LOCAL 251, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

(UNION)

- and -

THE CITY OF MASSILLON, OHIO

(CITY)

D

STATE EMPLOYMENT RELATIONS BOARD

DEC 13 1 37 PM '99

Case No. 99-MED-08-0702

FACT - FINDER'S REPORT

December 9, 1999

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was chosen by the parties to serve in the role of Fact-Finder in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was chosen on October 22, 1999.

I. APPEARANCES

FOR THE CITY:

At the first hearing/session the following individuals represented the City: Mr. Joseph F. Lencewicz (Labor Relations Representative), Mr. Al Climer (Public Safety Director) and Mr. Tommy Matthews (Fire Chief).

FOR THE UNION:

For the Union: Ms. Jill Couch, Esq. (Union Attorney) and Mr. Kenneth Couch (Paralegal), Mr. Michael Camfora (President, Local 251) and a significant number of bargaining unit members.

II. BACKGROUND

This proceeding involves collective bargaining negotiations between the International Association of Firefighters (IAFF), Local 251, and the City of Massillon, Ohio (City). The IAFF has had a collective bargaining relationship with the City for many years. The unit consists of forty-eight (48) full-time employees, of which forty-seven are in the unit. The unit is comprised of 3 assistant chiefs, 9 captains, 1 Superintendent of Buildings (Fire Prevention), 1 Superintendent of Apparatus and Equipment, 27 firefighters/paramedics, 3 firefighters/EMT's and 3 firefighters.

Prior to hearing/session, the parties had met on at least three different occasions in an attempt to negotiate a tentative agreement. However, while narrowing the differences between them, the parties ended up bargaining to impasse. The parties last negotiated on November 9, 1999 and by mutual agreement, they selected November 18, 1999 as the date of the Fact-finding hearing/session. The three (3) year contract expired on November 22, 1999.

The hearing was held on November 18, 1999 in City Hall. At that time, the City indicated that there were thirty-seven (37) unresolved contract issues. In an attempt to settle the contract or at least narrow the differences between them, the parties agreed to try to mediate the remaining issues. Thereafter, in twenty four (24) hours of mediation held over a two day period (November 18, 1999 and November 22, 1999), the parties were able to settle twenty-two (22) outstanding items. Unable to reach agreement on the remaining issues, they requested that the Fact-Finder write a Report and Recommendations and mail the same on or before December 9, 1999.

The parties also agreed that any mutually agreed-to changes in their new contract would be applied retroactively to November 22, 1999.

In support of its respective positions, both the City and the Union presented voluminous and well-researched documentation both prior to, and at, the fact-finding hearing. In that regard, the professionalism of the representatives and the thoroughness of their preparation was an admirable credit to both parties.

III. ISSUES

During the course of negotiations, and prior to hearing, the parties agreed to leave a number of provisions of their existing contract unchanged (Articles 1, 2, 4, 5, 7, 10, 11, 20, 25, 29, 35, and 46). During the course of mediation, they reached agreement on the following additional articles (3, 6, 8, 12, 13, 15, 19, 27, 33, 36, 38, 40, 42, 43, 44, 45, 47, 48, 49, 50, Glossary and Attachments). In most cases, agreement on these articles amounted to withdrawal of a party's proposed change and return to current language; however, in those instances where agreement involved a change in existing contract language, the amended language is attached to this Report and Recommendations for reference (see attached, infra).

Those mutually-resolved provisions of the contract reached in prior negotiations as well as those reached during mediation are hereby formally recognized and adopted by the Fact-Finder in his Report and Recommendations.

IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors which the Ohio State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.

2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.

3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service.

4. The lawful authority of the public employer.

5. Any stipulations of the parties.

6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In the preparation of this Report and Recommendations, the Fact-Finder did in fact consider these six (6) factors.

This Report sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

Opening Statements:

Since both parties wished to try mediation, they both took the opportunity to make brirg opening statements. In addition, at the conclusion of mediation, with a fair number of issues still unresolved, the parties waived the right to a formal hearing and asked that the Fact-Finder prepare his Report and Recommendations based on the voluminous briefs and supporting documentation that both parties had previously provided him.

In its opening statement and its written documentation, the City points out that this bargaining unit provides excellent overall service to the community. However, in prior contract negotiations, many conducted by individuals lacking a full understanding of state or federal law or standard industrial relations practice or customs, certain contract language has been agreed to that has become problemmatic and compromises the ability of management to properly discharge its statutory responsibilities to efficiently and effectively manage the department. More specifically, the City is concerned with both the costs of "non-productive" time (e.g., longevity, pension, workers compensation, medical insurance, vacation and holidays) and with a contract that in its view overly restricts management's ability to manage.

As a result, it expressed the need to modify the contract in a number of areas in order to accomplish the following important principles:

1. Clarify the respective roles of the City and the Union under the contract as regards to managing the day-to-day operations of the department.

2. Minimize the importance of having to turn to past practice to clarify the meaning of current contract language (which often requires arbitration to resolve).

3. Restore a proper balance in the relationship between the City and the Union that had gotten off-track in previous negotiations under prior administrations. In that regard, the City feels the need to change the "meet and agree" requirements of current language to a more appropriate, and traditional, "meet and confer" approach.

On the other hand, with proposed changes primarily focused on improving current pay rates and benefits, the Union largely wishes to maintain and preserve current contract language in most instances. The Union's negotiating stance appears to be based on the premise that as to current contract language, language that in some cases has been in the contract for many years, it should not be modified absent a clear and convincing showing of need by the City.

REPORT AND RECOMMENDATIONS

The following Report and Recommendations will address each open contract article in the order in which it appears in the contract.

Article 9 – Released Time.

Union

The Union proposes no change in the existing contract language.

City

The City proposes a rewrite of the article to reflect that Union business should not take precedence over non-emergency work duties, that it is excessive for three (3) paid Union representatives to attend a grievance hearing and for five (5) paid negotiators to prepare for and attend negotiations. In support of its position, it provides language from the Alliance, Barberton, Jackson, Stow, and Wooster, Ohio fire-fighter contracts.

Finding and Recommendation:

The Fact-finder agrees that current contract language is unusually generous as it relates to the conduct of Union business and clearly puts the conduct of Union business ahead of the legitimate day-to-day non-emergency operating needs of the City. While admittedly there was no showing that these current provisions have ever been abused by the Union, the Fact-finder is mindful of his statutory duty to find a proper balance between the legitimate need to conduct Union business and the countervailing (but predominant need) to efficiently run City services paid for with limited taxpayer dollars. Therefore, the Fact-finder finds, with certain limitations, that the City's proposed language should be adopted, subject to certain changes recommended by the Fact-finder (see attached.) While adoption of this language could be viewed as a diminution of the current rights and privileges enjoyed by the bargaining unit, the Fact-finder believes that in the context of subsequent contract changes and recommended superior economic enhancements, infra, it is not in most instances significant and will have a de minimus practical effect on the ability of the Union to conduct legitimate business while removing any potential for abuse later which could possibly impact the provision of fire services.

Article 14 – Grievance Procedure.

Union

The Union proposes no change in the existing contract language.

City

The City proposes a rewrite of existing language to, among other things, remove the appeal step to the Assistant Chief (duty officer) and remove the possibility of appeal to Civil Service.

Finding and Recommendation

While the Fact-finder finds the City's proposals to be generally sound, and consistent with the contracts presently in force in Alliance, Barberton, Jackson and Wooster, Ohio, it presented no substantiating evidence that the current system is either unworkable, inefficient of unfair. Most importantly, the Union, whose members are afforded the most protection by this article, believe the current procedure is adequately protecting its rights and so saw no need to modify the existing language. While the parties are encouraged to revisit this language in later negotiations to clear up what's not working or unnecessary, in the context of the other significant changes he is recommending, the Fact-finder does not see a compelling need to make any changes in the existing language at this time.

Article 16 – Maintenance of Conditions.

Union

The Union proposes no change in the existing contract language.

City

The City proposes to change the language to allow for layoffs based on classification, rather than seniority which is presently the case. The City believes that layoffs, and the concomitant bumping that would result, would hold the potential to unduly disrupt operations and adversely affect skill levels.

Finding and Recommendation

The Fact-finder finds that the reasoning behind the City's proposal is sound and in the best long-term interests of all potentially affected parties, i.e., the City, the citizens of Massillon and the Union. While the possibility of a layoff would apparently be very minimal in a

geographically expanding municipality like Massillon, in the hypothetical event of a reduction in force the current language could lead to a real and present danger that the remaining bargaining unit employees, i.e., those with the most seniority, would not necessarily possess the essential work skills to continue to safely discharge their duties to the citizens of the City. While normally the principle of seniority is central to the application of most union contract protections, the Fact-finder emphasizes that in the context of a public safety position like fire services, particularly with the profession having recently moved to a combination of fire-fighting and paramedic duties, it is imperative that the City have the assurance that the appropriate mix of skills levels will always be present in each station; a straight seniority provision such as that found in the present language does not assure that. Since in any event the Union's right to contest any application of a skill-based approach to layoffs is preserved, it is recommended that the City's proposed revisions to the current language, consistent with the practice in cities like Barberton, be adopted (see attached).

Article 17 - Management Rights.

Union

The Union proposes no change in the existing contract.

City

The City proposes a rewrite of this article to reflect an improved and clearer management rights clause. The City feels that current language has gone too far in devolving power to the Union and does not afford the City the prerogative to effectively and efficiently manage the department; in effect, it believes that the present language confers on the Union the right to bargain any and all changes, rather than the more appropriate right to meet and confer. As a result, it believes that management has had to be tentative in its approach to discharging its duty to best manage fire service operations since it believes that the present language would compromise its ability to win in arbitration if challenged.

Finding and Recommendation

While sensitive of the need for a City to have adequate latitude to effectively manage its fire services, the Fact-finder is not persuaded that the particular language the City has proposed is absolutely necessary to accomplish that end. In addition, the Fact-finder is sensitive to the fact that the Union is to a degree rightfully protective of limitations that have been placed on management's ability to affect the workplace, gained through the give and take of previous negotiations. Having said that, the Fact-finder does believe that for whatever reason the current language is holding the City back from confidently discharging its statutory duties. Therefore, the Fact-finder finds that the current language can and should be clarified. Towards that end, believing it to be a well written agreement and properly balancing the legitimate needs of the City and the Union, the Fact-finder recommends adoption of the language of the Barberton contract which had been supplied by the City (see attached).

Article 18 – Hours of Employment.

Union

The Union proposes that the fire-fighters current work week be reduced from 50.66 hours to 48 hours. In support of its position, it believes the reduction to be fair and even if adopted, would result in its bargaining unit members working 416 hours, or 20% more, per year than the City's 40 hour/week employees.

City

The City proposes no change in the existing contract.

Finding and Recommendation

In light of the other changes the Fact-finder is recommending elsewhere in the contract, particularly as regards the clarification and expansion of management rights and modification of seniority as it pertains to layoffs and recall rights, the Fact-finder recommends that the Union's proposal for this reduction in the work week be adopted. By the City's calculations, this change would translate into an additional 5% per year increase in fire-fighters' wages and an additional five (5) Kelley days off per year. This change, of course, would have a significant and long-term impact on the City's budget. However, the Fact-finder believes it (among other economic

incentives, infra) to be part of the necessary cost of it "buying back" or clarifying certain management prerogatives lost in previous negotiations. In addition, the length of this reduced workweek would not be out of line with the firefighter workweeks in Alliance, Barberton, Jackson, Stow and Wooster, Ohio. The proposed changes to this article are attached (see attached).

Article 21 – Sick Leave.

Union

The Union proposes significant changes to the current sick leave article, with most of these changes centering on the usage, charging and increase in lump sum payment for unused sick leave upon retirement.

City

The City proposes Section 1 to add the definition of a sick day and sick week and a change in how sick leave is approved.

Finding and Recommendation

The Fact-finder finds that neither party presented convincing evidence that the current language is not working well. While it is apparent, however, that there could be language improvements made to the article in the areas of definitions and procedures, in the context of the more substantive changes the Fact-finder is recommending in other areas of the contract, he does not recommend any changes in this article at the present time, preferring that the parties focus on the approving the other, recommended contract modifications set forth elsewhere in this report.

Article 22 – Minimum Safety Manning.

Union

The Union proposes changing the language of this article to require an increase from ten (10) to fourteen (14) employees as the minimum number of employees on duty at any one time,

and to add a section on truck safety manning. In addition, it proposes a number of non-substantive procedural changes regarding overtime to maintain minimum staffing.

City

The City proposes replacing the current Article 32, Minimum Safety Manning, with a rewritten article. In short, it suggests eliminating contractual reference to a mandated minimum staffing level and remaking this article to deal with the accrual, pay and use of overtime.

Finding and Recommendation

In the context of minimum staffing, the Fact-finder generally agrees with the principle that management should have the authority to determine appropriate levels and allocation of resources, including employees. On the other hand, from the Union's standpoint, it's clear why it would wish to protect, and perhaps even expand, language that guarantees it a certain level of protection when the time comes to respond to an emergency. Given the nature of fire-fighting, that position understandable. However, there was inadequate documentation by either party that the current language is unworkable. In the context of the parties somewhat competing interests, and recognizing the current low level of trust between them, the Fact-finder recommends no changes to the current article. That is, that the minimum guaranteed staffing levels remain unchanged, that the Union's proposed changes in safety truck manning and rotating lists not be adopted, and that the City's transformation of the entire article into an overtime article not be adopted. It is recommended that any particularly unworkable provisions of this article be dealt with in future negotiations.

Article 23 – Staff.

Union

The Union proposes a clarification of the Superintendent of Building's work title, the addition of an Assistant Chief Training Officer and elimination of certain language regarding the minimum number of full-time employees.

City

The City proposes elimination of any language that would restrict its ability to determine or assign appropriate employees throughout the department.

Finding and Recommendation

The City finds that the City had the more persuasive argument regarding its proposed changes. The City's proposal to continue to guarantee a minimum number of full-time employees in the department (i.e., 48), is reasonable and should adequately deal with concerns the Union might have regarding safe, overall staffing levels. However, the City's proposal to retain absolute flexibility to reduce the minimum number of ten (10) employees per shift is unreasonable. While the Fact-finder is generally receptive to management's prerogative to efficiently manage the department via an appropriate exercise of management rights as reflected in his earlier recommendations, retention of the right to reduce shift staffing levels below ten (10) employees does not appear to be central to an appropriate exercise of that right. Accordingly, it is recommended that the City's proposed changes be adopted, but consistent with the previous recommendation that the minimum shift staffing levels set forth in Article 22, Section 1 (10 per shift) remain unchanged, its proposed language be modified to ensure maintenance of a minimum of ten (10) employees per shift (see attached). The remaining language that the City has proposed deleting, i.e., a concrete delineation of department positions and their filling, should be removed and more properly left to management's discretion. However, in addition, retention of the current language in Section 3, (a), should be retained since in past difficult economic circumstances, unlike other City employees, this unit agreed to pay and work cuts in lieu of layoffs of its members (see attached). Lastly, since no substantive evidence was presented in support of the need to add new language relative to promotions, it is recommended that the City's proposal regarding its new promotional language not be adopted.

Article 24 – Acting Pay.

Union

The Union proposes no change in the existing contract.

City

The City proposes modifying Section 1 of the Acting Pay article to permit it to make out-of-classification assignments based not on seniority, but rather, qualifications and ability to perform.

Finding and Recommendation

The Fact-finder agrees with the need to amend the current language to ensure that only qualified, not simply most senior, employees be eligible for temporary promotion into higher classifications. Towards that end, and consistent with the reasoning behind his recommendations regarding Article 16, it is recommended that the language from the Jackson contract, with certain suggested changes, be adopted in lieu of existing Section 1 language (see attached), and that the current Section 2 remain unchanged. As a practical matter, given the generally consistent training levels of the great majority of unit employees, these revisions would probably not have significant practical effect.

Article 26 – Protective Clothing and Equipment.

Union

The Union proposes doubling the annual protective clothing and equipment fund (from $7,500 to $15,000 per year) and expanding the role of the protective clothing committee in determining how funds will be disbursed.

City

The only change the City proposes is to increase the protective clothing and equipment fund to $10,000 per year.

Finding and Recommendation

Based on the testimony and exhibits of both parties, it seems that in recent years annual allocations for clothing and equipment purchases have been both under and overspent. It's clear that adequate funding for these purchases are important from a both a safety and an

image standpoint and so both underfunding and unnecessary underspending is in neither parties interest. According, the Fact-finder recommends that the Union's proposal to double spending is warranted, particularly since any unused funds are returned to the City's general fund. In addition, it is recommended that the City's proposal to revise Section 3 to reconstitute the membership of the protective clothing committee and revise its authority is also warranted and consistent with this Fact-finder's overall suggested clarification of the City's management prerogatives (see attached). In light of the Union's concern that the City apparently does not often take the clothing and equipment purchasing process seriously, the Fact-finder encourages Public Safety administration to participate in this process in good faith and to take the panel's recommendations under due consideration.

Article 28 – Jury Duty.

Union

The Union proposes no change in the existing contract.

City

The City proposes changing current language which allows for an inordinate amount of time to report to work, and to require an employee to complete the remainder of his otherwise regularly scheduled work shift once he/she is excused from jury duty.

Finding and Recommendation

The Fact-finder finds that, with one minor change, the City's proposal is warranted and consistent with commonly accepted business practices in other Ohio municipalities. While there was scant evidence that unit members had been abusing this provision, to continue the present language would be to condone a practice that is unfairly subject to abuse. Accordingly, it is recommended that the City's proposed language for Section 1 be adopted, as amended (see attached), and that Section 2 be deleted.

Article 30 - Personal Days.

Union

The Union proposes changing Section 1 to reflect a forty-eight (48) hour work week and to double the allowable number of sick leave days (from 2 to 4) that can be taken as personal leave.

City

The City proposes no change in the existing contract.

Finding and Recommendation

Consistent with his findings and recommendation in Article 18, Hours of Employment, the Fact-finder recommends adoption of the Union's proposed change in language to reflect 48 rather than 50.66 hours. However, in light of the other substantial economic enhancements which have been and will be made elsewhere in this Report, it is not recommended that the allowable number of sick to personal days be doubled. This is not only unnecessary and unsubstantiated but would cause this unit to be substantially out of sync with the benefits enjoyed by other City units.

Article 31 - Paid Legal Holidays.

Union

The Union proposes changing Section 4 to redefine when an eligible employee may take an observed holiday. In addition, it proposes changing Section 7 to reflect the change to a 48 hour/week employee rather than the current 50.66 hour workweek schedule.

City

The City proposes a number of changes, including differentiating holidays between platoon employees and 40 hour/week employees, additional requirements for holiday pay eligibility and a change in holiday routine assignments.

Finding and Recommendation

The Fact-finder finds merit in both parties' proposals. Accordingly, it is recommended that both of the Union's proposed changes be adopted. In addition, the City's proposals regarding Sections 4 and 6, while more substantive, are also recommended with the proviso that current Section 4 (a) be maintained (see attached). The Fact-finder finds that the City's proposed changes, including the elimination of Section 9 which limits the type of work that can be assigned on a holiday, are reasonable, consistent with commonly accepted municipal business practices and consistent with this Fact-finder's previously recommended clarification of the City's management rights.

Article 32 – Overtime.

Union

The Union proposes no change in the existing contract.

City

The City proposes to relabel this article "Call-out/Court-time, rewrite it to more accurately reflect common municipal practices regarding the same, (e.g., Barberton and Jackson) and to bring overtime practices into conformity with the federal Fair Labor Standards Act (FLSA). Additionally, it proposes retaining current Section 9 regarding call-backs and pay for court appearances.

Finding and Recommendation

The Fact-finder finds that based on both exhibits and testimony, a complete rewrite of the article is unwarranted. However, it is recommended that consistent with the recommended reduction in the workweek from 50.66 to 48 hours, any reference in the current article to 100.8 be replaced with 96 and that the City's proposed language titled "Overtime Distribution" be added to the current article as a new Section 16 (see attached) to bring the contract into conformity with federal law regarding overtime.

Article 34 - Vacation Leave.

Union

The Union proposes no change in the existing contract.

City

The City proposes changing vacation calculations from weeks to tours of duty, requiring employees to work certain hours before being eligible for vacation leave and taking operational needs into consideration when scheduling vacation.

Finding and Recommendation

The Fact-finder is not unmindful of the fact that the City's proposed changes have substantive merit, particularly so with the comparables it presented in support of its proposals. However, in the context of the many other substantive changes he has already proposed, and recognizing that the Union has not recommended any changes to this particular article, the Fact-finder recommends no changes in this article at the present time except as to the proposed Section 12 modification regarding the vacation scheduling of Assistant Chiefs and Captains (see attached).

Article 37 - Entrance Rates.

Union

The Union proposes title clarifications in Section 5 and annual Wage Equalization Adjustments of 1.25% and general increases of 7% per year.

City

The City proposes revising the Compensation Schedule (Attachment 8), and granting annual increases of 3%/year.

Finding and Recommendation

The Fact-finder takes note of the City's admission that the fire-fighters in this unit are underpaid relative to comparable municipal fire departments. Having said that, he finds that the Union's proposed wage equalization adjustments, while novel, are not warranted, and its proposed 7% annual adjustment too rich, even in light of the various management rights modifications/clarifications it is being asked to adopt.

Given the scope of the language changes the City proposed, and to some extent the Fact-finder recommends adoption of, annual increases in the range of 3% would be an inadequate exchange, particularly since the City indicated a similar targeted increase with the other Massillon contracts soon to be negotiated. Rather, in addition to the recommended reduction in the work week and the concomitant increase in Kelley days off and the same pay for less hours worked (equivalent to a 5% annual increase in and of itself) the Fact-finder recommends annual increases of 5% for the life of the contract; (the wage schedule [Attachment 8] should be subsequently adjusted by the parties to accurately reflect this 5% annual increase). In addition, the Union's proposed language changes in Section 2 and 5 are recommended for adoption (see attached). Other than these two changes (i.e., wage adjustment and job title changes in Articles 2 and 5) it is recommended that the rest of this Article remain unchanged in the current contract.

Article 39 – Insurance.

Union

The Union proposes a change in the reimbursement schedule for eye and dental insurance to a usual/customary/reasonable standard. In addition, it wishes to shorten the eligibility period for coverage from the current 6 months to 30 days.

City

The City proposes to increase the employee prescription co-pays from $10 to $15 dollars and from $3 to $8 for generic brands.

Finding and Recommendation

The Fact-finder finds that the current levels of benefits have been in place for the past three (3) years. Of course, during this time, many substantive changes have occurred in the health insurance industry. In that regard, the City's proposed increase in prescription deductibles from $10 to $15 and from $3 to $8 (Section 1 (e), is both reasonable and warranted, particularly since the cost of prescription medication is one of the most rapidly escalating components of health insurance inflation. In that regard, while the Fact-finder would like to recommend adoption of the Union's proposed changes, he is not in a position to do so, particularly given the other substantial payroll costs he has recommended on behalf of this unit.

Article 41 – Prevailing Rights.

Union

The Union proposes no change in the existing contract.

City

The City proposes to delete the current article and replace it with a relabeled "Total Agreement" article. The City believes that the current language paralyzes its ability to effectively manage the department since its actions are subject to challenge as a result of the article's provision that any employee rights, privileges and working condition cannot be changed without mutual consent. In addition, it points out that the current provision is completely inconsistent with traditional labor-management relationships.

Finding and Recommendation

Consistent with the previously established principle of clarified and modified management rights, the Fact-finder finds the City's arguments regarding the need to change the current language persuasive. While there was no clear evidence that the Union has unfairly or consciously taken advantage of this extremely favorable language, this Fact-finder believes that perpetuation of the language would only serve to continue to aggravate the current strained relations between the parties and continue to unreasonably limit the statutory duty of the administration to effectively manage the City's resources. Given the need for both sides to work

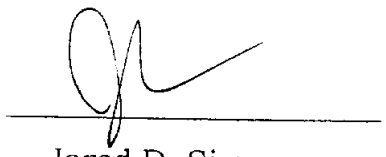
hard to restore and maintain a good working relationship, the Fact-finder recommends that the current Article 41, "Prevailing Rights, be relabeled as "Total Agreement" and that the City's proposed language be adopted as the body of this reconstituted article. However, to address potential Union concerns, the Fact-finder also recommends the adoption of two additional sections (2 and 3) to ensure that the Union retains the right to meet and confer prior to implementation and to grieve any and all City actions under this new article.

CONCLUSION

In conclusion, the above Findings and Recommendations, with attachments, include the entirety of the Fact-Finders' Report.

Issued: December 9, 1999

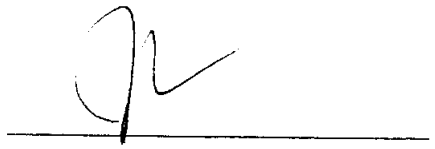
Respectfully submitted,



Jared D. Simmer
Fact-Finder

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the City of Massillon, Ohio (via Mr. Al Climer, Safety Director) and IAFF, Local 251 (via Mr. Michael Camfora) by overnight mail service, and upon the Ohio State Employment Relations Board (via Mr. George M. Albu) by first class mail, this day of December 9, 1999.



Jared D. Simmer
Fact-Finder

Current Article 9 - Released Time
replaced with the following:

ARTICLE 9 - UNION REPRESENTATION

Section 9.1. Two (2) representatives will be recognized by the City as the Union representatives in accordance with this Agreement upon the receipt of a letter so identifying them and signed by the president of the Union. Other Union officers and/or officials shall be required to fulfill their Union responsibilities during off duty time.

Section 9.2. The parties recognize that it may be necessary for an employee representative of the Union to leave a normal work assignment while acting in the capacity of representative. The Union recognizes the operational needs of the City and will cooperate to keep to a minimum the time lost from work by a representative. Before leaving an assignment pursuant to this section, the representative must obtain approval from his supervisor. The City will compensate a representative at the normal rate for the time spent in good faith processing of grievances, and at any meetings at which the City requests a representative to be present during their regular working hours.

Section 9.3. One (1) elected delegate of the Union shall be authorized up to seventy-two (72) hours without pay to attend I.A.F.F. sanctioned conventions, and regional seminars at which his participation is requested. Expenses incurred in attending such I.A.F.F. sanctioned conventions and regional seminars, including travel, lodging, and meals, shall be paid by the Union. Such time off from scheduled work must be arranged for at least ten (10) calendar days in advance, and must be made in writing accompanied with documentation of the event. In the event that it is not possible to give ten (10) calendar days notice, notice should be given as soon as possible. Approval by the Safety Director or his designee shall not be unreasonably denied.

Current Section 5 - Memorial and/or Funeral Funds becomes Section 9.4.

entries added to his personnel file, provided he authorized such notification by completing and signing Attachment 4.

~~SECTION 3:~~

~~The employee may be represented by the UNION at all conferences, meetings and other disciplinary proceedings.~~

ARTICLE 16 - MAINTENANCE OF CONDITIONS

SECTION 1:

Provided such Lay-off does not interfere w/ the operational requirements of the dept.

When it becomes necessary in the Fire Department, through lack of work or funds, to reduce the force, the youngest employee in point of service shall be laid off. Should a position in the Fire Department once abolished or made unnecessary be found necessary to be re-created or re-established within three (3) years from the date of abolishment, or should a vacancy occur through death, resignation, or any other cause within three (3) years from the date of the abolishment of the position or layoff, the oldest employee in point of service of those laid off shall be entitled to the position, providing he was at the date of his separation a regular and permanent employee. If any employee, laid off as prescribed in this Article, enters into the active service of the United States, the period such employee serves therein shall not be considered in the determination of the three (3) years stipulated as a maximum time within which reinstatements shall be made; such three (3) year period shall be computed exclusive of the time the employee spent in the Armed Services.

SECTION 2:

When a position above the rank of regular Firefighter is abolished, and the incumbent has been permanently appointed, he shall be demoted to the next lower rank and the youngest officer in point of service in the next lower rank shall be demoted, and so on down until the youngest person in point of service has been reached, who shall be laid off. provided such demotion and or Lay-off (singular or plural) does not interfere w/ the operational requirements of the dept

~~**SECTION 3: RELATION TO REGULATIONS, ETC.**~~ Delete

~~It is recognized by both parties that nothing in this Agreement shall supersede the authority granted by State Civil Service Laws.~~

~~ARTICLE 17 - MANAGEMENT RIGHTS~~

~~**SECTION 1:**~~

The UNION recognizes the prerogatives of the CITY to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority, consistent with City Ordinances and the express terms of this Agreement, including but not limited to Article 16, Maintenance of Conditions.

SECTION 2:

The UNION recognizes the exclusive right of the CITY to establish reasonable work rules, determine reasonable schedules of work, determine and establish methods, processes and procedures by which such work is to be performed as well as set work standards, provided that insofar as the UNION has not agreed to any rule, procedure or regulation, it does not waive the right to argue its reasonableness or application.

SECTION 3:

The CITY reserves the right in accordance with Article 16 of this Agreement to lay off for lack of work or funds, or the occurrence of conditions beyond the control of the CITY, or where such conditions would be wasteful and unproductive. Except that the CITY agrees to forfeit its right of layoff below the level of forty-two (42) employees within the Division of Fire. The UNION agrees that if any initiative or referendum causes the CITY income tax rate on individuals to be reduced to below one and one half percent (1 1/2%) that the UNION will meet with the CITY to negotiate the manning required under this provision.

SECTION 4:

Barberton

ARTICLE 17
MANAGEMENT RIGHTS

Section 1. Function Of The Employer. The Union recognizes that, except as otherwise limited in this agreement, it is the right and responsibility of the Employer to:

1. determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy, such as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, and organizational structure;

2. direct, supervise, evaluate, or hire employees;

3. maintain and improve the efficiency and effectiveness of governmental operations;

4. determine the overall methods, process, means, or personnel, by which governmental operations are to be conducted;

5. suspend, discipline, demote, or discharge for just cause, or layoff, transfer, assign, schedule, promote, or retain employees;

6. determine the adequacy of the work force;

7. determine the overall mission of the Employer as a unit of government;

8. effectively manage the work force; and,

9. take actions to carry out the mission of the public employer as a governmental unit.

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. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

Section 2. Inherent Rights. The Union recognizes and accepts that all rights and authority of the Employer not specifically modified by this agreement or ensuing agreements shall remain the function of the Employer.

UNION'S PROPOSAL

ARTICLE 18 - HOURS OF EMPLOYMENT

SECTION 1: WORK SCHEDULE

(a) The CITY shall maintain a ~~fifty point six six~~ forty-eight(~~50.66~~48) hour work week in the Firefighter division. The schedule shall be worked under the three (3) Platoon system, working twenty-four (24) hours on and forty-eight (48) hours off. Each employee shall receive ~~two (2) scheduled days off in each nine (9) week cycle.~~ one (1) scheduled day off in each three (3) week cycle. This day shall be referred to hereafter as a "Kelly Day." A typical schedule is attached hereto as Attachment 5.

(b) Employees shall pick "Kelly Days" by shift seniority, except that no two employees on one platoon may have the same Kelly Day unless all Kelly Days have been previously selected, and it is necessary to have two employees off. The schedules will be posted at each Fire Station by January 1 of each year.

(c) To maintain consistency with vacation scheduling, shift changes, and New Year, the posted "Kelly Day" cycles shall contain the starting date of the cycle, the ending date of the cycle, the number of "Kelly Days" for each member, and the starting date of the next cycle.

(d) When an employee is transferred to another shift he shall have the right to select a "Kelly Day" and bump any other employee on that shift with less seniority. Any employee bumped shall have the right to select another "Kelly Day" by seniority; this procedure shall be repeated as necessary.

(e) The employees in the Fire Prevention Bureau shall work forty (40) hours per week, 0800 hours - 1600 hours, five (5) days per week, Monday through Friday, excluding all Holidays set forth in Article 31 - Paid Legal Holidays. These hours may be modified by the Fire Prevention Bureau and Fire Chief on a case by case basis.

(f) If an employee is not working due to the use of disability leave, suspension, or any other unpaid leave of absence, said employee shall lose rights to select another Kelly Day for any scheduled Kelly Day missed due to the absence.

SECTION 2:

The starting time for the Firefighting Division shall be 0700 hours. The starting time for the Fire Prevention Bureau shall be 0800 hours.

SECTION 3:

Work other than emergencies should not be done after 1600 hours; however, work consistent with the day-to-day operations of the Fire Department or absolutely necessary for its smooth functioning will be required. Any breakdown of equipment may be deemed an emergency.

SECTION 4:

Any actions of a Firefighter taken in the line of duty, while off duty, shall be considered to have been taken on duty.

SECTION 5:

The UNION and the CITY hereby agree that the work week is ~~fifty point six six~~ forty-eight (~~50.66~~ 48) hours, in accordance with the Fair Labor Standards Act.

ARTICLE 23 - STAFF

SECTION 1:

The minimum number of full time employees of the department shall be forty-eight (48). The normal manpower per shift will be ten (10) however depending on operational and /or scheduling requirements as determined by management the number per shift may vary. .

(a) One (1) Chief who has served [illegible] in the Civil Service rules and testing procedures.

(b) Three (3) Assistant Chiefs.

(c) Three (3) Captains or Captain Paramedics for each of the [illegible] inside stations in operation.

(d) One (1) Superintendent of Buildings (Fire Prevention Bureau).

(e) One (1) Fire Safety Inspector (Fire Prevention Bureau) (Firefighter).

(f) One (1) Coordinator of Emergency Medical Services (Firefighter/Paramedic).

(g) One (1) Mechanic (Superintendent of Fire Equipment) (Firefighter).

The CITY agrees that in the event of changes or additions in duties, responsibilities, services, or locations, the staff and minimum safety manning, in accordance with Article 22, shall be increased and maintained in at least an equal ratio of strength to existing levels or increased to whatever level necessary to maintain adequate and reasonable degrees of safety and efficiency.

SECTION 1:

The Fire Prevention Bureau shall be staffed by one (1) Superintendent of buildings and one (1) Fire Safety Inspector who have served permanently and regularly as full time employees in the Division of Fire for a minimum of two (2) years.

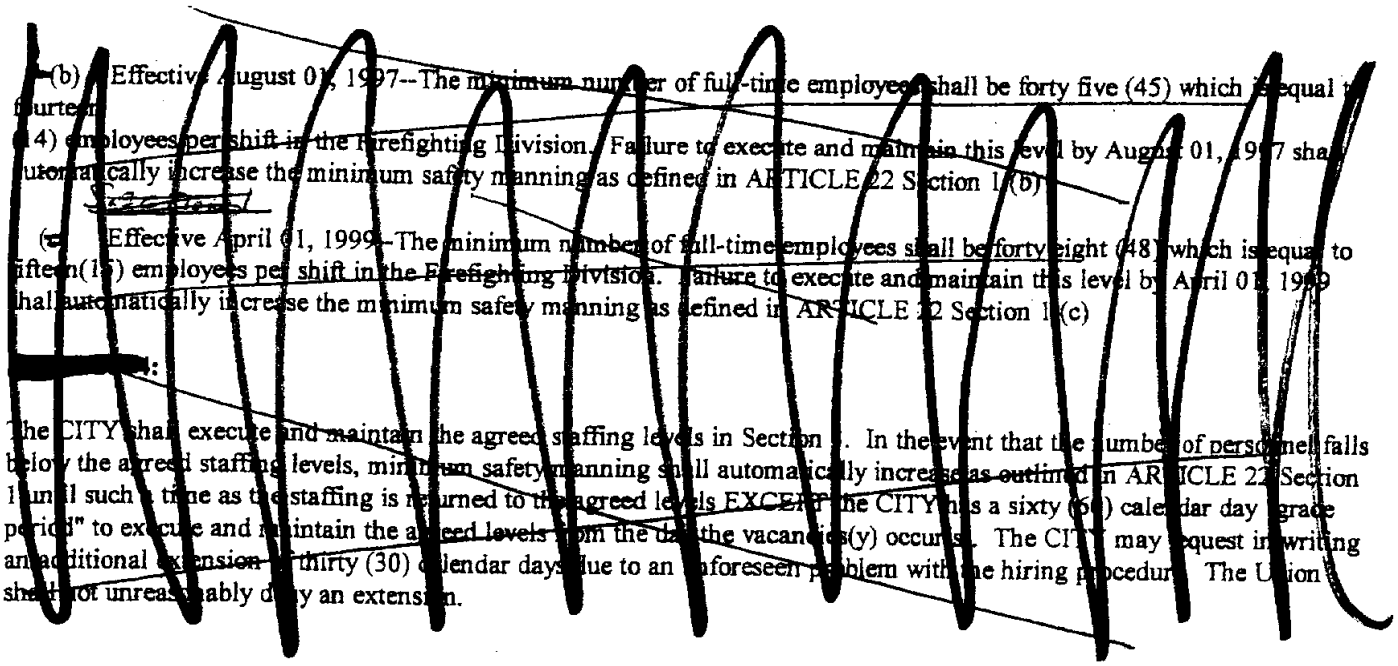
(a) Upon the vacation of the present Superintendent of Buildings, the position will be filled by the top scorer of a promotional Civil Service Exam held specifically for that position.

(b) The Fire Safety Inspector shall be appointed by the Fire Chief from the ranks of the Firefighting Division with the approval of the Safety Director.

SECTION 2:

(a) The CITY agrees if other bargaining units who have elected to take layoffs of their members (rather than pay and work cuts) are restored in staff above ninety and 1/2 percent (90.5%) of their September 18, 1982 strength, the CITY will bring the strength of the Fire Department up to forty two (42) full time firefighters and maintain it at that level.

retain (b) new section 2



(b) Effective August 01, 1997--The minimum number of full-time employees shall be forty five (45) which is equal to fourteen (14) employees per shift in the Firefighting Division. Failure to execute and maintain this level by August 01, 1997 shall automatically increase the minimum safety manning as defined in ARTICLE 22 Section 1(b)

(c) Effective April 01, 1999--The minimum number of full-time employees shall be forty eight (48) which is equal to fifteen (15) employees per shift in the Firefighting Division. Failure to execute and maintain this level by April 01, 1999 shall automatically increase the minimum safety manning as defined in ARTICLE 22 Section 1(c)

:

The CITY shall execute and maintain the agreed staffing levels in Section . In the event that the number of personnel falls below the agreed staffing levels, minimum safety manning shall automatically increase as outlined in ARTICLE 22 Section 1 until such time as the staffing is returned to the agreed levels EXCEPT the CITY has a sixty (60) calendar day "grace period" to execute and maintain the agreed levels from the date the vacancies(y) occurs. The CITY may request in writing an additional extension of thirty (30) calendar days due to an unforeseen problem with the hiring procedure. The Union shall not unreasonably deny an extension.

ARTICLE 24 - ACTING PAY

SECTION 1:

Temporary assignments for the purpose of filling vacancies in higher ranks shall be made by the Fire Chief from among the two (2) eligible firefighters with the highest shift seniority.

Eligibility shall be determined by:

~~Temporary assignments for the purpose of filling vacancies in a higher classification shall be offered to employees on the shift based on~~ qualifications, ability to perform the required duties as determined by management (provided such assignment does not adversely affect other operational needs), ~~and seniority.~~

SECTION 2:

In case an employee is qualified for and is required to serve in and accept the responsibility for work in a higher class or position, that employee shall be deemed as acting in that position and shall be entitled to the step rate of the higher grade class while so assigned, subject to the approval of the Safety Director. An employee may be temporarily assigned to work of any position of the same or lower class grade without change in pay.

~~ISSUE NO. 17~~

~~ARTICLE 26 - PROTECTIVE CLOTHING AND EQUIPMENT~~

~~CURRENT CONTRACT LANGUAGE:~~

~~ARTICLE 26 - PROTECTIVE CLOTHING AND EQUIPMENT~~

~~SECTION 1:~~

~~The CITY shall provide the protective clothing required by NFPA standards. As replaced, protective clothing and equipment shall meet NFPA standards.~~

~~SECTION 2:~~

~~The CITY will establish a fund of $7500.00 a year for protective clothing and equipment replacement, to replace worn and outmoded equipment; such as helmets, coats, ropes, self-contained breathing apparatus, flashlights and bunker pants.~~

UNION'S PROPOSAL

ARTICLE 26 - PROTECTIVE CLOTHING AND EQUIPMENT

SECTION 1:

The CITY shall provide the protective clothing required by NFPA standards. As replaced, protective clothing and equipment shall meet NFPA standards.

SECTION 2:

The CITY will establish a fund of ~~$7500.00 15,000~~ $15,000 a year for protective clothing and equipment replacement, to replace worn damaged and outmoded equipment; such as helmets, coats, ropes, self-contained breathing apparatus, flashlights and bunker pants.

SECTION 3:

There shall be a protective clothing committee consisting ~~of the Fire Co~~ two members of the Union, and the Fire Chief's designee who ~~collectively will determine how these funds are disbursed.~~ will make recommendations ~~[illegible]~~ as to how the funds should be disbursed. Any discussions relative to the same shall be considered work time.

~~Rationale: The Union proposes that a committee be formed to collectively determine the purchase of safety clothing [illegible] January 01, 2000. Additionally, the Union seeks an increase in the minimum amount which the City will spend for protective clothing and equipment.~~

City Proposal #41
Submitted by Mail 10/21/99

ARTICLE 28 - JURY DUTY

Section 28.1. Any employee who is called to jury duty (county, state, federal or municipal) during any regularly scheduled workday shall be excused from work on the days for which he serves. He shall be required to return to work ~~immediately~~ promptly after being excused from jury duty to complete the balance of his scheduled duty hours. Payment for such jury duty shall be the difference between his regular straight time daily earnings and the payment he receives for jury duty. The employee shall present proof of jury duty services and the amount of pay received for such services to the Chief.

Section 28.2. Delete.

ISSUE NO. 20

ARTICLE 30 - PERSONAL DAYS

CURRENT CONTRACT LANGUAGE

ARTICLE 30 - PERSONAL DAYS

SECTION 1:

All fifty point six six (50.66) hour employees may use two (2) days sick leave and all forty (40) hour employees may use four (4) days sick leave annually as personal leave; except for emergencies, three (3) days notice shall be given. Holidays are to be excluded from use as personal days.

UNION'S PROPOSAL

ARTICLE 30 - PERSONAL DAYS

SECTION 1:

All ~~fifty point six six~~ forty-eight (~~50.66~~) 48 hour employees may use two (2) days sick leave, and all forty (40) hour employees may use four (4) days sick leave annually as personal leave; except for emergencies, three (3) days notice shall be given. Holidays are to be excluded from use as personal days.

Rationale: The Union proposes that members be permitted to uses four (4) days of accumulated sick leave for personal leave each year, effective January 01, 1999.

ARTICLE 31 - PAID LEGAL HOLIDAYS

CURRENT CONTRACT LANGUAGE:

ARTICLE 31 - PAID LEGAL HOLIDAYS

SECTION 1:

Whenever used in this Agreement the term "Holiday" shall mean one (1) of the following days:

Jan. 01: (New Year's Day)	Veteran's Day
Jan. 15: (Martin L. King Day)	Thanksgiving Day
President's Day	Nov. 30: (Fftr. Memorial Day)
Easter	Dec. 24: (Christmas Eve Day)
Memorial Day	Dec. 25: (Christmas Day)
July 04: (Independence Day)	Dec. 31: (New Years Eve Day)
Labor Day	

SECTION 2:

The Firefighting Division shall observe holidays on the actual holiday date. Holidays shall run according to calendar year.

SECTION 3:

For the Firefighting Division, a holiday shall be deemed to begin at 0700 hours of the holiday and shall end twenty four (24) hours later. All forty hour personnel shall have the option of observing a holiday on the day of their choice provided it falls with ~~same week of~~ seven days prior to or after said observed Holiday.

SECTION 4: For employees scheduled to work a forty (40) hour per week schedule the term "Holiday" shall mean one (1) of the thirteen (13) holidays scheduled for City Hall personnel.

SECTION 5:

A holiday shall be deemed to begin at 0001 hours of the holiday and shall end twenty four (24) hours later for all forty hour personnel in the bargaining unit.

SECTION 6: ELIGIBILITY REOUIREMENTS FOR HOLIDAY PAY

In order to be eligible for holiday pay, an employee must comply with the following provisions:

(a) An employee who is scheduled to work on any holiday but fails to report and perform his scheduled or assigned work shall become ineligible to be paid for the unworked holiday.

(b) An employee must work the scheduled day before and after the Holiday.

SECTION 7: PAY FOR HOLIDAYS

(a) Each employee of the Fire Department who works on a holiday shall be paid, in addition to his regular salary, an amount determined by the following formula:

Bi-weekly base divided by ~~100.8~~ 96 X ~~20.16~~ 24 = Additional Holiday Pay

(b) Each employee of the Fire Department who does not work on a holiday shall be paid an amount determined by the following formula:

Bi-weekly base divided by ~~100.8~~ 96X ~~10.08~~ 12.0 = Additional Holiday Pay

SECTION 8: HOLIDAY SCHEDULE

By January 1 of each year the annual holiday schedule shall be posted at each Fire Station.

SECTION 9: HOLIDAY ROUTINE

(a) Holiday routine shall limit duties to emergency and/or public service runs. Any breakdown of equipment may be deemed an emergency. Normal scheduled housework shall be done.

(b) Holiday routine shall be observed on days listed in Section 1 above as well as on Saturdays and Sundays.

SECTION 3: HOLIDAY ROUTINE

(a) Holiday routine shall limit duties to emergency and/or public service runs. Any breakdown of equipment may be deemed an emergency. Normal scheduled housework shall be done.

(b) Holiday routine shall be observed on days listed in Section 1 above as well as on Saturdays and Sundays.

ARTICLE 32 - OVERTIME

SECTION 1: OVERTIME ADMINISTRATION

During emergencies, the Chief, Assistant Chief, or any officer in said capacities may prescribe reasonable periods of overtime work to meet operational needs.

SECTION 2: OVERTIME COMPENSATION

(a) Each employee in the Firefighting Division in a position of grade class, Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic,Coordinator of Emergency Medical Services, Superintendent of Fire Equipment (Mechanic) and Assistant Chief, who is required to work more than his regular twenty four (24) hour shift during any seventy two (72) hour period shall be paid overtime at the rate determined by the following formula:

Bi-weekly base salary divided by ~~100.8~~ 96 X 1.5 = rate per hour worked

(b) For the purpose of computing overtime, credit shall be given for paid Legal Holidays, Personal Days, Kelly Days, Trade Days, Vacation Leave, Disability Days, Jury Duty and any other authorized Leave of Absence.

SECTION 3:

(a) Each employee in the Fire Prevention Bureau in a position of grade class, Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, or Superintendent of Buildings, who is required to work more than his regular eight (8) hour shift during any twenty four (24) hour period shall be paid overtime at the rate determined by the following formula:

Bi-weekly base salary divided by 80 X 1.5 = rate per hour worked

(b) For the purpose of computing overtime, credit shall be given for paid Legal Holidays, Personal Days, Vacation Leave, Disability Days, Jury Duty, and any other authorized Leave of Absence.

SECTION 4:

Each employee in the Firefighting Division in a position of grade class Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, Coordinator of Emergency Medical Services, Superintendent of Fire Equipment (Mechanic), and Assistant Chief, who is called in or is required to remain on duty in excess of his normal shift for a fire, accident, or natural disaster shall be paid overtime at the rate determined by the following formula:

Bi-weekly base salary divided by 80 X 1.5 = rate per hour worked

SECTION 5:

Each employee in the Fire Prevention Bureau in a position of grade class Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic or Superintendent of Buildings, who is called in or is required to remain on duty in excess of his normal shift for a fire, accident, or natural disaster shall be paid at the rate determined by the following formula:

Bi-weekly base salary divided by 80 X 1.5 = rate per hour worked

SECTION 6:

The Superintendent of Fire Equipment (Mechanic) when called in or required to remain on duty in excess of his normal shift for any breakdown, maintenance or repair of equipment shall be paid overtime at the rate determined by the following formula:

Bi-weekly base salary divided by 80 X 1.5 = rate per hour worked

SECTION 7:

(a) In the Firefighting Division or Fire Prevention Bureau employees in a position of grade class Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, Coordinator of Emergency Medical Services, Superintendent of Fire Equipment (Mechanic), Superintendent of Buildings, or Assistant Chief, who are required to work more hours than their regularly scheduled work day or week, at their request, may be granted time off in lieu of pay at the rate of one and one half (1 1/2) times the hours worked.

(b) When an employee schedules compensatory time off and at such time the scheduling does not create overtime, said employee shall be granted his requested compensatory time off. However, if after said scheduling an overtime is created, the employee who scheduled compensatory time off shall not be asked or required to report to work or remain at work if part of a work day had been scheduled off; further, said employee's accumulated compensatory time will be reduced by the number of hours the employee was off.

(c) Employees may schedule compensatory time off for any work day or part of a work day within the calendar year, excluding Christmas and Christmas Eve, provided, however, a minimum of eight (8) consecutive hours shall be taken each time with at least twelve (12) hours advance notice. In the event that the request for compensatory time off does not create scheduled overtime, the minimum consecutive hours shall be four (4) hours. Compensatory time starting at or ending after 0001 hours must be taken for the rest of the shift.

(d) Employees may accumulate an unlimited number of compensatory hours; however, in the last week of May and the last week of November an employee's accumulated compensatory time, if in excess of two hundred forty (240) hours, will be rolled back to two hundred forty (240) hours and those hours in excess of two hundred forty (240) shall be paid to the employee on the first (1st) pay in June and the first (1st) pay in December at the employee's current hourly rate determined by the following formulas:

Firefighting Division
Bi-weekly base salary divided by ~~100~~ 96 = rate per hour

Fire Prevention Bureau
Bi-weekly base salary divided by 80 = rate per hour

Upon staffing reaching forty eight (48) in the Firefighting Division, an employee may accumulate compensatory hours. An employee may not carry a total accumulation of compensatory time in excess of two hundred (200) hours.

(e) Employees at any time may request any portion of their accumulated compensatory time in pay at the employee's current hourly rate determined by the following formulas:

Firefighting Division
Bi-weekly base salary divided by ~~100~~ 96 = rate per hour

Fire Prevention Bureau
Bi-weekly base salary divided by 80 = rate per hour

SECTION 8:

No overtime shall be paid when the time involved is less than thirty (30) minutes in excess of an eight (8) hour day in the case of the Fire Prevention Bureau, or twenty four (24) hours in the case of the Firefighting Division.

section 9:

Any off-duty employee who has left his normal place of work and is called back for overtime shall receive a minimum of two (2) hours overtime ~~in accordance with Section 4, 5, and 6 above.~~ at his appropriate overtime hourly rate.

(b) Any employee required to appear in court, before a grand jury, or pre-trial conference necessitated by the employee's performance of his duty shall receive a minimum of three (3) hours overtime ~~in accordance with Sections 2 and 3 above.~~ at his appropriate overtime hourly rate.

SECTION 10: OTHER OVERTIME SITUATIONS

(a) Overtime due to fires, accidents, and natural disasters should be filled by shift seniority when possible without regard to rotating lists. Recall shall be initiated with the shift that was relieved by the on-duty shift.

(b) Temporary vacancies created by employees engaged in job-required activities and schooling shall be filled by Fire Department seniority and by an employee of the same rank; only those vacancies reasonably anticipated to be less than sixteen (16) hours in duration shall be considered temporary.

(c) Two (2) rotating lists, one (1) for Assistant Chiefs and one (1) for Captains and Firefighters, excluding Fire Prevention personnel, shall be kept by the Assistant Chiefs or any officer acting in said capacity for the purpose of filling temporary vacancies.

(d) Overtime reasonably anticipated to be in excess of sixteen (16) hours shall be filled by the eligible employee as indicated by the appropriate rotating seniority list and the procedures outlined in Article 22, Section 2.

SECTION 11:

Employees attending required training, seminars, meetings, conferences, continuing education programs, etc. required by the Chief and/or Safety Director, during off-duty time shall be compensated for that time including reasonable travel time in accordance with Section 2 and 3 above.

SECTION 12:

Employees providing public services, C.P.R. classes and public relation work on off-duty time, and with prior approval of the Chief, shall be granted compensatory time in accordance with Article 32, Sections 2 and 3 above.

SECTION 13: OVERTIME AS PER THE FAIR LABOR STANDARDS ACT

Each employee in the Firefighting Division in a position of grade class, Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, Coordinator of Emergency Medical Services, Superintendent of Fire Equipment (Mechanic) and Assistant Chief, who works more than two hundred twelve (212) hours in the twenty eight (28) day work period shall be paid overtime, in addition to his regular hourly rate, at the rate determined by the following formula:

Bi-weekly base salary divided by ~~100.8~~ 96 X .5 = rate per hour worked

SECTION 15: EMERGENCY OVERTIME

Emergency overtime may be banked as overtime or paid as the employee wishes. In either option, such emergency overtime shall be paid or banked on the same basis, i.e.-- the emergency overtime rate.

ARTICLE 33 - SCHOOLING

SECTION 1: JOB REQUIRED

Each new employee shall attend an accredited Basic Fire Training Program in accordance with State Law. The CITY shall pay all necessary expenses including but not limited to tuition, text books, mileage, meals and lodging. Reimbursement for meals and lodging will require submission of receipts demonstrating actual expenses incurred and shall in no case be more than the rate set by the Massillon City Auditor for expenses of such kind.

Article 32

Revised
City Proposal #15
Submitted by Mail 10/21/99

Current Article 22 - Minimum Safety Manning and
Article 32 - Overtime
Replace with the following:

ARTICLE 22 OVERTIME DISTRIBUTION

Section 16.1. (a) The City shall be the sole judge of overtime requirements.

(b) Consistent with the Fair Labor Standards (FLSA) requirements overtime shall be defined as hours worked in excess of two-hundred twelve (212) in a twenty-eight (28) day work period for employees of the Firefighting Division. All other hours paid but not worked for any reason shall be excluded in determining the total number of hours worked, namely two-hundred twelve (212) in a twenty-eight (28) day work period.

(c) Consistent with the Fair Labor Standards Act (FLSA) requirements for overtime shall be defined as hours in excess of forth (40) hours per week for employees of the Fire Prevention Bureau. All other hours paid but not worked for any reason shall be excluded in determining the total number of hours worked, namely forty (40) in a seven (7) day period.

(d) Overtime shall be paid at the one and one-half (1-1/2) rate of the employee's appropriate overtime hourly rate as follows:

Firefighting Division
Bi-weekly base salary divided by 100.8 = rate per hour

Fire Prevention Bureau
Bi-weekly base salary divided by 80 = rate per hour

(e) Overtime shall be distributed as fairly as possible within the classification affected by the overtime using the "low man" principle; provided employees are available and qualified to perform the required duties.

(f) Overtime distribution lists shall be maintained for each classification and employees will be charged when they work or refuse such overtime opportunities. Such overtime lists shall revert to zero at the beginning of each calendar year.

[redacted] (3) An employee shall have a minimum of one (1) year department seniority to qualify for overtime.

[redacted] (4) An employee may not remain on duty more than forty-eight (48) consecutive hours without twenty-four (24) hours off duty except in an emergency.

article 34

SECTION 6:

After an employee completes a full year of service, the anniversary date of his employment shall be considered to be January 1 for vacation purposes.

SECTION 7:

Vacations under the provisions of this Article shall not accumulate from one year to another, except as herein provided for first-year (1st) employees.

SECTION 8:

During the vacation herein provided for, the employee shall be entitled to full pay for such periods at the regular rate of compensation. No vacation benefits shall be paid on the basis of time and one half (1 1/2).

SECTION 9: VACATION SCHEDULING

By January 1 of each year vacation schedules for the Firefighting Division shall be completed and posted at each Fire Station.

SECTION 10:

Employees in the Firefighting Division in a grade class of Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, Coordinator of Emergency Medical Services, and Superintendent of Fire Equipment (Mechanic) shall pick vacation leave by department seniority, per shifts in rounds. The first (1st) round constitutes selections by all employees of each shift of one (1) or more consecutive weeks of earned vacation leave as provided in Section 1 above. Subsequent rounds shall be used until all employees of each shift have selected their earned vacation leave.

SECTION 11:

One (1) employee per shift per week in the Firefighting Division in a grade class of Firefighter, Firefighter/Paramedic, Captain, Captain Paramedic, Coordinator of Emergency Medical Services and Superintendent of Fire Equipment (Mechanic) may be granted earned vacation leave at one time. If, however, a shift change occurs after the posting of vacation schedules, all scheduled vacations shall remain in effect.

SECTION 12:

Employees in the Firefighting Division in a grade class of Assistant Chief or Captain may select vacations among themselves without regard to their separate shifts. Department seniority shall prevail. No more than one (1) employee in either the Assistant Chief or Captain grade class shall be granted the same week of earned vacation leave at one time as provided in Section 34.1 above.

SECTION 13:

Employees working in the Fire Prevention Bureau shall have the option of selecting earned vacation leave by the week or consecutive weeks or individual days (not to exceed five (5) work days per week of allowed vacation leave).

SECTION 14:

The week beginning the first (1st) Sunday in January and the weeks following each subsequent Sunday throughout the year shall be available to all employees in the first (1st) round.

SECTION 15: O/C as is - no change

employed in a grade class of Captain, Captain Paramedic, Captain Superintendent of Buildings, Superintendent of Fire Equipment, Coordinator of Emergency Medical Services, or Assistant Chief at the time of his separation and his position was filled during his absence, he shall be reinstated at his former step rate but in the grade class of Firefighter.

SECTION 3: SALARY ADVANCEMENT WITHIN GRADE CLASS

On the first (1st) day of the payroll period following the anniversary date of his employment (continuous service) with the department, each employee shall advance within the grade class to the step rate to which his years of continuous service entitle him.

SECTION 4: SALARY ADVANCEMENT FOR PROMOTION

On the first (1st) day of the payroll period following an employee's promotion he shall be compensated at the appropriate grade class and the step rate to which his years of continuous service entitle him.

SECTION 5: TITLE DIFFERENTIAL

The CITY agrees to establish and maintain the following pay differential schedule using as its base the appropriate Firefighter rate of compensation as it appears in Attachment 9.

TITLES	RATE
Paramedic/Fire Inspector	**7.00%**
Captain/Mechanic/EMS Coordinator	**15.00%**
Captain Paramedic	**20.00%**
Captain/Superintendent of Buildings	**22.50%**
Assistant Chief	**30.00%**

SECTION 6:

All salaries herein provided for shall be paid in bi-weekly installments in accordance with Attachment 8.

Effective November 22, 1999, employees covered hereunder shall receive a 1.25% increase as a Wage Equalization Adjustment, and effective November 23, 1999 employees covered hereunder shall receive a 7% general wage increase. Effective November 25, 2000 employees shall receive a 1.25% adjustment, and effective November 23, 2000 employees covered hereunder shall receive a 7% general wage increase. Effective November 22, 2001 employees shall receive a 1.25% adjustment, and effective November 22, 2001 employees covered hereunder shall receive a 7% general wage increase.

SECTION 7:

The Chief shall be responsible for notifying the proper officials of any change in the status of an employee's rate of pay in accordance with this ARTICLE.

SECTION 8: CADET FIREFIGHTER/PARAMEDIC

(a) All Firefighter/Paramedic personnel hired by the CITY after January 1, 1997 shall be enrolled into the Cadet 1 program. This person shall remain as a Cadet 1 until he/she has successfully completed the Basic Fire Training and produced proof of completion to the office of the Safety Director.

If the newly hired employee has previously been certified in the above programs, or has training equal to or better, he/she may at the discretion of the Safety Director proceed to the level of Firefighter/Paramedic. Cadet I level will be maintained during the training required to complete and/or reach certification as a Firefighter/Paramedic. Upon successful completion and proof of such with the Safety Director, the employee shall be raised to the level of Firefighter/Paramedic with its level of pay. At the discretion of the Safety Director, Cadet I level training may be by-passed if the new employee

agreed to
in mediation

ARTICLE 38 - PENSION CONTRIBUTION

Section 38.1. No change.

Section 38.2. No change.

Section 38.3. (formerly Section 3 revise as follows):

Reported earnings for Pension Contribution purposes shall be in conformance with applicable laws and consistent with the Police and Fire Pension Fund reporting requirements.

Section 38.4. No change.

Section 38.5. No change.

ARTICLE 4 - TOTAL AGREEMENT

Section 1. This Agreement represents the entire Agreement between the City and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the City.

Section 2. However, prior to implementing such modifications or discontinuances, the City agrees to meet and confer with the Union to discuss the same. In addition, the City agrees that nothing in this language permits it to make any changes inconsistent with previously agreed-to provisions of this contract.

Section 3. Consistent with the provisions of Article 14, the Union retains the right to grieve any and all City actions TAKEN under this article.

Current Article 49 - Residency
replace with the following:

ARTICLE 45 - RESIDENCY

Section 45.1. All employees hired on or after November 25, 1996 must reside within the corporate limits of the City of Massillon. Any nonresident hired after November 25, 1996 must establish residency within the corporate limits of the City of Massillon within one year of being hired for employment and continue to maintain residency within the corporate limits of the City at all times during such continued employment.

Section 24.2. All employees hired before November 25, 1996 have no residency requirement.

ATTACHMENT 5

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1			2			3
		4			5	
	6			7		
1-8			2-9			3-10
		4-11			5-12	
	6-13			7-14		
8			9			10
		11			12	
	13			14		

LEGEND:

(a) Graph depicts one complete Kelly Day cycle

(b) Graph is typical for each platoon

(c) Blank Box denotes unscheduled work day

(d) Numbers 1 - 14 denote Firefighter on Kelly Day as follows

Firefighter	Kelly Day
# 01	1st & 2nd Sunday
# 02	1st & 2nd Wednesday
# 03	1st & 2nd Saturday
# 04	1st & 2nd Tuesday
# 05	1st & 2nd Friday
# 06	1st & 2nd Monday
# 07	1st & 2nd Thursday

Firefighter	Kelly Day
# 08	2nd & 3rd Sunday
# 09	2nd & 3rd Wednesday
# 10	2nd & 3rd Saturday
# 11	2nd & 3rd Tuesday
# 12	2nd & 3rd Friday
# 13	2nd & 3rd Monday
# 14	2nd & 3rd Thursday
#15	1st & 3rd, Any day

ATTACHMENT B

Also change dates to reflect new contract duration of November 22, 1999 thru November 21, 2001.

3.5% FIRE NOVEMBER 25, 1996 THRU NOVEMBER 23, 1997

1997 RANK	ENTRY	1 YEAR	2 YEAR	3 YEAR	5 YEAR	10 YEAR	15 YEAR	20 YEAR	25 YEAR	30 YEAR
CADET I	990.16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FIREFIGHTER	1,086.08	1,137.27	1,186.80	1,198.30	1,224.06	1,245.55	1,267.26	1,289.23	1,319.03	1,349.23
[redacted]	1,162.10	1,216.88	1,248.48	1,282.18	1,309.74	1,332.73	1,355.97	1,379.46	1,411.36	1,443.67
CAPT/MECH/EMS COOR	1,248.99	1,307.86	1,341.83	1,378.05	1,407.67	1,432.38	1,457.35	1,482.62	1,516.89	1,551.61
CAPT/MEDICS	1,303.29	1,364.72	1,400.17	1,437.96	1,468.87	1,494.65	1,520.72	1,547.08	1,582.84	1,619.07
SUPT. BLDGS.	1,330.44	1,393.16	1,429.34	1,467.92	1,499.47	1,525.79	1,552.40	1,579.31	1,615.81	1,652.80
ASST. CHIEF	1,411.90	1,478.45	1,516.85	1,557.79	1,591.27	1,619.21	1,647.44	1,676.01	1,714.74	1,753.99
[redacted]	[redacted]									

3.5% FIRE NOVEMBER 24, 1997 THRU NOVEMBER 22, 1998

1998 RANK	ENTRY	1 YEAR	2 YEAR	3 YEAR	5 YEAR	10 YEAR	15 YEAR	20 YEAR	25 YEAR	30 YEAR
CADET I	1,024.81	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FIREFIGHTER	1,124.09	1,177.07	1,207.64	1,240.24	1,266.90	1,289.14	1,311.62	1,334.36	1,365.20	1,396.45
[redacted]	1,202.78	1,259.47	1,292.16	1,327.06	1,355.58	1,379.38	1,403.43	1,427.76	1,460.76	1,494.20
CAPT/MECH/EMS COOR	1,292.70	1,353.64	1,388.79	1,426.28	1,456.93	1,482.61	1,508.36	1,534.51	1,569.98	1,605.92
CAPT/MEDICS	1,348.91	1,412.49	1,449.17	1,488.29	1,520.28	1,546.97	1,573.94	1,601.23	1,638.24	1,675.74
SUPT. BLDGS.	1,377.01	1,441.92	1,479.36	1,519.30	1,551.95	1,579.20	1,606.73	1,634.59	1,672.37	1,710.65
ASST. CHIEF	1,461.32	1,530.20	1,569.94	1,612.32	1,646.97	1,675.88	1,705.10	1,734.67	1,774.76	1,815.38
[redacted]	[redacted]									

3.5% FIRE NOVEMBER 23, 1998 THRU NOVEMBER 21, 1999

1999 RANK	ENTRY	1 YEAR	2 YEAR	3 YEAR	5 YEAR	10 YEAR	15 YEAR	20 YEAR	25 YEAR	30 YEAR
CADET I	1,060.66	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FIREFIGHTER	1,163.43	1,218.27	1,249.91	1,283.65	1,311.24	1,334.26	1,357.52	1,381.06	1,412.98	1,445.33
[redacted]	1,244.87	1,303.65	1,337.40	1,373.51	1,403.03	1,427.86	1,452.95	1,477.73	1,511.89	1,546.50
CAPT/MECH/EMS COOR	1,337.95	1,401.01	1,437.40	1,476.20	1,507.93	1,534.40	1,561.15	1,588.22	1,624.93	1,662.12
CAPT/MEDICS	1,396.12	1,461.93	1,499.89	1,540.38	1,573.49	1,601.11	1,629.03	1,657.27	1,695.58	1,734.39
SUPT. BLDGS.	1,425.21	1,492.38	1,531.14	1,572.47	1,606.27	1,634.47	1,662.97	1,691.80	1,730.90	1,770.52
ASST. CHIEF	1,512.46	1,583.76	1,624.88	1,668.76	1,704.61	1,734.54	1,764.78	1,795.36	1,836.87	1,878.92

Change to "Fire Captain - Dynamic" / Fire Captain - Inspector

Also change rates to reflect corrected years