

2003 FEB 26 A 10:40

IN THE MATTER OF FACT-FINDING

BETWEEN

NEW PHILADELPHIA FIRE FIGHTERS,
LOCAL 1501

AND

THE CITY OF NEW PHILADELPHIA

BEFORE: Robert G. Stein

SERB CASE NO. 02 MED 10 1053

PRINCIPAL ADVOCATE FOR THE UNION:

Michael P. Taylor, 3rd District VP
OHIO ASSOCIATION OF PROFESSIONAL FIREFIGHTERS, IAFF
615 Buena Vista Boulevard
Steubenville OH 43952-1022

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Nicholas Codrea Jr.
THE LAW FIRM OF ROBERT J. TSCHOLL, ESQ.
236 Third Street S. W.
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INTRODUCTION

Prior to reaching impasse the parties held several bargaining sessions and were able to reach tentative agreement on a number of articles. In fact-finding/mediation, the Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. After an initial attempt to mediate the issues in dispute the parties and the Neutral entered into fact-finding. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of each party's proposal on each issue, but instead will reference their Position Statements. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 RESIDENCY

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The facts indicate that all City employees have some form of residency requirement. However, not all the employees have the same definition of residency, and there are a few employees who have an exemption. For example, the service bargaining unit members (AFSCME) must live in the boundaries of the New Philadelphia School District (about 9 miles at its furthest point) or within the corporate limits of the City (about a five (5) miles radius). The Police Department residency requirement is within the City corporate limits. Some of the employees who have exemptions from residency are the New Philadelphia Park Police and life guards due to the seasonal nature of their employment. However, there are also individuals (e.g. New Philadelphia Information Systems Specialist) who have an exemption.

The Fire Department currently has a similar residency requirement as the Police Department. Article 16, Section 1 states "*Employees must reside within a 5 mile radius of the City square.*" The Union argues that this limit was established at a time when

roads and freeways did not provide the ready access that they do today. Furthermore, the Union contends that desirable homes and available property are becoming more difficult to find. The Union proposes that residency should be expanded to the Tuscarawas County boundary lines. The Union points out that within the past two years the Fire Department has lost two well-trained Firefighters due to the residency restriction. It contends that expanding residency to the county limits would increase the number of qualified candidates for the Department.

The City contends that residency is important in terms of response time. It also argues that it is important for safety that employees live in and be familiar with the City. The City contends that the Firefighter's unit should be subject to the same residency requirements that other bargaining unit employees have accepted. The City asserts that the bargaining history of the parties has included a residency requirement for several years.

The City's argument for consistency among bargaining unit members is reasonable. However, the Union raises some convincing arguments for changing the current five mile radius to at least the same limits that the service bargaining unit has agreed upon as a matter of equal treatment. In addition, it is a fact that the current five-mile limit also includes the City of Dover, which to some degree undermines the City's arguments regarding employees having a community connection. The school district or the corporate city limits appear to be a reasonable compromise that is supported by internal comparable data from the service unit. It would expand the area of living to a maximum of approximately nine miles and would help the City with recruitment and

retention. Having residency limited to school district boundaries would still provide Firefighters with a strong community connection.

Recommendation

Article 16 **RESIDENCY REQUIREMENT**

Section 1 – Employees must reside within a 5 mile radius of the City limits or within the boundaries of the school district.

Sections 2 and 3 Current language

ISSUES 2 SALARIES

Union's position

See UPS

Employer's position

See EPS

Discussion

Patterned bargaining is of utmost importance in the areas of wages and benefits. It is common for collective bargaining to historically focus on parity between Firefighter and Police bargaining units. The police bargaining unit settled for a three (3) year period of wage increases as follows: 3% effective January 1, 2003, 2.5% effective January 1, 2004, and 2.5% effective January 1, 2005. The salary schedules for the Police bargaining

unit were also improved to reflect shorter schedules that are more commonplace in Ohio among public employees.

The economic times have placed municipalities in difficult straits. The City of New Philadelphia is not different in this regard (Ex 2). According to the City, its income has declined in real terms, and it has less funds for operations. Although the City income tax was slightly reduced, the City's water and sewer rates have been increased. The Union provided excellent comparable data that demonstrates the eventual need for the City to address the wage differences with comparable SERB data. It also pointed out the expenditure of capital funds on renovation by the City and the need for expansion of the Fire Department (Ux 1). In more favorable economic times, the Union's arguments would be more persuasive. However, the times do not provide a favorable climate for above average or even average wage adjustments beyond what was recommended and accepted by the City and the Police bargaining unit.

Recommendation

Article 23

Section 1

Effective 1/1/2003, a wage adjustment in base salary shall be equal with the New Philadelphia Police Department across the board increase for all classifications and all steps within those classifications. Effective 1/1/2003, a 3% across the board increase for all classifications and all steps within those classifications.

Effective 1/1/2004, a 2.5% across the board increase for all classifications and all steps within those classifications.

Effective 1/1/2005, a 2.5% across the board increase for all classifications and all steps within those classifications.

* The wage scale for the Fire Department shall be adjusted to reflect these increases.

Step 2 Current language

See EPS for specific language with the exception of a January 1, 2003 starting date for first year salary increase.

ISSUE 3 HOURS

Union's positions

See UPS

Employer's position

See EPS.

Discussion

The change of hours being sought by the Union cannot be supported, given the City's current financial condition. The City made a persuasive argument that if the workweek was reduced from 56 hours to 52 hours, it would have to hire additional Firefighters. The City points out that if the safety levy had passed, there would have been money to consider a workweek reduction. The Union's arguments are not without merit. The current 56-hour workweek is becoming less common in comparison with many other comparable jurisdictions, yet the reduction being sought by the Union is implausible in

the current economic times. The Union proposed that a reduction in workweek hours from 56 to 52 would save the City approximately \$28,000 in required “FMLA” overtime pay. This savings could be theoretically accomplished without hiring additional personnel through the creative scheduling of “Kelly days,” argues the Union. The timing of this proposed reduction is not favorable.

Recommendation

Article 24 **HOURS**

Maintain current language

ISSUE 4 UNIFORM ALLOWANCE

Employer’s position

See EPS

Union’s position

SEE UPS.

Discussion

The parties’ positions are close on the issue of increases to the general uniform fund. They reflect the increases provided to the Police bargaining unit. However, the bargaining unit has an additional problem not shared by the police. It has to replace its old uniforms with ones made of safer material (NFPA Compliant Nomex, April 1, 2002 letter from Chief Snyder). The Fire Chief, who stated during the hearing that each

Firefighter realistically will need to have five complete sets of clothes, directed the change in uniforms.

The Union provided evidence in the form of a receipt, which placed the cost of each new uniform (one pair of pants and a shirt/the primary clothing affected by the uniform change), to be approximately \$125.00. Of course, it is recognized that the general uniform allowance is provided to cover the cost and replacement of all necessary uniform items and not just shirts and pants (e.g. winter (\$125) and summer (\$50) footwear, winter jacket (\$200), etc.) However, it is also true that all of these items generally do not have to be replaced annually. During the hearing, the Union modified its demand to \$500 for purchase of new uniforms, and the City offered to pay \$300 toward this cost. Again, this is another area where parity between safety forces is appropriate. Reasonable remuneration to help offset the start up costs associated with a fundamental change in uniform requirements is appropriate.

Recommendation

Article 34 UNIFORM ALLOWANCE/UNIFORMS

Section 1 – Any member of the Fire Department who has received his permanent appointment shall receive a Uniform Allowance as follows:

January 1, 2003	\$700.00*
January 1, 2004	\$750.00
January 1, 2005	\$800.00

* Effective March 1, 2003, each Firefighter shall receive a one-time stipend of \$400 to help cover the additional cost associated with the required transition to new uniforms.

ISSUE 5, 6, 7

COMPENSATION TIME, PERSONAL TIME, HOLIDAYS

Employer's position

See EPS.

Union's position

See UPS.

Discussion

The City lumped these issues together as a mini-package similar to the way that it did with the Police bargaining unit. The Union did not agree that these issues should be packaged, but made an attempt in mediation to work with the City to resolve these issues. The City modified its position to allow compensation time limits to rise to 240 hours and to add Veteran's Day in exchange for a reduction of 8 hours of personal leave. The Union is agreeable to adding Veteran's Day and to increasing the accumulated compensation time ceiling, but is opposed to giving up 8 hours of personal leave time.

As was stated by this Fact-finder in the report issued in the Police bargaining unit negotiations:

"...the facts support increasing the accumulation of compensation time for members of the bargaining unit from ... Time off helps employees to maintain a healthy balance between their work and family lives."

The trade-off of adding Veteran's Day for a reduction of eight (8) hours of personal time is what the Police unit accepted. The rationale used by this Fact-finder in supporting the recommendation for that change applies to the Firefighter's bargaining unit. It is as follows:

“The trade-off of one personal day for an additional holiday (Veteran’s Day) accomplishes several things. In our post “9-11” society there has been a renewed emphasis on the important role of the armed services in maintaining our democracy. Recognizing November 11th as a City holiday underscores this emphasis. From a practical point of view, the floating nature of Veteran’s Day allows all or most employees to have an equal opportunity to have the day off. It is not like fixed Monday holidays that may disadvantage certain bargaining unit members who have the same days off. If employees have to work the additional Veteran’s Day holiday they will receive compensation... or have the option of adding compensation time to their bank that is earned at a premium rate.”

The role played by Firefighters in the 9-11 tragedy is legendary, and it is certainly fitting to recognize Veteran’s Day as an official holiday. Both bargaining units (Police and Firefighters) have had the same number of personal leave hours prior to the most recent round of bargaining. The trade-off of eight (8) hours of personal leave for Veteran’s Day is reasonable given the pattern established by the Police unit.

Recommendation

Article 30 – Compensatory/Training Time

Section 1 – 1st four sentences shall remain as current language. The last sentence shall read: “After a maximum of two hundred forty (240) hours of compensation/training time is accumulated, additional time will be paid at 1.5 times the base rate of pay.

Article ___ – Educational Leave

Sections 1 and 3 remain current language

Section 2 – 1st sentence shall remain current language. The last sentence shall read: Compensation time will accumulate until a maximum of two hundred forty (240) hours is reached.

Article 35 – Personal Days

The language of Sections 1, 3, and 4 shall be changed to reflect twenty-four (24) hours of personal time for each year. Section 2 shall remain current language.

Article 40 – Holidays

Section 1 current language
Section 2 add Veteran’s Day

ISSUE 8 HEALTH BENEFITS

Union’s position

See UPS

Employer’s position

See EPS

Discussion

The health benefits agreed upon by the Police bargaining unit set the pattern for the safety forces in the City. It is understandable why the Union would resist increasing their monthly premium payment from the current \$0.35 per month to \$25 per month, as agreed to by the Police bargaining unit. The plan is not a “Cadillac plan.” Nevertheless, it is a very reputable plan with a comprehensive network of providers, and it guarantees broad basic coverage for employees. The City claims the premium payments will be going up 9.5% this year. If the issue is a need for a richer plan, labor/management or health committee discussion of benefit levels may be an option during the life of the

agreement, or the parties can always propose a better plan during the next round of negotiations. When placed in the perspective of comparable public employees in Ohio, it is clear that the bargaining unit is not overpaying for insurance. The City also raised the issue of the one-time 1% payment in lieu of dental care that the bargaining unit agreed upon in a prior round of bargaining (Ex 4). The City contends that its current value is \$602.00 after compounding. Its worth far exceeds the value of the AFSCME dental plan, argues the City. The Union did not refute this claim.

As stated in the Fact-finding report for the Police bargaining unit:

“According to SERB data, approximately 70% of public employees pay a monthly premium toward the cost of their healthcare coverage. The average cost of monthly premiums for single coverage is around \$30 per month and for family coverage the average is approximately \$87 per month. However, these employee premiums are based upon far more expensive plans than the current plan in place in New Philadelphia. SERB reports the statewide averages to be \$288 for single and \$705 for family. This is approximately 44% higher than the Aultcare plan currently purchased by the City. Furthermore, it must be kept in mind that in terms of past collective bargaining the employees have paid very little for their healthcare coverage. The healthcare premium averages used by SERB are based upon bargaining units that have historically paid a portion of their healthcare for several years.

As a matter of internal equity between the two safety bargaining units, Firefighters should have the same health benefit levels as the Police bargaining unit:

Recommendation

Article 49 HEALTH BENEFITS

Section 1:

Effective March 1, 2003, employees of the bargaining units shall contribute to the maintenance of hospitalization and major medical policies as follows:

Effective 3/1/03 Employees shall pay \$25 per month for family/\$15 for single coverage.

- Effective 3/1/04** **Employees shall pay \$30 per month for family/\$20 for single coverage.**
- Effective 3/1/05** **Employees shall pay \$35 per month for family /\$25 for single coverage.**
- New:** **The City agrees to maintain the current VSP eye care program at no additional cost to the employees**
- New:** **The City agrees to participate in an IRS Section 125 program that will allow pre-tax contributions by the employees toward health insurance.**
- New:** **The City and the Union agree to participate in a cooperative effort to research other policies or carriers to reduce costs and/or enhance benefits from current coverage. The committee (comprised of representatives from all bargaining as well as management personnel, will also research and make recommendations on other cost containment measures such as levels of coverage or opting out of coverage in lieu of other financial considerations.**
- Section 2:** **Shall be changed to reflect these recommended payment levels.**
- Section 3:** **Current language**

ISSUE 9 SUBSTANCE ABUSE

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

There is no disagreement between the parties regarding the need for a substance abuse policy. However, it became apparent in the mediation/fact-finding process that the parties have not discussed this issue at great length. The parties need to spend more time on this issue in order to come to terms on random testing versus for cause testing and any other details that need to be determined to make the program viable.

Recommendation

It is recommended that the parties meet after ratification of the agreement and negotiate a memorandum of understanding or an additional contractual provision regarding a substance abuse policy. If no agreement is reached within thirty (60) days following ratification of this agreement, the City's proposal shall represent the Substance Abuse Policy for the duration of this agreement and it will expire on December 31, 2005.

ISSUE 10 DURATION

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The parties are in agreement over the length of the Agreement.

Recommendation

Article 63 Duration

A three (3) year agreement from January 1, 2003 through December 31, 2005.

ISSUE 11 TECHNOLOGICAL CHANGE

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

According to the Fire Chief, the City is uniquely surrounded by several substantial chemical facilities, which already have caused the Department to respond to hazardous incidents. The work of containing spills and the release of toxic substances is dangerous yet essential to prevent the spread of dangerous chemicals and gases from those chemicals. The City stated it gets reimbursed for costs associated with responding to such matters, and the Chief indicated that it is the Firefighters who are instrumental in responding to the source of such accidents. The Union recommended a regular hourly rate be provided for employees who do hazmat work and who perform dive

rescue/recovery work. The City and the Union both agree that dive/rescue/recovery work is also dangerous work that requires special skills.

The City is not opposed to paying a significant stipend for this work, but it indicated that it should only be paid if the City is being reimbursed for its costs and it should be paid for work performed on site. I found the Union's argument for additional pay to be persuasive, given the dangerous nature of both hazmat and dive rescue work. However, the City's conditions for such pay appear reasonable given the unpredictability of its finances.

Recommendations

Article 15 Technological Change

New: Hazmat Pay and Dive Rescue Pay Supplement

Section _____

Hazmat team members and Dive Rescue members shall receive a stipend of \$30 per hour in addition to their appropriate hourly pay for all hours spent at the scene of hazmat accidents or incidents (e.g. terrorism, employee error, etc.) and at the scene of diving/rescue/recovery work. This stipend shall be provided to employees under the condition that the City is reimbursed for the hours of work that bargaining unit members are involved in each type of incident. If reimbursement should not be available or cease, the parties shall negotiate an alternative pay arrangement.

TENTATIVE AGREEMENTS

During negotiations, mediation, and fact-finding the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 25th day of February 2003 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Fact-finder