



STATE EMPLOYMENT  
RELATIONS BOARD

2009 JAN -2 A 11: 37

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of Conciliation Between:	)	
	)	
Eastlake Fire Fighters Association,	)	07-MED-09-1004
IAFF Local 2860	)	
	)	
-And-	)	
	)	Conciliator:
City of Eastlake, Ohio	)	John T. Meredith

**FINDINGS, OPINION AND AWARD  
ISSUED DECEMBER 30, 2008**

**INTRODUCTION**

The parties to this Conciliation proceeding are the Eastlake Fire Fighters Association, IAFF Local 2860, and the City of Eastlake, OH. The bargaining unit consists of all regular full-time employees employed in the Fire Department in the positions of Fire Fighter, Fire Lieutenant, Fire Marshall, and Battalion Chief, a group of approximately 28 employees. The subject Agreement will be a successor to the January 1, 2005 – December 31, 2007 Agreement between the parties.

The parties initiated collective bargaining for the successor Agreement but were unable to resolve all issues. Jared Simmer was selected by the parties to serve as Fact-Finder, and he conducted two mediation sessions and a one-day fact-finding hearing. Mr. Simmer issued his Fact-Finding Report on September 4, 2008. This Report was rejected

by both parties, and accordingly, by letter dated September 25, 2008, SERB appointed the undersigned, John T. Meredith, to serve as Conciliator. By agreement of the parties, a mediation session with the Conciliator was scheduled for 10:00 a.m. on November 3, 2008. Some issues were resolved during mediation, but nine issues remained unresolved.

A two-day hearing was held on November 25 and December 1, 2008 to take evidence on these unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements to the Conciliator. The Position Statements contained the party's final offer on each issue, and fully complied with SERB Rules. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. Witnesses were sworn, and the parties and their advocates also presented unsworn arguments. The parties waived stenographic transcription of the hearing, and agreed to accept the written exhibits and Conciliator's notes as the record in event of an appeal.

Appearing for the Union at the hearing were: James Astorino, President NOFF/IAFF (Advocate), Doug Drake, Local 2860 President, Michael Kaska, Local 2860 Vice President, Josh Saperstein, Local 2860 Treasurer, Kurt Zevnik, B Shift Representative, and, on November 25 only, Paul Moorehead, A Shift Representative. The Union also presented testimony from an "expert witness," Frank A. Suponcic, CPA, CFE, of the Skoda Minotti accounting firm. Appearing for the City at the hearing were: Michael Esposito, Advocate, Ted Andrzejewski, Mayor, and Richard Condron, Finance Director. Also present on November 25 only was Jonathon Noe, Assistant Advocate. (The Mayor was present for most of November 25 and part of December 1.)

The Conciliator has now resolved each issue by selecting the final offer of one of the parties. In making his decisions and issuing his Award, the Conciliator has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining 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, 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” noted in the sixth criteria include the common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report issued in the case. (See, for example: City of Lakewood and IAFF, SERB Case No. 00-MED-04-0952 (Dennis Byrne); City of Warren and OPBA, SERB Case No. 2006-MED-10-1267 (Harry Graham); City of Medina and OPBA, SERB Case No. 05-MED-08-0785 (Alan Miles Rubin).

Finally, the Conciliator notes that, on December 18, 2007, the parties entered into a Fact Finding Extension and Retroactivity. That Agreement, which was made part of the record at the hearing, states in pertinent part:

Furthermore, the parties waive provisions of 4117.14(G)(11) in regard to all matters of compensation or with cost implications which may be awarded by the Fact Finder and Conciliator in accordance with chapter 4117 and further agree that the Fact Finder and Conciliator may award wage increases or other matters with the cost implications to be retroactive to January 1, 2008.

## **BACKGROUND: CITY PROFILE AND FINANCES**

Eastlake is a residential community of modest homes in western Lake County. The population has gradually declined in recent years from a peak above 22,000 in early 1980's to an estimated 19,669 in 2006. About 20% of residents are dependent upon fixed income, principally social security and other retirement payments. The 2000 Census reported median household income of \$43,297.

Neighboring Lake County cities include Mentor, Willoughby, Willoughby Hills, Wickliffe and Painesville. In 2007, the base rate of pay for firefighters at the top step of the wage scale was \$57,773.71 in Eastlake, more than \$3000 below average for the neighboring Lake County cities. The shortfall in pay appears to be even greater if paramedic and pension pick-up benefits provided by some cities are considered. However, the cities with the highest pay rates were Mentor, Willoughby and Wickliffe; Mentor and Willoughby are more affluent than Eastlake, and Wickliffe has tax revenue from Lubrizol, a major corporate employer.

Financially, on May 18, 2004, the State of Ohio declared Eastlake to be in Fiscal Emergency under Chapter 118 of the Ohio Revised Code due to negative general fund balances. The culprits in this situation were cost overruns and debt related to construction of a baseball stadium for a minor league baseball team. (The stadium problems do not reflect on actions by current City officials.)

To deal with the crisis, Eastlake developed a Financial Recovery Plan, passed a three-year 3-mil tax levy in 2005, cutback personnel, made adjustments in health plans, and made cutbacks in services. Also, the City sold naming rights to the stadium for \$4.261 million, payable in installments through June 2009. Additional revenue – more

than \$100,000 annually – was picked up from contracts to provide certain safety services for the Villages of Timberlake and Lakeline.

Eastlake emerged from Fiscal Emergency in December 2007 with a reasonable year-end balance, and expects to have a reasonable year-end balance again in 2008. However, income tax revenue (the City's principal source of revenue) has been flat for seven years, and local government revenue from the state is frozen due to the state's own fiscal problems.

The Union also presented evidence to show that the City has been transferring money from the General Fund to other funds, principally Bond Retirement and the Callable Bond Fund. These transfers no doubt do reduce funds available for wages and restoration of general services. However, the Mayor explained that most transfers are being made pursuant to a plan for retirement of long-term debt. Currently, the stadium requires annual payments of \$1.8 million. \$750,000 of this comes from rental, parking and other payments from use of the stadium, leaving a \$1.1 million annual debt repayment obligation for the City. The combination of money from the scheduled General Fund transfers, naming rights payments, and some Federal revenue is expected to permit paying off \$10 to \$10.5 million of principal on the debt in 2009. Every dollar of principal paid off saves the City an approximately equal amount in interest payments over the long term. More immediately, there would be a reduction in the annual debt repayment burden on the General Fund from \$1.1 million to approximately \$560,000. This post-2009 reduction in annual debt repayment obligations should help the City over time continue to meet its obligations for other expenses, including wage payments and providing city services.

From this, it appears that, at least for a while, Eastlake is out of the fiscal crisis mode. But, due to cutbacks made during the Fiscal Emergency, it has many needs, including some “catch-up” for employees in the wage area and restoration of services in some other areas. Also, there is the need to pay down debt so that the City’s annual debt repayment levels can be reduced to a manageable level, which will enable the City to pay appropriate wages and maintain appropriate levels of service in the future.

## **RESOLUTION OF DISPUTED ISSUES**

### **1. Article 19, Section 1: Vacation Accrual**

#### **Positions of the Parties:**

The Fact-Finder recommended no change in vacation accrual, except to insert the words “continuous full-time” in the introductory sentence – a clarification to which neither party objects. In its pre-hearing statement, the Union adopts the Fact-Finder’s recommendation as its own position.

The City, however, proposes reducing vacation accrual at the 5-year level from 7.5 tours to 7.0 tours and at the 15-year level from 12.5 tours to 12 tours. The City claims this is necessary to provided consistency with other City bargaining units, all of which receive 3 weeks vacation after 5 years and 5 weeks vacation after 15 years. The 7.5 and 12.5 tours in the current Agreement, according to the City, give Firefighters assigned to suppression 12 more hours vacation time than other City employees with comparable experience. Further, the City asserts that Eastlake firefighters receive more vacation that firefighters in most Lake County cities, and more than firefighters in other

selected comparable cities (Lyndhurst, Niles, Painesville, Parma Heights, South Euclid and Willoughby.)

The Union argues that the Conciliator should defer to the Fact-Finder's Award. It notes that Eastlake firefighters have a slightly higher average hours per workweek (51.7 hours) than firefighters in many other communities (where the workweeks range from 48 to 50 hours). According to the Union, other cities with 51.7 hour workweeks provide vacation accrual comparable to Eastlake's. Finally, the Union states that the vacation accrual system has been in effect since 1983. To the extent it exceeds vacation accrual benefits in other jurisdictions, it was bargained for in exchange for other concessions.

**Discussion and Analysis:** Retaining the current schedule, as recommended by the Fact-Finder and proposed by the Union, is consistent with past agreements between the parties and the common practice of giving weight to the Fact-Finder's recommendation. It also is supported by comparability, in that other cities with 51.7 hour workweeks provide similar vacation accrual.

**Award:** The Union position, which is consistent with the fact-Finder's Award, is awarded. The following language shall be included as Article 19, Section 1 in the new Agreement:

**Section 1. Accrual.** All full-time employees shall be granted the following vacation leave with full pay based on their length of continuous full-time service according to the following schedule:

<u>Length of Full-time Service</u>	<u>Vacation Time</u>
After one (1) year full-time service	5 Tours Off
After five (5) years full-time service	7 ½ Tours Off
After ten (10) years full-time service	10 Tours Off
After fifteen (15) years full-time service	12 ½ Tours Off
After twenty (20) years full-time service	15 Tours Off

2. **Article 19, Section 3: Vacation Cashout/Required Usage**

**Positions of the Parties:**

The current Agreement gives firefighters the option of taking cash payment in lieu of vacation time provided they must use at least one shift (two weeks for 40-hour employees). It states:

19.03 If an employee at anytime during their vacation accrual year has vacation time remaining, he may, with two weeks' notice, receive payment at their regular rate for these hours, once each vacation accrual year. Every employee must use a minimum of one (1) shift annually. Forty-hour employees must use a minimum of two (2) weeks annually.

The Fact-Finder recommended changing this provision to limit the cash-out and require utilization of more vacation time, as follows:

After five (5) years of service, if an employee at anytime during their vacation accrual year has vacation time remaining, they may, with two weeks' notice, receive payment at their regular rate for these hours. Employees with seven and one-half (7 ½) or ten (10) tours of vacation must use a minimum of five (5) tours annually. Employees with 12 and one-half (12 ½) or fifteen (15) tours of vacation must use a minimum of eight (8) tours annually.

In this proceeding, the City has adopted the Fact-Finder's recommendation as its final offer. It argues deference to the Fact-Finder's recommendation, and notes that other comparable cities do not provide the cash-out option available to Eastlake firefighters. Other City employees have agreed to cash-out restrictions comparable to those recommended by the Fact-Finder.

The Union has proposed a compromise, which would prospectively (effective January 1, 2009) increase the utilization requirement from one to four shifts annually. It notes that the cash-out provision was a quid pro quo for other concessions and has been in effect since 1998. Further, reduction of the number of vacation days and holidays (see Issue No. 4) that can be cashed out offset the first year wage increase which the Fact-



Finder recommended. The Union maintains this is inequitable and may even be inconsistent with the Fact-Finder's expressed intent.

**Discussion and Analysis.** The issue of vacation cash-out must be considered in conjunction with Issue No. 4 (Holiday cash-out) and Issue No. 5 (Wages). The Fact-Finder recommended an enhanced wage increase with the expressed intention of helping Eastlake firefighters begin to catch up to wages paid by neighboring jurisdictions. However, he also responded to the City's concerns by reducing the potential compensation payable pursuant to Vacation and Holiday cash-out provisions, providing instead that firefighters must use most of their vacation and holiday time. The Conciliator generally agrees that it is better to put the money in wages, which uniformly affect all employees, than to pay it in the form of a vacation/holiday cash-out option, which forces employees to work extra for the additional money and which does not have a uniform impact. Nevertheless, the money that many employees have been pocketing pursuant to the cash-out provisions has been a real part of their annual income. The Union's evidence does show that, at least in the first year of the Agreement, loss of the cash-out benefits (vacation and holiday) would offset the value of the recommended wage increase. Therefore some modification of the Fact-Finder's recommendation is in order. The Conciliator believes that accepting the Union's compromise proposal on vacation use/cash-out (Issue 2), while affirming the Fact-Finder's recommendation on Holiday cash-out (Issue 4) will reduce the wage offset and thus provide a more meaningful and equitable increase in actual compensation in the first year of the Agreement.

**Award.** The position of the Union is awarded. The following language shall be included as Article 20, Section 3 of the new Agreement:

**Section 3.** As of January 1, 2009, if an employee at anytime during their vacation accrual year has vacation time remaining, they may, with two weeks notice, receive payment at their regular rate for these hours, once each vacation accrual year. Every employee must use a minimum of four (4) shifts annually. Forty hour employees must use a minimum of two (2) weeks annually.

3. **Article 20, Section 1: Holidays (Amount of Holiday Time)**

**Positions of the Parties:** Firefighters assigned to suppression currently receive seven 24-hour tours of duty off in lieu of the eleven (11) designated City-wide holidays, and one (1) tour of duty off as a “personal day.” According to the City, this gives fire suppression personnel more holiday time than other City employees, and therefore the City proposes reducing holiday hours to a level consistent with what other City employees receive. The City also notes that Eastlake firefighters receive more holiday hours than firefighters in selected comparable cities. The Union proposes retaining the current provision as recommended by the Fact-Finder. It points out that firefighters work more hours than other City employees and therefore should have more holiday hours. Further, holiday hours were a benefit bargained in exchange for concessions on other issues and partially compensate Eastlake firefighters for wage levels which are low relative to firefighter wages in comparable cities.

**Discussion and Analysis.** Retaining the current provision, as proposed by the Union and recommended by the Fact-Finder, is supported by past agreements and negotiations between the parties and by the principle that deference is due to the Fact-Finder’s recommendations. While holiday hours for Eastlake firefighters are above

average for firefighters in selected comparable cities, this is not inappropriate in that Eastlake also has higher scheduled annual hours and somewhat lower wages.

**Award.** The Union position, which is consistent with the Fact-Finder's Recommendation, is awarded. Current language of Section 20.01 shall be retained as Article 20, Section 1 in the new Agreement.

**4. Article 20, Sections 2 - 3: Holidays (Scheduling/Work Option)**

**Positions of the Parties.** Currently, firefighters have the option of taking cash instead of time off for holidays. The City proposes, and the Fact-Finder recommended, that this practice be abolished, though firefighters still could work holidays at the discretion of the department head. The City states that this change would put the firefighters in parity with other City employees and conform the IAFF Agreement to five of the seven other collective bargaining agreements in the City. It argues that City budgeting and scheduling are complicated by giving employees discretion as to whether or not to work or cash out holidays. Finally, it notes that, except for Mentor, other Lake County cities do not give their firefighters the cash-out option that Eastlake firefighters currently have.

The Union strongly objects. The cash-out has the effect of enhancing the annual earnings of firefighters, and abolishing the cash-out option thus reduces the effect of the wage increase recommended by the Fact-Finder. The Union doubts that this was the Fact-Finder's intent, and suggests that the recommendation on holiday cash-out was an error. Further, it notes that the compensation provided by the holiday cash-out has served to ease the pain from otherwise substandard wages. Finally, the cash-out practice has

been in effect for many years, and the City has shown no compelling need to change it at this time.

**Discussion and Analysis.** The City's evidence on internal parity and comparability in neighboring jurisdictions supports its position on this issue. With respect to the Union's concern about impact on compensation, this issue must be considered in conjunction with recommendations on Issue 2 (Vacation Usage/Cash-Out) and Issue 5 (Wages). The Union did present evidence to show that the impact of the recommended wage increase was materially reduced in the first year by the recommendations to reduce vacation cash-out and abolish holiday cash-outs. The Conciliator has already dealt with this concern by rejecting the Fact-Finder's recommendation and adopting the Union proposal for vacation utilization and cash-out, Issue 2, above. Along with the enhanced wage increase (Issue 5, below), this should be sufficient to compensate for loss of the holiday cash-out benefit.

**Award.** The City position, which is consistent with the Fact-Finder's Recommendation, is awarded. The following language shall be included as Article 20, Sections 2 – 3, of the new Agreement in lieu of current sections 20.2, 20.3 and 20.4.

**Section 2. Holiday/Personal Time Scheduling.** The employee shall designate the days he wishes to take off, which shall be subject to the advance approval of the Fire Chief as to when they may be taken. An employee shall be required to take the time during the year in which it is earned and shall not be able to carry the time over into the next calendar year.

**Section 3. Holiday Work Options.** At the discretion of the respective department head, with consideration of workloads and department needs, an employee may work designated holidays. The employee may then elect to take the additional holiday compensation in the form of payment.

5. **Article 22, Sections 1–5 (Replacing Sections 22.01-.07): Salary Schedule**

**Positions of the Parties.** As its proposal, the Union adopts the Fact-Finder's recommendation, which provides for 3% annual increases effective on January 1, 2008, January 1, 2009, and January 1, 2010, plus "equity adjustments" of 25 cents/hour January 1, 2008, 25 cents/hour January 1, 2009, and 20 cents/hour January 1, 2010. The 3% annual increases are the same as those accepted by Eastlake police and generally consistent with statewide averages for public sector employee wage increases. To justify the additional "equity adjustments," the Union asserts that Eastlake wages are significantly below average for firefighters employed by Lake County cities and other Northern Ohio communities. The problem has been getting worse, not better, as Eastlake firefighters accepted a wage freeze in 2004 and below average increases in 2005-2007. Indeed, the Union maintains that the Fact-Finder's recommended wage increases are insufficient, but adopts them as its proposal as a step in the right direction.

The City proposes annual increases of 3% plus a signing bonus of \$500. It argues that this is consistent with wage increases accepted by other Eastlake bargaining units, and that the Fact-Finder's recommendation is inconsistent with maintaining internal parity among the various Eastlake employee groups. The City does not argue absolute inability to pay, and it acknowledges that Eastlake firefighters are paid less than firefighters in neighboring cities. However, the City asserts that Eastlake should pay less because it has relatively less ability to pay than neighboring cities. This is particularly true of Willoughby, Mentor and Wickliffe, the highest paying cities in Lake County.

**Discussion and Analysis.** Deference is due to the Fact-Finder's recommendation, which is justified by comparability data and is not inconsistent with the

City's ability to pay. Comparability data submitted at the hearing does establish that Eastlake wage rates are below rates in most other Lake County cities. While some cities are clearly wealthier and more able to pay, the Fact-Finder reasonably concluded that the gap was greater than it should be. Moreover, Eastlake wage settlements since 2004 (0% 2004, and 2% 2005 – 2007) were below state and regional averages. For these reasons, the Fact-Finder recommended equity adjustments (25 cents/hour January 1, 2008, 25 cents/hour January 1, 2009, 20 cents/hour January 1, 2010) in addition to the 3% annual increases, which are close to state and regional averages for public employee increases. He was justified in doing so.

The Fact-Finder also fully considered Eastlake's recent financial problems, and concluded that the City has the ability to pay the recommended wage adjustments. The City emerged from "Fiscal Emergency" status under Chapter 118 of the Ohio Revised Code on December 4, 2007. The 3% increases are consistent with its spending plan, and funds are available to cover any additional cost of the equity adjustments. Moreover, other changes in the Agreement (Issues 4, 6, 8 and 9) should enable the City to attain savings that would at least partially offset the increased wage cost.

**Award.** The Union position, which is consistent with the Fact-Finder's Recommendation, is awarded. The following language, replacing Sections 22.01 -22.07, shall be included as Article 22, Sections 1 – 5. In addition, the wage rate schedule attached as Appendix A hereto shall also be attached as Appendix A to the new Agreement and incorporated therein.

(Note: Old Sections 1-4 replaced with wage appendix)

**Section 1.** All employees shall receive salaries and wages in accordance with the provisions of this Article.

Section 2. General Wage Increases. The following represents the annual base percentage increases for bargaining unit members for the duration of this agreement. The actual wage rates are attached and appended to the parties' agreement as Appendix A. Effective January 1, 2008, bargaining unit members will receive a twenty-five cents (\$.25) wage adjustment and three percent (3.0%) general wage increase. Effective January 1, 2009, bargaining unit members will receive a twenty-five cents (\$.25) wage adjustment and three percent (3.0%) general wage increase. Effective January 1, 2010, bargaining unit members will receive a twenty cents (\$.20) wage adjustment and three percent (3.0%) general wage increase.

Section 3. In the event any employee is required to work a forty (40) hour work week, the annual salaries and their fringe benefits will be modified to the 2,080 hour equivalent.

Section 4. Wage Schedule Administration. All newly-hired members will be hired at Probationary pay or at a higher rate determined by the Chief of Fire. Advance to the next successive step pay will come on each anniversary date.

Section 5. Upon completion of fifteen (15) department years with the City and at the discretion of the Chief, members may, based on their seniority, drop their Paramedic or Intermediate status, as long as this reclassification does not deplete the minimum (as described by ordinance) staffing levels. The request to drop status would remove incentive pay.

**6. New Article, Replacing Section 22.08: Minimum Manning**

Positions of the Parties. Unlike most Agreements, the current Eastlake Agreement includes a "minimum manning" provision, which requires a minimum of seven (7) full-time firefighters per shift. The City proposes, and the Fact-Finder recommended, retaining the minimum manning clause, but deleting the requirement that all seven (7) firefighters be full-time. The City states this is necessary to reduce overtime costs. It argues that the quality of service depends on the number of firefighters on duty, not whether they are full-time or part-time. The Union disagrees, and asserts that full-time firefighters are more likely than part-time firefighters to provide quality service. It notes that Eastlake as a community has consistently passed tax levies to support its full-

time Fire Department, and suggests that adding part-time employees is inconsistent with the public will. It further states that the City overstates the extent to which overtime costs are attributable to the minimum manning provision. Finally, it asserts that the minimum manning provision was added to the Agreement in 2004 as the quid pro quo for the Union's acceptance of a wage freeze, and that the Union is entitled to the continuing benefit of this bargain.

**Discussion and Analysis.** Deference is due to the Fact-Finder's recommendation. While the minimum manning provision may have been added as the quid pro quo for a wage freeze in 2004, the Fact Finder recommended an enhanced wage package for the next three years, and this to a degree ameliorates the continuing effect of the wage freeze. Moreover, the Fact-Finder did not recommend deleting the minimum manning provision or reducing the required minimum per shift. Rather, he simply modified the language to permit some use of part-time firefighters, if any are hired during the term of this Agreement, to meet the minimum manning requirement. The Fact-Finder's wage recommendation is an appropriate quid pro quo for this modification. Moreover, the modification is not inconsistent with comparability data. In fact, evidence submitted on comparability indicates that most other cities do not maintain minimum manning provisions in their collective bargaining agreements. Rather, manning requirements are determined by policy, and it appears that staffing levels in Eastlake are consistent with those in other jurisdictions, and would remain so even after the modification recommended by the Fact-Finder.



**Award.** The City position, which is consistent with the Fact-Finder's Award, is awarded. The following language shall be included in the new Agreement as a new Article, replacing current Section 22.08:

Section 8. The City shall maintain a minimum of seven (7) Fire Fighters on duty at all times.

7. **Article 23, Section 2: Hours or Work/Overtime (Call-in/Call-back)**

**Award:** The positions of the Union and City on this issue are the same, as both now adopt the recommendation of the Fact-Finder as their position. Therefore, the identical positions of the City and Union are awarded. The following language shall be included as Article 23, Section 2 of the Agreement:

Section 2. Call-in/Call back. In event an employee is called in to work after he has left work or on a day when he is not scheduled to work, the employee will be guaranteed minimum of three (3) hours pay at his straight time rate of pay or one and one-half (1 ½) times his regular rate for all hours actually worked, whichever is greater, providing such hours do not abut the employee's normally scheduled workday.

In a call-in/call back situation the following provisions shall apply:

A. Time of Call. The start time of compensation for members that are called back to work will begin at the time of request to return to work.

B. Release. The members will be released from call back duty when the "on duty" crew and firehouse equipment is deemed in service by the officer in charge.

C. No Duplication/Pyramiding. There shall be no duplicating or pyramiding of call back minimum payments. The call-back minimum covers all call-backs occurring during the three (3) hour period from the time of a call. Additional call-backs after that time period will be eligible for a new minimum.

8. **Article 24: Working Out of Classification**

**Positions of the Parties.** Pay for work out of classification comes into play when either the Battalion Commander or Lieutenant Shift Commander is absent. Currently, a

Lieutenant is automatically paid to assume the Battalion Commander's duties, and a firefighter is automatically advanced and paid to work in the Lieutenant's position.

The City proposes, and the Fact-Finder recommended, changing current language so that employees receive extra pay only when assigned to perform work in the higher classification. As a practical matter, the parties agree that a Lieutenant would still be assigned to perform the Battalion Commander's duties in his absence, and that a firefighter would have to be assigned to fill the Lieutenant's position if there was a fire or a call-out. However, absent fire or call-out, under the new language the City might decide to have one Lieutenant perform the duties of both jobs. The City noted that its proposal is consistent with contracts in most other cities, and that management needs the right to control assignments in order to control costs. The Union argued that this would cause loss of compensation to current senior firefighters. It also noted that shift supervision was reduced from three to two when the Captain's position was abolished in the 1990's. The Union believes that having two individuals on duty in supervisory capacity at all times promotes safe and efficient service.

**Discussion and Analysis.** As noted by the Fact-Finder, determining the need for assigning an acting shift commander normally is and should be a management right. Deference is due to the Fact-Finder's recommendation. Further, comparability data submitted by the City establishes that other cities pay for work out of classification only when management decides to assign the work, which is consistent with the City proposal and Fact-Finder's recommendation.

**Award:** The position of the City, which incorporates the Fact-Finder's recommendation, is awarded. The following language shall be included as Article 24 of the Agreement:

**Section 1.** An employee required to assume the duties that are exclusively the part of a higher classification shall receive the rate of pay for that classification. The individual working the affected shift, with the most departmental seniority, in the classification from which the assignment is to be made, will receive the stated upgrade.

**Section 2.** The member with the most departmental seniority based on hire date and/or promotion date, will always be designated as in charge of the run. When a Battalion Chief or Lieutenant is present, they will be in charge of said run.

**9. NEW Article: Part-Time Personnel**

**Positions of the Parties.** The City proposes, and the Fact-Finder recommended, adding new language which recognizes the City's right to hire part-time firefighters, subject to certain restrictions. These include: (1) Part-time employee utilization would not result in a reduction in force of full-time firefighters. (2) Part-time employees could not perform supervisory functions. (3) Full-time employees would be offered overtime before part-time employees would be offered overtime. A labor-management committee also would be formed to discuss implementation of the new part-time language. The City stated that it had no "hidden agenda" and that it was not planning to cut back full-time firefighters. However, it hoped to use part-time firefighters, when hired, to cover absences which now cause what, in the City's view, is excessive overtime for full-time firefighters.

The Union expressed concerns about part-time firefighters, at least if the pre-implementation planning was insufficient. Safety can be compromised if the part-time employees are not adequately trained. Moreover, even with training, the part-time

employee is not accustomed to working with the rest of the team. It suggested that the new Fire Chief, who did not attend the hearing, shared the Union's reservations on part-time personnel. Finally, it notes that the introductory sentence of the recommended language, (stating that the "Union acknowledges" the necessity of part-time workers) is inaccurate.

**Discussion and Analysis.** The Fact-Finder carefully review and analyzed the Union's expressed safety concerns and concluded that they were not supported by data, at least where part-time personnel were adequately trained so as to be qualified to perform assigned duties. Deference is due to his conclusions. Further, comparability data submitted shows that most fire departments, including Eastlake's neighboring departments, use at least some part-time personnel. In view of this, it is appropriate that the City of Eastlake have the option of employing part-time personnel, and it is highly likely that the Committee can deal with concerns over training and integration of part-time personnel into the Department. (Parenthetically, the Conciliator notes that he agrees the introductory phrase of the proposed language is inappropriate, but unfortunately the Conciliator lacks authority to modify either party's proposal.)

**Award:** The position of the City, which incorporates the Fact-Finder's Recommendation, is awarded. The following language is to be included as a new Article in the Agreement:

Section 1. The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of Eastlake and maintain the integrity of fire department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) of regularly scheduled hours of bargaining unit members.

Additionally, prior to instituting a layoff among regular full-time bargaining unit members, the Employer will first reduce all part-time firefighters.

Section 2. Overtime Work. Whenever the Employer determines that overtime work is necessary, it will offer the overtime work opportunity to eligible full-time bargaining unit members prior to offering the overtime work to part-time firefighters.

Section 3. Ranking Officer Functions. The Employer agrees that part-time firefighters will not be used for supervisory/rank personnel.

Section 4. Part-Time Personnel Committee. The parties agree to establish a committee consisting of not more than four (4) representatives of the Employer and four (4) representatives of the Union to meet and discuss issues related to the integration and functioning of part-time personnel within the Fire Department.

### **INCORPORATION OF AGREEMENTS**

Consistent with SERB's Conciliation Guidebook and the preferences expressed by the parties at the Hearing, the signed tentative agreements reached by the parties during negotiations and listed in paragraph 3 of the Employer's November 20, 2008 Pre-Hearing Statement, and two side letters (spousal surcharge and transition to retirement of injured firefighter) to which the parties agreed after discussion during the November 3, 2008 Mediation, are incorporated by reference in this Report and made part of the Award.

### **ISSUANCE OF AWARD**

This Award is issued this 30<sup>th</sup> day of December, 2008.




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John T. Meredith, Conciliator

Shaker Heights, Ohio  
December 30, 2008

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Opinion and Award was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 30<sup>th</sup> day of December 2008:

James Astorino, President  
Northern Ohio Fire Fighters  
3100 East 45<sup>th</sup> Street, Suite 214  
Cleveland, OH 44127

Representative of IAFF Local 2860

Michael Esposito, Esq.  
Clemans, Nelson & Associates  
2351 Arlington Road, Suite A  
Akron, OH 44319

Representative of the City



John T. Meredith, Conciliator

**APPENDIX A  
WAGE SCHEDULE**

<b>Effective 1/1/08 (\$25 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 13.84	\$ 37,216.06
<i>Firefighter (After 1 year full-time service)</i>		\$ 17.31	\$ 46,547.76
<i>Firefighter (After 2 years full-time service)</i>		\$ 21.45	\$ 57,679.35
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 21.68	\$ 58,288.54
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 22.39	\$ 60,199.19
<i>Lieutenant</i>		\$ 23.58	\$ 63,383.60
<i>Lieutenant w/ EMT-I</i>		\$ 23.80	\$ 63,992.79
<i>Lieutenant w/ EMT-P</i>		\$ 24.53	\$ 65,958.82
<i>Battalion Chief</i>		\$ 26.04	\$ 70,001.63

<b>Effective 1/1/09 (\$25 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 14.52	\$ 39,024.80
<i>Firefighter (After 1 year full-time service)</i>		\$ 18.09	\$ 48,636.46
<i>Firefighter (After 2 years full-time service)</i>		\$ 22.36	\$ 60,102.00
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 22.59	\$ 60,729.46
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 23.32	\$ 62,697.43
<i>Lieutenant</i>		\$ 24.54	\$ 65,977.37
<i>Lieutenant w/ EMT-I</i>		\$ 24.77	\$ 66,604.84
<i>Lieutenant w/ EMT-P</i>		\$ 25.53	\$ 68,629.85
<i>Battalion Chief</i>		\$ 27.08	\$ 72,793.95

<b>Effective 1/1/10 (\$20 adjustment + 3% increase)</b>			
<b>Classification</b>		<b>Hourly Rate</b>	<b>Annual Compensation</b>
<i>Firefighter (Entry-Probationary)</i>		\$ 15.16	\$ 40,749.36
<i>Firefighter (After 1 year full-time service)</i>		\$ 18.84	\$ 50,649.36
<i>Firefighter (After 2 years full-time service)</i>		\$ 23.23	\$ 62,458.87
<i>Firefighter (After 2 years w/ EMT-I)</i>		\$ 23.47	\$ 63,105.16
<i>Firefighter (After 2 years w/ EMT-P)</i>		\$ 24.23	\$ 65,132.16
<i>Lieutenant</i>		\$ 25.48	\$ 68,510.50
<i>Lieutenant w/ EMT-I</i>		\$ 25.72	\$ 69,156.79
<i>Lieutenant w/ EMT-P</i>		\$ 26.50	\$ 71,242.55
<i>Battalion Chief</i>		\$ 28.10	\$ 75,531.58