

IN THE MATTER

OF

CONCILIATION

BETWEEN

**THE INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 336**

AND

THE CITY OF MIDDLETOWN, OHIO

STATE EMPLOYMENT
RELATIONS

FEB 7 1997

Hearing: January 17, 1997
SERB Case Nos.: 96-MED-09-0764
Date of Report: February 6, 1997
Issue: Conciliation

Union Representative:

**Don Hardin
President, IAFF Local 336
223 Rachel Lane
Middletown, Ohio 45042**

City Representative:

**Don Crain
Frost & Jacobs
First National Bank Building
Middletown, Ohio 45042**

**FINAL OFFER SETTLEMENT AWARD
OF CONCILIATOR**

**Michael Paolucci
Conciliator**

ADMINISTRATION

By letter dated January 3, 1997, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as Conciliator between the Parties. On January 17, 1997, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on January 17, 1997, and is now ready for a Final Offer Settlement Award.

FACTUAL BACKGROUND

The City lies between Cincinnati and Dayton, Ohio, several miles west of I-75 and has a population of approximately fifty thousand (50,000); the Union represents both the eighty-eight (88) firefighters and the four (4) Deputy Chiefs. The only employee in the fire department who is not a member of the bargaining unit is the Fire Chief.

On December 11, 1996, the Parties held a factfinding hearing in front of Donald Heisel of Cincinnati, Ohio. On December 18, 1996, Factfinder Heisel issued a report on twelve (12) issues, a copy of which is attached as Exhibit A. While the City Council of Middletown voted to accept the report, the Union rejected the Report by a vote of 66-0. The Parties met one (1) other time before conciliation was held and were unable to reach agreement.

Prior to the beginning of the hearing, mediation was inquired into by the Conciliator. However, upon advice of both Parties it was determined that such efforts would not be worthwhile and a hearing was held. Following the hearing, the undersigned again engaged the Parties in mediation but was not successful.

Prior to the conciliation hearing on January 17, 1997, ten (10) issues were raised in the

Parties' pre-hearing statements. However, during the hearing agreement was reached on five (5) of those issues. The issues presented before the hearing were as follows:

1. Wages
 - a. Pay Increase
 - b. Savings Plan
 - c. Promotion within firefighter rank
 - d. Transfer Pay
 - e. Starting Salary
2. Hours of Work
 - a. Work Week
 - b. Flexibility on 24-48 schedule
3. Call-in Pay
4. Stand-by Pay
5. Random Drug Testing

The issues will be addressed separately giving consideration to all of the required factors.

Pursuant to Ohio Revised Code 4117.14 (G)(7), the undersigned considered all of the following statutorily required elements:

After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (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 interests 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 procedures in the public service or in private employment.

SETTLED ISSUES

During the hearing, and based on the Parties' Last Best Offers as contained in the pre-hearing statements, the following issues were resolved:

1. **Wages**
 - a. **Pay Increase** - The Parties agreed to a 3%, 3%, and 3% wage increase in each year of a three (3) year contract.
 - b. **Promotion within firefighter rank**
 - The Parties agreed to the Factfinder's recommendation that the status quo be maintained where premium pay is based on certifications being obtained.
2. **Hours of Work**
 - a. **Work Week** - The Parties agreed that the Factfinder's report, where the status quo is maintained, was acceptable. The Work Week will remain at fifty-two (52) hours.
 - b. **Flexibility on 24-48 schedule**
 - The Parties agreed that the Factfinder's report, where re-opener language for this provision was included, would be acceptable if it was instituted on or after November 1, 1998.
3. **Call-in Pay**
 - The Parties agreed to adopt the Factfinder's proposed language that would make the current practice consistent with the Agreement.

**UNSETTLED ISSUES SUBMITTED FOR
FINAL OFFER SETTLEMENT AWARD OF CONCILIATOR**

The following five (5) issues were left for award by the undersigned. Before entering into the rationale for each specific issue, it is important to note the significance of the Factfinder's report. Since the inception of the Ohio Collective Bargaining Law, two positions have evolved with regard to the weight that should be given to a factfinding report by a Conciliator. The first is that the conciliation hearing is a trial *de novo* where both Parties begin their case anew. It is a second bite at the apple and both parties may explore new ways of arguing the same issues in an attempt to be more successful. The risk of forcing the issues to conciliation is that a party may lose an issue that it was previously successful with in factfinding, and *vice versa*.

The alternative view is that both procedures are extensions of the collective bargaining process and consequently, the Factfinder's report must be given great deference to prevent the Parties from forum shopping the same issues. It is more of an appeal process where the Party arguing that the Factfinder is wrong must prove its claim. Thus, under the second view, unless there is obvious error, a complete lack of reasoning, or a deviance from reasonableness, the Factfinder's report must be given deference.

Of these two camps, the second has evolved to become the prevailing view. Indeed, the undersigned supports the position that a factfinding report must be given great weight and that the party wishing to modify that report has the burden of proving why such should be done. To find otherwise would make the negotiation process more erratic than necessary. If the factfinding portion were able to be completely ignored and its importance minimalized, then it is reasonably foreseeable that it would lose its effectiveness as a means to come to an Agreement. Since it is axiomatic that the factfinding process was not intended to have such inconsequential effect, then it must be given

due consideration to avoid that occurrence.

In the instant matter, the City has argued for adoption of the Factfinder's report on all but one issue - Drug Testing. Thus, except for that issue, the Union will have the burden of proving why the Factfinding Report should be changed.

Issues 1&2. WAGES: SAVINGS PLAN & STARTING SALARY

Although listed separately, the issues of the Savings Plan and the Starting Salary were so intertwined that the Parties' Last Best Offers combined the issues and they were argued together. Therefore, they are presented together here.

The Savings Plan was proposed by the Union during the 1993 negotiations following the City's claim that it needed creative ways to reduce costs. The Union proposed that the first year employees' salary be reduced from \$25,000.00 to \$18,000.00 in exchange for the creation of a pool of money that the City would contribute to whenever a firefighter left the City's employ. The amount the City would contribute to the pool would be the difference between the previous employee's salary and the new employee's salary at the \$18,000.00 level. The pool would then be split in the following manner: the City would get 10% and the remaining 90% would be split among bargaining unit employees with more than ten (10) years of seniority.

The matter was further complicated when an arbitrator ruled that the calculation would include all new-hires. Thus, even new-hires who were not replacements for quitting employees but, instead, were only added as the bargaining unit expanded were included in the calculation.

This issue was the most contentious and, based on the Factfinder's report, the most difficult to deal with. The Factfinder sided with the City by recommending that the savings plan be abolished

and that the starting pay of new hires be raised to \$25,000.00. His rationale is as follows:

“Savings Plan: In the 1993 negotiations leading to the current contract, this idea was introduced as a quid pro quo for a lower entry rate, \$18,000 for new Firefighters. Basically, it took the money saved when a person on a high step left and was replaced by someone at \$18,000. Most (90%) of the difference went into a pot for distribution among the senior employees. Complicating the situation was an Arbitrator’s ruling that the pot for 1996 include the difference between maximum and minimum for newly-hired employees added to the complement of the Department who didn’t replace anyone. The amounts involved each year are substantial. For 1996, over \$129,000 is scheduled for distribution to 37 employees, some of who will get over \$4,000 — more than 10% of their base pay.

Both management and the Union recognize the inequity of the plan. It is not an appropriate way to distribute pay.” (Page 3)

* * *

“Pay Recommendations:…2. Eliminate the ‘Savings Plan’ — Article 45, Section F. I am not making any recommendation regarding the payments for 1996. That matter is not involved in the 1997-99 contract, which is my sole concern.” (Page 4)

The above represents Factfinder Heisel’s complete rationale regarding the savings plan.

City Contentions

The City contends that the Savings Plan failed in at least two ways: the low starting salary has resulted in a low number of qualified new candidates, and it has created disagreement and extensive litigation between the Parties. It argued that the Savings Plan was not intended to be immortal and in fact, will lose value to the City as it ages and the starting salary increases. Based on the foregoing, the City asks that the Factfinder’s recommendations be adopted by abolishing the Savings Plan and by raising the starting salary to \$25,000.00.

Union Contentions

The Union argued that the Savings Plan was appealing to the Union because the payment increased each affected member's pension benefits; it had no affect on current employees; and, even though starting pay was lowered, new employees rose quickly through the steps of the wage scale and were not adversely affected for an unreasonable period. It contended that the City benefitted from the Plan in several ways. It asserted that the City had lower overtime costs for new hires; that new hires had to achieve higher levels of training to receive more pay, that it cost the City nothing; and that it saved money. It contends that if the starting pay had not been voluntarily lowered by the Union, it would currently be \$28,254.98 and the City, under its proposals, would save over \$4,000 per new hire. The Union asks that the Savings Plan be kept in place with the starting pay increased to \$24,000.00 and the pool of money be split 90% to the Union and 10% to the City.

Findings

A review of the record shows that the City's position, and by reference the Factfinder's report, must be adopted. The basis for this finding is that the Union failed to show why the Factfinder's report should be overturned; that the Savings Plan has not worked; that the Savings Plan provides no real benefit to the City; and that it is in the best interest of the Parties that the provision be removed.

Although the Union argued that the Factfinder was confused, a review of his statement of the facts shows that he clearly understood the Savings Plan. The report explains the Savings Plan in a succinct clear manner and follows with a terse rationale for the recommendations. Although the rationale was terse, it was sufficient enough to conclude that the Factfinder understood the fact

situation. The conclusion that logically follows is that the Union failed to show that the Factfinder's report was based on his confusion. Therefore, the Factfinder's report must be given due consideration and cannot be overturned unless it was shown to be unreasonable.

Even if the Factfinder had not sufficiently explained his recommendations, a review of the Plan shows that it is in the best interest of the Parties that it be removed. Although the Plan is creative in its attempt to save the City money, like many unusual ideas it failed to meet both Parties' original goals. Indeed, instead of benefitting both Parties, it became one-sided in its value and resulted in becoming a source of contention. The reason for the Plan becoming such a source of contention is that although it provided a windfall for the Union members, the benefits provided for the City were negligible. Thus, the anticipated value of the Plan for the City was not realized and weakened its *quid pro quo* benefit.

In fact since the benefit only went to those Union members with over ten (10) years of seniority, it is reasonable to assume that those with just short of ten (10) years would be most interested in the benefit continuing until they received their perceived share. Consequently, it is reasonable to conclude that the benefit would be progressively more difficult to get rid of as time passed. Thus, the benefit has not only caused unnecessary discord between the Parties, it is reasonable to conclude that it would have divisive power within the Union if it were allowed to continue.

Since it would be unwise to include any new provision that would cause dissension between the Parties, it is equally unwise to keep relatively new language that has been applied in unforeseen ways. It is obvious that it is better to remove problematic language while it is still relatively new than to leave it in place to cause further feuding. In that vein, it must be found that it is in both Parties best interest to get rid of the language.

This finding must stand even though the Union made a persuasive argument that the starting salary would be over \$28,000.00 if the Savings Plan had not been included. However, when both Parties' Last Best Offers are compared, it must be found better to get rid of the Savings Plan and suffer the City's starting salary than to keep the Savings Plan in any form.

3.

WAGES: TRANSFER PAY

Currently, whenever a firefighter is transferred from one station to another during the course of a shift they receive transfer pay in the amount of \$7.00 per transfer with the maximum per day reimbursement of \$14.00.

City Contentions

The City asks that the Factfinder's report be adopted by eliminating the transfer pay. It agrees with the Factfinder that the transfer pay is a poor way to distribute payroll. It argues that the benefit prevents no abuse; the fire stations are all within two (2) miles of each other; no other employees within the City receive a benefit like this; and it impedes the City's ability to staff the fire stations.

Union Contentions

The Union argues that the firefighters are the only employees in the City who are required to change work stations at their own expense and in their own vehicles. It contends that the City can avoid the payment by giving forty-eight (48) hours notice and the FOP has a similar benefit in that unless five (5) days notice is given, three (3) hours pay is due - a much higher rate than the \$7.00 paid to firefighters.

Findings

Similar to the discussion made in the Savings Plan, no support was given for why the Factfinder should be overturned. Moreover, the distance traveled by firefighters is rarely more than a couple of miles and therefore, it must be found that the compensation is not rationally related to the inconvenience. Therefore, it must be found that the City's position be adopted.

4. STANDBY PAY

The current language calls for two (2) hours pay for each "day" that an employee is placed on "standby."

The City wanted to define a "day" as twenty-four (24) hours. The Union wanted to define a "day" as eight (8) hours. The Factfinder generally supported the Union and wrote the following new language as his recommendation:

"Members placed on standby status outside their regular work shifts approved by the Chief shall receive compensation equal to two hours of straight-time pay for each eight-hour day on standby, (computed at their forty-hour rate), unless furnished with a page or portable cellular phone."

City Contentions

The City, although it did not like the Factfinder's recommendation, adopted it as its Last Best Offer.

Union Contentions

The Union argued for the current language and then attempted to argue for the correct interpretation of "day" as part of its Last Best Offer position.

Findings

To be frank, it is unclear where the Parties differ. If the City concedes that a day is defined by eight (8) hours of work, then it would appear the matter is settled by modifying the current language to define a "day." In fact this issue was nearly settled at the hearing until the Parties could not agree as to what affect either a cellular phone or a beeper would have on the employee placed on standby. Making matters worse is the fact that the Factfinder's recommended language is not clear.

The problem I have with the Factfinder's report is the language "unless furnished with a page or portable cellular phone." This recommended language contains a conditional phrase, "unless furnished", followed by an unknown. More specifically, the language does not make clear what follows once the condition has been satisfied. That is, if a firefighter is "furnished with a page or...phone" what then? Does it mean that he waives the two (2) hour compensation altogether or is it only intended to allow him to leave his home? Can the City force him to be on "standby" forever, without compensation, as long as pager is given to him? Because of these difficulties, it must be found that the City's position, by way of the Factfinder's recommendation, contains a lack of clarity. Since to do adopt unclear language would be unsound, the City's position cannot be adopted.

On the other hand, the Union's Last Best Offer is that the current language be kept. The problem that arises is that the Union did not attempt to modify the language to define a day as only eight (8) hours. Thus, although the Union wants a day to be defined as the Factfinder recommended, it failed to incorporate that favorable definition in its Last Best Offer. Thus, if the Union's position is adopted then the issue concerning the proper definition of a "day" remains unresolved. Since a Conciliator does not interpret language, but instead just evaluates each Parties' Last Best Offer and chooses between the two, then the undersigned is without power to give the interpretation necessary.

When left with these two (2) alternatives, the Union's position causes the least problems and must be adopted. This finding must stand even though the potential for a future grievance still exists based on the unresolved definition of a "day." Since the Union's Last Best Offer did not modify the current language in line with the Factfinder's "eight-hour day" language, then it is impossible to include that language here or to define the term "day" as the Union wants. Hopefully, the Parties will be able to resolve the language without the need of another third party. As it stands, the Union's Last Best Offer is to be used and the *status quo* language is to remain.

5.

RANDOM DRUG TESTING

The City proposed including random drug testing in the Agreement. It argues that it needs this as a matter of policy. The Factfinder recommended that such testing not be included in the Agreement.

City Contentions

Although the City proposed the Factfinder's report as its Last Best Offer for every other issue, it asks that the report be overturned on this issue. It argues that since the firefighters operate machinery and trucks that are every bit as dangerous as that used by Commercial Drivers Licence, hereinafter CDL, employees, and since the CDL employees are subject to random drug testing, then a similar testing procedure must be instituted here. It argues that the duties performed by the firefighters relating to the health and safety of the general public suggests that random drug testing is appropriate.

Union Contentions


The Union argues that Random Drug Testing is not necessary since the current language affirms that both the Union and City have a zero tolerance for drugs and alcohol abuse; since there are no allegations that any current problems exist; since supervision of the firefighters is too close to permit drug or alcohol abuse to go undetected; and since the plan offered by the City does not contain proper guidelines.

Findings

The trend for the modern work place supports the conclusion that random drug testing will eventually exist for every safety work force in the country. Thus the question is not whether it should happen but whether the time is right for this particular unit. In the instant matter, the City's position would be stronger if its FOP unit had such a program. Since the FOP has more intense and daily exposure to the problems of drug and alcohol abuse, then it must be found that it is a more immediate concern for the police officers to have such a program. Based on the fact that the FOP and IAFF are fair comparables, and since the police officers do not have random drug testing, it must be found as not yet time for the firefighters. This finding must stand even though it must be recognized that one of the two (2) units must be first to adopt some sort of Drug Testing procedure. The FOP will certainly argue that it should not have such testing if the IAFF does not. However, in this case, until the FOP are required to have random drug testing, the IAFF should not be required to do so.

Therefore, it must be found that the *status quo* language be maintained.

February 6, 1997
Cincinnati, Ohio



Michael Paolucci
Conciliator

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Don Hardin, President, IAFF Loca 336
223 Rachel Lane
Middletown, Ohio 45042

Don Crain
Frost & Jacobs
First National Bank Bldg
Middletown, Ohio 45042

Re: Case No. 96-MED-09-0764
City of Middletown & Local 336

Gentlemen:

Attached herewith is a copy of my factfinding report making recommendations on the issues submitted in the hearing on December 11, 1996.

Factfinding reports are confidential unless rejected by either party; if rejected, SERB will notify the parties regarding posting requirements,

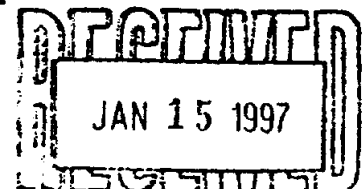
The report has been faxed to both parties in order to allow the parties to see the report at the earliest possible time. The parties are statutorially required to vote within seven days of the report's date, and to notify SERB immediately after the vote.

I appreciate the parties' professionalism in presenting their respective cases.

Sincerely,

W. Donald Heisel
W. Donald Heisel
Factfinder

December 18, 1996



International Association of
Firefighters, Local 336

and

City of Middletown, Ohio

Case No. 96-MED-09-0764
December 18, 1996

REPORT OF THE FACTFINDER

A hearing was held on the referenced case Wednesday, December 11, 1996, beginning at 9:15 a.m. in the second-floor conference room in the Middletown City Building. Donald L. Crain, Esq., and Leslie Landen, Esq., represented the City. Tim Scott, Local 336 Secretary-Treasurer, represented the Union. The hearing adjourned at 1:00 p.m.

The parties had bargained in good faith on six previous occasions and had resolved a number of issues, including:

1. The City's proposal on health insurance costs.
2. The Union's proposal on term life insurance.
3. The City's proposal regarding language in the FMLA article.
4. Various changes in the provisions for Union leave.
5. The City's proposal regarding training and education to provide for tuition reimbursement consistent with that offered other employees.
6. A new residency requirement for newly-appointed employees.
7. The merger of longevity vacation into regular vacation, without changing the total amount.
8. A Union-proposed procedure for reporting off-duty.
9. Withdrawal of a Union proposal to add another telephone line for the Union office.
10. Modification of the procedure involved in bidding on clothing orders.
11. Modification of the contract regarding military leave.

IAFF and City of Middletown
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REMAINING ISSUES

PAY

This issue includes not only base pay, but also other ways in which the parties determine how much money is transferred from the Employer to members of the bargaining unit in return for services rendered. These include the so-called "savings plan," the preferential pay for the specific assignments of Operator and Squadman, transfer pay, and starting pay for a newly-appointed Firefighter.

BASE WAGES. Currently, Middletown pays the following as maximum rates for each rank:

| | |
|------------------|----------|
| Firefighter: | \$37,710 |
| Fire Lieutenant: | \$43,007 |
| Fire Captain: | \$47,145 |
| Deputy Chief | \$54,109 |

The City submitted a comparison of these rates with those of seven other nearby jurisdictions which it considered comparable in terms of population. The Union did not challenge these comparisons. In comparison with the averages computed by the City, Middletown compares well at the basic ranks, as follows:

| Rank | Annual Max Middletown | Average of other Agencies |
|-----------------|--------------------------|------------------------------|
| Firefighter | \$37,710 | \$34,926 |
| Fire Lieutenant | 43,007 | 41,415 |
| Fire Captain | 47,145 | 43,751 |
| Deputy Chief | 54,109 | 50,476 |

These data are weak at the rank of Captain and above, as several departments have no such ranks or base their salaries on performance as evaluated by the Chief, and some might get more or less than Middletown. However, it is safe to conclude that these comparisons certainly do not support any major adjustment in Middletown.

The Union would like us to use larger cities such as Cincinnati, Dayton and Columbus for comparison. Typically, they pay more, But they at least have the potential (and frequently the actual occurrence) of major conflagrations and other problems than are rarely experienced in Middletown. As an example, Middletown has proportionately fewer tall buildings, and fewer hazards associated with radioactive materiel. Of course, some of these jurisdictions (but not all) will raise rates in 1997 and beyond.

I do not like to be a slave to comparisons; there are many variables which enter into setting pay, so when it comes down to actually setting pay, each jurisdiction is unique. But I repeat an earlier statement: there is nothing in these comparisons to justify any major change in Middletown..

Savings Plan: In the 1993 negotiations leading to the current contract, this idea was introduced as a quid pro quo for a lower entry rate, \$18,000, for new Firefighters. Basically, it took the money saved when a person on a high step left and was replaced by someone at \$18,000. Most (90%) of the difference went into a pot for distribution among the senior employees. Complicating the situation was an Arbitrator's ruling that the pot for 1996 include the difference between maximum and minimum for newly-hired employees added to the complement of the Department who didn't replace anyone. The amounts involved each year are substantial. For 1996, over \$129,000 is scheduled for distribution to 37 employees, some of whom will get over \$4,000 -- more than 10% of their base pay.

Both management and the Union recognize the inequity of the plan. It is not an appropriate way to distribute pay.

Within-grade preferential pay for Squadmen and apparatus operators. Current practice gives these employees additional pay for these assignments, won after competitive examinations. The City would eliminate these amounts; the Union opposes.

The Operators take considerable responsibility for their \$400 a year stipend. The Squadmen likewise take more responsibility. Further, they probably make more runs than do regular firefighters, although no testimony was offered on that subject. They require more training. This differential is widely recognized elsewhere.

Transfer pay: This is unique to my experience. I always thought that firefighter worked wherever they were told to. The total amount each year is inconsequential (one or two thousand a year, in the aggregate); but it is a poor way to distribute payroll.

Starting salary: As stated earlier, the starting pay was reduced when the current contract was accepted, to \$18,000 a year. Both parties want it to be increased, the City to \$25,000 and the Union to about \$29,000. The City has acknowledged that the low pay hurt its recruitment efforts.

IAFF and City of Middletown
Page 4

Pay Recommendations: Putting together all these pay topics, I recommend a package as follows:

1. Increase base pay for each rank by 3% in each of the three years of the proposed contract.
2. Eliminate the "Savings Plan" -- Article 45, Section F. I am not making any recommendation regarding the payments for 1996. That matter is not involved in the 1997-99 contract, which is my sole concern.
3. Retain the current provision for premium pay for Squadmen and operators.
4. Eliminate transfer pay.
5. Retain the two-track pay system in Article 45, but with starting pay at \$25,000. for the second tier.

Data were not presented that would permit exact costing of these changes. I estimate that for recommendations 2, 3, 4, and 5 in the aggregate, the net effect would slightly favor the City.

HOURS

Currently, employees who work 24 hour shifts average 52 hours a week. This is accomplished by providing an extra shift off every six weeks. The City proposed a 56-hour average week by increasing the time between extra days off, while the Union's final position was to decrease average hours to 51 a week.

There is no "right" number of hours that should be worked by firefighters. It is implicit in the bargaining process that the number of hours be set by agreement; if certain conditions are established, the "right" number of hours is that which members will work for the agreed conditions. Unlike the typical private sector job, there is no set amount of work to be accomplished; firefighters must be available when an aberrant event takes place -- a fire, accident, or other catastrophe -- and firefighters are on duty at a location that permits rapid response. Such factors as ability to sleep during parts of duty hours are usually considered, but no one has yet been able to put a dollar value on such conditions.

Neither party has presented an argument for change. Obviously, the City stands to save money by increasing hours; but that argument was available when hours were reduced in past years.

The City has complicated this subject -- albeit unintentionally -- by introducing a proposal to permit shifts of less than 24 hours, as a means of providing "flexibility" in case it is needed in connection with the possible opening of additional firehouses to protect a growing city. No examples were cited as to how this might work. Discussion during the hearing led to agreement that the contract include a provision allowing the City to introduce a provision that would allow the City to propose a contract amendment late in 1997 to be effective January 1, 1998, or late in 1998 to be effective January 1, 1999, providing a specific plan for dealing with the hours problem. Presumably, if such a re-opener is requested, the City will have had the opportunity to develop something specific to which the Union can react, instead of the current situation, which is like asking the Union to buy a pig in a poke. As both parties agreed to this proposal during factfinding, it should be incorporated in the new contract.

Recommendations on hours:

1. Make no change in the average hours worked by 24-hour personnel.
2. Incorporate the substance of the above language, underlined, in the new contract. (Suggested contract language will be found in "recommendations" summary)

CALL-IN PAY

Currently, if a serious emergency arises and the officer in charge deems it necessary, he can issue a call-in, which requires that at least five members be called. Presumably this number was determined so that there would be sufficient manpower to staff an engine company and a paramedic unit. The City sought to eliminate this minimum number, because many situations arise in which five are not necessary. Sometimes the emergency is terminated before five can be reached. Sometimes only one person, a specialist, is needed. The Union objected to the proposed change because in the types of cases cited, the Union did not object to calling only a lesser number.

The Union's position is untenable. The Union should not be selective in what contract provisions it will enforce. The contract should reflect actual agreed practices.

Recommendation: I propose the following language be added to the current language in Article 19, Section A, first paragraph:

It shall not be a violation of this paragraph if the emergency is terminated before five members are called, or in case the officer in charge determines that he needs a person with some specific expertise.

This language would harmonize the contract with accepted current practice.

STANDBY

Currently, the contract provides two hours' pay if an employee is required to stand by, but it is not clear whether this two hours is for standing by for eight hours or 24. The City interprets the provision as permitting it to require up to 24 hours, while the Union assumes it means for eight hours.

There is apparently no bargaining history which would lead to a conclusion as to what was intended. I think it makes more sense to provide the two-hour pay for each eight hours; who wants to be locked to a phone for 24 hours? More important was the agreement that if pagers are furnished, the problem would be minimized, as the member could go anywhere within the reach of the paging system with no inconvenience. Whether or when pagers will become available is not known, at least by this Factfinder.

Recommendation: Re-write Article 19, Section B, as follows:

Members placed on standby status outside their regular work shifts approved by the Chief shall receive compensation equal to two hours of straight-time pay for each eight-hour day on standby, (computed at their forty-hour rate), unless furnished with a pager or portable cellular phone.

DEPUTY CHIEFS

The City seeks to have Deputy Chiefs excluded from the bargaining unit. Currently, only the Chief is excluded.

Unit determination is a function of the State Employment Relations Board. Even if both parties agreed, it would require Board approval for any unit revision. I do not consider that I have authority to make a recommendation on this subject.

RANDOM DRUG TESTING

Management would like the authority to make drug (and presumably alcohol) tests randomly, as a means of encouraging a drug-free Department.

The City cites the federally-mandated program of random testing for CDL Drivers, many of whom drive smaller equipment than fire trucks.

The Union objected strongly to the idea. Most of the objection was what I consider to be an emotional reaction to the concept, but did include one potential problem -- a person being tested while or after using certain prescription drugs which might cause him to test positive. Further, the Union pointed out that with Lieutenant or higher officers on each shift, supervision is too close to permit drug use to go undetected. I consider the Union's reaction to be so strong as to fear its effect on employee morale if random testing became policy.

Recommendation: We know of no drug problem within the Middletown Fire Department, so I recommend this subject not be included in the 1997-99 contract.

SUMMARY OF RECOMMENDATIONS

I conclude with this summary of recommendations. Under Chapter 4117, O. R. C., the parties must vote to accept or reject these recommendations as a whole, not on each item within this package. (The parties, of course, may modify any part through agreement.) The summary includes proposed contract language even though in some cases that language may have been previously stated; this is so the summary provides a complete package from which the parties can work while making their decisions. However, this is not intended to suggest that the parties cannot by agreement substitute other language.

This represents the totality of issues still on the table at factfinding. Many other issues were included in various documents submitted to the Factfinder. At the start of the hearing, however, I asked both parties to identify every issue to be included in the hearing, and the foregoing includes all.

In addition, it should be noted that the items noted on page 1 of this report have already been agreed upon, and should become a part of the contract regardless of the vote on this report.

1. **Pay and related items.**

3% increase for each class and step for each of the three years of the proposed contract, in each case to be effective January 1.

Abolish the "Savings Plan" (Article 45, Sec. F) in its entirety.

Retain the current system for rewarding apparatus operators and squadmen.

Abolish transfer pay.

Retain the current two-tier pay system but set the starting pay at \$25,000 for new entrants.

2. Hours of work.

Retain the current 52-hour schedule.

Amend Article 16, Section A, by adding the following language:

On or before November 1, 1997, the City may re-open solely on this section (and any other section which would have to be changed if this section is changed) if at the time, the City feels a need for some shifts to be less than 24 hours.

3. Call-in pay.

Modify Article 19, Section A, by adding the following language:

It shall not be a violation of this paragraph if the emergency is terminated before five members are called, or in case the officer in charge determines that he needs a person with some specific expertise.

4. Standby

Re-write Article 19, Section B, as follows:

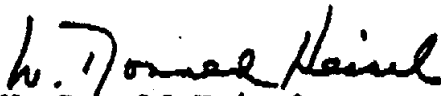
Members placed on standby status outside their regular work shifts approved by the Chief shall receive compensation equal to two hours of straight-time pay for each eight-hour day on standby, (computed at their forty-hour rate), unless furnished with a pager or cellular phone.

5. Deputy Chiefs. No recommendation

6. Random drug testing.

Do not include in 1997-99 contract.

If this report is rejected by either party, I would urge the parties to cooperate so that whatever results from conciliation can be made effective January 1, 1997.


W. Donald Heisel
Factfinder