

I. Introduction and Background.

SERB appointed the undersigned, Mitchell B. Goldberg, as the Fact Finder for this public employment dispute on November 28, 2003. The parties entered into an extension agreement for the fact-finding period and agreed to extend the date for the fact-finding hearing until April 29, 2004. The agreement further provides that any increases in compensation recommended by the Fact Finder or awarded by the Conciliator will be made retroactive to December 20, 2003. The parties agreed that this Fact Finding Report is to be issued on May 19, 2004.

The parties submitted position statements in accordance with SERB rules and guidelines. The bargaining unit consists of approximately twenty-two firefighters. The unit excludes employees with the rank of Lieutenant and above, confidential employees, part-time employees, seasonal and casual employees, and civilian employees. The functions of the public employer and employees were described.

For purposes of this Report, all unchanged or unopened articles, and all articles agreed upon, or tentatively agreed upon between the parties are adopted, included, and incorporated into this Report. The parties engaged in negotiating sessions beginning in November 2003. The unresolved issues are as follows: (1) Article 17, Section 17.1 – Work Period and Overtime; (2) Article 17, Section 17.2 – Work Period and Overtime; (3) Article 17, Section 17.5 (New) – Overtime Rate; (4) Article 19, Sections 19.1 and 19.2 – Wages; (5) Article 22, Sections 22.1, 22.2, 22.3 and 22.4 – Special Events; (6) Article 24,

Sections 24.1 and 24.4 – Longevity; (7) Article 28, Section 28.1 – Holidays; and (8) Article 29, Section 29.8 – Vacation. This matter proceeded to hearing on April 29, 2004 in Blue Ash, Ohio. The following recommendations take into consideration all of the criteria set forth in SERB Rule 4117-9-05 (J).

II. Economic Evidence.

All of the issues in dispute are financial or economic in nature. The Union's evidence shows that the City's financial condition is strong. The general fund's assets to liabilities ratio at the end of the fiscal year was 2.28 (\$2.28 for each \$1.00 in liabilities). The unreserved fund balance as a percentage of expenditures at the end of 2002 was 18.93%, well over what is considered a prudent level of 5%. Earnings tax collections exceeded budget estimates. The 2003 earnings tax collections should total \$20,419,351, or 3.33% over the 2003 final budget. This reflects the general economic upturn. The tax growth in the next five years is expected to expand at a very healthy rate.

The City has recently built a new state of the art fire station on the north side at an original projected cost of \$5 million. Cost overruns have pushed the price past \$6 million, but the added payments are made out of existing reserve accounts. The 2004 proposed budget calls for the addition of two full-time firefighter/paramedics, with two more in 2005 and two more in 2006. Both the north and south stations will be staffed 24 hours per day. Services are provided for a daytime population of over 75,000, making Blue Ash the second largest employment center in the area, and the second major economic center in the region, behind only the city of Cincinnati.

The Union believes that the most reasonable comparables in the area to Blue Ash are the other large economic centers in the county. These include the cities of Cincinnati, St. Bernard, Norwood and Springdale. These entities (with the exception of St. Bernard in population) have large populations, large areas, and are funded with earnings taxes. The City Manager has expressed the desire of the City to keep the wages of the safety forces “in the upper scale of Hamilton County municipalities.” This is reflected in the recent 4% increases for the police and fire lieutenants.

The City looks at the numbers somewhat differently and attributes the financial health of the City to effective conservative management, which has permitted the City to survive and prosper through recent poor economic times. For example, the cash fund balances at the end of 2000 and 2001 approached \$8 million, but declined to approximately \$3.5 million at the end of 2002. This reflected level tax revenues during the period with a substantial decline in 2002, combined with a dramatic increase in tax refunds paid. The projection for 2004 remains at the \$21 million level. Refunds are expected to return to the normal range of \$979,000. On the expenditure side, Blue Ash, like other cities and companies, has experienced high medical insurance premium increases. Nevertheless, the City is not asking the bargaining unit to share any of these increased burdens. None of the evidence, however, reflects an inability to pay the proposed wage and benefit increases, and the City is making no such claim.

The City believes that for economic comparisons, it should be compared to other similar suburban fire departments and not the Cincinnati or Norwood. These include nearby communities such as Sharonville, Evendale, Fairfield, West Chester, Forest Park, Indian Hill/Madiera, Sycamore Township, Loveland-Symmes, and Mason.

III. Unresolved Issues.

A. Work Period (Reduction of Work Week).

Before March of 2003 the firefighters were working 56-hour workweeks that included guaranteed overtime. The City in March 2003 unilaterally lowered the workweek to 53 hours and reduced the overtime guarantee. Staffing was not reduced notwithstanding that the City increased the staff over the last few years and increased the contingent of part-time firefighters. The Union proposes a further reduction in the workweek to a 48-hour week similar to Cincinnati, Norwood, St. Bernard and Sycamore Township. The Union further proposes no reduction in the base pay and maintains that the change will cause only a minimal financial impact upon the City. The City has shown that they will not be forced to replace the reduced hours with more staff, although the Union recognizes that the overtime pay rate will increase as the result of the increased hourly rate caused by the reduced hours and the same base pay. The reduction will, however, more closely align the unit's work with other traditional fire work schedules, and will provide for work hours more like other city employees who work less hours but receive the same benefits as those paid to the firefighters.

The City opposes the Union's position for a plethora of reasons. The fixing of the workweek erodes the City's management rights to direct and staff its work force. The fixed schedule may prevent the City from dealing with unforeseen consequences affecting public safety. The lieutenants originally proposed the same change, but backed off and accepted the 53-hour schedule with additional guaranteed overtime.

The reduction to a 48- hour week increases the effective hourly rate from \$19.81 to \$21.87, an increase of 10%. The reduction also creates five hours of artificial overtime increasing the City's cost by \$243,214. The City will have to cover this time by paying for overtime or by paying for other staffing. While the costs did not substantially decrease from the first reduction from 56 to 53, the further reduction to 48 will place increased staffing burdens upon the City. There are already staffing increases in the budget projections without accounting for a further reduced workweek.

The trend among fire departments nationally and locally is to move away from the 48-hour schedule. Most of the other communities operate in the range of 53-56 hour schedules. The unit has never worked the 48-hour schedule. A change would have unknown consequences on the City's budget, and upon the operation of the department and the provision of fire protection services to the public.

Recommendation.

The reduction of the 53-hour schedule to 48 is too radical of a change to impose upon the parties at this time. The economic costs to the City and the operational results

from the change are too uncertain. Any such change and the ramifications from such a change should take place from further negotiations between the parties. However, the Union was persuasive in demonstrating the need for further time off on a paid basis to bring compensation levels in line with some of the other comparable departments. The present provision of one-half Kelly days as time off presents particular personal scheduling problems for the members. Accordingly, Section 17.1 shall be amended as follows to retain the present 53-hour workweek, but the members shall receive seven paid full Kelly days per year, which shall be selected in advance. There shall be no more than one Kelly day per employment cycle. This, in effect, provides for a substantial pay increase because the members are receiving more time off, but with pay. This economic recommendation impacts the recommendations on the remaining economic issues.

Section 17.1 (The first paragraph shall remain unchanged and the following shall be added).

The current work schedule is as follows and is subject to the provisions set forth herein:

- (a) Bargaining unit members currently work fifty-three (53) hours per week, on a schedule of 24 hours of duty followed by 48 hours off duty. The current shift established by the City commences at 0700 and continues through 0700 the following day.
- (b) Bargaining unit members shall receive seven (7) paid twenty-four (24) hour days off from work per year, or 168 hours of annual paid time off. (Kelly Days). Said Kelly Days shall be taken at the member's regular rate of pay in the year in which it is earned and shall not carry

forward. Scheduling of Kelly Days shall be done by seniority subject to departmental needs. Requests for a Kelly day shall be submitted to the Fire Chief for consideration no later than January 15th of the calendar year. During the period of May 15 through May 31 of each calendar year, members may submit requests to modify the dates of their chosen Kelly Days. The City shall determine the administration and scheduling of Kelly Days based upon operational needs. No more than two members shall be off on Kelly days at the same time.

B. Overtime Rate of Pay.

The Union proposes changing the overtime pay rate from time and one-half over 53 hours to time and one-half over 40 hours. This is similar to the other departments in the region. The City's cost will not be materially affected because it has been consistently reducing its overtime costs by employing more staff, including part-time firefighters.

The City objects to this change for obvious reasons. The firefighters will continue to work substantial overtime regardless of the recent increase in staff and the hiring of part-timers. The cost increase from paying time and one-half over 40 will be substantial and unreasonable.

This proposal is not accepted based upon the other economic recommendations contained herein.

Recommendation. No change in Section 17.2.

C. Maximum Employees Permitted on Leave.

Currently, the City permits as a matter of policy a maximum of three employees to be off at one time. This includes all employees, part time employees and lieutenants. The Union proposes a new article providing for a maximum of three “bargaining unit employees” to be on leave at one time. The Union acknowledges that there is substantial leave time but it believes that the members are unreasonably restricted in the use of such time because the decision at any particular time is left to management discretion. An issue arose relative to the use of compensatory time that led to the filing of a grievance. The issue was whether management’s refusal to permit the leave was based upon the fact that the operation of the department was unduly disrupted. The grievance was settled by the implementation of a temporary policy permitting three IAFF employees including lieutenants to be off at the same time. The City opposes any contract language that would lessen its management right to staff the department as it determines is necessary. The Union’s proposal has the effect of increasing costs because the restriction to three bargaining unit members means that at any one time three unit members can be off at the same time as absent lieutenants and part timers. This will cause a raise in overtime pay to provide proper staffing.

Recommendation. No change.

D. Wages.

The Union is proposing an alternative package. It is willing to accept a 4% across the board increase for each year of a two-year contract if it does not receive the above workweek reduction to 48 hours. If there is no reduction, it proposes an increase of 8% for year one. The City is willing to offer across the board increases of 3.5% each year with the maintenance of the 53-hour workweek.

The Union argues that it effectively received an 8.5% wage reduction with the elimination of automatic overtime with the workweek reduction from 56 hours to 53 hours. The members were receiving \$54, 583 in base pay and \$4,636 in automatic overtime. The reduction in overtime brought them back to 2001 levels. Moreover, the reduction in pay has resulted in Blue Ash firefighters being less competitive with the top departments in the area such as Cincinnati, Norwood and St. Bernard.

The City believes its offer is reasonable considering its stagnate budget since 1999 and the present state of the economy. The maintenance and service workers received 3.5% for 2004 and 3.5% for 2005. The FOP and the Fire Lieutenants received 4% each year, but the Lieutenants were behind other departments and were given additional wages and benefits to catch up. The City's proposal is consistent with the past bargaining history between the parties and well ahead of the CPI. It is further in line with increases awarded to firefighters in Colerain Township, Fairfield and Springdale. It must be further kept in mind that the City continues to pay for 100% of health insurance, a

benefit not enjoyed by other departments, and one that becomes increasingly more expensive.

Recommendation. I recommend an across the board increase of 3% for each year of the two year contract in light of the recommendations for the other economic issues, including the extra paid Kelly days off.

E. Special Events.

The Union proposes increasing special event pay from 1 1/2 the 40- hour rate to two times the 40- hour rate. The City opposes the increase. The police and the lieutenants, however, received the increased rate.

Recommendation. The language of Section 22.4 shall remain the same except the rate of one and one-half times the regular rate shall be changed to “two times the employee’s then current regularly hourly rate of pay (calculated at the equivalent forty hour work week rate).”

F. Longevity.

The Union proposes increasing longevity pay from \$3.00 per month to \$4.00/month. This is the rate for all other City employees. The City opposes the increase in costs, which it computes to be \$17, 388.

Recommendation. The Union's proposal is accepted and the language in Article 24 shall be changed to provide for the increase to \$4.00 per month.

G. Holidays.

The Union proposes that all hours worked during recognized holidays be paid at time and one-half the hourly rate of pay. Currently, three of the ten holidays are treated this way. Good Friday counts as one-half holiday or twelve hours. The lieutenants received this benefit (minus eight hours for Good Friday). The City opposes this increase in cost.

Recommendation. I recommend no change in this language (Article 28) in light of the other economic recommendations.

G. Vacation.

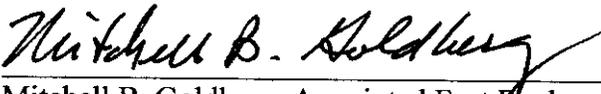
The Union proposes that its members receive credit for prior public safety service with other public employers for determination of vacation accrual time. This is the practice with non-bargaining unit employees in Blue Ash. Lieutenants receive six years of prior credit and police receive twelve years of prior credit. The City wants to maintain the current language.

Recommendation. Section 29.8 shall be added to Article 29 as follows:

For bargaining unit employees hired by the City on or after December 1, 1989, up to six (6) years of full-time employment in the public safety field of any other Ohio municipality, township, county, or the State of Ohio shall be counted

for the purpose of determining the number of hours of
vacation for which a bargaining unit employee is
eligible.

Date of Award: May 19, 2004



Mitchell B. Goldberg, Appointed Fact Finder