

PRELIMINARY COMMENTS

The **STATE EMPLOYMENT RELATIONS BOARD** appointed the fact-finder who was duly notified by G. Thomas Worley, Administrator, Bureau of Mediation, by letter on November 29, 1996.

The fact-finder hearing was held on December 9, 1996 at the Old Fire House in Avon Lake, Ohio.

The Bargaining Unit consists of approximately twenty-three (23) employees including Lieutenants and Firefighters.

Avon Lake is a chartered city covering approximately twelve (12) square miles with a population of approximately eighteen thousand (18,000) people.

Unfortunately, the parties did not engage in much meaningful negotiations prior to fact-finding. Mediation and negotiation during fact-finding was marginally successful in that a few items were either resolved or withdrawn. These efforts, however, did result in clarifying the respective positions and were quite helpful to the fact-finder.

Along with the testimony and exhibits, consideration was given to the criteria in the Ohio Administrative Rules and the Ohio Revised Code.

The fact-finder would be remiss if he did not compliment the parties in the preparation and presentation of their respective positions and the degree of professionalism displayed throughout the proceedings.

ISSUES AND RECOMMENDATIONS

N.B. Issues will be discussed in the order in which they were considered at the time of fact-finding.

ARTICLE IX - SAFETY AND HEALTH (section 9.04)

ISSUE: This issue, proposed by the Union, seeks to increase the amount provided for periodic health examinations from \$200.00 to \$300.00.

POSITION OF THE UNION: It is the position of the Union that the cost of physical exams in excess of the amount provided by the collective bargaining agreement is submitted to the insurance provider and, with the raise of medical costs, could possibly result in increased premiums.

POSITION OF THE CITY: It is the position of the city that this question is moot due to the insurance proposal of the City whereby physical exams will be available at no cost to the employee.

OPINION OF THE FACT-FINDER: It is the opinion of the Fact-Finder that the Union did not present any persuasive argument in support of its proposed change in Section 9.04. The possibility of precluding a premium increase falls somewhat short of convincing.

The City has proposed a PPO plan to replace the current medical coverage. The Fact-Finder is not privy to the specific features of the plan if adopted.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the Fact-Finder that Article 9, Section 9:04 read as follows:

CURRENT LANGUAGE PLUS THE FOLLOWING SENTENCE

In the event that any medical insurance plan is adopted that may at beat variance with this section, such medical insurance shall be controlling.

ARTICLE IX - SAFETY AND HEALTH

New Section - Expenses for Dangerous Exposures

ISSUE: This issue, proposed by the Union, seeks contract language assuring payment of medical expenses caused by exposure, treatment and testing.

POSITION OF THE UNION: It is the position of the Union that such language is necessary to assure payment by the City of these expenses.

POSITION OF THE CITY: It is the position of the City that it, as a matter of policy, pays the expenses of treatment and testing. The City maintains that any problems connected with billing would have been present whether or not the payment policy was incorporated in the collective bargaining agreement.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the City is correct in its position. Not any shred of evidence was presented to indicate that the City either failed to, or refused, to pay these expenses.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to its proposed section of Article IX is as follows:

DO NOT ADD

ARTICLE XI - HOURS OF WORK (Section 11.01a)

ISSUE: This issue, proposed by the Union, seeks a reduction in the number of hours worked per week, i.e., from its present 52 hours to 51 hours in 1997; 50 hours in 1998 and 49 hours in 1999.

POSITION OF THE UNION: It is the position of the Union that its members work more hours than comparable communities. The Union contends that the work week in these communities averages 50.9 hours.

POSITION OF THE CITY: It is the position of the City that further time off would only serve to accentuate the difference in labor costs between Avon Lake and comparable communities. The City presented documents which indicated that the average firefighting unit employee worked only 91 (24 hour) days per year.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the reduction of hours could have a serious impact on labor costs. For example, assuming that the staffing is to be maintained at current levels in the best interest of the community and its residents, then approximately 1200 hours at overtime rates are built into this proposal.

In reviewing the data furnished by the Union, it is quite true that the communities presented reflect a work week having a **mean** average of 50.9 hours. However, the data reflected a work week having a **modal** average of 52.0 hours.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to Article XI, Section 11.01a is as follows:

DO NOT CHANGE

ARTICLE XII - OVERTIME COMPENSATION - NEW SECTION MINIMUM CALL-IN

ISSUE: This issue, proposed by the Union, seeks a minimum of two (2) hours of pay at the overtime rate when called back to the station.

POSITION OF THE UNION: It is the position of the Union that this proposal is justified not only because of the interruption to the employee's personal time but also because it is consistent with comparable situations not only within the City but also in other communities.

POSITION OF THE CITY: It is the position of the City that this proposal would only exacerbate the problem of excessive overtime costs.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the proposal is reasonable and quite comparable to situations in both the public and private sectors. However, the fact-finder is not inclined to pyramid the premium time prated by section 12.02 and 12.03.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder that a new section (12.05) be added and read as follows:

12.5 An employee called into work while on time off shall be granted a minimum of two (2) hours pay at the overtime rate as established by section 12.04. This section shall not apply to sections 12.02 and 12.03 of this Article.

ARTICLE XII - OVERTIME COMPENSATION

NEW SECTION - EQUALIZATION LIST

ISSUE: This issue, proposed by the Union, seeks language in its collective bargaining agreement covering the equalization of overtime among its members **and** the use of part time personnel.

POSITION OF THE UNION: It is the position of the Union that the collective bargaining agreement should address these matters.

POSITION OF THE CITY: It is the position of the City that it is perfectly willing to work with the Union to correct any problems with the assignment of overtime among the employees which might exist. It also maintains the use of part time employees is well within its rights as a manning issue.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the issue, although labeled as an Equalization List is in reality, a collateral attack on the use of part time employees. Inasmuch as no serious problems were presented as to equalization among members and no evidence was presented to indicate that the City was using part time people to erode the bargaining unit or undermine the Union as an effective bargaining agent pursuant to Chapter 47 of the Ohio Revised Code, this Fact-Finder can find no need for a new section on this subject.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to the issue is as follows:

DO NOT ADD

ARTICLE XIII - LEAD MAN (Section 12.01)

ISSUE: This issue, proposed by the Union, seeks to relieve the Fire Chief of the authorization to appoint a lead man. A lead man would be assigned strictly on the basis of seniority.

POSITION OF THE UNION: It is the position of the Union that the overwhelming number of

communities assign this responsibility on the basis of seniority. The Union also alleges that this could result in a cost savings to the City.

POSITION OF THE CITY: It is the position of the City that the proposal represents an invasion on a management right and chooses not to negotiate this matter with the Union.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the assignment of lead man responsibilities should not be treated as an employee benefit to be acquired simply by longevity.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to the issue is as follows:

DO NOT CHANGE

ARTICLE XIV - UNIFORM ALLOWANCE (Section 14.02)

ISSUE: This issue, proposed by the Union, seeks to increase the annual allowance to \$750.00 regardless of rank.

POSITION OF THE UNION: It is the position of the Union that comparables, external and internal, support its position. Comparables for nine (9) other communities as well as Avon Lake police and service departments were permitted. The Union also directed the attention of the fact-finder to new directives concerning mandated clothing.

POSITION OF THE CITY: It is the position of the City that this allowance is augmented by the City in replacing clothing damaged on duty. It is also the position of the City that adequate notice is given prior to the effective date of newly mandated clothing.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that some adjustment in the uniform allowance is in order. There does not appear to be any justification for the disparity with other comparable communities or the Avon Lake police department.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder

that Section 14.02 read as follows:

14.02 Whereafter there shall be an annual allowance for each full-time employee for maintaining and replacing his official fire uniform as becomes necessary or advisable by reason of use and wear in the performance of active duty. The annual uniform allowance shall be:

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Lieutenants	\$650	\$650	\$700
All Others	\$600	\$650	\$700

Such uniform allowance shall be paid by the Director of finance in two (2) equal installments on April 1st and October 1st of each year.

ARTICLE XII - OVERTIME COMPENSATION (Section 12.03)

ISSUE: This issue, proposed by the Union, seeks to expand the double time provision for call-ins on holidays to be applicable to all holidays.

POSITION OF THE UNION: It is the position of the Union that call-ins cause stress and hardship for the members and his family and, therefore, compensation should be provided.

POSITION OF THE CITY: It is the position of the City that there is no justification for this proposal.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that a review of the comparable proffered by the Union does not support this proposal. Furthermore, the fact-finder has recommended that addition of Section 12.05 which increases the minimum guaranteed call-in time on holidays.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the factor as to Section 12.03 is as follows:

DO NOT CHANGE

ARTICLE XV - HOLIDAYS (Section 15.01)

ISSUE: This issue, proposed by the Union, seeks to add two (2) holidays to the schedule, namely Easter Sunday and Marten Luther King Day.

POSITION OF THE UNION: It is the position of the Union that its members receive no compensation for working these days. The Union also relies on the fact that the Mayor was quoted as expecting to add the Martin Luther King Day to labor contracts.

POSITION OF THE CITY: It is the position of the City that this proposal is merely another attempt to convert regular time to overtime premium time.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the Union did not really mean that their members did not receive any compensation for working Easter Sunday. The fact-finder assumes that the Union meant that the employees did not receive **any additional** compensation. In reviewing the comparables, it appears that Avon Lake is not a laggard in this matter.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder that no holidays be added to the schedule in Section 15.01.

ARTICLE XV - HOLIDAYS (Section 15.01)

ISSUE: This issue, proposed by the Union seeks to increase the personal leave days to three (3) days.

POSITION OF THE UNION: It is the position of the union that the adoption of this proposal would bring its employees in line with other City employees.

POSITION OF THE CITY: It is the position of the City that this is a proposal designed to convert regular time to premium time.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the argument of the Union is not persuasive. Comparables furnished by the Union itself indicate that the current

provisions are better than most other communities.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder that no personal leave days be added to the schedule in Section 15.01.

ARTICLE XVII - HEALTH INSURANCE

ISSUE: Both parties had proposals in this area. The Union is proposing an increase in Dental and Eye Care and an increase of Fifty Dollars (\$50.00) per year in the cap. The City, on the other hand, has proposed a P.P.O. plan to its employees, which contains deductibles, premium sharing and co-pay features.

POSITION OF THE UNION: It is the position of the Union that its members do not wish to lose the right to choose doctors. It is further the position of the Union that it does not wish to participate in premium sharing. It is also the position of the Union that the City has enjoyed very low rates.

POSITION OF THE CITY: It is the position of the City that the time has come to address the rise in medical costs in a manner consistent with the majority of the private and public sectors.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that this issue is fraught with emotion and thus, the fact-finder has received more heat than light. The City, for its part, has not presented a definitive plan. The fact-finder cannot properly evaluate a proposal which states the policy "may" include such and such.

The Union, for its part, states that the City has had low rates including a decrease. However, the Union is seeking an increase in caps of \$50.00 per year as per its written summation but the data presented at the hearing was zero; \$25; and \$25 for the three (3) years of the contract. It seems logical to assume that the union was not confident that medical costs would not rise.

The choice of doctors is a real concern. Opponents of the HMO/PPO feel that this problem will eventually dissipate as more and more doctors and hospitals become affiliates.

It is the opinion of the fact-finder that the basic concept of the City is sound, i.e.,

that the best economic results can be obtained by having one plan for all city employees and a sharing of cost between employer and employee.

It is also the opinion of the fact-finder that perhaps we should walk across a bridge rather than plunge into an entirely new system. The following recommendation is made with that thought in mind.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder that this Article read as follows:

ARTICLE XVII - HEALTH INSURANCE

17.1 The City shall maintain the health insurance currently in effect. Carriers may be changed provided that no benefits (including choice of health providers) are reduced.

17.2 The cost of such insurance shall be allocated as follows:

	<u>ITEM</u>	<u>CITY</u>	<u>EMPLOYEE</u>
Monthly Premium up to	\$575.00	90%	10%
Monthly Premiums in excess of	\$575.00	50%	50%

The Director of Finance is hereby authorized to make such payments on behalf of the City.

The employee's portion shall be made by payroll deduction on the last pay prior to the month covered.

17.3 Payments of any monies for medical bills not paid by the health insurance carriers shall be the responsibility of the employee.

17.4 Current 17.05

17.5 Current 17.06

17.6 Current 17.07

ARTICLE XVIII - LIFE INSURANCE

ISSUE: This issue has been resolved by the parties.

ARTICLE XIX - LONGEVITY (Section 19.01)

ISSUE: This issue, proposed by the Union, seeks an increase in the longevity rate schedule.

POSITION OF THE UNION: It is the position of the Union that the current schedule is well below that of comparable fire departments.

POSITION OF THE CITY: It is the position of the City that longevity is an outdated form of compensation which it does not wish to augment its importance in the compensation package. It is further the position of the City that the current longevity schedule is standard throughout the City.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the fragmentation of compensation into segments such as longevity does make some comparisons more difficult. Although the longevity may lag, total compensation in Avon Lake does not.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder as to this issue is as follows:

DO NOT CHANGE

ARTICLE XXI - SICK LEAVE (Section 21.04[e])

ISSUE: This issue, proposed by the Union, seeks to increase the sick time buy back from 25% of 120 days to 50% of 120 days.

POSITION OF THE UNION: It is the position of the Union that this proposal is justified by comparables.

POSITION OF THE CITY: It is the position of the City that this proposal is tantamount to paying the employees not to abuse sick leave.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that a careful review of the comparables submitted does not justify this proposal.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder

as to this issue as follows:

DO NOT CHANGE

N.B. Notes on the hearing indicated that the Union had withdrawn this issue.

ARTICLE XXIII - WAGES AND RATES OF PAY (Section 23.01)

ISSUE: Both parties had proposals in this area. The Union seeks a 5.25% increase per year. The City has countered with a proposal of \$2,000.00 lump-sum payment effective January 1, 1997 for all firefighters in an active pay status at that time. The City has proposed a \$2,500.00 lump-sum payment effective January 1, 1998 for all firefighters in an active pay status at that time. Effective January 1, 1999, the City has proposed a 2 ½% across-the-board increase to all classifications in the Collective Bargaining Agreement.

POSITION OF THE UNION: It is the position of the Union that its proposal is necessary to maintain pay levels now maintained with comparable departments. It is also the position of the Union that this proposal is in line with increases pending with other city employees.

POSITION OF THE CITY: It is the position of the City that its proposal accomplishes the objective of granting a substantial increase and, at the same time, not further outstripping the comparable cities in base pay.

It is further the position of the City that currently Avon Lake firefighters are the highest and have the best benefits in totality of any union in Cuyahoga or Lorain Counties.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the approach of the City is sound. It provides a substantial pay increase to the employees and helps to contain the overtime costs at or near current levels.

Percentage increases tend to exacerbate differences existing both internally and externally.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder

that retroactive to January 1, 1997, Section 23.01 of Article XXIII be restated to reflect the proposal of the City as set forth above. We will leave the arithmetic to the parties.

ARTICLE XXIII - WAGES AND RATES OF PAY

ISSUE: This issue, proposed by the Union, seeks an increase in pay differentials between ranks.

POSITION OF THE UNION: It is the position of the Union that Lieutenants who do work assigned to Captains in other departments should enjoy a comparable differential.

POSITION OF THE CITY: It is the position of the City that this proposal represents a thinly veiled intrusion on management's right to determine its organization. It is further the position of the City that it does not, at this time, wish to have a captain, either de jure or de facto.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that no persuasive argument was presented by the Union on this proposal.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to this proposal is as follows:

DO NOT IMPLEMENT

ARTICLE XXV - MILITARY AND PRIOR SERVICE PICK-UP

ISSUE: This issue, proposed by the Union, seeks to remove language that creates conditions that limit exercising the benefits of this Article.

POSITION OF THE UNION: It is the position of the Union that more employees would retire early, thus saving the City money. The savings would come ostensibly from items such as longevity and step rates.

POSITION OF THE CITY: It is the position of the City that it is currently exceeding the benefits to military veterans which are required by law. It sees no justification for any expansion.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that no persuasive

argument was presented by the Union on this proposal.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to this proposal is as follows:

DO NO CHANGE

ARTICLE XXVII - INJURY LEAVE (Section 27.01)

ISSUE: This issue, proposed by the Union, seeks language whereby employees would not be required to use sick leave to augment payments received pursuant to workers compensation.

POSITION OF THE UNION: It is the position of the Union that the employee should not be required to use sick leave when injured on the job.

POSITION OF THE CITY: It is the position of the City that if payment provided by workers compensation is inadequate they should lobby the state legislature. Sick leave is provided by the collective bargaining agreement to protect the employee at the time of sickness and injury whether job related or not.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that no persuasive argument was presented by the Union on this proposal.

RECOMMENDATION OF THE FACT-FINDER: It is the recommendation of the fact-finder that this proposal be as follows:

DO NOT CHANGE

ARTICLE XXVII - PARAMEDIC CERTIFICATION

ISSUE: This issue has been withdrawn by the Union.

NEW ARTICLE - PREVAILING RIGHTS

ISSUE: This issue, proposed by the Union, seeks an Article which would maintain present

practices.

POSITION OF THE UNION: It is the position of the Union that this proposal eliminates the need to place all current practices into the contract and the arbitrary withholding of benefits by the Administration.

POSITION OF THE CITY: It is the position of the City that such a provision can easily be abused.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that under such a proposal privileges might easily ripen into rights. It is also the opinion of the fact-finder that this Union has not demonstrated any need for such a proposal.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to the proposal is as follows:

DO NOT ADD

NEW ARTICLE - HAZARDOUS MATERIALS TECHNICIAN

ISSUE: This issue, proposed by the Union, seeks additional pay for members of the Hazardous Materials Technician team.

POSITION OF THE UNION: It is the position of the Union that employees are performing duties outside of their normal job description.

POSITION OF THE CITY: It is the position of the City that since this is a voluntary program, it is not a negotiable item.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that the position of the City is well taken.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to this proposal is as follows:

DO NOT ADD

NEW ARTICLE - FIRE PREVENTION OFFICE & TRAINING OFFICE

ISSUE: This issue, proposed by the Union, seeks an annual stipend for the position of Fire Prevention Officer and Training Officer.

POSITION OF THE UNION: It is the position of the Union that the City's choice of rank structure has not allowed adequate compensation for the middle management responsibilities for these positions.

POSITION OF THE CITY: It is the position of the City that such duties are well within the scope of the position and should not require a bonus.

OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that this proposal is an attempt to collaterally attack the structure of the fire department personnel. The organizational structure of the department is clearly a management right.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder as to this proposed new article is as follows:

DO NOT ADD

ARTICLE XII - OVERTIME COMPENSATION

ISSUE: This issue, proposed by the City, seeks a two-pronged revision of overtime compensation.

One prong seeks to establish the basic hourly rate by dividing the employee's bi-weekly rate by 104. The other prong seeks to take advantage of the 207(K) exemption as it is permitted to do under the Fair Labor Standards Act.

POSITION OF THE CITY: It is the position of the City that the overtime costs are excessive, unnecessary and unrealistic.

POSITION OF THE UNION: It is the position of the Union that the large amount of overtime was due to the failure of the City to hire additional firefighters.

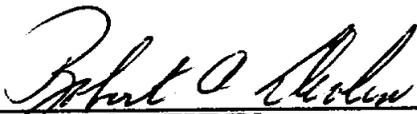
OPINION OF THE FACT-FINDER: It is the opinion of the fact-finder that since the Union, strangely, did not offer any opposition in its written summation and that the proposal of the City is both logical and legal, he should recommend accordingly.

RECOMMENDATION OF THE FACT-FINDER: The recommendation of the fact-finder is as follows:

ARTICLE XII - OVERTIME COMPENSATION

12.4 The basic hourly rate shall be determined by dividing the employee's bi-weekly wage by 104.

12.5 Overtime shall be determined by the application of the 207(K) exemption under the Fair Labor Standards Act.



ROBERT C. DEVLIN
FACT-FINDER

Dated: January 13, 1997

SERVICE

A copy of the foregoing Report and Recommendations of the Fact-Finder has been sent to the following by U S Mail this 13th day of January, 1997:

G. Thomas Worley, Administrator
STATE EMPLOYMENT RELATIONS BOARD
65 East State Street
Columbus, Ohio 43215

Robert J. Tscholl, Esq.
740 United Bank Building
220 Market Avenue South
Canton, Ohio 44702

Mr. Jeffery K. Moore
32811 Walker road
Avon Lake, Ohio 44012

N.B. Copies were sent by Fax to Mr. Tscholl and Mr. Moore on January 13, 1997.



ROBERT C. DEVLIN
Fact-Finder