

D

STATE EMPLOYMENT
RELATIONS BOARD

Oct 15 10 35 AM '99

IN THE MATTER OF FACT-FINDING
BEFORE
RICHARD D SAMBUCO, FACT-FINDER

CUMBERLAND TRAIL)	
JOINT FIRE DISTRICT #4)	FINDINGS OF FACT
)	
and)	and
)	
LOCAL 3667 OF THE INTERNATIONAL)	RECOMMENDATIONS
ASSOCIATION OF FIREFIGHTERS)	

SERB CASE NO. 99-MED-05-0516

REPRESENTING THE EMPLOYER: Mr. Gerald P. Duff, Esq.
Hanlon, Duff, Paleduis & Estadt Co., LPA
46457 National Road, West
St. Clairsville, OH 43950

REPRESENTING THE UNION: Mr. Thomas M. Myers, Esq.
Cassidy, Myers, Cogan,
Voegelin & Tennant, LC
126 E. Main Street
St. Clairsville, OH 43950

DATE OF FACT-FINDING: September 24, 1999

DATE OF REPORT: October 13, 1999

PRELIMINARY STATEMENT

On September 24 1999, a fact-finding hearing was held in St. Clairsville, Ohio by and between the Cumberland Trail Joint Fire District #4, hereinafter referred to as the "Employer" or "District" and Local #3667, International Association of Firefighters, hereinafter referred to as the "Union", or "Bargaining Unit" or "Employees".

Richard D. Sambuco was mutually selected by the parties through the administrative services of the Ohio State Employment Relations Board (SERB) to serve as impartial fact-finder.

The Employer's position was presented by Mr. Gerald P. Duff, Attorney. Also present for the Employer was Greg Reline, Fire Chief; Ken Saffell, Assistant Fire Chief; and Darlene Pempek, Clerk for the Belmont County Commission and also Clerk for the Cumberland Trail Fire Department.

The Union's position was presented by Mr. Thomas M. Myers, Attorney. Also present for the Union was Michael P. Taylor, OAPFF Representative; William W. Yost, Jr., Union President; and Richard A. Howell, Firefighter-Paramedic.

The Cumberland Trail Fire District is governed by a Board of Trustees whose representation includes the City of St. Clairsville, Richland Township, two (2) representatives from the private sector, and a clerk.

The District's administration is the responsibility of the Fire Chief and Assistant Fire Chief.

The District's operational staffing consists of fifteen (15) full-time firefighters assigned to a three-shift (Red, Green and Blue) platoon system. Each shift is staffed with a lieutenant and four (4) firefighters. These fifteen (15) full-time personnel make up the bargaining unit of Local No. 3667 of the IAFF.

The District also employs sixteen (16) part-time firefighters.

The Collective Bargaining Agreement currently in effect became effective as of 08:00 August 1, 1996 and was due to expire at 07:59 on August 1, 1999.

The parties have been involved in negotiations for a new Collective Bargaining Agreement since prior to the Agreement's expiration date and have been negotiating with approval from the Fact-Finder under two (2) requested extensions.

Having exhausted their attempts at negotiation, the parties contacted the Fact-Finder to arrange for a fact-finding hearing, which was held on Friday, September 24, 1999. Both parties submitted their position statements regarding the unresolved issues in a timely manner.

The Fact-Finding hearing began promptly at 9:00 a.m. in the Conference Room of the St. Clairsville, Ohio, Municipal Building.

Eleven (11) unresolved issues were presented by the parties to the Fact-Finder.

Following brief introductory remarks by the Fact-Finder with regard to the importance of the parties' reaching agreement on the unresolved issues on their own initiative and through mediation, rather than leave these issues to the recommendations of the Fact-Finder and quite possibly a conciliator's mandates, the parties agreed to try mediation.

The mediation session lasted from approximately 9:20 a.m. until 2:00 p.m. with little or no progress being made.

Throughout the mediation session, the Fact-Finder kept reminding the parties of the importance of reaching agreement on their own initiative if for no other reason than to narrow the issues that will be considered by the Fact-Finder and quite possibly come before the Conciliator.

During the mediation session, the Fact-Finder met individually with the representatives of each party to explore the strengths and weaknesses of each party's position.

Some progress was made on a few individual issues; however, absent agreement on all unresolved issues, agreement on those issues on which the parties appeared to be making

progress failed to come to fruition.

The Fact-Finding portion of the hearing commenced at 2:00 p.m. The Fact-Finder administered oaths to those witnesses who would be testifying. Each party was provided ample time to present their case, examine their witnesses and provide rebuttal argument to the other party's position on the issues. The hearing adjourned at approximately 4:15 p.m.

Of the eleven (11) unresolved issues originally submitted to the Fact-Finder, those same eleven (11) issues remained at impasse and were left to the Fact-Finder's recommendation. Those issues are:

- Issue 1. ARTICLE 18 - PROBATIONARY PERIOD
Section 18.02 and Section 18.03
- Issue 2. ARTICLE 27 - UNIFORM ALLOWANCE
Section 27.09
- Issue 3. ARTICLE 28 - VACATIONS
Section 28.02
- Issue 4. ARTICLE 32 - HOLIDAYS
Section 32.03
- Issue 5. ARTICLE 37 - HEALTH INSURANCE
Section 37.01 and 37.04
- Issue 6. ARTICLE 40 - OVERTIME
Section 40.09
- Issue 7. ARTICLE 43 - PERSONAL DAYS
Section 43.01
- Issue 8. ARTICLE 44 - SALARIES
Appendix A(2) and Section 44.03
- Issue 9. ARTICLE 50 - PROMOTIONS
- Issue 10. ARTICLE 60 - MINIMUM MANNING
- Issue 11. ARTICLE 63 - TRAINING HOURS

The following pages include the positions of the Union and the Employer and recommendations of the Fact-Finder.

In arriving at my recommendations, consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board.

ISSUES AT IMPASSE : FINDINGS OF FACT

Issue #1: ARTICLE 18 - PROBATIONARY PERIOD

Position of the Employer:

"UNION'S REQUESTED LANGUAGE:

- 18.02 No probationary employee shall have the rights to any additional overtime created by open, unfilled shifts, or additional shifts added to the normal work schedule. The only exception is stated in Article 40.
- 18.03 After an employee is removed from their probationary status, they will be placed at the bottom of the overtime rotation, and will have the equivalency of the same amount of hours overtime as the lowest employee. If the probationary employee has acquired any extra overtime covered under Article 40, then that time will be added to the overtime totals, thus moving the employee higher up the overtime list.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.
2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.
3. These requested provisions effect staffing. There needs to be a time frame to fill the shift. The proposals create an administrative problem when full-time employees sign up for overtime but do not show up.
4. Probationary employees are every bit as qualified as full time employees.

The Union stated "wages are important", but they want to decrease probationary employees' wages. This is unfair to them.

5. Also, it would handicap our scheduling of workforce and impact our recruiting. Decreased salary, no overtime, etc.

These requests should be refused."

Position of the Union:

"ARTICLE 18 - PROBATIONARY PERIOD

- 18.01 All probationary appointments will be for six (6) calendar months of total service. Upon successful completion of all requirements, the Fire Board will then make a recommendation of a final appointment of the employee at the first board meeting following completion of the probationary period.
- 18.02 No probationary employee shall have the rights to any additional overtime created by open, unfilled shifts, or additional shifts added to the normal work schedule. The only exception is stated in Article 40.
- 18.03 After an employee is removed from their probationary status, they will be placed at the bottom of the overtime rotation and will have the equivalency of the same amount of hours overtime as the lowest employee. If the probationary employee has acquired any extra overtime covered under Article 40, then that time will be added to the overtime totals, thus moving the employee higher up the overtime list.

Probationary employees are not part of the bargaining unit until their six month probation period has elapsed. Therefore, we feel that overtime as defined by the collective bargaining agreement should be adhered to as described in such agreement.

When overtime is needed, it is most often in a situation where the minimum number of firefighter/paramedics are on duty. Probationary employees would not possess the experience in their first six months to be expected to perform in these types of situations."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to the language of the probationary period (Article 18) as being a Management Rights issue that is reserved to management and not a subject to bargaining; the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect** wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement." (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the probationary language of Article 18 is a subject of bargaining.

With regard to this probationary language, only Sections 18.02 and 18.03 are unresolved.

Upon questioning by the Fact-Finder with regard to the parties' intent of "The only exception is stated in Article 40," the Employer stated it was the Union's request to insert the phrase "**non-probationary**" into the language of Article 40, Section 40.01, which reads in pertinent part as follows:

"40.01 In the event of overtime, the Fire Chief or the Assistant Fire Chief shall first try to fill full-time openings with **non-probationary** full-time employees."

The discussion revealed that a third category of employees (part-time), which was not initially revealed without the Fact-Finder's probing, was being utilized to fill overtime openings. Thus, the rationale for insertion of the phrase "**non-probationary**" into the language of Section 40.01.

With regard to the Employer's position that full-time employees sign up for overtime but do not show up; this is an issue to be resolved under the Management Rights disciplinary policies and procedures.

With regard to the Union's position that probationary employees are not part of the bargaining unit until their six-month probation period has elapsed; this Fact-Finder is not convinced.

Probationary employees fill bargaining unit classifications certified by SERB. These probationary employees may not be eligible for Union membership until they complete their

probationary period, but they provide their services in a bargaining unit classification originally certified by SERB. The intent of a probationary period is to provide management with time to evaluate an employee's job performance for consideration for full-time regular employment.

This is usually not the case for part-time employees which, in this instant case, are not even addressed in the currently effective collective bargaining agreement. It is also interesting to note that newly requested Sections 18.02 and 18.03 are not included in the currently effective collective bargaining agreement.

On the basis of the foregoing discussion and the Employer's need for effective staffing and scheduling of the workforce, I recommend that probationary employees and full-time employees be utilized as "one entire group" of employees available for overtime. I recommend that the parties develop an overtime procedure, outside the Collective Bargaining Agreement, which provides for overtime distribution on an equitable basis, among probationary and regular full-time employees.

This overtime procedure should be established on the basis of the low person with overtime hours being called first and any employee declining the opportunity to work overtime should be "charged" with the amount of overtime his/her replacement works.

This recommendation should obviate the need for Sections 18.02 and 18.03 and also serve to mitigate management's apparent reluctance to exercise their management right to discipline employees who sign up for overtime but do not show up.

My final recommendation with regard to this issue is that temporary employees be considered for overtime in only the most extreme circumstances and when all other (probationary and regular full-time) employees have declined the overtime.

I will recommend my suggested language under Article 40 - Overtime.

Issue #2: ARTICLE 27 - UNIFORM ALLOWANCE

Position of the Employer:

"UNION'S REQUESTED LANGUAGE:

27.09 Each full-time employee shall have two (2) complete sets of properly fitted structural fire fighting turn out gear that is in compliance to the current NFPA 1971 Standards. This additional set shall be provided so that the employee may have a clean and/or dry set to change into.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.
2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.
3. As a practical matter, this is covered by Article 27.10 and will probably be taken care of in 2001.
4. If we increase number of employees, we may not be able to afford extra sets. Each set is approximately \$1,000.00. Cost is a question.

This should be refused."

Position of the Union:

"27.09 Each full-time employee shall have two (2) complete sets of properly fitted structural fire fighting turn out gear that is in compliance to the current NFPA 1971 Standards. This additional set shall be provided so that the employee may have a clear and/or dry set to change into.

27.10 An employee's structural fire fighting gear shall be either replaced and/or qualified factory reconditioned starting in the month of May 2001; and must meet current NFPA Standards.

Two sets of structural firefighting gear is standard issue in most departments. An extra set of gear is necessary after most fires because it is wet and soiled. This is especially true in winter time. It is presumed that ten sets of gear is needed presently for the district to comply with this article. Approximate cost of ten sets of gear would be \$12,000.

FACT-FINDER'S RECOMMENDATION

Notwithstanding the Employer's initial position with regard to the language of Section 27.09 (Article 27) as being a Management Rights issue that is reserved to management and not a subject to bargaining; the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, the fact-finder concludes that Uniform Allowance language contained in Article 27 is a condition of employment and is a subject of collective bargaining.

With regard to this language, only Section 27.09 is unresolved. The reason the parties have not come to terms with Section 27.09 is not the language itself, but the cost involved in purchasing a second set of "properly fitted structural fire fighting turn out gear."

The parties are not too far apart in their estimated costs for additional sets. The Union estimates \$1,200 per set. The Employer estimates \$1,000 per set.

During the mediation session, it was revealed that approximately half the fire-fighting personnel already have two (2) sets. According to the parties, approximately six (6) to eight (8) personnel have two (2) sets of gear. This leaves approximately seven (7) personnel without a second set of gear.

Referring back to the Union's rationale for a second set of fire fighting gear, plus the fact that it is standard procedure in other fire departments to have two (2) sets of fire fighting gear, and since, according to the parties, approximately half of the personnel already have two (2) sets of fire fighting gear, I recommend that the remaining full-time fire fighting personnel (approximately seven

(7) people) be properly fitted and provided with a second set of structural fire fighting turn out gear by no later than December 31, 1999. This recommendation will allow the cost to be written off as an operating expense in this current year.

This request by the Union is not out of line. We expect these people to respond to emergencies in all kinds of (hot and cold) weather and to carry out their duties under extreme and stressful conditions utilizing water as one of their primary fighting tools. It is not unreasonable to ask the Employer to provide a second set of clean, dry structural fire fighting gear.

Issue #3: ARTICLE 28 - VACATIONS

Position of the Employer:

"CURRENT CONTRACT LANGUAGE:

28.02 The following vacation schedule is established for Fire District personnel working the fifty-three (53) hour per week schedule:

After 1 year	three (3) scheduled 24 hour days
After 2 years	five (5) scheduled 24 hour days
After 7 years	seven (7) scheduled 24 hour days
After 15 years	nine (9) scheduled 24 hour days

1. This is a management rights issue. Under 4117.08(C), this is reserved to management and is not subject to bargaining.
2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.
3. The District is in line with State and County on vacations. This is an increase in expense which is unreasonable. Cost is a question.
4. Also, excessive time off can create scheduling problems. Refuse the changes requested here.

The District's Final counter proposal is in the alternative:

1. Keep Article 28.02 language same as current contract and, agree to requested change on 43.01, or
 2. Keep 43.01 same, and
- 28.02 The following vacation schedule is established for Fire District personnel working the fifty-three (53) hour per week schedule:

After 1 year	three (3) scheduled 24 hour days
After 2 years	five (5) scheduled 24 hour days
After 5 years	six (6) scheduled 24 hour days
After 10 years	eight (8) scheduled 24 hour days
After 15 years	nine (9) scheduled 24 hour days"

Position of the Union:

"ARTICLE 28 - VACATIONS

- 28.01 Each full-time employee shall be granted vacation with pay after one (1) year of service with the Fire District. The employee's anniversary date shall be the date on which the employee started to work.
- 28.02 The following vacation schedule is established for Fire District personnel working the fifty-three (53) hour per week schedule:

After 1 year	three (3) scheduled 24 hour days
After 2 years	five (5) scheduled 24 hour days
After 5 years	six (6) scheduled 24 hour days
After 7 years	seven (7) scheduled 24 hour days
After 10 years	eight (8) scheduled 24 hour days
After 15 years	nine (9) scheduled 24 hour days

The Union asks for the additional steps be included in the vacation schedule. Even with the pay raises granted in this agreement, the employees will remain one of the lowest paid departments in the State. Therefore we do not feel that these steps are excessive and in fact are comparable with many other departments."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to the language of Article 28 - Vacations as being a Management Rights issue that is reserved to management and not a subject to bargaining, the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that Article 28 - Vacation, is language that is subject to collective bargaining.

With regard to this vacation language, the only unresolved issue is Section 28.02 of Article 28, which has to do with the amount of vacation time earned for years of service.

The Employer argues that "The District is in line with State and County employees". The Employer presents no "hard copy" comparables to support their argument. The Employer also argues that "This is an increase in expense which is unreasonable; cost is a question". Again, the Employer presents no "hard copy" comparables to support their argument.

The Union argues that, "Even with the pay raises granted in this argument, the employees will remain one of the lowest paid departments in the state".

The "hard copy" comparables submitted by the Union does support their argument of being one of the lowest paid departments. Of the eleven (11) fire departments submitted by the Union as comparables, ten (10) of these eleven (11) fire departments have a starting salary and top salary that is greater than Cumberland Trail Fire District #4. While these comparables may not reflect salaries statewide, they are indicative of fire departments located within an eighty (80) mile radius of Cumberland Trail Fire District #4.

Absent any "hard copy" comparables with regard to vacation from either party, this Fact Finder took the liberty of comparing the vacation entitlement of the "Road and Bridge Crew" of the Belmont County Engineer vis-a-vis the current vacation entitlement between the parties. Why? Because this "Road and Bridge Crew" is required to respond to emergency calls during inclement

weather, and they are geographically located much closer to Cumberland Trail Fire District #4.

Those comparisons, with necessary modification, are as follows:

Cumberland Trail	Hourly
<u>Current Vacation Entitlement</u>	<u>Equivalent</u>
After 1 year - three (3) scheduled 24 hour days	72 hours
After 2 years - five (5) scheduled 24 hour days	120 hours
After 7 years - seven (7) scheduled 24 hour days	168 hours
After 15 years - nine (9) scheduled 24 hour days	216 hours

Belmont County Engineer	Vacation
<u>Road and Bridge Crew</u>	<u>Entitlement</u>
1 year but less than 5 years	80 hours
5 years but less than 14 years	120 hours
14 years but less than 21 years	160 hours
21 years or more	200 hours

On the basis of the foregoing comparison, I recommend the District's final counter-proposal, absent any reference to Section 43.01. The District's final counter-proposal with regard to vacation modification is as follows:

"28.02 The following vacation schedule is established for Fire District personnel working the fifty-three (53) hour per week schedule:

After 1 year	three (3) scheduled 24 hour days
After 2 years	five (5) scheduled 24 hour days
After 5 years	six (6) scheduled 24 hour days
After 10 years	eight (8) scheduled 24 hour days
After 15 years	nine (9) scheduled 24 hour days"

Issue #4: ARTICLE 32 - HOLIDAYS

Position of the Employer:

"CURRENT LANGUAGE:

- 2 - Each employee shall receive holiday pay at the rate of 8 hours per holiday times their current hourly rate.

UNION'S REQUESTED LANGUAGE:

- 32.03 The duty crew working from 08:00 hrs to 24:00 hrs on the said holiday, shall be paid one and one-half their regular rate of pay for said hours of work in additional to their eight (8) hours of holiday pay.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This was heavily discussed and negotiated in the 1996 negotiations. The District made several proposals, and the Union chose it this way. Now they want to change for no good reason.
2. An increase of \$8,000-\$10,000 would occur per year under their proposal. This is unreasonable and not affordable.

This should be refused completely.

The District's Final Counter-Proposal Is:

- 32.02/03 Keep the current contract language or duty crew working 08:00 to midnight on the Holiday shall be paid one and one-half times their current rate for said hours of work. No pay for other employees."

Position of the Union:

"ARTICLE 18 - HOLIDAYS

- 32.03 The duty crew working from 08:00 hrs. to 24:00 hrs on the said holiday, shall be paid one and one-half their regular rate of pay for said hours of work in addition to their eight (8) hours of holiday pay.

Additional pay for working a holiday is standard throughout the State. The cost of this Article to the District would be approximately \$5,000.

FACT-FINDER'S RECOMMENDATION:

The discussion during the mediation session revealed the following: The District's operational staffing consists of fifteen (15) full-time firefighters assigned to a three-shift (Red, Green and Blue) platoon system. Each shift (**Duty Crew**) is staffed with a lieutenant and four (4) firefighters. The current situation has this duty crew of five (5) firefighters working on the holiday. The remaining ten (10) employees in the bargaining unit who are not working on the holiday also receive eight (8) hours holiday pay.

The Union is requesting an additional one-half ($\frac{1}{2}$) the regular hourly rate for those five (5) firefighters (duty crew) who are required to work on the holiday. The Union contends that the additional cost to the District would be approximately \$5,000.

The Employer argues that an additional increase of \$8,000 to \$10,000 would occur per year under the Union's proposal. The Employer submitted the following calculations, which was marked as District Exhibit No. 8, to support their argument. The estimated cost of the Union's proposal, according to the Employer's calculations, are as follows:

"HOLIDAY PAY

PER SHIFT	O.T. RATE	16 HR. PAY
1 Lieutenant	13.42	214.72
3 Paramedic	12.57	603.36
1 F.F. EMT	12.21	195.36
	Total	1,013.44 Per Holiday
1 st year total for 10 Holidays		<u>10,134.40</u>

PER SHIFT	O.T. RATE	16 HR. PAY
1 Lieutenant	13.82	221.12
3 Paramedic	12.94	621.12
1 F.F. EMT	12.58	201.28
	Total	1,043.52 Per Holiday
2 nd year total for 10 Holidays		<u>10,435.20</u>

PER SHIFT	O.T. RATE	16 HR. PAY
1 Lieutenant	14.23	227.68
3 Paramedic	13.33	639.84
1 F.F. EMT	12.96	207.36
	Total	1,074.88 Per Holiday
3 rd year total for 10 Holidays		<u>10,748.80</u>

TOTAL COST OF UNION PROPOSAL 31,318.40

The Union challenged the Employer's cost figures by stating that they were inflated because of utilizing the cost that was already being paid to the duty crew for working the holiday shift and then adding in the additional one-half (½) the regular hourly rate that the Union is requesting.

When offered the opportunity to rebut the Union's challenge and support their cost estimate, the Employer declined to offer a rebuttal argument.

On the basis of the agreed-upon new salary schedule, which is not an unresolved issue, this Fact-Finder made some calculations with regard to cost as follows:

HOLIDAY PAY - AUGUST 1, 1999

Classification/Shift	Regular Rate	One-Half Rate	16 Hr. Pay
LT/FF/Paramedic (1)	\$8.95	\$4.475 x 16 =	\$ 71.60
FF/Paramedic (3)	\$8.38	\$4.19 x 3 x 16 =	\$201.12
FF/EMT (1)	\$8.14	\$4.07 x 16 =	<u>\$ 65.12</u>
TOTALS			<u>\$337.84</u>

First year total for ten (10) holidays: \$3,378.40

HOLIDAY PAY - AUGUST 1, 2000

Classification/Shift	Regular Rate	One-Half Rate	16 Hr. Pay
LT/FF/Paramedic (1)	\$9.22	\$4.61 x 16 =	\$ 73.76
FF/Paramedic (3)	\$8.63	\$4.315 x 3 x 16 =	\$207.12
FF/EMT (1)	\$8.38	\$4.19 x 16 =	<u>\$ 67.04</u>
TOTALS			<u>\$347.92</u>

Second year total for ten (10) holidays: \$3,479.20

HOLIDAY PAY - AUGUST 1, 2001

Classification/Shift	Regular Rate	One-Half Rate	16 Hr. Pay
LT/FF/Paramedic (1)	\$9.50	\$4.75 x 16 =	\$ 76.00
FF/Paramedic (3)	\$8.89	\$4.445 x 3 x 16 =	\$213.36
FF/EMT (1)	\$8.63	\$4.315 x 16 =	<u>\$ 69.04</u>
TOTALS			<u>\$358.40</u>

Third year total for ten (10) holidays: \$3,584.00

As was already indicated, the totals for the regular rate are already being paid. The total additional cost of the Union's proposal over three (3) years amounts to \$1,044.16 times ten (10) holidays, which equals \$10,441.60.

This is a far cry from the Employer's calculated three-year cost of \$31,318.40 and is not even close to the Employer's projected cost of a \$8,000 to \$10,000 per year increase in cost.

This discrepancy in the Employer's calculated cost figures and the projected cost in their position statement does not portend well and leaves suspect other arguments the Employer makes based on cost.

Referring back to the Belmont County Engineer, as an example, we find that their method of payment for working on a holiday reads in pertinent part as follows:

"Section 30.3 All employees who work on a recognized holiday shall receive their regular hours holiday pay in addition to time and one-half (1-1/2) their regular rate of pay for all hours worked on the holiday."

Language of this type or similar language appears to be the accepted practice in the majority of the governmental units and industries in the area.

On the basis of the foregoing rationale, I recommend the following:

"32.03 The duty crew working from 08:00 hours to 24:00 hours on the said holiday, shall be paid one and one-half (1-1/2) their regular rate of pay for said hours of work in addition to their eight (8) hours of holiday pay."

Issue #5: ARTICLE 37 - HEALTH INSURANCE

Position of the Employer:

"CURRENT CONTRACT LANGUAGE:

1 - The Employer shall pay 75% of the cost of the monthly premiums for the employees and his dependents for:

- current health insurance which is provided
- dental

PREVIOUS TENTATIVELY AGREED LANGUAGE:

37.01 The Employer shall pay 75% of the cost of the monthly premiums for the employees and his dependents for:

hospitalization
surgical
medical expense
major-medical
dental

There is a discrepancy here. The District has this listed as being agreed upon.

UNION'S NEW REQUESTED LANGUAGE:

37.01 The Employer shall pay 100% of the cost of the monthly premiums for the employees and his dependants for:

Hospitalization
Surgical
Medical Expenses
Major-medical
Dental

This was previously dropped during negotiations and is now put back in.

CUMBERLAND TRAIL'S POSITION:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.

Furthermore,

The District has never paid 100% of health insurance premiums. It thinks it is important that the employees pay a small portion - of the same.

UNION'S REQUESTED LANGUAGE:

37.04[.06] The Employer shall provide at no cost to the employees, prescription safety glasses, within ninety (90) day of execution of this agreement, but only once during the life of this contract, unless these glasses are damaged on the job or the prescription changes.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.

Furthermore,

2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.
3. This is not required by R.C. 4121 nor O.A.C. 4121. After the first contract was signed, prescription coverage increased and take home pay increased due to lower premiums. This was done by employer without it being required to do so. Changing prescriptions could mean several new purchases per contract. This is unreasonable, too expensive and unacceptable. It should be refused."

Position of the Union:

"ARTICLE 18 - HEALTH INSURANCE

- 37.01 The Employer shall pay 100% of the cost of the monthly premiums for the employees and his dependents for:

Hospitalization
Surgical
Medical expense
Major-medical
Dental

- 37.04 The Employer shall provide at not cost to the employee, prescription safety glasses, within ninety (90) days of execution of this agreement, but only once during the life of this contract, unless these glasses are damaged on the job or the prescription changes.

Paying the employees' portion of the Health Insurance would be of minimal cost to the District. Comparables will show a vast majority of departments cover 100% of their health insurance costs.

The cost factor involved in this article is approximately \$9,500.

Purchasing safety glasses for the members who need them goes hand-in-hand with other facets of their safety equipment.

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to Article 37 - Health Insurance, as being a Management Rights issue that is reserved to management and not a subject to bargaining; the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the language pertaining to Article 37 - Health Insurance is a subject of bargaining.

Notwithstanding the Employer's contention that "There is a discrepancy here; the District has this as being agreed upon", in reference to 37.01 "Previous Tentatively Agreed Language" and the Employer's statement, "This was previously dropped during negotiations and now is put back in;" Health Insurance was submitted by both parties to the Fact-Finder as an unresolved issue.

During the mediation session, it was the Employer who insisted that no individual issues would be agreed upon unless all outstanding issues were agreed upon.

This position by the Employer leaves all unresolved issues submitted to the Fact-Finder as being subject to the Fact-Finder's recommendation and quite possibly a conciliator's mandate. This was the very point I was trying to make at the outset of the hearing.

Approximately five (5) hours was attributed to mediation efforts to no avail. Any tentative agreement on individual issues during mediation are negated due to lack of agreement on all issues, which was the Employer's position, not the Union's.

The actual current contract language with regard to this issue reads in pertinent part as follows:

“ARTICLE 37 - HEALTH INSURANCE

The Employer shall pay 75% of the cost of the monthly premium for the employees and his dependents for:

- hospitalization
- surgical
- medical expense
- major-medical
- dental”

Notwithstanding the unresolved issue regarding prescription safety glasses, the only change to the above language that I can see is the Union’s request to insert 100% in place of 75%.

The Employer argues that it thinks it is important that employees pay a small portion of their health insurance premium.

The Union, in its comparables on health insurance, cites nine (9) other fire departments, all of which pay 100% of their hospitalization. Of course, we don't know what all is covered under those other fire departments’ hospitalization plans.

We do know that Cumberland Trail Fire District #4 includes “dental” coverage in their health insurance coverage.

We also know that the trend today, because of ever-increasing health insurance premiums, is to have the employee absorb some of the cost of the health insurance premium.

The Union contends that, because of dissatisfaction with the insurance carrier’s coverage, only six (6) out of fifteen (15) employees presently utilize the current health insurance plan (Health Assurance) provided by the Employer. The Union further stated that employees not utilizing the current health plan provided by the Employer are covered under their spouses’ health insurance plans.

If some employees are dissatisfied with the coverage provided by the Employer's insurance carrier, this Fact-Finder is at a loss to understand how the Employer paying 100% of the monthly insurance premium will overcome that dissatisfaction with the present insurance carrier's coverage.

Referring once again to the Belmont County Engineer, we find that the employee pays ten percent (10%) of the monthly premium for Single Hospitalization coverage, but not to exceed \$15.00 per month. Employees with Family Hospitalization coverage pay a monthly premium of ten percent (10%) of the total monthly premium cost, not to exceed \$35.00 per month.

This would be my recommendation in this instant case and the language I propose is as follows:

“37.01 Effective August 1 of each year (beginning August 1, 1999) and continuing to July 30 of the following year and during the term of this agreement in years two (2) and three (3), employees shall pay a monthly premium of ten percent (10%) for Single health insurance coverage but not to exceed fifteen dollars (\$15.00) per month. Employees with Family health coverage shall pay a monthly premium of ten percent (10%) of the total monthly premium cost, not to exceed thirty-five dollars (\$35.00) per month for:

- Hospitalization**
- Surgical**
- Medical Expense**
- Major Medical**
- Dental”**

This recommendation should provide both parties with something that should satisfy each of their concerns.

With regard to the unresolved issue of prescription safety glasses; the Employer's argument with regard to R.C. 4121 and O.A.C. 4121 and their contention that “After the first contract was signed, prescription coverage increased and take home pay increased due to lower premiums” is confusing to say the least. The Employer makes reference to R.C. 4121 and O.A.C. 4121 but provides no information or copies of these codes to support their position.

On the other hand, with regard to the Union's suggested language regarding prescription safety glasses; the real world will teach us quickly how an employee's glasses can get damaged on the job when "he" decides that he wants a new pair of glasses.

Since most eye doctors recommend that you should have your eye prescription evaluated at least once per year, and in the interest of safety, the most I would dare to recommend would be the following language:

"37.04 The Employer shall provide to the employee prescription safety glasses within ninety (90) days of the execution of this Agreement and one pair each year thereafter during the life of this Agreement. The cost of the prescription safety glasses shall be shared equally between the Employer and the employee."

Issue #6: ARTICLE 40 - OVERTIME

Position of the Employer:

"CURRENT LANGUAGE:

40.01 In the event of a need of overtime, the Fire Chief shall try and fill the open position with full-time employees, but final discretion is with the Chief.

UNION'S REQUESTED LANGUAGE:

In the event of a need of overtime, the Fire Chief or Assistant Chief shall first try to fill full time openings with non-probationary full time employees.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.

Furthermore,

2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.

3. As with Article 18, the proposals effect the staffing. There needs to be a time frame to fill the shift. Creates an administrative problem when full-time employees sign up for overtime but do not show up. Probationary employees are every bit as qualified as full time employees. The Union stated wages are important, but they want to decrease probationary employees' wages. Unfair. Handicaps over scheduling of workforce and impacts our recruiting. Decreased salary, no overtime, etc.

The Union's requests should be refused. Working well as it is pursuant to a prior grievance and resolution thereof.

The District Counter-Proposal is:

- 40.01 In the event of a need of overtime, the Fire Chief or Assistant Chief shall first try to fill full time openings with full-time employees.

UNION'S REQUESTED LANGUAGE:

- 40.09 Probationary status employees may be called into the station under the Articles of Section 40, but for the manning of apparatus, the fire station(s) and for required mandated training only. (Refer to Article 18)

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C.. §4117.08(C), this is reserved to management and is not subject to bargaining,

Furthermore,

2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.

3. Can deleteriously effect scheduling and organizing workforce.

The Union's request should be refused."

Position of the Union:

"ARTICLE 40 - OVERTIME

- 40.01 In the event of a need of overtime, the Fire Chief or the Assistant Fire Chief shall first try to fill full-time openings with non-probationary full-time employees.

40.09 Probationary status employees may be called into the station under the Sections of Article 40, for the manning of apparatus, the fire station and for required mandated training only. (Refer to Article 18.)

All Union asks for is that the initial attempt for overtime be offered to the members of the bargaining unit."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to the language of Article 40 - Overtime as being a Management Rights issue that is reserved to management and not subject to bargaining, the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the overtime language of Article 40 is a subject of bargaining.

With regard to this overtime language, only Sections 40.01 and 40.09 are unresolved issues.

Section 40.09 references Article 18, which is language pertaining to probationary employees.

Upon questioning by the Fact-Finder with regard to the parties' intent of "The only exception is stated in Article 40," the Employer stated it was the Union's request to insert the phrase "**non-probationary**" into the language of Article 40, Section 40.01, which reads in pertinent part as follows:

"40.01 In the event of overtime, the Fire Chief or the Assistant Fire Chief shall first try to fill full-time openings with **non-probationary** full-time employees."

The discussion revealed that a third category of employees (part-time), which was not initially revealed without the Fact-Finder's probing, was being utilized to fill overtime openings. Thus, the rationale for insertion of the phrase "**non-probationary**" into the language of Section 40.01.

With regard to the Employer's position that full-time employees sign up for overtime but do not show up; this is an issue to be resolved under the Management Rights disciplinary policies and procedures.

With regard to the Union's position that probationary employees are not part of the bargaining unit until their six-month probation period has elapsed; this Fact-Finder is not convinced.

Probationary employees fill bargaining unit classifications certified by SERB. These probationary employees may not be eligible for Union membership until they complete their probationary period, but they provide their services in a bargaining unit classification originally certified by SERB. The intent of a probationary period is to provide management with time to evaluate an employee's job performance for consideration for full-time regular employment.

This is usually not the case for part-time employees which, in this instant case, are not even addressed in the currently effective collective bargaining agreement.

On the basis of the foregoing discussion and the Employer's need for effective staffing and scheduling of the workforce, I recommend that probationary employees and full-time employees be utilized as "one entire group" of employees available for overtime. I recommend the parties develop a low overtime procedure, outside the Collective Bargaining Agreement, which provides for overtime distribution, on an equitable basis, among probationary and regular full-time employees.

This overtime procedure should be established on the basis of the low person with overtime hours being called first and any employee declining the opportunity to work overtime should be

"charged" with the amount of overtime his/her replacement works.

This recommendation should obviate the need for Section 40.09 and also serve to mitigate management's apparent reluctance to exercise their management right to discipline employees who sign up for overtime but do not show up.

My final recommendation with regard to this issue is that temporary employees be considered for overtime in only the most extreme circumstances and when all other (probationary and regular full-time) employees have declined the overtime.

My recommended language would be as follows:

"40.01 In the event of a need for overtime, the Fire Chief or Assistant Fire Chief shall first fill the overtime vacancy with full-time regular employees and/or full-time probationary employees in the classification where the overtime vacancy exists on the basis of low overtime hours worked in that classification. Temporary employees will be considered when all other (probationary and regular full-time) employees have declined the overtime."

This should satisfy the Employer's problem with scheduling and the Union's objection to temporary employees working overtime.

Issue #7: ARTICLE 43 - PERSONAL DAYS

Position of the Employer:

CURRENT LANGUAGE:

43.01 All bargaining unit members will receive one (1) unrestricted personal day of twenty-four (24) hours off, to be used at their discretion during the calendar year. These hours will be deducted from the employee's accumulated sick time.

UNION'S REQUESTED LANGUAGE:

All bargaining unit members will receive one (1) unrestricted personal days of twenty-four (24) hours off, to be used at their discretion during the calendar year. These hours will not be deducted from the employee's accumulated sick time.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.

Furthermore,

2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter. The District counter proposal is:
3. This causes a scheduling predicament because we are a small department. This has to be reserved to the Chief's final say.
4. Too costly. It should be refused."

Position of the Union:

"ARTICLE 43 - PERSONAL DAYS

43.01 All bargaining unit members will receive one (1) unrestricted personal day of twenty-four (24) hours off, to be used at their discretion during the calendar year. These hours will not be deducted from the employee's accumulated sick time.

Members now receive 24 hours off for personal leave that is charged to their sick time. This is an almost unheard of practice. Comparables will show that most departments allow at least 24 hours of unrestricted personal leave."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to Article 43 - Personal Days as being a Management Rights issue that is reserved to management and not a subject of bargaining, the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the language of Article 43 is a subject of bargaining.

The Employer argues that a one-day personal day is too costly and will cause a scheduling predicament because they are a small department. Actually, this personal day language is already in the current agreement. The dispute centers around whether or not the personal day hours will be deducted from the employee's accumulated sick time.

The current language states that "These hours will be deducted from the employee's accumulated sick time." (Emphasis added)

The Union's proposal states that "These hours will not be deducted from the employee's accumulated sick time. (Emphasis added)

The Employer did not submit any comparables with regard to this issue.

The Union did submit comparables revealing that two (2) fire departments provide 24 hours personal time and four (4) other fire departments provide anywhere from 32 hours to 72 hours of personal time.

But these comparables do not reveal whether these hours of personal days are charged to sick pay. Therefore, the comparables submitted by the Union of these other fire departments are not relevant to the unresolved issue between the parties.

Since the Employer did not submit any comparables supporting their position, and since we are only talking about one (1) unrestricted personal day of twenty-four (24) hours off, my recommendation is to **not deduct these hours from the employee's accumulated sick time.** The recommendation is to adopt the Union's proposed language of 43.01.

Issue #8: ARTICLE 44 - SALARIES

Position of the Employer:

- "2. Three hundred dollars (\$300.00) on signing. [Reduced due to the increase in the % of the raises.]

CUMBERLAND TRIAL'S POSITION IS AS FOLLOWS:

Mr. Taylor initially, and several times, rejected signing bonuses as not being appropriate. Clearly they have no argument whatsoever.

A signing bonus was offered if the contract was agreed to and signed before Fact Finding, and according to the last proposal of the District. The District never agreed to pay a signing bonus if the Union did not agree to the District's last position, and if the Union went to Fact Finding.

No signing bonus is allowable."

Position of the Union:

"2. Three hundred dollars (\$300.00) on signing. [Reduced, due to the increase in the % of the raises.]

44.03 New pay scale(s) are effective 08:00 hours on August 1, 1999. [okay if agreed by 8/31/99]"

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's arguments that a signing bonus was offered if the contract was agreed to and signed before fact-finding, the fact remains that a signing bonus was offered.

The Union points out that the Employer, on August 3, 1999, offered wage increases of 3-1/2%, 3-1/2% and 2% each year respectively over a three (3) year contract, plus a \$500 signing bonus.

Subsequent negotiations resulted in an Employer's offer of seven percent (7%) in the first year, three percent (3%) in the second year and three percent (3%) in the third year of a three (3) year contract. As a result of this increased percentage offer, the Employer reduced the signing bonus from five hundred dollars (\$500) to three hundred dollars (\$300).

The reduction in signing bonus from five hundred dollars (\$500) to three hundred dollars (\$300) due to the percentage increase is confirmed by both parties in their position statements.

The unresolved issue is the three hundred dollar (\$300) signing bonus.

The Employer's position is to withdraw the signing bonus since the entire contract (all unresolved issues) was not agreed to and signed prior to fact-finding.

Let the record show that under O.R.C. 4117, the process of fact-finding is a legal right available to either party. A party's right to fact-finding is a legal right and not a subject of bargaining.

O.R.C. 4117 has established certain specific timelines for negotiations to begin, mediation to take place, and fact-finding to begin. An attempt to use any one of these factors as a bargaining tool to force the opposing party to acquiesce to certain demands could be construed as bad faith bargaining.

On the other hand, a bonus, and in this instant case, since it was reduced from five hundred dollars (\$500) to three hundred dollars (\$300) as a quid-pro-quo for a percentage increase in wages, is a form of wages and since the parties agreed to submit the bonus to the Fact-Finder, it becomes an unresolved issue.

The comparables submitted by the Union with regard to salaries reveals Cumberland Trail Fire District #4 as being the lowest in starting salary and top salary when compared to eleven (11) other fire departments within the eighty (80) mile radius of the Employer.

The starting salary for a Cumberland Trail firefighter in 1999 is \$23,685. The lowest starting salary of the eleven (11) other fire departments is \$23,760.00

The top salary for a Cumberland Trail firefighter in 1999 is \$26,141.00. The lowest top salary for the eleven (11) other fire departments is \$26,136.00. The salaries for the eleven (11) other fire departments range from \$23,760 to \$35,000 for a starting salary and from \$26,136 to \$37,575 for a top salary.

The Employer argues that it plans extensive capital improvements next year in the form of:

\$150,000 for land for a new fire station
\$500,000 for a new fire station
\$70,000 for a new fire truck
\$720,000 - total

The record will show that the District's year-end balance for 1998 was \$857,747.27 and the estimated year end balance for 1999 is \$975,826.26

A Board memorandum dated December 16, 1998 from the Board Clerk to the Board members of Cumberland Trail Fire District #4 reads in pertinent part as follows:

"This year has allowed the District the opportunity to continue to build a reserve. We have received the additional 2 mill levy monies needed to add the new employees - but because the hiring of the employees was a gradual process - we did not feel the full impact of the cost. We saved around \$100,000.00 on cost of employees and benefits.

Add that savings into the year end carry over and we have a healthy reserve.

I have estimated the operating costs for the District without the consideration of the new station - my figures are based on what I know is necessary to operate the existing station with the personnel now on staff.

Estimated 1998 Carry over	857,584.19
Estimated revenues for 1999	1,015,000.00
Estimated expenditures for 1999	896,918.31
	<u>975,665.88 Balance</u>

Some of my concerns:

1. If we continue to carry such an excess balance at the end of each year the Budget Commission could make the decision to reduce our levy monies.
2. If the Board makes the decision to not borrow monies for the construction of the new station - I need to plan ahead to free some of the monies now in C.D.'s - with the intent of cashing a couple of the C.D.'s and investing that money in STAR OHIO. (Star Ohio then allows access at any time to the invested money.)"

Notwithstanding the Employer's contention of huge capital expenditures in the year 2000, prudent financial management would suggest that these capital improvements could be amortized over a much longer period. Nevertheless, the money for a signing bonus is there at an

approximate cost of \$4,500.

My recommendation is to pay those regular full-time, non-probationary, non-temporary employees a three hundred dollar (\$300) signing bonus subject to approval of a new contract.

Since these employees are not allowed to strike and have been working beyond the expiration of the current agreement, I recommend, upon approval of all issues, including the Fact-Finder's recommendation, that the Collective Bargaining Agreement be made **retroactive** back to the effective date of 08:00 hours on August 1, 1999.

Issue #9: ARTICLE 50 - PROMOTIONS

Position of the Employer:

"UNION'S REQUESTED LANGUAGE:

- 50.01 The following procedure shall govern all promotions and job openings within the Cumberland Trail Fire District #4:
1. The employer shall set a standards and evaluations of qualifications for any vacant position(s) or new additional positions.
 2. If the employer adds a new position other than the current classifications, the employer shall post the job description and the required standard for evaluations and qualifications.
 3. All promotions shall be made by a written examination of members from the current full-time roster. This shall create an eligibility list.
 4. All examinations shall be performed by an impartial third party and shall be related to the matter, which will test fairly the candidate(s) to perform the duties of the position to be filled.
 5. Eligibility for a promotion to a new position shall be a minimum of two (2) years of full-time service. If no candidate meets the above eligibility requirements, then the current full-time roster shall become eligible. If at that time no applicants apply from the full-time roster, then management shall seek candidates from outside the current full-time roster.
 6. Announcements for promotional examinations shall be posted at the fire station for seven (7) days prior to the closing date for applications. Applications received after that date will not be considered.
 7. All applicants will be notified of their final scores and their relative standing.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS AS TO (3)-(7):

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.
2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.
3. Cumberland Trail is not subject to Civil Service by law. It is inappropriate for the Union to basically try to impose this by contract.

The Union's requests should be refused.

The District's Final counter proposal is:

3. Any current employee interested in any potential openings shall so indicate in writing by the 15th of January of the year."

Position of the Union:

"The Union asks that a promotional procedure be implemented that is fair and impartial. Presently, there is no such procedure. The only position that would be currently affected by this article is the Lieutenant position. It is the only promoted position in the bargaining unit."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to promotional language (Article 50 - Promotions) as being a Management Rights issue that is reserved to management and not a subject to bargaining, the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the promotional language of Article 50 is a subject of bargaining.

It was this issue (promotional language) that the parties devoted quite some time on and appeared to be making some progress. But when the Employer conditioned any agreement on this language to agreement on all other issues, mediation efforts broke down.

The extensive language proposed by the Union would leave one to conclude that the Union has concerns about the Employer's ability to give appropriate consideration and weight to all factors when granting promotions. Language requesting that promotional examinations be administered by a neutral third party leads me to this conclusion.

The Employer argues that this issue is not subject to the Civil Service Law and that it is inappropriate for the Union to try to impose this by contract.

Other than their position statements, neither side presented the Fact-Finder with any explanation as to why this language should be included or excluded from their agreement.

It would seem appropriate at this time to call the parties' attention to O.R.C. 4117.10(A), which reads in pertinent part as follows:

“Civil Service Jurisdiction and the Agreement

- 4117.10(A) An agreement between a public employer and an exclusive representative entered into pursuant to Chapter 4117. of the Revised Code governs wages, hours, and terms and conditions of public employment covered by the agreement.
- 4117.10(A) If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions and have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure.
- 4117.10(A) Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or

ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees.”

On the basis of the foregoing, I recommend that any language pertaining to promotion not be included in the collective bargaining agreement. At the present time, the current agreement makes no specification about promotions.

Issue 10: ARTICLE 60 - MINIMUM MANNING

Position of the Employer:

“UNION’S REQUESTED LANGUAGE:

- 60.01[.05] The minimum manning for all midnight shift shall be four (4) full time employees.
- 60.02[.06] In the event that the minimum manning falls below the minimal standard set forth herein, Chief and/or Assistant Chief shall fill those vacancies as per the Articles of this Agreement. Employees working any shift who are on duty and involved in any emergency situation and the minimum staffing on station falls below that set herein, does not qualify as an under staffing, or a below of minimum manning.

CUMBERLAND TRAIL’S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining. These are all strictly management rights. Not subject to negotiation.

Furthermore,

2. Pursuant to O.R.C. §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the par-ties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.

3. Cost would be prohibitive.

It should all be refused.”

Position of the Union:

“ARTICLE 60 - MINIMUM MANNING

60.01 The minimum manning for all shifts shall be four (4) full time employees.

60.02 In the event that the minimum manning falls below the minimal standards set forth herein, the Fire Chief or the Assistant Chief shall fill those vacancies as per the Articles of this Agreement. Employees working any shift who are on duty and involved in any emergency situation and the minimum staffing on station falls below that set herein, does not qualify as an understaffing, or a below of minimum manning.

Most departments have some type of minimum manning policy in effect. Minimum manning levels are needed to properly protect the citizens of the district as well as the members of the department on duty. While four members per shift is too few for the area served, and the amount of emergency calls answered, concern for the districts finances and ability to staff were taken into consideration.”

FACT-FINDER’S RECOMMENDATION:

Notwithstanding the Employer’s initial position with regard to this unresolved issue (Minimum Manning) as being a Management Rights issue that is reserved to management and not a subject to bargaining; the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

“4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ...” (Emphasis added)

“4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.” (Emphasis added)**

On the basis of the foregoing, this Fact-Finder concludes that the minimum manning language of Article 60 is a subject of bargaining.

The comparables submitted by the Union reveal that eight (8) out of ten (10) fire departments within an eighty (80) mile radius of Cumberland Trail Fire District #4 already have some form of minimum manning requirements.

The Employer argues that the cost would be prohibitive, but presents no supporting evidence for their argument.

This parties are not even in agreement as to what they disagree on.

The Employer quotes the Union's requested language as follows:

"60.01(.05) The minimum manning for all midnight shift shall be four (4) full time employees." (Emphasis added)

The Union's proposal reads as follows:

"60.01 The minimum manning for all shifts shall be four (4) full time employees." (Emphasis added)

With the exception of its comparables, the Union's argument for minimum manning is somewhat of a vague generalization.

Since the parties cannot agree on what they disagree on, and since they did not elaborate in detail their positions with regard to minimum manning, and in the interest of getting the parties to come to agreement on all other issues, I recommend that the issue of minimum manning not be a part of their new agreement.

Issue 11: ARTICLE 63 - TRAINING HOURS

Position of the Employer:

"UNION'S PRESENT REQUESTED LANGUAGE:

63.01 It shall be the standard that departmental training shall be held:
Monday through Saturday from 08:00 to 16:00 hour.

This does not apply to the normal duties around the fire station that are scheduled throughout the year. (i.e. hose testing and rotation and air bottle fillings)

63.02 Special training that must be held on weekends, such as ACLS or Paramedic/EMT refresher classes are acceptable with prior written notice.

CUMBERLAND TRAIL'S POSITION IS AS FOLLOWS:

1. This is a management rights issue. Under O.R.C. §4117.08(C), this is reserved to management and is not subject to bargaining.

Furthermore,

2. Pursuant to O.R.C. . . §4117.14(G), this section was not incorporated in the prior collective bargaining agreement. It was considered not important enough to be negotiated by the Union. As pointed out before, the Union was then represented by Mike Massie, a veteran of some 26 years of Union representation (see his card at Exhibit A). Nor was it ever bargained for between the parties at any time. This element specifically is a criterion under the statute. It is in Cumberland Trail's favor in this matter.

These requests should be refused.

The District's Final counter proposal is:

- 63.01 It shall be the standard that departmental training shall be held: Monday through Saturday from 08:00 to 20:00 hours."

Position of the Union:

"ARTICLE 63 - TRAINING HOURS

- 63.01 It shall be the standard that departmental training shall be held: Monday through Saturday from 08:00 to 16:00 hour.

This does not apply to the normal duties around the fire station that are scheduled throughout the year. (i.e., hose testing and rotation and air bottle fillings.)

- 63.02 Special training that must be held on weekends, such as ACLS or Paramedic/EMT refresher classes are acceptable with prior written notice.

Training hours are asked for to prevent the forced training of members in inclement weather and unacceptable hours of the day for punishment purposes, or for the training of non-bargaining unit members. With the amount of emergency calls being answered by members of the department, it would be excessive to expect members to be available for training 24 hours a day."

FACT-FINDER'S RECOMMENDATION:

Notwithstanding the Employer's initial position with regard to this unresolved issue (Training Hours) as being a Management Rights issue that is reserved to management and not a subject to bargaining, the Management Rights Section of O.R.C. 4117.08(C) reads in pertinent part as follows:

"4117.08(C) Unless a public employer agrees otherwise in a collective bargaining agreement ..." (Emphasis added)

"4117.08(C) The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit **except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.**" (Emphasis added)

On the basis of the foregoing, this Fact-Finder concludes that the Training Hours language of Article 63 is a subject of bargaining.

It appears that the story behind this request is that the employees on duty at the fire house were playing some kind of card game (which is allowed) at around 11:00 p.m. when a management person came in and immediately ordered them out for training. According to the Union's position, it was also raining at the time.

None of the present management personnel could recall this incident. Upon further questioning, this one incident happened approximately eight years ago. Further discussion reveals that at times, training is necessary during late night-time hours.

Appropriate up-to-date training is a very important and critical aspect of a fire fighter's duties.

Management is responsible for maintaining their crews, ready to perform at their top level. Therefore, management should maintain the discretion to schedule training whenever management deems necessary, absent any arbitrary, capricious, or discriminatory motivation from management.

The key word is schedule.

My recommendation with regard to this issue is as follows:

"It shall be the standard that departmental training be held between the hours of 08:00 to 20:00 hours Monday through Saturday. Any departmental training scheduled outside the hours of 08:00 to 20:00 hours, Monday through Saturday, will be scheduled five (5) days in advance, and the employees so notified of this scheduled training."

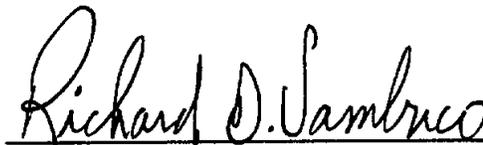
As the parties well know, not everyone gets everything they want in negotiations. That is what collective bargaining is all about.

In making my recommendations, given the comparative analysis, the federal and state laws, and the mandates (from SERB) that I must operate under, I have attempted to make my recommendations with the ultimate objective of bringing the parties together and moving them toward approval of a new three (3) year agreement.

My recommendations are predicated on the fact that all previously resolved issues are to be incorporated into the final agreement.

I wish both parties success in their deliberations.

Report compiled and submitted in Belmont County, Ohio, effective October 13, 1999.

A handwritten signature in cursive script that reads "Richard D. Sambuco". The signature is written in black ink and is positioned above a horizontal line.

Richard D. Sambuco
Fact-Finder