

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

STATE EMPLOYMENT  
RELATIONS BOARD  
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In the Matter of Fact-Finding	*	
Between	*	<u>FINDINGS</u>
	*	<u>AND</u>
INTERNATIONAL ASSOCIATION	*	<u>RECOMMENDATIONS</u>
OF FIRE FIGHTERS,	*	
LOCAL 2156	*	Case No. 96-MED-10-0999
and	*	October 21, 1997
CITY OF	*	
NORTH ROYALTON, OHIO	*	Anna DuVal Smith
	*	Fact-Finder

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Appearances

For the International Association of Fire Fighters:

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For the City of North Royalton:

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## I. BACKGROUND AND SUBMISSION

The International Association of Fire Fighters, Local 2156 ("Union" or "Fire Fighters") represents approximately twenty-five (25) full time fire fighters/paramedics and lieutenants employed on the City of North Royalton, Ohio ("City"). Its contract with the City expired on December 31, 1996, but was extended by mutual agreement. Negotiations for a successor contract began December 10, 1996, with the parties meeting seven times through September 5, 1997, one of which was with a State mediator. Tentative agreement was reached on a number of issues. However, negotiations were complicated by the introduction of new counsel after which new proposals were made. Being unable to reach an agreement in all issues, the parties proceeded to fact-finding under §4117.14(C) O.R.C. The undersigned, who was appointed Fact-Finder pursuant to 4119-9-05(E) of the Ohio Administrative Code on November 29, 1996, met with the parties on September 15, 1997 in an attempt to mediate the dispute. Proposals on the following issues were withdrawn with agreement to adhere to current language:

Article IX	Rules and Regulations
Article XVII	Vacations
Article XVIII	Section 18.01 Sick Leave - Retirement
Article XXIV	Workweek
Article XXVII	Uniform Allowance
Article XXVIII	Educational Pay
Article XLVI	Disciplinary Procedure
Article XLVII	Grievance Procedure

New agreements were reached on the following:

Article XIII	Promotions
Article XXIX	Supervision and Staffing
Article XXXII	Section 32.03 Reopener
	Section 32.04 Fire Prevention Pay
Article XLVIII	Arbitration Procedure

There remaining unresolved issues, the parties proceeded to hearing for the purpose of fact-finding and recommendations. Pre-hearing statements were timely filed. The oral hearing was convened at 10:30 a.m. on October 1, 1997, at North Royalton City Hall, North Royalton, Ohio. Present for the Union in addition to counsel were George Cisar (President), Marc Buchanan (Secretary), Thomas Sargent (Negotiator), and Barbara Varanese (Consultant). Present for the City in addition to counsel were Michael Fabish (Fire Chief) and James Swider (Finance Director). Seven issues were presented: Holidays, Sick Leave Bonus, Call In & Overtime (26.08 & 26.09), Longevity, Salary Schedule, Paramedic/Advanced EMT Pay, and Duration. The parties were afforded a complete opportunity to examine witnesses, who were sworn, to present written evidence, and to argue their respective positions. The oral hearing concluded at 6:00 p.m. whereupon the record was closed.

In rendering this Report and Recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117:14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **II. POSITIONS OF THE PARTIES**

The City's general position is that nonproductive labor costs for the bargaining unit are excessive, being about seventy percent of salary. When this fact became known the City's objectives in these negotiations changed to reduce pay for time not worked (such as holidays) and to obtain a collective bargaining agreement that would not restrict its ability to manage the department. With these objectives in mind, the City asks the Fact Finder to consider the issues conjunctively and to weigh rationality of the cities offered as comparable to North Royalton. The City contends the Union's are cherry-picked to place their demands in a favorable light, while it uses only contiguous cities whose fire departments interface with North Royalton's in a number of ways. The factfinder for the previous contract used comparables more like the City's than the Union's. Regarding its financial position, the City points to its desire to maintain its present bond rating and the inequity of allocating a relatively large share of the projected surplus to relatively few employees. It acknowledges the sacrifice the Fire Fighters made in the past, and recent successful efforts to pass a fire levy, but contends the bargaining unit has had several opportunities to redress the past and that the fire levy was not earmarked specifically for salaries, but for fire operations in general.

The Union disputes the City's calculation of the benefit-to-total compensation ratio. For example, absent firefighters are not replaced when on vacation, taking sick leave or Kelly days. In addition, the City has used full sick leave as if all firefighters consume the entire allowance and full medical insurance is charged despite it being a city-wide per-employee calculation regardless of actual employee utilization. The Union asks the Fact

Finder to consider the position of the bargaining unit relative to firefighters in twenty other cities in northeast Ohio, which, it contends, have historically been used for comparison. Some of these are contiguous, some are of similar size. North Royalton's firefighters are dead last or close to it, a place the unit dropped to from its historical position of middle third in 1993 when it took a pay freeze because of a perceived financial problem. The unit has never recovered. A fire levy earmarked for fire salaries was recently passed, but the firefighters have yet to see any of it. The Fire Fighters contend the City's financial position is healthy. It can therefore afford to bring the unit closer to its historical position relative to comparable units. The Union further asserts that the parties negotiated certain ground rules for bargaining which it claims the City has violated. It argues the Fact Finder should give weight to previous tentative agreements which the City now renounces without justification.

#### Holidays

The City contends the current benefit of 168 hours is excessive compared to other cities and is equivalent to 21 days of holidays for employees who work an eight-hour shift. In addition, other cities do not pay a premium for working holidays. It therefore seeks to reduce the 168 hours to five tours of duty (120 hours) to be scheduled as full shifts rather than taken in 12-hour increments, and to eliminate the premium. It seeks to schedule full shifts off because partial shift scheduling is disruptive to the department.

The Union seeks one additional personal day (24 hours), which it says was previously tentatively agreed to, and preservation of all other language of the article. While it recognizes the nature of a tentative agreement, it objects to the City seeking to reopen the

issue without offering a quid pro quo or even status quo. The Union goes on to argue that three personal days are not out of line with other units, nor is a premium for working Christmas and Thanksgiving. The premium is a benefit employees have had for years. Losing it would damage morale and not justify the cost savings. Regarding the method by which holidays are taken, again the Union points to the longstanding practice. It says the Chief has control here and the ability to schedule so as to prevent overtime. In addition, it claims the flexibility afforded employees is not abused, as 95 percent take the holiday in 24-hour blocks anyway.

#### Sick Leave Bonus

The sick leave program currently contains an incentive of eighteen hours pay or time off per calendar quarter in which no sick leave is used. This time must be taken in 24-hour increments and employees may use compensatory time to take an entire tour off. Forty-hour employees receive eight hours of sick leave incentive.

The City takes the position that this provision should be eliminated because sick leave is an insurance policy, not a means for earning personal days. Moreover, employees who are sick should not be encouraged to come to work. The City also presents evidence to show that a number of contiguous cities do not have a sick leave bonus plan. It claims this is a program that provides no benefit to the City and is strictly an economic issue. It maintains it can and should control sick leave abuse by management prerogative. The City argues the Fact Finder should give no weight to the previous tentative agreement because it was entered into without the benefit of the financial analysis conducted by the new finance director. It says the Union's scheduling argument is irrational, drawing attention

to the fact that the Union makes the opposite argument with respect to holidays. It further contends firefighters are taking the time in 24-hour increments anyway by adding six hours from some other earned time-off benefit.

The Union wants this benefit restored to the previous level of 24 hours per quarter. Twenty-four hours is the logical level, it argues, because time off cannot be taken in 18-hour increments. It again points to a tentative agreement, which it says the City went along with because the present eighteen hours created a recordkeeping nightmare for the finance department. The Union acknowledges sick leave bonus is a cost to the City, but asserts the incentive program has worked to control sick leave usage. It claims the police have a similar program and the City has not proposed to eliminate theirs. As to the City's comparables, the Union acknowledges that four of the cities do not have a sick leave bonus program, but none of these ever had it to begin with.

#### Call-In & Overtime (Sections 26.08-26.09)

The expiring contract provided that shift employees receive twelve hours compensatory time in 1994 and 24 in 1995. Forty-hour employees received eight hours in 1994, sixteen hours in 1995. The City proposes to eliminate both sections, arguing that there is no economic justification for noncontingent compensatory time and no other city has such a benefit. It claims the time period for which these sections applied has expired, that is, this comp time was never meant to be a continuing benefit. As to the Union's sidebar exhibit, the City notes that it was dated September 15, 1996, and applied only to 1996 and to shift employees. Now the Union seeks to extend it to 40-hour employees and

make it a continuing benefit. Moreover, whatever the City did in the past does not preclude it from removing it from the contract now, notwithstanding the sidebar agreement.

The Union wishes to extend the 24 hours for shift employees (including the 6-hour carryover provision) and sixteen hours for 40-hour employees into the new contract as an annual benefit. It says the concept was first placed in the 1994 contract at the City's initiative and continued thereafter despite the absence of language specifically referring to 1996. There was never any question it was intended to be paid in 1996. The only discussion when the sidebar was negotiated related to the problem of carryover. Forty-hour employees were not included in the sidebar because the carryover problem does not occur for them. The Union contends the benefit was designed and is used to fill out the eighteen hours of sick leave bonus. The language is workable and there is no justification for eliminating it.

#### Longevity

The current contract provides for \$100 per year of service, from the fifth through the fifteenth anniversary. The Union proposes to increase the top to twenty years, thus providing for a maximum longevity payment of \$2000. In support of its position, the Union offers the internal comparison to nonbargaining unit employees of the City, including the chief, who top out at \$2000, and to other fire departments in other cities. The overwhelming majority, whether the City's comparison departments or the Union's, increase longevity pay after fifteen years. It is rational to do so, contends the Union, because employee service continues for ten to fifteen years beyond the present top step. The Union further asks the Fact Finder not to consider longevity in isolation, but conjunctively with other types of compensation.

The City prefers to retain the current benefit, arguing it is improper to compare bargaining unit employees to non-represented employees because so many other terms and conditions of employment vary as well, beginning with responsibilities, accountabilities, and methods of management. The City offers the internal comparison to other bargaining units, which it claims enjoy the same longevity pay the Fire Fighters do. It also points to its own external comparison units which do maximize at greater than fifteen years, but which have smaller amounts on the front end. The City says it is willing to increase the benefit in the later years if the Union is willing to reduce it in the early years. The City also again raises its argument of payment for time not worked, asserting the longevity provision has outlived its usefulness in supporting productivity.

#### Wages-Paramedic/EMT Pay-Duration

The City seeks a two-year agreement with pay increases of 3½%-3% in each year respectively, retroactive to January 1, 1997. It argues that North Royalton's wages are quite comparable to those of the surrounding communities (Berea, Broadview Heights, Independence, Middleburg Heights, Parma, Parma Heights and Strongsville), and these cities are raising wages 3-3½ percent per year. The City has settled with AFSCME at 4%-4%, but it got concessions for the higher rate. The City has also taken a slightly higher position (3½%-3½%) to factfinding with the police, but the police do not have paramedic pay.

With respect to its financial position, the City does not make an inability-to-pay argument, but supports its position in terms of how available funds should be spent. While it does hope revenue growth for the City will be \$637,000, expenditures will also increase.

The City needs to build surplus to maintain its bond rating. A 5 percent wage increase, as sought by the Fire Fighters would reduce the surplus and have an adverse impact on the cost of borrowing.

The City wishes to redirect dollars from EMTs, which provide little or no return to the City, to paramedics, which do. It says all EMTs have had the opportunity to become paramedics and can do so if they so choose. The City offers some money to Advanced EMTs because they are on their way to becoming paramedics. It proposes \$1100 for maintaining paramedic certification and \$600 for maintaining Advanced EMT. The additional language it proposes is in a number of other contracts without confusion as to what it means: paramedics must maintain their certification.

As to duration, the City wishes to have the Fire Fighters contract expire the same year as the police contract. It dropped its demands on a number of other issues important to it because of the realization it would be able to revisit them in 1998 if it prevails on the duration issue.

The Union proposes a 5 percent increase in each year of a three-year agreement, retroactive to January 1, 1997, an increase in EMT/EMTA/Paramedic pay from \$300/\$500/\$900 to 1%/2%/5% rolled into base. The Union seeks increases of this magnitude because its position relative to historical comparison cities has dropped from thirteenth prior to the wage freeze to twentieth. Its proposal would move North Royalton to twelfth place by 1998, compared to twentieth place under the City's offer, assuming 3½ percent raises in the other cities.

The analysis of the Fire Fighter's financial consultant shows the City has been solvent and will continue to be so. The Union contends the City has the funds to meet Fire Fighters' demands and still cover its other needs such as road repairs. By the Union's calculations, the difference between the City's offer (with an assumed 3 percent in 1998) and the Union's during the life of a three-year agreement is \$237,000 or \$79,000 a year, an amount within the City's ability to pay.

With respect to paramedic/EMT pay, the Union objects to the City's desire to eliminate EMT pay. It says this is a mean-spirited takeback from the most senior men of the department. The Union also has objections to changing the method of payment from annual lump sum to spreading it throughout the year, and is concerned that the proposed "performing duties" language will lead to grievances.

Finally, the Union seeks a three-year agreement to provide stability and avoid laborious negotiations again next year. It is perplexed about why the City wants a two-year agreement because it had no problem with a three-year term when it first came to the table.

### III. FINDINGS AND RECOMMENDATION

#### Holidays

Although tentative agreements between the parties must be given weight in making recommendations so as to support the integrity of bargaining, they are not necessarily determinative. New facts or previously undiscovered information are among the grounds that may justify rethinking a position and reopening an issue. In this case, while the parties had previously agreed to the addition of one personal day, the facts submitted in factfinding show support for the Employer's claim that the department, at 168 hours, is already high

relative to others in holidays and personal days. The addition of another 24 hours would only add to this. Although the Union points out that offduty firefighters are not replaced, it overlooks the fact that paid time off puts pressure on the department either to schedule overtime, hire additional firefighters, or reduce the manning of the department, affecting the department's cost or the safety of the public.

As to the City's claim that the cost of paid time off and other benefits is a high percentage of total labor costs, I agree with the Union that the City's figures are misleading, in part because the City fully charges some variable benefits as fixed and includes some that should be excluded entirely, and in part because no basis for comparison is provided. The City's comparables also do not support its position, nor did it meet its burden to prove the present usage in 12-hour increments is disruptive. The seven-city average is 158 hours and three of seven have premium pay for more days than does North Royalton. Current language is recommended.

#### Sick Leave Bonus and Compensatory Time

According to the Union, these two provisions work together. Although the compensatory time provided in §26.08/§26.09 is noncontingent (i.e., not earned by working overtime or by not taking sick leave) and therefore is available to all, it is used to supplement the eighteen hours sick leave incentive to provide for a full tour of duty off. I am puzzled, then, with the logic of the Fire Fighters argument that it needs to "regain" the six hours per quarter it "lost" in sick leave incentive in the previous contract, since it was made up through §26.08/§26.09. In short, the Fire Fighters cannot have it both ways.

Either it achieves a full tour per quarter sick leave bonus directly through Article XX or indirectly through the combination of Article XX and §26.08/§26.09.

As to the City's position, the sick leave bonus is evidently effective. Were it not, the City would either not have entered into a tentative agreement to extend it or it would have brought evidence to support its claim that it receives no benefit from the program, and it would be seeking to eliminate it from the police contract as well.

Current language on sick leave bonus is recommended. The Union's proposal on §26.08/§26.09 is also recommended as it represents continuation of an existing benefit.

#### Longevity

The Union's argument with respect to continuing to increase longevity after fifteen years has merit to the extent that it contributes to the department's stability, allowing it to retain experienced firefighters. No such evidence was offered. North Royalton Fire Fighters want it because others have it. However, this overlooks the fact that the maximum longevity pay in North Royalton already equals or exceeds that of all the surrounding communities except Parma and Brook Park, and even these cities have a much lower 15-year payment. Thus, the \$1500 maximum payment is not only greater than or equal to most, but is earned much sooner and therefore over a longer period of time. The current benefit, which maintains parity with other bargaining units is recommended.

#### Wages, EMT/Paramedic Pay, and Duration

Whatever comparison cities are used, there appears to have been an erosion in North Royalton's relative base pay position since 1991. Using Berea, Brook Park, Middleburg Heights, Parma, Parma Heights and Strongsville as reasonably comparable units (being

neighboring and used by the factfinder in 1996), but excluding Broadview Heights because it is a new contract, Brunswick because it is a part-time department, and Independence because no 1991 data were submitted, North Royalton's 1991 base pay of \$33,128 was above the six-city average of \$32,139. In 1996 (excluding Brook Park as no 1996 data were supplied but including Independence), North Royalton was close to average with a \$39,222 base wage compared to a six-city average of \$39,562. Thus, while there has been some erosion, the situation is not as bleak as the Union submits.

On the other hand, it is misleading to view base wage in isolation of other economic benefits. As held above, North Royalton enjoys a favorable longevity benefit, but the evidence clearly demonstrates it underpays paramedics relative to others in the full seven-city group of neighboring communities (Berea, Brook Park, Independence, Middleburg Heights, Parma, Parma Heights and Strongsville). In addition, the City's claim that the comparison communities are raising wages by 3-3½% per year is unfounded. The figures submitted by the City itself show raises of 3½-4½%, and even the City's own service department has settled for more. Thus, the City's offer, because it is under average in base wages and merely redirects EMT to paramedic pay, will have the effect of further eroding North Royalton's total pay position relative to its neighbors.

In 1997, base pay plus medic pay and longevity pay at 15 years averaged \$43,932 in the seven cities. Deducting North Royalton's \$1500 longevity yields a figure of \$42,432 which North Royalton Fire Fighters would have to earn in 1994 in medic pay and salary to equal the average of the other cities. A 4½ percent salary increase in 1997 followed by 4 percent in 1998 plus a paramedic increase in 1997 to \$1500 would accomplish this objective

as well as provide significant encouragement to EMTs to attain and maintain paramedic certification. Most units have higher medic pay than North Royalton, but are also eliminating EMT pay. I recommend both EMT and Advanced EMT pay be attrited so as not to harm present employees.

The only question remaining is whether the City can afford the recommendation. It can. The situation today is different from what the 1996 factfinder faced. General fund revenues are growing as are revenues from police and fire levies. To be sure, expenditures are also rising, but the City is not facing the "serious financial constraints" it presented to the factfinder last year. There is no justification in such a situation to allow Fire Department compensation to erode.

As to duration, the City yielded a number of operational and administrative issues in mediation on the theory that it is better to negotiate these than to present them to a neutral. I agree. The City's desire to revisit these sooner than later and to establish common expiration dates among its unions is reasonable. I therefore recommend a two-year contract.

**IV. Summary**

<b>Holidays</b>	<b>Current language</b>
<b>Sick Leave Bonus</b>	<b>Current language</b>
<b>\$26.08/\$26.09</b>	<b>Union proposal</b>
<b>Longevity</b>	<b>Current language</b>
<b>Salary</b>	<b>4½-4% effective 1/1/97 and 1/1/98 respectively</b>
<b>EMT/Paramedic Pay</b>	<b>\$1500 Paramedics</b>
	<b>Grandfather current EMT/EMT-A at \$300/\$500</b>
<b>Duration</b>	<b>January 1, 1997-December 31, 1998</b>

**Respectfully submitted,**

*Anna DuVal Smith*

**Anna DuVal Smith, Ph.D.  
Fact-Finder**

**Cuyahoga County, Ohio  
October 21, 1997**