

STATE EMPLOYMENT  
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD 2003 NOV -7 A 10: 38

Fact Finding Report

In the issues at impasse	)	Fact Finder: Janet C. Goulet, Ph.D.
between	)	
City of Kettering	)	Hearing Date: October 23, 2003
and	)	Report Date: November 6, 2003
Kettering Firefighters	)	SERB Case No.: 03 MED 05 0568
Association, IAFF,	)	
Local 2150	)	

APPEARANCES

**For the Employer**

Daniel G. Rosenthal, Esq.  
Robert L. Zickler, Chief  
Rick Strader, Director, H.R.  
Mark Schweterman, Asst. City Mgr.  
Jessica Sletten, Legal Asst.  
Thomas O. Weghorst, H.R. Analyst  
Karen Sejas, H.R. Analyst  
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Paul Alexander

**For the Association**

James W. Skogstrom, Esq.  
Joel Busch, President  
Brian Beaver, Vice-President  
Jack Harrison, Secretary  
Nick Andrews, Treasurer  
Marcus Hoholick, Steward  
James Koller, Steward

## PROCEEDINGS

The Fact Finding hearing was held in the City of Kettering's Conference Room. Mediation commenced at 9:35 am, however, it did not result in the resolution of any of the issues. Those listed above were present for the hearing. The parties presented witnesses, evidence and testimony and each was given the opportunity to fully present arguments and proofs in support of their respective positions. All evidence, testimony and arguments were carefully considered in reaching these recommendations whether or not all are specifically set forth or discussed herein.

In offering resolution of the following issues, the Fact Finder shall take into consideration all reliable information relevant to the issues and the criteria listed in Ohio Administrative Code Rule 4117-9-05(J). All contractual issues, other than those set forth below, are considered settled and the entire contract will be completed with the acceptance of this report. The issues considered in this report are those submitted in the pre-hearing statements.

### ISSUES AT IMPASSE

Article VII: **Wages**

Article VII: **Paramedic Differential**

Article VII, Section 6: **Shift Differential**

Article X, Section 1: **Holidays**

Article X, Section 2: **Earned Days Off**

Article XI: Section 1: **Vacations**

Article XV, Section 3: **Safety and Health**

Article XVI Section 1: **Sick Leave and Funeral Leave**

Article XVIII: **Uniform Allowance and Program**

Article XX, Section 1-3: **Medical and Life Insurance**

Article XX, Section 2: **Life Insurance**

Article XX, New Section: **Dental Insurance**

Article XXI, Section 4 and 5: **Union Business**

New Article: **Working Out of Rank**

#### BACKGROUND

The Employer, the City of Kettering, and the Union, the Kettering Firefighters Association, IAFF Local 2150, have a mature, long term collective bargaining relationship. The parties are cordial in their interactions, each respecting the other. These firefighters are well paid in comparison to the local referent group as well as the state wide comparable cities. The City of Kettering has stable tax revenue and is ably managed. It looks to economic development in order to maintain and enhance its economic position.

The City has bargaining relationships with 5 units and all but the firefighters have settled under essentially similar terms. All labor contracts between the parties have been resolved without appeal to the state mandated final dispute resolution procedure for safety forces of Conciliation. However, in the previous contract negotiations impasse was reached with this bargaining unit and a Fact Finder was used.

The Firefighters do have the right to negotiate their own contract. However, the labor contract does not exist in a vacuum and comparability represents a very real consideration. The number of negotiating sessions was not reported on the pre-hearing statement, yet, the City's pre-hearing statement iterated that the Shift Differential proposal was not raised, discussed or bargained during any of the negotiation sessions.

#### RECOMMENDATIONS

The following recommended changes are discussed individually below. The primary issue for the parties was health insurance premium sharing which has been accepted by this as well as all the other bargaining units. The parties are close to resolution of the wage issue, however, the City is offering a lower percentage to this bargaining unit than it settled with the other units because of the many economic issues presented.

#### Article VII: Wages

The Association seeks a wage increase of 3.5% in each of the three years of the Agreement as well as retroactivity of this increase. As an exemplary department they are currently at the top of their comparable groups in both the local and statewide comparisons and want to retain that position. The other four bargaining units have accepted this proposal and as the last unit bargaining, the association proposes to accept this on the basis of internal comparability.

The Employer offers 3% because it is concerned about the large number of economic issues proposed by this bargaining unit. It

points out that this is a highly paid department which has enjoyed substantial wage increases in the past. The non-represented employees received a 3.5% wage increase and the other bargaining units received 3.5% in each of the three years of the Agreement as well as retroactivity.

**Recommendation: Wages**

A 3.5% wage increase in each of the three years of the Agreement. This wage increase is to be retroactive to September 8, 2003. This wage increase along with the other benefits recommended will preserve internal comparability, help to cover the tax adjusted cost of the health insurance premium sharing, and allow for a small increase in real compensation. Furthermore, the tax base of the City is stable and it now bills for EMS services. The City does not have financial problems and is taking action to prevent any future problems stemming from health insurance cost increases by insisting on the 10% premium sharing without a cap. The department's pay levels will remain in the top position within comparable local and state departments and cover the increased cost of health insurance premium sharing. This increase cost is now covered without it seeming like a "give back" from the Union to the City. The positive relationship between the Employer and the Firefighters is important and needs to be preserved.

**Article VII: Paramedic Differential**

The Association proposes to increase the paramedic differential from 3 % to 4%. This differential has not been increased since 1993 while the job of paramedic has changed and

become increasingly more difficult. The number of paramedic runs has increased significantly. Furthermore, the average statewide paramedic differential statewide is 5 %. The cost of the requested increase is \$.27/hour for the top step paramedic.

The City responds that the job requirement is actually firefighter/paramedic. All new hires must be paramedics and 35 out of the 40 members of the bargaining unit are paramedics. This proposal actually amounts to a 4.5 % increase in wages for the majority of the bargaining unit.

**Recommendation: Paramedic increase**

Maintain the current 3 % differential for paramedics. The members of the bargaining unit are well paid and retain a top wage level within their comparable groups. While protocols have changed and runs volume has increased wages have also increased over the time period since 1993. Since the job is now defined as firefighter/paramedic, and the majority of the department has the paramedic certification, this differential seems somewhat archaic. At some future time it could be folded into wages. Furthermore, since the majority of the department has the certification, this is a costly demand.

**Article VII, Section 6: Shift Differential**

The Association wants to increase the shift differential to \$.90 per hour when half or more of working hours are between 3:00 pm and 8:00 am. The current contract section specifies a \$.15 for hours worked between 6 pm and 6 am for those assigned to the 8 (eight) hour shifts. Currently, no member works an eight hour

shift. The Association members work either a 10 hour shift or a 24 hour platoon shift. Furthermore, all four of the other Kettering bargaining units have language similar to the proposal covering shift differential. Patrol Officers and Command Officers both receive a \$.90 differential. Fire dispatchers receive a \$.30 shift differential while civilian dispatchers receive \$.50. Even the public service workers receive the \$.90 differential.

The Employer points out that this proposal was not bargained. The first time it appeared in the current form was in the Fact-finding Pre-Hearing Statement. Furthermore, it did not appear in the list of issues submitted by counsel for the firefighters dated September 10, 2003. The City's response to the substance of the proposal is that it is an attempt to get a \$.90 per hour increase for all 24 hour platoon shift firefighters.

**Recommendation: Shift Differential**

The current language is a holdover from an earlier period when the department was organized differently. It does not fit the current situation and could be removed from the Agreement. While other units have a functioning shift differential language, the nature of the 24 hour platoon shift does not lend itself to shift differential. Earned Days Off are a compensation for this type of scheduling. Furthermore, I would be loath to grant through fact-finding an issue which had not yet been bargained.

The operative concept here is impasse. The state mandated dispute resolution procedures are based on the parties first bargaining the issues and upon reaching impasse moving to any or

all of the three dispute resolution procedures: mediation, fact-finding and for safety forces ultimately conciliation. An issue that has not been subject to the give and take of the collective bargaining process such as this one does not belong in impasse resolution procedures. It is not recommended.

**Article X, Section 1: Holidays**

The Association proposes to change the way that holidays are compensated for those working the 10 hour shift. The City has a fairly cumbersome and confusing system for holiday compensation for those who work the four day/10 hour per day shift. The Association contends that the system delays the earned benefit of missed holidays by years and repays the employee at a lower benefit than what was lost.

The City contends that the system on its face looks confusing, but it is understood and fair to all, including those who work a ten hour day. It is based on the 80 hour holiday bank that each employee receives for the year.

**Recommendation: Holidays**

This is an issue where the Employer and the Association seem to be talking at cross purposes. (or past each other) This might better be resolved by a sub-committee of the labor management committee. Retain current contract on this issue.

**Article X, Section 2: Earned Days Off**

The Association is proposing to increase the Earned Days Off (EDO) by two: an increase of 1 day as of January 1, 2004 and another day as of January 1, 2005. This EDO concept is a necessary

accompaniment to the 24/48 platoon shift. The EDO compensates the employee who is working more than 40 hours per week on the platoon shift assignment. Currently, the receipt of eleven (11) EDO's annually amounts to a 51.12 hour work week for the platoon shift firefighter. (Table found on page 44 of Association Brochure) This is above the average work weeks of local and statewide comparable departments as shown on page 46 of the Brochure. It is also above the average work week of the City of Kettering organized departments. (Ibid, p. 47) The addition of two more EDO's would move the average work week per EDO down to 50.19. Ibid, p. 44) Using a 25 year career comparison, the Union points out that the two additional EDO's would reduce the platoon shift's average work week from the current 46.47 to 44.25 hours per week. According to the Table on page 47, this is still above the internally comparable groups.

The Association states that the demands on the members of the bargaining unit have been increasing both in terms of the number of calls, new technologies for both the paramedic certification and firefighters as well as an increase in fire safety inspections required.

The City opines that the current number of EDO's is generous and opposes the increase in EDO's because of cost considerations. It states that additional days off are, in practice, covered by overtime which is an increase in cost for the Employer. Furthermore, the City prefers to pay higher wages rather than give additional time off. If any additional EDO's are recommended the

overtime associated with them should be compensated according to the FLSA rather than that which is normally paid to firefighters. The overtime for firefighters is nearly double time because of the manner in which it is paid.

**Recommendation: Earned Days Off**

Increase the number of EDO's by one effective January 1, 2004. Add the following language to Article X, Section 2 of the Agreement:

Effective January 1, 2004, firefighters assigned to a 24-48 hour schedule shall receive twelve (12) EDO's annually. Such EDO's shall be scheduled in advance twice a year, six (6) days at a time for half a year. The scheduling of all EDO's are subject to scheduling requirements as determined by the Chief.

The rationale for this recommendation is that the data presented show that the firefighters are working a longer week when compared with both the relevant external and internal groups. In addition, the average number of EDO's as found on the Table presented by the City is 12.

The second day requested by the Association was not recommended because of the cost to the Employer.

**Article XI, Section 1: Vacations**

The Association proposes to change the number of years required for the increased maximum vacation time from 25 to 20. The City increased the rate of accumulation for employees with 25 or more years of service to receive two additional days of vacation. This change is in line with the benefit given to employees in the Public Employees Retirement System. Police and Firefighters have a 25 year standard retirement period and thus do

not benefit from the increased vacation.

The Employer argues that paid time off deprives the citizens of services or results in high coverage expenses, usually at overtime rates. The firefighter's time off is consistent with that of other City employees as well as firefighters locally and state wide. While one Kettering unit received additional vacation time, it did not receive dental insurance. There is no justification for granting firefighters more vacation time.

**Recommendation: Vacation Time**

Accept the Association proposal and change the rates as indicated below. This will increase the rate of accumulation for those with over 20 years to 192 hours/year. Three of the four contracts within the City have accumulation rates in the over 20 year category of 192 hours/year.

Vacation leave will be accumulated, for uninterrupted employment, based on straight time hours in a paid status at the following comparative rates for a forty (40) hour workweek schedule.

<u>Years in service</u>	<u>Rate of Accumulation - Hours/year</u>
Less than 5	80
5+ up to 10	96
10+ up to 15	136
15+ up to 20	168
Over 20	192

**Article XV, Section 3: Safety and Health**

The Association wants the City to include this new article in the Agreement which requires the City to cover any expenses incurred as a result of the firefighter being exposed to blood or other potentially injurious materials (OPIM).

The City responds that effective March 14, 2003 Workers' Compensation covers these expenses. This information was presented at the hearing on a "Fact Sheet" published by the state Workers' Compensation division.

**Recommendation: Safety and Health**

Do not include this provision in the Agreement. It is covered by the State of Ohio Worker's Compensation.

**Article XVI, Section 1: Sick Leave and Funeral Leave**

The Association proposes an increase in sick leave accumulation consistent with what the other bargaining units as well as the non-represented employees of the City received.

The City considers this a cost item and opposes it on that basis. It is concerned with the economic impact of all recommendations.

**Recommendation: Sick Leave and Funeral Leave**

Increase the sick leave accumulation as proposed by the Association. This is consistent with what the other bargaining units as well as the non-represented employees enjoy.

**Article XVIII: Uniform Allowance and Program**

The Association wants to include a new article in the Agreement which establishes a four person committee to oversee the Quartermaster Uniform Program. The Local was instrumental in developing and establishing this system and wants to continue to be involved. Prior to hiring the Assistant Chief the program was run by this Local.

The City argues that a new language on the labor management

committee has been developed and problems with the Quartermaster program can be discussed there.

**Recommendation: Uniform Allowance and Program**

Do not include this new article. Give the labor management committee the opportunity to work.

**Article XX, Sections 1-3: Medical and Life Insurance**

The Union proposes that a working Insurance Committee be formed that meets on a monthly basis with meetings scheduled well in advance. The purpose of the committee is to improve insurance offerings and to control costs. However, the City is required by this proposal to review the committee's recommendations prior to entering into new contracts for insurance coverage and provide written reasons if it declines to follow the committee's recommendations. The proposal states that the City's choice will be final.

The City responds that it has an insurance committee called the Health Care Insurance Committee which meets occasionally or when necessary. A memo to this Fact-finder dated October 23, 2003, detailed how the committee functions. It is called together to respond to the quotes on health insurance, hear presentations, and suggest ideas and types of insurance. For example, the committee recommended dental insurance and also expressed a preference for remaining with Anthem Health Care. It is also called together when important issues effecting the health insurance of employees surfaces.

The Employer objects to the dominance of this one union in a

health insurance committee as well as the tightly drawn structure and reporting requirements if the City deviates from the committee's recommendations. The City's health insurance is for all those employees who choose to participate in it.

**Recommendation: Health Insurance Committee**

Do not include this committee language in the Agreement. The committee membership suggested by the Association is too narrow and obviously favors this one local union. Furthermore, inclusion of this language means that the committee concept is a legal contractual obligation with all the consequences that obligations of this type involve.

The concept of having regular meetings, scheduled well in advance to educate and inform representatives of the employee groups is sound. Educated employees can search for health insurance and ways and means to lower costs. This is a key period of time to form a tightly constructed group because the employees are now paying a portion of the premium. Some are willing to participate in the design, cost control and choice of company and can serve as liaison. The representatives of the employee groups can insure that communication flows both ways and when a decision is made, by their participation they can encourage acceptance. However, the Employer has the final decision and also has the support of an informed representative employee group.

I encourage the City to form a broadly based, structured, working committee of the type outlined above but it is not an obligation of this report.

**Article XX, Section 2: Life Insurance**

The Association proposes that each member be provided a life insurance policy in an amount equal to his annual salary at the time of death, plus an equal amount of accidental death or dismemberment coverage. It requires that provisions be applicable as soon as possible after execution of the Agreement. In addition, the firefighter may purchase additional amounts of life insurance through the insurance carrier selected by the City.

The City opposes this on economic grounds considering the other expensive demands that the Union has made. It seeks an Agreement that is not inconsistent with that agreed to by the four other bargaining units on the grounds of fairness and concern about maintaining a trustful bargaining relationship.

**Recommendation: Life Insurance**

Include this proposal in the Agreement. The amount of coverage requested is reasonable and the City can select the carrier. In addition, the employee can choose to increase the amount of his coverage at his expense. The language taken directly from the Union proposal follows:

Each firefighter will be provided a life insurance policy in an amount equal to his base annual salary at the time of death, plus an equal amount for accidental death and dismemberment coverage. Provisions under this section pertaining to Life Insurance shall be applicable as soon as practicable, following the execution of this agreement; in the meantime, provisions under the prior Agreement shall apply. The City will permit Firefighters to purchase additional life insurance coverage through payroll deduction. The rates and availability of this optional coverage shall be as specified by the insurance carrier selected by the City.

**Article XX, New Section: Dental Insurance**

The members of the IAFF, Local 2150 propose the inclusion of a dental insurance plan in the successor Agreement. Three other bargaining units in the City have this proposed plan as well as the non-represented employees of the City.

The Employer states that this is an economic item which increases the cost to the City even though the employee is paying 10% of the premium. The adoption of this benefit means that another benefit must be foregone.

**Recommendation: Dental Insurance**

Include Dental Insurance in the new Agreement. Three other units have this benefit and the proposal is the same as that found in the other three agreements. It is internally comparable and administratively consistent. The language is found on page 123 of the Association proposal which is taken from the AFSCME contract on page 12, 13, and 14.

**Article XXI, Section 4 and 5: Union Business**

The Union proposes to include in the Agreement time off for union officers so that they can carry out the responsibilities of their office. The suggested language allows members to donate vacation if they so choose. All of the time designated as Union Leave would come from the membership. Designated union leave would have no cost to the City. The language is nearly the same as that which the Kettering patrol officers and the command officers have in their agreement.

The City responds that this bargaining unit is requesting more paid leave for union business than any of the other units have in

their contract. It is not called for. The City wants its employees on the job providing service to the citizens of Kettering.

**Recommendation: Union Business**

Include this leave proposal in the successor contract. The leave time comes from vacation time donated by members of the local. The police officer's contract has this benefit. In addition, any leave requires the approval of the Chief of Fire and is subject to the scheduling requirements of the Department. This is not an increase in leave time but rather a shifting of time from vacation to union leave. The proposal requests that members of the bargaining unit contribute 5 hours rather than the 2 hours mandated in the police contract because the firefighter local has only 40 members.

**New Article: Working Out of Rank**

The Association wants the members of this bargaining unit to be compensated when a firefighter is assigned to work as a Captain. This assignment has greater responsibility including that for the crew, the firehouse, and he may be in command of an emergency crew. The City of Kettering administrative policies state that when an hourly employee is temporarily assigned duties at a higher level of responsibility, that employee may be compensated at an appropriate higher rate of pay. (Administrative Policy 101) Furthermore, the FOP and the AFSCME agreements contain language which assures a higher rate of pay for performing the duties of a more responsible job assignment.

The City opposes this proposal by saying that the Firefighters

are already well paid and are therefore expected to assume additional responsibilities as a part of their job assignment.

**Recommendation: Working Out of Rank**

It is normal for employees to be compensated when they assume the duties of a more responsible job assignment. Two of the City's bargaining units have this language: AFSCME and the FOP, police officers. In addition, the majority of comparable firefighter bargaining units include this type of language in their Agreements. Because the City is concerned about the large cost of this proposal, I am suggesting that the rate of pay increase (found on line 2 of page 135) be modified to: . . . paid at the employee's next higher classification for the hours that he performs the job duties of the higher classification for more than four hours in a work day. The rest of the Article remains as the Association proposed in on pages 135-136 in their Brochure.

  
Submitted on November 6, 2003  
by Janet C. Goulet, Ph.D. Arbitrator