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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between)
Local 1591, INTERNATIONAL)
ASSOCIATION OF FIREFIGHTERS)
and)
CITY OF WARRENSVILLE HEIGHTS)

FINDINGS AND RECOMMENDATIONS
CASE NO. 02-MED-09-0955
April 10, 2003
Charles Z. Adamson, Fact-Finder

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The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on November 29, 2002 pursuant to Section 4117-9-05 of the Ohio Revised Code in respect to a unit of firefighters employed in the Fire Department of the Employer, Warrensville Heights, Ohio.

I. HEARING

After mediation the case proceeded to hearing on February 11 and March 4, 2003 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

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| 1. Reduction in Force | 8. Special Payments for Certifications |
| 2. Retirement Bank | 9. Longevity |
| 3. Prevailing Rights | 10. Sick Leave |
| 4. Legal Defense Liability | 11. Holidays |
| 5. Rank Differential | 12. Reporting and Call Back Pay |
| 6. Clothing | 13. Hospitalization |
| 7. Promotions | 14. Light Duty |

II. CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (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 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 the private employment.

ISSUES AND RECOMMENDATIONS

REDUCTION IN FORCE

The Union's Position

In the current contract Article IX, Section 9.01, provides as follows: The Employer reserves the right to reduce the size of the work force for lack of work, lack of funds, or reasonable good cause, consistent with Ohio Revised Code Section 124.321. Layoff and recall shall follow Civil Service procedure.

The Union proposes to change this provision to provide for layoffs in order of reverse seniority and for firefighters to be recalled by seniority. The proposal also contains a provision stating that no new employees should be hired until all laid off firefighters have been given ample opportunity to return to work. The Union maintains that layoffs and recalls in the order of seniority is a fair procedure to follow in these cases.

The Employer's Position

The Employer agrees that seniority should be a factor to be considered in layoffs and recalls, but it does not want to be bound to follow seniority in all situations. According to the

Employer its management rights would be affected if this provision was included in the new contract. It notes that there could be certain situations where it would be preferable to retain a less senior employee rather than an employee with more seniority.

Findings and Recommendations

A number of collective bargaining agreements in the public sector provide for seniority to govern layoffs. It is considered that seniority governing layoffs is an equitable provision to be included in labor contracts.

Accordingly, it is concluded that the Union's proposal in this respect has merit and that Article IX contain the following: 9.02. In event of personnel reductions the employee with the least seniority shall be laid off first. Employees shall be recalled in order of seniority. An employee who has been laid off shall be subject to recall for a period of three (3) years.

RETIREMENT BANK

The Union's Position

The Union proposes two changes in the retirement bank provisions. In Article 23.02 it wants the retirement bank to be paid to a firefighter within thirty (30) days of separation or a date agreed upon by the firefighter. The Union also proposes to change Article 23.04 to allow an employee to request a buy-back of one hundred (100) hours without approval from the bank.

The Union asserts that any problem faced by the Employer in respect to retirement bank payoffs would be limited since there is a maximum of six potential retirees with a large payout because current firefighters no longer have the option of placing excess leave in the retirement bank. It maintains that allowing employees to buy back up to one hundred hours would reduce the Employer's liability because a buy-back at the current hourly rates would always be less

expensive for the Employer than a buy-back in the future when the hourly rates would be higher.

The Employer's Position

The Employer asserts that it cannot plan ahead for retirement; it does not have sufficient resources to pay the Retirement Bank money quickly in accordance with the Union's proposed change to Article 23.02. As for Article 23.04, it believes that the mayor should have the option to decide whether requests for partial payoffs would place undue strain on the Employer's budget.

Findings and Recommendations

The current graduated payoff schedule in Article 23.02 appears to be adequate and does not place an undue burden on the Employer. Although the Union points out that there are six long-term employees with a potential of receiving large sums for accumulated holiday, vacation or compensatory time which have been added to the Retirement Bank, if they all retired at the same time a thirty day payoff could place a serious financial burden on the Employer. Problems could also arise if employees had the option of a hundred hour by-back without receiving approval from the Bank. Accordingly, it is recommended that both Union proposals be rejected and that the provisions in Article 23 remain the same.

PREVAILING RIGHTS

The Union's Position

The Union proposes to delete current Article 3.01 and replace it with the following provision: All rights, privileges and working conditions enjoyed by the employees at the present time, which are not included in this Agreement, shall remain unchanged unless by mutual consent of the City and the Union.

The Union indicates that the new language would prevent rule changes being made

arbitrarily. It a provided a number of examples of rule changes made by Fire Chief Stanley Martin in 2002.

The Employer's Position

The Employer proposes that the current language in Article 30.01 remain the same and that the proposed changes be rejected. It maintains that the language in the proposed changes is too ambiguous since the words "rights, privileges and working conditions" lack sufficient specificity.

Findings and Recommendations

It is recommended that the current language in Article 30.01 remain the same. The Union has not made a sufficient case to warrant the conclusion that the proposal would not raise problems of interpretation resulting from its inclusion in the applicable contract.

LEGAL DEFENSE LIABILITY

The Union's Position

The Union proposes that the contract include language providing that the Employer furnish legal defense to its employees. It provided language from its counsel requiring the Employer to "...defend each firefighter from suits and indemnify them for judgments arising out of the scope of their employment with the Employer."

The Employer's Position

The Employer indicates that current law protects employees acting within the scope of their employment so that the proposed language is not necessary. The Employer also criticizes the proposed language indicating that it is not clear whether "arising out of the scope," modifies suits and judgments.

Findings and Recommendations

It is recommended that the Union's proposed changes not be adopted. There is merit in the Employer's position that current law adequately protects employees acting within the scope of their employment.

RANK DIFFERENTIAL

The Union's Position

The Union proposes that the differential between the ranks in the Fire Department be increased from ten percent (10%) to twelve percent (12%). It points out that the rank differential in the Employer's Police Department is 12% and that both departments deserve parity in this respect. Reference was made to the rank differential in fire departments in surrounding cities with the following rank differential existing: Maple Heights 12%, Bedford Heights 10%, Bedford 10%, Solon 10% and Shaker Heights 10%.

The Employer's Position

The Employer takes the position that the current 10% rank differential is appropriate and that no change is warranted in this respect.

Findings and Recommendations

The record reflects that some communities have a 10% rank differential in their fire departments while others have a 12% rank differential. Considering that most municipalities, including the Employer, have to adapt to financial constraints in their operating budgets, this does not appear to be the appropriate time to add an additional burden in this respect. Accordingly, the Union's proposal is not recommended.

CLOTHING

The Union's Position

The Union proposes to delete Article 22.01 which annually provides each firefighter a \$500.00 clothing allowance and a \$600.00 clothing maintenance allowance by replacing it with a \$1,200.00 for clothing and maintenance. However, it takes the alternative position that if the undersigned agrees with the proposal involving clothing vouchers it would accept a \$700.00 cash payment and a \$500.00 clothing allotment voucher. It notes that the current system involving vouchers has not worked efficiently and that employees have had to wait a number of months to receive clothing under the voucher system. In addition it points out that employees in the Employer's Police Department annually receive a \$1,200.00 cash payment for clothing.

The Employer's Position

The Employer's primary position is a \$1,200.00 per year voucher system for clothing. It proposes an alternative voucher system using \$600.00 cash and \$600.00 for maintenance. Chief Martin indicated that a quartermaster system ordering twice a year works satisfactorily for mass purchases.

Findings and Recommendations

The undersigned is aware of potential problems involved in switching to a system requiring only a cash payment to firefighters in place of a system that was part cash and part maintenance allowance. Accordingly, it is recommended that the Union's alternative position of \$700.00 cash payment and a \$500.00 clothing allotment voucher be adopted.

PROMOTIONS

The Union's Position

The Union proposes the following new article in respect to promotions: Promotions shall be from the ranks of the Warrensville Heights Fire Department. Promotions from one rank to the next shall be by written exam, unless otherwise mutually agreed upon. The City shall promote one of the top three eligible employees and shall make promotion within fourteen (14) days of the list being certified by the Civil Service Commission. Each candidate shall be considered three (3) times before being removed from the list. All promoted individuals will a serve a one (1) year probationary period.

The Union notes that promotions are involved in a court case as well as an unfair labor practice case before SERB. It takes the position that promotions are a mandatory subject of bargaining and that its proposed language can resolve outstanding issues regarding promotion practices and procedures.

The Employer's Position

The Employer proposes that the Union's language should be rejected for the following reasons. First, there is a pending SERB unfair labor practice case regarding a related promotion issue. Second, the appropriate result would be to defer to the Employer's Civil Service promotional guidelines because of the existence of the City Charter and Municipal Home Rule.

Findings and Recommendations

The Union's proposal in this respect is not recommended. Because of the pending SERB unfair labor practice case as to a related promotion issue, it is not the appropriate time to make a new recommendation in this respect.

SPECIAL PAYMENTS FOR CERTIFICATIONS

The Employer's Position

The Employer wants to eliminate special annual payments to firefighters with various certifications set forth in contract Articles 11.06 through 11.10. It takes the position that it does not want to pay for anything that does not add value to the Fire Department, noting that the Employer contracts for HAZMAT services with the Chagrin/Southeast Hazardous Material Group which is comprised of members in a number of nearby communities. The Employer indicates that although firefighters possess the various certifications set forth in Articles 11.06 through 11.10, it does not have the equipment to be used in HAZMAT situations. It also notes that firefighters are compensated for attending HAZMAT meetings. Records reflect that the Employer paid in excess of \$38,000.00 for a half year of premium pay for these various certifications in 2002.

The Union's Position

The Union has no objection to eliminating premium pay with the exception of paramedic pay for all employees hired after January 1, 2003, but maintains that the various premium payments should continue to be paid to those firefighters currently receiving them. The paramedic pay is currently a combination of Articles 11.06 through 11.08. The Union points out that the HAZMAT team was assembled in 1990 and that the Employer's firefighters are first at the HAZMAT scene and would deal with the HAZMAT problem until the HAZMAT team arrived approximately one hour later. The HAZMAT call is made by the Employer to Solon which then dispatches the HAZMAT team to the site. Also, it states that since 9/11 there is a greater potential for HAZMAT problems and that surrounding communities are increasing the

number of firefighters with HAZMAT training. The Union further notes that the Employer has three employees on the HAZMAT team. Individual employees would lose between \$2,300.00 to \$2,600.00 in compensation per year, and would also be affected by a reduction of between \$62.00 to \$125.00 per month in retirement pay if the premium pay for HAZMAT certification was removed from compensation.

Findings and Recommendations

It is significant that the Employer's firefighters with HAZMAT certification would continue to be first to arrive at a HAZMAT scene even though the Employer belongs to an area-wide group. Employees with this type of training would be useful until the HAZMAT team arrived. Further, the record reflects that firefighters with HAZMAT training would lose substantial sums as to compensation and retirement if the Employer's proposal were included in the new contract. Accordingly, it is recommended that the Employer's proposals as to removing premium pay for the special certifications not be included in the contract. It is further recommended, in accordance with the Union's suggestion, that premium pay with the exception of paramedic pay be eliminated for all employees hired after January 1, 2003.

LONGEVITY

The Employer's Position

The Employer proposes to replace the current longevity provision with the following: In addition to the base salary, employees shall receive longevity as a separate bonus payment in accordance with the following schedule: After the second year of service and thereafter, one percent (1%) of the annual salary; commencing with the fourth year of service and each and every year thereafter, the employee shall receive an addition sum amounting to one half percent (.5%) of

the annual base salary.

The Employer asserts that its financial position warrants a reduction in the employee's longevity payments based on the projections for revenue in the coming year. It maintains that it is operating on a very tight budget with expectations for substantial increases in health premiums and worker's compensation premiums. It also notes that Solon and Shaker Heights have different longevity provisions in their contracts and that non-bargaining unit employees have had their longevity payments discontinued by City Council ordinance.

The Union's Position

The Union maintains that it is not fair that firefighters receive a reduction in longevity when other bargaining units have not been asked to accept a similar reduction. It points out that long time employees will lose compensation as a result of this proposal and that the firefighters compensation package is in the middle range of surrounding communities.

Findings and Recommendations

Even though the Employer is operating under tight budgetary constraints, there is no evidence indicating that any of the other bargaining units of the Employer have been requested to accept reductions in longevity. It is noted that currently the firefighters compensation package falls within the middle range of firefighters in surrounding cities. Accordingly, it is recommended that the Employer's proposal not be adopted since including it in a contract would not be equitable under the circumstances.

SICK LEAVE INCENTIVE

The Employer's Position

The Employer proposes to eliminate Article 20.04 which provides for the payment of cash bonuses for not using sick leave in accordance with a schedule ranging from \$200.00 if three or less sick days are used in a year up to \$600.00 if one day or less is used during a year. Its records reflect that in 2001 \$14, 740 was paid in sick leave bonuses. The Employer indicates that the Employer's Council has passed an ordinance eliminating this benefit from the benefits enjoyed by the general administrative employees. It believes that the elimination of this benefit would assist the Employer operating within strict budget constraints. In addition, it notes that Service Department employees do not enjoy this bonus and that comparisons between the Fire Department and the Police Department are not valid since the police work eight hour shifts while the fire fighters work twenty four hours on and twenty four hours off.

The Union's Position

The Union states that this incentive program works by controlling the taking of sick leave. In 2000 twenty five out of thirty three firefighters received incentive pay. In 2001 twenty six out of thirty three firefighters received this pay. It points out that this program has been in effect since 1986 with some modifications made over the years. Also, it notes that the Employer's Police Department has a sick leave bonus and was not asked by the Employer to relinquish it during the last contract negotiations.

Findings and Recommendations

The Employer has not sufficiently substantiated the need to remove a program which has been effect since 1986 and appears to exercise some control on sick leave. Further, it is noted

that the Employer's Police Department continues to enjoy a sick leave bonus program and was not requested to forego it in its last contract negotiations. Accordingly, the Employer's proposal in this respect is not recommended.

HOLIDAYS

The Employer's Position

The Employer proposes to amend compensatory time, Article 14.07, by removing the option of allowing firefighters to be paid for holiday comp time in cash. It points out that Article 15.04 provides that an excess of 240 hours of banked compensatory time must be paid in cash. According to the Employer in 2002, it paid out over \$22,000.00 in extra compensatory time pay for compensatory time issued for holidays.

The Union's Position

The Union opposes this provision indicating that it is a possible violation of the Fair Labor Standards Act.

Findings and Recommendations

The Employer's position in respect to this change is reasonable. Deletion of the option for cash payment for holiday comp time is not an onerous change and would result in some short term economy for the Employer. Accordingly, the Employer's proposal in this respect is recommended.

REPORTING AND CALL BACK PAY

The Employer's Position

The Employer proposes to add new Section 16.02 as follows: To the extent that a member is required to report for duty during non-scheduled time that falls on a paid holiday, the member

will only be compensated under this Section.

According to the Employer, this clarifies situations where an employee is called back to work on a non-scheduled time on a holiday and receives time and a half compensation. It wants to avoid the possibility that the employee would not only receive time and a half for working a holiday but would also receive regular holiday pay in addition to the time and a half.

The Union's Position

The Union opposes this provision indicating that pay for an employee called in to work on a holiday is adequately covered by Sections 14.07, 15.01, 17.01 and 17.02. It maintains that time and a half is a holiday benefit and should not be taken back. It is a separate article and should not be affected by any other articles in the contract. According to the Union being called in to work on a holiday has only occurred twice in the last twenty years.

Findings and Recommendations

Apparently employees have only been called in to work on holidays twice in the last twenty years. Since this has been an infrequent situation it is recommended that the Employer's proposal not be included in the contract.

HOSPITALIZATION

The Employer's Position

The Employer proposes to delete and replace Article XVIII, Section 18.01 with the following: The City shall provide single and where appropriate family hospitalization coverage. The City shall pay at a minimum, a portion of such coverage for the duration of the Agreement. The City reserves the option of securing additional coverage or benefits at any time during this Agreement.

The Employer states that health costs have increased dramatically resulting in either a reduction in benefits or prohibitive expenditures by the Employer. With co-pay the Employer will be able to obtain better coverage for employees at a much lower cost which will ultimately lower costs for the employee.

The Employer's Personnel Director stated that when the most recent hospitalization coverage expired the renewal for this plan required a thirty four percent (34%) increase in premiums. She was able to negotiate coverage for one year under another plan with an eight percent (8%) increase. The Employer's finances have not increased to keep pace with the projected costs of hospitalization during the term of the applicable agreement.

The Union's Position

The Union rejects the Employer's proposal because it does not contain enough specific information as to a health plan. Further, it points out that no other employees employed by the Employer are sharing the cost of hospitalization.

Findings and Recommendations

The record reflects collective bargaining agreements covering separate units of employees employed by the Employer which were entered into by the Employer in 2002 - contracts covering employees of the Service Department and the contract covering the unit of police patrol officers. Both contracts provide that the Employer shall provide the full cost of hospitalization coverage. It is equitable that various units of the Employer's employees receive the same hospitalization coverage.

Accordingly, it is hereby recommended that the following be included in the applicable contract in respect to hospitalization: The City will continue to pay the full cost of single and,

where appropriate, family hospitalization coverage equivalent to the coverage provided in the collective bargaining agreements between the City and the Ohio Patrolman's Benevolent Association (January 1, 2002 to December 31, 2004) and the City and Local 244, IBT (October 5, 2002 to October 4, 2005). The City shall have the right to change hospitalization providers. However, the current levels of coverage shall be maintained for the duration of this Agreement.

LIGHT DUTY

The Employer's Position

The Employer would like to amend Article XXV, Section 24.03, which currently indicates that a firefighter on light duty will work the same hours and schedule as other firefighters as set forth in Article XVII by reserving to the Fire Chief the right to set the light duty hours at his sole discretion. The Fire Chief referred to the last two firefighters on light duty - one suffered a broken clavicle while the other received a broken leg. The Chief assigned them to desk jobs using computers on a forty hour a week schedule. He indicated that he wanted to be able to exercise this flexibility in the future.

The Union's Position

The Union believes that there should be no change in this provision indicating that employees need time to adjust to a new schedule when they are on light duty status.

Findings and Recommendations

The current contract language provides that firefighters on light duty work the same hours and schedules as other firefighters performing their full functions as active employees. It makes no provision for different scheduling for firefighters who are on light duty because they are physically unable to perform the strenuous physical requirements of the job performed by active

employees. It is obvious that light duty employees should be working at desk jobs which would also require desk job schedules that are different than the scheduled hours of members of the unit engaged in regular active tasks. Accordingly, even though the record reflects the Chief has been assigning light duty employees to desk jobs with desk schedules, it is recommended that the Employer's proposed language be adopted to reflect the flexibility that the Chief has already been exercising in this respect.

April 10, 2003


Charles Z. Adamson, Fact-Finder