

2003 DEC -9 A 10: 25

IN THE MATTER OF FACT-FINDING

BETWEEN

MANSFIELD FIRE FIGHTERS, LOCAL 266 IAFF

AND

THE CITY OF MANSFIELD

BEFORE: E. William Lewis

SERB CASE NO. 03-MED-09-0884

PRINCIPAL ADVOCATE FOR THE UNION:

**MR. William C. Moul, Attorney
THOMPSON-HINE
10 West Broad Street
Columbus, Ohio 43215**

And

PRINCIPAL ADVOCATE FOR THE EMPLOYER

**Mr. Jeff Fogt, Human Resources Director
30 North Diamond Street
Mansfield, Ohio 44902**

I. INTRODUCTION:

This case evolves out of a collective bargaining dispute between the City of Mansfield, herein after known as the employer, and IAFF, Local 266, hereinafter known as the union. The parties have met one time in an attempt to resolve a wage re-opener provision (Article 21, Section 21.1 (A) which expired on December 1, 2003. In accordance with Ohio Revised Code, Section 4117.14, I (E. William Lewis) was appointed as the fact finder in this case. Fact-Finding hearings were held on November 21, and November 25, 2003 with the fact finder commencing each meeting attempting to mediate the dispute. The parties were in mediation approximately four hours with the neutral on the two occasions; 11/21-8:30am to 11:30am and on 11/25-9:00am to 10:00am. The second hearing date was adjourned at 2:00pm after the parties indicated they had nothing additional to submit. The fact finder was asked to write a Fact Finding Report and submit to the parties on or before December 9, 2003.

II. THE HEARINGS:

The fact finding portions of the hearings were convened at 12:15pm on November 21, 2003 and 10:00am on November 25, 2003. The hearings were conducted in conformance with rules promulgated for such proceedings as found in O. R. C. 4117.

A. Attendees:

The following persons were in attendance at the hearings. For the City of Mansfield:

- | | |
|---------------------|----------------------------|
| Mr. Jeff Fogt | Human Resources Director |
| Ms. Sandra Converse | Finance Director (witness) |
| Mr. Ron Kreuter | Safety Director |

Ms. Denise Kudrak	Payroll Director
Mr. Dave Remy	Law Director
Mr. Mike Schwamberger	Asst. Finance Director
for the Union:	
Mr. William C. Moul	Attorney
Mr. Joe Boebel	IAFF- 1 st V.P.
Mr. Dale Clemons	IAFF- 2 nd V.P.
Mr. Andy Heath	IAFF- Pres.
Mr. Matt Shafley	IAFF- Trustee
Mr. Jim Southward	IAFF- Secy.-Treas.

B. Exhibits:

The parties were asked to submit exhibits. No joint exhibits were submitted, however, the fact-finder received a copy of the AGREEMENT with the pre-hearing submittals. The following were entered into the record as separate exhibits For the Union:

Union Exhibit #1	POSITION STATEMENT- Back-up data, including comparables.
Union Exhibit #2	UNION PROPOSALS APPENDIX A
Union Exhibit #3	COMMERCIAL REAL ESTATE DIGEST

- Union Exhibit #4 FOP/City of Mansfield
AGREEMENT- 9/1/00–8/31/03
- Union Exhibit #5 Mansfield Fire Department
Emergency Transport Plan
- Union Exhibit #6 City of Mansfield- Statement of
Actual and estimated Revenues-
Income Tax Holding Fund as of
11/19/2003
- Union Exhibit #7 THE DAILY REPORTER-11/21/03
Bureau of Worker’s Comp. Article-Re:
20% discount
- Union Exhibit #8 9/9/02-Finance Director letter re: inter-
fund transfers
- for the Employer:
- Employer Exhibit #1 Water & Sewer- Health Insurance 1994
-2002, showing excess amounts paid to
Health Insurance Fund
- Employer Exhibit #2 November 14, 2003-Revenue and
Expenditures Analysis-prepared by
Finance Director
- Employer Exhibit #3 Work sheets-from 1991 to 2003&4
Estimates of revenue for General Fund
Police/Fire Special revenue fund;
Income Tax Holding Fund
- Employer Exhibit #4 Title VII, Municipal Corp. Chapter 743-
Utilities-Electric; Gas; Water 743.05
Disposition-Surplus Funds

Employer Exhibit #5	12/31/02 Annual Report Note 5A Fund Deficits-Police and Fire Special Revenue Funds \$139,334
Employer Exhibit #6	Arbitration Decision-re: FOP/City, 4- Layoffs-due to lack of funds-9/18/03
Employer Exhibit #7	November 25, 2003-Revenue & Expenditures analysis correction to Employer Exhibit #2-General Fund & Safety Fund
Employer Exhibit #8	City of Mansfield-list of open Investments October 2003
Employer Exhibit #9	City of Mansfield-Estimated & Actual Year end balances from 1994 through 2003 YTD
Employer Exhibit # 10 A&B	Two Health Care Bonds, equaling \$2,500,000-due 12/1/22

Supplemental evidence submitted to the fact finder by the employer was the requested cost of 1% increase for all city employees, plus a copy of the FOP/City of Mansfield Fact Finder's Report, dated November 26, 2003.

III. CRITERIA:

In compliance with ORC 4117.14 (C)(4)(e) and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this AWARD.

1. Past collectively bargained agreements 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 adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
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 public service or in private employment.

This report is based on facts provided in document and testimony introduced at the Hearing and in keeping with statutory consideration cited above.

IV. ISSUE AT IMPASSE:

The following Article was the only issue at impasse at the time of the Fact Finding Hearing and reads as follows:

ARTICLE 21----WAGES AND FRINGE BENEFITS

Section 21.1. Wages

A. Wage Rates. Employees covered by this agreement shall receive wages in accordance with the provision and wage schedule set forth in Appendix E (attached hereto and made a part hereof). In the interpretation and application of the terms of this Agreement, the regular rate of pay of an employee assigned to a forty-eight (48) hour work week shall be computed by dividing the applicable rate as set forth in the Schedule of Wages in Appendix E by two thousand four hundred ninety-six (2496), and the regular rate of pay of an employee assigned to a forty (40) hour work week shall be computed by dividing the applicable wage in Appendix E by two thousand

eighty (2080). This pay specification is subject to enactment of the wage scales into appropriate Ordinance by City Council. The parties hereby agree to re-open negotiations pursuant to the procedure contained in Section 26.4 herein, for the specific, limited purpose of negotiating wage rates for the period from 12/1/03 through 11/30/05.

B. 2002/2003 Wages. The provisions and wage schedule set forth in Appendix E reflect a wage freeze for the 2002/2003 contract year. In the event that any City bargaining unit, unclassified, or classified employee working under the authority of the Mayor should negotiate, receive or otherwise be awarded a wage increase for that employee's fiscal year beginning after January 1, 2003 (except step increases as provided in each City labor agreement), employees covered by this agreement shall receive the same increase, by percentage, negotiated, received, or otherwise awarded to those City employees, which increase shall be retroactive to 12/1/02, without re-opening this agreement.

V. SUMMARY PARTY POSITION:

Employer	Issue	Union
Inability to grant any increase	Article 21, Section 21.1(A) Wage re-opener-12/1/03 & 12/1/04	12/1/03, plus 4% 12/1/04, plus 5%

VI. DISCUSSION AND DETERMINATION

An overwhelming majority of funding for Fire Fighters and Police comes from three sources; (1)- ½% Income tax, restricted to Safety Forces, (2)-1% General Income tax, of which (E#2) 69.9%-2001 to 77.7%-2004(estimated) has been or will be used by the Safety Forces, and (3)-General Fund. Revenue sources for (1) and (2) are obvious, however, the General Fund sources are varied and come from property taxes, fees, grants, etc., and interest income from all funds balance investments. Per the Finance Director, a significant loss of revenue to the General Fund of approximately \$1, 000,000 has occurred in recent years. This loss, according to Ms. Converse, has ben due to a significant drop in interest rates on the City's investments (E#2).

Evidence and testimony (E#1) from the Finance Director showed that Health Insurance costs, beginning in 2002, were re-allocated to the various funds' expenditures based on the number of employees supported by that particular Fund. This re-allocation of Health Insurance costs was directed by the State Auditor, according to employer testimony. This accounting change increased the Safety Fund's Fringe Benefits expenditures approximately 3.3 million dollars in 2002 over 2001. Bonds in the amount of 2.5 million dollars were issued by Water & Sewer to help offset the Health Insurance costs. Evidence shows (E#s 2 and 7) that General Fund revenue has been decreasing since 2001, exclusive of the 2.5 million dollar bond transfer (2002).

The Income Tax Holding Fund (E#s 3 & 9) contains the overwhelming majority of revenue sources for Safety Personnel. This fund will have gone up approximately one million dollars from 2000 to the 2004 estimated figure. An increase of slightly more than one percent/ year (E# 9). Certainly not keeping up with the increased cost of operating a city.

The union makes a number of points that they believe disprove the employer's claim of inability to pay. First, they question the reliability of the employer exhibits. Exhibits E# 2 & E# 7 of the General Fund and Safety Funds were changed by the employer within a two week period, including actual. The Finance Director testified that she stands by revised E# 7 of General Fund and Safety Fund amounts. Lacking formal objection or proof to the contrary E# 7 was admitted as an Employer Exhibit. However, it was testified to by the Finance Director that 2004 estimates were preliminary and not necessarily "bare bones".

Much to do about inter-fund transfers was made by the parties at the hearing. However, no convincing evidence was submitted to show that other funds were sufficiently over funded to bring forward a specific claim by the union that the City was "money- hording".

Comparables were submitted by the union, and uncontested by the employer, showing the Mansfield City Fire Fighters as trailing other similar municipalities. An employer has a duty to appropriately compensate its employees and not to expect them to bear the "lions share" of hard times. The Fire Fighters bargaining unit has not had a wage increase since 12/1/01 and as both parties agree, is entitled to an increase.

In analyzing E #7, Finance Director corrected General Fund and Safety Fund revenue and expenditures, a modest increase could be generated for this bargaining unit. The back-up data regarding Transfers Out expenditures of the Safety Fund shows an increase of \$528,000 (General Fund 5%) for 2003 over 2002 and 2001. According to the Finance Director's testimony, up to 5% of the fund is allowed to be transferred, optional to Council. A continuation of the 2001, 2002 practice of a \$50,000 transfer would allow this fund to show a positive fund balance of \$184,046. Although a modest increase might be possible for this bargaining unit, the actual costs to the City, with at least one other definitive "me too" provision would at this time, be prohibitive.

The fact finder cannot be responsible for what employers and unions agree to in the bargaining processes, however, he must recognize what is! What is, in this existing situation, is that a modest increase of 3%, effective 12/1/03 to the Fire Fighters would cost the City a minimum (with AFSCME-me too) of \$600,000. In the fact finder's opinion, without significantly increasing revenue or major expenditure reductions, the City is without resources to fund a Fire Fighters increase.

RECOMMENDATION: Modify Article 21.1(A) to read as follows:

A. Wage Rates. Employees covered by this agreement shall receive wages in accordance with the provision and wage schedule set forth in Appendix E (attached hereto and made a part hereof). In the interpretation and application of the terms of this agreement, the regular rate of pay of an employee assigned to a forty-eight (48) hour work week shall be computed by dividing the applicable rate as set forth in the Schedule of Wages in Appendix E two thousand four hundred ninety-six (2496), and the regular rate of pay of an employee assigned to a forty (40) hour work week shall be computed by dividing the applicable wage in Appendix E by two thousand eighty (2080). This pay specification is subject to enactment of these wage scales into appropriate Ordinance by City Council. **The parties may re-open negotiations pursuant to the procedure contained in Section 26.4, herein, for the specific, limited purpose of negotiating wage rates on 5/1/04 and/or 12/1/04 for the period from 12/1/03 through 11/30/05.**

VII. CERTIFICATION:

- This will affirm the foregoing report, consisting of 10 pages, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.
- Any matter presented before the Fact Finder and not specifically addressed in this Determination and Award were given consideration but are not recommended for inclusion in the Agreement.
- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendation, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendation complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of **Columbus**, in the County of **Franklin**, in the State of **Ohio**, this date of **December 8, 2003**.

E. William Lewis, Fact Finder