

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD

2004 APR 12 A 9:21

In the matter of:

**City Of Delaware/ IAFF Local 606/Ohio
Labor Council**

Case No. 2003-MED-01-0056

FACT-FINDING REPORT

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report:

I. HEARING

On February 27, the parties met at the Delaware City Hall and agreed to attempt mediation with the Fact-Finder. Several issues were resolved, and the parties agreed to meet later and submit three remaining issues to the Fact-Finder, all other issues being the subject of a tentative agreement. The Fact-finding was heard at the Delaware Fire Substation on March 17, 2004, at 9:00 a.m. The following were present:

IAFF Local 606 –	Henry A. Arnett, Esq. Tim Pyle, President Alan Matteson
City of Delaware –	Howard Heffelfinger, Clemans, Nelson & Associates, Inc. Todd Allen, Human Resources Manager

II. CRITERIA

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, 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; and
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 private employment.

III. ISSUES AND RECOMMENDATIONS

FINDING OF FACT NO. 1 – RANDOM DRUG TESTING

The City proposes a new article to require mandatory and random drug and alcohol testing. The City states that its proposal is almost identical to that required by the police agreement and has been applied to those in the City having commercial driver's licenses for many years. The City states that there is a trend toward testing, but both the City and Union agree there is no statewide norm. The City points out that the provision has protections built into the process to rehabilitate those employees who run afoul of its prohibitions. The costs of the program, including the employees' time and expenses (including travel), are to be paid by the City.

The Union states that it can accept a drug and alcohol program based upon reasonable suspicion, but the City states that it believes it has the power to do that (*i.e.*, test employees upon reasonable suspicion for drug or alcohol abuse) without any agreement. Whether or not such power exists is beyond the scope of the Fact-Finder's report.

The Fact-Finder was presented with no facts to indicate that drug or alcohol abuse is any significant factor in the bargaining unit; or, for that matter, any factor at all. The City's main argument is that the police unit has the provision, which appears to be somewhat akin to the

firefighter's "parity" argument (*i.e.*, the police and fire units should be treated as equally as possible).

The presentations of the bargaining unit employees, and the Chief, at hearing, their obvious commitment to safety, and their own self-interest in not allowing the behavior of any of the Department's employees to risk the safety of others, and the lack of any evidence as to drug or alcohol problems within the unit, all support a conclusion that random testing is not needed.

Moreover, the obvious costs of such a program to the City, in light of its budgeting concerns, mitigates against adoption of an unnecessary expense such as random testing.

RECOMMENDATION

The new mandatory random drug and alcohol testing article proposed by the City should not be adopted.

FINDING OF FACT NO. 2 – ARTICLE 31. MINIMUM MANNING

The City wants to delete Article 31 relating to minimum manning requirements. The Union proposes raising the station/shift minimum staffing from seven to eight. A minimum manning provision has been in the firefighters' agreement since 1985. The minimum originally was six and was raised to seven in subsequent (including the current) agreements.

The City wishes to delete all minimum staffing provisions because such invade the province of the employer and would interfere with layoffs should such ever be necessary. Layoffs are not foreseen. The City has four contracts with manning clauses, and the other three all have "escape" clauses for financial difficulty.

The Union cites advisory standards issued by the National Fire Protection Association, and guidelines for the township fire departments serving Delaware County, as causes for increased manning. Bureau of Workers' Compensation standards would appear to require a

minimum of eight (*i.e.*, four at each station) should circumstances require two responses at the same time. However, there is an exception for a “known life safety problem,” which would permit less than four firefighters to be involved in a working fire.

The City’s consultant recommended having three more firefighters. An increase in the volume of runs also suggests that additional staffing may be necessary. The City argues that the firefighters could go from a 50-hour work week to 53 to alleviate staffing concerns. The City believes that going to a minimum of eight employees (four per station) is really intended by the Union to increase overtime pay. Moreover, such a requirement would mandate at least three additional firemen, and would limit its ability to reach joint venture agreements with county departments. The Fire Chief acknowledged recommending an additional seven firemen during the campaign for a recent fire and police levy which was defeated at the polls. Press reports during the levy campaign quoted a councilman as saying that the current staffing situation as “getting along on a wing and a prayer.” Current City budget projections include the addition of one firefighter.

The Fact-Finder concludes that, indeed, staffing is generally a management prerogative. However, it is a legitimate area of negotiation, as it affects conditions of employment. Upon a showing of a clear need for increased staffing, this Fact-Finder would have no reservation in including such a recommendation.

In this case, there appears little doubt that the City would benefit from additional staffing. The employees are doing more, with no increase in staff, but no evidence was presented by which the Fact-Finder could see any hardship. The Fact-Finder believes that the City should be given the leeway to determine staffing above the current minimums. Its responsibility to the

safety of the public (and the firefighters) should determine its actions in staffing during the term of the new agreement.

However, the Fact-Finder also sees no persuasive argument in deleting a provision to which the City has long agreed, and operated under without hardship.

RECOMMENDATION

The Fact-Finder recommends that the current Article 31 be retained in the new agreement unchanged.

FINDING OF FACT NO. 3 – ARTICLE 16. WAGES

After mediation, the Union modified its proposal to 4%-4%-4% wage increases for the three years of the new agreement. The City remains at offering 1%-1.5%-2%. The City states that it is powerless to offer more, as the City Council has limited the staff's ability to bargain further.

The Union presented figures to show an average of 3.5% payroll increases in firefighting units statewide for the years 2003-2005. In the Columbus metro area, it contends that the average is 4.2% (including the City of Columbus). The Delaware police received a 5% increase in 2003 and a 3.5% increase in January 2004. The Union wants parity in wages with the police.

The City believes that statewide averages should not be used, as they do not reflect population differences, budget differences, and geographical differences. The City believes that the City of Columbus is not comparable to Delaware, and unfairly skews the Columbus metro averages. Also, the City contests the use of comparables which use a 53-hour work week. The City further argues that "parity" between the police and fire departments can only be judged when all provisions of both agreements are fully compared and contrasted. The City elicited

much testimony to show that the firefighters' unit had the benefit of many contract provisions not available to the police.

The City urges comparable wage jurisdictions in the central Ohio area, compared at the maximum possible longevity and at top pay, to show Delaware firefighters ranking second in wages (*Exhibit 16A*). Those other cities are Westerville, Worthington, Upper Arlington, Marion, Whitehall, Grandview Heights, Newark, Marysville and Mt. Vernon.

The City argues a limited ability to pay. The City lists tax rates in Delaware as seventh out of the ten comparable jurisdictions (*Exhibit 16B*). It produced figures to show that a 1% wage increase would have a \$25,191.76 first year effect on the City's budget (*Exhibit 16C-1*) based on the 2003 firefighter payroll of \$2,519,176 (*Exhibit 16C2*). The City projects increased overall revenues of 4.42% for the year 2004, and a 5.4% increase in income tax revenues for 2003, and a 5% increase for 2004, but argues that its projections have been too high for the past three years. (*Exhibits 16E and 16H*) City general fund expenditures increased by 3.8% in 2003 and are projected to increase 1.7%, not counting an extra payroll (27th) of \$380,935 in 2004. A police and fire levy (.15% increase) was defeated at the polls. The carryover on the budget of the City is within the amounts suggested by the State Auditor. The Union also notes that the City's projected carryover of \$1.7 million at the end of 2004 assumes adding three firefighters and a 11-½ % total increase in payroll. The Fire Chief received a 4% wage increase for 2004, and all other department heads received a 2% increase.

All objective evidence indicates that the City's finances are on the upturn, and certainly no crisis exists which would limit increases in wages otherwise reasonable and commensurate with other comparable jurisdictions.

The Union argues that for the comparables listed by the City, those jurisdictions averaged 4% increases the last year. The Union further notes that the City's figures in Exhibit 16A do not include FSCA overtime for the other communities. Delaware firefighters do not normally get overtime pay. The Union argues that, if the base wages are to be compared, not total compensation as urged by the City, Delaware is seventh out of ten in base wages.

Internal comparables for the City (*16I*) indicated that police supervisors received 4%, 5% and 3.5% increases for the years 2002-2004 after a fact-finding in November 2001. Patrol salaries increased 4%, 5% and 3.5%. Police clerical increases were 3%, 3% and 3%.

The Union provided information as to comparable firefighter increases in central Ohio communities for the years 2003-2005, ranging from 6% (Columbus, 2003) to 3% (Whitehall, 2004), and appearing to average about 4%. Very few figures were provided, however, for 2005, and the average increase for 2004 was 3.7%. The Delaware firefighter appears generally to rank well within other Columbus and northern suburb salary levels, though they work 50 hours to a standard 53 hours in Upper Arlington, Whitehall, Westerville and Worthington. Delaware firefighter salaries increased 4% each year of the last **agreement**. The Fact-Finder concludes that their recent wages have not diverged from those comparables, plus or minus, to any appreciable degree.

The Union provided figures to show that top firefighter pay has slipped somewhat in comparison to top police pay since 1994. The most recent pay increase for the police was 3.5% for the calendar year 2004. This divergence, which is appreciable, may exist for a number of reasons, and a rehash of prior contracts and the contents of the current respective contracts is mind-numbing and not productive, given the contrasts in the two positions.

The Fact-Finder believes that the most significant gauge of firefighters' wages are wages for comparable firefighter units in other locales. The statutory criteria listed in the preamble to this report favors comparing like jobs. Police wages (and other wages of the City) are relevant to the inquiry, but are a less significant gauge because of the dissimilarities of the employment tasks. Both firefighters and policemen risk their lives in physically and mentally challenging tasks absolutely necessary to the safety of the City. Both have broadly comparable education and training, though the specifics of the education and training necessary to the respective tasks differ substantially. Police carry guns and arrest people, and work more or less regular 8-hour shifts; firefighters fight fires, perform emergency medical services, and work 24-hour shifts. Historically, the two services are paid somewhat comparably, though differences exist from jurisdiction to jurisdiction. Certainly, this Fact-Finder sees percentage increases for one service as a significant factor (absent clearly defined reasons for a divergence) in the increases for the other service.

The Fact-Finder concludes that pay increases of 3.5% for the three years of the new agreement are reasonable, are commensurate with wage increases statewide, and will maintain comparable wages with similarly situated fire departments. The relationship of such wages to the next police agreement can only be gauged after negotiation of the new police agreement.

RECOMMENDATION

Article 16. Wages should read as follows:

Retroactive to 4/1/03, all classes and all steps shall receive increases of 3.5%, over the wages (a copy of which is attached hereto) paid in the last year of the previous agreement, and thereafter receive increases of 3.5%, effective April 1, 2004 and April 1, 2005.

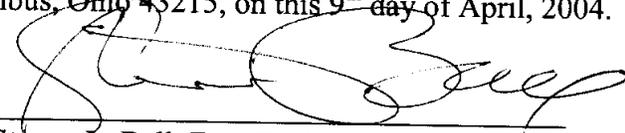
All other provisions of Article 16 shall remain as in the previous agreement, unless heretofore modified by tentative agreement.



Steven L. Ball, Fact-Finder
April 9, 2004

CERTIFICATE OF MAILING

I hereby certify that a copy of the Fact-Finding Report was sent via fax and overnight mail to: Howard Heffelfinger, Clemans, Nelson & Associates, Inc., 5100 Parkcenter Avenue, Suite 120, Dublin, Ohio 43017, and Henry A. Arnett, Livorno and Arnett Co., LPA, 280 N. High Street, Suite 1410, Columbus, Ohio 43215; and the original Fact-Finding Report was sent via first class U.S. mail, postage prepaid, to Dale A. Zimmer, Administrator, Bureau of Mediation, SERB, 65 East State Street, 12th Floor, Columbus, Ohio 43215, on this 9th day of April, 2004.



Steven L. Ball, Fact-Finder

ARTICLE 16

WAGES

Section 1. Pay Ranges and Rates.

The following pay rates will be paid members beginning on the dates specified:

Class Title - Fire Captains:

Pay Steps	1	2	3
April 1, 2000 Hourly (40)	24.17	25.16	26.15
Hourly (50)	19.33	20.12	20.91
ANNUALLY	50,267.36	52,322.40	54,377.44
April 1, 2001 Hourly (40)	25.14	26.17	27.20
Hourly (50)	20.10	20.92	27.20 21.75
ANNUALLY	52,278.05	54,415.30	56,552.54
April 1, 2002 Hourly (40)	26.15	27.22	28.29
Hourly (50)	20.90	21.76	22.62
ANNUALLY	54,369.17	56,591.91	58,814.64

Class Title - Fire Fighters:

Pay Steps	1	2	3	4	5
April 1, 2000 Hourly (40)	16.17	17.24	18.44	19.43	20.26
Hourly (50)	12.94	13.79	14.75	15.54	16.20
ANNUALLY	33,637.76	35,855.04	38,342.72	40,397.76	42,128.32
April 1, 2001 Hourly (40)	16.82	17.93	19.18	20.21	21.07
Hourly (50)	13.46	14.34	15.34	16.16	16.85
ANNUALLY	34,983.27	37,289.24	39,876.43	42,013.67	43,813.45
April 1, 2002 Hourly (40)	17.49	18.65	19.95	21.02	21.91
Hourly (50)	14.00	14.91	15.95	16.81	17.52
ANNUALLY	36,382.60	38,780.81	41,471.49	43,694.22	45,565.99

31,985.60

Section 2. Application of Hourly Rates.

The hourly rates set forth under this section are based on a forty (40) hour workweek and shall be used to calculate salaries for hours actually worked or in paid status for the appropriate pay range and pay step.