

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2003 JAN 24 A 10: 26

In the matter of	*	Case No. 02-MED-06-0622
	*	
Fact-finding between:	*	
	*	
City of Findlay	*	Fact-finder:
	*	
and	*	Martin R. Fitts
	*	
IAFF Local 381	*	
	*	January 22, 2003
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Findlay (the Employer):

James A. Budzik, Attorney-at-Law
Robert Ruse, Safety-Service Director
Roy DeVore, Fire Chief

For IAFF Local 381 (the Union):

John Crom, Local President
Timothy J. Coppes, Firefighter
Ed Harrington, Firefighter
Scott A. Emans, Firefighter
Ted Bibler, Firefighter

PRELIMINARY COMMENTS

The bargaining unit consists of all full-time firefighters and fire captains. There are approximately 75 employees in the bargaining unit. The parties met on September 27, 2002, November 8, 2002, and November 20, 2002. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on November 29, 2002. The Fact-finder held mediation sessions on December 12, 2002 and December 20, 2002 at the offices of the City of Findlay. Prior to mediation by the Fact-finder, there were 22 unresolved issues at impasse, found within 11 articles of the collective bargaining agreement. Following mediation, there were 4 issues left at impasse found within 4 different articles. A fact-finding hearing was held on January 8, 2003 at the offices of the City of Findlay. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions with evidence and testimony.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

In fashioning this report, the Fact-finder has carefully considered all of the evidence and testimony provided, and has attempted to strike a fair balance between the concerns of both parties, as well as the interests of the taxpayers of the City of Findlay.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as submitted in writing to the Fact-finder prior to the hearing, unless otherwise noted.

ISSUES AND RECOMMENDATIONS

Issue: Wages

Positions of the Parties

The Employer proposed a 0.5% wage increase in the first year of the agreement, a 2% increase in the second year of the agreement, and a 2% increase in the third year of the agreement. The City argued that its ability to pay for a wage increase is severely limited due to flat income tax revenues.

The Union proposed wage increases of 2% in the first year, 3.2% in the second year, and 3.2% in the third year.

The parties had agreed in principle to compress and reduce the number of years to the top step to seven (7) years. The City did not argue against this at the hearing, but pointed out that this has a cost to the City, and this needs to be considered in the overall wage recommendation of the Fact-finder.

Findings and Recommendation

The City contends that the wage compression will cost approximately \$55,000, almost equal to a 1% wage increase. The Union contends that the impact of the compression is about half that, as there are a number of employees in the bargaining unit that will reach new steps regardless of whether under the existing provisions of the contract or the new proposal. The City figures did not account for any such movement, but there was no argument by the City that the Union's contention was untrue. It would appear to the Fact-finder that the true additional cost to the City for the wage compression would more accurately be closer to 0.5%.

Income tax provides the City with roughly half of its income. There is no question that the City's projections for income tax revenue do not look good for the coming year. The City argued at the hearing that it was extremely limited in its ability to pay wage increases. The City's income tax rate is a modest 1%, with no special assessment or other tax levy dedicated to fire service, so any discussion on the City's limited ability to pay must be couched within the framework of its determination to be a lower-taxed city. The Union pointed out a number of projects that the City has recently undertaken as evidence that the City's claimed inability to pay is at least in part due to other political priorities for funds. It is not the Fact-finder's responsibility or authority to recommend to any political entity what its priorities should be. However, the total picture of revenue projections, expenditures and potential sources of revenue is properly considered by the Fact-finder when assessing whether funds are available to provide for reasonable increases in wages and other benefits.

Many of the economic challenges facing cities throughout Ohio also face the City of Findlay. The City of Findlay has a history of faring better economically than most other cities in Ohio. While it may appear that 2003 will be a difficult year revenue-wise for the City, no mass layoffs or business closings were cited by the City as reasons for tax revenues to be on a permanent downward slope. Additionally, some of the City's own ventures, as noted by the Union at the hearing, are evidence of a City that does not believe its economic downturn will be either severe or long-term. In light of the above, the Fact-finder's recommendations take into account 2003 may be a tough budget year. But as history shows that the City's economy historically performs better than most, the recommendations for wages and other provisions to be discussed later, while still modest, are based on that expected performance in the second and third years.

Accordingly, the Fact-finder's recommendations for wage increases are as follows: 1% in 2003; 2% in 2004; and 2.5% in 2005. Additionally, the Fact-finder recommends the step compression as agreed to in principle by the parties.

Issue: Hours of Work

Positions of the Parties

The Employer proposed a reduction in the average workweek to 50.4 hours from the current 51.7 hours, effective within 14 days of the ratification of the agreement by both parties.

The Union proposed a reduction in the workweek to 50.3075 hours.

Findings and Recommendation

There was considerable discussion on this issue during mediation and at the hearing itself. Ultimately the parties narrowed their differences to 0.0925 hours per week, which mainly reflects a difference in how the reduction gets implemented over the years.

The Union argued that cities are moving toward a 48-hour workweek, and noted that its original proposals called for greater reductions over the life of the agreement.

The City contended that the reduction in the workweek is in essence a 2.5% increase for the bargaining unit. While the Union did not agree that there should be a dollar figure placed on this issue, as it contends there is no cost in implementing it, the Fact-finder agrees with the City. The contract by its very nature places a dollar value on a firefighter's time. Thus there is a dollar value to each firefighter that can be attributed to

having additional time off during the year. With the City's proposal, each firefighter will be scheduled for over two tours of duty less each year. As a firefighter's time has been given a monetary value by the contract, it is fair and reasonable to conclude that the value of the time off is equal to about 2-2.5% of a firefighter's annual wages.

The Union cites the lack of minimum manning levels in the agreement as it contends that there is no cost to the City in implementing the reduced workweek. The City argued that it will likely end up using overtime to fill some of the lost time, and that it will indeed have some additional cost. Again, the Fact-finder agrees with the City that it is likely it will pay a price for the reduction in the workweek. That price may be overtime costs, or the cost, albeit not monetary, of having fewer firefighters on duty at any given time.

At the City's request, the Fact-finder also notes that in fact-finding a fact-finder retains the right to fashion a recommendation that can fall outside the proposals of the two parties. In the instant matter, however, where the parties have narrowed their differences to such a miniscule degree, it would be unreasonable and irresponsible of this Fact-finder to do so here.

Based upon the considerable evidence, testimony and discussions surrounding this issue, the Fact-finder recommends the City's proposal for a reduction in the average workweek to 50.4 hours, effective within 14 days of the ratification date of the agreement by both parties.

Issue: Longevity

Positions of the Parties

The Employer proposed to increase each of the current longevity steps by \$5.00 effective in 2004 (the second year of the agreement.)

The Union proposed to increase each of the current longevity steps by \$5.00 effective in 2004 (the second year of the agreement) and an additional \$5.00 in 2005 (the third year of the agreement.)

Findings and Recommendation

The bargaining history of the parties indicated that longevity increases generally occurred every fourth year, and traditionally has been in terms of dollars, not percentages. Again, the City argued that recommended increases in longevity need to be considered by the Fact-finder in concert with the overall wage package and not in isolation. The Union had originally proposed a percentage increase rather than a flat, across the board increase. Its final proposal for \$5 increases in each of the final two years of the contract is not

unreasonable, especially in consideration of the modest wage increase recommended earlier in this report.

The Fact-finder recommends the Union's proposal for a \$5.00 increase each of the current longevity steps by \$5.00 effective in 2004 (the second year of the agreement) and an additional \$5.00 in 2005 (the third year of the agreement.)

Issue: Layoff language

Positions of the Parties

The Employer proposed adding a new section to the agreement to deal with layoffs and recalls.

The Union opposed adding additional language to the agreement.

Findings and Recommendation

The City noted that no language presently exists to deal with any layoffs, job abolishment or recalls. The only recourse presently available is the civil service commission. It noted that the contract already contains provisions different than the civil service commission for promotions, and that it makes sense to have separate provisions for layoffs, job abolishment and recall as well. Further, it argued that at present there is confusion over what is able to be grieved, and the addition of its proposed language would clarify things. Under the City's proposal, the resolution of any dispute would be subject to the grievance procedures contained in the agreement. This would result in quicker and less expensive dispute resolution than proceeding under the civil service rules.

The Union argued against the addition of these provisions, claiming that they were unnecessary as individuals have the recourse of the civil service provisions. It noted that the civil service provisions were used in the instance of a job abolishment in the past, although not for layoffs, as there have not been any.

The City's arguments in favor of adding these provisions have some merit. However, this proposal was made during mediation and was not among the issues that were originally at impasse. As such, despite its probable merit and value to both sides, it is an issue better left to the parties to bargain in future negotiations when it can be discussed in the context of a multitude of issues. As no layoff has occurred in the past, there is no real experience that the parties can draw upon to determine the real merits of such a proposal.

Therefore, the Fact-finder recommends the Union's position that the new language not be included in the agreement.

Additional recommendations

The Fact-finder also recommends all of the tentative agreements reached by the parties during their negotiations, mediation, and fact-finding.

The above completely represents all the opinions and recommendations of the undersigned in this matter

A handwritten signature in cursive script, appearing to read "Martin R. Fitts".

Martin R. Fitts
January 22, 2003
Fact-finder

Martin R. Fitts

Labor Arbitrator

**STATE EMPLOYMENT
RELATIONS BOARD**

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January 22, 2003

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Re: SERB # 02-MED-06-0622

Gentlemen:

With this letter I am sending to each of you via Express Mail my Fact-finding Report in the above-referenced matter. A copy of this is being sent via regular mail to SERB.

Thank you.

Sincerely,



Martin R. Fitts
Fact-finder

cc: SERB