In the Matter of Conciliation	*	
Between	*	SERB Case No.: 98-MED-01-0046
IAFF Local 67	*	
	*	Before: Harry Graham
and	*	
The City of Columbus, OH.	*	

APPEARANCES: For IAFF Local 67:

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For The City of Columbus:

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board two days of hearing were held in this matter before Harry Graham. A transcript of the proceedings was taken and furnished to the Conciliator. It was read. Post-hearing submissions were filed by the parties. Receipt was acknowledged on March 20, 2000 and the record in this dispute was closed.

This matter has a very, very lengthy history. As may be discerned from the case number above, it involves a dispute

for the Agreement to replace the one that expired in 1998. When the parties came to bargain a successor Agreement for the 1996-98 Agreement they reached a Tentative Agreement. That Tentative Agreement was submitted to the Union membership for ratification. It was overwhelmingly rejected. Recourse was had to Factfinding. Factfinder David Stanton submitted his report on November 4, 1998. As is traditional in matters of this sort Factfinder Stanton gave great weight to the Tentative Agreement reached by the parties. It was his opinion that the Tentative Agreement should not be modified. Factfinder Stanton's report was resoundingly rejected by the Union. The vote to reject was 844-141. After a dispute involving the propriety of the vote on Factfinder Stanton's recommendations was resolved, this dispute ultimately found its way to Conciliation. (Interest arbitration). As is set forth more fully below, the parties choose to embrace sections of the Tentative Agreement and Factfinder Stanton's award in support of their positions. It is indeed the case that Interest Arbitrators should be circumspect in altering the terms of a Tentative Award or the recommendations of a Factfinder. Obviously, to do so encourages the "another bite at the apple" fashion of bargaining. That observation must be tempered with another, that a tentative agreement and a Factfinder's report are consensual in nature. They lack the

binding character of an arbitrator's award.

To the knowledge of this Conciliator there is a significant instance of the role of the Tentative Agreement being discussed in Interest Arbitration and a subsequent attempt to set aside the award of the arbitrators. In Moravia Community School District and Moravia Education Association (Iowa, 1988) the panel of arbitrators commented at length on the place of a tentative agreement in the collective bargaining process. The Panel noted:

> The use of the very term "tentative" conveys the clear meaning that a tentative agreement is something less than a final and binding agreement. If agreements arrived at between negotiators at the bargaining table are final and binding, then the term "tentative" is a misnomer. Morever, if tentative agreements arrived at during negotiations are elevated to the status of final and binding agreements not subject to ratification by the constituency, such determination may very well impede the normal process of bargaining by making it necessary for the negotiators to consult with their constituency on each and every issue prior to reaching an agreement.
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> The elevation of tentative agreements to the status of final and binding agreements would seriously affect the role of negotiators. The traditional role of the negotiator has been to achieve a settlement within the guidelines established by the constituency the negotiator represents. In the reality of collective bargaining there may be times when a negotiator, cognizant of all aspects of the particular bargaining, may consciously deviate from those guidelines sincerely believing that he or she can persuade the constituency to accept the tentative agreement. If such tentative agreements become final and binding, the role of the negotiator will be significantly reduced to the detriment of the process. Tentative agreements are precisely what the term implies--tentative until ratified by the respective constituencies.

In Moravia, the Employer moved to vacate the award of the

interest arbitrators. It did not prevail at the District Court. On appeal, the Iowa court also discussed the place of the tentative agreement. It observed in reference to the citation above, "We concur with this statement." (460 N.W.2d 172, Iowa App. 1990).

In this situation bargaining unit members expressed their displeasure with the terms negotiated on their behalf. Their repugnance with those terms is manifest by the substantial margin by which they rejected the Tentative Agreement and the recommendations of the Factfinder. The genius of collective bargaining is that employees have a voice in the terms and conditions of their employment. A "tentative agreement" cannot serve to bind the parties. Nor can the rejected award of a Factfinder. For an Arbitrator to exalt the terms of a Tentative Agreement or recommendations of a rejected Factfinding award as representing a final agreement is arrogant in the extreme and will not be sanctioned by this Conciliator.

ISSUES: The parties agree upon the issues that are in dispute between them. These are:

1. Position for Position Call-Back
2. Health Insurance
3. Wage Increase
4. Physical Fitness

ISSUE 1, POSITION FOR POSITION CALL-BACK

POSITION OF THE UNION: There is a feature in the Agreement of

the parties at Section 13.2(A) termed Position for Position Call-Back (or Rank-for-Rank Call-Back). That provision requires that when there is a vacancy in the officer rank between 8:00 p.m. and 8:00 a.m. it be filled by a person holding the vacated rank. The City may not fill such vacancies by working a Fire Fighter out of classification and paying Officer-in-Charge pay.

There is a very long history to this provision of the Agreement. In 1987 Factfinder Bill Heekin recommended it. The parties did not resolve their dispute in 1987 and it proceeded to interest arbitration. I was the Arbitrator. I awarded Factfinder Heekin's recommendation which was the proposal of the Union.

The issue surfaced again in 1990 as the City sought to eliminate the Position for Position Call-Back provision of the Agreement. The parties went to Factfinding and the City failed in its attempt.

In 1993 the City attempted in negotiations to get Position for Position Call-Back out of the Contract. The parties reached agreement without third-party intervention. Once again, the City failed to remove Position for Position Call-Back from the contract.

In 1996 the City tried again. Again it failed. The parties went to Factfinding. The Factfinder did not endorse

the proposal of the City to strike Position for Position Call-Back from the Agreement.

When the parties came to bargain the 1998 Agreement the City raised the issue again. The Union Bargaining Committee acceded to the City position on this matter. As pointed out above, the recommendation of the Bargaining Committee was soundly rejected. When Factfinder Stanton adopted the Tentative Agreement as the basis for his recommendation on this issue his Report was decisively turned down by the membership, setting the stage for this proceeding.

In the opinion of the Union, a vacancy at the rank of Lieutenant, Captain or Battalion Chief should be filled by a person with the same qualifications as the absent officer. The fill-in will be as qualified as the absentee. The City is proposing the vacancy be filled by an officer working out of classification. By definition, that person cannot be as qualified as the trained officer, Lieutenant, Captain or Battalion Chief he or she is replacing.

The Union views this as a safety issue. Officers working out-of-classification do not have the training or experience to replace higher ranking officers. No matter the statistical legerdemain presented by the City, the Union insists that fires at night are more dangerous than fires that occur during the day. Visibility is reduced. By-standers who are

aware of the situation are fewer. As the Union views this situation, it is irrefutable that fires occuring at night are more hazardous to Fire Fighters than those occuring during daylight hours.

There is a knowledge factor at work in this situation as well. Promoted officers by virtue of their training have a higher appreciation of safety considerations at a fire scene than do Fire Fighters who will serve as Officers-in-Charge under the City proposal.

As pointed out above, this issue has repeatedly come before neutrals. In each case, the Union has prevailed. This history goes back to 1987. Neutrals have been convinced that this is a safety issue and the costs associated with Position for Position Call-Back are justifiable. Nothing has changed to warrant a different conclusion in this round of negotiations.

Were this not a bona-fide safety issue the City has available to it expertise to testify to the contrary in the person of the Fire Chief. He was not called to testify in this proceeding. The Union views this as an indication of support for its position. His failure to testify is an indication safety is the prime concern on this matter.

This is not an economic issue. Were it so, the membership would have accepted the Tentative Agreement and Factfinder

Stanton's recommendations. Were the proposal of the City to be adopted Fire Fighters will receive pay for working out of classification. The Fire Fighters who stand to benefit from the City's proposal have rejected it. They do not want to sacrifice safety for money. They know best. The Arbitrator should not substitute his judgement for those who will be affected on a daily basis the Union urges.

Were the proposal of the City to be adopted Lieutenants, Captains and Battalion Chiefs will lose considerable income. The amouts range from $3000.00 to $6,000.00 (rounded) per year under the Union's computations. If the computation of the City is accepted the lost income to officers is less, but still significant. The City projects a loss of 64% of current overtime opportunities for officers. The Union anticipates loss of all overtime for officers. Accepting the estimate of the City arguendo, saving 64% of overtime cost, plus the addition of work out of classification pay under the City's proposal leaves savings too small to justify adoption of the City proposal the Union insists. Hence, it urges adoption of its proposal on this issue.

POSITION OF THE EMPLOYER: Initially, the City points to the history of negotiations in support of its proposal on this issue. There was a compromise struck which was acceptable to the Union negotiating team. Now, the Union wants to keep what

it likes, but get out of those aspects of the deal it finds objectionable. This should not occur in the City's view.

Further, the City did not bring to this proceeding aspects of the Tentative Agreement favorable to the Union. For instance, a substantial increase in longevity was agreed upon. So too was an increase in the uniform allowance. The City is standing by its committment on these and other issues. That it is doing so is illustrative of the way the parties do business. The Union in the City's opinion, is unwilling to compromise in any manner.

It is essential to bear in mind there was a Tentative Agreement. It was embraced by Factfinder Stanton. To permit its repudiation would undermine the bargaining process as the Factfinder observed. That should not be permitted by the Arbitrator according to the City.

In this situation the Tentative Agreement represents the status quo. The burden is on the Union to justify a departure from it. This is a burden it cannot meet. In order to secure agreement the City made significant concessions to the Union. Agreement was reached. It included agreement by the Union to eliminate Position for Position Call-Back. The Union is now seeking to have the best of all possible worlds: the sweeteners put on the table by the City and retention of Position for Position Call-Back. That is insupportable in the

City's view.

Under the present provisions of the Agreement the City is permitted to fill-in for absent officers by working Fire Fighters out of classification from 8:00 a.m to 8:00 p.m. There has been no safety concern raised by the Union over this situation. Such a concern now is bogus. Moreover, when the parties dealt with this issue in 1987 safety was not an issue raised by the Union. Nor was it cited as a factor in my award. By raising it subsequently, the Union has distorted the record and my award before the many neutrals who have come to consider the issue. Significantly, the Union has not argued before me this year that in 1987 I based my award on safety considerations.

The safety concerns raised by the Union in support of the current arrangement are spurious according to the City. All people working out of class have been through training with the exception of Fire Fighters working as Lieutenants. When a person is promoted, he or she must attend the training school. All people working as Captains, Battalion Chiefs and Deputy Chiefs will have been through training. Fire Fighters work out of class from 8:00 a.m. to 8:00 p.m. No problem has arisen. Nothing is different at night than in the day to justify the Union position.

Under the current system, when an officer is called-in at

night, the officer is often unfamiliar with the crew with which he/she is working. In the 8:00 a.m. - 8:00 p.m. period, the person acting out of class is often a member of the crew. If anything, safety is diminished under the present system.

The evidence shows that injuries occur more often during the day than at night. There are more fires in the daylight hours.

The Tentative Agreement addresses the safety concerns of the Union. A Battalion Chief is to be on duty 24 hours per day. Presently, the requirement is for a 12 hour presence. A Safety Captain with each unit and EMS personnel must be available. The Union Committee would not have taken the Tentative Agreement back to the membership if it considered safety to have been compromised.

In truth, the concerns of the Union are not safety-related, they are economic. In the course of negotiations the City offered above market wage increases, increases in rank differential, service credit, sick leave separation payout and uniform allowance in exchange for elimination of the Provision for Provision Call-Back provision. Now, the Union wants to keep the advantageous sections of the bargain but repudiate what it gave in exchange. This is ridiculous according to the City. The safety concerns raised by the Union are a red-herring designed to disguise this ploy. They

should be rejected by the Arbitrator the City urges.

No City urged upon the Arbitrator as being comparable has a provision such as Position for Position Call-Back. Columbus is unique in this regard. Consequently, the City contends its proposal on this issue should be awarded.

DISCUSSION: Under the circumstances of this dispute this Conciliator does not feel compelled to give deference to the Tentative Agreement or the recommendations of the Factfinder. As will be apparent in discussion of the wage issue, the City has departed from the TA and the Factfinder's recommendation in its position on that issue. That dilutes the force of its argument that the Tentative Agreement and Factfinder Stanton's award should be embraced by the Conciliator. Further, as indicated by the holding in Moravia, a tentative agreement is just that, tentative. Absent ratification by the body of employees or officials acting on behalf of the employer, the Tentative Agreement is not binding. In this situation the history surrounding the Position for Position Call-Back issue is very significant. The parties have fought this issue out for more than a decade. The Union has steadfastly held to its position and has prevailed. It has prevailed in face-to-face negotiation, before Factfinders and Interest Arbitrators. The Union has presented a solid front in opposition to efforts of the Employer to alter what it

obviously regards as a significant benefit to its membership. In the face of that record, a neutral should be reluctant to alter history and impose judgement different from that of those whose lives will be affected.

Union opposition to the Position for Position Call-Back proposal of the City has continued to the present. When its Negotiating Committee came back with a proposal to alter it, the Tentative Agreement was solidly rejected. The vote was 732 to 190 to reject. When Factfinder Stanton's embrace of the Tentative Agreement was presented to the membership, it was rejected by a larger margin, 844 to 141. The voters know best. It is their lives that will be affected should the proposal of the City be awarded. Confronted with such opposition, only a neutral endowed with overweening hubris would award the proposal of the City on this issue.

It unclear that the economics of the situation support the proposal of the City. Of necessity there must be factored into the mix the loss of income that will be sustained by Lieutenants, Captains and Battalion Chiefs. Under either the assumptions made by the Union or the City that loss is substantial. It is not a one-time event. It will continue throughout the career of incumbents as well as throughout the career of those who come to be promoted. Accepting arguendo the calculations of the City to be accurate, the City must

demonstrate a need for its proposal. It cannot do so. As is set forth below when the wage issue is discussed, the City cannot show it is in financial difficulty. To the contrary, it is in extraordinary financial health. There is no hardship in continuation of the current Position for Position Call-Back provision which has existed through bad and good economic times alike.

Significant in determination of this issue is the absence of testimony from high-ranking officials of the Fire Division to testify on behalf of the City. The City asserts this issue is not one of safety. Not a single officer in the Fire Service testified to that. Such an omission is remarkable. Surely if there were no safety considerations whatsoever an expert from the Fire Division would have been produced to substantiate the position of the City's negotiators. That none was undercuts the force of the City argument. Even were it the case that safety considerations are absent from the Position for Position Call-Back issue as asserted by the City, the history of negotiations on this issue as well as the lack of need for any such savings as may result from the change sought by the Employer mandate adoption of the proposal of the Union on this issue. The position of the Union on Position for Position Call-Back is awarded.

ISSUE 2, HEALTH INSURANCE

POSITION OF THE UNION: At Article 18 the Agreement provides for health insurance coverage of employees. The City proposes that members of the Fire Division become members of a Preferred Provider Organization (PPO) on the January 1st following the date on which every other City employee covered by the PPO is subject to an 80/20 percent in-network and 60/40 percent out-of-network co-insurance provision. In essence, this joins employees of the Fire Division to those of the Police Division. If and when the Police accept the City PPO, Fire Division employees must abandon their current coverage and enter the PPO as well.

As is common in the protective services in the United States there is a certain degree of rancor between the Fire Fighter and Police Bargaining Units. The Fire Fighters in this instance strongly object to being held hostage by the Police. The Union insists its members should not be required to enter the PPO if the Police decide to do so.

This is not merely a matter of principle for the Union. Basic economics are involved as well. The situation in the Columbus Fire Division is unlike that found elsewhere in the nation with respect to health insurance. Union Exhibit 8 is a compilation of data with respect to health insurance costs. It indicates on the first page that the Average Annual Cost Health Insurance cost per employee in the Fire Division was

less in 1999 than in 1992. From 1992 through 1999 the average annual total increase in health insurance cost in the Fire Division was 2.76% per year. This was at the same time as the total number of employees in the Division increased by 34%. There is no economic justification for the proposal of the City according to the Union.

The Union also objects to the notion that some bargaining unit members would be required to change physicians were the proposal of the City to be adopted. Prior to the hearing the Union was informed that 26% of its members would be required to change physicians if the City prevails on this issue. At the hearing, the City indicated the percentage of employees who would have to change physicians was much less. The Union doubts the figure provided by the City. No matter, the Union insists that there is no need for the proposal of the City to be adopted and any disruption to the existing health care arrangements of its membership cannot be justified by savings accruing to the City.

POSITION OF THE EMPLOYER: The proposal of the City on this issue mirrors the Tentative Agreement. It was embraced by the Factfinder. The Fire Fighters do not enter the PPO unless and until their counterparts in the Police do so. As was the case with the Position for Position Call-Back issue, the City views this as a situation where the Union is accepting what

it likes but rejecting the compromises it made. In essence, the Union is attempting to eat its cake and have it too.

Over recent years the City has attempted to standardize its insurance coverage. It has made substantial progress in that effort. Continuation of multiple benefit plans, with different characteristics, is costly to the City. In an effort to reduce administrative costs standardization is appropriate.

A PPO is not unusual. The proportion of people enrolled in PPO's in the United States has increased substantially. Further, 96% of health care providers utilized by IAFF members are included in the PPO. There is no great amount of disruption associated with the City proposal.

DISCUSSION: The evidence shows the City is seeking a solution to a problem that does not exist. Union Exhibit 8 is compelling. It shows that in 1999 the average annual cost per employee for Fire Division employees was $4,690.12. The analogous cost in the Police Division was $5,965.99. The per-capita costs in the Fire Division were below those for any other bargaining unit in City service. In the face of the evidence the proposal of the City is insupportable. Uniformity in benefit plans may or may not be desireable. There must be some rationale to support it. In this case, there is absolutely not a shred of evidence to support the

City position.

Further, why the Fire Fighters should be held hostage to the Police is incomprehensible. The IAFF bargains on behalf of its membership. So too does the FOP. The choices made by the FOP should not control the outcome of the IAFF negotiation. The proposal of the Union on this issue is awarded.

ISSUE 3, WAGE INCREASE

POSITION OF THE UNION: The Union proposes general wage increases of 3.0% for 1998, 4.0% for 1999 and 4.0% for 2000. Those increases are the ones reflected in the Tentative Agreement. There is nothing special about them. They are not outsize. They approximate those being seen in the area. If consideration is given to negotiated increases in Franklin County during the past 15 months, they are below average. The City has negotiated wage increases of about this magnitude with other bargaining units.

The IAFF is particularly distressed by its relationship with the Police in Columbus. Historically there was parity between the two services. Starting recently, a gap has developed. It favors the Police and is adverse to the Fire Fighters. Table I below indicates the situation.

Table I

	Fire Fighter Top	Police Officer Top
1990	$27,414.40	$32,011.20
1998	$39,707.20	$45,281.60

Not only is there a gap between the two services, it has become wider. This situation is a constant irritant to the Fire Fighters. The Union speculates that given the history of negotiations, the gap will grow during the upcoming round of bargaining.

There is no question of the City having an inability to pay. The unemployment rate in Franklin County is miniscule. The City is one of the few in the nation with an AAA bond rating from Standard and Poor's and Moody's Investor Services. Without engaging in extensive discussion, it suffices to observe that the City has experienced steadily increasing General Fund Revenues and carryovers. At November 15, 1999 it had a carryover of $33.6 million. The City also maintains two other reserve funds. These are the economic stabilization fund and the anticipated expenditures fund. They have been showing increasing balances. There is no way the City can claim an inability to pay.

There is a second element to the Union wage proposal. Prior to 1990 the rank differential in the Fire Service was 18%. In 1990 Factfinder Rogers recommended a general wage increase that was acceptable to the Union. As part of it, the

rank differential was reduced to 16%. That was inadvertent on his part according to the Union. The City did not propose it. Now, the Union seeks restoration of the 18% rank differential. The differential is 18% in the Police Division. No reason exists for the difference. The City agreed to restore the 18% differential as part of the tentative agreement. It was part of the deal relating to the Position for Position Call-Back issue. The Union recognizes that deal did not materialize. Notwithstanding, it seeks restoration of the 18% rank differential on the grounds of its historic place in the Fire Service and its relationship with the rank differential in the Police Division.

POSITION OF THE EMPLOYER: The City proposes a three percent (3.0%) wage increase be made in each year of the Agreement. It also proposes retention of the 16% rank differential.

During the 1990's bargaining unit members averaged wage increases of 4.85%. This far exceeds those provided in comparable jurisdictions. Fire Fighters in Columbus have the highest average pay among the comparable jurisdictions. (See; City Exhibits 12-18).

The internal parity argument of the Union should be rejected according to the City. It has been raised for many years and been rejected by neutrals and the City alike. No consideration should be given to it in the City's view.

Fire Fighters in Columbus have experienced wage increases well above the inflation rate. The proposal of the City perpetuates that situation. For these reasons, the City contends its proposal should be adopted.

DISCUSSION: As is always the case in proceedings of this nature, the parties both marshall formidable arguments in support of their respective positions. There is no question that Columbus Fire Fighters are paid better than their counterparts elsewhere. City Exhibits 12-18 are conclusive on that point. The external comparables support the proposal of the City.

Offsetting that is the trend in settlements. Data from the State Employment Relations Board indicate that settlements in Fire Departments throughout the State were 3.42% for 1998 and 3.54% for 1999. (SERB Quarterly, Vol 15, No. 51, First Quarter 2000, p. 1). City Exhibit 12 shows that among arguably comparable jurisdictions some provided greater increases than Columbus for 1998 and 1999 and some provided smaller increases. It cannot be determined that the proposal of the Union is excessive. Nor is the proposal of the City substandard. Turning attention to the outcome of negotiations within the City, its Exhibit 11 indicates that for the 1998-2000 period agreement has been reached with various unions. A consistent pattern of 3.0%. 3.5% and 4.0% for 1998, 1999 and

2000 resulted. The proposal of the City is 1.5% below the pattern. The Union proposal is above the pattern by .5%. It is closer to the bargain that has been reached in City service to date. This is supportive of the Union position on this issue. The history of settlements within a jurisdiction is traditionally given great weight in proceedings of this sort. The history in Columbus supports the position of the Union better than that of the City on the matter of the general wage increase.

No discussion is necessary regarding the ability of the City to finance the wage increase proposed by the Union. The City is in robust fiscal health. It can finance the proposal of the Union without difficulty.

Both the Tentative Agreement and the Factfinder's Recommendation provide for an increase in the Rank Differential to 18%. To 1990 18% was the standard in the Department. The City did not propose reducing it in 1990. No convincing reason was advanced by the City to justify the disparity between the rank differential in the Police and Fire Divisions. It is recognized that there was a relationship between the restoration of the 18% rank differential and the Position for Position Call-Back issue. Factfinder Stanton determined that in addition to that relationship, "The Record of evidence indicates that a 2%

increase to the previous 16% is indeed reasonable...." (p. 10). This neutral agrees. It is impossible to separate the rank differential issue from the general wage increase issue for decisionmaking purposes. The weight of history favors the Union on this issue. The proposal of the Union on the wage issue is awarded.

ISSUE 4, PHYSICAL FITNESS

POSITION OF THE UNION: There is in effect in the Division of Fire a physical fitness program. It came into effect during the 1996 negotiations and associated Fact Finding. When the City discussed the program with the Union and the Fact Finder it represented that it was unwilling to implement the fitness program without a disciplinary component. It also represented that in the negotiations with the Fraternal Order of Police on behalf of the Police, it would insist on the same or similar disciplinary features in those negotiations as well. That outcome was not forthcoming. When the City and FOP concluded their negotiations the disciplinary feature of the physical fitness program was conspicuously absent. The IAFF asserts it was duped. It relied on the position of the City that the Police would be subject to the same discipline as Fire Fighters. The Fact Finder heard the same words from the City. He accepted them. After the fact, the Union and the Fact Finder were shown to be naive and credulous. The Union

is outraged at the City for what it regards as the deception it engaged in on this issue.

The Union also points out that while the Agreement contains the customary just cause standard for discipline, that standard is absent with respect to fitness. Discipline for failure to meet the fitness standard is automatic. That is inappropriate in the Union's view.

The fitness program adopted by the City is designed to ensure an officer is generally fit. It was not designed with specific aspects of the Fire Fighter's job in mind. The City did not determine whether or not attaining the various standards in the program is necessary for successful performance of the tasks of a Fire Fighter. Given these considerations, the Union seeks adoption of its proposal that the discipline features of the fitness program be eliminated.

POSITION OF THE EMPLOYER: The City seeks continuation of the present program. That was the result of the Tentative Agreement and the award of the Fact Finder in the current round of negotiations.

Implementation of the fitness program has commenced. The City has spent millions of dollars to put exercise equipment in fire stations. To ensure a return on that investment the disciplinary component of the program is essential. The two Fact Finders who have considered this issue agreed with the

City on that factor.

The disciplinary features of the fitness program are mild and slow to take effect. Employees do not have to meet each and every standard to remain free of discipline. They only have to show progress in small increments. The ultimate penalty, discharge, is applicable only to people hired after 1997. That sanction could be imposed only if an employee never recorded improvement in his/her performance. Under that worst-case scenario, it would still take two years of repeated failure for an employee to reach discharge. Discipline is appealable in the grievance procedure.

The situation of the Fire Fighters and Police is different. By virtue of their job Fire Fighters can exercise on City time, in a City facility, the Fire Station. Police do not have that option.

The fitness plan contains monetary incentives for reaching fitness standards. To date, the City has paid over $500,000 to Fire Fighters. No discipline has been issued. The fitness program has proven to be successful. No change can be justified under these circumstances. The City consequently insists its proposal on this issue be awarded.

DISCUSSION: The physical fitness program currently in effect is magnificent. It can stand as a model to the nation. It is understandable that the Union is rankled by the failure of

the City to follow through on its assertion the Police would have the same sort of discipline in their fitness program as do Fire Fighters. That observation is tempered with the other positive aspects of the City plan. Not only is it magnificent in all aspects, the City is correct when it points out that Fire Fighters and Police are situated differently. The former can exercise on City time, in a City facility. The latter cannot. This is a crucial difference.

The IAFF has not been able to show that the disciplinary aspect of the fitness program has worked any hardship upon its members. The discipline under the program is of such nature that a person literally will have to go out of his/her way to be subject to any aspect of it. Discipline under the program can scarcely be termed Draconian. There exists no reason to modify the current fitness program. The position of the City is awarded.

SUMMARY OF AWARD

ISSUE 1, POSITION FOR POSITION CALL-BACK: The proposal of the Union is awarded.

ISSUE 2, HEALTH INSURANCE: The proposal of the Union is awarded.

ISSUE 3, WAGE INCREASE: The proposal of the Union is awarded.

ISSUE 4, PHYSICAL FITNESS PROGRAM: The proposal of the City is awarded.

Signed and dated this 10th day of April, 2000 at Solon, OH.

Harry Graham
Conciliator