

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUN 14 A 9 32

BEFORE THE

STATE EMPLOYMENT RELATIONS BOARD

CASE NO. 03-MED-01-1044

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1536

:
:

UNION

:

AND

:

FACT FINDER'S REPORT

CITY OF WICKLIFFE

:

:

EMPLOYER

:

I. Bernard Trombetta,
Fact Finder
P.O. Box 391403
Solon, Ohio 44139
(440) 349-2110

I. DATE AND PLACE OF HEARING

This hearing was held on May 13, 2004 at the Wickliffe City Hall.

The undersigned was mutually selected by the parties to serve as the neutral fact-finder herein.

II. PARTIES

The employees, hereinafter referred to as the "Union", are full-time firefighters. They are represented by the International Association of Fire Fighters, Local 1536.

The Employer, hereinafter referred to as the "City", is a charter municipality located in Lake County.

III. APPEARANCES

The following appeared on behalf of the respective parties as noted:

For the Union

Kenneth Adams
Vice President
Northern Ohio Fire
Fighters
17703 Grovewood Ave.
Cleveland, OH 44119

James R. Mrosko, Pres.
Nicholas Mann, V.P.
John Michalak, Member

For the City

Thomas Grabarczyk
Labor Relations Mgt, Inc.
6800 W. Central Ave., L-2
Toledo, OH 43617

Martin J. Germ, Fin. Director
Daniel Helsel, Chief

IV. INTRODUCTION

The unit consists of 19 members, 12 full-time fire fighters, 3 Officers-in-Charge and 4 lieutenants. Part-time fire fighters are excluded from the unit.

The City is primarily residential and has a population of approximately 13,500. It is the home, however, of 2 rather large industrial concerns and a number of retail, office, professional and light industrial companies.

The fire fighters have been organized for 30 or more years. The current contract expired on December 31, 2003.

The City claims that for the past 3 years it has engaged in deficit spending, diverting monies budgeted for capital programs to cover the projected deficit in the general fund.

Among the reasons responsible for the deficit are soaring health care costs which have risen by over 58% between 2000 and 2003. Additional increases are expected in the second half of 2004 when the City switches from a self-funded plan to a fully insured plan. The City claimed it could no longer fund the plan because of the rising costs and the relatively few number of covered employees (107).

The economic projections for tax collections are flat and have been flat for the past few years. Some of the major employers are contemplating either lay-offs or moving from the City, thereby stressing an already difficult tax situation.

V. ISSUES PRESENTED

ISSUE NO. 1
UNION RIGHTS & ACTIVITIES
ARTICLE 10, SECTION 5

A City Proposal

City: The City has proposed to amend Section 5 by limiting the number of Union members to one employee per shift who could attend union sponsored seminars and conventions.

Union: The Union countered by arguing that the City failed to establish a need for change in the current contract language.

Discussion: The City failed to present any evidence of abuse by the Union or that the efficiency of the department was lowered under the language of the current contract. Neither party could recall when this clause first appeared in the collective bargaining agreement between the parties.

Recommendation: The Fact Finder declines to recommend a change to the language of Section 5. This

section, as presently constituted, should be contained in the new agreement between the parties.

ISSUE NO. 2
SICK LEAVE
ARTICLE 11

A City Proposal

City: The City proposed to require an employee to provide a physician's certificate after 2 undocumented 1-day or more absences occurring in a single calendar year.

Union: The Union opposed any changes in the current contract language.

Discussion: It appears that the gist of the City proposal is to make it mandatory to submit a physician's letter after 2 single day absences occurring within any calendar year. The Sick Leave article as presently constituted is both lengthy and encompassing. Section 4 gives the City the discretion of requiring a physician's statement upon the return to work from an extended period absence, but fails to define "extended period". However, Section 6 appears to adequately protect the City against the abuse of this right by giving the City the discretionary power to require satisfactory proof of illness. The City may to demand the employee submit to examination by a physician of the City's choice. Though

this section appears aimed at extended absences, but does not specifically limit itself thereto. Section 6 also makes it mandatory for an employee to submit a "Physician's 'sick leave slip' to be eligible for paid sick leave, unless waived by the Employer".

Section 7 empowers the City to deny sick leave pay, if it finds that there was no satisfactory evidence of illness sufficient to justify the absence. Requiring an employee furnish a physician's statement would force the employee to seek medical treatment where none may be necessary or desirable. It would unnecessarily increase an employee's medical expenses.

It is hard to envision how additional language to the bargaining agreement could place the City in any more advantageous position on this issue. In addition, the City did not prove that the fire fighters have abused this right.

Recommendation: The Fact-Finder recommends against any changes to the current language of Section 11.

ISSUE NO. 3
HOLIDAYS
ARTICLE 14, SECTIONS 3 AND 7

Union Proposal As To Section 3

City Proposal As To Section 7

Union Position: The Union sought an increase in the number of personal days from 2 to 4 (See Section 3) and argued that increasing the number of personal days would reduce the workweek to 51 hours and put the City slightly below Eastlake, Lyndhurst and Mentor in workweek hours. (See Union Exhibit No. 4). The Union also argued that increasing the number of personal days would not create an overtime factor, whereas increasing the number of holidays would.

City Position: The City was opposed to increasing the number of personal days and, in addition, proposed adding the words "compensatory time" to Section 7 thereby prohibiting more than 2 suppression personnel from taking off on the same day by using holidays, vacation days, compensatory time, or a combination of these three contractually scheduled days off.

Discussion: The City proposals appear intended to counter balance the Union's demand for increasing the number of personal days as contained in this Article and an increase in the carry-over of compensatory time from 48 hours to 480 (See Art. 18, Sec. 5). A review of the number of personal days given in surrounding communities discloses that the City is at the top of the list in granting 2 (3 to employees with more than 20 years

seniority) personal days. (Art. 14, Section 3 and Union Ex. No. 3)

The method in scheduling comp time-off was bargained in one of the many previous contracts between the parties. Suffice to say, the City could not establish that the current language imposed any hardship upon it or has been abused by the membership.

A comparison of the number of holidays days that the City affords its fire fighters against neighboring communities discloses that only Euclid grants more (Union Exhibit No. 3). When holidays and personal days are added together the City is actually ranked rather high. It is noted, that the contract contains 11 named holidays. (See also, City Exhibit No. 7).

Recommendation: The Fact-Finder recommends against changing the language of this section. The Fact Finder also recommends against increasing the number of personal days.

ISSUE NO. 4
WORKWEEK
ARTICLE 18, SECTION 5

A Union Proposal

Union Position: The Union has proposed to increase to 480 hours, from the present 48 hours the amount of carry-over compensatory time and argued that

the City is at the bottom when comparing the number of compensatory time hours with neighboring communities. (See Union Exhibit No. 3).

City Position: The City claimed that the amount of compensatory time that may be booked by an individual was contractually capped at 48 hours and increasing the comp time would expose the City to potential cost increases of between \$18,200 and \$182,400 depending on when the time is paid (the time is paid at the prevailing hourly rate in effect when payment is requested).

Discussion: Compensatory time is a curious phenomena of public employment. The issue is quite common among fire fighters. The upside for the employer is not to presently pay for services rendered, which can act to save money for the employer in the short run. The downside is that when payment is requested for compensatory time, it is paid at the hourly rate then in effect. Since wages have not been going decreasing, the employers end up paying at a higher rate. Thus, a short run benefit may turn into a long run loss. Neither side requested abolishing "compensatory time" and a review of neighboring communities discloses that the City is at the very bottom. (See Union Exhibit No. 3). The City has received the benefit of the employees services and should

make the carry-over hours comparable with other surrounding communities, even if the payment is made at a rate higher than that when actually worked.

Capping off the hours at 48 does not seem to have had any more of a basis than permitting an employee to bank 480 hours as is done in Euclid and Eastlake.

Recommendation: The Fact-Finder recommends that compensatory time be capped at 144 hours instead of 48.

ISSUE NO. 5
PERSONNEL REDUCTION
ARTICLE 21, SECTION 5 (NEW PROPOSAL)

A Union Proposal

Union Position: The Union is seeking to add a new section to this article patterned after Sec. 124.323 of the Revised Code. The Union submitted that in accordance with that section, all part-time fire fighters be laid off before full-time fire fighters and argued that full time fire fighters have more training than part-timers. (120 hours vs. 240 hours of training).

City Position: The City claimed that the above mentioned section is inapplicable to charter

cities and wanted to retain part-time fire fighters if it chose to layoff full time members.

Discussion: A review of the cited revised code section appears to mandate lay-offs within the primary appointment categories beginning first with seasonal, then part-time permanent and lastly full-time permanent employees. It then orders that within the primary appointment categories, the employees be laid-off in the following order: a) provisional probationary employees, b) then provisional employees who have completed their probationary period, c) then employees appointed from a certified list, but who have not completed their probationary period and lastly, d) appointed employees who have completed their probationary period. (Sec. 124.323 Ohio Rev. Code).

In 5 out of 10 neighboring communities, part-time fire fighters are laid-off before full time members. (See Union Exhibit No. 13).

While the City may be correct (neither party either briefed the issue of the applicability of that section of the Code) in arguing that Sec. 124.323 is not applicable to charter cities, the present agreement is silent as to whether part-time fire

fighters are to be laid-off prior to full-time fire fighters (part-time members are excluded from the unit). Laying-off part-time fire fighters before full-timers creates a more stable and loyal workforce.

Neither party introduced any evidence to support the claim that full-time fire fighters are better fire fighters than part-time fire fighters or that there is any fall-off in the level of protection afforded the community. The legislature set a pattern by enacting the cited statute. The Fact Finder believes it to be beneficial to the community and the morale of the department that the jobs of full-time employees be protected.

Recommendation: The Fact Finder recommends that language to the effect that part-time fire fighters be laid off prior to the lay-off of full time fire fighters.

ISSUE NO. 6
UNIFORM ALLOWANCES
ARTICLE 22
A UNION PROPOSAL

Union Position: The Union proposed an increase of \$25 per year in each year of the contract.

City Position: The City was opposed to any changes in the present allowance.

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Discussion: Uniform allowances were originally intended to offset the cost of uniform purchases, which were required to be worn, by safety forces while on duty. Over the years, this benefit has had little correlation to actual costs. Sometimes the allowances were increased instead of wages. Employers did not have to pay pension or retirement benefits on the money and the recipients believed it to be non-taxable. Sometime ago the IRS determined that such allowances were, in fact, taxable and had to be reflected on an employee's W-2.

While it is true that firefighters incur expenses each year in replacing uniforms or uniform components. No evidence of cost or expected length of service of the different components was produced to support an increase in this allowance. Turn-out gear is provided by the City (See 22.03 CBA) at no cost to the employee.

The present allowance is paid as a \$425 voucher requiring uniform or gear receipts and a \$425 check for which receipts are not required prior to receipt by the employee. A review of neighboring communities discloses that Wickliffe is at about the mid-point in such allowances. (See City Exhibit No. 9). While

clothing costs, along with other expenses of daily living, are undoubtedly increasing, the Fact-Finder can see no compelling reason to increase the allowance without evidence that it is inadequate to pay for mandated uniform purchases.

Recommendation: The Fact Finder recommends against increasing the allowance at this time.

ISSUE NO. 7
HEALTH INSURANCE
ARTICLE 23

A City Proposal

City Position: The City has demanded changes to both the plan design and employee premium share

Union Position: The Union sought to retain the present plan with the same premiums.

Discussion: The City, along with virtually every other employer in the state, if not the country, is faced with increasing health care costs. Increasing health care costs are no secret. Almost daily newspaper articles relate the spiraling costs. Television has featured numerous segments regarding them. Many retired public employees have had their benefits eliminated or scaled back. Private industry retirees have been hit even harder.

Medical insurance has been provided as a part of the employment package for a very long time, starting in an age in which medical costs were stable and medical services under-utilized. Whatever its history, the benefit is a part of the over-all employment economic costs. All benefits and costs must be considered and weighed when determining a fair and equitable arrangement between employer and employee. Health insurance costs and benefits cannot be considered in a vacuum, divorced from the other costs of running a public entity or private business.

At the present time, the City self-funds medical costs and all city employees are covered under the same plan. Due to increasing costs, however, the City has switched to a fully insured plan.

During negotiations the City had narrowed its choices down to two major carriers, Cigna and Medical Mutual of Ohio. By hearing time, Cigna had been eliminated and the choice facing the employees is either a PPO or HMO through Medical Mutual and the premiums and co-pays which the employees are facing. The City produced no evidence as to whether any other units had agreed on either the type of plan or its

costs. On the other hand, the Union did not suggest an alternative plan or a workable division of costs.

Clearly, the City cannot be expected to furnish the same plan with the same co-pays and premiums as under the newly expired collective bargaining agreement.

The employees apparently turned down a switch to Kaiser Permanente, which could have furnished the same type of coverage, with fewer and less co-pays at a cost of over \$300 per month per employee less than the current costs.

The City is still faced with a dilemma of having a 3-year labor contract and a 1-year medical insurance contract. Costs are likely to continue to rise. The key is accurately guessing the amount of the increase so that the employer is not faced with an inability to provide medical insurance 1 or 2 years from now.

Neither side suggested a medical insurance re-opener clause and the Fact Finder is not inclined to recommend such a clause.

Currently medical insurance, including dental coverage is costing the City, each month per employee, between \$410.44 per month for single coverage and \$1,239.26 for family coverage.

Those costs under the Medical Mutual (Health Ohio) plan, including dental and optical care, are expected to increase to \$435.08 for single coverage and \$1,294.42 for family coverage for the HMO and \$431.41 for single and \$1,283.62 for family coverage under the PPO, depending upon the plan chosen by the employee. The City expects to incur an additional \$326,356 per year to pay for medical benefits for its employees. Fire fighters account for only 18% of those increased costs, but the City wants to provide the same plan for all employees, fire fighters included. (See City Exhibit No. 16).

Under the Medical Mutual plan, whether the HMO or PPO is chosen, the employee would be responsible for the following co-pays: prescriptions \$12 generic /\$24 proprietary (an increase from the current \$5/\$10); office visit of \$15 (currently \$0); specialist visit of \$25 (currently \$0), Urgent Care \$35 (currently \$0) and ER visit \$75 (currently \$0), all of which are substantially higher than those now in effect. The City wants each employee to pay for 12% of the total medical benefits cost. (See City Exhibit No. 14).

It is now costing the City \$1,239.26 per month, per employee. Under the HMO plan those monthly

expenses are expected to increase to \$1,294.42 per month or an increase of \$55.16, and to \$1,283.62 per month, or an increase of \$44.33, under the PPO. The employees would be responsible for the payment of appreciably higher co-pays. So both the City and the employees are faced with increased costs by way of premiums and co-pays. (See City Exhibit No. 17).

Under the City's demand of 12%, the employee would pay \$155.33 under the HMO and \$154.03 for the PPO (currently paying \$25 per month for single and \$50 per month for family coverage), plus substantially higher co-pays. The City's would pay between \$100 and \$110 per month less than it is currently paying. At one during the negotiations, the City offered to pass along the increases only on a 70/30 split, but that proposal appears to have been withdrawn in favor of sharing the entire premium cost. Since the medical benefits have been contractually furnished its employees, the Fact Finder is not inclined to recommend either a plan or a cost to the City of less than what is now being furnished. The increasing costs are the pivotal issue and not the benefit.

During the hearing the parties agreed to form a joint hospitalization committee.

Recommendation: It is the recommendation of the Fact-Finder that the City provide its employees with medical coverage through Medical Mutual, either a HMO or PPO plan, with services the equivalent as those now being furnished and as contained in City Exhibit No. 14. It is further recommended that each subscribing fire fighter pay 6% of the costs thereof. It is also recommended that the parties immediately implement the formation of a joint hospitalization committee.

ISSUE NO. 8
EDUCATIONAL PAY
ARTICLE 25, SECTION 4

A Union Proposal

Union Position: The Union submitted that the following language be removed from Art. 25, Sec. 4: "and actively assigned to the Fire Prevention Bureau" claiming that it wanted the appointment of an inspector to carry-out fire inspections.

City Position: The City was opposed to striking the language.

Discussion: The clause under consideration requires the payment of \$750 additional

compensation per year to an individual "actively assigned" to the Fire Prevention Bureau. Sometime prior to the expiration of the current agreement, the City reduced the number of fire inspectors from 2 to 1, and required on-duty fire fighters to make inspections not made by the regular inspector. The Union claimed it wanted the appointment of an additional inspector because regular inspections were being delayed. The Union expressed apprehension over entering a burning building that had not been currently inspected.

Unfortunately, no evidence regarding the time period between inspections, or the increased dangers in entering an un-inspected building in an emergency were produced. The City has not been cited for its failure to inspect and apparently has not suffered a lowering in its insurance rating. It was not clear whether the Union sought additional compensation for those fire fighters making the inspections or whether the addition of another inspector, thereby relieving the on-duty men from the inspection detail, was the real purpose behind this issue.

The City argued that the additional compensation as contained in this section was to offset the lack of

overtime opportunities available to a full-time inspector.

There was no evidence that the inspections by the fire fighters were not satisfactory or they were not able to perform their other duties. Further, the section of the contract under which this argument was made, does not appear to cover staffing standards of the Fire Prevention Bureau.

In addition the Union apparently desired that Art. 25.05 be modified to permit up to 50 hours of paid time for attendance at various training classes if attending on non-duty hours. No arguments or evidence were presented on the change from 25 hours to 50 hours.

Recommendation: The Fact Finder recommends against requiring the addition of a second inspector for the Fire Prevention Bureau. The Fact Finder also declines to recommend an increase in the number of hours permitted to attend training seminars.

No changes are recommended to either 25.04 or 25.05.

ISSUE NO. 9
SALARY SCHEDULE
ARTICLE 27

A Union Proposal

Union Position: The Union is seeking a wage increase of 4% each year of a new 3-year contract, retroactive to January 1, 2004 (down from 5% per year).

City Position: The City countered by offering 1%, 1½% and 1½% increases in each of the 3 years of the contract (See City's position statement).

Discussion: The City defended its proposal by arguing that for the past 3 years it has engaged in deficit spending and transferring funds from the capital account to the general expense account.

In support of its offer, the City cited Painesville with a 2% increase, Mentor-on-the-Lake with a 2½% increase, Lyndhurst with a 3, 3½ and 3½% increase (perhaps buoyed by the expected income from Legacy Village) and Eastlake with no increase. The media is rife with news about Eastlake and the Fact Finder does not find it to be comparable to Wickliffe.

The City claimed that each 1% raise in general payroll increases its costs by \$100,000. Exhibit 28 discloses that a 1% wage increase for the fire fighters is an increase of \$13,251 in the City budget. (See City Exhibit No. 28). Fire fighters wages and benefits amount to less than 20% of the City's total. Those wages, however, must be considered as a part of all municipal employees.

In comparing the City's fire fighters wage structure against Cuyahoga and Lake County departments, Wickliffe fire fighters fare well. (See City Exhibit No. 29 and Union Exhibit No. 4).

Lastly, the City maintained it was facing a \$1,900,000 deficit for fiscal 2004 and had already begun investigating revenue enhancements, such as user fees and, possibly a raise in taxes.

The Consumer Price Index has increased 1.3%, 2.4% and 1.6% in the last three years (See City Exhibit No. 27). City tax revenues appear flat and some industries in the City have scheduled lay-offs which could mean less income.

Against those criteria, one must measure the fire fighters increased living costs in general, and increased medical costs. While the City is faced with

belt tightening, it has not established an inability to pay a reasonable wage increase to its fire fighters. A wage re-opener clause was not requested by either party.

Recommendation: The Fact Finder recommends a wage increase of 2½% in each year of the 3-year contract.

ISSUE NO. 10
RESIDENCY
ARTICLE 42

A Union Proposal

Discussion: During the course of the hearing, the parties agreed upon a modification of this article by changing the current 15 miles to 20 miles.

Recommendation: It is recommended and the parties have agreed to substitute "20 statute miles" in the stead of the current "15 statute miles" in the new contract.

ISSUE NO. 11
MINIMUM STAFFING
A NEW ARTICLE

A Union Proposal

Union Position: The Union claimed that there were always 5 full-time and 1 part-time fire fighters on duty, but that number has been reduced to

4 and 2 and sometimes 4 and 1, leaving the department unable to respond to more than 1 squad emergency call at a time.

City Position: The City argued that there is nothing in the current contract regarding minimum staffing and that the management clause contract grants it the responsibility and right to determine the adequacy of the work force.

Discussion: The Union produced no evidence of any inherent dangers in maintaining a work force 6, or for that matter 5 fire fighters on-duty per shift, or, for that matter, that being able to respond to only one squad emergency at a time posed a danger to the men (whether the matter posed an issue to the residents or persons working within the City is of no consequence herein). There was evidence that the City participated in regional assistance programs and all calls were covered.

There is no history of bargaining between the parties on this issue. The management rights clause appears to permit the City to determine the adequacy of shift personnel.

Recommendation: The Fact Finder recommends against the inclusion of a "Minimum Staffing" clause.

Additional Recommendation: The parties agree and the Fact Finder recommends that the new contract be for a 3-year period, effective January 1, 2004 and expiring December 31, 2006.

Respectfully submitted


I. Bernard Trombetta
Fact Finder

SERVICE

A copy of the foregoing Fact Finder's Report was served upon Tom Grabarczyk, Labor Relations Management, Inc., 6800 W. Central Ave., L-2, Toledo, OH 43617 and Kenneth Adams, V.P., Northern Ohio Fire Fighters, 17703 Grovewood Ave., Cleveland, OH 44119 on this 10th day of June 2004 by ordinary U.S. Mail.


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