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FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

June 1, 1998

In the Matter of :

City of Lakewood)

and)

Lakewood Association of Firefighters,)
IAFF Local 382)

Case No. 97-MED-07-0760

APPEARANCES

For the Employer:

Gary C. Johnson, Attorney
Sara J. Fagnilli, Law Director
Madeline Cain, Mayor
Yvette M. Ittu, Finance Director
Sean F. Kelleher, Human Resources Administrator
Larry Mroz, Fire Chief

For the Union:

David Byrnes, President, Northern Ohio Fire Fighters
Jim Astorino, Staff Representative, Northern Ohio Fire Fighters
Tom Hanculak, Attorney
Dan Herdman, President, IAFF Local 382
Jim Hefner, Secretary-Treasurer, IAFF Local 382
Walt Hennie, Vice President, IAFF Local 382
Doug Hennie, Representative, IAFF Local 382
Tim Dunphy, Representative, IAFF Local 382
Cornelius Sullivan, Representative, IAFF Local 382

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Lakewood and Lakewood Association of Firefighters, International Association of Fire Fighters Local 382. Negotiations for an agreement to replace the one expiring December 31, 1997 began during the fall of 1997. When no agreement was reached, a Factfinder was appointed on December 1, 1997. The parties requested an extension of the time limits in order to continue negotiations but they were unable to reach agreement.

The Factfinder met with the parties on three occasions. Mediation sessions were held on March 2, 1998 and April 2, 1998 and a number of issues were resolved. On April 27, 1998 a factfinding hearing was conducted for the unresolved issues.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties presented ten issues to the Factfinder. For each issue the Factfinder will describe the current contract provisions, set forth the positions of the parties, summarize the arguments and evidence offered by the parties, offer his analysis of the issue, and where appropriate supply suggested contract language.

1) Article 3 - Wages and Hours, Section 1 - Wages - The salary for a grade 1 firefighter with less than 22 years of service is \$42,222. The union demands that salaries be increased 4% effective January 1 of 1998, 1999, and 2000. The city offers salary increases of 2.5% effective January 1, 1998; 2% effective January 1, 1999; and 2% effective January 1, 2000.

Union Position - The union argues that its wage demand is supported by a comparison to wages paid in other communities. It indicates that base pay in seven similar cities -- Bay Village, Cleveland Heights, Euclid, Fairview Park, Rocky River, Shaker Heights, and Westlake -- ranges from \$39,949 (excluding a \$1800 bonus for training) in Euclid to \$46,925 in Shaker Heights compared to \$42,222 in Lakewood. The union notes that its salary rank compared to six west side cities -- Bay Village, Fairview Park, North Olmsted, Rocky River, and Westlake -- fell from third in 1994 to fifth in 1997.

The union contends that its position is also consistent with increases agreed to in other departments. It points out that in 1997 firefighters in the city received a 2% increase while the average increase in four other west side cities was 4.1%. The union notes that the average wage increase for the three departments that have agreed on wages for 1998 is 3.5% and 3.75% for the two cities that have settled wages for 1999.

The union maintains that the city can afford to pay its wage demand. It reports that the city has experienced moderate economic growth and that income tax collections have grown at a 2.8% annual rate since 1992. The union observes that the year-end general fund balance increased from \$1,437,713 in 1996 to \$2,606,419 in 1997.

City Position - The city argues that its wages compare favorably to wages paid in ten comparable cities -- Bay Village, Cleveland, Cleveland Heights, Euclid, Fairview Park, Mentor, North Olmsted, Parma, Rocky River, and Westlake. It states that the top step wage (excluding paramedic pay) for the ten cities in 1997 was \$42,152 which is \$70 less than its salary. The city reports that the average wage increase for 1998 for the seven cities that have agreed on wages is 3.4%.

The city contends that its wage offer is consistent with changes in the cost of living. It asserts that over the last three years the average increase in the consumer price index has been less than 2.8%. The city notes that a January 1, 1998 article from the Plain Dealer indicates that the rate of inflation is low and is expected to remain low in 1998.

The city claims that while it does not claim an inability to pay, it has a "limited ability to pay." It acknowledges that revenue increased 5% in 1997 but indicates that it has a pattern of a large increase in revenue followed by two years of smaller increases. The city states that reports show that the \$2.6 million carryover was only 5.98% of appropriations which ranks ninth among 13 comparable cities. It stresses that budget projections reveal that the 1997 carryover will be exhausted in two or three years depending on the wage increase received by the firefighters.

Analysis - Wages is a complex issue. At any given point in time firefighters in an area are paid a variety of wages. The array of wages reflects differences in other forms of compensation, non-monetary benefits, working conditions, the resources of the community, past bargaining, and many other factors.

The wage rankings that these factors produce generally do not change very rapidly. Only rarely will a community experience a crisis or windfall that in the short run produces a significant change in wage relationships. A Factfinder should be very cautious about recommending a radical change in the wage structure that has evolved over many years and many rounds of bargaining. An easy way to avoid making undue changes in

wage relationships between communities is to recommend wage increases similar to those being granted in comparable and nearby communities.

The Factfinder believes that wage increases in comparable and nearby communities is approximately 3.5% per year. The data submitted by the union indicate that the average wage increase for 1998 for three nearby cities -- Fairview Park, North Olmsted, and Rocky River -- is 3.5% and 3.6% for a list of 11 Cuyahoga County cities. The city supplied information on wage increases for 1998 for six comparable cities -- Cleveland Heights, Euclid, Fairview Park, Mentor, North Olmsted, Parma -- which shows an average increase of 3.4%.

The parties' positions on the wage issue do not reflect the 3.5% average wage settlements in the area. The city is offering only 2.5% in 1998 followed by 2% in 1999 and 2000. The union is demanding 4% wage increases in 1998, 1999, and 2000. The Factfinder believes that he should consider a settlement greater than 3.5% or less than 3.5% only if there is a clear reason to do so.

The Factfinder believes that the salary data offered by the parties indicate that salaries in Lakewood are inconsistent with other cities. The 1997 salaries in the contiguous and other nearby cities are:

Bay Village	\$41,183
Cleveland	39,510
North Olmsted	43,409
Rocky River	42,729
Westlake	44,117
Average	42,422

The salaries for area cities of comparable size are:

Cleveland Heights	\$41,148
Euclid	40,586 (includes \$1800 training bonus)
Mentor	45,768
Parma	41,214
Average	42,179

The \$42,222 salary in Lakewood exceeds the average for cities of comparable size by \$50 but is \$200 less than the nearby cities.

The union's argument that its wage demand is justified because its salary rank dropped from third to fifth among six westside cities must be rejected. First, the five other cities are generally rapidly growing suburbs while Lakewood is an inner ring city experiencing relatively slow growth in revenue. Second, the record indicates that in the last round of bargaining the union accepted a smaller wage increase in order to win a reduction in hours.

The union's contention that the city's 1997 \$2.6 million general fund ending balance justifies its demand cannot be accepted. While \$2.6 million appears to be a sizable balance, it represents less than 6% of general fund appropriations and is a substantially smaller percentage of appropriations than the ending balances for the other cities cited by the city and is less than what is generally regarded as appropriate.

The Factfinder must also reject the city's claim that its "limited ability to pay" justifies a wage offer which is substantially below wage offers in other communities. The fact is that the city is in good financial health. This is reflected in the 2.5% annual growth in income tax collections since 1992 and the report of Moody's Investors Service dated March 20, 1998 which states that "prudent and sustainable management strategies result in satisfactory financial position."

Recommendation - The Factfinder recommends the following contract language:

Effective January 1, 1998, January 1, 1999, and January 1, 2000 all firefighters shall receive a 3.5% wage increase.

2) Article 3 - Wages and Hours, Section 2 - Rank Differential - The current contract calls for fire captains and fire marshalls to receive base pay 20% above

that of grade 1 firefighters with less than 22 years of service and for assistant chiefs to receive base pay 15% above that of fire captains and fire marshalls.

Union Position - The union argues against the creation of the rank of lieutenant. It states that the lieutenants will be in charge of a company just as the captains. The union maintains that the general orders now in effect address the city's reasons for creating the new rank.

The union contends that if the rank of lieutenant is established, the differential should be 18%. It points out that sergeants in the police department receive 18% more than patrol officer grade 1. The union indicates that the differential for its five west side comparables is 10.1%. It notes that in larger departments -- Cleveland, Cleveland Heights, Euclid, Parma, and Shaker Heights -- the differential is 13%.

City Position - The city states that it intends to create the rank of lieutenant. It indicates that this will improve the efficiency of the department. The city stresses that it has the right to create a position subject to the requirement that it negotiate the rate of pay for the position. It states that it will create the lieutenant positions as captains retire so that no current captain will be hurt.

The city maintains that a 10% differential is appropriate. It points out that the average rank differential for its seven comparables averages 11.4%. The city maintains that the average differential for 26 Cuyahoga County cities is 10.3%.

The city contends that fire lieutenants are not entitled to the same differential as police sergeants even though both are the first promoted rank. It stresses that police sergeants supervise 12 to 18 patrol officers while fire lieutenants supervise very few firefighters.

Analysis - The Factfinder recognizes that the city has the right to create the rank of lieutenant. The union may be correct in some of its arguments regarding the creation of the new rank but the city is entitled to make its own determination in the matter. The city, however, acknowledges that it is obligated to negotiate the salary for the position.

The Factfinder believes that the data for the comparable and nearby cities suggests a 12% differential between the ranks of firefighter, lieutenant, and captain. While it is true that the differentials in nearby cities are closer to 10%, the differentials in cities closer to the size of Lakewood are more than 12%. The large differential received by police sergeants in the city also supports a 12% rank differential in the fire department.

Even with a 12% rank differential, the introduction of lieutenants will result in significant savings to the city. As the city replaces six of the 12 captains with lieutenants, it will pay the 12% differential for lieutenants rather than the current 20% differential for captains. It will also save money on acting pay whenever a firefighter replaces a lieutenant rather than a captain.

Recommendation - The Factfinder recommends the following contract language:

Effective upon the creation of the position fire lieutenants shall receive a base pay 12% above that of firefighter grade 1 with less than 22 years of service. Effective at the beginning of the calendar year immediately succeeding the substitution of a lieutenant for a presently existing captain's position in a line company working 24 hour tours, the captain's rank differential shall be modified to be 12% higher than the lieutenant's pay.

3) Article 3 - Wages and Hours, Section 3 - Acting Pay - The current contract requires members who are assigned to perform the duties of the next higher rank to receive the pay for that rank for each hour worked. The city seeks to limit acting pay to those times when a member serves in an acting capacity for 24 hours. The union wishes to retain the current contract language.

City Position - The city argues that acting pay should be limited to those who serve in the higher rank for 24 hours. It maintains that those who serve in the position for only a few hours do not perform all of the duties of the position. The city points out that several departments among its comparables do not provide for acting pay. It notes that in

1997, 203 of the 654 firefighters who received acting pay served in an acting capacity for less than 24 hours.

Union Position - The union wishes to maintain the status quo. It claims that in several of the contracts where there is no provision for acting pay an officer is called in to fill a vacancy. The union acknowledges that some departments have a deductible that must be met and then acting officers are paid hour for hour.

Analysis - The Factfinder believes that firefighters who serve as acting officers are entitled to consideration. The city, however, is correct that a firefighter who serves only a few hours in an acting position performs few of the officer's duties. It would also appear that the cost of changing payroll records for an hour or two of acting pay might not make sense.

The Factfinder feels that a member who serves in a higher rank for four hours or more is entitled to the pay of the higher rank. This reflects the likelihood that the acting officer will perform at least some of the duties of the higher rank and will be more likely to have to make some of the decisions appropriate to the higher rank. The data supplied by the city indicate that a four-hour minimum in 1997 would have eliminated 76 of the 654 claims for acting pay.

Recommendation - The factfinder recommends the following contract language:

Members who are assigned to perform the duties of a higher ranked member will receive the pay rate for the job title he is filling, providing the employee works in such position for not less than four (4) consecutive hours.

4) Article 4 - Longevity - The current contract provides for semi-annual longevity payments beginning at \$250 after five years of service and increasing by \$12.50 for each additional year of service to a maximum of \$500 after 25 years. The union wishes to increase longevity so that it begins with a semi-annual payment of \$275 after

five years and increases by \$25 for each year of additional service. It also seeks to eliminate the cap on longevity. The city opposes any change in longevity.

Union Position - The union contends that its proposal for an increase in longevity is justified. It complains that longevity in Lakewood is less than in its west side comparables at 5, 10, 15, 20 and 25 years. The union notes that even if its proposal is adopted, longevity will be less than the other cities at 25 years.

City Position - The city opposes the union's demand. It claims that the extra 3% payment that firefighters get after 25 years of service makes its \$500 minimum and \$2,267 maximum longevity equal to or better than any in the area. .

Analysis - The Factfinder finds no basis to recommend any increase in longevity.

Recommendation - The Factfinder recommends current contract language.

5) Article 7 - Workweek, Section 1 - Hours - The current contract establishes an average work week of 50.4 hours per week. The union seeks to reduce the work week to 48 hours. The city wishes to retain the current work week.

Union Position - The union contends that hours should be reduced from 50.4 hours to 48 hours. It points out that this reduction equates to 4.5 tours per year. The union notes that the average hours among its seven comparable cities is 49.4 hours. The union complains that firefighters in the city work more hours for less pay than other cities.

City Position - The city rejects the union's demand. It indicates that the union's proposed reduction in hours is equivalent to a 5% wage increase. The city claims that hours are not so egregiously more than surrounding communities as to justify its proposal since it got a reduction in hours during the last round of bargaining.

Analysis - The Factfinder must deny the union's request for a reduction in hours. While he recognizes that hours in the city are slightly more than in surrounding cities, he believes that any extra money recommended by the Factfinder should go toward wages considering the fact that the last negotiations resulted in a reduction in hours.

Recommendation - The Factfinder recommends the current contract language.

6) Article 8 - Educational Credit, Sections 2 and 6 - Rate of Pay for Training - The current contract states that if the city requires a member to attend a course or seminar, it will pay him time and one-half for class time and travel time. The city proposes that if a mandatory class lasts one week or longer, the member be detailed to a 40-hour week and be compensated at his regular rate of pay for the length of the program. The union opposes any change in the current contract.

City Position - The city argues that its proposal is made necessary by an Arbitrator's decision. It claims that the Arbitrator ignored a ten-year practice of detailing employees attending schools lasting one week or longer to a 40-hour week. The city asserts that the Arbitrator focused exclusively on Section 2 of Article 8 and ignored Section 6 which refers to employees being placed on a 40-hour week.

Union Position - The union argues that the current contract language should not be changed. It points out that it won the right to time and one-half in arbitration on December 19, 1997 and should not be required to relinquish it. The union further claims that Euclid and Westlake firefighters get time and one-half while attending a school and Brook Park firefighters have their choice of 24-hour tours or a 40-hour work week.

Analysis - The Factfinder cannot second guess the Arbitrator. The case was decided and pursuant to the decision members enjoy time and one-half when they attend schools that last one week or longer. While the Factfinder understands the city's desire to change the contract to eliminate the time and one-half, he believes that it is unrealistic to expect the Factfinder or the union to accept such a change only five months after taking the issue to arbitration.

Recommendation - The Factfinder recommends current contract language.

7) Article 11 - Leaves of Absence, Section 1 - Funeral Leave - The current contract provides that funeral leave can be extended at the discretion of the chief by using sick leave. The union proposes that a member be able to use any paid leave he selects. The city opposes this change.

Union Position - The union contends that its demand ought to be recommended. It points out that it amended its proposal after mediation. The union notes that the ability to use other paid time allows a member to preserve his attendance bonus and benefits new members who might not have sick leave to use.

City Position - The city opposes the union's demand. It maintains that its funeral leave policy is better than other jurisdictions.

Analysis - The Factfinder believes that the union's proposal should be adopted.

Recommendation - The Factfinder recommends the following contract language:

Funeral leave may be extended at the discretion of the Chief of Fire, based on individual circumstances. Such extra time will be utilized out of the member's paid leave accounts including holidays, compensatory time, sick leave, and vacation.

8) Article 12 - Sick and Pregnant Leave Policy, Section 1 - Sick Leave - The current contract allows sick leave to be used for a member's own illness. The union seeks to allow a member to use sick leave for the illness of the member's immediate family. The city rejects the union's demand.

Union Position - The union maintains that members should be able to use sick leave for illness in their immediate family. It points out that its demand is consistent with Section 124.38 of the Ohio Revised Code. The union notes that sick leave can be used for illness in the immediate family in all of its west side comparables. It observes that non-bargaining unit employees enjoy the benefit which it seeks.

City Position - The city opposes the union's demand. It contends that it is a long-standing practice in the city that employees can use sick leave only for their own illness. The city indicates that this practice is reflected in every other collective bargaining agreement in the city. It stresses that employees have so much other time available that they can generally get time off when requested and that serious illness and injuries are covered by the Family Medical Leave Act.

Analysis - The Factfinder must deny the union's demand. While the ability to use sick leave for the illness of an immediate family member is common among the west side comparables, none of the city's bargaining units enjoy this benefit. Since firefighters have more time off than employees in the other bargaining units, the Factfinder does not believe he can recommend it before it is negotiated by other bargaining units.

Recommendation - The Factfinder recommends the current contract language:

9) Article 14 - Vacations, Section 5 - Random Selection - The current contract provides that after the completion of the general selection procedure all remaining holiday and vacation time is granted on a first-come, first-served basis if one or more vacation or holiday slots are available subject to the requirement in current Division of Fire Rules and Regulations that at least three officers remain on duty. The union wishes to drop the requirement that a three officer minimum be maintained. The city seeks to retain the current minimum.

Union Position - The union argues that the number of officers who can be off should only be subject to the overall limit of three members who can be off on vacation or holiday. It complains that the minimum means that if one officer is on a Kelly Day and another officer calls in sick or is sent to school, no officer can take holiday or vacation time even if such a slot is available because the city will not call in an officer on overtime. The union stresses that firefighters are allowed to fill slots even if it creates overtime.

The union charges that the situation has been made worse because the city does not promptly fill officer positions. It indicates that in 1990 a captain was detailed as an assistant chief for the entire year, in 1994 the "A" shift was short a captain for 11 months, and in 1995 the "C" shift was short a captain for nine months.

City Position - The city rejects the union's demand. It contends that it wishes to have three officers on duty so that an officer is present at each station. The city maintains that this still allows up to two of the five officers on a shift to be off compared to four of 18 firefighters who can be off when two officers are off. It asserts that this means that the officers have a better deal because 40% can be off while only 22% of the firefighters can be off.

Analysis - The issue of random selection for officers requires balancing the concerns of the city and the union. The city wishes to have an officer at each station and to avoid excessive overtime. The union wishes to provide officers with the maximum flexibility in selecting holidays and vacations.

The major complaint of the union appears to relate to those times when there was an officer's position vacant for a long period of time. On that basis the Factfinder will recommend that the current rule be retained except when an officer's position is vacant for more than three months. Once a position has been vacant for three months the rule requiring that three officers be on duty will no longer be in force.

Recommendation - The Factfinder recommends the following contract language:

Three (3) members shall be permitted to select vacations or holiday time off each day except that a minimum of three officers shall be on duty. However, if an officer's position is left vacant for more than three (3) months the following shall govern: if the officer levels are at the minimum of three (3) with no officer presently on vacation time or holiday time off, and there is at least one (1) slot available, an officer may select vacation time or holiday time off.

10) Article 14 - Vacations, Section 6 - Number of Members Off - The current contract allows three members to select holiday or vacation time each day. The city wishes to limit the number of employees that can be off on any combination of holiday, vacation, and Kelly days to five. The union wishes to retain the current contract provision.

City Position - The city contends that its proposal to impose a limit of two on the number of employees who can be off on holiday or vacation when three members are off on Kelly days is entirely reasonable. It points out that in 1997 there were 109 days when three members were off on Kelly days and that on 54 of the days overtime was created which cost approximately \$40,000. The city indicates that its proposal allows employees to get their accumulated time off since there were 362.5 slots that were unused in 1997.

Union Position - The union rejects the city's proposal. It complains that the restriction on the number of employees who can be off unduly limits the selection of holiday and vacation time. The union charges that the city should not balance its budget on the backs of the firefighters.

Analysis - The Factfinder cannot recommend the city's demand. First, the union agreed to limit the number that could be off on holidays and vacation when three members were off on Kelly days for 1996 because the department was short-staffed. However, the city apparently chose not to increase staffing so it now is asking that the temporary relief it was granted in 1996 be made permanent.

Second, the scheduling of holidays and vacations is an important consideration. Employees wish to take time off when they are able to spend it with their families. The fact that there are unfilled holiday and vacation slots during certain periods may mean little to a firefighter who wishes to spend time with his family. The Factfinder believes that the restriction that the city wishes to institute is more significant than the potential overtime costs.

Recommendation - The Factfinder recommends current contract language.

A handwritten signature in cursive script, reading "Nels E. Nelson". The signature is written in black ink and is positioned above a horizontal line.

Nels E. Nelson
Factfinder

June 1, 1998
Russell Township
Geauga County, Ohio