

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

2004 APR -5 A 10: 21

IN THE MATTER OF:)	
)	CASE NO.:03-MED-09-0945
Fact Finding between)	
Berea Firefighters Assn., IAFF Local 1836)	
(Full time Fire Fighters))	FINDINGS AND
)	RECOMMENDATIONS
and)	April 2, 2004
)	GREGORY P. SZUTER
The City of Berea)	FACT FINDER
)	

List of Appearances:

FOR The Berea Firefighters Assn., IAFF Local 1836
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FOR The City of Berea
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INTRODUCTION

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on March 12 2004, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D). The bargaining unit herein consists of a unit of all full time fire fighters and excluding part time fire fighters employed by the City of Berea, Ohio (herein also "Berea" or "the City") and represented by Local 1836 International Association of Firefighters (herein "the Union" or "Fire Fighters"). The positions represented by the unit are three captains, three lieutenants, thirteen (13) five fire fighter EMT/Paramedics, two fire fighter EMTs.

HEARING

The hearing, it was held on March 25, 2004 at Berea, Ohio. Both parties submitted position statements with proposals and exhibits. Both attended the hearing and elaborated upon their positions regarding the issues remaining at impasse through their representatives as listed in the preceding page. Received in evidence as Joint Exhibit 1 at the hearing was the "Agreement Between The City of Berea, Ohio and Local 1836 International Association of Firefighters," (eff. January 1, 2001 through December 31, 2003) herein the "Agreement" or "CBA." The Union submitted a rebuttal position statement. By agreement of the parties in conformity with OAC 4117-9-05(L), the date of issuance of the Fact Finder's Report has been extended to not later than April 16, 2004.

OPEN ISSUES FROM NEGOTIATION

The parties position statements identified issues open for fact finding based on their negotiations as follows in sequence of the Collective Bargaining Agreement:

THREE YEAR CONTRACT AND RETROACTIVITY

UNION POSITION: The Union proposes a three year contract for calendar years 2004, 2005 and 2006 and any settlement retroactive to January 1, 2004.

CITY POSITION: The City agrees (See letter of November 26, 2003).

INCREASE IN BASE PAY OVER THREE YEAR CONTRACT

Article 13 Rate of Pay
Sections 13.01, 13.02, 13.3

UNION POSITION: The Union proposes 4% increase in each year of a 3 year contract.

CITY POSITION: The City proposes 0% increase for the first year, 3.5% for the second year and 4.5% for the third year of the contract.

UNION COUNTER: The Union opposes 0% in first year of a 3 year contract otherwise no change of position except that the two captains receive 2% in the first year because they are retiring before the second year.

EMT AND EMT PARAMEDIC SUPPLEMENTS

Article 13 Rate of Pay
Section 13.05
Article 14 Professional Wage Supplement
Section 14.01

CITY POSITION: The City proposes converting the current 2% EMT supplement to \$800 but \$1000 for officers and converting the current 5% EMT-Paramedic supplement to \$2000 except that Senior Firefighter would be \$2,500 and officers \$3000.

UNION POSITION: The Union opposes this change and states it was not an open issue and not discussed.

INCREASE LONGEVITY PAY
Article 15 Longevity Compensation
Section 15.01

UNION POSITION: The Union proposes eliminating the 3 year set back for the longevity pay that pays for example the 20 year employee 17 years and proposes to increase it by \$100.

CITY POSITION: The City opposes additional supplemental pay.

UNIFORM ALLOWANCE
Article 16 Uniform Allowance
Section 16.02

CITY POSITION: The City proposes \$200 increase for the first year, making the total uniform allowance \$1000.00.

UNION POSITION: The Union proposes \$200 increase for the first year, making the total uniform allowance \$1000.00.

PREMIUM SHARING
Article 18 Insurance
Section 18.02

CITY POSITION: The City proposes \$50 per pay premium contribution by all unit members.

UNION POSITION: The Union opposes the City's change and states it was not proposed in this form before.

PRESCRIPTION DRUG CO-PAYS
Article 18 Insurance
Section 18.05

CITY POSITION: The City proposes prescription co-pay of \$5 for generic drugs and \$10 brand name drugs.

UNION POSITION: The Union opposes the City's change and states it was not proposed in this form before.

INCREASE SICK LEAVE BUY BACK
Article 21 Sick Leave
Section 21.08

UNION POSITION: The Union proposes to increase the buyout of sick leave upon retirement by 7 days to a total of 70.

CITY POSITION: The City opposes increases in costs of paid time off benefits.

DEFINITION OF MAXIMUM VACATION TIME OFF

Article 22 Vacation Leave

Section 22.01

UNION POSITION: The Union proposes accelerating the vacation time off schedule so the threshold on each tier is at the 5-10-15-20 year break rather than 5-11-17-21 years.

CITY POSITION: The City opposes the Union's proposal and proposes maintaining the same schedule but stating the maximum vacation time off in terms of tours of duty (ie 2 weeks or 5 tours max.; 3 weeks or 7 tours max.; 4 weeks or 9 tours max.; 5 weeks or 11 tours max.; and 6 weeks or 13 tours max.)

UNION COUNTER: The Union opposes the City's change and states it was not an open issue and not discussed.

DEFER HOLIDAY PAY

Article 23 Holiday Leave

Section 23.01

CITY POSITION: The City proposes to defer the payment of holidays not taken before December to the end of the following January.

UNION POSITION: The Union agrees with the City's position.

FLOATING HOLIDAY

Article 23 Holiday Leave

Section 23.01

UNION POSITION: The Union proposes an additional (ie 11th) holiday to be used at the member's discretion subject to notice only.

CITY POSITION: The City opposes additional paid time off for a holiday and opposes any discretionary time off as causing time off subsidy, overtime, and safety (manning) and other administrative burdens.

HOLIDAY BUY OUT FOR DROP PROGRAM

Article 23 Holiday Leave

Section 23.05

UNION POSITION: The Union proposes incorporating in the agreement the interim amendment allowing pre-retirement buy out of holiday leave before participating in the Police and Fire Pension DROP Program.

CITY POSITION: The City agrees.

INCREASE PERSONAL LEAVE CARRY OVER

Article 24 Personal Leave

Section 24.03

UNION POSITION: The Union proposes to increase personal leave carry over from 6 to 9 days.

CITY POSITION: The City opposes increases in costs of paid time off benefits.

DELETION OF PREMIUM PAY

Article 39 Premium Pay

Section 29.01

CITY POSITION: The City proposes to delete this which was agreed in lieu of a "signing bonus" for the last contract and is no longer applicable.

UNION POSITION: The Union opposes this as a give back. The Union opposes the City's change and states it was not an open issue and not discussed.

MEDIATION

The parties agreed to an offer of mediation and proceeded with the assistance of the Fact Finder to address the Open Issues identified. Through mediation the parties were able to achieve agreement on several issues that are identified below as the "Mediated Package" contingent on the ultimate resolution of two issues viewed as contingent necessities for the rest of the package. The result is that the issues remaining for consideration by the Fact Finder are:

Issue No. 1 Mediated Package

Issue No. 2 Floating Holiday

Issue No. 3 Premium Pay

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

1. Past collective bargaining 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 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;
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.

FACT FINDER'S FINDINGS

ISSUE No. 1 MEDIATED PACKAGE

THREE YEAR CONTRACT AND RETROACTIVITY:

A three year contract for calendar years 2004, 2005 and 2006 and any settlement retroactive to January 1, 2004 per the letter of November 26, 2003 except as noted otherwise.

INCREASE IN BASE PAY :

(Article 13 Rates of Pay, Sections 13.01, 13.02, 13.03). 0.0% increase for the first year; 3.5% for the second year and 4.0% for the third year of the contract.

EMT AND EMT PARAMEDIC SUPPLEMENTS:

(Article 13 Rate of Pay, Section 13.05). Convert the current 2% EMT supplement to 3% No change to EMT-Paramedic (Article 14 Professional Wage Supplement Section 14.01).

PRESCRIPTION DRUG CO-PAYS :

(Article 18 Insurance, Section 18.05). Prescription co-pay changed to \$5 for generic drugs and \$10 brand name drugs.

DEFER HOLIDAY PAY:

(Article 23 Holiday Leave, Section 23.01). Defer the payment of holidays not taken before December to the end of the following January.

HOLIDAY BUY OUT FOR DROP PROGRAM:

(Article 23 Holiday Leave, Section 23.05). Incorporate in the agreement the interim amendment allowing pre-retirement buy out of holiday leave before participating in the Police and Fire Pension DROP Program.

RECEDED ISSUES. As part of the Mediated Package there will be NO change to the following:

- Article 15 Longevity Compensation, Section 15.01
- Article 16 Uniform Allowance, Section 16.02
- Article 18 Insurance, Section 18.02
- Article 21 Sick Leave, Section 21.08
- Article 22 Vacation Leave, Section 22.01
- Article 24 Personal Leave, Section 24.03

FINDINGS: This was the package agreed in mediation subject to resolution of the remaining issues.

ISSUE No. 2 FLOATING HOLIDAY

Article 23 Holiday Leave
Section 23.01

UNION POSITION: The Union proposes an additional (ie 11th) holiday to be used at the member's discretion and otherwise subject to the contract as to discretionary holidays.

CITY POSITION: The City opposes additional paid time off for a holiday and opposes any discretionary time off as causing time off subsidy, overtime, and safety (manning) and other administrative burdens.

FINDINGS: The Union argued that accepting a wage freeze on the base wage in the first year is so far out of the pattern of the comparables, even with the EMT subsidy, that some other portion of the Agreement must compensate for such a drastic provision. It sees an additional floating holiday as the best means for compensating adjustment. It argues the annual hours of the department is already high with 10 holidays. The 11th day would be paid to the member whether he worked it or had a holiday. A floating holiday gives discretion to the membership which is particularly valuable. Working 24 hour tours and staffing the department 365 days annually through the legal holidays and weekends is particularly difficult on the members and families. The additional freedom is especially needed. The overtime that the City cites as its objection, while it happens, it is not as common as the City alleges and other burdens are no different than the existing three floating holidays. Moreover, staffing which is set by the City is the true cause of overtime. If there were larger staff the overtime and manning issues would not happen.

The City opposes additional time off as a cost in itself and when it is discretionary with the employees, overtime becomes unavoidable in every case thus increasing the cost associated with the time off. The City's studies of the holiday schedule indicated overtime is caused virtually 100% of the time that a flexible holiday is taken. The City cannot plan for a discretionary day off ..

Several alternatives were explored including 72 hour advance request but that would not materially affect the overtime. A scheduled additional holiday instead of floating was considered but that did address the Union's concerns over constrictions of scheduling caused by the membership being available 365 days 24-7. A "flexible" holiday that would be taken only if overtime was not caused was determined to create too many contingent variables that would lead to labor management conflict over implementation.

To achieve both freedom of discretion for the members and the avoidance of new cost, overtime and manning crisis for the City, the City proposed converting one of the existing holidays to a floating holiday. Currently there are 10 with seven scheduled by management and three taken at member discretion. The change would be six scheduled and four discretionary.

The Union responded that the wage freeze is not compensated by the City's change. However, the Union offered contingent acceptance provided a method would be found to compensate for the approximate \$510 average base value of its proposed additional holiday. The possibility of adding \$200 to the uniform allowance since both parties proposed to that earlier. When the Mediated Package was negotiated both receded from that concept to pay for other costs. However, uniform allowance is not pensionable.

ISSUE No. 3 AMENDMENT TO PREMIUM PAY

Article 39 Premium Pay

Section 39.01

CITY POSITION: The City proposed to delete this which was agreed in lieu of a "signing bonus" for the last contract and no longer applicable..

UNION POSITION: The Union opposes this as a give back. The Union opposes the City's change and states it was not an open issue and not discussed.

FINDINGS: The City explained that the Premium Pay article was added as a signing bonus for the last agreement and should be omitted because its purpose has lapsed. The last agreement had been signed and administered through expiration. There is no reason to have an incentive to sign an expired agreement incapable of being signed. However, it offered to recede its original position and add \$200.00 to the Premium Pay formula if the payment could be deferred beyond the first year of the Agreement. The City proposed that the Premium Pay be accrued January 1 of the year and paid in the following January. The Union countered that in a three year agreement there are only two Januaries remaining. The Parties agreed that the premium pay for the first year would be the rate times 24 hours plus \$200.00 accrued retroactively to January 1, 2004, and paid January, 2005. The premium pay for the second and third years would be unchanged.

FACT FINDER'S RECOMMENDATIONS

RECOMMENDATION: Issue No. 1. The contingencies to the Mediated Package having been satisfied by the resolution of the other open issues, the Fact Finder finds the agreement on the Mediated Package to be just and equitable and in accord with the Criteria and adopts the parties's agreement as the Recommendation. Therefore, the following are recommended changes to the Agreement (additions shown by underscore and deletions by overstrike) and no other portions of the agreement are recommended to be changed.

- I. A three year contract for calendar years 2004, 2005 and 2006 and any settlement retroactive to January 1, 2004 per the letter of November 26, 2003 except as noted otherwise.

II. Article XIII Rates of Pay

- 13.01 ~~Effective with the first pay period beginning December 25, 2000, which is paid January 11, 2001, January 1, 2004,~~ all employees shall be paid biweekly according to the wage schedule set out in Exhibit A attached hereto and made a part hereof as if fully rewritten herein. [Exhibit A is former Exhibit C eff. December 23, 2002, (ie +0.000% increase).]
- 13.02 ~~Effective with the first pay period beginning December 24, 2001, which is paid January 10, 2002, January 1, 2005,~~ all employees shall be paid biweekly according to the wage schedule set out in Exhibit B attached hereto and made a part hereof as if fully rewritten herein. [Exhibit B is 1.035% of Exhibit A above (ie +3½ % increase).]
- 13.03 ~~Effective with the first pay period beginning December 23, 2002, which is paid January 9, 2003, January 1, 2006,~~ all employees shall be paid biweekly according to the wage schedule set out of Exhibit C attached hereto and made a part hereof as if fully rewritten herein. [Exhibit C is 1.040% of Exhibit B above (ie +4 % increase).]
- 13.05 Each employee, after satisfactory completion of initial certification as an Emergency Medical Technician, shall receive an EMT Wage Supplement in the amount of ~~two percent (2%)~~ three percent (3%) of the basic wage of such employee, in addition to the rates of pay set out in paragraphs 13.01, 13.02 and 13.03 above.

ARTICLE XVIII INSURANCE

- 18.05 The prescription drug program shall provide for a per prescription deductible of ~~two dollars (\$2)~~ five dollars (\$5) for generic prescriptions and ~~four dollars (\$4)~~ ten dollars (\$10) for name brand prescriptions. A mail-order program providing a three months' supply will be made available with the same deductibles.

ARTICLE XXIII HOLIDAY LEAVE

- 23.03 All holiday leave not taken prior to December 1 of each year, nor scheduled to be taken prior to the end of such year, shall be compensated in cash money not later than the end of January of the following year at the preceding December rate pay.
- 23.05 Any employee of the Division eligible to enter the Ohio Police and Fireman Pension Fund authorized DROP program, pursuant to all rules and regulations of the Ohio Police and Fireman Pension Find, may apply to the City to receive in cash money, compensation for accrued Holiday Leave prior to their application to enter the DROP Program. The employee shall make written application on a form prescribed by the City to the Chief at least 30 days prior to the anticipated date of the application to the DROP Program. The City will make payment for such accrued Holiday Leave in accordance with this section within 45 days of the receipt of the written application. In the years of active employment following the employee's application to receive compensation pursuant to this section, and in the year of separation from employment with the City, all payments made for unused Holiday Leave shall be made in accordance with Sections 23.03 and 23.04 respectively.

RECOMMENDATION : Issue No. 2.: This was agreed contingent on compensation in the form of a pensionable economic change and that having been achieved, the Fact Finder finds the conversion of a scheduled holiday to a discretionary holiday to be just and equitable and in accord with the Criteria and adopts the parties' agreement as the Recommendation. Therefore the following are recommended changes to the Agreement (additions shown by underscore and deletions by overstrike).

ARTICLE XXIII HOLIDAY LEAVE

23.01 All employees shall receive the following city approved and recognized holidays:

New Years Day	Fourth of July
M.L.King Day	Labor Day
President's Day	Veteran's Day
Good Friday	Thanksgiving
Memorial Day	Christmas Day

The employee and the City recognize that the fire station must be manned twenty-four (24) hours a day for three hundred sixty-five (365) days a year regardless of the City approved and recognized holidays set forth.

The employees and the City hereby agree that the employees shall receive holiday leave, with regular compensation, in the amount of ~~seven (7)~~ six (6), twenty-four (24) hour tours of duty, which shall be scheduled on the days chosen by the employee; provided, however, that the employee shall have obtained prior approval of the Chief, and that no two (2) members of the same shift shall schedule holiday leave on the same day.

Further agreed between the employee and the City is the employee shall receive with regular compensation, an additional ~~three (3)~~ four (4), twenty-four (24) hour tours of duty, to be scheduled on days chosen by the employee, with prior notification. The ~~three (3)~~ four (4) above holidays shall be taken in increments of not less than one fourth (1/4) of a twenty-four (24) hour tour of duty.

RECOMMENDATION: Issue No. 3: The Fact Finder finds the agreement on increasing the Premium Pay formula by \$200.00, subject to the deferral for the first contact year to January, 2005, to be just and equitable and in accord with the Criteria and adopts the parties' agreement as the Recommendation. Therefore the following are recommended changes to the Agreement (additions shown by underscore and deletions by overstrike).

ARTICLE XXXIX PREMIUM PAY

39.01 The parties agree that employees must work on designated holidays and perform Fire Department functions in order that the fire station be manned twenty-four hours a day for three hundred sixty five days a year. All employees shall therefore be entitled to twenty-four (24) hours of pay plus \$200.00 (two hundred dollars), at their straight time rate of pay, earned January 1 of each year. Such payment shall be made in the first pay date in December, except that the payment earned January 1, 2004 shall be paid not later than the end of January of the following year at the preceding December rate pay. Payments shall be in one (1) draft, separate and distinct from the regular biweekly salary payment.



Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
April 2, 2004