties in terms of group health care and dental care insurance programs provided to bargaining unit members by the Employer.

The fact-finder recommends to the parties that the language "substantially the same level of benefits in coverage as in effect July 1, 1995" expresses the intention of the bargaining unit that its level of coverage and benefits be maintained at a level commensurate with that which was in effect on July 1, 1995. While such language does not require the Employer to provide identical coverage in the event alternative coverage becomes necessary, the fact-finder believes that this language addresses the concerns of both parties. The fact-finder therefore recommends that section 24.1 be amended for purposes of inclusion within the parties' new collective bargaining agreement to provide that the Employer shall provide "substantially the same level of benefits and coverage to bargaining unit members as was in effect on July 1, 1995."

The change to Article 24 of the contract between the parties proposed by the Employer would collect from bargaining unit members who avail themselves of family health care coverage ten percent (10%), on a monthly basis, of the additional cost to the Employer for the provision of family coverage over the cost of single health care coverage. Single coverage costs the City of Grandview Heights one hundred and seventy-seven dollars (\$177.00) per month; family coverage costs the City of Grandview Heights four hundred sixty-seven dollars (\$467.00) per month. The difference between single

coverage and family coverage on a monthly basis, in terms of the cost of premiums to provide this coverage by the Employer, is two hundred ninety dollars (\$290.00). Ten percent (10%) of this amount would equal twenty-nine dollars (\$29.00) per month to be paid by those bargaining unit members who avail themselves of family coverage under Article 24.

The Employer points out that all non-firefighting personnel and all non-police personnel employed by the City of Grandview Heights who receive family health care coverage from the City, since December 21, 1994, pay a portion of family health care coverage consisting of ten percent (10%) of the difference between family coverage and single coverage on a monthly basis. This resulted from an ordinance passed by the City of Grandview Heights's City Council in April, 1994. The Employer points out that nine of twelve fire departments in Franklin County require their bargaining unit members to contribute to the cost of health insurance coverage and in most cases these contributions would be required for both single and family coverage. The Employer argues that it is important that bargaining unit members understand the true costs of providing health insurance and by contributing to meeting these costs, bargaining unit members will appreciate the expense of providing this benefit and use it wisely. The Employer is of the view that it is time that employees contribute to the costs necessary to providing this benefit and contends that the request for such a contribution has merit, is fair, and is in

proportion to what other fire departments are requiring of their employees.

The Union opposes the ten percent (10%) contribution for the difference between family coverage and single coverage as proposed by the Employer. The Union notes that at present, eleven people within the bargaining unit avail themselves of family health coverage and by requiring them to spend twenty-nine dollars (\$29.00) per month the Employer would receive, in the aggregate, less than three thousand nine hundred dollars (\$3,900.00) for the year, an amount the Union finds negligible in comparison to the costs of this coverage.

The Union contends that there had been a change in health insurance coverage which has resulted in higher deductibles and higher out-of-pocket expenses being imposed upon bargaining unit members. The Union contends that increases in out-of-pocket expenses incurred by bargaining unit members has served to reduce the cost of providing health care coverage required of the City. The Union notes that health care costs to the City were actually reduced in 1994, and only increased by 1.5% in 1995. The Union contends that the minimal increase in the cost of health care insurance to the City over the past two years does not justify health care contributions to be made by bargaining unit members to the City, and pointed out that police officers do not make such a contribution at present under their contract with the City.

There are two justifications put forward by the Employer for the particular language it proposes in requiring bargaining unit

members covered by family coverage to provide a ten percent (10%) contribution on a monthly basis of the costs of family coverage that exceed single coverage. First, the Employer points out that exempt employees of the City of Grandview Heights are required to make such a contribution and such a contribution should be imposed upon non-exempt firefighters and police. Second, the Employer contends that bargaining unit members should be made aware, through this contribution, of the costs of this benefit.

The fact-finder does not recommend language requiring a ten percent (10%) contribution from those who avail themselves of family health care coverage. While the cost of this coverage is no doubt substantial, there is no indication that there has been a substantial change in these costs from the time that the Employer and the Union first negotiated this benefit for inclusion in their predecessor agreement. The evidence presented reflects a decrease in health care costs in 1994, and only a 1.5% increase in these costs in 1995. The fact-finder is also of the view that if exempt employees are required to make such a contribution, the lack of such a contribution among bargaining unit members comprises a benefit earned through bargaining on behalf of the bargaining unit, and diminishing this benefit, in the absence of compelling reasons to do so, should result from bargaining by the parties. The fact-finder is also not persuaded that this contribution is necessary to convince bargaining unit members of the substantial costs associated with providing this benefit.

The fact-finder therefore recommends the language suggested by the Union for Article 24 concerning maintaining substantially the same level of benefits and coverage as received by bargaining unit members effective July 1, 1995, and does not recommend the Employer's proposal that bargaining unit members receiving family health care coverage be charged ten percent (10%) monthly of the difference between the cost of single coverage and the cost of family coverage.

Proposed Contract Language: Article 24

Section 24.1 - Insurance

The City shall offer a group health care and dental care insurance program to members providing substantially the same level of benefits and coverage as in effect July 1, 1995. The health care insurance program shall include hospitalization, surgical, major medical, prescription drug, dental care, vision and an employee assistance program as set forth in the Physician's Health Plan (PHP) and United Health and Life of Ohio (UHLO) or their equivalents.

Article 25: Wages and Benefits

The Union points out that through a conciliation process which predated the parties' predecessor agreement, the issues of wages and benefits were separated and treated as separate issues. The Union urges that these issues be treated separately for purposes of this fact-finding proceeding and also recommends that each of

these issues be addressed in a separate article in the parties' collective bargaining agreement.

The Employer has no particular objection to addressing wages and benefits as separate issues but sees no benefit in separating language addressing these issues into two separate articles.

As to wages, the Union proposes an across the board increase for all bargaining unit members, with the exception of captains, in the amount of five percent (5%) in 1996, five percent (5%) in 1997, and seven percent (7%) in 1998. The Union recommends that the captains receive a pay increase by pegging their wages at five thousand six hundred (\$5,600.00) dollars above the pay for top firefighter-medic. The Union points out that this would result in an increase to captain pay at slightly less than five percent (5%) per year.

In support of the wage increases proposed by the Union, the fact-finder was informed that all bargaining unit members are certified as hazardous material technicians, a certification requiring forty hours of intensive training. It was noted that in more than one case among bargaining unit members even higher hazardous material certifications are possessed. It was noted that many of the bargaining unit members are firefighter instructors, several bargaining unit members possess college degrees, and it was argued that if premium services are demanded, a premium price should be expected to be paid.

It was noted on behalf of the bargaining unit that there was a time when seven firefighters were assigned to a fire truck, and

that comprised the operational capacity of the department. Today the department operates a fire truck, emergency medical vehicles, hazardous response equipment, provides arson investigations, and provides fire inspections and a host of other public safety services, many of which do not relate directly to fighting a fire.

It was noted that the Grandview Heights Fire Department is part of a mutual aid group committed to responding to hazardous material problems. It was also noted that the jobs of firefighters and firefighter-medics have become more technical, require more skills, require the operation of newer and more sophisticated apparatus, and demand greater expertise in the area of investigation and inspection.

It was argued that the field of emergency medical services (EMS), though relatively young at thirty or forty years, has undergone in recent times substantial change. It was noted that in recent times emergency medical services have been moving in the direction of initial treatment to stabilize injured citizens in the field and while transporting the injured person to a higher level of care. For example, in the last three years a ventilator intended to assist in breathing was added to the EMS unit and is now available for use. The Union pointed out that EMS technicians are now required to insert tubes into injured persons suffering from seizures and that a number of new drugs have been added to the service, including morphine.

The Union pointed out that in terms of new technology, emergency medical personnel are now required to monitor the carbon

dioxide produced by a person suffering a head injury for the purpose of determining the extent of brain damage, and such monitoring is used to assess the severity of cardiac arrests. Equipment now possessed by the Grandview Heights Fire Department includes an external cardiac pacing system which is capable of capturing an injured person's pulse rate and modifying it to the benefit of the patient. Grandview Heights emergency medical personnel perform electrocardiograms which produce data sent via a modem to a receiving hospital in the case of a myocardial infarction and all bargaining unit members responsible for emergency medical services are expected to keep current on the literature in this area. The Union points out that in this era of increasing managed health care there is a trend toward providing more services rather than less at the scene of an injury.

Each firefighter-medic is required to hold certifications as a journeyman firefighter, as a state certified emergency medical technician/paramedic, and as a hazardous materials technician. Each officer is required to hold certification as a state certified fire safety inspector, a state certified fire or EMS instructor, and as a hazardous materials incident commander. According to a memorandum drafted by Chief Koffman of the Grandview Heights City Fire Department in December, 1993: "By far, the Grandview Heights Fire Division holds its employees to higher requirements than any fire agency in the state." Chief Koffman wrote: "Beginning in 1986, the city set about a plan to reduce the manpower of the division, in an attempt to cut costs. Through attrition, the division dropped

from a staff of six per shift (already down from seven per shift in the 1960's) to a staff of five per shift." See Union Exhibit 25A, page 3.

The Union also noted that with dangerous communicable diseases on the rise, e.g., tuberculosis and AIDS, the risks of the work of the bargaining unit have increased. It was noted that firefighting and the provision of emergency medical services is not as safe as it used to be and pointed out that the City of Grandview Heights had purchased body armor for the protection of its firefighters. The Union noted that violence against emergency medical personnel has been on the rise nationally and that the increase in such violence has been dramatic.

The Union explained that though inflation is at about three percent (3%) and is expected to continue at relatively low levels, the Union is asking for more than three percent (3%) as it believes the bargaining unit members are being asked to do more among increased responsibilities, smaller staffs, greater training, and more work. The Union contends that the bargaining unit members are doing more today and should be compensated for this extra work. In this regard the Union points to an increase in emergency medical service runs of 16.3% from 1990 through 1995. See Union Exhibit 25C.

The Union claims that Grandview Heights Fire Department bargaining unit members are lagging behind the wages of similarly situated workers in Franklin County, Ohio, arguing that Grandview Heights is paying firefighters about 4.8% below the average wages

for firefighters in Franklin County. The Union contends that to increase the wages of the bargaining unit by three percent (3%) annually, as suggested by the Employer, would only increase the distance these bargaining unit members have already fallen behind the average wages for firefighters in Franklin County, Ohio.

The Employer does not dispute that changes have occurred in the areas of fire fighting and emergency medical services. The Employer points out, however, that the training required of paramedics is imposed by the state of Ohio and changes in technology have affected all aspects of our lives, with fire fighting and emergency medical services not escaping these changes. The Employer contends that the Union is, in effect, asking for greater wage increases than the Employer believes are warranted in return for remaining current with modern equipment and techniques used in fire fighting and providing emergency medical services. The Employer points out that it pays for the training received by bargaining unit members, training that is received while firefighters are paid and considered on duty, and noted that in some cases this training is then used by bargaining unit members outside of their employment to supplement their income.

The Employer also points out that presently there are two bargaining unit members who, because of grandfather clauses, are working within the bargaining unit without paramedic certification. These individuals receive less money than those bargaining unit members who do possess paramedic certification. The Employer notes that those firefighters with paramedic certification are already

paid sixteen hundred dollars (\$1,600.00) more than is paid to firefighters who are without said certification.

The Employer notes that the purpose of training is to reduce risks and that extra training required of firefighters in this day and age provides a reduction in risks to these firefighters. The Employer also notes that many of the activities referred to in the Union's recitation of responsibilities of bargaining unit members are covered by standard protocols. The Employer agrees that the Grandview Heights Fire Department has been out in front on certain issues, but claims other areas still require attention.

The Employer does not minimize the inherent risks involved in providing fire fighting services and emergency medical services but disagrees that the bargaining unit members of the Grandview Heights Fire Department face violence in the performance of their duties. The Employer noted its interest in reducing risks in this regard in any way possible but does not agree that violence threatened against Grandview Heights firefighters or emergency medical personnel supports the wage increases proposed by the Union.

The Employer points out that the City of Grandview Heights is the smallest municipality within the smallest area in Franklin County, Ohio, with a population of about seven thousand. The Employer describes the City of Grandview Heights as primarily a bedroom community and notes that three-fourths of the City's revenues are derived from only two sources, an income tax and a property tax. The City's income tax is levied at two percent, levied on net profits of businesses and professions conducted

within the City's boundaries, and on wages, salaries, and other compensation of persons employed in a business or profession for services performed in the City. Grandview Heights' income tax accounts for about fifty-three percent of the City's annual revenue and the Employer argues that tax revenues have been projected and budgeted to grow at a three percent (3%) annual rate through 1998. The second source of City revenue is a voted property tax assessed against real estate and personal property. Property tax proceeds account for about twenty-percent of the City of Grandview Heights' annual revenue and this revenue is increased and decreased through voted levies.

In May, 1993, City of Grandview Heights voters passed a 6.9 mill tax levy to fund operating expenses over a five year period, from January, 1994 through December, 1998.

The Employer also points out that municipalities in other political subdivisions are prohibited by Ohio law from receiving increased revenues from voted millage due to appreciation in real estate property values. Thus, if the value of real estate property within the City of Grandview Heights appreciates, the voted millage to be applied to that property is "corrected" by decreasing it to a level which yields the same dollar value of tax revenue as the original voted millage.

The Employer projects that personal income, non-real estate income, and personal property revenue will grow at approximately three percent (3%) per year through 1998. The Employer claims that the City's outlook for future additional revenue is bleak due to

an absence of new or expanding revenue sources. The Employer notes that the City of Grandview has little undeveloped real estate available for new commercial, industrial, or residential construction, expansion or development, and notes that the City is landlocked with no opportunity for annexation of new territory. The Employer claims that as the City of Grandview Heights's sources of revenue are directly affected by the state of the economy at any point in time, the City must be conservative in its expenditure commitments that extend beyond the short term.

The Employer proposes an across the board wage increase for all bargaining unit members of three percent (3%) for 1996, three percent (3%) for 1997, and three percent (3%) for 1998. The Employer points out that the consumer price index in November, 1995 reflected a 2.6% inflation rate and noted as well that following a 1993 wage freeze, the bargaining unit received a seven percent (7%) across the board increase for 1994, plus a one and one-half (1-1/2%) pension pickup increase, and a three percent (3%) wage increase and one percent (1%) increase in pension pickup in 1995.

The Employer argues that the wage and pension pickup increases proposed by the Union for the duration of the new contract between the parties would provide for a twenty-two percent (22%) increase to the benefit of bargaining unit members during a period of time when the inflation rate is expected to rise by a total of nine percent (9%). The Employer argues that its wage proposal still exceeds the inflationary rate expected during the term of the new contract and pointed to the fact that a 6.9 mill levy that extends

through December, 1998 provides for three percent (3%) growth, and the wage increases proposed by the Employer are consistent with this view.

As to comparing the wages of Grandview Heights firefighters to other firefighters in Franklin County, the Employer questions the comparability of the City of Grandview Heights to other municipalities considering the small size of the City of Grandview Heights and its limited opportunities for growth. The Employer points out that there is no particular reason why Grandview firefighters being located near the mid to lower third of wages paid to firefighters in Franklin County have to move up, and neither the City Council of Grandview Heights nor the electorate of the City of Grandview Heights has expressed or exhibited any intention that such should be the case.

The Employer urges that wage rates not be assessed in a vacuum, that the entire package of benefits offered by the Employer to the bargaining unit members be weighed in assessing what is fair and reasonable. The Employer believes that adequate and appropriate compensation is being paid and is being proposed by the Employer on this issue.

The Employer opposes eliminating separate pay rates for fire captain-medic and fire captain, and also opposes compressing the wage rate structure between fire captain-medic and firefighter-paramedic 3 by spacing these positions apart by five thousand six hundred dollars (\$5,600.00). The Employer claims that the Union has historically bargained a percentage spread between the highest paid

rank and file position and the supervisor's hourly rate, and the Employer proposes to retain a similar form of spacing.

In response to the Employer's proposals, the Union notes that fire captains have traditionally enjoyed a fifteen percent (15%) differential over the pay of top firefighters. The Union claims that this gap has been getting wider and the fifty-six hundred dollar (\$5,600.00) figure suggested by the Union is an attempt to slow the widening of this gap.

The Union also urges that the pension pickup paid by the City of Grandview Heights, currently at six percent (6%), be increased to eight percent (8%) in 1996, and ten percent (10%) in 1997. The Union agrees that the pension pickup for Grandview Heights firefighters is close to the average in comparable jurisdictions, but notes that wage levels among bargaining unit members trail those of other cities. The Union argues that in order to be paid at the average level in 1996, a top firefighter would need an increase of about 9.5%. As the Union is only proposing a five percent (5%) increase for 1996, the Union is also suggesting that the pension pickup be increased by two percent (2%) each year. According to the Union, increasing the pension pickup would make the total economic package for Grandview Heights firefighters more competitive with other cities although their salaries would remain below average.

The Union also recommends that the longevity of bargaining unit members be increased from four hundred dollars (\$400.00) to six hundred dollars (\$600.00), plus sixty dollars (\$60.00) per year

instead of the current forty dollars (\$40.00). According to the Union this would make the longevity schedule in Grandview Heights more in keeping with longevity paid in comparable departments.

The Employer opposes any increase in the pension pickup which is presently at six percent (6%) and urges that this language be retained without modification from the prior agreement of the parties.

As to longevity payments, the Employer argues that these payments are consistent with longevity payments made to exempt employees and the FOP bargaining unit. The Employer claims that the Union presented no justification for increasing these payments beyond present levels.

Just as the parties have done in their presentations to the fact-finder, the fact-finder will address wages and benefits separately. The fact-finder, however, does not recommend that wages and benefits be installed within two separate articles. The fact-finder does not recommend the deletion of the fire captain classification as there appears to remain a need for said classification based on the incumbent of that position. Considering that a fire captain-medical requires a paramedic certification while a fire captain does not, there also appears to be no reason to consolidate both of these classifications into a single classification providing a single pay rate.

As to the wage increases recommended by the parties, the fact-finder recommends that the Employer's proposal be adopted. The inflation rate which is at present 2.6% and expected to continue

in that range, the small population of the City of Grandview Heights in comparison with other municipalities in Franklin County, the limited opportunities for the City of Grandview Heights to increase its revenue base, and the presumptions inherent in the passage of the 6.9 mill levy which is to run through 1998, that is, a three percent (3%) growth rate, all tend to be in accord with the more modest wage increases suggested by the Employer.

The comments concerning the increased responsibilities, increased skills, and increased training necessary to maintain acceptable levels of services among fire fighting and emergency medical services within the bargaining unit are well-taken and reflect the diligence and increasing capabilities of this bargaining unit, both in fire fighting capacity, hazardous material services, and emergency medical services. The increased training, however, reflects the evolution of how these services are to be provided in the present age and comprise the necessary skills of fire fighting and emergency medical services today. While there is no dispute that bargaining unit members have maintained the level of expertise necessary to perform these skills at acceptable levels, it also appears that these skills are well within the expected job responsibilities of the bargaining unit, have been compensated by the Employer, and training necessary to the provision of these services has been secured while being paid to receive said training by the Employer, with this training paid for by the Employer.

The fact-finder recommends that the bargaining unit receive a three percent (3%) across the board increase effective December 20, 1995; a three percent (3%) wage increase effective January 1, 1997; and a three percent (3%) wage increase effective December 31, 1997. The fact-finder also recommends that the percentage spread between the highest paid rank and file position and the supervisor's (captain) hourly rate utilized within the parties' predecessor agreement be retained.

The fact-finder does not recommend a change to the longevity payments provided to bargaining unit members as expressed within the parties' predecessor agreement.

The fact-finder does not recommend an increase in the pension pickup presently provided by the Employer. The Union contends that the pension pickup should be increased from six percent (6%) to eight percent (8%) in 1996 and to ten percent (10%) in 1997, not because the six percent (6%) is not near the average of comparable jurisdictions in Franklin County, but because the wage level of Grandview firefighters has lagged behind and the pension pickup is a way to diminish this gap.

The fact-finder finds that the pension pickup is near the average of similarly situated employees within Franklin County. Having addressed the issue of wages and presented the view of the fact-finder, and after recommending no increase in health care contributions and no increase in longevity payments, the fact-finder does not recommend that makeup compensation is needed in

the area of pension pickup to augment the wage increases already recommended.

Proposed Contract Language - Article 25 - Wages and Benefits

<u>EFFECTIVE 12/20/95</u>	<u>ANNUAL</u>	<u>BI-WEEKLY</u>	<u>HOURLY</u>
Firefighter/Paramedic (Trainee)	25,816.69	992.95	8.866
Firefighter 3	36,625.99	1,408.69	12.578
Firefighter/Paramedic 1	28,560.33	1,098.47	9.808
Firefighter/Paramedic 2	32,989.84	1,268.84	11.329
Firefighter/Paramedic 3	38,278.79	1,472.26	13.145
Captain	42,146.33	1,621.01	14.473
Captain/Medic	44,020.60	1,693.10	15.117

<u>EFFECTIVE 1/01/97</u>			
Firefighter/Paramedic (Trainee)	26,591.19	1,022.74	9.132
Firefighter 3	37,724.77	1,450.95	12.955
Firefighter/Paramedic 1	29,417.14	1,131.43	10.102
Firefighter/Paramedic 2	33,979.53	1,306.91	11.669
Firefighter/Paramedic 3	39,427.15	1,516.43	13.540
Captain	43,410.72	1,669.64	14.908
Captain/Medic	45,341.22	1,743.89	15.570

<u>EFFECTIVE 12/31/97</u>			
Firefighter/Paramedic (Trainee)	27,388.93	1,053.42	9.406
Firefighter 3	38,856.51	1,494.48	13.344
Firefighter/Paramedic 1	30,299.66	1,165.37	10.405
Firefighter/Paramedic 2	34,998.92	1,346.11	12.019
Firefighter/Paramedic 3	40,609.96	1,561.92	13.946
Captain	44,713.04	1,719.73	15.355
Captain/Medic	46,701.46	1,796.21	16.038

The hourly rate of compensation for annual salary shall be based on two thousand nine hundred twelve (2,912) hours per year.

Contracting out

The Union desires that language prohibiting contracting out work assigned to the bargaining unit be included in the parties' new agreement. The Union notes that to an increasing degree, private companies are offering firefighting services to political

subdivisions and in so doing threatening the job security of bargaining unit members, diminishing the control of fire fighting services by public officials, and offering services that are not as competent as those provided by the bargaining unit. The Union argues that if the City of Grandview Heights were to consider such a proposal and no language addressed contracting out within the contract between the parties, it would then be too late for the Union to have any effect in opposing such an action. The Union argues that now is the time to address this issue even if it anticipates circumstances that have not yet arisen.

The Employer argues that there has been no proposal by anyone to contract out fire fighting services to a private concern; the City of Grandview Heights has never contracted out fire fighting services in the past; that there has been no claim that contracting out has eroded overtime within the bargaining unit; there is no reason to include a contracting out provision within the contract between the parties.

The evidence reflects that four fire departments in the general vicinity of the City of Grandview Heights operate under language within a collective bargaining agreement limiting the discretion of the employer to contract out fire fighting services. These communities include the City of Delaware, Grove City/Jackson Township, the City of Upper Arlington, and the City of Westerville. Ten communities in the general vicinity of Grandview Heights do not provide for such language.

It is noted that the language proposed by the Union has within it two exceptions to the prohibition against contracting out the work of the bargaining unit, those being the right of the City, without restriction, to enter into mutual aid agreements with other political subdivisions to provide services, and to enter into contracts with individuals to provide bargaining unit services in the course of any bona fide emergency during which manpower levels fall below safe levels as determined by the chief or his designee, due to injury, illness, or death of bargaining unit members. Said contracts are not to extend beyond the time reasonably necessary to replace lost manpower through the prescribed civil service procedure.

The Employer has emphasized that this language on contracting out anticipates a problem that has not as yet arisen within the City and is not expected to. The Employer contends that without a particular instance wherein contracting out has arisen, there is no need for this language and would, without necessity, diminish management rights reserved to the Employer.

The fact-finder can find no fault with the Union's timing concerning its proposal on contracting out language based on the Union's claim that without said language in the contract there would be no opportunity for the Union to complain in the event in the future contracting out should be considered by the City. The Union's contention that this language must be considered now for inclusion within the contract or the Union will in effect waive any right to complain about such activity is well-taken. From a

contractual point of view, this language must either be included or not included in the new agreement between the parties, with a decision to be made at this time even though no particular problem involving contracting out has arisen.

The fact-finder is of the opinion that the contract suggested by this fact-finding report is a relatively conservative approach to continuing a contractual relationship between these parties. The modest wage increase recommended by the fact-finder, the fact that the fact-finder has not recommended an increase in pension pickup, the fact that the fact-finder has not recommended that bargaining unit members be required to contribute to the cost of providing health care coverage to them and their families, and the recommendation of memorializing in the contract past practices rather than suggesting any radical changes within the contract (e.g., use of leave following the exhaustion of injury leave), are intended by the fact-finder to present to the parties a contract that promotes an evolution of the parties' relationship rather than a revolutionary departure from agreements previously negotiated and agreed by these parties.

While including contracting out language within the parties' new agreement is a change from the predecessor agreement, the language itself intends to solidify the bargaining unit members' expectations concerning continuing employment, the volume of duties required of the bargaining unit, and the nature of the duties required of the bargaining unit. The fact-finder finds the contracting out language recommended by the Union to reserve to

management the right to continue in mutual aid agreements with other political subdivisions and to contract out for additional services normally assigned to the bargaining unit in the event of an emergency. These exceptions to the prohibitions against contracting out appear to the fact-finder to reserve to the City of Grandview Heights the opportunity to meet its obligations to other communities and to prepare for emergency circumstances, while at the same time reserving to bargaining unit members a reasonable expectation that their services, over the next three years, will continue to be utilized by the City of Grandview Heights. The fact-finder therefore recommends the language suggested by the Union as to contracting out.

Proposed Contract Language: Article 31 - Contracting Out

Section 31.1

The City agrees that during the term of this agreement that it will not enter into a contract with anyone other than the Union to provide fire fighting, emergency medical or paramedic services for the City of Grandview Heights, except under the following circumstances:

(A) The City may without restriction enter into contract(s) with other political subdivisions to provide fire fighting, emergency medical and paramedic services for the City of Grandview Heights in the form of mutual aid agreements.

(B) The City may as reasonably necessary enter into contract(s) with any person to provide fire fighting, emergency medical and paramedic services for the City of Grandview Heights during the course of any bona fide emergency during which manpower levels fall below safe

levels as determined by the chief or his designee due to injury, illness or death of bargaining unit members. Such contracts may not extend beyond the time reasonably necessary to replace lost manpower through the prescribed civil service procedure.

Article - : Drug and Alcohol Testing

The parties have discussed whether to include within the parties' new contract an article addressing drug and alcohol testing, an article not found within the parties' predecessor agreement. While there has not been an agreement between the parties as to the exact mechanism to be utilized in establishing such a policy applicable to bargaining unit members, there was agreement between the parties that this policy does not, at this time, belong in an article of the parties' new agreement. The Union recommends that agreed language on this issue be attached to the parties' new agreement in a memorandum of understanding attached as an addendum to the new agreement; the Employer does not agree that it would be appropriate to attach this policy to the contract as an addendum.

Beyond the nature of the policy itself, the Union has concerns as to how the Union may express its agreement or disagreement with the policy prior to having it imposed upon bargaining unit members. While there appears to be some level of agreement about how the policy is to be developed, there is no agreement between the parties as to how such a policy is to be approved or disapproved prior to its establishment.

The fact-finder recommends that no contractual language addressing drug and alcohol testing be included within the parties' new agreement. By not recommending such language, the fact-finder declines to recommend inclusion of any proposed contract language on this subject to the parties and leaves this subject to the parties for further discussion.

Inclusion of All Other Bargained Articles to Which the Parties Have Agreed

Along with the language proposed above in this report, the fact-finder recommends that the other articles which the parties have successfully bargained to agreement during negotiations for their new collective bargaining agreement be included within the parties' new collective bargaining agreement.

In preparing, filing, and issuing this fact-finding report, the fact-finder has taken into consideration all reliable information relevant to the issues before the fact-finder as required by Ohio Administrative Code section 4117-9-05(J); has taken into consideration factors pursuant to Ohio Revised Code section 4117.14(C)(4)(e), as required by Ohio Administrative Code section 4117-9-05(K); has considered the past collectively bargained agreement between the parties as required by Ohio Administrative Code section 4117-9-05(K)(1); has compared the unresolved issues relevant to the employees' bargaining unit with those issues related to other public and private employees who do

comparable work, giving consideration to the factors peculiar to the area and classifications involved, as required by Ohio Administrative Code section 4117-9-05(K)(2); has considered the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the affect of the adjustments on the normal standards of public service, as required by Ohio Administrative Code section 4117-9-05(K)(3); has considered the lawful authority of the public employer as required by Ohio Administrative Code section 4117-9-05(K)(4); has considered any stipulations of the parties as required by Ohio Administrative Code section 4117-9-05(K)(5); and has considered such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment, as required by Ohio Administrative Code section 4117-9-05(K)(6).

RECOMMENDATION

The fact-finder recommends that the language proposed by the fact-finder in this report for inclusion in the collective bargaining agreement between the parties be agreed by those who are empowered to vote on the recommended language on behalf of the parties, along with all other language already agreed by the

parties for inclusion in the parties' successor collective bargaining agreement.



Howard D. Silver
Fact-Finder

January 22, 1996
Columbus, Ohio