

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT
FACT FINDING PROCEEDINGS RELATIONS BOARD

2003 AUG 27 A 10: 27

REPORT & RECOMMENDATIONS
OF THE FACTFINDER

AS ISSUED
AUGUST 25, 2003

IN THE MATTER OF:

City of Streetsboro <i>(Employer)</i> <i>-and-</i> Streetsboro Part-time Firefighters <i>(Union)</i>	SERB Case No. 02-MED-08-0695
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APPEARANCES:

On Behalf of the Union:

Michael W. Piotrowski	General Counsel
Kevin McCarthy	President, SPTFFO
Glenn Broska	Vice President, SPTFFO

On Behalf of the Employer:

Thomas J. Wiencek	Attorney
Wayne Johnson	Fire Chief
Joe Collica	Mayor
Ron Stenglein	Council Member

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SUBMISSION

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in a contract that obtained through December 13, 2002. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter, effective on November 29, 2002. Mutually agreeing to extensions of the statutory deadlines, the Parties met in negotiations toward a successor contract on several occasions, resulting in a tentative agreement in June of 2003. On June 23, 2003, the tentative agreement was rejected by the Streetsboro City Council, and a counter-offer was rejected by the bargaining unit membership on July 7, 2003.

The Parties requested the Factfinder to attempt mediation of unresolved issues, and a session was accordingly held on August 5, 2003 at the City facility in Streetsboro, Ohio. That mediation likewise failed to satisfactorily resolve all matters in dispute. Consequently, an evidentiary hearing was held on August 14, 2003, at which the Parties were afforded an opportunity to present evidence and testimony supporting their respective positions. The matter was declared closed as of the date of hearing. The Parties mutually requested issuance of the Report and Recommendations of the Factfinder to correspond with the August 25, 2003 meeting of the Streetsboro City Council, with service via e-mail attachment, concurrent with regular First Class USPS mail.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

- 1. Article 10 – Wages and Compensation**
- 2. Article 26 – Residency**
- 3. Article 27 – Staffing**
- 4. Absence and Fill-In – New Language**

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K):

- 4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3) 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;
- 4117-9-05(K)(4) The lawful authority of the public employer;
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND GENERAL CONSIDERATIONS

Like many ex-urban communities, the City of Streetsboro has recently experienced unprecedented growth. In the past, the City's fire service was provided by a cadre of part-time Fire Fighters, many of whom were employed full-time by fire departments in surrounding jurisdictions or had other regular employment. Accordingly, within certain parameters, the City's part-time employees scheduled the hours and days they were available to work. Under this system, the City enjoyed a highly skilled, dedicated fire department incorporating proficiencies such as Hazmat or diving certifications that its part-time Employees had obtained in their full-time positions in other departments.

Streetsboro's growth, however, has led to a determination that a full-time fire department would provide more effective coverage of the City's expanding needs. The institution of this change was not without certain tensions. The City's part-time Fire Fighters were concerned that

employment on which many had relied for additional income was threatened, and that their dedication and contributions were not appreciated. The Employer, while acknowledging the part-time Employee's past service, believed that the Fire Fighters had nonetheless been compensated for their work, and that certain of their negotiating positions might threaten development of a full-time fire service.

In an effort to resolve these differing interests the Parties met on a number of occasions and, in late May of 2003, their negotiating teams reached tentative agreement. Among the provisions entertained were funding for three part-time positions on each shift; an exception to the residency requirement for up to 20% of the part-time contingent subject to residency requirements in their full-time positions elsewhere; and a forbearance of wage increases for 2003, with subsequent 3% increases in the final two contract years. Following these discussions, the Union President and the Mayor had an informal conversation - without benefit of participation by the official representatives of either Party - in which the former indicated that three part-time positions per shift would not be acceptable to the bargaining unit. The Mayor therefore offered to include a 3% wage increase for 2003, subject to legislative ratification.

In consideration of this casual arrangement, contract language providing for a 3% wage increase in each of the contract years, retroactive to January 1, 2003 was presented to the Streetsboro City Council. At its June 23, 2003 meeting the Council rejected the proposed terms, specifically objecting to retroactivity of the 2003 wage increase and to the exception to the City's residency requirement. Subsequent discussions regarding the Council's position were undertaken, with the Union rejecting the positions presented. Council accordingly rejected the proposed tentative Agreement on July 7, 2003.

As a result of the failure of the arrangement between the Union President and the Mayor, each Party believes that the other has abrogated a tentative agreement to which it had been bound. It should be pointed out, however, that tentative agreements are by definition provisional; both Parties accept the terms subject to ratification by their respective constituencies. Contemplating such reversals, Ohio law provides procedures for resolution of issues at impasse.

In that regard, in the course of mediation of open issues, the Union presented a proposal titled "Absence and Fill-In" in which it sought to mandate replacement of absent Fire Fighters – either full-time or part-time – with members of the part-time bargaining unit. Citing the SERB's decision in *Richland County Bd. Of MR/DD*, 13 OPER 105 (1995), the City argued that this

proposal had not been made previously in the bargaining process, and that accordingly the Factfinder had no jurisdiction to consider the issue.

Ruling on the jurisdictional issue at hearing, the Factfinder determined that a fluid exchange of positions was inherent in the collective bargaining process and implicit in statutory and regulatory encouragement of mediation. The Union's proposal in response to the City's rejection of a retroactive wage increase was therefore a valid counter-proposal, offered prior to the submission of the position statements required under ORC 4117.14(C)(3)(a). Having been rejected by the Employer the issue was therefore at impasse and as such within jurisdiction of the Factfinder.

The City further asserts that as part-time Fire Fighters, members of the present bargaining unit are not "Member[s] of a Fire Department" as defined in ORC 4117.01(O), and as such are not subject to conciliation under OAC 4117-9-06. While the Employer's assertion is legitimately espoused as a negotiating tactic, its consideration is irrelevant to the findings of fact and recommendations that constitute the statutory duty of the Factfinder in these proceedings.

FINDINGS OF FACT & RECOMMENDATIONS

1. Article 10 – Wages and Compensation

Union Proposal:

The Union acknowledges that wage increases are secondary to staffing and other similar issues. However, it argues that in the Mayor's discussion with the Union President and in the tentative agreement presented to Council the City agreed to a wage increase of 3% for the present contract year, retroactive to January 1, 2003, as well as 3% increases in each subsequent year of the Agreement.

In support of its request that the Factfinder recommend retroactivity to January 1st, the Union argues that past collective bargaining agreements between the Parties have always been retroactive. Additionally, the City's full-time bargaining unit received its 2003 wage increase effective January 1, 2003, and that internal parity would thus militate for similar retroactivity afforded part-time Union members. Fire fighters in comparable communities have received wage increases in excess of 3%, says the Union. Moreover, it argues, the City is unable to present evidence indicating an inability to pay those increases requested by its part-time Fire Fighters.

The Union rejects the Employer's contention that it should be held to a willingness to forego 2003 wage increases entirely, stated in the course of negotiations. That agreement, it says, was made in consideration of other provisions important to the Union. The City having rejected those proposals, the bargaining unit maintains that it should not be required to maintain its concession while the City is not. Therefore, the Union urges the Factfinder to recommend 3% increases in each of the three contract years, retroactive to January 1, 2003.

City Position:

Initially, the part-time Fire Fighters agreed to no wage increase for 2003, according to the Employer, if an exception to the residency requirement was instituted and assured part-time positions were funded on each shift. The City acknowledges that informal discussions between the Mayor and the Union President resulted in tentative agreement to provide a retroactive 3% wage increase to bargaining unit members, in exchange for a reduction of the Union's demand for funding of four part-time positions per shift. However, that proposal was rejected by the City Council. The City is now offering to institute wage increases effective July 1, 2003.

Discussion and Recommendation:

As previously discussed, tentative agreements are subject to ratification by the constituencies of both Parties. Although it may have exceeded its statutory authority in interceding, however informally, in negotiations regarding specific contract terms, the Streetsboro City Council was certainly within its right to reject the provisional accord reached between the Union President and the Mayor for a retroactive 3% wage increase in 2003. Likewise, the Union was free to reject the City's offer and to present counter-proposals of its own.

Its legislative body having rejected a retroactive pay increase for the City's part-time Fire Fighters, the Employer offers to compromise by instituting those increases effective July 1, 2003. In conjunction with this proposal, it offers to accept the residency exemption for those bargaining unit members whose full-time employment requires them to live elsewhere. Although it does not represent the full benefit the Union seeks, it is a good faith concession, and is accordingly recommended by the Factfinder:

Effective January 1, 2003, 2004 and 2005, all employees governed by this Agreement shall receive wages and, if qualified, a bonus and incentive compensation at the rate set forth in Appendix A hereof. The wage rates in Appendix A [shall] reflect a 3% increase effective July 1, 2003, and 3% increases effective January 1, 2004 and 2005.

2. Article 26 – Residency

Union Position:

During the course of negotiations, the City and the Union reached agreement as to exceptions to the residency requirement for those bargaining unit members who are employed in other jurisdictions having residency requirements in conflict with the provisions of Article 26. At the time, the City was represented at the bargaining table by two members of Council, and the Parties reached an agreement that was accordingly ratified by bargaining unit members. Therefore, the Union urges that the exception to the residency requirement be recommended as ratified.

City Position:

The City acknowledges that it reached tentative agreement as to the exception proposed by the Union, and agrees to honor that provision.

Discussion and Recommendation:

In rejecting the tentative agreement reached between the Parties' negotiating teams, the Streetsboro City Council objected to two provisions: retroactive wage increases and exemptions to the residency requirement for up to 20% of the part-time Fire Fighters. In an attempt at compromise, the Employer has offered to institute pay increases for half of the 2003 contract year, and it has agreed to accept the exemption to the residency requirement sought by the Union. It is recommended that the Union accept the concession:

Employees shall reside within the territorial boundaries as established by City Ordinance or regulation. The method used to determine the distance check (GPS) will be the only valid method and will not change from employee to employee.

Employees subject to a residency requirement at another fire department shall be exempt from the residency requirement in this Article. The total number of such exemptions shall not exceed 20% of the then existing workforce.

3. Article 27 – Staffing

Union Proposal:

Initially, says the Union, it requested contractual assurances that four part-time positions per shift would be guaranteed for the life of the Agreement. During the course of negotiations the Union and the Employer agreed to language providing for the funding of three part-time positions, contingent on a retroactive pay increase in 2003. When the Streetsboro City Council

rejected the pay increase, the Union re-instituted its four-position proposal, based on what it views as the City's abrogation of other elements of a quid pro quo exchange. In addition, the Union proposes language that would require that the number of part-time Fire Fighters on each shift be equal to or greater than the number of full-time Employees. Accordingly, it asks the Factfinder to recommend that its proposed language be included in lieu of retroactive pay increases in the current year.

City Position:

The Employer maintains that the Union originally sought guarantees of six part-time positions per shift. During negotiations discussion was had as to the number of reserved positions, as well as whether each would be guaranteed or funded, with discretion as to whether each was filled left to the Chief or his or her designee. Ultimately the City contends the Parties agreed to language providing for the funding of three part-time positions per shift. The Employer rejects the Union's proposal for equivalence in the number of full-time and part-time Fire Fighters on each shift.

Discussion and Recommendation:

The Union's proposal mandating the funding and filling of four part-time positions on each shift, as well as parity in the number of members of each bargaining unit working per shift, directly and indirectly constitute minimum manning requirements infringing on the Employer's management rights and responsibilities. Questions regarding the safety of manning decisions are more appropriately addressed in other forums. Additionally, irrespective of other contract provisions, the Parties reached tentative agreement as to appropriate staffing. Consequently, the language of the Tentative Agreement is recommended:

The Fire Chief will prepare in each of his budgets for 2003 through 2005 money to fund three (3) part-time fire fighter positions. These positions shall exist and shall be filled only during the term of this agreement. This staffing requirement shall only exist during the term of this agreement. Any continuation of the three (3) part-time fire fighter positions in future contracts must be separately negotiated.

4. Absence and Fill-In – New Language

Union Position:

The Union proposes new language that would provide bargaining unit members the right to first refusal of work hours created on each shift by the absence of any fire fighter, whether

part-time or full-time. It makes this proposal to compensate for what it maintains is the loss of other contractual benefits previously agreed upon by the Parties. The provision, says the Union, memorializes a promise made by the Chief that bargaining unit members would have an opportunity to replace new full-time Employees whose training requirements might lead to extended absence.

City Position:

Under the Union's proposal, the City argues that it would be forced to replace absent full-time Fire Fighters – whose time off is generally paid – with members of the present bargaining unit, thus incurring additional expense in situations in which it might determine that no replacement was necessary. Moreover, part-time Fire Fighters are volunteers, over whom the Chief has no direct authority to mandate work. Additionally, it is not necessarily arguable that part-time Fire Fighters would not be entitled to overtime. Often, says the City, bargaining unit members have worked sufficient hours to be eligible for premium rates. Therefore, the Employer urges that the Union's proposal be rejected.

Discussion and Recommendation:

The Union's proposal entitling bargaining unit members to a right of first refusal of work created by the absence of any Streetsboro Fire Fighter unduly infringes on the Employer's right to direct its work force and to make those staffing decisions it deems appropriate. In the exercise of these rights the Employer is certainly not without constraints - safety, efficiency and the cost of operations are all subject to critical review in other forums. It would not be appropriate, however, to usurp these decisions by recommendation of the Union's proposal. Accordingly, the proposed contract language is not recommended.

SUMMARY OF RECOMMENDATIONS

1. Article 10 – Wages and Compensation

3%; 3%; 3% - retroactive to July 1, 2003.

2. Article 26 – Residency

Exemption for up to 20% of bargaining unit recommended

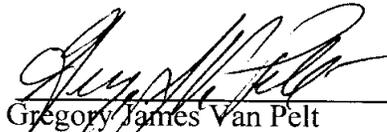
3. Article 27 – Staffing

Tentative Agreement Recommended – 3 funded positions

4. Absence and Fill-In – New Language

Not Recommended

Respectfully submitted, this 25th day of August, 2003
At Shaker Heights, Cuyahoga County, Ohio



Gregory James Van Pelt

Factfinder

State Employment Relations Board



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