

HAND DELIVERED

**IN THE MATTER
OF
INTEREST ARBITRATION
FACT FINDING
AWARD**

**STATE EMPLOYMENT
RELATIONS BOARD**

2003 FEB 11 A 11: 10

BETWEEN	CASE NO: SERB 02-MED-07-0669
Zanesville Professional Fire Fighters	FACT FINDER: JOHN S. WEISHEIT
And the	HEARING DATE(S): Dec. 18, 2002
City of Zanesville, Ohio	AWARD ISSUED: Jan. 23, 2003

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Dale Raines, Budget & Financial Director David A. Lacy, Acting Fire Chief	Jim Prang, Pres. Loc. #88 Marty Mercer, VP Jeff Jadwin, Sec. Steven A. Empry, #1 Rep. Dan Shipley, #2 Rep. Andy Gardner, # 3 Rep.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

BACKGROUND

The City of Zanesville, hereinafter called the “Employer” and/or the “City”, recognizes the International Association of Fire Fighters, AFL-CIO-CLC, Local #88, hereinafter called the “Union” and/or “IAFF”, for all fulltime firemen employed by the City . The above named parties engaged in bargaining for a successor Agreement to the one expiring December 31, 2002. In the course of good faith bargaining, several issues were resolved in tentative agreement. Some issues remained unresolved and this Fact Finder was called upon as provided in ORC 4117.

The Fact Finding Hearing was convened on December 18, 2002, at the Zanesville City Administration Building. The parties timely submitted pre-hearing briefs and presented additional testimony and documentation at the Hearing. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their bargaining position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions. The Fact Finder was asked to write a Fact Finding Report and submit it to the parties on or before January 27, 2003.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that the Hearing and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following issues were resolved in negotiations and tentatively agreed to:

Article	Title	Article	Title
1	RECOGNITION	18	MANAGEMENT RIGHTS
2	LOCAL #88 DUES	19	LOCAL #88 CONSTITUTION & BYLAWS
3	HOURS OF WORK	21	CONTRACTING OUT
4	NO STRIKE OR WORK INTERRUPTIONS, NO LOCKOUT	22	TRAINING AND EDUCATION
5	NO MISREPRESENTATION	24	SENIORITY/RESIDENCY
6	JOINT COOPERATION	25	SAVINGS CLAUSE
7	PAYMENT FOR TIME EARNED	26	ADOPTING LEGISLATION RATIFYING THE AGREEMENT
8	PROBATIONARY PERIOD	27	WAIVER CLAUSE
9	WAGES	28	DISCIPLINARY PROCEDURE
10	GRIEVANCE PROCEDURE	29	TRADES
11	ARBITRATION	30	DRUG/ALCOHOL TESTING
15	CLOTHING ALLOWANCE	31	AUTOMATIC RENEWAL
16	BULLETIN BOARDS	32	PROMOTIONAL EXAMS
17	LOCAL #88 REPRESENTATION		

ISSUES AT IMPASSE

The following Articles were at impasse, in part or whole, at time of the Fact Finding Hearing:

Article	Title
Article 12	Vacation/Holidays
Article 13	Insurance Schedule
Article 14	Sick/Injury Leave
Article 20	Physical Exams
Article 23	Working Conditions
Append.I-III	Pay Rates

SUMMARY PARTY POSITION

ISSUES AT IMPASSE

The following Articles remain, in part and/or whole, unresolved at Fact Finding. Only those issues as specifically reflected below remain unresolved.

Employer	Issue	Union
Propose 6 paid Holidays at 1.5x if not worked & 2x if worked.	Art. 12 Vac./Holidays	Propose 10 paid Holidays at 1.5x if not worked & 2.0x if worked.
	12.1 Length of Vacation	
Propose to retain current language.	Art. 13 Insurance	Propose: Reduce Deductible from \$150 to \$50 -Ind. \$400 to \$100-Family
Propose to retain current language.	Art. 14 Sick/Injury Leave	Propose removing cap on accum. in computing retirement pay off rate.
Reject Union Proposal	Art. 20 Physical Exam	Propose to include all job related physicals be paid in full by the City.

Employer	Issue	Union
Retain current language.	Art. 23 Working Cond. 23.7 Min. Staffing	Propose to Increase minimum staffing level.
Propose 3.5% annual increases for duration of Agreement.	Appendices I-III Pay Rates	Propose 6% annual increases for duration of Agreement

DISCUSSION & DETERMINATION

General

The economic issues at impasse are first considered collectively. Economic impact was reviewed in context of cost estimates of issues tentatively agreed to as well as those economic issues at impasse. Recommendations were made on an item by item basis as called for under ORC 4117. The Fact Finder has used generally accepted standards applied in making a finding and recommendation in interest rights matters in this instant situation. Inability to pay is not raised as an issue. Bargaining member employees work a rotating 24 hour shift; such shift structure is noted common in fire departments.

Proposed increase of employee economic benefits are considered as a part of the total cost and increase in the base pay increase for the term of the Contract. This includes such matters as insurance benefits, premium pay provisions, paid leave. etc.

Fact Finder's Determination

Issue by Issue

Issue	Discussion/Determination
Art. 12 Vac./Holidays Sec. 12.1 Length of Vacation	Prior to this Agreement, bargaining unit members have not been paid for any Holidays. The Union seeks 10 paid holidays while the Employer has offered to pay for 6 holidays. The addition of such a provision would not only provide a financial increase in pay as well as vacation time/pay. This recommendation is considered in relation to the pay increase provision addressed in this finding.

Recommendation

It is recommended that the Article be included in the Agreement as stated in the expiring agreement including the following language:

Section 12.1 Holiday Pay

The following listed days shall be recognized as paid holidays:

New Year's Day, Memorial Day, Independence Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

Employees who work these days shall be compensated at 2 times their normal rate of pay. Employees who do not work these days shall be paid at their daily base rate pay. In addition, such time and pay shall be applied to the accelerated rate of compensation of vacation computation set forth in Section 12.1

**Art. 13
Insurance**

All terms set forth in Article 13 - Insurance are tentatively agreed to except the deductible amount. The expiring agreement provides \$125 deductible for single coverage and \$400 for family coverage.

Comparables with other City employee units normally provide a good base line regarding benefits. However, such comparisons must also consider bargaining patterns, particularly when different benefit levels are granted in different employee groups. Most particular is the differences between other bargaining unit benefits. In the matter of insurance, the City provides the same self-insured benefit plan to all its employees. It is noted that there is a wide difference in deductibles between employee groups. While this bargaining unit has the highest employee pay deductible, prior bargaining history was not revealed regarding how such evolved. Current negotiations with other bargaining units have not all settled bargaining. However, the City has settled or made its "last" offer deductibles of \$150-Single and \$350. It is common practice in such medical plans to provide like coverage to all employees covered unless in the course of bargaining significant argument is persuasive to alter coverage or costs to a given bargaining unit. Such argument was not raised in this instant case.

Art. 13 Insurance It is also noted that the parties have agreed to an increase in employee contribution rates. Again, this matter is unresolved in other City-employee bargaining units. While to reduce the deductible of this bargaining unit would be contrary to the City's general bargaining pattern, it is considered appropriate in this instant case when considering the past bargaining pattern for this bargaining unit on the issue of insurance and taking into consideration the economic effect of the proposed pay rates made in this Award.

Recommendation It is recommended that the Article be included in the Agreement as stated in the expiring agreement include the following language:

Section 13.2 - Content of Insurance Plan

(B) The family deductible shall be \$300, single shall be \$100. *****

Art. 14 Sick/Injury Leave All terms set forth in Article 14-Sick/Injury Leave, are tentatively agreed to except for the pay off of accrued and unused sick leave at time of retirement set forth in Section 14.4 (A). Upon review and due consideration, it is determined that this provision should remain in the Agreement as set forth in the expiring agreement.

Recommendation It is recommended that the Article be included in the Agreement as stated in the expiring agreement.

Art. 20
Physical Exam

The Employer made a procedural challenge regarding the Union's right to introduce the issue at Fact Finding, regarding the proposal that would attain full Employer payment for a physical examination resulting from all job related exposure or injury. It argues the issue was not raised at the initial bargaining session, a protocol procedure previously followed by the parties. The issue is considered properly before the Fact Finder for the following reasons: 1. The issue was raised in the course of bargaining when another matter in the Article was addressed; 2. The issue is addressed in the expiring agreement; 3. There is no Contract language barring negotiations on an issue after the initial bargaining session; The Employer challenge was based on a local bargaining procedure not supported by any written local practice. No ORC 4117 or SERB Rule or Regulation is found controlling on this point. Therefore, the issue is found properly before the Fact Finder.

Testimony at Hearing on this issue is clear and unrefuted. There has been no occurrence in which a bargaining unit member was required to pay any portion of a physical examination resulting from an on the job injury and/or exposure. Worker's Compensation, to date, has covered such situations. This is determined the appropriate time and manner to resolve the matter. It is normal that job related medical cost are totally incurred by the Employer.

Art. 20 **It is determined that this provision shall provide full cost of physical**
Physical Exam **examinations of members resulting from on the job injury or**
Recommendation **exposure as proposed by the Union.**

Art. 23 The Union proposal, while showing a noble intent, seeks to modify
Working Cond. contract terms that are found to be reserved to management. The
23.7 Employer indicated a willingness to raise the minimum staffing level to 12
Min. Staffing men per shift, as set forth in a departmental memorandum issued February
25, 2002. However, the Employer proposes to retain current qualifying
language with such a change. The position expressed by the Employer at
the Hearing is considered to be a reasonable compromise in this matter.

Recommendation **It is recommended that the Article be included in the Agreement as**
stated in the expiring agreement and include the following language:

Section 23.7 Minimum Staffing

The City shall make a reasonable effort to maintain at least the
minimum staffing level of twelve (12) men per shift.

**Appendices
I-III
Pay Rates**

Appendices I-III are extensions of Article 9 - Wages, which is tentatively agreed to by the parties. There is a significant difference between the hours worked by Fire Fighters and other City employees. While Fire Fighters are on continuous duty, as are other safety service employees, they work back to back multiple 24 hour shifts. This results in much greater on-duty time in a calendar year than an employee working an 8 hour a day shift.

It is also noted that in this case, the parties have agreed to language providing an increase in additional premium pay with increase in base pay. Such factors are properly considered as part of the contract wage increase. This in addition to increases recommended should be considered as wage equivalent increases for the duration of this Agreement.

Based on the foregoing, it is determined the wage rates reflected in Appendices I-III in the following recommendation are appropriate.

Appendices I-III cont'd **It is recommended that the Appendices I - III be included in the Agreement as stated in the expiring agreement and include the following changes:**

Recommendation **Appendix I shall reflect a 3.5% increase on each step of the schedule effective January 1, 2003, of the current wage schedule.**

Appendix II shall reflect a 3.5% increase on each step of the schedule effective January 1, 2004.

Appendix III shall reflect a 4% increase on each step of the schedule effective January 1, 2003.

TOTALITY OF AGREEMENT

- It is recommended that all items of tentative agreement prior to Fact Finding be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Fact Finder in the Award.

- This will affirm the foregoing report, consisting of **14 pages**, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.

- * Any matter presented before the Fact Finder and not specifically addressed in this

Determination and Award were given consideration but are not recommended for inclusion in the Agreement.

- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Gallon, in the County of Crawford, in the State of Ohio, this date of **January 23, 2003**.

John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

BETWEEN The Zanesville Professional Fire Fighters And the City of Zanesville, Ohio	CASE NO: SERB 02-MED-07-0669
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was served to the below named parties at the stated addresses

Mr. Dale Raines 401 Market St. Zanesville, OH 43701	Mr. James T. Prang P. O. 2404 Zanesville, OH 43701-24041
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by U.S. Postal Service mailed, overnight express, on January 23, 2003.

Copy of this Award was submitted U. S. Postal Service by First Class Mail to Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on January 23, 2003.

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.

John S. Weisheit, Fact Finder Date