

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2001 JUN 28 A 11: 11

In the Matter of)	
Fact-Finding Between:)	
)	
)	
INTERNATIONAL ASSOCIATION OF)	Case No. 00-MED-10-1079
FIRE FIGHTERS, LOCAL 2009)	
)	
-and-)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
CITY OF RICHMOND HEIGHTS)	
)	
)	

**FACT-FINDING REPORT
and
RECOMMENDATION**

Appearances

For Union:

James P. Astorino - Pres., NOFF
Phillip J. Salvia - Pres., Local 2009
Ken Pinter - Vice Pres., Local 2009
Philip Raczka - Member of Local 2009

For Employer:

Marc J. Bloch, Esq. - Attorney for City

Date of Issuance: June 27, 2000

I. PROCEDURAL BACKGROUND

This matter first came on for hearing on May 2, 2001 before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on December 1, 2000. The hearing was conducted between the City of Richmond Heights ("City" or "Employer"), and the International Association of Fire Fighters, Local 2009 ("Union"), at City Hall located at 457 Richmond Road, Richmond Heights, Ohio. The bargaining unit involved in this fact-finding process consists of approximately fifteen (15) members. The issues, as contained in each of the parties' pre-hearing briefs and extant after the fact-finding hearing, may be summarized as follows:

1. Article 20 - Work Period and Workweek
2. Article 22 - Salary Schedule
3. Article 23 - Acting Officer Pay
4. Article 24 - Sick Leave
5. Article 27 - Holidays
6. Article 30 - Uniform Allowance
7. Article 31 - Vacations
8. Article 38.1 - Miscellaneous (Jury Duty)

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements reached between the parties relative to the current negotiations. In making the recommendations which follow, the fact-finder has reviewed the parties' respective position statements, arguments and evidence presented at hearing.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATION

Issue 1: Article 20 - Work Period and Workweek

The Union proposes to reduce the workweek from the current 53 hours to 51.7 hours per week. This proposal is also tied in with the Union's proposal seeking an increase in holiday time from the current allotment of 132 hours to 192 hours. The Union reasons that the members of the bargaining unit work more hours than fire fighters in similarly situated communities, and as a consequence are underpaid for the work which they perform.

The City, reluctant to make any changes in the workweek, acknowledged that some reduction in the workweek would be appropriate, but vigorously objected to the Union's original proposal of a forty-eight hour week as extreme and cost prohibitive. In the City's view, including the amount of overtime/compensatory time which members of the bargaining unit incur, a reduction from a 53 hour to 52 hour workweek would place the City closer to the middle of the eight comparables cited. (City Ex. 2).

Findings and Final Recommendations

It is the final recommendation of the fact-finder that Article 20, Section 20.1 of the new collective bargaining agreement provide for a workweek of 51.7 hours. This recommendation is supported by evidence that such a reduction in hours worked is warranted and will provide for ease of scheduling as argued by the Union. Moreover, it should be noted that the massive increase sought by the Union in holiday time was not recommended by the fact-finder.

Issue 2: Article 22 - Salary Schedule

The Union proposal on salaries seeks a raise of five percent in each year of the three-year agreement. In the event that its proposal on a reduction in hours is recommended, the Union expressed a willingness to accept a four percent increase in keeping with the percentage increases received by fire fighters in surrounding communities.

In contrast, the City position calls for a four percent increase in each year of the collective bargaining agreement. The City justifies its position on several grounds. First, it has consistently maintained pay equality between patrolman first grade and fire fighter first-class as evidenced by the 2000 salary equivalent for each of these classifications. Second, the recent conciliation proceeding between the City and the Fraternal Order of Police, Lodge 57 resulted in a conciliation award adopting the City's position of four percent in each year of a three-year agreement.

Finally, the City references low rates of inflation at the national level, similar percentage increases in comparable jurisdictions, and the potential impact of the conciliator's placement of a "me-to" provision in the FOP agreement with respect to wages in support of its offer of four percent.

Findings and Final Recommendation

It is the final recommendation of the fact-finder, based upon recognition for the parties' expressed desire to maintain internal parity between the safety force units within the City, evidence of wage levels (and percentage increases in the base rates) of employees performing

similar work in comparable jurisdictions, together with the recommendation to reduce the number of hours comprising the workweek, that the salary schedule be adjusted by a four percent increase in each year of the successor collective bargaining agreement.

Parenthetically, the City proposed and the Union accepted an increase in the annual paramedic premium to \$1000 which is incorporated into the agreement. The parties also reached agreement on an increase in the rank differential to eleven percent to be contained in Article 22, Section 22.2, which increase is consistent with the rank differential received by the police.

Issue 3: Article 23, Acting Officer Pay

The Union proposes to increase the current compensation paid to members of the bargaining unit, other than the fire prevention officer, who may act in the capacity of fire prevention officer, for each day that duty is performed as currently provided in Article 23, Section 23.3. The City counters that no bargaining unit members function in that capacity, and reasons that no change to the current contract language is warranted.

Findings and Final Recommendation

There is no probative evidence that Section 23.3 has functioned so as to require modification in accordance with the Union's proposal. Indeed, there is no recent evidence that fire fighters have been required to perform duties normally performed by a fire protection officer. The fact-finder recommends that the current contract language contained in Article 23, Section 23.3 remain unchanged.

Issue 4: Article 24, Sick Leave

Findings and Final Recommendation

The parties resolved the issue of sick leave bonus at the fact-finding hearing. The following language shall be contained in Section 24.13.

Section 24.13 When an employee has completed 90 calendar days and has not used any sick leave, he shall be given the equivalent of one (1) eight (8) hour day in cash.

Issue 5: Article 27, Holidays

The Union's initial proposal with respect to holidays was to seek an increase in total holiday time from the current 132 hours (or 12 hours added to the employee's accumulated time off for 11 holidays) to 192 hours of holiday time. After considerable movement by both parties on this issue, agreement was reached whereby an additional 12 hours, or a total of 144 hours of holiday time, will be provided to members of the bargaining unit. This will be accomplished by the addition of a personal leave day, which contract modification is fully warranted by review of both the comparable jurisdictions, as well as the increase received the FOP through the recent conciliation award.

Findings and Recommendation

It is the fact-finder's final recommendation that Article 27, Section 27.1 provide as follows:

Section 27.1 All employees shall receive twelve (12) hours which will be added to the employee's accumulated time off for each of the following holidays:

New Year's Eve	Thanksgiving Day
New Year's Day	Christmas Eve
Good Friday	Christmas Day
Memorial Day	Employee's Birthday
Independence Day	Martin Luther King, Jr. Day
Labor Day	Personal Day

Issue 6: Article 30, Uniform Allowance

After discussion at hearing over the amount of the uniform allowance to be paid to members of the bargaining unit, the parties were able to reach an agreement increasing the uniform allowance for each year.

Findings and Final Recommendation

It is hereby recommended and agreed by the parties that Article 30, Section 30.1 shall provide, as follows:

All employees shall be entitled to a uniform allowance in the amount of seven hundred (\$700.00) effective January 1, 2001, seven hundred fifty dollars (\$750) effective January 1, 2002, and eight hundred dollars (\$800.00) effective January 1, 2003.

Issue 7: Article 31, Vacation

The Union has proposed to increase the maximum accumulation of vacation time to fifteen tours of duty after an employee has provided twenty-five years of continuous service.

The City urges retention of the current contract language, and emphasizes that the very same request was rejected by the conciliator in the recent negotiations with the FOP.

Findings and Final Recommendation

The City's position is well taken as there is insufficient evidence to warrant a modification of the current language with respect to the rate of accrual or total vacation to be provided to bargaining unit members. The fact-finder does recommend a modification permitting an employee to "cash out" at the end of each vacation year any unused vacation time. Accordingly, the fact-finder recommends the following language be added to the current language of Section 31.2:

An employee shall be paid for any unused vacation time remaining at the conclusion of the vacation year within thirty (30) calendar days after the anniversary date of his or her appointment.

Issue 8: Article 38, Miscellaneous (Jury Duty)

Under the current contract language, fire fighters are expected to return to work after serving jury duty unless excused by the Fire Chief. The Union's proposal, which the City opposes, calls for a fixed rule that an employee who serves more than eight (8) hours of jury duty shall be excused from reporting to work that day.

The City's position is that the current contract language be maintained arguing there is insufficient evidence that the authority to excuse an employee from returning to work after a

lengthy day of jury duty has been abused. It further submits that an employee who serves only a few hours of jury duty should not be excused from the remainder of his or her tour.

Findings and Final Recommendation

Despite the potential for abuse, the fact-finder remains unconvinced that the authority to excuse an employee from the remainder of his tour of duty after serving on a jury has been abused. Nevertheless, in deciding whether to release an employee from work under such circumstances, discretion to do so should be exercised in a reasonable manner. An employee who completes his jury duty in two to three hours may very well be required to work his tour of duty that same day. The same treatment may not apply to the employee who serves a full eight hours of jury duty. Section 38.1 should be modified to reflect the caveat that such discretion must be exercised in a reasonable manner, as follows:

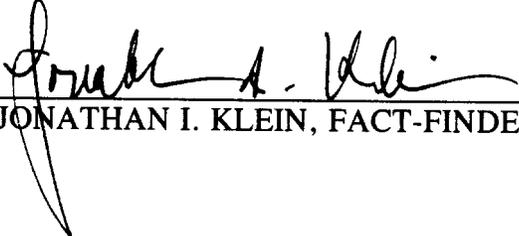
Section 38.1. Jury Duty. An employee, while serving upon a jury in any court of record, shall be paid at his regular salary rate for each of his work days during the period of time so served, providing that the jury duty fees paid to the employee by the court shall be returned to the City. Further, employees shall be expected to return to work after jury service has been completed unless excused by the Fire Chief, which excuse shall not be unreasonably withheld.


JONATHAN I. KLEIN, FACT-FINDER

Dated: June 27, 2001

CERTIFICATE OF SERVICE

Originals of this Fact-Finding Report and Recommendations were served upon Marc J. Bloch, Duviv, Cahn & Hutton, Erieview Tower - 20th Floor, 1301 East Ninth Street, Cleveland, Ohio 44114, and upon James P. Astorino, President, Northern Ohio Fire Fighters, 17703 Grovewood Avenue, Cleveland, Ohio 44119-3100, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215, each by express mail, sufficient postage prepaid, this 27th day of June 2001.


JONATHAN I. KLEIN, FACT-FINDER