

STATE EMPLOYMENT
RELATIONS BOARD

2003 SEP -5 A 10: 33

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of

*
*
*
*
*
*
*
*
*
*
*

Case No. 03-MED-03-0271

Fact-finding between:

Fact-finder:

City of Lima

Martin R. Fitts

and

IAFF Local 334

September 3, 2003

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Lima (the Employer):

- Pete B. Lowe
- Vince Ozier
- Elizabeth Criblez
- Steven Cleaves

For the IAFF Local 334 (the Union):

- Doug Corwin
- Sean Carpenter
- Richard Reiff
- Andy Heffner
- Scott Fry

PRELIMINARY COMMENTS

The bargaining unit consists of all full-time firefighters, excluding the fire chief and assistant fire chief, employed by the City of Lima. There are approximately 69 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on May 30, 2003. The fact-finding hearing was held on August 5, 2003 at the offices of the City of Lima, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were eight issues at impasse: Hours of Work & Overtime; Holidays; Vacation; Insurance; Wages; Conformity to Law; Work Out of Rank; and Minimum Manning. The parties declined mediation at the hearing, and thus eight issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the August 5, 2003 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Hours of Work and Overtime

Positions of the Parties

The Union proposes a change in Section 8.01 of the agreement to provide for a 48-hour average workweek for 24-hour shift employees. It argued that since 1995 reductions have been made in sick time, vacations and holidays. The City has also reduced the number of firefighters that can be off from 6 to 5.

The Employer proposes to retain current language in Section 8.01 providing for an average workweek of 53 hours. It argued that a reduction to 48 hours, after factoring in the required Kelly Days, would result in an additional 255 hours off each year for each firefighter – the equivalent of over 10.6 additional days off annually. As the Union's proposal does not contain any provision for a reduction in the bi-weekly pay, it also would have the net affect of granting an average of \$1.56 per hour wage increase, as the firefighters would be working fewer hours for the same pay.

The Employer is proposing a change in Section 8.05 to provide for payment of overtime on the basis of a 53-hour week rather than the current 40-hour week. It argued that paying employees based on a 40-hour week instead of a 53-hour week inflates each hour paid to the employee by 132.5%. It stated that the reduction is necessary to help defray the increasing overtime costs the department is experiencing.

The Union proposes the retention of the current language. It argued that reduced staffing levels have driven up overtime costs and that the staffing levels are in the control of the City.

The Employer proposes change in this section to reduce the maximum number of bargaining unit shift employees that can be off from 5 to 4, and to include extended sick leave known in advance and Garcia Days to the types of leave covered. It would grant the Fire Chief the right to authorize leave to a greater number of employees. The Employer argued that the Chief should have the discretion to deny requests for leave when he knows in advance he is going to be short of manpower. It argued that the bargaining unit members are able to create overtime opportunities under the current language. It feels that the current language restricts a basic management right necessary to ensure adequate staffing of the shifts while controlling overtime costs.

The Union argued that given the contractually allowed number of days off for each firefighter, it would be impossible under the City's proposed change for them to take all their days off. It argued that the City has decided to let staffing levels fall, and that the firefighters shouldn't be penalized for it. The Union proposed that the Fire Chief's policy

in effect on October 31, 2000 be specifically referenced in the agreement, with any changes to be subject to mutual agreement by the parties.

Findings and Recommendations

Regarding Section 8.01, the Union's arguments in favor of a reduced average workweek do not contain any compelling evidence that the current average workweek of 53 hours is out of line with the average workweeks of other fire departments. There was no evidence that this department has difficulty attracting or retaining firefighters due to the workweek, nor was there any compelling evidence that the firefighters are unduly burdened or harmed by the 53-hour workweek.

The Employer makes a compelling argument that there would be a negative financial impact on the City should the workweek be shortened at this time.

Therefore, the Fact-finder recommends the Employer's proposal that the current language of Section 8.01 be retained.

Regarding Section 8.05, the current practice of paying overtime based on a 40-hour rate versus a 53-hour rate is, in essence, an established economic benefit enjoyed by the bargaining unit. To unilaterally reduce it by recommending the Employer's proposal would be unfair to the employees. Further, premium pay is designed by its very nature to be a disincentive for employers to utilize extensive overtime versus the hiring of additional employees. The Employer argued that the costs of overtime were high. But the Fact-finder would note that manning levels and staffing levels are within the control of the Employer.

Therefore, the Fact-finder recommends the Union's proposal that the current language in Section 8.05 be retained.

Regarding Section 8.09, both parties presented compelling arguments for various pieces of the two positions. The inclusion of "Garcia Days" and "extended sick leave known in advance" to the section, as proposed by the Employer, makes sense. "Garcia Days" are scheduled in advance, and have the same affect on schedules as vacation and holidays. Likewise, "extended sick leave known in advance" also represents the same type of scheduling situation. This change should be of assistance to the Fire Chief in scheduling manpower. However, the Union makes a compelling argument when it argues that reducing the number of bargaining unit members off from 5 to 4 will make it difficult for the firefighters to schedule time off to which they are entitled. Further, it noted that the number had been previously reduced to 5 from 6, yet overtime costs had still risen. The retention of the language calling for a maximum of 5 employees to be off strikes a nice balance with the addition of the "Garcia Days" and "extended sick leave known in advance" provisions proposed by the Employer.

The inclusion of the Employer's proposed phrase "unless a greater number is authorized by the Chief" provides the Employer with some flexibility to allow more than five employees to be off when circumstances allow. The Employer's proposal to eliminate a reference to a past policy of the Chief except to state that the Chief's policy must be in compliance with the collective bargaining agreement is not really a negative for the Union. The Employer's language mandating compliance with the provisions of this section of the agreement add certainty for the employees, yet allows the Chief some flexibility. The Union had proposed a contractual reference to a previous policy, but specificity in labor agreements is a benefit for both parties, as future disputes over intent and references are minimized.

Therefore, the Fact-finder recommends that Section 8.09 of the agreement read as follows:

***Section 8.09.** In order to maintain adequate staffing, a maximum of five (5) bargaining unit shift employees will be permitted to be off on vacation, holiday, extended sick leave known in advance, Garcia Day, or prescheduled twenty-four (24) hour consecutive compensatory time unless a greater number is authorized by the Chief. Vacations, holidays, and compensatory time will be scheduled off in accordance with the Fire Chief's policy that shall be in compliance with this Agreement. A maximum of one (1) employee will be scheduled off on Garcia Day at one time provided such limitation permits all employees to be scheduled on Garcia Day within the specified twenty-seven (27) day work period.*

Issue: Holidays

Positions of the parties

The Employer proposal for Section 11.01 was acceptable to the Union.

The Employer proposes to change the sell-back rate for unused holiday time off from the current 40-hour rate to a 53-hour rate. The Employer argued that when a firefighter cashes in a holiday, it costs the City more than what it costs to pay a replacement to work for him. The Employer also proposed removal of language that currently provides for an exception on the limit of days that can be sold back for employees who have been denied the scheduling of holidays prior to their separation due to extended sick leave, disability leave, or work requirements of the Employer.

The Union proposal is that the current language be retained. It argued that it is cheaper for the City to pay a firefighter the sell-back at the 40-hour rate than it is to replace them with someone on overtime. It argued that reducing the value of the sell-back reduces the

incentive to sell back the day, which will result in fewer days being sold back and thus more overtime costs to the City. The Union also proposed that 40-hour employees be able to sell back a third unused day, one more than the current contract provides.

The Employer proposes amending the language in the current agreement to specify that compensation paid to those working a holiday will be paid at the 53-hour rate. The Employer noted that the Agreement currently does not specify at what rate the compensation will be paid, but the current practice of the City has been to pay it at the 40-hour rate.

The Union proposed current language be retained. It again noted that the practice of the City has been to pay firefighters based upon a 40-hour rate, and that the Employer's proposal would result in a taking away of a benefit currently enjoyed by the bargaining unit.

Findings and Recommendation

The Fact-finder recommends the Employer's proposal for Section 11.01.

Regarding Section 11.03, the Fact-finder agrees with the Union that the Employer's proposal represents a reduction in benefits currently enjoyed by the bargaining unit. The actual cost to the City appears to depend upon whether or not the firefighter is replaced by another on straight time or overtime. While the reality of overtime costs cannot be ignored, neither can the fact that the City holds the ultimate control regarding staffing and manning levels. Further, the Union correctly notes that the Employer's proposal is, in essence, a reduction of an economic benefit bargained for by the Union at, one would assume, some cost or trade-off in prior negotiations. Additionally, the Fact-finder agrees with the Union's proposal that 40-hour employees be able to sell back a third unused day, a proposal that the Employer noted it was not strongly opposed to.

The Employer's proposal to eliminate the exception on the limit of unused holidays that can be cashed in (for those who could not take them due to extended sick leave, disability leave, or work requirements of the Employer) is based on a single, recent experience and has not been a problem in the past. However, the Employer correctly notes that the potential is there for the situation to be repeated in the future. Undoubtedly both parties should be afforded protection, and an equitable balance appears to the Fact-finder to lie in the recommendation below.

Therefore, the Fact-finder recommends that Section 11.03 read in its entirety:

***Section 11.03.** Shift employees not using the holiday time off can sell back any unused days at the beginning of the calendar year. Their regular forty (40) hour rate of pay times twenty-four (24) hours will be applied for each day to be paid on the first pay day of March. Unused holidays are not to exceed four (4) tours. Forty (40) hour employees not using the holiday time off can sell*

back any unused days at the beginning of the new calendar year at their regular rate of pay times eight (8) hours for each day to be paid the first pay day in March. Unused holidays are not to exceed three (3) days. Shift employees upon retirement or resignation, shall be eligible to sell back at their forty (40) hour rate of pay any unused tours up to but not to exceed ten (10) holidays. Employees who retire or resign with a higher accumulation of ten (10) holidays shall not be afforded any additional compensation, except in the following circumstances:

- 1) employees who are denied the scheduling of holidays prior to their separation date because of extended sick leave or disability leave shall be compensated for any additional holidays that have been accumulated during said leave; and*
- 2) employees who have made a reasonable effort to schedule unused holidays but have been denied the opportunity to use said holidays due to scheduling requirements shall be permitted to be compensated for an additional five (5) days.*

Regarding Section 11.04, there is only a need to clarify that this section also calls for the payment of the holidays at the 40-hour rate of pay that is the current practice.

Therefore, the Fact-finder recommends that Section 11.04 should read in its entirety:

Section 11.04. *Employees required to work on any of the recognized holidays listed in 11.01 (A), shall be compensated at one and one-half (1 ½) times their 40-hour rate of pay.*

Issue: Vacations

Positions of the parties

The Employer proposed amending Section 12.01 to include a provision that would prorate the amount of vacation to which an employee is entitled based on the number of pay periods completed in the calendar year of the employee's separation. This proposal was in response to scrutiny from the City Law Director and City Auditor relative to payments made to several employees who separated from the department prior to their anniversary date, yet were requesting their full year's worth of vacation.

The Union proposed a countermeasure – an accrual method that would result in an increased amount of vacation. It argued that this would eliminate the Employer's concern for separations that occur prior to an employee's anniversary date.

The Employer proposed amending Section 12.02 B & C of the current agreement to a method of paying shift employees who have accumulated more than 950 hours of sick leave either additional vacation days or additional pay for unused sick leave, including the elimination of a chart in Section 12.02 B that represents the current practice despite being in conflict with other language in the same Section. The union proposed the retention of current language in Sections 12.02 B & C, but proposed a new language for a proposed Section 12.02 D which would provide an interpretation of the application of FMLA leave.

The Employer proposed a change in Section 12.03 that would remove the reference in the current language to the Chief's policy that was signed and posted October 31, 2000, and would replace it with a simple reference to the "policy established by the Fire Chief." It argued that this would afford the Chief the flexibility to change the policy to address seasonal spikes in vacation demand.

The Union is proposing a change in Section 12.03 that would allow firefighters to take vacation in 8-hour increments. The proposed language limits the use of the 8-hour increment, and was not strongly opposed by the Employer as long as it was understood that the 8-hour increments had to mirror the 11 PM – 7 AM, 7 AM – 3 PM, and 3 PM – 11 PM shifts, which was acknowledged by the Union as its intent as well.

Findings and Recommendations

Regarding Section 12.01, the Employer's concerns are valid. Vacation is not really earned magically on January 1st, but rather at the anniversary date of the employee. The Employer's proposal does not take anything away from the employees that has been earned. While an accrual system would also achieve this, the Union's proposal provides for an increased accrual that is not justified. The Employer's proposal really represents an effort to be a good steward of the public's dollars in regard to paying only for something that has been earned. This is a different argument than that of determining the value of what has been earned, as was at issue in Article 11.

Therefore, the Fact-finder recommends that the current language of Section 12.01 remain, with the addition of the following:

F. The amount of vacation to which an employee is entitled shall be prorated for the employee's last calendar year of employment based upon the number of pay periods completed in that last calendar year.

Regarding Section 12.02, the Fact-finder does not agree with the Employer's proposal to amend the language of Section 12.02 B & C, as that proposal would reduce a benefit currently enjoyed by this bargaining unit. At some point the chart in Section 12.02 D and

the language in Section 12.02 C were agreed-upon by the parties, and there was no compelling evidence or testimony to support the removal of this language and subsequent reduction of benefits simply because the Employer now sees them as too generous. Regarding the Union's proposal for language to support its interpretation of the Family and Medical Leave Act, again no compelling evidence or testimony was presented to support its position. While the parties are free to negotiate some of the methods of applying the FMLA under their contract, the Fact-finder does not find any compelling argument offered by the Union to support its position for the inclusion of new language.

Therefore, the Fact-finder recommends that the language in Section 12.02 of the agreement be retained as is.

Regarding Section 12.03, the Union's proposal to allow for vacation to be taken in 8-hour increments is reasonable and represents a new and valuable benefit for the bargaining unit employees with enough limitations so that it should have minimal impact on the Employer's ability to manage the workforce. The current agreement references the Chief's October 31, 2000 posted policy, and also provides for changes in the policy subject to the mutual agreement of the parties. The Fact-finder did not see any compelling evidence or testimony that provisions the Employer found acceptable in the last agreement were now so unacceptable and unreasonable that they should now be unilaterally stricken from the contract. Absent that, the Fact-finder believes that the Union's proposal for Section 12.03 is reasonable.

Therefore, the Fact-finder recommends the Union's proposal for Section 12.03.

Issue: Insurance

Positions of the Parties

The Employer proposals for Sections 16.01 and Section 16.03 were agreeable to the Union.

The Employer proposes to amend Article 16 to provide for cost sharing of health insurance premium increase between the Employer and the bargaining unit members. The Employer proposed setting a cap on its share of the health insurance premium at \$853.31 per month (\$30.00 below the current cost) for family coverage and \$371.10 per month (\$10 below the current cost) of a single plan, with the first ten percent increase in insurance premiums to be paid 65% by the Employer and 35% by the employee. Any increase each year above the first 10% would be paid by the Employer.

The Employer argued that it must have some protection against rising health insurance premiums, especially since it does not have unilateral control over the coverage. The Employer noted that it has negotiated cost sharing of premium increases with its other bargaining units. It noted that the other units are paying flat rates versus percentages, as

this was the City's strategy to "crack open the door" to cost sharing. As this contract is the last to be negotiated, the City now desires to "crack open the door" to a percentage formula for sharing rather than a flat rate. It noted that under its proposal firefighters would pay only \$3.50 a month for the single coverage and \$10.50 for the family plan. If the premium increases a full 10% or more for 2004, the firefighters would only be paying \$16.84 each month for single coverage, and \$41.42 for the family plan.

The Union proposed a flat \$10 per month contribution for single coverage, \$20 per month for the single plus one plan, and \$30 contribution for the family plan. It argued that the City concluded negotiations with the FOP earlier this year where that contract calls for these employee contributions in 2005, but the Union here is proposing them to be effective January 1, 2004 when wage increases would also be effective. The Union expressed its concern for the exposure its members would have if the employee contribution is not fixed.

Findings and Recommendations

Regarding Section 16.01 and Section 16.03, the Fact-finder recommends the Employer's proposals that were agreed upon by both parties at the hearing.

Regarding Section 16.02, the City's proposal contains certain elements of fairness. Certainly today's health care climate is exposing employers to premium increases that are rising at a significant rate each year. In the City of Lima, all of the bargaining units are represented on a Health Care Cost Containment Committee that requires a unanimous vote for a change in benefits. Therefore, the City has no ability to unilaterally reduce or modify benefits. As the bargaining units have great say in the benefit levels, it is fair that they shoulder some of the rising costs associated with maintaining them. The City's proposal simply exposes the bargaining unit employees to a share of the cost of increases to maintain benefit levels over which the bargaining unit has considerable control with its fellow municipal unions.

The Union's concern regarding the potential exposure for its members if the employee contribution is not fixed is deflated by the level of control that the bargaining units have over the benefits level, which has a direct correlation to cost. Further, the Union's desire to have a fixed rate because the other bargaining units do ignores the fact that the other units have already begun to contribute to premium costs while this one has not. The Employer's argument that in a worst-case scenario this bargaining unit would have only contributed about the same as the others over the life of the agreement holds merit.

The Fact-finder does find that the percentage split proposed by the Employer is slightly high, as the compounding effect at the end of this agreement and beyond if continued could quickly approach equity with potential wage increases in the future. A split of 80% employer / 20% employee of the first 10% of any premium increases still "cracks open the door" for the Employer relative to percentage cost sharing, yet gives the employees in

the bargaining unit greater protection. The 20% share for the employees remains significant enough to provide impetus for this bargaining unit's representative on the Health Care Cost Containment Committee to push for cost-saving measures.

Therefore, the Fact-finder recommends that Section 16.02 of the Agreement read as follows:

Section 16.02. *The Employer shall contribute up to the following amounts each month toward the premium cost for each bargaining unit employee's health insurance coverage.*

Single Plan \$371.10 Per Month

Family Plan \$853.31 Per Month

The first ten percent (10%) of any increase in insurance premiums each calendar year above the limits specified herein, shall be paid eighty percent (80%) by the Employer and twenty percent (20%) by the employee. Any insurance premium increase each year above the first 10% will be absorbed by the City.

The COBRA rate established by the third party administrator shall be utilized to determine the above premium sharing. The Health Care Cost Committee may seek verification of the annual COBRA rate calculation from an independent industry recognized self-insured health insurance authority.

Issue: Wages

Positions of the Parties

The Union proposal is for a 4% wage increase effective on January 1, 2004, an additional increase of 4% effective on January 1, 2005, and an additional 4% increase effective on January 1, 2006. It argued that looking at percentage increases provided for in other collective bargaining agreements is the fairest method of using comparables and that a 4% annual increase was reasonable. Further it argued that an increase of less than 4% would not be fair given the desire of the City to have the firefighters share in the burden of increasing health insurance premiums.

The Employer's proposal is for a 2% wage increase effective on January 1, 2004, an additional increase of 2% effective on January 1, 2005, and an additional 2% increase effective on January 1, 2006. It noted that the employees of this bargaining unit enjoy many benefits that surrounding fire departments do not, including cash in of holidays and

vacation, holiday pay based on 24-hours, overtime pay based on a 4-hour rate, and more paid leave.

Findings and Recommendation

As always, wages represent the great equalizer in negotiations. In the instant situation, the Union is proposing a higher than reasonable wage increase, while the Employer's proposal may be somewhat more reasonable in the current economic climate. Gains recommended for the Employer elsewhere in this Report, and the retention of economic benefits elsewhere in this Report for the Union, must be taken into account as the wage issue is discussed.

As outlined elsewhere, the Fact-finder has not found compelling reasons to recommend unilateral reductions in economic benefits enjoyed by this bargaining unit, despite some strong arguments made the Employer that its fiscal outlook is somewhat bleak. However, the retention of those other benefits in the current economic climate does come at a price of sorts to the Union. And that price is paid with a lower wage increase than it proposed.

Therefore, the Fact-finder recommends a wage increase of 2.5% effective January 1, 2004, an additional 2.5% effective January 1, 2005, and 3.0% effective January 1, 2006.

Issue: Conformity to Law

Positions of the Parties

The Employer proposes to add language in Article 24 that would state specifically that the collective bargaining agreement supersedes any and all state and federal laws that it has the authority to supersede, unless the agreement is silent.

The union opposes this change. It argued that the contract only supersedes state law in matters that state law provides for collective bargaining agreements to do so, and those matters are specifically stated in the agreement. Its proposal is for the retention of current language.

Findings and Recommendation

The Employer presented no instance where the difficulties have arisen under the language in the current agreement. As such, it provides no compelling reason for changes in Article 24 to be recommended.

Therefore, the Fact-finder recommends the Union's proposal for the retention of the existing language in Article 24.

Issue: Work Out of Rank

Positions of the Parties

The Employer proposes to add a new article to the agreement spelling out pay for an employee who is assigned to work temporarily in a higher-ranking position. It's proposal would call for an individual who performs the duties and responsibilities of a higher position for a minimum of 12 hours to receive acting pay for all hours so assigned. It also would vest the determination of when temporary assignments are necessary with the Chief or designee.

The union opposes the inclusion of this new article. It noted that the current practice is that employees are paid after 8 hours of temporary assignment, and it is unsure of the impact of a change to 12 hours. It also noted that the present policy of 8 hours mirrors the 8-hour overtime shift.

Findings and Recommendation

Basically what the Employer is proposing to do is incorporate language into the agreement that in some respects mirrors the existing method under which the Fire Chief makes temporary assignments. In making its arguments, the Employer referenced the current practice, which is to bump everyone in the chain of command up one spot when a higher-ranking firefighter is temporarily assigned to a higher rank. The Fire Chief currently has all the authority to determine work assignments under the existing agreement, so the addition of an article such as this would not do any harm to the employees of the bargaining unit. In fact such language is commonly found in safety service agreements.

The Union makes a reasonable argument that the 8-hours minimum currently in practice mirrors the 8-hour overtime shift, and likely makes sense to retain. The 12-hours proposed by the Employer is basically unsupported by any compelling evidence.

Therefore, the Fact-finder recommends that a new article be added to the agreement, and appropriately numbered, that reads as follows:

*ARTICLE ____
WORK OUT OF RANK*

If a bargaining unit employee is temporarily assigned by the Chief or designee to perform in a higher-ranking position, and performs the duties and responsibilities of such higher ranking position for a minimum of 8 hours, the employee shall be entitled to receive acting pay for all hours so assigned. Acting pay shall be paid at a rate equivalent to the employee's current pay step in the next higher pay range.

The Chief or designee shall determine when temporary assignments are necessary under this Article.

Issue: Minimum Manning

Positions of the Parties

The Union proposes to maintain the current City of Lima policy on manning as outlined in a letter from Mayor David Berger to the Union dated December 24, 1990.

The Employer opposes the inclusion of any provision requiring minimum manning levels in the agreement. It maintains that the letter has never been part of the collective bargaining agreement, nor is it a letter of understanding signed by both parties.

Findings and Recommendation

The Fact-finder is presented with a difference of opinion between the parties as to whether the 1990 letter is a part of the current collective bargaining agreement or not. There is no evidence in the current agreement or any attached letter of understanding that the parties have reached a manning level agreement. The only evidence is the 1990 letter from Mayor Berger. The letter reads, in relevant part:

"This letter is in response to one of the provisions of the recently completed negotiations between the City of Lima and the IAFF. It was agreed that I would state, in letter form, the City's policy on manning for the Fire Department."

The language in the letter is very clear and unambiguous when it states that the parties agreed that the Mayor would state in letter form the City's policy on manning. The agreement is clear: the Mayor will put the policy in writing. Also clear is that it is the City's policy and not an agreed-upon policy reached by the parties in their negotiations.

The Employer cited the provisions of Section 2.01 and 2.02 of the current agreement that vest the right to determine the number of persons to be employed and the work assignments of same, subject to any limiting provisions in the collective bargaining agreement. The Employer also argued that the Fact-finder does not have the authority to rule on the issue of minimum manning because it is not already in the collective bargaining agreement, and because the Union has not submitted a proposal to make it such. However, it is the Fact-finder's opinion that the Union's proposal to "maintain" the letter is, in essence, a proposal to have the letter considered a part of the collective bargaining agreement. Therefore, the Fact-finder has the authority to rule on this issue just as he does any proposal properly presented by either party at the hearing.

What would be improper would be for the Fact-finder to consider the letter already a part of the current collective bargaining agreement and thus the Union's position one of maintaining the language in the current agreement. The Union's proposal is most definitely a proposal to include a new provision in the agreement, one that would limit the management rights in Section 2.01 and 2.02 of the present agreement. Certainly this would be a major change of the existing agreement, one that would be better left to the designs of the parties in negotiations. It is most certainly not an issue to be recommended by this Fact-finder, given the lack of any convincing or compelling evidence from the Union to support such a fundamental change.

Therefore, the Fact-finder recommends the Employer's position that no minimum manning language be included in the agreement.

Additional recommendations of the Fact-finder

The Fact-finder has reviewed all the tentative agreements the parties reached during these negotiations, and recommends them all as well.



Martin R. Fitts
Fact-finder
September 3, 2003