

OHIO STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

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JANUARY 18, 1999

CARDINAL JOINT FIRE DISTRICT )  
AND )  
AFSCME, OHIO COUNCIL 8 )

CASE NO. <sup>98-MED-04-0389</sup>~~96-MED-0389~~

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APPEARANCES:

FOR THE EMPLOYER:

James P. Wilkins, Esq. - Representative  
W. Burton Bryan - Chairman of the Board of Trustees  
Robert J. Tieche - Fire Chief, Cardinal Joint Fire Department  
William R. Weaver - Township Trustee

FOR THE UNION:

Eva Burris - Regional Director, Representative  
William Jones - Union Official  
James Dahman, Jr. - Union Official  
Donald J. Hutchison - Union Official

FACT-FINDER:

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## INTRODUCTION

On June 10, 1998, the administrator for the Bureau of Mediation, State Employees Relations Board appointed the undersigned as fact-finder and served notice of same on the parties. Because of negotiation difficulties and family illnesses, the timetable for holding the fact-finding conference was extended, by agreement of the parties, to November 17, 1998.

The parties having failed to reach an agreement on or before November 17, 1998, a fact-finding conference was set on November 30, 1998. The location of the hearing was the office of the fact-finder. Said office was located within the fire district and accessible to all parties.

On that date, the parties met and agreed to mediate their differences before the fact-finding conference. There was an extensive mediation session. An agreement was made between the parties that in the event that a conciliator was needed, the conciliator had the option make any conciliator's decision retroactive to January 1, 1998. The case was continued for fact-finding to December 13, 1998. The parties further agreed that the fact-finding report was to be mailed on January 1, 1999.

Before the fact-finding conference was to begin on December 13, 1998, the parties notified the undersigned that many of the issues had been resolved and that the parties were prepared to go forward on the remaining eleven (11) issues and the defense of inability to pay. The following issues were presented at fact-finding along with the defense of inability to pay.

1. Intent and Purpose
2. Management Rights
3. Layoff and Recall
4. Injury on Duty
5. Wages and Benefits
6. Staffing and Hours of Work
7. Education and Training
8. Dues Deduction/Fair Share
9. No Strike-No Lockout
10. Bargaining Unit Work
11. Filling of Vacancies
12. Miscellaneous

Evidence was taken and arguments were made on issues "1 through 6" including the defense of inability to pay on December 13, 1998. The conference was continued until December 21, 1998 where evidence and arguments were made for the remainder of the issues. The parties agreed to extend the time for the mailing of the fact-finding report to January 18, 1999. Since January 18, 1999 is a holiday, mailing will take place January 19, 1999.

Consideration was given to criteria listed in Section 4117.9-05(J) of the Ohio Administrative Code and all corresponding sections in the Ohio Revised Code

### **Defense of Inability to Pay**

The employer has raised the defense of inability to pay for economic issues requested by the Union. The wage demands of the union are approximately \$18,000.00 per year for each year of the contract. For a three year contract that would be a total of \$54,000.00 over the life of the contract.

As of October 9, 1998, the employer had over \$307,000.00 in cash. The employer has been setting aside funds in a "sinking fund" or "savings account" for possible expenditures needed in the future. The employer stated through its witnesses that money is set aside each year in the event that capital equipment is needed.

The undersigned finds that there exists no need or anticipated need for money to be spent on capital equipment expenditures. The fire chief testified that all of the equipment worked properly and the undersigned finds that there is no need in the immediate or foreseeable future that capital expenditures need be made. The idea of having a savings plan for future equipment breakdowns or capital expenditures is a good idea, however, some of that money is necessary to pay for wages of those who risk their lives for the citizens of this fire district.

The union has countered that the union employees have not had a raise in years. They further state that the act of putting money under some type of future capital expenditure heading was a way of hiding money from union members because of this years' anticipated demands from the union.

The undersigned finds that the employer has not proven an inability to pay for the economic demands of the union. Even if one assumes that a need for future capital expenditures is shown, well over \$307,000.00 is available for any necessary equipment. It was further shown that the income of the district has been steady and there are no foreseeable decreases of this future income. Therefore, the employer has failed, in its burden of proof, to show that the employer has an inability to pay for the increased economic demands of the union.

### **ISSUE NO.1** **INTENT AND PURPOSE**

Both the employer and union have submitted similar clauses for the intent and purpose of the Collective Bargaining Agreement. The union argues that this is an employer/employee agreement and that the union cannot enter into an agreement with the citizens of the fire district. But for the citizens or taxpayers, there would be no joint fire district. But for the citizens or tax payers, there would be no money to fund a district. The purpose of fact-finding and conciliation

is to bring the taxpayer directly into labor management negotiations. The citizens and tax payers must be not only recognized, but the citizens and tax payers must be an integral part of any labor management agreement in the public sector.

### RECOMMENDATION

It is recommended that the following clause be part of the contract under intent and purpose:

It is the intent and purpose of this Agreement to promote and maintain a harmonious relationship between the Cardinal Joint Fire District and its employees; to set forth a full and complete understanding and agreement between the Employer and the Union with respect to wages, hours of work, working conditions, benefits and other terms and conditions of employment for bargaining unit employees; to insure orderly, uninterrupted and efficient service to the citizens and tax payers served by the Cardinal Joint Fire District; to assure a fair days's work for a fair day's pay; to assure a fair day's pay for a fair day's work; and to provide the procedures for prompt and equitable adjustment of grievances regarding the terms of this Agreement. The parties recognize and agree that the safety, health and well being of the citizens served by the Cardinal Joint Fire District is of paramount importance.

### ISSUE NO. 2 MANAGEMENT'S RIGHTS

It is axiomatic that the employer has the right to direct the workforce. Many of the items set forth in the employer's proposal exceed Ohio Revised Code, Section 4117.08(C). Some of these expansive items may affect wages, hours and working conditions which under state law bargaining would be expected.

Other than the previous association agreement, this is the first time that the parties have collectively bargained. The employer desires a clause that no past practice policy procedure or benefit need be continued unless expressly required in this agreement. Furthermore, management desires that this agreement constitutes an entire agreement between the parties regarding all matters. Because this is the first agreement and because this is the first time collectively bargaining, it would be impossible to include all matters between the parties. A refusal to bargain collectively and further negotiate would only breed mistrust and misunderstanding between the parties. However, if items not touched by this agreement are left open to the collective bargaining process, an avenue of communication is left open between the employer and its employees to air their differences.

## RECOMMENDATION

It is recommended that the following be inserted under the Management Rights clause:

The union recognizes and accepts that except as otherwise limited by the express terms of this agreement, all rights, privileges and responsibilities of the Cardinal Joint Fire District shall solely remain the function of the employer's Board of Trustees. The employer has the sole and exclusive right to manage its operations and facilities and to direct the working force. The right to manage includes all items set forth in Section 4117.08© of the Ohio Revised Code.

The exercise of the foregoing rights, authorities, duties, and responsibilities and the adoption of policies, rules, regulations and practices in furtherance thereof, and the sole and exclusive exercise of judgment and connection therewith shall be limited only by the specified and express terms of this agreement.

The employer has and retains, without regard to frequency of exercise, all rights to operate and manage its affairs and employees which are explicitly or implicitly conferred upon the employer by the state constitution, statutes or other sources of law. The employer shall have the right promulgate and demand a reasonable policy, procedures, directives, and work roles. The reasonableness of any policy, directive or work role or application of same may be subject to review in the grievance procedure and shall be open to negotiation between the parties.

### ISSUE NO. 3 LAYOFF AND RECALL

At the fact-finding conference, Issue # 3 has been agreed to by the parties and signed off by the parties. Therefore, the fact-finder shall not discuss the issue nor shall there be any recommendation.

### ISSUE NO. 4 INJURY ON DUTY

The parties seem agree that the paragraph submitted by the employer was satisfactory. The disagreement comes with the amounts to be paid by life insurance for death on the job and the maximum amount that can be paid for disability on the injury. The employer has this under wages and the union has this under injury on duty pay. The undersigned will treat the issues of insurance and weekly disability pay under this heading.

The employer makes a very good point that an increase from \$50,000.00 to \$100,00.00 for death benefits and an increase from \$250.00 to \$500.00 per week for disability cap would be a 1% increase in the total wage benefit for each employee. However, these amounts have not been raised for several years. Furthermore, the work that these men and women perform is work that exposes them to death and injury each time an emergency alarm goes off. It is expected that some will be injured and some will even die in the course of their service to the employer. Reviewing the benefits requested and the costs of these benefits, the demands for the union in this situation are reasonable.

### RECOMMENDATION

It is recommended that the following paragraphs be the Injury on Duty Clause:

If a bargaining unit employee is incapacitated as a result of an occupational injury sustained in the course and arising out of employment with the Cardinal Joint Fire District, the employer will pay the employee 55% of earned income lost by the employee during the first twenty-eight days after the date of injury. The amount of earned income lost shall be determined by the employer based on the employee's average earnings from the employee's primary employment during the three month period prior to the date of the injury. Any compensation for lost wages received from workers compensation or any part of the twenty-eight day period shall be reimbursed to the employer by the employee.

The employer shall purchase on behalf of each bargaining unit member a \$100,000.00 group life insurance policy.

The employer shall purchase on behalf of each bargaining unit member an accident and disability insurance policy that shall guarantee up to \$500.00 per week wage benefit to any bargaining unit who becomes disabled through injury or illness while in service by the Cardinal Joint Fire District. This clause shall not preclude the employee from applying and receiving P.E.R.S. disability and/or social security benefits.

### ISSUE NO. 5 WAGES

The union proposed an increase in wage rates in its pre-hearing statement and also at the fact-finding conference. The union's wage proposal is based strictly on seniority and it is a step proposal so that the more senior employees receive the highest rates.

The union maintains that its employees took a wage freeze in 1992. According to the union, the trustees of the employer requested that the union employees take a wage freeze so that

the fire district could "get on its feet". There was, according to the employees, a promise that the employees would be "taken care of" when the district got on its feet. The employees claim that now is the time to fairly change the wage rate since the community now has the funds to do so. The employer did not dispute that this promise existed.

The union further explains that the increases demanded are the first increases in over six years. Looking at the "average range" (10-14 year) there is a 3 to 3 ½ % increase per year for the six year period beginning in 1992 and commencing 1998 if the proposal of the union is accepted.

The union provided comparables that would appear to substantiate that their position is fair for like communities under similar circumstances.

The employer's position is that comparables of the union are for cities with full-time employees. The employer states that the comparables are not comparable under any sense under the mandates of the revised code since the comparables are for "full-time employees" and the Cardinal Joint Fire District has no full-time employees. The employer provided comparables that would claim to substantiate a lower amount than requested by the union.

The employer also takes issue with the wage freeze issue. Since there was step progression for seniority, the employer argues that there has not been a wage freeze. All of the employees that have stayed there have had their wages increased so long as they have maintained their seniority. The employer claims that if the union's position is accepted, it would be an unprecedented 18% increase. The employer also states that the most senior employees would make unjustifiable increases, as high as 30 to 40%.

The employer asserts that seniority is not the best factor to drive the firefighters progression of wages. Since this is a fire department where most of the firefighters are called out, responding to emergency calls would be the best way to pay higher wage rates.

The employer proposes an increase in compensation with a base of \$7.00 per hour upon the signing of this contract with increases to \$7.25 and to \$7.50 on successive anniversaries of the Collective Bargaining Agreement. The employer further states that for emergency compensation and emergency stand-by compensation, the employer would recommend a base rate for the first 25 hours and after 25 hours of emergency and emergency standby hours, there would be an increase to \$7.25 an hour. Thereafter, each additional 100 hours of emergency and standby emergency service would increase for respective \$.25 per each hundred hours. However, the employer put a cap of \$9.45 for duty in 1999, \$9.70 in the year 2000 and \$9.95 in 2001.

The employer also recommends that there be a bonus received upon the completion of training. For certifications, there would be a one time pay of \$100.00 for 1-B class; \$100.00 for 1-C class; \$200.00 for EMT basic and \$200.00 for Firefighter I and II.

The undersigned finds that the idea proposed by the employer proposed is a good idea in theory. However, the plan proposed by the employer would be difficult to manage and would lend itself to claims of favoritism. Productivity in the public sector is difficult to measure. Although seniority has been criticized, experience and longevity aids a firefighter in saving lives and property.

The union proposes that training and special detail shall be paid to all bargaining unit members that are rated \$7.00 per hour for all hours worked. They further recommend that day-time staffing be paid at a rate of \$7.50 per hour for all hours worked. On the other hand, the employer states that all bargaining unit employees, other than captains, will be compensated at a rate of \$6.00 per hour for all training they attend up to a maximum of 48 hours per calendar year. The bargaining unit should be compensated at a rate of \$6.00 per hour for special detail assignments that are designated by the fire chief or his designee including station duties, special activities, contract services and testimony and litigation when required by the employer or pursuant to a third-party subpoena.

The undersigned finds that training is not only a responsibility of the employer, it is a responsibility of the employee. A rate of \$6.00 per hour is satisfactory for training. For special details and all other assignments, the undersigned finds that \$ 7.50 per hour is a fair wage rate.

A problem occurs with the payment of stand-by pay. When an emergency is called, many times firefighters arrive after the fire truck has gone to the emergency. The question becomes whether or not the unit employee should be paid and if paid, how much. The undersigned agrees with the employer that the employee should be paid at least one hour for the first any hour or portion thereof, with any time in excess of one hour, in one-quarter (1/4) increments.

The parties also disagree on EMS responses. The proposal by the union starts to encroach on a management decision as to whether or not there shall be a shift on stand-by. The proposal of the employer that only a maximum of four persons shall be paid unless approved by the fire chief is accepted.

The parties disagree over what should be the rate for any third-party pays or any special detail pay should be compensated at the rate of their day-time manning rate. In the event that an emergency occurs during the time they are on duty, that firefighter or ranking member of the bargaining unit should be paid at the emergency rate.

Since the initial fact-finding conference was conducted sometime in the summer of 1998, the undersigned finds that the following recommendation should be retroactive to July 1, 1998. The undersigned finds that the emergency wage rates proposed by the union is fair.

A promise was made several years ago and the employer should make good on the promise. The rate increase would be about 3% per year which is the state average. Finally, the rates would be an "incentive" for firefighters to respond to emergencies.

## RECOMMENDATION

It is recommended that the above emergency wage rates be retroactive to July 1, 1998:

### July 1, 1998

<u>Years</u>	<u>Firefighter</u>	<u>Lieutenant</u>	<u>Captain</u>
0 - 1	\$ 7.25	\$ 8.25	\$ 9.25
1 - 4	8.25	9.25	10.25
5 - 9	9.25	10.25	11.25
10 - 14	10.25	11.25	12.25
15 - 19	11.25	12.25	13.25
20 +	12.25	13.25	15.25

### January 1, 1999

<u>Years</u>	<u>Firefighter</u>	<u>Lieutenant</u>	<u>Captain</u>
0 - 1	\$ 7.54	\$ 8.58	\$ 9.62
1 - 4	8.58	9.62	10.66
5 - 9	9.62	10.66	11.70
10 - 14	10.66	11.70	12.74
15 - 19	11.70	12.74	13.78
20 +	12.74	13.78	15.86

### January 1, 2000

<u>Years</u>	<u>Firefighter</u>	<u>Lieutenant</u>	<u>Captain</u>
0 - 1	\$ 7.84	\$ 8.92	\$10.00
1 - 4	8.92	10.00	11.08
5 - 9	10.00	11.08	12.17
10 - 14	11.08	12.17	13.25
15 - 19	12.17	13.25	14.33
20 +	13.25	14.33	16.49

It is recommended that the following clauses be inserted into the contract regarding wages:

Bargaining unit employees who respond to his/her station to answer an alarm of an emergency and who do not respond on a first alarm apparatus as defined by departmental policy, shall remain at their assigned station to perform station duties and to be available to answer additional alarms until released by the fire chief or other command officer. Bargaining unit employees will be paid a minimum of one (1) hour for responding to an emergency call with any time actually worked in excess of one (1) hour being paid and one-quarter (1/4) hour increments. For EMS responses, only a maximum of four (4) persons will be paid unless approved by the fire chief and the fire chief will cause those persons over four person to be paid unless the fire chief can give a legitimate reason as to why said person should not be paid.

Training Rate of Pay: Training shall be paid to all bargaining unit members at a rate of \$6.00 per hour for all hours of training. Those who conduct training shall be paid at the emergency rates.

Special Detail: Special detail shall be paid at a rate of \$7.50 per hour for all hours worked.

Daytime Staffing: Daytime staffing shall be paid at a rate of \$7.50 per hour for hours worked.

A bargaining unit member who is working day-time manning when an emergency occurs will be paid emergency rates as set forth in this article of the Collective Bargaining Agreement, if said employee responds to the emergency.

All bargaining unit members who are in the rank of captain or lieutenant shall be paid his/her emergency rate for all hours worked.

Bargaining unit employees will be compensated at \$7.50 per hour for special detail assignments and third-party events, including but not limited to station duties, special activities, contract services and testimony when required by the employer or pursuant to a subpoena. A bargaining unit member who is working any of the duties set forth in this paragraph shall be paid emergency rates as specified in this article in the event an emergency occurs while they are on duty and if they respond to the emergency.

Bargaining unit employees that respond to his or her station to answer an alarm of an emergency, who do not respond on a first alarm apparatus as defined by departmental policies, shall remain at their assigned station to perform station duties and to be available to answer additional alarms until released by the fire chief or other command officer.

For EMS responses, only a maximum of four persons shall be paid unless approved by the fire chief and the fire chief shall not unreasonably withhold approval.

## ISSUE NO. 6 HOURS OF WORK AND STAFFING

The union has put forth proposal regarding manning between the two stations and a

proposed equalization of the two stations. The union has also proposed seniority to determine special detail assignments. Furthermore, in mutual aid, the union has proposed the number of firefighters per truck.

The undersigned has reviewed all of the evidence, including all of the exhibits presented by both sides. The undersigned finds no evidence whatsoever of any type of nepotism or favoritism towards any employees. Furthermore, the undersigned finds no evidence of type of favoritism in operating one station as opposed to the other. The undersigned finds that management is doing an excellent job complying with the staffing demands of this growing fire district.

The demand for equalization between stations is a management decision and not a proper subject for a Collective Bargaining Agreement.

The union does however make some good points regarding the minimum manning on certain types of equipment. However, in reviewing the evidence, the staffing proposal by the management is the best proposal for supplying limited human resources throughout this fire district while taking into account the safety of the employees.

### RECOMMENDATION

It is recommended that the following paragraphs be included in the staffing section of the contract.

### STAFFING

Special Details and Assignments: Whenever possible, special details and third party assignments will be posted at both stations ten (10) days in advance of the date for the detail or assignment. All employees interested in working the special detail or assignment shall sign the posting on or before the seventh day of posting. The fire chief will select an appropriate complement of employees for the detail or assignment from among those who sign the posting, taking into consideration the certifications needed to provide the service. The Fire Chief will also give favorable consideration to employees who have worked the greatest number of hours for the Employer within the most recent three (3) months (not including daylight staffing hours) and to employees with the greatest seniority with the Employer. Probationary employees may sign up to be considered for special details and third party assignments only upon the prior recommendation of the oversight committee.

Mutual Aid: The decision to respond to a mutual aid call outside the boundaries of the Fire district shall be within the sole discretion of the Fire Chief or his designee, giving due consideration, first and foremost, to the ability to provide adequate emergency services to the Fire District, the safety of employees, and the availability of bargaining unit employees. Minimum manning for each apparatus used in responding to a mutual aid call shall be determined by the fire

Chief or his designee, provided that at no time shall any apparatus respond to a mutual aid call without a minimum of three (3) department employees.

Call-in: A call-in is defined as any time a bargaining unit employee is alerted by tones and reports to his assigned station. If an employee who is called in misses the assigned response apparatus but elects to remain at the station shall sign in on the master pay log indicating time in station and all duties completed while on stand-by. An employee on stand-by shall be expected to complete as many duties as possible from the stand-by duties list posed by station captains at each station or as assigned by an officer. An employee who elects to stay and perform stand-by duties will be compensated for a minimum of one hour commencing with the time the alert tone is sounded; an employee who elects not to stay shall not be compensated for responding to the call-in. Medical-only calls shall be administered and paid in the same manner as described in this contract, except that stand-by pay shall be paid to a maximum of four (4) employees or such greater number as the Fire Chief or his designee may approve on a case-by-case basis.

Paid time for employees on the truck who have responded to a tone shall commence from the time the tone is sounded and shall cease when the truck and/or station is back in service. The officer in charge of the incident will determine when the truck and/or station is back in service and will note the time on the master pay sheet.

#### ISSUE NO. 7 EDUCATION AND TRAINING

The union proposes an expansion of education and training. The union states that any employer wishing to take 1-C training, EMT, Advanced EMT, Paramedics and State Fire Inspector training shall be reimbursed for all expenses for this training, including materials, tuition and travel. Although this would be excellent not only for the district and the firefighter, the Board of Trustees and the chief must determine what increased training is necessary for any higher positions including all of those above. To simply leave the training and how much training to each employee would cause havoc on the budget. As for the proposal that the Mahoning County Joint Vocational School offer classes, the Canfield Joint Fire District has no jurisdiction or authority to dictate to the joint vocational school what courses to teach.

The ten opportunities for training at a national or state fire academy may be an option, however, it must be at the employer's discretion. It is found that the education and training requirements set forth by the employer be accepted.

#### RECOMMENDATION

It is the recommendation that the language in the Education and Training section of the contract shall be the following:

Mandatory scheduled training shall be conducted two Mondays per month. The mandatory training schedule shall be posted at each fire station at least thirty (30) days in advance. The posting shall include the date, times, type of training and instructors.

Every bargaining unit employee shall attend a minimum of three (3) hours of mandatory training per month for a total minimum of thirty-six (36) hours of mandatory training per year.

Any bargaining unit member who holds and provided Certified First Responder, EMT-Basic or EMT-Advanced medical care for the employer shall attend an additional twelve (12) hours of EMS training per year.

All bargaining unit employees shall maintain certifications as required by state law. The employer retains the right to alter the minimum training requirements for bargaining unit employees to assure compliance with applicable laws. The failure of a bargaining unit employee to meet the mandatory training requirements of the employer shall result in disqualification from service or other discipline.

#### ISSUE NO. 8 DUES DEDUCTION/FAIR SHARE

According to the exhibit from the union, the State Employment Relations Board certified election results and the current union was given 16 votes. Eleven votes were cast for the Canfield Firefighters Association. Zero votes were cast for "no representative". Although a clear majority voted for the current union, a strong minority cast their votes for the old firefighters association. In fact, 10 members signed a statement that they do not desire to be members of the current union. Nor do they wish to pay a fair share to the current union.

The employer further states that there is a division between in the workforce and forcing the "fair share" provision on the dissenting members would exacerbate the rift between the rival members.

This is the age old battle between those who believe in a "right to work" without union representation versus the "union shop" concept. It is clear that in the State of Ohio the union shop contract has been accepted in all areas of both public and private labor negotiations. There has been no objection on the basis of religious or ideological grounds. All persons who voted, voted for some type of union representation. Although there was no evidence that the old association paid any dues, it was clear in their by-laws that dues could have been voted upon and that there would be a check-off for these dues.

It is clear that union representation will bring about benefits to its members. It would be unfair to allow someone to gain benefits and at the same time not pay his or her fair share for those benefits.

### RECOMMENDATION

It is the recommendation that the following language be contained in the contract regarding dues deduction/fair share fee:

The employer shall deduct regular union dues, initiation fees, and assessments from the pay of the employees in the bargaining unit upon receipt from the union of individual written authorization cards voluntarily signed by the employees. An employee shall have the right to revoke such authorization card in performance with said authorization agreement, a copy of which will be attached as an appendix to this agreement.

Deductions will be made each pay period from the pay of all bargaining unit members, who have authorized said deduction. In the event an employee pay is insufficient to cover the dues deduction, the employer will make double deduction from the next pay.

All bargaining unit members who are not members of the union shall pay a fair share to the union. All employees hired after the date of this agreement who do not become members of the union shall, as a condition of employment, pay a fair share fee effective 60 days from the date of hire. The deduction of fair share fee from any earnings of the employee shall be automatic and require no written authorization for payroll deduction.

The union shall notify the employer of the amount of regular union dues and fair share fees to be deducted.

The union dues and fair share fee deduction will be transmitted to the union no later than the 10th day following the end of the pay period in which the deductions are made. These deductions shall be forwarded to the controller of AFSCME, Ohio Council 8, 6800 North High Street, Worthington, OH 43085-2512.

The employer will send a list of names for those whom deductions are made with each payment. The list will designate which employees are fair share payers. This list shall include last known address and social security numbers of the names listed.

Once funds are remitted to the union, their disposition thereafter shall be the sole responsibility of the union, and the union holds the employer harmless from any claims, actions or proceedings, by any employee arising from the deductions made by the employer hereunder. The parties agree that the employer assumes no obligation, financial or otherwise, arising out of the provisions of the article regarding deduction of union dues.

The parties agree that neither the employees nor the union shall have a claim against the employer for error in processing of deductions unless a claim of error is made in writing to the employer within sixty (60) days after the date of such error is claimed to have occurred. If it is found an error was made, it will be corrected by deducting the proper amount at the next pay period in which the union dues deduction would normally be paid.

#### ISSUE NO. 9 NO STRIKE/NO LOCKOUT

Although the proposal of both parties are close, the company desires to define the definition of a strike in order to close the loophole of wildcat strikes. Since lives and property depend upon the operation of the workers in the fire district, a provision like this is necessary to insure that no type of strike will be attempted.

#### RECOMMENDATION

It is the recommendation that the following language shall be part of the contract for no strike/no lockout clause:

The services performed by the employees included in this Agreement are essential to the public health, safety and welfare of the citizens served by the Cardinal Joint fire District. There shall be no interruption of the work for any cause whatsoever, nor shall there be any work slow-down or other interference with public services. It is expressly recognized by the Union that any strike by members of the bargaining unit is in violation of Section 4117 of the Ohio code. If a strike or any other interruption of work is engaged in by the members of the bargaining unit, said bargaining unit members would be subject to immediate termination. If a grievance is filed by a member of the bargaining unit for his termination for violation of this Article, the sole question to be resolved in the grievance arbitration procedure is whether or not the member engaged in conduct violative of this Article. If this is determined that the conduct occurred, the discipline imposed by the employer will not be altered. Furthermore, it is recognized that the Employer has the right to seek an injunction against the union and/or the employee in the Court of Common Pleas. The union recognizes

that in accordance with Section 4117.15(b) that the Union or its members cannot rely upon any alleged unfair labor practice by the Employer in the support of any strike activity.

In the event any employee covered hereunder is engaged in any violation of this section, the Union shall, upon notification by the Employer, immediately order such employee or employees to resume normal work activities and certify same to the Employer and take appropriate action against any one who continues to engage in a violation. If the Union discharges its obligations, it shall not be liable for the unauthorized and uncondoned acts of individual bargaining unit members.

#### ISSUE NO. 10 BARGAINING UNIT WORK

An accident occurred in the township. When the crew arrived a person was entrapped in an automobile. Although the daytime staffing and other staffing were notified, a deputy sheriff was helping to extricate the person from the automobile. The complaint was that a deputy sheriff was doing the work that should have done by bargaining unit employees. On cross examination, it was brought out that all employees were paid for that incident. It was also brought out on cross examination that union employees were upset that a deputy sheriff was doing "their" work.

The fire chief and the assistant deputy chief are not members of the fire district. These persons probably have more experience than any other firefighter on the force. To prohibit those persons from working because they are management would not be in the best interest of the fire district.

Unlike the private sector, firefighters must respond quickly. A scene of an emergency is no place to quibble about who should be doing what work. To complain that someone was there attempting to save another's life and somehow interfering with the work of the bargaining unit, is not a valid argument.

#### RECOMMENDATION

It is the recommendation that there be no provision in the contract restricting the performance of any type of work to be solely the work of the bargaining unit.

#### ISSUE NO. 11 FILLING OF VACANCIES

The union urges that there be contract language that when a vacancy occurs in the bargaining unit, the unit employee with the most seniority shall be awarded the position. It also placed qualifications to determine whether or not the employee is qualified. It indicates that the

test shall be designed by a committee of two labor and two management representatives, one of the labor representatives being an officer. It further states that the test shall be administered yearly for entry level and there should be notices posted for this testing. It also states that in the event the senior qualified employee should refuse the position, the next most senior qualified employee shall be awarded the position.

The employer argues that the captain is the only ranking position and the EMS position is an assignment and not a position. The employer further states that seniority is not the best way and not a good barometer to select employees for new positions. It further states that the promotional exams, not done by experts, will cause problems with the Equal Employment Opportunity Commission. Unless the test is properly designed and validated, legal problems will arise. The employer believes that the current method of filling vacancies is the best way to balance experience with qualifications.

In this situation the undersigned tends to agree with the employer's position. At this point, the number of full-time firefighters is limited, therefore, seniority may not be the best barometer for the most qualified candidate. Further, because of the problems with designing and validating tests, this would expose the fire district to unnecessary possibilities of litigation.

#### RECOMMENDATION

It is recommended that the union's proposal for the filling of vacancies not be placed into the contract. It is recommended that the employer fill the positions as it has in the past.

#### ISSUE NO. 12 MISCELLANEOUS

The following items are contract issues that do not fit under any other topic other than the "miscellaneous" title. Each paragraph will be discussed separately.

#### RECOMMENDATION

It is recommended that the following two paragraphs shall be inserted into the contract. The parties, at fact-finding, agreed to the following language:

1. If an item of personal property belonging to a bargaining unit employee is lost or destroyed during the employee's performance of duties with the employer, the employer will reimburse the employee for the value of the item up to a maximum of \$250.00. Reimbursement will be made within a reasonable time after the lost/destroyed certification to the fire chief accompanied by proof of the value of the item. There shall be no reimbursement for the loss or destruction of unauthorized equipment.

2. No bargaining unit employee shall serve as a member of any other fire department or public support emergency service on either a volunteer or paid basis without the written approval of the fire chief.

### PERSONAL VEHICLE EQUIPMENT

The following sub-issue deals with personal vehicle of the employee when the employee is responding to calls. Safety is an issue and also the installation of emergency lights and sirens are an issue. The union argues that the installation of emergency lights and siren by individuals not authorized by a dealer may void the warranty of a person's self-owned automobile. Furthermore, the estimate to make such installation is approximately \$150.00. The employer contends that this is an economic issue as well as a safety issue since it is conceivable that an employee can change cars frequently thereby costing the employer installation costs each time the employee changes a vehicle. A limit on the equipment issued and the number of times the costs of installation would be paid is an appropriate compromise.

### RECOMMENDATION

It is recommended that the following clause be contained in the contract:

A bargaining unit employee who responds to calls in his personal vehicle shall meet all of the requirements of state law for a public safety vehicle. The fire district shall continue to make available the equipment necessary to make the personal vehicle a public safety vehicle. The employer shall pay to the employee the amount to install the equipment provided by a dealer or technician authorized to perform such work. Payment will be made only to a person who is authorized or trained to do this work. One payment shall be made once every three years if the employee has changed vehicles.

### TRAVEL TIME

The parties differ as to the pay rate an employee should receive for payment in court time and travel time. The employer states that it should be handled under the special detail rate where the union urges that it should be the same as emergency pay. Since the employee is not responding to an emergency, the undersigned can find no reason why the employee should be paid the emergency rate for time spent in court and in travel to and from court. Mileage for the employee for using his own vehicle should be paid at the IRS rate which is currently \$.31 per mile.

## RECOMMENDATION

It is recommended that the following clause be inserted into the contract:

If a bargaining unit employee is required in the function of his job for the Cardinal Joint Fire District to appear in court for any reason other than jury duty, he shall be paid a rate of pay for special duty for all time spent in court and travel to and from court. Any witness or mileage fee received by the employee by the court for so serving shall be turned over to the Cardinal Joint Fire District. Mileage shall be paid at the allowed IRS rate, which is currently \$.31 per mile for all employees who use their own vehicles during the course of conducting fire district business. Any change in the IRS rate shall cause a like change with the amount paid per mile to the employee.

## INSPECTION AND TESTING

The union desires that the employer pay for inspection and testing of structural integrity and safety of ground ladders using NFPA recommended or equivalent procedures by and independent testing company. Currently, the fire chief is in charge of the testing requested by the union. The employer contends that this is a management decision. After hearing all of the evidence the undersigned finds that the procedures now used by the fire chief are more than adequate and that this language in the contract is not needed.

## RECOMMENDATION

It is the recommendation that there be no language in the contract regarding the inspecting and testing of the above items.

## CHANGES IN POLICIES OR WORK RULES

The union proposes a paragraph that no policy, procedure or work rule may be changed without notifying the union two weeks prior to the changes. The union requests the opportunity to meet and discuss or demands to negotiate such changes. The employer counters that this is an infringement of managements rights. Since the employer has the right to direct the workforce, policy procedures and work rules come under its sole domain.

The undersigned finds that policies, procedures and work rules are "working conditions" and such should be the subject of collective bargaining. Furthermore, communication between management and the employees, as required by any proposed clause would be beneficial for the district as a whole.

## RECOMMENDATION

It is recommended that the following paragraph become part of the contract:

### Policies, Procedures and Work Rules

No policy, procedure or work rule may be changed without first notifying the union two weeks prior to any changes. Notification shall be in writing and shall be made to the president of the union. The employer shall provide the union with an opportunity to meet and discuss the changes before any changes are put into effect.

## FITNESS FACILITY

The union requests that the employer create a fitness facility at each fire station within ninety (90) days of the execution of the agreement. The union, through its witnesses, maintain that fitness is important and that heart attacks are a main concern for the employees when responding to an emergency situation. Evidence as introduced that persons that are fit are less susceptible to heart attacks than those who are fit.

The employer responds that the amount requested for a fitness facility would not even be enough to set up an area in each fire station to conduct fitness activities. Furthermore, there is no proposed budget as to the costs and maintenance of any equipment desired.

It is obvious that fitness is very important in the job of firefighters. However, the undersigned finds no compelling reason at this point in time to request that a fitness facility be maintained at each fire station. Further, the undersigned has no information as to the exact nature of the facility nor the cost of its construction and maintenance.

## RECOMMENDATION

It is recommended that no language be put into the contract regarding the creation of a health maintenance fitness facility for any of the fire stations.

## TURN-OUT GEAR

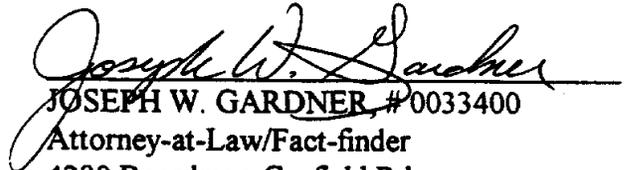
The last issue is regarding the gear worn by the firefighters. The parties are not in dispute that the employer shall furnish complete turn-out gear as it has done in the past. However, the union proposes that the employer purchase and maintain a washer extractor for the purpose of properly washing fire fighters gear. The union states that firefighters were not properly informed as to the procedures of washing the gear and they may have contaminated some of their own clothes or the clothes of their family. The employer countered that they object to the washer extractor. In 1995, the cost of the washer extractor was \$5,000.00. It is not known the cost of

the extractor nor is it known the cost to maintain the extractor. A purchase of this amount should not be made without knowing the cost of the equipment and the future maintenance of the equipment.

### RECOMMENDATION

It is recommended that the following paragraph be included in the contract:

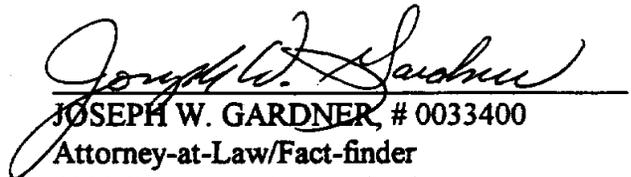
The employer shall furnish complete turn-out gear as it has in the past. Firefighters may only utilize gear that is furnished by the employer.

  
JOSEPH W. GARDNER, #0033400  
Attorney-at-Law/Fact-finder  
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(330) 533-1118

### CERTIFICATION

A copy of the foregoing Fact-Finding Report and invoice has been forwarded to Attorney James P. Wilkins, Attorney for Cardinal Joint Fire District, 9150 South Hills Boulevard, Cleveland, OH 44147-3599 and to Ms. Eva Burris, Regional Director, AFSCME, Ohio Council 8, 150 S. Four Mile Run Rd., Youngstown, OH 44515-3137 via certified mail, RRR. on the 19th day of January, 1999.

A copy of the foregoing Fact-Finding Report has been forwarded to Mr. G. Thomas Worley, State Employment Relations Board, 65 East State Street, Columbus, OH 43215-4213 via regular U.S. Mail on the 19th day of January, 1999.

  
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