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**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

IN THE MATTER OF:)	
)	CASE NO.: 99-MED-11-1077
Fact Finding between IAFF Local 3646)	
(Full time Fire Fighters))	FINDINGS AND
)	RECOMMENDATIONS
and)	March 2, 2000
)	GREGORY P. SZUTER
The City of Broadview Heights)	FACT FINDER
)	

List of Appearances:

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INTRODUCTION

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on December 1, 1999, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D). The bargaining unit herein consists of a unit of all full time fire fighters and excluding part time fire fighters employed by the City of Broadview Heights, Ohio (herein also "Broadview" or "the City") and represented by Local 3646 International Association of Firefighters (herein "the Union" or "Fire Fighters"). The positions represented by the unit are three captains, one lieutenant, five fire fighter paramedics, four fire fighter EMTs and one fire fighter.

The fire department has grown since it first became full time. It was part time until 1995. Seven full time firemen were the first unit. In July, 1996, the parties entered their first two-year collective bargaining agreement after the intervention of Fact Finder Feldman. In 1999, negotiations concluded with an agreement through the assistance of Fact Finder, Mancini. That agreement expires December 31, 1999.

HEARING

After several agreements of the parties in conformity with OAC 4117-9-OS(G) extending the hearing, it was held on January 25, 2000 at Broadview Heights. Both parties attended the hearing and elaborated upon their positions regarding the issues remaining at impasse through their representatives as listed in the preceding page. Received in evidence as Joint Exhibit 1 at the hearing was the "Agreement Between The City of Broadview Heights, Ohio and Local 3646 International Association of Firefighters," (eff. July 1, 1998 through December 31, 1999) herein the "Agreement". The City submitted 12 other exhibits

and the Union submitted 6 other exhibits. By agreement of the parties in conformity with OAC 4117-9-05(L), the date of issuance of the Fact Finder's Report has been extended to March 2, 2000.

MEDIATION

The parties deferred an offer of mediation and proceeded with the hearing of the issues wherein they had reached impasse and upon which evidence was presented. The issues remaining at impasse for fact finding were in the order that they were heard were:

Issue No. 1 Sick Leave

Issue No. 2 Holidays

Issue No. 3 Conformity to Law

Issue No. 4 Compensation

Upon conclusion of the presentation of the evidence and positions, the parties agreed to a continuation of mediation which proved unfruitful.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

1. Past collective bargaining agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

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

4. The lawful authority of the public employer;

5. Any stipulations of the parties;

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUES AND RECOMMENDATIONS

ARTICLE XXXII SICK LEAVE

CITY POSITION: The City proposes to eliminate the ability of new employees to transfer and retain accumulated Sick Leave by amending this article with:

SECTION 5 (new) Employees hired on and after January 1, 2000 shall not be permitted to retain a transfer accumulated sick leave from a public service outside the City of Broadview Heights.

The City presented for its position the following. This provision is the similar as the agreement with Broadview Heights police units, particularly the patrolmen sergeants and dispatchers. The proposal affects no employee currently in the bargaining unit.

During the conversion of the department to full time, the prior part time fire fighters were able to become full time fire fighters within the time prescribed by City legislation. In addition, full time firemen were hired from other communities.

As this bargaining unit ages, the sick leave costs will continue to accrue. The sick leave allowance is 14 hours per month or 168 per year. The cost of 168 sick hours per year

per employee was \$140,795 to the City. There is no maximum for time used until retirement. On retirement, the City pays for one quarter of the accumulated sick leave up to a maximum of 240 hours. A newly hired fire fighter from outside the community, it could easily add 1000 hours to the sick leave costs already accrued by the bargaining unit.

UNION POSITION: The Union proposes no change to this Article. Ohio Revised Code, R.C. 124.38(C), allows previously accumulated Sick Leave of an employee to be placed to his/her credit upon re-employment in public service. This section also permits an employee who transfers from one public agency to another to be credited with unused balance of his/her accumulated sick leave. The Union opposes the City proposal to eliminate this protected right. This is not an expensive issue for the City.

The Union does not believe the interest and welfare of the community will be served if the City position is recommended. If the City position is recommended a highly qualified candidate for employment that has accumulated Sick Leave from Public Service outside of the City of Broadview Heights might determine the loss of his/her accumulated Sick Leave is too steep of a price to pay for employment with the City. The candidate who may have been a great addition to the Department will choose not to accept employment. The bargaining unit is in an early stage of development. Experienced fire fighters, who are part time or full time elsewhere, are needed. The ability to transfer in sick hours would enhance the opportunity to recruit experienced fire fighters.

The Union is also opposed to this proposal because there is no evidence that this practice exists anywhere within the Fire Service. Other bargaining units in the City are mature units such as the Police unit. They do not face the concerns over being able to attract and maintain experienced workers. Since this is not a practice within the other bargaining units doing comparable work, and since the proposal will prove detrimental to

recruiting qualified candidates, the City proposal should be rejected and the Union position of status quo should be recommended.

IN REBUTTAL . The City states that recruitment is not affected by sick hours. It is minor, or not a consideration at all. Broadview police have had provisions such as this since the second or third year of their bargaining unit. They have suffered no detriment in hiring. The employment decision rests with the City and is not an interest that the Union can forward. If a prospective recruit had an issue with the ability to transfer sick hours, it may make him an unattractive candidate to the City in hiring.

FINDINGS AND RECOMMENDATIONS

Fact Finder finds that the elimination of the transfer of sick time accumulated outside of the City for newly hired fire fighters after January 1, 2000 is reasonable in a number of respects. The Union's chief objection is ill taken in that it is asserting the City's inability to recruit experienced fire fighters. Similar provisions had been implemented within the City without any apparent detriment to hiring.

The hiring decision is the City's and the Union is only indirectly impacted, at best. Since the hiring decision is with the City, it has within its wherewithal to select candidates and to de-select candidates. It may de-select all applicants with large transferrable sick leaves without the Union's agreement. This would not be in any party's self interest. However, to implement consistency with the other units it is possible. The elimination of the inconsistency as between the units can only serve to improve the quality of fire service for the City and the unit.

Second, the Union cannot state an interest in having workers from outside the department receive better benefits than the persons who have been working in the

department. Not only would the benefits be more generous, it would cost the City/taxpayers more for the recruit than for an incumbent.

This appears to be an issue of greater value to the fire service at large than the parties to the Agreement. As such the Fact Finder must recommend in favor of adopting the City's proposal. The Fact Finder recommends the adoption of this proposal at Article XXXIII, Sick Leave Section 5:

Employees hired on or after January 1, 2000 shall not be permitted to retain and transfer accumulated sick leave from any public service employment outside the city of Broadview Heights.

ARTICLE XXXV HOLIDAYS

UNION POSITION: The Union proposes increasing the Holiday Hours from 144 hours to 204 hours in 2000, and then to 264 in 2001 by amending the agreement as follows:

SECTION 1. Effective January 1, 2000, employees shall be entitled to two hundred four (204) hours of Holiday Pay. Effective January 1, 2001, employees shall be entitled to two hundred sixty-four (264) hours of Holiday Pay. Holiday time-off may be used in twelve (12) or twenty-four (24) hour blocks.

SECTION 2. As is.

SECTION 3. As is.

After reviewing the adjusted annual hours worked by the communities historically used by the City to survey benefits provided to employees, the Union says Broadview Heights Fire Fighters work an excessive amount of hours.

The Union position does not place an extreme burden upon the City but merely places the Fire Fighters within the range of acceptable work hours for Fire Fighters in the area. The Fire Fighters' proposal would still compel them to work more hours than the average adjusted hours worked by the comparables. This position does not take them from one end of the spectrum of the most hours worked to the other end of the spectrum of the

least hours worked. Rather it places them slightly above the average adjusted hours of the comparable communities. This fact demonstrates the reasonableness of the Union proposal.

The City proposal of the status quo, on the other hand, will perpetuate the mistreatment of the Broadview Heights Fire Fighters by compelling them to work an excessive amount of hours.

The Union's analysis of the comparison of holidays among several cities focus in on what it terms the "annual net hours worked," which is a figure arrived at by the annual hour of work per the normal work week in each community less the hours represented by the holiday benefit in the respective collective bargaining agreements. This "annual net hours" as studied by the Union compares 1995 figures to the year 2000. From the Union's prospective, the Broadview Heights Fire Fighters work more non-holiday hours in their schedule than the other communities and that the variance has grown from approximately 100 in 1995 to about 200 hours in the year 2000.

The changes from 1995 to 2000 in the sample considered by the Union indicate that all but four of the 12 other communities have had an increase in holiday time off and having an average increase of 56.5 hours.

The same comparison was made with respect to the Broadview police using the same sample of communities and focusing on the annual paid hours net the holiday time off. The conclusion of that comparison was that paid hours net holidays for the Broadview Police Department was also higher in other communities. Applying the same ratio of the differences between the police unit in Broadview Heights and the police in the other twelve communities to the annual paid hours net holidays of Fire Fighters, the Union concluded that the paid hours net holidays for its members should be 2,468 hours. The Union

concludes arguing that it is not asking for the same parity as the relation of the Broadview Police Department to the other police departments with respect to the holiday hours. Rather it is seeking to phase in an increase that by the end of the contract term would have the Fire Fighters in the position possibly the same as the relationship of the police to the police of other communities. The Union's position is that the current non-holiday hours of 2,612 would be reduced by its proposal in the first contract year to 2,552 and then the second contract year to 2,492. At that point (ie 2,429) it is still higher than the average as among the Fire Fighters of other communities, but is within the same relative area as the Broadview Police is with respect to the sample of police of other communities used for comparison.

To the response that the increase in holiday hours would set a precedent for other units in the City particularly the Police Department, the Union responds that its increase would put it in parity with the other fire departments in the same relation that the police would have to other police departments.

CITY POSITION: The City proposes no increase to the Holiday Hours.

The present holiday benefit is comparable or above the holiday benefits of other cities both within and without the City. The Union's proposal nearly doubles the holiday time off by the end of the contract term increasing an already generous benefit. It would add 120 hours to the 144 already in the Agreement. The current provision is already generous and conforms with the City's philosophy of preferring to pay for work than non work. An increase in the holidays is an increase in non-work pay.

With respect to comparison to the police, the holiday hours represent 4% of the average annual hours of police work. In equivalent terms, that percentage of the hours of

work on the Fire Fighters' schedule of 2,756 per year would mean 106 hours holiday. Since the Fire Fighters now receive 144 hours, they are receiving more than the time off in the City based on a percentage of annual hours of work than the police. The City has already changed the holiday schedule to negotiation when pursuant to a Fact Finder Report the holiday time off was increased from 106 hours to 144.

The City stated that it would prefer to pay more in compensation than to give additional time off. It demonstrated with an array of ten other cities that Broadview Heights was 4th highest in hourly rates and also 4th lowest in holiday hours. Indeed it appears that the hourly rate is inversely relational to the holiday hours provided. The higher hourly rate a fire fighter receives the lower number of holidays are observed as paid time off. If the hours are reduced, wages will have to be reduced. The City is in the middle of the pack in terms of holiday hours, but the comparison of annualized hours net hours worked cannot be made.

The Union is asking for the time off without compensatory credit in compensation. The cost to the City is not merely the compensation to the employee having had time off, but the cost of fill-in. The City estimated that one of the 15 bargaining unit members is employed merely for the purpose of covering the paid time off.

Further the City argues that Solon, Parma and Strongsville are not comparable based upon the size of the city. The City notes there are extraneous provisions in other cities relative to the changes in the holidays. For example, Independence reduced wages by 3% to accommodate a change in the holiday schedule.

The City criticizes the Union's "annualized net hours worked" in that those hours are not worked. They include vacation hours for example and furthermore no fire fighter works

all of the hours identified. With the holiday time off and the vacation time off, a 24-hour schedule equates to 100 days or less work actual work in a year.

The City objects to the comparison of the police department and fire department on this ground for any purpose. The nature of the work is substantively different. If the fire fighters would work 80 hours in a two-week period, it would be fair to compare it to the police department. The Fire Fighters insist on maintaining the 24 on, 48 off schedule. A 24-hour tour of duty is not the equivalent of the work being done on an 8-hour shift by the police department because it is not all productive time.

IN REBUTTAL. The Union rebuts that Solon, Parma and Strongsville as an appropriate comparison based upon the City's use of those other communities in doing a survey for non-bargaining unit work done by other city employees.

The Union argues that the increase in the holiday hours would not directly increase other benefits for example overtime. The City's position would increase wages rather than time off with compounding effects in terms of costs on the other related benefits.

The Union states that it realized that change in holiday hours is a cost, but that the bargaining unit should be paid similar to the industry standard and that the Union's proposal brings the bargaining unit closer to that standard. The bargaining unit ought not have to pay for privilege of having its benefits in line with the industry standard particularly since the City has the ability to finance this benefit.

The Union agrees that the City of Independence reduced costs by a trade off of wages for holiday time off, but the precedent in that negotiation ought not to have an effect outside of that city. The bottom line is that the Broadview Fire Department works more hours. As to comparison with the police department, the Union agrees they cannot be

compared. The comparison the City is making is the one the City is saying is unfair, The City compared the fire department to the police department. What the Fire Fighters are arguing in their comparison is that they wish to be paid in the same relative position in their industry as the Broadview Police Department is paid in terms of the holiday benefit in their industry. The Union made a police department to police department comparison and a fire department to fire department comparison and did not cross compare the two fields.

IN REBUTTAL The City argued further as follows.

With respect to the survey of communities are non-bargaining work, the City states that the market for non-bargaining unit work is a different market than that for bargaining unit work. It stated that the inclusion of Strongsville, Solon and Parma, for that purpose is legitimate because the City hires from those areas.

On the issue of cost, the City notes the Union wants to get closer to the level of other units, but is not willing to make adjustments that other units have made. Passing the burden onto the taxpayer should not be the legitimate response. It should not be a burden. Comparability is not being identical in every case. Equity is argued with respect to this benefit, then it should be with respect to wages and Broadview Heights favorably compares on that scale.

FINDINGS AND RECOMMENDATIONS

Fact Finder finds that in view of the collective bargaining agreements on holidays and adjusted through the presentation of the parties, the comparison as reflected by the corrections brought out in the hearing are:

	Holiday Hrs.	Ave. Wage (City data)	Annual (Union data)
Maple Heights	240 hours*	17.00	43,040
North Royalton	240 hours*	17.07	43,950
Garfield Heights	192 hours	17.28	43,424
Parma Heights	144 hours	17.31	44,520
Broadview Heights	144 hours	17.48	45,210
Middleburg Heights	144 hours*	18.11	45,240
Independence	120 hours	17.24	44,243
Brook Park	32 hours**	19.25	45,094

* Includes personal and other untraditional holidays.

** Brook Park scales up its holiday hours to 80 and 104 hours in the coming two years.

The studies by the Union of "annual net hours worked"¹ was slightly inflated by the absence of Broadview Heights from the array. This calculation, however, does not account for other paid time off in the respective agreements such as vacation time off. Among the comparable communities many have more mature Fire Fighters units which have been full time for a longer period than Broadview Heights has. Having had a longer history of full time employment, those units would likely have greater longevity rights in terms of vacation.

The Fact Finder finds that the Annual Paid Hours Net Holidays, when Broadview Heights is considered in the array (but Parma, Solon and Strongsville omitted), averages 2,464, with Broadview Heights maintaining 2,612 hours. Without Broadview Heights in the array and using only the nine others, the average is 2,447 hours. It is appropriate that Strongsville, Solon and Parma be omitted as not having been traditional comparators. Nonetheless, Broadview Heights' Annual Hours Net Holidays is still higher than the mean regardless of the array used. The circumstantial case of need has been made.² From this

¹ This is a confusing description because it is not work hours. Thus, the Fact Finder will use "Annual Hours Paid Net Holidays" as the better description of the Union's information.

² Similarly the comparison of the police to their counterparts is also illustrative of a case of need for change without magnitude being addressed.

data, an adjustment is indicated but the degree is not because it is too easily skewed by longevity rights like vacation.

The Union in part bases its 60 hour per increase on a study of the changes from 1995 to 2000, yielding 56.5 hours. However, that calculus does not give information about the starting points of the changes. It may be that a community went from extremely low to high. Also, the changes studied are the Annual Hours Paid Net Holidays which do not give any information about holidays themselves. The sample considered by the Union also includes four with no change at all which, out of 12 communities, tends to exaggerate the average. In all, that is not a reliable piece of information on which to determine the amount of increase appropriate.

However, it must be observed that, while the modal figure for holidays is 144, the City's provision, there has migration of the mean beyond the mode. Continuing to use the Union's figures, over time the change in the holiday time averages with all of the communities it studied went from 160 holiday hours in 1995 to 176 holiday hours in 2000, an increase of 16. In the same period time, the Annual Hours Paid Net Holidays increased 2,508 to 2,449 an increase of 60 hours. Since the holiday hours increased only modestly in the same period time, and certainly not at the relative rate of 60, it must be that the other factors influenced the Annual Hours Paid Net Holidays, such as vacations.

Therefore, the Fact Finder has found that an appropriate increase in holiday hours, for the Broadview Heights Fire Department would be in the nature of 12 hours, not 60 or 120. This would maintain the relationship to the average shown in the holiday hours only.

However, what is also found is the observation that the wage rate is inversely related to the number of annual holiday hours. On that scale, Broadview Heights' relative hourly rates (4th high in the above array) and relative number of holiday hours (fourth low) would

be affected by any increase in the paid time off. Therefore, additional holiday time will have a depressing effect on compensation.

The Fact Finder finds it reasonable to increase the holiday hours by 12 the in the second year of the agreement. However, to prevent undue escalating costs associated with added paid time off, that certain eligibility rules would be appropriate. Such rules are becoming more prevalent among the comparables when the holiday hours increase on the scale beyond the mode. In addition, the City's concern for paying for work rather than non-work is legitimate. Including certain eligiblity rules for the additonal holiday time can assure that concern is resolved.

Therefore, the Fact Finder recommends that Article XXXV Section 1 of the Agreement expiring December 31, 1999 read as follows:

SECTION 1: Effective January 1, 2000, employees shall be entitled to one hundred forty-four (144) hours of holiday pay. Holiday time off may be used in twelve (12) or twenty-four (24) hour blocks.

SECTION 4 (New). Effective January 1, 2001, employee shall receive one (1) additional personal holiday of twelve (12) hours in a calendar year period. To be eligible for the personal holiday, the employee must have worked as scheduled during six (6) of the 12 months of the preceding calendar year. Holiday time off for the personal day may be taken at any time during the year after meeting the eligibility and with prior approval by the Chief. If the time off is not taken, the eligibility lapses without pay.

ARTICLE XXII CONFORMITY TO LAW

UNION POSITION: The Union proposes to modify this article by making the agreement subject to, and subordinate to any present and future state and local law.

SECTION 1. This agreement shall be subject to, and subordinate to, any applicable present and future state and local laws, along with any applicable rules regulations and the invalidity of any provisions of this Agreement by reason of any such existing or future law or rule or regulation shall not affect the validity of the surviving positions.

This differs from the current language which states that this Agreement "shall supersede any present and future laws." The Union refers to R. C. 4117.10(A) and argues that a change in this language subordinating the Agreement State law is necessary because if the Agreement provides less than applicable law then the law should prevail.

The Union believes there is no justified reason for having the current language in the contract. The Fact Finder Report of January 8, 1997 by Bernard Trumbetta with respect to the part time fire fighters of the Broadview Heights Fire Department, 97 MED 03-0246, rejected a provision similar to the existing Section 1 stating it was without necessity and suggesting that it may be void as against public policy. Of the communities used in our comparables, only one (1) city has similar language. Four (4) of the cities have language similar to the Union's proposal. The remaining seven (7) cities do not have language addressing the issue. The Union argues further that only two cities have this language, Independence and of Broadview Heights. All of the others had provisions to the contrary that stating the intention of the parties to comply with or be subordinate to state law.

In answer to the objection that this provision has no affect on the bargaining unit, the Union points to the vacation credits of a fire fighter that were discontinued by action or by ordinance when he went to a full time schedule.

CITY POSITION: The City proposes no change to this article. The City states that this clause has been part of each of the Collective Bargaining Agreements since first one with the only change was that in 1998 the word "federal" was removed by agreement by the parties.

The City for its position states it recognizes that many cities do not have a similar provision. Most have the formulation of the agreement being "subordinate to" the law. Some do have the provision that states the agreement shall "supersede the present and future state law." For example, both the Parma Police Department sergeants and patrolmen have a "supersede" form of the clause. Similarly the Broadview Heights' dispatcher and Independence Fire Fighters have the "supersede" form. In addition, all of the other units in the City of Broadview Heights, with the exception of the part time fire fighters, have the "supersede" form.

The part time fire fighters had the clause excised form their first agreement in the fact-finding process in 1997. Since the language was never in their agreement, it was not an issue of having an agreed to provision later removed. However, in that unit, difficulty arises by the absence of this clause. It has resulted in an additional term by the Fireman's Association in their agreement that states that the parties had negotiated to all of the wages, hours and working conditions and that anything not stated in the agreement was intended to be zero.

With respect to the vacation credits of fire fighter, Kulow, the City states that the matter had been resolved by a grievance settlement.

The City states that it believes that other cities are in jeopardy by not having the superseding form of the clause because the parties themselves should be in control of their agreement leaving nothing subject to chance by way of legislation. The parties should be able to rely upon the agreement of one another to the provisions of the Collective Bargaining Agreement and not look for an opportunity that the state legislation would in some obscure way

allow for a change in the agreement not anticipated by the parties.

IN REBUTTAL The Union pointed out that the agreement of the Broadview Heights dispatchers is really not supportive of the City's position because the term is nonsensical as written. It reads:

15.1 The provisions of this agreement shall prevail over or be subject to any present and future federal, state and local laws, along with any applicable Rules and Regulations as provided in Revised Code § 4117.10 in view of any provisions of this agreement by reason of any such existing future law or rule or regulation shall not affect the validity of the surviving portions.

The Union points out that the Agreement cannot both prevail or and be subject to the law. Thus two bargaining units in Broadview Heights, the dispatchers and the part time fire fighters, do not effectively have a clause of a similar nature to Section 1, Article XXII.

FINDINGS AND RECOMMENDATIONS

Article XXII Conformity to the Law has three sections: Section 1 pertaining to superseding changes of law; Section 2 is a savings clause, and Section 3 provides by negotiations over portions of the agreement affected by legislation or court determinations.

The Fact Finder finds that the Existing Conformity to Law clause is not a universal term in all agreements in Broadview Heights. Two units in Broadview Heights effectively do not have similar language. The dispatcher clause is self contradictory and the part time fire fighters clause was rejected in a Fact Finder Report. The Fact Finder notices also that it is a term that is almost universally absent in other collective bargaining agreements.

Indeed, the language of Section 1 attacked by the Union is very problematic. It states:

This agreement shall supersede any present and future state and local laws, along with any applicable rules and regulations and the invalidity of any provisions of this agreement by reason of such existing or future law or rule or regulation shall not affect the validity of the surviving portions.

The first clause states the agreement shall supersede legislation and regulation, but the second clause says that the "invalidity" of the agreement by reason of such legislation or regulation does not affect the validity of the balance. The Agreement cannot both supersede the law and have been invalidated by the law. If the Agreement truly prevails over law, then there is no worry about survivability of the remainder being intact.

Moreover, R.C. 4117.10(A) indicates that the state law would prevail in the absence of an agreement or in the absence of a "specification" in an agreement. R.C. 4117.10(A) in part applicable recites:

Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all of the applicable state or local laws or ordinance pertaining to the wages, hours, and terms and conditions of employment for public employees.

In other words, the affirmative benefits of state law can be superseded by specific agreed upon provisions only. A general term such as the existing Section 1 of Article XXII Conformity of Law, in the Fact Finder's opinion, may not be sufficient in light of the intent of R.C. 4117.10(A) that there be a "specification" in order that an agreement supersede laws regulating public employment. Thus, the clause has both dubious utility and syntax.

Nonetheless, the City's argument is well taken that the parties bear the prime responsibility for their relationship and ought not desire their joint agreement to be undermined by uninvolved entities.

It does not escape the Fact Finder's notice that the language of this Agreement contains within it self-healing characteristics. With respect to legislation and case law that may renders any part of the Agreement "invalid" or "unenforceable" under Section 2, the balance remains unaffected but, more importantly, Section 3 requires the parties to enter into negotiations on the affected parts. Thus it appears to be the parties' intent is that negotiation be the balm for

countervailing legislation and case law that causes invalidation unenforceability. That intent must apply equally to the superseding effect of the affirmative provisions of present and future law on public employment under R.C. 4117.10(A).

Therefore, the Fact Finder recommends that Article XXII of the Agreement effective January 1, 2000 read as follows:

SECTION 1: This agreement shall be subject to and subordinate to any present and future state and local laws, along with any applicable rules and regulations and the invalidity of any provisions of this agreement by reason of such existing or future law or rule or regulation shall not affect the validity of the surviving portions.

SECTION 2. As is.

SECTION 3 Should any Article, Section or Subsection of this Agreement either be deemed to have been superseded by any present and future state and local laws or ordinances, along with any applicable rules and regulations, pertaining to wages, hours, terms and conditions of employment of the employees, or be deemed invalid or unenforceable under Section 2 above, the parties shall enter into discussion on the superseded, invalidated or unenforceable section to negotiate successor sections.

ARTICLE XXXVI COMPENSATION SCHEDULE

UNION POSITION: The Union proposes an increase to the compensation of 4% in 2000 and 4% in 2001. Of the communities the City has historically used to review wages and benefits provided to employees, the Broadview Heights Fire Fighters have the longest workweek and work the most hours on an annual basis. After reviewing the adjusted hourly rate of the comparable communities, the data indicates that the Fire Fighters are compensated .94/hour less than the average adjusted hourly rate. Since the Fire Fighters are compensated far less than the average of the comparable communities, and since the 4% is a reasonable increase that the City has the ability to finance, the position of the Fire Fighters should be adopted.

The Union demonstrated that dividing the 1999 fourth year rate for Fire Fighters by the "annual net hours" it used in the holiday discussion that the City had an average 1999 hourly

rate of \$17.31 compared to an average of the same 12 other communities of \$18.25. The Union also made the same type of calculation for the Broadview police department and then compared its average reached by that method to seven other police departments. This was repeated for the agreed year 2000 salaries of the City's police department relative to other cities, and for the Union's proposed fire service rates relative to other cities also. This data was then compared: the police rates to a sample within their public service and the fire rates to a sample within their public service. The conclusions the Union found were that the City's police were \$0.25 below average in their 1999 and 2000 rates but the City's fire service was \$0.94 below average in 1999 with the Union's proposal bringing them to \$0.50 below in 2000. To have the same standing in their service as the police do in theirs means the fire service rate should be \$18.72, still above the \$18.42 proposed. Even when including the cost of the Union's proposed holidays, the Union argues that the net hourly rate it uses in this exercise is still below the 2000 averages of other communities but exceeds the average by about \$1.00 in 2001.

On the effective date of the increase, the Union argues that the contract term was changed in Fact Finding to coincide with the police contracts, something the City had proposed. Previously it was a July 1 effective date and became a January effective date. In effect the expiring contract was an 18 month contract. The Union resisted but had to be persuaded by Fact Finder Mancini. Therefore, the wage increases should coincide with the contract term, ie January 1. Indeed the City had increased the medical insurance premiums on January 1, 2000.

CITY POSITION: The City proposes an increase to the compensation to 3.25% in 2000 and 3.25% in 2001. It argues the current Fire Fighter base wages are above average of comparable Fire Fighters of communities. The increase proposed is also comparable to other comparable communities.

The July 1, effective date of the increase is simply consistent with prior wage increases. There was a change in the contract term from July 1 to January 1 in the last agreement. As a result the last increase for the Fire Fighters was July 1, 1999, six months before the contract expired. An increase on January 1, 2000 represents an increase within six months of the last increase and there is no justification to do that. The Union proposal would be an increase of 7.5% from July 1, 1999 to July 1, 2000. No Fire Fighter unit has that level of increase.

The Union's use of "annual net hours" to determine an hourly rate is wrong. If a city is low on holiday time, the so called "net" average hours will be high. To divide the annual wage by that is a misleading way to arrive at an hourly rate. The same is true of the comparison to the police but that comparison is also inappropriate due to the differences in work, skill and qualifications and working conditions.

Any city that pays more in wage rates hourly and annually has additional hours of work. The pay rate is not determined by whether it has more or less holidays. To reduce the paid hours by holiday time in a convoluted way to make a comparison.

FINDINGS AND RECOMMENDATIONS

The fire service received an increase in July, 1999, of 3.5% . The City is correct that an increase in January by some annual improvement factor would effectively be two annual increases in one twelve month period. However, it was the City that sought the change of the contract term. Nonetheless, wage rate expires with the contract, absent interim measures pending negotiations. To maintain July 1 wage changes in 2000 would require it be done in perpetuity, putting the contract constantly out of synchrony with the wage scale. Were that to be the practice, it creates an artificial disincentive for any employer to negotiate in good faith because the negotiations would precede the economic benefits of the contract by six months. There is no doubt the effective date of the wage change should be January 1.

Fact Finder finds that the method of the Union would have had much useful information had it not proceeded from a fallacious premise. To remove the holiday time from an annual hourly rate comparison skews the results by one variable, and it is a variable that is unrelated to either work performed to pay received. That is , no work is performed on holidays and the pay received is not driven by the number of holidays a person receives. For the exercise to be valuable the Union should have either calculated annual hours of work or average annual paid hours. Annual hours of work is reached by deducting all paid time off, holidays and vacations including and adjusting for averages on such things as sick time, bereavement, overtime premiums etc. The annual average paid hours is reached by adding all paid time including paid time off and also adjusted for averages on such things as sick time used, bereavement, overtime etc. Using either of these to be the denominator for the base rate or the average salary (eg average W-2) would yield far more informative data. As it is, the Union's analysis took only the first steps. It resulted in a comparison that is misleading in its incompleteness.

Other data is more useful. In 1999 the 14 fire fighters earned an average of \$47,802 with an average rate of \$17.27. That is suggestive of 2,768 as the annual hours of work. Using the 1999 Fire Fighter rate (fourth year) rate the comparison of the communities shows:

Annual		Holiday Hrs.	Ave. Wage (City data)
43,040	Maple Heights	240 hours*	17.00
43,424	Garfield Heights	192 hours	17.28
43,950	North Royalton	240 hours*	17.07
44,243	Independence	120 hours	17.24
45,094	Brook Park	32 hours**	19.25
45,210	Broadview Heights	144 hours	17.48
45,240 ³	Middleburg Heights	144 hours*	18.11
44,520 ⁴	Parma Heights	144 hours	17.31

³ The evidence presented at hearing differ on the annual salary for Middleburg Heights and Parma Heights The Union's figures are used. The relative position on the table remains unchanged by this choice,

⁴ *Ibid.*

Since holiday time off is inversely related to salary, and the Fact Finder has already recommended an additional 12 hour holiday, the salary increase should be slower than without the holiday. Also cautioning this is the high relative standing of the City pay scale in the array.

One other factor is the changed effective date of the wage increase accelerating an annual factor adjustment by six months.

Therefore the Fact Finder recommends that Article XXXVI COMPENSATION SCHEDULE, Section 1, be amended to increase all rates for all classifications by 3.25% effective January 1, 2000, and further that effective January 1, 2001 the same section be amended to increase all rates for all classifications in effect January 1, 2000 by 3.75%.



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Fact Finder
Made and entered at Cleveland, Ohio
March 2, 2000