

2023 APR -1 A 10: 25

FACT FINDER'S REPORT

IN THE MATTER OF:

International Association of Fire Fighters (IAFF) Local 336
And
The City of Middletown

Case Numbers:
02-MED-10-1129

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Susan D. Jansen, Attorney and Advocate
For IAFF Local 336
111 West First Street – Suite 1100
Dayton, Ohio 45402-1156

And

Donald L. Crain, Attorney and Advocate
For The City of Middletown
300 North Main Street
Middletown, Ohio 45402
Columbus, Ohio 43215-6106

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3) on September 27, 2001.

The parties informed the Fact Finder that time extensions would be filed. A hearing date of February 20, 2003 was subsequently established and utilized. The parties timely filed the required pre-hearing briefs and the first part of the hearing date was used to explore areas where additional mediation might prove helpful.

In their pre-hearing filings one or more of the parties identified the following issues, and/or contract provisions as being unresolved:

Article 9	Sick Leave
Article 25	Longevity
Article 26	Clothing Allowance
Article 27	Insurance
Article 28	Vacation
Article 29	Holidays
Article 43	Benefits to be paid upon termination
Article 45	Wages
Article 48	Overtime

A good faith attempt was made to mediate a settlement of all outstanding issues. The parties were unable to do so.

As a result of the mediation, Article 26 and Article 48 proposals were withdrawn and the parties agreed these two articles would remain at current language.

The IAFF was represented by Susan D. Jansen, Spokesperson; Bob Nichols, President Local 336, Gregory D. Justice, Vice President and J. Lyons, Secretary-Treasurer.

The City was represented by Donald L. Crain, Spokesperson; Ursulla McDonnell, Assistant Law Director and John Sauter, Fire Chief

The respective parties presented their positions professionally, competently and with clarity.

BACKGROUND:

The unit is a deemed certified unit that includes Firefighters, Lieutenants, Captains and Deputy Chiefs. There are 89 persons in the unit.

Middletown is a home rule community operating under a City Charter.

There are seven bargaining units within the City of Middletown. The entire City workforce is comprised of 466 full-time employees serving a population of 51,605 citizens.

COMPARABLE JURISDICTIONS:

It is not surprising that the parties view the populations to which they should be compared, somewhat differently.

The city list includes Hamilton, Huber Heights, Lima, Mansfield, Newark, Springfield, Union Township (now West Chester) and Fairfield.

The City notes that previous Fact-Finders have accepted these jurisdictions. The City proposes that this list, plus Kettering, constitute proper comparables.

The Union proposes two sets of comparables. The first is made up of jurisdictions within the Miami Valley which are within 30% of Middletown's Income Tax Revenue and within 30% of the population of Middletown. This list includes Fairfield, Hamilton, Huber Heights, Kettering, Springfield and West Chester.

The second statewide list includes those jurisdictions which are within 5% of the City of Middletown's income tax revenue and within 5% of the City of Middletown's population. This list includes Cleveland Heights, Cuyahoga Falls, Euclid, Mentor, Mansfield and Shaker Heights.

To their credit, the parties attempted to agree upon the appropriate comparable jurisdictions. They were unable to do so and thus each group has presented their own data.

Comparables are instructive by nature but are not the only criteria that must be considered by a Fact Finder. While this Fact Finder will review all the comparables presented, I, like the two previous Fact Finders, find those in the Miami Valley that have been previously used, to be most instructive and appropriate.

Article 9 SICK LEAVE

The City notes the previous contract reduced the work week for tour employees from 52 hours per week to 51 hours per week. This was accomplished by both parties accepting the previous Fact Finder's report.

The Fact Finder did not change the 13.5 hour per month rate for tour employees. The City contends that since the 13.5 rate was based upon the tour employees working longer (52) hours) since the hours have now been reduced to 51 the 13.5 rate should be reduced.

The Union argues that Collective Bargaining Agreements are a package and the 13.5 hour rate is a benefit tour employees have long enjoyed. To reduce that level now will be viewed as a "take away" for which there is no corresponding gain.

Discussion:

This Fact Finder cannot attempt to know if Fact Finder Donnelly considered adjusting the number of sick leave hours when he adjusted the work week and certainly cannot attempt to rectify a "mistake" if one was made.

Instead, a review of the comparables would indicate that 13.5 hours sick leave for tour employees is not out of line.

I recognize the importance of internal equity but suggest that this must be accomplished by the parties in quid pro quo bargaining.

Recommendation:

I recommend status quo language except that the housekeeping change of referring to the appropriate forms by name rather than number should be included.

ARTICLE 25: Longevity

The union notes longevity has not been increased for a long time and, many other comparable jurisdictions offer a higher rate. They propose to keep the steps the same but to double the percentage amounts of longevity.

The City notes that it has been attempting to get rid of longevity in it's other units and, while no change is proposed, it would be counter to the City's intention to increase the percentages.

Discussion:

Longevity is clearly an economic benefit. It was added in many jurisdictions when yearly across the board raises were non existent or limited in amount. It is a popular benefit in that it is given in a lump sum near the holidays.

While the amount of longevity in Middletown is somewhat lower than some of the comparable jurisdictions, it must be noted that two of them (West Chester and Kettering) do not offer the benefit at all.

In light of the desire of the City to eliminate this particular type of economic benefit, I fail to be convinced that an increase is warranted at this time.

Recommendation:

Maintain current language and amount of longevity pay.

ARTICLE 27 Insurance

The City proposes to change health insurance by removing the dollar cap for premiums and replacing it with a fixed percent. In addition the City proposes increases in office co-pays, out of pocket maximums and prescription co-pays. Further, the City will only implement these changes if and when they are implemented for non-union employees.

To support their argument, the City provided information regarding health costs in the Cincinnati area and the SERB report on health care contributions statewide.

The Union wants the status quo. Many comparable jurisdictions pay 100% of health care costs for employees.

Further, the Union requests increases in life insurance and the addition of vision insurance.

Discussion:

Health care is a complex issue. There are many ways for the employee and the employer to share costs. Premiums are only one of them.

While the Union is correct in noting that several jurisdictions have 100% paid premiums those within the area of comparables I am giving primary attention to, are as high as 10% and in many the office co-pays,

the prescription co-pays and the out of pocket maximums are higher than those being proposed by the City of Middletown.

Add to this picture the rapidly increasing costs of health care and the proposal of the City seems modest and fair.

I will therefore recommend the cities proposal regarding changes in the health care program.

There is no question that these changes will lead to an increased expenditure on the part of fire fighters. It seems some consideration should be given to this fact.

Just as inflation and increasing costs face the city, it would seem the same factors come into play in the area of Life Insurance. The amounts of term life provided seem very low.

To that end I am recommending a modest increase in Term Life Insurance.

This Fact Finder prefers to provide as much equity as possible between units, and therefore has considered the request of the Union regarding Vision Insurance. But, based upon the lack of cost figures, and the fact most vision insurance is not a good value for the dollars expended, I am not recommending it's inclusion at this time.

Recommendation:

I recommend the inclusion of the proposed changes of the City in the Basic Health Care Program and an increase in the amount of Term Life Insurance for Fire Fighters from \$15,000 to \$20,000, and from

\$17,500 for Officers to \$22,500. (Contract language is included in Appendix A)

ARTICLE 28 Vacation

The City proposes to revise the vacation article to incorporate an equity factor similar to that discussed in the sick leave article. The union proposes no change in the vacation article.

Discussion:

For the reasons presented in the sick leave article, I am proposing no changes to the vacation language.

Recommendation:

Maintain current contract language.

ARTICLE 29 Holidays

The Union argues that Fire Fighters are low on the actual days earned and more importantly, are significantly lower than comparable jurisdictions on the cash value and the compensatory time in lieu holidays.. They propose an additional holiday (President's day), an expansion of the birthday holiday from eight (8) hours to twenty-four (24) hours for four employees, and four employees would receive 264 hours of compensatory time annually in lieu of the holidays.

The City wants to maintain the current number of holidays and convert the holidays to hours and multiply those by the equity factor.

Discussion:

Clearly this is one area where the comparables show Middletown is below. It is my intention to recommend a step toward improving this situation.

I am also aware of the concerns about equity in this area between forty (40) hour and tour employees but I fail to be convinced that the equity factor is as critical as the City would lead me to believe. This is an area that the parties need to come to a meeting of the minds and not have a major change imposed by a Fact Finder or Conciliator.

Recommendation:

I recommend one additional holiday be added (President's day). This will allow Fire Fighters to gain some ground on the total number of compensatory hours without adding significant costs to the City during these tight economic times... The language to accomplish this recommendation is included in Appendix B¹

ARTICLE 43 Terminal Pay

The Union proposes current language for Article 43. The City proposes to add Sick Leave and Holidays to the section wherein termination benefits are reduced back to regular hours. They argue this avoids a windfall payment for benefits that have already been increased.

Discussion:

I have already noted that I do not recommend any changes to the “equity factor.”

Recommendation:

I recommend current language be maintained in Article 43.

ARTICLE 45 Wages

The Union is seeking a five (5) % increase each year for a three year agreement. They present comparables of total compensation showing Middletown to be behind many jurisdictions and below the average. The comparable document showing future settlements in the comparable jurisdictions was in dispute due to the figures listed for Fairfield (9.8% in the first year) (9.25% in the second).²

Apparently the Union figures included an additional step increase. The actual across the board increases is 3.5% in each of the first two years of the Fairfield Contract.

The Union notes that the City is not advancing an “ability to pay” argument but rather has the funds to implement the increase they are seeking.

The City argues that, while finances are not dire in Middletown, revenues are on the decline. They argue that businesses are closing and the dire economic situation in the region casts a pall over future economic projections.

¹ Adding a holiday is only one way in which gains can be made in this area. The parties may decide to accomplish a gain in some other way. In this, and all other areas, I urge the parties to seek their own agreement if it is preferable to my recommendation.

The City offers 3% in each of the first two years of the agreement and ask for a re-opener on wages and insurance in the third year.

Discussion

No one can argue that these are difficult economic times. It appears that the city of Middletown is a well run, fiscally responsible operation. Even under good management it is necessary for any prudent jurisdiction to exercise fiscal restraint in these difficult circumstances.

A recalculation of the comparables of the selected jurisdictions shows an average wage increase of 3.57% in the first year and 3.55% in the second.

Much discussion took place regarding Hamilton who passed a levy and then awarded a 5% increase. Not surprisingly, the parties viewed this action from different perspectives. While it is instructive to know what another jurisdiction has done, it is not decisive. The fact finder does not know the circumstances that led another jurisdiction to take the action they did.

The real number appears to be 3.5% for each of the first two years of the agreement.

I am persuaded that a re-opener in the third year is a good idea. At that time there will hopefully be some further signs of economic recovery and clarity. The Union did not appear to have strenuous objections to such a proposal.

² The Research Department of the State Employment Relations Board indicates the across the board increase for 2003 is 3.5% and 2004 is 3.5%.

Recommendation:**Article 45 - Wages.**

January 1, 2003 – 3.5%

January 1, 2004 – 3.5%

January 1, 2005 – Reopened (See Article 55- Termination)

Everything else in the Article remains the same.

ARTICLE 5 Termination

Based upon the discussion and recommendation in the wage article, it will be necessary to revise Article 56 to incorporate the re-opener clause.

Recommendation:

Article 56 should read:

This contract shall become effective January 1 2000 2003 and shall remain in force until December 21, 2002 2005, except that effective January 1, 2005, Articles 45 and 27 of this contract shall be reopened for purposes of negotiating Wages and Insurance).

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as stated herein.

In addition, all agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 31st. Day of
March, 2003.


N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Fact Finders Report** was served by Priority Overnight Mail on Donald L. Crain, Esq., Frost Brown, Todd, LLC, 300 North Main Street, Suite 200, Middletown, Ohio 45042, Attorney for the Employer, and Susan D. Jansen, Logothetis, Pence & Doll, 111 West First Street, Suite 1100, Dayton, Ohio 45402-1156, and by regular U.S. Mail upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th. Floor, Columbus, Ohio 43215-4213, this 31st Day of March, 2003.


N. Eugene Brundige,
Fact Finder

APPENDIX A:**ARTICLE 27, Insurance****Article 27 - Insurance.**

All coverage shall be subject to the insurance company's requirements and eligibility.

A. Members shall be entitled to participate in the City's health insurance program described as described in the documents on file in the Finance Department, subject to the following provisions:

1. Employee contribution: (a) A member's contribution for medical coverage ~~will not exceed~~ **shall be 5%** of the estimated annual cost of the City's medical insurance plan. ~~Annual member drug and dental contribution increases from 1989 forward will not exceed 5% annually. A member's contribution shall be \$16.73 each month for the family plan and shall be \$13.47 each month for the single plan.~~

2. ~~If the City's total cost for its health care plan in any given year exceeds the total cost for the year by more than 0%, employees shall pay this excess amount, subject to the limitation set forth herein (i.e., A1 and A2(c)). The amount in excess of 0% increase, if any, shall be apportioned among health care plan members as follows:~~

~~(a) Each employee with a family contract shall pay 2.5 times the amount that an employee with a single contract pays.~~

~~(b) The total excess cost (above the 0% which the City pays) will be divided among the plan members as follows:~~

~~The total number of single contracts, and 2.5 times the total number of family contracts will be added. This sum shall then be divided into the excess cost. The result of this division will be the cost of a single contract. That cost will be multiplied by 2.5 to determine the cost of a family contract.~~

~~(c) During the term of this agreement, the amount due under paragraph 1(b) of this Appendix shall not exceed \$30.00 per month for a family plan or \$25.00 per month for a single plan.~~

3. **Members shall pay the following co-pays and coinsurance:**
-Doctor's Visit Co-Pays: \$10.00 in network/\$15.00 out of network

-Prescription Co-Pays: \$7.00 generic/\$15.00 brand name (where brand name is requested by member, pharmacy may collect difference between cost of generic and brand name).

-Maximum Annual Out of Pocket (excluding the above co-pays): \$500 single/\$1,000 family in network/ \$800/\$1,600 non-network.

The above-listed employee premiums, co-pays and coinsurance limits shall become effective at such time and to the extent that they are implemented for the City's non-union employees.

B. Members who retire under the Police and Firemen's Disability and Pension Fund because inability to work due to disability, or having reached the respective pension fund's retirement age/or years of service requirements, shall receive Hospital Care and Surgical Care Insurance coverage if the same is not provided by the respective pension fund. No duplication of coverage is permitted.

C. Group life insurance coverage paid by the City shall be provided in an amount equal to that provided under the annual salary ordinance. The 1997 amount is:

For Firefighters: ~~\$15,000~~ **\$20,000** For Officers: ~~\$17,500~~ **\$22,500**

Double indemnity premiums shall be paid by the City on all coverage.

D. Any member retiring on or after January 1, 1972, shall receive \$5,000 life insurance coverage paid for by the City. Double indemnity will not be provided on such coverage.

E. The City will provide liability coverage in the following amounts for each member to cover any liability which may arise as a result of his official duties, provided such coverage remains available at 1985 premium rates:

\$1,000,000 per person
\$1,000,000 per incident

In the event liability coverage is not available to the City at the 1985 rates, the City agrees to indemnify members for liability which arises as a result of the exercise of his official duties.

- F. In the event the City investigates alternate forms of health insurance or carriers, the Union will be consulted prior to any change in carriers or forms of coverage. Current levels of insurance benefits will remain the same for the term of this agreement. In the event the City creates a task force or committee to study alternate forms of health insurance, the Union President will be invited to become a member of such task force or committee.

APPENDIX B

Article 29 – Holidays

1. The following holidays are celebrated by all employees:
 - A.

New Years Day	Labor Day
Martin Luther King Day	Thanksgiving Day
President's Day	Day after Thanksgiving Day
Good Friday	Christmas Eve Day
Memorial Day	Christmas Day
Independence Day	
 - B. In addition to the above, all officers shall receive their birthday as a celebrated holiday. Firefighters, in lieu of time off, shall receive 8 hours pay, at the 40 hour rate, in the pay period which includes their birthday
2. If any of these holidays falls on Sunday, the following Monday is considered the holiday. If any falls on a Saturday, the preceding Friday is considered the holiday, for all forty hour workers.
3. Holiday regulations for full-time employees:
 - A. A full-time employee working a 40 hour schedule shall be excused from work that day.
 - B. A full-time employee who is regularly scheduled to work on a holiday, or whose normal off-day falls on a holiday, shall be given another day off in lieu of the holiday.
 - C. If an employee is off without pay because of unauthorized absence either the work day before or the work day after a holiday, he forfeits that holiday.

D. If a holiday falls during an employee's vacation period, it shall not be charged to vacation time, except where departmental or division policy is to grant additional time in a lump period in lieu of granting regular holidays off.

4. Compensatory time off in lieu of holidays shall be added to members' total accumulated vacation days. See Vacation Article.

5. Holiday Pay: Employees who are regularly scheduled to work, and do work, on New Year's Day, Thanksgiving Day, or Christmas Day, shall be entitled to the following additional compensation:

One-half of the regular shift pay for those men working between 7 a.m. the morning of the holiday and 7 a.m. the following day, in addition to compensatory time off and the regular holiday pay.

6... (a) Members of the Division of Fire shall have the option, **once per month, on a day designated by the finance department**, of exchanging four (4) 24 hour holiday tours earned, but not taken, for pay at the following rate:

Bi-weekly pay divided by number of hours in normal bi-weekly work period times number of hours in normal work day.

(b) Each holiday turn converted shall constitute three (3) earned holidays.

7. Each member shall be able to accumulate unlimited holidays.

8.

A member may request that any compensatory time off be used three holidays be combined to enable the member to take a minimum of eight hours and a maximum of 1 full tour of duty off of work in lieu of accumulating these holidays hours. A member may take off an eight-hour increment of time only once per year. The member may not request that this day be taken on New Years Day, Thanksgiving Day or Christmas Day. This tour shall be granted on a first come first served basis. The member must give the Chief of the Division of Fire 24 hours notice of this request and the Chief or his designee may refuse such request if the request is made less than 24 hours in advance or if 3 other members have already received approval on a particular day.