CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 1, 2002

In the Matter of:	)	
The City of Lakewood	)	
and	)	00-MED-09-0952
Local 382 International Association of Fire Fighters	)	

APPEARANCES

For Local 382:

Tom Hanculak, Attorney
Jim Astorino, President Northern Ohio Fire Fighters
Daniel Herdman, President Local 382
James Heffner, Local 382 Bargaining Committee
Douglas Hennie, Local 382 Bargaining Committee
David Kachler, Local 382 Bargaining Committee
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Daniel Waitkus, Local 382 Bargaining Committee

For the City of Lakewood:

Gary Johnson, Attorney
Larry Mroz, Fire Chief, City of Lakewood
Kevin Reynolds, City of Lakewood

Conciliator: Dennis M. Byrne

Background:

The parties to this conciliation are the employees of the Lakewood Fire Department represented by the International Association of Firefighters (IAFF) Local 382 and the City of Lakewood. Prior to the Conciliation, the parties held numerous negotiating sessions and participated in a fact finding hearing. In addition, the Conciliator spent one day in mediation prior to the formal hearing. Originally the parties presented twenty issues to the Conciliator. However they were able to resolve most of these items during mediation and only four issues were raised at the hearing. They are: 1) stipends for the EMT personnel and Firefighter paramedics; 2) length of the workweek; 3) vacation scheduling, and 4) language on transfers. The mediation session was conducted on February 28, 2002 and the conciliation hearing was held on April 10, 2002. Both hearings were held at the Lakewood City Building. The conciliation hearing was convened at approximately 10:00 AM and adjourned at 3:00 PM.

The Ohio Public Employee Bargaining Statute sets forth the criteria a conciliator is to consider in making recommendations. The criteria, which are set forth in Rule 4117.14(G)(7), are:

(1) Past collectively bargained agreements, if any, 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedures in the public service or private employment.

The Report is attached, and the Conciliator hopes the discussion of the issue is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Conciliator would be glad to meet with the parties and discuss any questions that remain.

Introduction:

The main area of disagreement between the parties is the way that vacations are scheduled. The Union believes that the vacation scheduling process in effect last year was not equitable. The reason for the problem is that the City took over the paramedic duties previously supplied by Lakewood Community Hospital and hired the hospital's paramedics as members of the fire department. Parenthetically, these paramedics formed their own separate bargaining unit, the Lakewood Paramedic Association, and are not represented by the IAFF. The city then allowed the newly hired paramedics to schedule their vacations based on seniority earned at the hospital. Therefore, some of these paramedics were able to schedule vacations during the summer months. The Union argues that its members often were forced to schedule their vacations at less desirable times. The Union believes that the vacation scheduling process should follow the historical pattern and be restricted to members of the IAFF.

During negotiations and fact finding, and at the conciliation hearing, the City presented data that showed that the vacation schedules caused an enormous amount of overtime and increased personnel costs. The City argued that it does not have the ability to continue paying these costs. Consequently, it demanded that the two separate bargaining units be considered as a single unit, i.e., folded into the same vacation list, for purposes of vacation bidding. This would effectively force members of the fire department to schedule vacations each and every week of the year. According to the City's analysis, this would cut the use of overtime substantially. The Fact Finder heard both sides of this discussion and recommended that the City's position be incorporated into the final contract.

The Union disagrees with this result and stated that its membership is not responsible for the City's problems with overtime. The Union argued that it does not represent the ex hospital paramedics and that its membership should not be forced to schedule vacations with the hospital paramedics getting some of the more desirable slots based on their seniority. The Union also believes that the entire overtime liability faced by the City is due to the way that the newly hired paramedics were allowed to bid for vacations. Therefore, the Union believes that it should not be forced to have the hospital paramedics on their vacation schedule. The Union's position is that the two units are distinct and should be treated separately.

The City argues that the Fact Finder heard all of the testimony and awarded its position. The City contends that the Conciliator's recommendations should mirror the Fact Finder's in this instance. Therefore, the role of the Conciliator and the relationship between a fact finding report and a conciliation report need some elucidation.

A Conciliator must carefully weigh a fact finder's report. If a Conciliator overturns the Fact Finder's recommendations, as a matter of course the fact finding process becomes meaningless. In that situation, a party will follow the dispute resolution procedures contained in ORC 4117 all the way to conciliation if any single fact finder's recommendation is not to its liking. This will add cost and uncertainty to the process. What the legislature envisioned when it passed the collective bargaining statute is a process whereby the parties have a neutral's recommendation on the issues, a fact finding

report, that can serve as a template to help them craft their final agreement. The fact finding report is, of course, non binding; but it is an experienced neutral's best recommendation on a solution to the problems that divide the parties. If one or both parties do not agree with the report, either can push the process to conciliation. In that eventuality the conciliator will issue a binding recommendation.

For both practical and theoretical reasons, conciliators will scrutinize fact finding reports very carefully. A conciliator is not bound to follow the fact finder's recommendations, but only a foolish or naive conciliator will change the fact finder's recommendations without an overriding reason. In general, the party that disagrees with the fact finder must prove that the neutral made some mistake in fact or logic. If the moving party cannot adequately prove that the fact finder made a mistake, then there is no reason for a conciliator to make a different recommendation than the fact finder.

It is clear that a conciliator should not change the fact finder's recommendation simply because he/she disagrees with it. That is, the conciliator cannot simply make the argument that he/she would have come to a different conclusion than the fact finder and therefore, offer a different recommendation. Whether or not a conciliator agrees with the recommendation is somewhat beside the point. The conciliator must be deferential to the fact finder unless it can be proved that the fact finder made a serious error in his/her report. This means that the bar has been set very high for the party that wishes to have the fact finder's recommendations modified.

In practical terms a party that disagrees with the fact finder's recommendations must accept the burden of proving that the fact finder erred. In addition it must also be proved that the error is of sufficient magnitude that the fact finder's recommendation is unreasonable, not just unpopular. Therefore, in some ways the conciliator is faced with a two prong test. First, did the fact finder make a mistake? If the answer to that question is in the affirmative, then the second question is whether the mistake is of sufficient magnitude that the conciliator must negate the fact finder's recommendation. It is possible to prove that the fact finder made a mistake of sufficient magnitude to necessitate a conciliator making a different recommendation on an issue; but it must be an unusual occurrence if the integrity of the fact finding/conciliation process is to be maintained.

The parties to this dispute accept the foregoing analysis. The City argues that the Conciliator should accept the fact finding report and award the Fact Finder's recommendations. The only change that the City desires is a change in the transfer provision(s) of the existing contract. The City argues that the fact finder's report is silent on this issue because of an oversight. That is, the City believes that the Fact Finder would have awarded its position on the transfer issue, but that he inadvertently left the discussion of this issue out of his report.

The Union accepts that fact that it must prove that the Fact Finder erred in his recommendations. The Union's position is that the report is substantially correct, but that in three areas there is reason to believe that the Fact Finder either made a mistake or did not fully understand the evidence presented by the Union. In these instances the Union argues that the Conciliator should amend the Fact Finder's recommendations. With the foregoing as an introduction the outstanding issues can be discussed.

Issue: Article 7: Workweek

Union Position: The Union demand is for a 49.6 hour workweek rather than the current 50.4 hour week.

City Position: The City argues that the Fact Finder's recommendation for no change in the current workweek should be accepted by the Conciliator.

Discussion: The Union made a somewhat unusual presentation on this article. The IAFF did not argue that the Fact Finder made a mistake; rather, it believes that his recommendation on this issue is an "aberration." The Union argued that the Fact Finder based many of his recommendations on the information contained in the comparables presented by the parties. In the Union's view he modified long standing provisions of the contract because these provisions were not in line with the same provisions in comparable jurisdictions. The Union believes that this same logic should prevail when the Fact Finder discussed the length of the work week. The Union presented data from comparable jurisdictions that show that the average work week in the area is 49.6 hours. It should be noted here that this issue is somewhat more contentious than it superficially appears because it also affects the accrual rate for vacation and health care benefits, etc. The Union argued that the Fact Finder should evaluate this issue in the same way he evaluated other issues; and since his analysis stressed comparability in recommending changes in some articles of the contract, he should use the same standard in deciding this issue. Therefore, the Union believes that the Conciliator should modify the Fact Finder's recommendation in this instance.

It must be pointed out that the evidence the Union presented in support of its position is the same evidence that was presented to the Fact Finder. In this instance the Union believes that the Fact Finder understood the evidence, but he was not consistent with his logic in deciding this issue. Essentially the Union's position is that if the Fact Finder was using the evidence from comparables to decide issues, then he should use that evidence throughout his report.

The City argued that the Fact Finder understood the issue and decided that the current work week was comparable to other jurisdictions. That is, the difference between 50.4 hours and 49.6 hours is minimal. In addition, the City argued that there is a cost consideration in this issue and that its finances are such that even small increases in the cost of running the department cannot be accepted at the present time.

The question turns on two factors. First, did the Fact Finder know what he was doing when he made this recommendation? There is nothing in the record to indicate that the Fact Finder was unaware that the current work week in Lakewood is somewhat higher than the work week in surrounding communities. His report states, "There is not a great deal of difference between the Lakewood workweek and the average in the area." In his report the Fact Finder considered the Union's position and found that the evidence taken as a whole supported the City's position on this issue.

The second factor to be considered is whether the evidence presented by the Union was so compelling that the Fact Finder should have been persuaded by the Union's

presentation. The Conciliator does not believe that the fact that the Fact Finder did not recommend strict comparability with the average workweek with surrounding communities is noteworthy.

The use of comparables is somewhat misunderstood. If a neutral used only the "evidence" of comparables, he/she would not be following the requirements of ORC 4117, which lists a number of factors to be considered when making recommendations. But, if a municipality is far out of line with other jurisdictions in terms of some contract provision, then the comparables point out a potential inequity. If there is no reasonable explanation for the discrepancy offered at the hearing, then a neutral sometimes makes a recommendation based on comparability. However, if the discrepancy is small then the neutral will often conclude that the provision in question is essentially the same as the provision in other contracts. In that case he/she will not recommend a change in the contract.

This is the situation here: the Fact Finder understood the evidence but he did not believe that the discrepancy pointed out by the Union was large enough to warrant a recommendation for change. This is especially true given the fact that the City argued that there would be cost ramifications that the City could not afford at the current time.

Award: The Conciliator believes that the Fact Finder understood the parties' positions on this issue and that the Union did not provide evidence that proved the Fact Finder made a mistake. Therefore, the workweek shall remain at 50.4 hours as the Fact Finder recommended.

Issue: Article 3: Wages

Union Position: The Union demand is for a stipend of $1,500.00 for the paramedics and a stipend of $750.00 for EMT personnel.

City Position: The City position is that paramedics should receive the same compensation as police officers, i.e., the Fact Finder's recommendation.

Discussion: The Fact Finder found that the stipend paid to all Lakewood medical response personnel is below average for the area. He recommended that paramedics receive an increase in their paramedic stipend so that the base pay of paramedics plus the stipend equals the base pay of police officers. That is, the Fact Finder recommended parity between the police officers and the paramedics. The Union disagrees with this analysis. The Union contends that the Fact Finder made a mistake when he crafted his recommendation.

The fact finding report states that, "At the hearing it was indicated that EMT personnel no longer provide medical service to City residents. Thus, no increase in the EMT stipend is appropriate and none is recommended." The Union stated that this statement is counterfactual. The Union argued that this mistake caused the Fact Finder to set the pay or paramedics equal to the pay of police officers. According to the Union's analysis EMT personnel are usually paid the same as police officers and paramedics are

paid more because they are more highly trained than either EMT personnel or police officers. The Union contends that paramedics should be paid a rate comparable to a police investigators based on the level of training needed to become a paramedic. The Union presented a number of exhibits to illustrate this fact. Therefore, in this instance the Union believes the Fact Finder's recommendation is based on an erroneous conclusion and should be changed.

The City did not dispute the fact that EMT personnel still provide medical services to the citizens of Lakewood, and it did take note of the difference in training and responsibilities between EMT personnel and paramedics. However, the City argued that the Fact Finder recognized that there was a difference in the stipend pay between Lakewood and the surrounding areas, but he stated that adoption of the Union's proposals would be excessive at this time. The City also pointed out that the Fact Finder recommended that all paramedics receive the stipend whereas previously only a few members of the department received the extra pay.

The City ended its presentation by testifying that its finances do not allow it to pay more than the Fact Finder recommended in the coming year(s). The City contends that the Fact Finder may have misunderstood the role of EMT personnel, but his recommendation is reasonable based on the entire record. In this context the City argued that the wage and earnings data supplied by the Union in its exhibits was somewhat misleading in that the wage figures given for the surrounding communities were based on 2001 figures, i.e., had the 2001 pay increase included whereas the data for Lakewood are based on the 2000 wage rates because the contract has not been finalized. The City contends the firefighters are not at the bottom of the comparables list with regard to income, regardless of stipend levels, when the agreed upon 4.5% raise is included in the Union's exhibits.

This is a situation where the Conciliator is bound by the strictures of ORC 4117 that require him to choose between the parties' final offers. In this case the Conciliator is convinced that the Fact Finder made a mistake in his report. It is clear that EMT personnel do still provide some medical services to the citizens of Lakewood. If the Conciliator had been the Fact Finder, the recommendation on the stipend payments might well have been different than the recommendation put forward by Dr. Graham. However, that is not the point.

It is true that Dr. Graham made a mistake in his analysis of the situation. That is, the Union has met the first part of the test; it proved an error occurred. The second part of the test is whether the error is of sufficient import that the Fact Finder's recommendation should be changed. In this instance, the Conciliator does not believe that the error is so serious that he should change the Fact Finder's recommendation. The size of the Union's demand coupled with the City's financial condition means that the City cannot be expected to meet the Union's demand at this time. During the conciliation hearing, the City Finance Director testified that the City's financial position was so weak that layoffs were a distinct possibility. At the present time, the Conciliator believes that the weight of the evidence narrowly supports the City's position on this issue.

The Conciliator is aware that the EMT stipend is unchanged at $375.00 and the paramedic stipend will rise to $700.00, both of which are below the amounts paid in other

surrounding areas. The Union's demand is to double these amounts. Given the entire record, the Conciliator believes that the demand is excessive at this time.

The Fact Finder noted that the department does not have a long history of providing medical services to the community. The usual way for a group to achieve significant increases in a benefit is to negotiate the benefit into the contract and then increase the amount of the benefit over a number of contracts. In effect that is what Dr. Graham recommended. He increased the size of the stipend and the number of individuals who receive it in this round of negotiations. Implicit in his recommendation is the fact that the parties will revisit this issue in the coming years. This is especially true given the fact that the parties will reopen the contract in 2003 and this issue will certainly be on the table, and the Conciliator expects that the City will become more competitive in terms of EMT and paramedic stipends in future negotiations.

Award: The stipend for EMT personnel shall remain at $375.00 and the payment for paramedics will rise to the level where the base pay of paramedics plus the stipend will equal the pay of police patrol officers to within $25.00.

Note: There shall be a BLS stipend of $375.00.

Issue: Article 14: Vacations

Union Position: The Union proposes that the current language which permits three (3) members of Local 382 to select vacation or holiday time off on any given shift to be maintained.

City Position: The City position is that both Local 382 members and paramedics who are not members of the Union select vacation and holiday time off a merged seniority list.

Discussion: The Fact Finder agreed with the City's position and recommended that all department personnel select vacation and holiday time off as a group. This decision was reached after a consideration of the evidence. There are two points that led the Fact Finder to this decision. First, the City proved that its overtime costs of providing different vacation/holiday schedules to the fire department personnel are extremely high. Second, there is an inherent logic in treating all personnel of the department in the same way, regardless of whether all of the affected individuals belong to the same union. Based on these considerations, the Fact Finder recommended that all members of the fire department bid on vacations and holidays as a unit. The Union strongly objects to this outcome.

A discussion of the history of the situation is needed at this point. Paramedic services in the area were provided by the local hospital. The City negotiated with the hospital and agreed to take over the provision of emergency medical services. As a result, the paramedics who worked for the hospital were hired by the City. Prior to the merger, the City had only a few paramedics and a complete complement of firefighters.

At the time of the service shift, a decision was made to keep the two groups separate as far as bidding for paid time off was considered.

Historically, fire department personnel went through a bidding process based on seniority to select vacation time. The department regulations limited the number of individuals who could be on vacation at one time to three firefighters. Therefore, the result was that some fire fighters, the less senior members of the department, were forced to take vacation time during the winter months, or during the early spring or fall. That is, some vacations had to be scheduled outside the normal summer vacation months.

When the paramedics were hired from the hospital, the City allowed these individuals to bid for vacation time based on their total accumulated seniority from both the hospital and the Lakewood Fire Department. In order to accommodate the bidding process that was specified in the firefighters' contract with the City, the City created a fourth vacation slot. That is, four individuals could be on vacation at one time. It is this forth slot that causes the overtime problem. The firefighters proved during the hearing that essentially all the overtime costs borne by the City came from the way that the hospital paramedics were allowed to bid for vacation. The Union claims that this proves that there is no need to modify the current vacation selection process.

In addition, some of the firefighters object to the fact that the newly hired paramedics were able to select "better" weeks for their vacation when compared to more senior members of the department. The Union believes that the problems will be exacerbated if both the hospital paramedics and the continuing members of the department are merged on to a single list for vacation/holiday bidding.

The City agrees that the process in place for vacation bidding during the last selection round was flawed. The City argued that it was not sure if the hospital paramedics would join Local 382; and when it became apparent that the two units were not going to unite, that caused some problems. The City dealt with these problems by living up to the strictures of its contract with Local 382, and by allowing the hospital paramedics to bid for vacation based on accumulated seniority from both the hospital and the Fire Department. The City contends that this was a stop gap measure put in place solely to get the department through the previous selection period. The City argues that this procedure is extremely expensive and was never intended to be the ultimate solution to the problem.

The City desires to merge the entire department into a unified group to bid for vacation/holiday time off based on departmental seniority, i.e., the hospital paramedics will be grouped at the bottom of the merged seniority list. The only members of Local 382 who will bid for vacation/holiday time below the hospital paramedics will be members who have less departmental seniority. According to the discussion on this matter, this will affect only three to five members of Local 382. This should go a long way toward meeting some of the concerns expressed by the Union. Long standing members of the fire department will not have less desirable vacation weeks than less senior members, unless they chose not to exercise their bidding rights.

The City also agreed to institute an enhanced buy-back program whereby Local 382 members can sell vacation/holiday time for cash. This will allow firefighters who desire to use less time off a way to trade that time for money. At the same time, any hours that are sold back will be free for use by other, presumably less senior, firefighters

for their vacations. There was some discussion on this issue during the mediation prior to the conciliation hearing and the Union indicated that it thought that the impact would be minimal. However, even if only one or two individuals avail themselves of the buy-back program it will still increase the time off choices available to other firefighters.

The major concern expressed by the IAFF was that firefighters would not be able to use their vacation/holiday time off it the City's proposals are accepted. The Conciliator is convinced that this concern is overdrawn. The most senior firefighters have an accumulated vacation time bank, and if all of these individuals elect to empty their banks in the same year, then there is not enough time off available for all members of the fire department to use their earned time off assuming that the City maintains its policy of only allowing three paid time off slots per shift. In the event that such a problem was to surface, the City agreed to add an extra time off slot for the affected shifts. This should ameliorate any problems with the total amount of time off available for use.

It must be emphasized that the Conciliator asked whether it is possible for a member of Local 382 to earn time and not be able to either be paid cash or use the time, i.e., whether a person would be forced to forfeit contractually earned time with no compensation. Under almost any set of assumptions this will not eventuate. It bears repeating, however, that the City agreed if any such situation did arise, then it would make more slots available for vacation/holiday time off.

The City's desire to minimize their overtime payments for paid time off is understandable. The City realizes that its proposal will force members of the Fire Department, both the hospital paramedics and Local 382 members, to select vacation time throughout the year. Under the City's proposed joint list bidding system, some firefighters will, most likely, be on vacation every week of the year. Consequently, some firefighters will be on vacation at times when they would prefer to be at work. This is unfortunate, but it is a fact of industrial life. Bidding systems for any contractually obligated benefit based on seniority lead to the less senior individuals getting the least desirable choices. Of course, as these individuals more up the seniority ladder, their situation improves. This is one of the major ideas behind seniority systems; the most senior individuals are rewarded for years of service by having the best choices when the bidding takes place.

The Union tried to show that the Fact Finder did not fully understand the evidence presented to him. The Union exhibits did prove that the overtime problems faced by the City were due in large part to the incorporation of the hospital paramedics into the Fire Department. This is true, but beside the point. The City has a Fire Department; it does not have two separate departments. The hospital paramedics and the firefighter paramedics go on calls together, i.e., they are scheduled as a unit. In general the City treats the department as a unit, and from the City's point of view, the overtime costs that it is forced to pay go to the Fire Department. Therefore, this is a situation where both sides are presenting their positions based on their own interests. Moreover, both sides are taking the positions that are reasonable based on their own view of the situation. The problem arises because these different views of the situation are incompatible.

The question for the Conciliator is whether the Fact Finder's recommendation was based on erroneous information or whether he caused an insurmountable problem for the

Fire Department with his recommendation. It is the Conciliator's view that the Fact Finder understood the evidence that was presented to him and that he did not make a fundamental error in his decision on this issue. The Fact Finder believed that a merged bidding list was reasonable in this situation. The Conciliator does not find that solution to be so unusual that he believes that recommendation should be overturned. This is especially true given the City's assurances that if any unforeseen circumstances do occur, it will make more slots available for bid. What the merged bid list does do is force some firefighters to take vacation on weeks that they would rather work, and work on weeks that they would rather be on vacation. This is a result of seniority bidding systems and is not unique to the Lakewood Fire Department.

Award: The Fact Finder's recommendation that all members of the Fire Department bid for vacation/holiday time as a single unit based on Fire Department seniority is not unreasonable when all the evidence is considered. This is especially true when the overtime costs paid by the City are taken into account and considering the financial position of the City.

Issue: Article 10: Posting of Notices.

Union Position: The Union believes that the Fact Finder made no recommendation on this issue because he chose not to make a recommendation. That is, the Union argues that he accepted the status quo.

City Position: The City believes that the Fact Finder inadvertently left his recommendation on this issue out of his report and that the Fact Finder would have recommended the City's position that the word transfer be deleted from Article 10, Section 1.

Discussion: The City believes that the current system of posting notice of a vacancy for ten days for a transfer even if the transfer does not create a vacancy is unreasonable. The City wishes to delete the word "transfer" to correct what it argues is an unworkable situation.

The Union response consisted of a number of points. First, the Union presented an arbitration report on this issue, where the arbitrator decided the issue in the Union's favor. The Union presented this report to show that the language in question had been, historically, a source of contention between the parties and had been scrutinized by an arbitrator. The arbitrator's decision was that the transfer of a firefighter created a vacancy under the wording of Article 10 and must be posted.

Second, the Union argued that by accepting the Fact Finder's report the City was barred from attempting to make changes in the recommendations. The Conciliator finds this to be a novel position and upon reflection does not agree with the Union's contention. There is no need to go into a long philosophical discussion on the reasons why the Conciliator does not agree with the Union. Suffice it to say that by turning down a Fact Finder's report the side that disagrees with the recommendations should not be

given a free "second bite at the apple." If the Union's position is accepted, then when a party disagrees with any provision in a Fact Finder's report, it will vote to turn down the report. However, the rejecting party will state that it disagrees with only one (two, etc.) issue(s) and accepts the other recommendations. If the other side accepts the report, the Union's logic implies that the party that rejected the report can attempt to modify some provisions of the proposed contract to its advantage with little or no cost. The Conciliator believes that this outcome is not what the framers of ORC 4117 envisioned when they drafted the act.

Finally, the Union argued that the Fact Finder did not make a mistake in his report. The fact that the Fact Finder's report was silent on the issue means that the Fact Finder did not choose to make a recommendation on this issue and, therefore, he accepted the status quo.

The Conciliator does not know why the Fact Finding report is silent on this issue. However, there is no reason to believe that the Fact Finder simply overlooked this issue in his report. The Conciliator has taken the view that in order to overturn a Fact Finder's recommendation there must be conclusive proof that the Fact Finder made a mistake. There is no evidence that the Fact Finder make an error, except the City's statement that is the case. The Conciliator cannot recommend a change in the language of Article 10 based solely on the City's contention that the Fact Finder agreed with its position but forgot to make a recommendation in his report. There was no proof of that contention put into the record at the hearing. Absent proof of the City's contention, the Conciliator believes that there should be no change to the language in question at the current time.

Award: The word transfer shall remain in Article 10, Section 1.

Note: All other agreement between the parties shall be incorporated by reference into the final agreement.

Signed and dated this 21st day of May, 2002 at Munroe Falls, Ohio.

Dennis M. Byrne
Conciliator

Exhibits:

Joint Exhibits:

1. The contract between the IAFF, Local 382 and the City of Lakewood dated October 29, 1998.
2. Fact Finding Report by Dr. Harry Graham Serb dated December 12, 2001. SERB Case No. 00-MED-09-0952

Union Exhibits:

1. Union Conciliation Statement
2. Arbitration decision by Nels Nelson dated April 6, 2000.
3. Union Analysis of Overtime and Vacation hours earned by the Lakewood Fire Department.
4. Union cost analysis of the change in wages v. the change in Union benefits.
5. Letter from William Schnitz to Dr. Harry Graham dated November 5, 2001 plus other attachments.

City Exhibits:

1. City Conciliation Statement
2. Exhibit entitled "General Fund Actual Expenditures vs. Revenue 1993 – 2002"
3. Lakewood Ohio Estimate of Revenues and Expenditures for the year ending December 31, 2002.
4. City of Lakewood 2002 Budget Book page 5.
5. City of Lakewood 2002 Budget Book page GF6.
6. Regional Income Tax Agency Distribution by Month.
7. City of Lakewood General Fund Receipts, Disbursements and Balances dated March 31, 2002.