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STATE EMPLOYMENT RELATIONS BOARD  
CASE NO: 10-MED-06-0842

In The Matter Of The Conciliation Between:

THE CITY OF SHEFFIELD LAKE )  
 )  
 -AND- )  
 )  
 THE SHEFFIELD LAKE PROFESSIONAL )  
 FIREFIGHTERS, LOCAL 2355, )  
 IAFF, OAPFF, AFL-CIO-CLC )

**APPEARANCES:**

**For The City:**

Sandy Conley Employer Advocate  
David Graves Law Director  
Tammy Smith Finance Director

**For The Union:**

Ryan Lemmerbrock, Esq., Attorney  
Scott S. Kozlowski President, Local 2355  
Wesley A. Mariner Trustee, Local 2355  
Brian Davis Bargaining Committee, Local 2355  
Mary Schultz, CPA, CFA Financial Consultant

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**BEFORE ALAN MILES RUBEN, CONCILIATOR**  
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**BACKGROUND:**

The City of Sheffield Lake, located in Lorain County Ohio, occupies 2.5 square miles and has a 2010 population of 9,137 residents.

The average per capita income in the City is \$20,219.00 (2009). In 2006, voters increased the City's municipal income tax rate from 1.25% to 1.5%. Consequently, its 2010 municipal income tax receipts amounted to \$1,533,000.00 which, on a per capita basis, equals only \$168.00 for each of its residents.

The City's nine Firefighter/Medics and two Lieutenant/Medics (collectively referred to as "Firefighters"), form a Bargaining Unit exclusively represented by Local 2355, International Association of Firefighters.

The City recognizes four other Bargaining Units - one represented by the American Federation of State, County and Municipal Employees and three represented by the Ohio Patrolmen's Benevolent Association.

The City and the Firefighters Union are signatories to a Collective Bargaining Agreement entered into as of January 1, 2008 for an initial term which expired on December 31, 2010.

In advance of the impending expiration of the Contract, the parties opened negotiations for a successor Agreement. After three bargaining sessions and two meetings with a Mediator from the Federal Mediation and Conciliation Service, agreements were

reached on some of the terms of a successor Contract. However, impasse was declared on the issues remaining in dispute, and on March 3, 2011, the State Employment Relations Board appointed Donald N. Jaffe, Esq., as Fact-Finder. Fact-finding hearings commenced on May 24, 2011, continued on June 21, 2011 and ended on July 6, 2011.

As a result of the parties' earlier negotiations, and the efforts of the Mediator and the Fact-Finder, the parties reached tentative agreements on a number of the outstanding issues, and the corresponding terms of a successor Agreement. Those tentative agreements are listed in "Appendix A" hereto.

Provisions of the following Articles remained in dispute:

Article 6, Sections 2, 4 and 5 - "Union Business";  
Article 9, Sections 1, 2, 3, & 7 - "Overtime";  
Article 10 - "Workweek";  
Article 13 - "Paid Holidays";  
Article 15 - "Sick Leave";  
Article 16 - "In-Line-Of-Duty Injuries, Death In-Line-Of-Duty and Pension Require for In-Line-Of-Duty Injuries";  
Article 18 - "Differential Pay";  
Article 19, Sections 2 and 3 - "Grievance Procedure";  
Article 20 - "Arbitration";  
Article 24 - "Safety";  
Article 25, Sections 1 and 5 - "Clothing and Personal Effects";  
Article 27, Section 2 - "Hospitalization";  
Article 29 - "Paramedic Payment";  
Article 30 - "Annual Base Salary";  
Article 31 - "Longevity";  
Article 32 - "Minimum Manning";  
Article 33 - "Officer, Department, and Mandatory Meetings";  
Article 38 - "Retirement and Separation Pay";  
Article 39 - "Contracting-Out";  
Article 40 - "Discipline";

Article 42 - "Calculation of Rates", and  
Article 43 - "Duration"

The Fact-Finder, in a thoughtful report issued on August 18, 2011, made findings and recommendations on all the unresolved issues.

The Fact-Finding Report, however, was rejected.

In consequence of the parties' rejection, the State Employment Relations Board issued a Conciliation Order and, on September 16, 2011, the undersigned was appointed as Conciliator, to resolve, after hearing, "the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties final settlement offers taking into consideration the factors outlined in O.R.C. Section 4117.14(G)(7)".

Thereafter, the parties timely submitted the pre-hearing statements required by O.R.C. Section 4117(G)(3) and O.A.C. Section 4117-9-06(E), setting forth, inter alia, their respective final offers and supporting position statements.

At the direction of the parties a mediation session and evidentiary hearing was commenced on October 31, 2011 at the Sheffield Lake City Hall and concluded there on November 1, 2011. Additional tentative agreements were reached between the parties and are reflected in Appendix "A".

The parties further agreed that all of the provisions of the expired Contract that were not amended either by consent in

the negotiations of the parties or by the mediation efforts during the fact-finding and the conciliation proceedings, and not implicated in the proposals presented to the Conciliator, were to be carried forward and incorporated into the three-year successor Agreement, mutatis mutandis.

All other proposals of the parties to amend other provisions of the Agreement or to add new terms thereto, that are not reflected in the list of tentative agreements nor identified in the Conciliator's Award, are deemed to have been abandoned.

On October 28, 2011, the Employer filed notice of the parties' limited Section 4117.14(G)(11) waiver "only to the extent necessary to allow a conciliator to issue an award with an effective date that is on or before January 1, 2011, and ... that increases/decreases in rates of compensation and other matters of cost implications awarded by the Conciliator may be effective in 2011 calendar year and/or thereafter."

At the conciliation hearing, the Advocates for the parties made opening statements and made evidentiary presentations with respect to each of the unresolved issues.

The parties jointly submitted the expired 2008 Agreement, the Fact-Finder's Report of findings and recommendations and a list of those recommendations which the parties mutually accepted.

The parties in the aggregate offered over fifty documents pertaining to the City's financial condition, the City's other Collective Bargaining Agreements and the terms of Contracts entered into by cities deemed comparable to Sheffield Lake.

Testimony on the City's financial condition was presented on behalf of the Union by Mary Schultz, C.P.A.; C.F.A. and, on behalf of the City by Tammy Smith, the City's Finance Director. Historical background was given by retired Fire Chief Michael J. Conrad.

The Conciliator considers below the final proposals and positions of the parties on the issues before him, as well as the recommendations of the Fact-Finder thereon.

In so doing, the Conciliator has considered the factors enumerated in O.R.C. Section 4117.14(G)(7), viz.:

"(a) past collectively bargained agreements, if any, between the parties;

"(b) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c) 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;

"(d) the lawful authority of the public employer;

"(e) the stipulations of the parties;

"(f) such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

## **CONCILIATOR'S ANALYSIS, FINDINGS AND AWARDS:**

### **PREFACE:**

With a few exceptions, the disagreements over the content of the successor Collective Bargaining Contract involve compensation issues. The City contends that its financial condition requires major concessions from the Union.

The Union, on the other hand, argues that the City's financial condition is significantly superior to those of most of the cities in Ohio, and that its tax base, and consequent revenue stream, are stable and, indeed, improving, so that concessions are not necessary. On the contrary, the Union insists that certain of its members' present compensation and benefits should be improved in light of the compensation and benefits received by Firefighters in comparable communities, and by members of other City Bargaining Units.

The conflict that is raised requires the Conciliator to look to the City's future fiscal condition, not to its past. It also obliges him to consider competing demands for the City's services, as well as the demands of other groups of employees who also look to preserve their economic status.

The Conciliator turns first to the "Ability to Pay" issue, and then will consider both the external and internal comparability questions.<sup>1</sup>

**ABILITY TO PAY:**

Sheffield Lake has come through the current economic recession relatively unscathed.

In 2008, its General Fund revenues were \$3,120,000.00 while expenditures amounted to \$3,094,000.00. The General Fund balance increased from \$138,000.00 to \$165,000.00.

In 2009, General Fund revenues declined to \$2,962,000.00, \$158,000.00 less than received in 2008.

On the other hand, City expenditures from the General Fund in 2009 amounted to \$3,005,000.00, only \$36,000.00 less than 2008. As result, the General Fund carry-over balance was reduced to \$122,000.00 - \$43,000.00 or 26% less than at year end 2008.

2010 General Fund revenues improved to \$3,259,000.00 - \$297,000.00 or 10% over the 2009 receipts. However, the increase was largely attributable to the unprecedented spike in

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<sup>1</sup> Increases in the cost of living as measured by the Consumer Price Index have been excluded from the Conciliator's consideration. The Index - because of volatile food, energy and gasoline components - has increased by less than 3% over the past twelve months, and prospects of significant inflation are remote.

Estate Tax income (\$383,000.00) mainly collected from the estate of a very wealthy resident.

The 2010 General Fund expenditures were \$3,005,000.00, the amount spent in 2009. The result was that the General Fund carry-over increased to \$376,000.00 or 12.5% of 2010 expenditures.

The City estimated that its General Fund revenues would total only \$2,999,000.00 by year end, 2011, while the General Fund expenditures would increase as budgeted to \$3,398,000.00 some \$393,000.00 more than in 2010. If the City's estimate were to prove accurate, the General Fund balance would decline to \$274,000.00, or 8% of 2011 expenditures. As of September 30, 2011, however, the unencumbered General Fund balance was \$517,000.00

Moreover, for the first nine months of 2011 (75% of the year) General Fund revenues are running ahead of budget estimates (79%) of the projected total, because income tax receipts increased by some \$130,000.00.

On the other hand, the City expenditures accounted for only 64% of the budget or \$375,000.00, (11%) below the 75% expenditure benchmark.

The Union's expert witness, Mary Schultz, C.P.A., C.F.E., estimated that the unreserved General Fund balance at 2011 year-end would exceed \$490,000.00, an increase of \$117,000.00 or 31%,

representing 16% of 2011 expenditures, a ratio recommended by municipal bond rating agencies.

Although inter-governmental funding will decrease during 2012, and especially in 2013, the Consultant opined that the reduction should not materially impair the City's financial status, 47% of the General Fund income is derived from income taxes, 12% from the property tax, while estate tax, the Local Government Fund, and other inter-governmental transfers account for a significantly lesser proportion of Sheffield Lake's total revenues.

Further, the Consultant pointed-out that when considering the Fire Department's budget, it is important to note that only 60.6% is contributed by the General Fund. Four special property tax levies are dedicated to the support of Firefighters' salaries and pensions - the Fire Levy Fund accounts for 14.5% of the Department's budget; the Fire Operating Levy Fund represents 13.1%; the Paramedic Program Fund accounts for 11.4% and the Fire Salary Levy Fund for 4%. Collectively, the Levy Funds cover some 42% of the total Fire Department wages.

Fire Department expenditures represented 25.54% of the General Fund total in 2009, 26.20% in 2010, but only 25.01% under the 2011 budget.

Total Fire Department expenditures were \$1,346,000.00 in 2008; \$1,344,000.00 in 2009 and \$1,319,000.00 in 2010. The

\$25,000.00 decline from the 2009 spending level was largely attributable to a reduction in medical costs.

For 2011, the Fire Department budget, comprising both General Fund and Levy Fund components, was \$1,395,000.00, an increase of \$76,000.00 or 5.7% over 2010 expenditures. The total combined amounts budgeted for wages of \$990,000.00 was \$6,000.00 less than expended in 2010.

The 2011 property tax revenues received by the Fire Levy, Paramedic Program, Fire Salary Levy and Fire Operating Levy Funds were \$28,000.00 less than the full year estimates. Approximately \$4,200.00 of the tax loss was attributed to the phase-out of the Personal Property Tax.

Looking to 2012 and 2013, the City is likely to receive \$97,000.00 less from the Local Government Fund.

A further loss of \$95,000.00 from the Local Government Funds is estimated for the first-half of 2013. Also in 2013, the estate tax will be eliminated, and the City will lose some \$35,000.00, the average of the annual payments, exclusive of the extraordinary 2010 supplement.

Sheffield Lake's "Management's Discussion and Analysis" portion of its annual report submitted to the Auditor of State for the year ended December 31, 2010 commented that the then assets of the City exceeded its liabilities by over

\$21,338,000.00 of which \$2,091,000.00 was unrestricted and available to meet the City's obligations.

The City closed the year with combined fund balances totaling \$2,162,000.00, an increase of \$435,000.00 over the prior year. \$2,005,000.00, or 93%, was available for discretionary spending.

The General Fund's unreserved balance was calculated according to generally accepted accounting principles, as \$596,000.00, or 18% of 2010 total General Fund expenditures. During 2010, the City's total debt decreased by \$501,000.00 or 5%, and the debt outstanding was \$8,633,000.00.

The General Fund's 2010 revenue sources included municipal income taxes of \$1,533,000.00; property taxes of \$343,000.00; charges for services of \$288,000.00 and inter-governmental revenue of \$801,000.00 and fines and licenses and permits of \$220,000.00 and other income of \$507,000.00 for a total of \$3,694,000.00.

Expenditures for the General Fund, including debt service totaled \$3,284,000.00. After adjustments, there remained an excess of revenues over expenditures of \$413,000.00.

The General Fund balance at the beginning of the year was \$223,000.00. It increased to \$635,000.00 as of year end 2010.

As a result of the slow growth rate of the economy and the reduction of inter-governmental funding, the City's budget

forecasted flat revenue growth and a zero-based approach to controllable expenditures for 2011 and 2012.

Review of these reports leads to the conclusion that Sheffield Lake's financial position is stable, and, even with the scheduled revenue reductions from the Local Government Fund, the Estate Tax and the Personal Property tax in 2012 and 2013, the City does not face the prospect of such a revenue - expenditure imbalance as would require concessions from the Firefighters, particularly in light of the fact that their compensation, unlike that of other employees, is only partially dependent upon General Fund subvention. Indeed, the City has not presented, much less supported, a specific dollar figure of savings it requires from these employees.

On the other hand, the economic situation does not warrant enhancement of Firefighters' compensation.

"Status quo" should be maintained as far as prudent.

**COMPARABLE COMMUNITIES:**

In assessing which communities are comparable to Sheffield Lake the following factors are most relevant: (1) population; (2) area (in square miles); (3) propinquity (same labor market); (4) median household income; (5) taxable property valuation; (6) Fire Department size; (7) number of annual runs.

The City proposes the following jurisdictions as comparable: Avon; Bellevue; Campbell; Girard; Huron; Mentor-on-the-Lake; Struthers.

For certain comparative purposes, the City adds Amherst and Oberlin, and deletes Huron.

How these selected communities satisfied the above listed factors is not available from the record.

The City's comparables are not all within the same labor market as Sheffield Lake. Struthers, Campbell and Girard are located in the extreme eastern part of the State.

Avon has more than twice as many residents as Sheffield Lake, more than twice as many Firefighters occupies and eight times the area.

The per capita income of residents in Struthers and Avon are not close to that of Sheffield Lake residents.

With the exception of Campbell, the municipal income tax collection of the listed cities is significantly higher than that of Sheffield Lake, ranging from \$2,472,000.00 in Girard to \$5,311,000.00 in Oberlin.

The per capita income tax collected by Sheffield Lake of \$168.00 is lower than that of any other jurisdiction except Mentor-on-the-Lake, where the per capita income tax collection is \$110.00.

Each of the City's selected jurisdictions, except Avon, maintains a significantly lesser number of full-time Firefighters, ranging from one in Amherst to nine in Struthers. Oberlin has five, full-time Firefighters and twenty-one part-time Firefighters. Even more significant, is the fact that Struthers, Campbell, Bellevue and Amherst all have significant numbers of volunteer Firefighters.

In terms of General Fund expenditures, only Campbell (\$2,666,000.00 in 2009) and Mentor-on-the-Lake (\$2,129,000.00) spend less than Sheffield Lake. All of the other communities spend more, with Oberlin at the top with General Fund expenditures of \$7,839,000.00.

The Union's list of comparables includes twenty-five cities and townships, only two of which - Avon and Huron - were also proffered by the City.

The populations of Lorain (70,263); Elyria (54,969); Ashtabula (23,239); Avon (17,416); North Ridgeville (28,768); Westlake (30,331); North Olmsted (31,053); Sandusky (25,651) are all significantly larger than that of Sheffield Lake.

In terms of area covered, Mentor-on-the-Lake is the only City occupying fewer square miles (1.7) than Sheffield Lake (2.5). Only eight of the cities on the Union's list operate within a five square mile area. The others are significantly larger with Avon topping the list at 20.9 square miles.

The median income of residents in some of these communities is also much greater than that of Sheffield Lake residents. For example, the median income in Beachwood is \$66,884.00; that of Independence is \$64,808.00; that of Olmsted Falls is \$60,840.00; that of University Heights is \$67,051.00; that of Avon is \$75,106.00; that of Bay Village is \$72,518.00; that of Avon Lake is \$73,582.00 and that of Westlake is \$63,465.00. All are disproportionately higher than Sheffield Lake's median income of \$49,151.00.

Similar disparities are evident in the comparison of Fire Department size where Elyria has 70 Firefighters, four cities have between 42 and 49 and nine others have more than double the number of Department members as does Sheffield Lake.

Whereas Sheffield Lake's taxable property valuation is \$123,223.00, the property valuation in six of the Union's suggested communities exceeds \$200,000.00.

The Firefighters in Sheffield Lake make an average of 871 runs a year, but only one of the Union's list of comparable Departments operates with less than 1,000 runs per year.

In sum, comparability considerations are not likely to be of assistance in resolving the pending issues.

**INTERNAL COMPARABLES:**

The City and the Ohio Patrolmen's Benevolent Association which represents a Bargaining Unit of Patrol Officers, Sergeants

and Dispatchers entered into an Agreement with the City, effective as of January 1, 2011 for an initial term of three years.

The City and the American Federation of State County and Municipal Employees, also entered into a Collective Bargaining Agreement for the same term covering employees in the classifications of Water and Sewer Maintenance; Street Department Maintenance; Senior Lead Man; Mechanic; Clerk; and Accounting Clerk who are assigned to a variety of Departments.

Obviously, the scheduling, base wage rates and other terms and conditions of employment in the Contracts differ markedly from the counterpart provisions in the Firefighters Contract. There are certain subjects, however, where commonality is present and, indeed, desirable. Those situations will be referred to as appropriate as the Conciliator tackles each of the outstanding issues.

#### **UNRESOLVED ISSUES:**

##### **I. Article 9, Section 1 - "Overtime Rate":**

###### **A. The 2008 Agreement:**

The expired Agreement provides:

"(1) ... overtime shall be paid to the employee ... as follows:

"1. All overtime except as listed below, salary divided by 2080 multiplied by time and one-half. ...."

###### **B. The City's Final Offer:**

The City proposes to increase the divisor in the formula from 2080 to 2600 to reflect the Firefighter's current fifty-hour workweek. The City contends that the continued use of the former 2080 hour workweek in the calculation unjustifiably inflates the cost of overtime by 25%.

**C. The Union's Final Offer:**

The Union seeks to maintain the current Contract language on the ground that the Firefighter's top salary is far below that available in comparable communities and the overtime compensation represents a significant portion of the Firefighter's total compensation.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder commented:

"Compensation generally is being computed based on the contractual basis of a fifty-hour workweek, but for overtime purposes you use a rate 2080. This, in effect does constitute something of a windfall which does not appear to exist in any other City Department and, undoubtedly, is unique to Firefighters. Based on the present Contract requirement ... the Fact-Finder does not believe that it is appropriate or fair to disregard that provision and to provide for overtime at a 2080 hour rate."

Accordingly, the Fact-Finder recommended that Sections 1 and 2 be amended to provide that salaries be divided by 2600 instead of the current 2080.

**E. THE CONCILATOR'S ANALYSIS AND AWARD:**

As of October 15, 2011, the City's eleven Firefighters received a total of \$107,289.00 in regular overtime and \$84,515.00 in ATO (Kelly) overtime hours.

If the overtime had been calculated based on a fifty-hour workweek, the loss to individual Firefighters would range from a low of \$1,104.00 to a high of \$4,795.00, but the City would have saved \$21,458.00.

A.T.O. payments for the first nine months of 2011 ranged from a low of zero for two members of the Department to a high of \$11,956.00. If ATO overtime were calculated at fifty-hours a week instead of forty-hours, the nine employees would lose from \$1,080.00 to \$2,391.00 apiece. In total, the Bargaining Unit members would lose, and the City would save, \$16,903.00.

Thus, the use of a fifty-hour workweek in all overtime calculations would result in an aggregate reduction in Firefighter compensation and a corresponding saving to the City, of \$38,361.00.

The City cites the fact that all of the jurisdictions it deems comparable base their overtime computation upon the actual annual hours worked by the Firefighters.

The present formula for the computation of overtime - current salary divided by 2080 and multiplied by 1.5 - has been used in every Collective Bargaining Agreement at least since 1996, although each of the Contracts provided that "each full-

time employee of the Bargaining Unit of the Department shall work a fifty (50) hour workweek."<sup>2</sup>

Making Firefighter compensation so dependent on an inflated overtime allowance does not represent good policy. The amount is distributed unevenly through the staff dependent upon happenstance, and the City, in its budget-making process, is unable to forecast accurately the extend of its obligation.

As the foregoing analysis suggests, although the impact would be felt unevenly across the Department's membership, the total compensation received by each of the eleven members of the Department would be substantially lower were the City's proposal adopted.

However, the City in seeking to reform the procedure offers nothing in exchange to the Firefighters.

It would have been appropriate and, indeed, desirable, if the City had offered an increase in wage rates in exchange for basing overtime pay upon a 2600 hour work year.

However, the City chose not to do so.

The Conciliator does not find that the City's financial status is such that it requires this great of a concession it seeks to exact.

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<sup>2</sup> A Memorandum issued by the City's Law Director on January 31, 1995 noted that Firefighters work a "fifty (50) hours workweek of regular time and six (6) hours of overtime each week."

Accordingly, the Conciliator Awards the Union's Final Offer.

II. Article 9, Section 7 - "Emergency Call-In Overtime Pay:

A. The 2008 Contract:

The expired Contract provides:

"When off-duty employees respond to such emergencies, those employees are called-in/paged-in and respond are entitled to a minimum of three-hours overtime pay, provided, however, no more than three-hours shall be paid to any off-duty employee so responding unless the employee, in fact, worked for more than three-hours..."

B. The City's Final Offer:

The City seeks to maintain the current Contract language.

C. The Union's Final Offer:

The Union wishes to increase the minimum compensation payable to non-scheduled employees who are called-out for emergencies from the present three-hours to four-hours.

D. The Fact-Finder's Recommendation:

Section 8 of the expired Contract, which is not at issue, provided that:

"In the event of scheduled overtime, those employees who are called-in shall receive a minimum of four-hours of overtime pay."

The Fact-Finder wrote:

"It is difficult for the Fact-Finder to perceive why there should be a differentiation between the call-in overtime pay under Section 7 and 8 when, in essence, the off-duty Firefighters, responding to an emergency and ... [are] called-in would be presumably doing the same work activity as an employee who is on scheduled overtime and is called-in."

Accordingly, the Fact-Finder recommended that Section 7 be amended to read in relevant part that:

"When off-duty employees respond to such emergencies, those employees who are called-in/paged-in and respond are entitled to a minimum of four-hours overtime pay, provided, however, no more than four-hours shall be paid to any off-duty employee so responding unless the such employee, in fact, worked for more than four-hours..."

**F. THE CONCILIATOR'S ANALYSIS AND AWARD:**

Among the communities the City cites as comparable, five provide for minimum call-out hours, and three of those allow a minimum of four-hours for emergency call-outs.

Looking to internal comparables, the AFSCME Bargaining Unit members receive three-hours minimum on a call-in, while Police Officers receive four-hours subject to the requirement that they work the full four-hours, and, if they do not, they are paid only the actual time worked.

The Fact-Finder is undoubtedly correct in failing to discern why off-duty Firefighters called-in in an emergency situation should receive any less than employees called-in for scheduled overtime who are entitled to a minimum of four-hours overtime pay. If anything, because of the greater inconvenience, the unscheduled off-duty employees should be entitled to a greater minimum than those employees who know in advance that they are going to work overtime.

If logic were the controlling feature in the development of Collective Bargaining Agreements, the Conciliator's call would have to go in favor of the Union. But, logic is not the controlling element. Financial considerations are. The City's fiscal status is stabilized in 2011, however, with the reduction in Local Government Funding, the phase-out of the personal property tax and the estate tax and the expected continuation of a distressed economic environment through 2013, the Conciliator is unwilling to add to the City's financial burden.

Accordingly, the Conciliator Awards the City's Final Offer.

**III. Article 10, Sections 2-10 - "Workweek":**

**A. The 2008 Contract:**

Section 5 of Article 10 provides in relevant part:

"Each full-time an employee of the Bargaining Unit of the Department shall work an average fifty-hour workweek. Each such employee shall receive six-hours of `earned time-off' (ATO)(ETO) for each week of service." ["Accumulated Time-Off" or, as known in other jurisdictions, "Kelly Time".] ...

"Notwithstanding the foregoing, Firefighters with at least twenty years of full-time employment who have reached their 320 hour `bank' may elect to work a fifty-six hour workweek....

"Section 8 - Each employee earning six-hours of Earned Time-Off (ATO) per week or 312 hours per year, is eligible to receive such time-off in the year that it is earned. Any hours earned and not used in any calendar year shall be placed in `an ATO Bank' and may accumulate up to a total of 320 hours. Any hours above the 320 hour limit shall be paid at the overtime rate, with payment made by the first pay of April in the next calendar year.

...

"Section 10 - No employee shall be required to use their ATO time during the period of personal illness or injury when this illness or injury shall have occurred prior to the beginning of their ATO time."

**B. The City's Final Offer:**

The City would add to Section 1 of Article 10 the following sentence: "The work year shall consist of thirteen (13) twenty-eight (28) day work periods."

The City would further amend Sections 5 and 8 to read as follows:

"Section 5 - Each full-time employee of the bargaining unit of the Department shall work an average fifty (50) hour workweek. Each such employee shall receive six (6) hours of `Earned Time-Off' (ATO) (ETO) (Relief Time) for each week of service. Employees shall be credited with three hundred twelve (312) hours of ATO on January 1 of the applicable calendar year. The Fire Chief shall have the right to refuse the ATO day-off, referred to herein, at the time of request if such refusal is necessary to avoid scheduling overtime for any full-time employees. When refusing vacation or ATO due to another employee's extended sick leave absence, the Chief shall grant time-off to be scheduled after that employee is scheduled to return to work as per physician's written directions as follows:

..."

"Section 8 - Each employee earning six (6) hours of `Earned Time Off' (ATO) per week, or three hundred twelve (312) hours per year, must take such time-off in the year that it is earned/credited. In order to accomplish the required fifty (50) hour workweek set forth in Section 5, each employee shall request or be scheduled one (1) ATO day-off in each twenty-eight (28) day work period. Any hours earned and not able to be used in any calendar year due to operational needs shall be placed in `an ATO bank' and may accumulate up to a total of three hundred twenty (320) hours. Any hours above the three hundred twenty (320) hour limit shall be paid at the overtime rate, with payment made by the first pay of April in the next calendar year.

"Notwithstanding the above, for calendar year 2012, a minimum of one hundred ninety-two (192) hours of ATO must be used and the employee may `bank' up to one hundred twenty (120) hours of unused ATO and be paid for hours in excess of three hundred twenty (320) within calendar year 2013 as set forth above."

**C. The Union's Final Offer:**

The Union desires to maintain the current Contract language.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder after reviewing the parties collective bargaining history, the reports to the United States Department

of Labor, Wage and Hour Division and the Sixth Circuit Decision in Aiken vs. City of Memphis, 190 F.3d 753 (6<sup>th</sup> Cir., 1999) stated:

"In light of all of the circumstances in history of the ATO provision, the Fact-Finder recommends that Article 10 be retained in its current language."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

In 2010 four of the then twelve members of the Bargaining Unit took no ATO time-off. One took 192 hours and the others took time-off ranging from seven-hours to a high of fifty-two hours.

The ATO time remaining in their banks ranged from a low of 120 to the maximum of 312 hours which was maintained by five of the twelve.

The City made A.T.O. payouts that year ranging from \$4,499.00 to \$12,764.00, for an average of \$10,477.00 per Firefighter.

The total expended by the City in 2010 for ATO payouts was \$125,723.00.

In 2009 the then acting Fire Chief issued a notice requiring that:

"All A.T.O. ... must be signed-up on or before Friday, April 10, 2009, and taken off within the year it was earned .... Any time not taken before April 10, 2009 will be assigned ...."

Thereupon, the Union filed a "class action" grievance alleging that the Order violated the Contract. An Arbitration Award was issued on October 14, 2009 resolving the grievance.

Interpreting Article 10, Section 8 of the then subsisting Collective Bargaining Agreement whose text had been carried forward into the present Contract, the Arbitrator held that:

"Section 8 clearly was intended to give Firefighters the right to bank their A.T.O. hours. Even if the language were to be considered unclear and ambiguous, the past practice of the parties in applying the language supports the Union's interpretation. ... During Contract negotiations, the City agreed to reduce the workweek to fifty-hours in exchange for the Union abandoning its proposal for a wage increase. ... In conclusion, the grievance is granted. The City shall allow Firefighters to bank A.T.O. hours and to pay them for hours worked over 320 hours at the overtime rate as stated in Article 10, Section 8 ..."

Over the years, the ability to bank and receive payment for A.T.O. time has become part of the standard compensation received by Firefighters under Contract after Contract. The City proposes a major reduction in Firefighter's compensation by requiring that A.T.O. time be taken off and not banked, but offers nothing in return. As the Conciliator has previously indicated, the City's fiscal condition does not require such drastic concessions to be made by the Firefighters at this time.

Accordingly, the Conciliator Awards the Union's Final Offer.

**IV. Article 15 - "Sick Leave":**

**A. The 2008 Contract:**

Section 1 of Article 15 provides:

"Section 1 - Sick leave with pay shall be granted to all employees at the rate of one and one-quarter (1 ¼) days per month for each full calendar month of service."

**B. The City's Final Offer:**

The City would amend Section 1 to read:

"Sick leave with pay shall be granted to all employees at the rate of twelve and one-half (12.5) hours per month for each full calendar month of service."

**C. The Union's Final Offer:**

The Union proposes to maintain the current Contract language.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder's Report noted:

"The City equating hours worked with days worked which is a non-sequitur. If the City wanted to put the Firefighters on the same type of eight-hour shift arrangement (presumably three shifts per day) and have Firefighters function as a 2080 hours employee, then their rationale would indeed be entirely correct. It is also significant to note that 2,080 multiplied by 1.25 results in a total of 2,600. Thus, the current Contract language of 1.25 days per month appears to be the proportion adjustment between a 2,600 hour employee and a 2,080 hour employee. This might logically explain why Section 1 of Article 15 provides for 1.25 days per month for sick leave rather than 12.5 hours as suggested the City. For the reasons set forth herein, the Fact-Finder therefore recommends that the language of Article 15 be retained in the new Contract."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The City proposes to restructure the computation of sick leave accrual so that it becomes proportionate to the amount of annual hours actually worked by the Bargaining Unit members and thus tracks the method of sick leave accrual used for all other City employees.

The City points-out that the Firefighters accrue 1.25 sick leave days per month, based upon a twenty-four hour day, which results "in a disproportionate benefit whereby these bargaining unit employees receive credit of up to 432 hours of sick leave annually, a ratio of 16.62% of the annual hours. Although 2600 hour employees may work a twenty-four hour day, they only work 108 or 109 days per year while 2080 hour employees work 260 days per year or 5.77% of their annual hours." The City would apply the same 5.77% ratio to the Firefighters which would yield 150 hours of sick leave annually.

Among the City's list of comparables, Avon offers thirteen-hours per months based upon a 51.7 hour workweek; Campbell provides 13.25 hours per month based upon a fifty-three hour workweek; Girard and Huron offer 1.25 days per month, based respectively, on a fifty-three hour and fifty-six hour workweek; Mentor-on-the-Lake provides 12.5 hours per month based on a fifty-hour workweek.

Among the cities the Union suggests are comparable to Sheffield Lake, only Willoughby Hills and Elyria offer fifteen

sick leave days a year. The remainder provides considerably less. The average sick leave granted by the group of twenty-four is only 8.70 days a year.

The Conciliator does not believe that the comparable sick leave data is persuasive and finds no compelling reason to change the current arrangement absent some consideration from the City.

Accordingly, the Conciliator Awards the Union's Final Offer.

**V. Article 18 - "Differential Pay":**

**A. The 2008 Contract:**

The expired Contract provides in Article 18, Section 1 as follows:

"In the event of an absence in the position of the Chief due to vacation, ATO, illness, bereavement and/or any other reason, that absent position shall be filled and filled by the next senior Officer or Acting Officer with regard to vacations and/or any other time-off."

**B. The City's Final Offer:**

The City seeks to modify the text to allow the Senior Officer the opportunity to accept or decline the assignment, and if the Senior Officer does decline, then to permit the Mayor to assign the acting duties to any qualified ranking Officer or other person. It proposes to amend Section 1 to read as follows:

"Section 1: In the event of an absence in the position of the Chief due to vacation, ATO, illness, bereavement and/or any other reason, that absent position shall be filled by assignment. The senior ranking officer shall be given the first opportunity to accept to decline the assignment. If the senior ranking officer declines the assignment, the Mayor may appoint the next senior officer or such other individual determined to be qualified to serve as Acting Chief.

"The Mayor may determine it appropriate to alternate the period of such assignment(s), however, each assignment shall normally be for at least sixty (60) calendar days or the period of the absence, whichever is less.

"An employee appointed Acting Chief shall be compensated at the minimum rate for the position of Chief."

**C. The Union's Final Offer:**

"Section 1: In the event of absence in the position of the Chief due to vacation, ATO, illness, bereavement and/or any other reason, that absent position shall be filled and filled by the next senior officer or Acting Officer. Should the senior officer decline such assignment it will then be offered to the next senior officer(s). In the event that all ranking officers decline the assignment, the Mayor shall appoint such individual he determines to be qualified to serve as acting Chief.

"Section 2: In the event of an absence in the position of Lieutenant or other Shift Officer due to vacation, ATO, illness, bereavement and/or any other reason, that absent position shall be filled and filled by the next senior firefighter on that shift.

"Section 3: Whenever an employee of the Department is required to work in a higher classification than their regular classification, such employee for every hour of such service shall be paid at the rate of the higher rank which they serve in their acting capacity."

**D. The Fact-Finder's Recommendation:**

The Fact-Finder recommended that the current Contract language be retained without change and carried forward into the successor Contract.

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The City raises the issue because of the "unusual circumstances" which arose during the last Contract term when an Acting Chief was appointed and served for a period of more than two years. The Contract language required the appointment of the "next Senior Officer", but both parties might have preferred a different appointee.

The present Fire Chief is in good health and not near retirement age. The circumstances which gave rise to the present controversy are unlikely to develop during the term of this Contract.

The Union's proposal provides some flexibility in allowing the Senior Officer to decline the assignment, and, in the event all the ranking Officers refuse to serve as Chief, allows the Mayor to appoint such individual as he determines to be qualified.

Accordingly, the Conciliator believes the flexibility offered is adequate, and therefore Awards the Union's Final Offer.

**VI. Article 25 - "Clothing and Personal Effects":**

**A. The 2008 Contract:**

Article 25, Section 5 provides as follows:

"Section 5: Each employee shall receive an annual clothing and uniform maintenance allowance in the amount of \$500.00 per year which shall be paid as follows: On or before April 30<sup>th</sup> (30<sup>th</sup>) of each calendar year."

**B. The City's Final Offer:**

The City demands the retention of the current Contract language.

**C. The Union's Final Offer:**

The Union seeks to increase the annual clothing allowance from \$500.00 per year to \$600.00 per year.

**D. The Fact-Finder's Recommendation:**

After considering that the:

"500.00 allowance is virtually the lowest clothing allowance of a number of cities which ... [the Union] contends are roughly comparable, including a number of nearby cities, for example, the City of Avon/\$850.00; Avon Lake/\$800.00; North Olmsted/\$1300.00; North Ridgeville/\$750.00; for an overall average of \$882.95, and the fact that the Police Officers in Sheffield Lake receive a uniform allowance of \$810.00"

The Fact-Finder wrote:

"On balance ... the Fact-Finder believes that the Union has made a reasonable argument justifying for some increase, although modest in the maintenance allowance."

Accordingly, the Fact-Finder recommended that Section 5 be amended to read as follows:

"Each employee shall receive an annual clothing and uniform maintenance allowance in the amount \$600.00 per year which will be payable as follows on or before April 30<sup>th</sup> of each calendar year."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The Conciliator has already noted that while the City's 2011 financial condition is in good shape, its revenue streams in 2012 and 2013 are problematic.

This Contract does not represent an occasion for enhancing the economic status of the Firefighters.

Accordingly, the Conciliator therefore Awards the City's Final Offer.

**VII. Article 27, Section 2 - "Hospitalization":**

**A. The 2008 Contract:**

The expired Contract provides in Section 2 as follows:

"Section 2: The Employer agrees to pay ninety percent (90%) of the monthly cost for those bargaining unit employees who elect to receive health care coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following:

<u>Calendar Year:</u>	<u>Maximum Employee Contribution:</u>
January 1, 2008 through	\$47.50 Single Coverage
December 31, 2010	\$100.00 Family Coverage

**B. The City's Final Offer:**

The City proposes to amend Section 2 to provide that effective "July 1, 2011 the maximum employee contribution shall be \$50.00 single coverage; \$120.00 family coverage."

**C. The Union's Final Offer:**

The Union agrees to increase the single coverage obligation from \$47.50 to \$50.00 per month, and the contribution for family coverage from \$100.00 to \$120.00 per month. However, the Union would add the following provision to Section 2: "Notwithstanding the above, either party may request to reopen negotiations for purposes of health insurance for 2013 by submitting written notice to the other party between October 1, 2012 and October 31, 2012."

**D. The Fact-Finder's Recommendation:**

The Fact-Finder recommended the Section to be amended to read as follows:

"The Employer agrees to pay ninety percent (90%) of the monthly cost for those bargaining unit employees who elect to receive healthcare coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following: for the period July 1, 2011 to December 31, 2011, the maximum employee contribution shall be Fifty Dollars (\$50.00) for single coverage; One Hundred Twenty Dollars (\$120.00) for family coverage.

"Notwithstanding the above, either party may request to reopen negotiations for purposes of health insurance for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 31, 2011."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The present City-wide healthcare plan calls for Bargaining Unit employees to pay 10% of the monthly cost subject to contributions of \$47.50 for single coverage and \$100.00 for family coverage. The City proposes a minimal increase in employee responsibility. The Union does not oppose the increase.

Where they part company is over the Union's proposal to allow either party to reopen negotiations for 2013.

There is no more volatile element of the City's expenditures than health insurance.

Although the City does not accept a reopener for 2013, the Conciliator believes it would be in the best interest of the City to reconsider the issue of employee contributions at that

time. Any resolution, however, should take into account the fact that it is preferable to have a uniform health insurance program for all employees so as to minimize administrative costs which escalate when differing groups have differing benefits, and to avoid encouraging over-utilization by allowing certain groups to pay less than others, and requiring the disfavored groups to provide a subsidy.

Accordingly, the Conciliator Awards the Union's Final Offer.

VIII. Article 29 - "Paramedic Pay":

A. The 2008 Contract:

Article 29, Section 1 of the expired Contract provides:

"Section 1: Any full-time employee covered by this Agreement who shall have attained and have maintained paramedic certification as determined by the State of Ohio and as required pursuant to their employment with the City shall be paid as follows:

"The paramedic payment for Firefighters shall be six thousand five hundred fifty dollars (\$6,550.00) and the paramedic payment for Lieutenants shall be seven thousand two hundred five dollars (\$7,205.00).

B. The City's Final Offer:

The City proposes that the the current language be carried forward into the successor Agreement without change.

C. The Union's Final Offer:

The Union would incorporate the current Paramedic pay supplement into the Firefighters and Lieutenants base pay rate as follows:

"Section 1: Any full-time employee covered by this Agreement who shall have attained and have maintained paramedic certification as determined by the State of Ohio and as required pursuant to their employment with the City shall be paid as follows:

"The paramedic payment for Firefighters shall be six thousand five hundred fifty dollars (\$6,550.00) and the paramedic payment for Lieutenants shall be seven thousand two hundred five dollars (\$7,205.00).

"Effective January 1, 2012, the above paramedic payments shall be rolled into the Firefighters' and Lieutenants' annual base salaries set forth under Article 30."

**D. The Fact-Finder's Recommendation:**

After noting that there is no "central uniformity" as to the provision of separate Paramedic pay or incorporating such supplement into the base salary, the Fact-Finder wrote as follows:

"The Fact-Finder appreciates that reasonable arguments could be made both the Union's and the City's positions, even with a recognition that base salaries would have a cost of living factor which could also be applied to Paramedic pay even if identified as a separate item. However, in light of the Fact-Finder's recommendations addressing Article 30 (Annual Base Salary), at this time the Fact-Finder recommends that current Contract language be maintained and that Article 29 remain unchanged."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The current separate Paramedic stipend is equivalent to 15% of the Firefighters' base salary.

The City proposes to maintain the separation because, at some future date, it may wish to hire Firefighters who do not have Paramedic certification.

The difficulty from the Union's prospective is that by maintaining the separation from base salary, the Paramedic pay is not subject to cost of living increases.

For the duration of the successor Contract, it is highly unlikely that there is going to be a significant risk of material increases in the cost of living.

Historically, the parties made a deal to keep Paramedic pay separate from the base salary, and the Conciliator does not find any adequate reason to change it now.

Accordingly, the Conciliator Awards the City's Final Offer.

**IX. Article 30 - "Annual Base Salary":**

**A. The 2008 Contract:**

Article 30 of the expired Contract provides as follows:

"Section 1: The annual base salary for full-time Class A and below Firefighters in the City shall be as follows:

...

<b><u>Firefighter:</u></b>	<b><u>2010:</u></b>
Step 1	\$34,234.47
Step 2	\$36,184.58
Step 3	\$38,149.17
Step 4	\$40,067.33
Step 5	\$42,018.82

"Section 2 - The annual base salary for full-time Lieutenants in the City shall be as follows:

"Step V:

...

"As of January 1, 2010 - \$46,220.71."

**B. The City's Final Offer:**

The City offers no wage increases for the term of the successor Agreement noting that its four other Bargaining Units had agreed to maintain the current compensation schedule with an economic reopener in 2012.

The City's final offer does include a one-time lump sum payment of \$690.00 in 2012, while the other Bargaining Units received a \$750.00 lump sum offer as their healthcare cost had

increased during at least the past six months. Its Final Offer reads:

"Section 1: The annual base salary for full-time Class A and below Firefighters in the City shall be as follows:

<b><u>Firefighter:</u></b>	<b><u>2011:</u></b>
Step 1	\$34,234.47
Step 2	\$36,184.58
Step 3	\$38,149.17
Step 4	\$40,067.33
Step 5	\$42,018.82

"Section 2 - The annual base salary for full-time Lieutenants in the City shall be as follows:

"Step V:

....

"As of January 1, 2011 - \$46,220.71.

"Section 3: Effective with the first pay in January 2012, a one-time, lump sum wage equity adjustment of six hundred ninety dollars (\$690.00) shall be paid to bargaining unit employees employed as of January 1, 2011 and still employed as of January, 2012."

**C. The Union's Final Offer:**

The Union offers to retain the current base rate compensation without change for the period January 1, 2011 to December 31, 2012, but would increase the City's offer of a lump sum payment to equal that paid to members of the other Bargaining Units as follows:

"Section 3: Effective with the first pay after January 1, 2012, a one-time, lump sum wage equity adjustment shall be paid to bargaining unit members as follows:

"Firefighter (Step 1-Step V) \$750.00

"Lieutenant

\$750.00

"Section 4: Notwithstanding the provisions in Section 1, 2 and 3, either party may request to reopen the agreement for purposes of economics for 2013 by submitting written notice to the other party between October 1, 2012 and October 31, 2012."

**D. The Fact-Finder's Recommendation:**

The Fact-Finder commented as follows:

"Without belaboring this issue, it is significant to note that under Article 26 of the police officers' contract for 2011, wages are frozen but that as part of the wage freeze, a one-time `lump sum wage equity adjustment' of \$750.00 was paid with a reopener permitted under Article 37. Likewise, under Article 37 of the AFSCME contract, wages were similarly frozen for 2011 with a one-time lump sum payment of \$750.00 with a wage reopener clause. In light of the identical provisions in the police and AFSCME contracts, the Fact-Finder perceives no reasonable basis to go outside of the Sheffield Lake's collective bargaining arrangements for purposes of making a recommendation or to deviate what has been bargained with the other two representatives.

"Accordingly, the Fact-Finder recommends that Article 30 be amended to read as follows:

"Section 1: For the period January 1, 2011 to December 31, 2011, the annual base salary for full-time Class A and below firefighters in the City shall be as follows:

**Firefighter: 2011:**

Step 1	\$34,234.47
Step 2	\$36,184.58
Step 3	\$38,149.17
Step 4	\$40,067.33
Step 5	\$42,018.82

"Section 2: The annual base salary for full-time Lieutenants in the City shall be as follows:

"Step V: \$46,220.71

"(For the period January 1, 2011 to December 31, 2011).

"Section 3: Effective with the first pay after ratification by the parties, a one-time, lump sum wage equity adjustment shall be paid to Bargaining Unit employees employed as of January 1, 2011, as follows:

"Firefighter (Step 1-Step 5)	\$ 750.00
"Lieutenant	\$ 750.00

"Section 4: Notwithstanding the provisions in Sections 1, 2 and 3, either party may request to reopen the agreement for purposes of economics for 2012-2013 by submitting written notice to the other party between October 1, 2011 and October 31, 2011."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The difference between the two Final Offers is that the City would include a one-time lump sum payment of \$690.00 in 2012 in lieu of the \$750.00 paid to the employees in the other Bargaining Units.

The differential for the eleven employees in the Firefighters' Bargaining Unit amounts to \$660.00.

The City believes the reduction is appropriate because employees in the other Bargaining Units began paying a higher co-insurance following the execution of their respective successor Collective Bargaining Agreements.

How the City came up with the amount of \$60.00 as the appropriate differential is unclear.

The Fact-Finder had no patience with this argument, and recommended the Union's proposal to incorporate the text of the

amended salary language which appears in the other Collective Bargaining Contracts.

The Conciliator agrees.

Accordingly, the Conciliator Awards the Union's Final Offer.

**X. Article 32, Section 2, - "Minimum Manning":**

**A. The 2008 Contract:**

Article 32, Section 2 of the expired Agreement provides:

"Section 2: The number of employees of the Bargaining Unit on-duty, available to respond to an alarm, shall be a minimum of three (3).

**B. The City's Final Offer:**

The City proposes to amend Section 2 to read as follows:

"Section 2: For the duration of this Agreement, there shall be a minimum of three (3) personnel (full-time/part-time) on-duty per shift. The minimum shift compensation shall include at least two (2) full-time employees."

**C. The Union's Final Offer:**

The Union accepts the Fact-Finder's recommendation that language be added to the Article allowing the City to utilize one (1) non-Bargaining Unit/part-time personnel towards the minimum manning level if overtime costs exceeds certain thresholds.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder recommended that Section 3 be amended to read as follows:

"Section 3: If sixty percent (60%) of the budgeted overtime monies within the City of Sheffield Lake for the Fire Department personnel have been expended prior to the seventeenth (17<sup>th</sup>) pay period, or seventy percent (70%) prior to the twentieth (20<sup>th</sup>) pay period or eighty percent (80%) prior to the twenty-third (23<sup>rd</sup>) pay period, or ninety percent (90%) prior to the twenty-fourth (24<sup>th</sup>) pay period, then, and in that event, the minimum

manning shall be three (3) Firefighters, one (1) of whom may be a part-time Firefighter."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The City argues that future losses of revenue might prevent it from guaranteeing a staffing level of three full-time personnel. It points-out that:

"Historically, the Department of Fire was comprised of full and part-time personnel. As full-time personnel increased their annual work hours by `electing' not to take-off their A.T.O. time, utilization of part-time personnel became an `excess' cost and necessarily dwindled." Now, in order to survive the economic downturn and declining revenues, and be fiscally responsible, the City needs to reign-in overtime costs and return to a full-time Department supplemented by part-time personnel."

The Fact-Finder, responsive to the City's concern of excessive overtime costs, recommended that the City be contractually allowed to include one part-time employee among the three Firefighters required by the minimum manning provision if certain percentages of budgeted overtime monies for the Fire Department were expended prior to specified pay periods.

The Conciliator concludes that the Fact-Finder's recommendation is innovative and practical.

Accordingly, since the Union has adopted the Fact-Finder's recommendation, the Conciliator Awards the Union's Final Offer.

**XI. Article 38, Sections 1, 3, 4 - "Retirement and Separation Pay":**

**A. The 2008 Contract:**

The 2008 expired Contract provides for retirement pay under Section 1 and separation pay under Section 3 as follows:

"Retirement Pay:

"Section 1: An employee who retires from the Fire Service under OPFPDF (service or disability retirement) is eligible to be compensated accordingly for all his accumulated sick time, ATO hours, and vacation time, including pro-rata pay due for the current year as listed below:

- "1. Sick Time - Up to 150 days x 24 hours x 50 hour rate\*
- "2. ATO Hours - Hours x regular overtime rate
- "3. Vacation Time - Days x 24 hours x 50 hour rate

"\* Less any sick leave paid under Step VI pay (see Article 41).

...

"Separation Pay:

"Section 3: An employee who has completed one (1) year of service or more and who resigns from the Fire Service for reasons other than retirement as addressed in Sections 1 and 2 herein, and excluding discharge for cause or transfer to another public jurisdiction, or is laid off or dismissed, is eligible to be compensated accordingly for all their accumulated sick time, ATO hours, and vacation time, including pro-rata pay due for the current year as listed below:

- "1. Sick Time - Days (up to 150) x 24 hours x 50 hour rate\*
- "2. A.T.O. Hours - Hours x regular overtime rate
- "3. Vacation Time - Days x 24 hours x 50 hour rate

"\* An employee who has completed one (1) year of continuous full-time service with the Department may convert accumulated and unused sick leave to cash at a rate not to exceed ten (10) days of sick leave per completed year of full-time service. For example, an employee who separates from service after ten (10) completed years of service may convert up to a maximum of one hundred (100) days of sick leave. Any employee who opted for

Step VI pay and then separates from service for reasons other than discharge for cause or transfer, where such employee does not retire (service or disability retirement) shall have the proportionate amount of sick leave paid under Step VI deducted from his sick leave balance or one hundred fifty (15) days, whichever is less, in determining an sick leave to be paid."

**B. The City's Final Offer:**

The City proposes to modify the provisions to be consistent with its proposals for modifications to the sick leave overtime and A.T.O. time provisions of the Contract, and require that the payment of accrued but unused sick leave occur only at retirement, rather than upon resignation or other separation of employment.

"Retirement Pay:

"Section 1: An employee who retires from the Fire Service under OPFPDF (service or disability retirement) is eligible to be compensated accordingly for all his accumulated sick time, and vacation time, including pro-rata pay due for the current year as listed below:

- "1. Sick Time - Up to 1500 hours x 50 hour rate\*
- "2. A.T.O. Hours - Hours x regular (50 hour) overtime rate
- "3. Vacation Time - Hours x 50 hour rate

....

"Separation Pay:

"Section 3: An employee who has completed one (1) year of service or more and who resigns from the Fire Service for reasons other than retirement as addressed in Sections 1 and 2 herein, and excluding discharge for cause or transfer to another public jurisdiction, or is laid off or dismissed, is eligible to be compensated accordingly for all their ATO hours, and vacation time, including pro-rate pay due for the current year as listed bellows:

- "1. Sick Time - Hours x 50 hour rate\*
- "1. ATO Hours - Hours x regular (50 hour) overtime rate\*
- "2. Vacation Time - Hours x 50 hour rate

"\* An employee who has completed one (1) year of continuous full-time service with the Department may convert accumulated and unused sick leave to cash at a rate not to exceed one hundred (100) hours of sick leave per completed year of full-time service. For example, an employee who separates from service after ten (10) completed years of service may convert up to a maximum of one thousand (1,000) days hours of sick leave. Any employee who opted for Step VI pay and then separates from service for reasons other than discharge for cause or transfer, where such employee does not retire (service or disability retirement) shall have the proportionate amount of sick leave paid under Step VI deducted from his sick leave balance or one hundred fifty (150) days, whichever is less, in determining any sick leave to be paid."

**C. The Union's Final Offer:**

The Union seeks to maintain the current Contract language.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder observed:

"The Fact-Finder has already addressed the question of the firefighters' entitlement to computations based on 50 hour rate and utilizing 24 hour workday as those are the actual hours that the firefighter is expected to work. The Fact-Finder finds no compelling reason to deviate from the present contract provisions as they are consistent with the other decisions of the Fact-Finder.

"Equally so, the Fact-Finder believes that Section 3 dealing with separation pay should similarly remain unchanged as that is the formula under which the employees have been operating in determining their retirement or separation pay."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The Conciliator has not awarded the City's position with respect to changing the calculation of sick leave overtime and

A.T.O. time, and, accordingly sees no reason to change the Contract language.

**XII. Article 42, Section 1 - "Calculation of Rates":**

**A. The 2008 Contract:**

The expired Contract provides in Section 1, Paragraphs 2 and 3 as follows:

"Section 1: Calculations for rates of pay will be made as follows:

....

"2. Calculations for the fifty-six (56), fifty (50), and forty (40) hour rates and biweekly pay will be done by taking the step rate of pay, including paramedic pay if applicable, and adding any longevity due the employee, and dividing by two thousand nine hundred twelve (2,912), two thousand six hundred (2,600), two thousand eighty (2,080), and twenty-six (26), respectively.

"3. Overtime calculations will be made by multiplying the forty (40) hour rate by one and one-half (1 ½), two (2), or three (3) as defined in this Agreement."

**B. The City's Final Offer:**

The City seeks to amend the provisions of Paragraphs 2 and 3 to be consistent with its other proposals to change the 2080 annual work hour calculation, and address leave time in hours rather than "days". It proposes to amend the text of Section 1, Paragraphs 2 and 3 to read as follows:

"Section 1: Calculations for rates of pay will be made as follows:

....

"2. Calculation for the fifty-six (56), and fifty (50) hour rates and biweekly pay will be done by taking the step rate of pay, including paramedic pay if applicable, and adding any longevity due the employee, and dividing by two thousand nine

hundred twelve (2,912), two thousand six hundred (2,600), and twenty-six (26), respectively.

"3. Overtime calculations will be made by multiplying the fifty (50) hour rate by one and one-half (1 ½), as defined in this Agreement."

**C. The Union's Final Offer:**

The Union seeks to maintain the current Contract language.

**D. The Fact-Finder's Recommendation:**

The Fact-Finder observed:

"The Fact-Finder has already discussed the inappropriateness of using a 40 hour rate when the rate of pay and the workweek previously set forth in this report are all based on a 50 hour workweek. Using a 40 hour rate injects a disproportionate formula when all of the underlying workweek activities are based on 50 hours (2,600 hours per year) which, for example, was the recommended rate for use in Article 15 (Sick Leave).

"The Fact-Finder proposes that Section 1, Paragraphs 2, 3, 4 and 5 be changed to read as follows:

"Calculations for the 56 and 50 hour rates and biweekly pay will be done by taking the step rate of pay, including paramedic pay, if applicable, and adding any longevity duty employee, and dividing by 2,912, 2,600 and 26, respectively.

"Overtime calculations will be made by multiplying the 50 hour rate by one and one-half or two as defined in this Agreement.

"Holiday pay will be calculated by multiplying the 50 hour rate by 24 hours.

"Acting Lieutenants' pay will be calculated by multiplying the difference in the Acting Lieutenants' 50 hour rate of pay and the 50 hour rate of pay of a Lieutenant by the number of hours worked."

**E. THE CONCILIATOR'S ANALYSIS AND AWARD:**

The Conciliator has previously rejected the City's proposal to require overtime calculation to be based upon the 2600 hour work year, and its allied proposal to recalculate employee's sick leave entitlement.

Accordingly, the Conciliator Awards the Union's Final Offer.

Conciliator's Award signed, dated and issued at Cleveland, Ohio this 8<sup>th</sup> day of November, 2011.

Alan Miles Ruben  
Conciliator

AMR:ljpg

**APPENDIX “A”**

**TENTATIVE AGREEMENTS REACHED BETWEEN THE CITY OF SHEFFIELD LAKE AND IAFF LOCAL 2355, INCLUDING PROVISIONS CARRIED OVER FROM CONTRACT THAT EXPIRED 12/31/10 (NO CHANGE)**

<b><u>Article</u></b>	<b><u>Title</u></b>	<b><u>TA/No Change</u></b>
Article 1	Union Recognition and Bargaining Unit	No Change (CCL)
Article 2	Validity and Application of Civil Service Law	No Change (CCL)
Article 3	Duties of Employees	No Change (CCL)
<b>Article 4</b>	<b>Non-Discrimination</b>	<b>12/3/2010</b>
Article 5	Check-Off	No Change (CCL)
<b>Article 6</b>	<b>Union Business</b>	<b>10/20/2011</b>
Article 7	Probationary Period	No Change (CCL)
Article 8	Seniority	No Change (CCL)
<b>Article 9</b>	<b>Overtime - Sections 2, 3, 4, 5, 6 and 8</b>	<b>10/27/2011</b>
Article 11	Civil Service	No Change (CCL)
<b>Article 12</b>	<b>Vacations</b>	<b>5/22/2011</b>
<b>Article 13</b>	<b>Paid Holidays</b>	<b>10/20/2011</b>
Article 14	Special Leaves (Bereavement)	No Change (CCL)
<b>Article 16</b>	<b>In-Line-of-Duty Injuries...</b>	<b>10/31/2011</b>
Article 17	Light Duty	No Change (CCL)
<b>Article 19</b>	<b>Grievance Procedure</b>	<b>10/20/2011</b>
<b>Article 20</b>	<b>Arbitration</b>	<b>10/20/2011</b>
Article 21	Rules and Guidelines	No Change (CCL)
Article 22	Absenteeism	No Change (CCL)
Article 23	Adequate Air Conditioning	No Change (CCL)
<b>Article 24</b>	<b>Safety</b>	<b>10/20/2011</b>
<b>Article 25</b>	<b>Clothing and Personal Effects - Section 1</b>	<b>10/20/2011</b>
Article 26	Employee’s Rights	No Change (CCL)
Article 28	No Strikes or Lockouts	No Change (CCL)
Article 31	Longevity	<b>10/20/2011</b>
<b>Article 33</b>	<b>Officer, Department, Mandatory Meetings</b>	<b>7/6/2011</b>
Article 34	Court and Jury Duty	No Change (CCL)
Article 35	Credit Union and Deferred Compensation Deposits	No Change (CCL)
Article 36	Schooling, Training, and Continuing Education	No Change (CCL)
Article 37	Layoffs and Reductions	No Change (CCL)
<b>Article 39</b>	<b>Contracting Out</b>	<b>10/20/2011</b>

<b>Article 40</b>	<b>Discipline</b>	<b>10/31/2011</b>
Article 41	Step VI Pay	No Change (CCL)
<b>Article 43</b>	<b>Duration</b>	<b>10/31/2011</b>
<b><u>Article</u></b>	<b><u>Title</u></b>	<b><u>TA/No Change</u></b>
Appx. A	56 Hour Work Week	No Change (CCL)
<b>New</b>	<b>Living Quarters</b>	<b>10/20/2011</b>

Provisions in “Bold” represent signed TA’s; regular font provisions were either not opened by either party or any proposals were withdrawn and there is no change

November 9, 2011

Ryan J. Lemmerbrock, Esq.,      Ms. Sandy Conley  
Muskovitz & Lemmerbrock      Account Manager  
820 W. Superior Ave.              Clemans, Nelson & Assoc.  
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RE: SERB Case No: 10-MED-06-0842  
The City of Sheffield Lake -and- The Sheffield  
Lake Professional Firefighters, Local 2355,  
IAFF, OAPFF, AFL-CIO-CLC

**For Services Rendered:**

Hearing Dates - 10/31/11 & 11/1/11 2 days at \$1200.00 per day	\$2400.00
Mileage - Bratenahl, OH/Sheffield Lake, OH 2 round trips - 152 miles at \$.50 Per mile	\$ 76.00
Meals - No Charge	\$ 0.00
Duplication - No Charge	\$ 0.00
Postage - No Charge	\$ 0.00
Consideration and Preparation of Conciliator's Analysis & Award 4.5 days at \$1200.00 per day	<u>\$5400.00</u>
<b>Total Amount Due:</b>	<b>\$7876.00</b>
<b>The City's Share:</b>	<b>\$3938.00</b>
<b>The Union's Share:</b>	<b>\$3938.00</b>

Respectfully submitted,

Alan Miles Ruben  
Conciliator  
TAX ID NO: 189-24-1171

