

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 16, 2004

STATE EMPLOYMENT
RELATIONS BOARD

2004 APR 19 A 9:21

In the Matter of:

The City of Springdale, Ohio

03-MED-10-1216

and

Springdale Professional Fire
Fighters, Local 4027

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Paul R. Berninger, Attorney
Daniel Shroyer, Fire Chief
Derrick Parham, Assistant City
Administrator

For the Union:

Lenny French, President
Mark S. Pelfrey, Secretary
Anthony Stanley, II, Vice
President
William Quinn, District Vice
President
Joe Parks, Member

INTRODUCTION

The undersigned was selected by the parties, and was duly appointed by SERB by letter dated November 28, 2003, to serve as Fact-Finder in the matter of the City of Springdale (hereinafter referred to as "Employer") and Springdale Professional Fire Fighters, Local 4027 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until April 16, 2004. Hearing was held at Springdale, Ohio on March 25, 2004. The Union was represented by Lenny French, President, and the City was represented by Paul R. Berninger, Attorney.

FACTUAL BACKGROUND

The City of Springdale is a City located in Hamilton County, Ohio with a residential population of approximately 10,000. Due to the City's large business base, the daytime population swells to approximately 50,000. The City operates a single fire station which covers a geographic radius of five square miles. The City employs approximately 114 full time employees in its fire, police, public works, administration and tax departments. The City also employs a number of part-time employees, including a number of part-time firefighter/paramedics. Among the full time employees, there are two separate bargaining units. Those include, the fire unit involved here, and a police bargaining unit. The remaining City employees are unorganized.

The fire fighter bargaining unit consists of 21 employees, and includes fire fighters, firefighter/paramedics and captains. The Collective Bargaining Agreement between the parties expired on December 31, 2003. The parties have waived any statutory claims concerning the award being effective in the following fiscal year. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.

The unresolved issues are as follows:

Article 8 - Discipline

Article 10 - Hours of Work and Overtime

Article 11 - Wages

Article 15 - Scheduled Time Off

Article 16 - Compensatory Time

Article 17 - Call In Pay

Article 21 - Vacation

Article 30 - Uniform Allowance

Article 36 - Insurance

New Article - Fair Share

New Article - Promotion

ISSUES

ARTICLE 8 - DISCIPLINE

Union Position: The Union proposes several changes in the disciplinary provisions currently in the Agreement. The Union initially proposes that all disciplinary matters be appealed to either the Civil Service Commission or to a neutral arbitrator. Current language restricts appeal of discipline beyond a written reprimand to the Civil Service Commission. The Commission is appointed by the City and is answerable to the City. It thus has an inherent bias. Further, it is far too expensive and time consuming to appeal decisions to Common Pleas Court. A review of comparable bargaining units demonstrates that the majority utilize arbitration for review of all grievance matters, including discipline.

The Union further proposes language that would require that any pre-disciplinary hearings be conducted no more than 14 days after the investigative conference required by Section 8.4. This would provide the employee with an opportunity to be heard in a timely fashion. The Union further proposes an extension of the time for the notice which the employee is given prior to the pre-disciplinary hearing from 72 to 144 hours in order to provide sufficient preparation time.

Employer Position: The Employer argues that the City prefers that discipline continue to be heard by the Civil Service Commission. The residents of the Commission are appointed by the

City Council, and are ultimately answerable to the citizens of Springdale. They are members of the community who take responsibility for their decisions. An impartial arbitrator does not have this accountability, and as recent repetitive losses of disciplinary actions by the City of Cincinnati demonstrate, an arbitrator may not uphold community standards in his decision. Additionally, there have not been any incidents of fire fighter discipline heard by the Civil Service Commission, and thus there is no basis for arguing that it is biased or unfair.

As to the Union's proposals to limit the time for a pre-disciplinary conference to 14 calendar days following the investigative conference, this proposal would make it far too difficult for the Employer to complete a thorough and fair investigation. The Employer simply needs to take as much time as necessary to complete a full and fair investigation. Further, this pre-disciplinary conference is intended only to advise the employee of the charges prior to discipline. The Union's proposal seeks to make this conference into an additional disciplinary hearing. At the same time, the Union proposes an extension of time from 72 to 144 hours for the notice to the employee prior to a disciplinary hearing in order to allow for additional preparation time. Thus the Union seeks to have it both ways. That is, to shorten the Employer's time available for an investigation, while giving the employee more time to mount a defense.

Discussion: The comparable data provided by at hearing

demonstrates that the reality of collective bargaining in 2004 is that the vast majority of collectively bargained grievance procedures provide for final and binding arbitration by a mutually selected impartial arbitrator for all grievances arising under the terms of the Agreement, including both disciplinary and non disciplinary matters. The continued appeal to a Civil Service Commission and thereafter to Common Pleas Court is on its way to becoming a relic. The purpose of final and binding arbitration is to provide an inexpensive and expedient means to resolve grievances with finality. This purpose is circumvented by a Civil Service/court appeal procedure which is both time consuming and expensive.

The Employer contends that a Civil Service Commission which is appointed by the city council is a fair and impartial body which is answerable to the citizens of the community, which is not the case with an arbitrator. The Employer points to the City of Cincinnati's recent well publicized losses of several disciplinary arbitrations as evidence that the lack of accountability by neutral arbitrators leads to results which are objectionable by local community standards.

The Fact Finder cannot accept this argument. The mere fact that the City of Cincinnati was unsuccessful in several recent arbitrations concerning the terminations of its employees, simply does not indicate that the arbitrators deciding those cases were failing to uphold community standards, or were indeed in any other way wrong. Without having the ability to review the

decisions and the evidence before the arbitrators, it is impossible to reach a conclusion that those arbitrators did not decide those cases correctly under the terms of the Collective Bargaining Agreement involved.

Further, although the Employer argues that the Civil Service Commission is unbiased and accountable, in fact the Commission is ultimately accountable only to the city council which appoints its members. If the members of city council are displeased with its decisions or the decisions of certain members, they can easily refuse to reappoint. The Union, however, exerts no control over the composition of the Commission. In the case of arbitration, both parties retain the ability both to initially select an arbitrator. Both parties additionally have the ability to refuse to again select an arbitrator with whose decision they are unhappy. This places the parties on an equal footing in the process which is not the case when disciplinary matters must be appealed to a civil service commission.

The Union's second proposal relating to discipline requires that the Employer hold a pre-disciplinary hearing which precedes formal charges within 14 days of its investigative conference with the employee and increases the notification time given to the employee prior to this hearing from 72 to 144 hours. Current contractual language gives the Employer unlimited time before holding an pre-disciplinary hearing. As the Employer points out, this hearing is an opportunity for the parties to review the matter and to give the employee an opportunity to be heard prior

to the meting out of discipline. It is reasonable that there should be some finite time after the initial investigative conference so that the disciplinary process proceeds with some dispatch. It should be noted that the Employer's time for investigation is not cut off by this requirement. Since there is no time limitation by which the Employer must issue discipline after the conference, the Employer may continue to investigate after the conclusion of the pre-disciplinary conference.

The Union's proposed extension of the notice time provided to the employee prior to the conference from 72 to 144 hours is in effect a lengthening of the notice time from 3 to 6 days. This would seem to be a logical change in that the 72 hour time frame may make preparation with a union representative difficult in instances wherein the bulk of that time falls over the course of a weekend.

Recommendation:

Change Section 8.5 to read as follows:

A pre-disciplinary hearing shall be conducted before formal charges are prepared and a penalty is imposed. A pre-disciplinary hearing shall be conducted no more than 14 calendar days following the investigative conference. ... When an employee is charged with misconduct which may result in suspension, reduction or dismissal, he shall be given at least one hundred forty-four (144) hours prior to any hearing, a written notice of the potential charges and a general description of the evidence supporting the charges. ...

Change Section 8.9 to read as follows:

Appeals of any suspension, reduction in pay or position, and/or dismissal may be made to the Springdale Civil Service Commission in accordance with Civil Service rules in lieu of the grievance procedure, if desired.

ARTICLE 10 - HOURS OF WORK AND OVERTIME

Union Position: The Union proposes a significant change to the scheduling provisions of the Agreement. The bargaining unit currently works a 24 on 48 hour off work schedule. The employees generally work an average of 54 hours per week. Based upon an hourly rate, the employees have a low hourly wage comparative to comparable jurisdictions. The Union argues, however, that at this point in time it is more important to its members to decrease the hours of work rather than to increase wages. Further, if the work week were reduced, the bargaining unit would reach parity with the wages of the police unit with a modest 5% wage increase. Additionally, all comparable fire departments except one work less than the 54 weekly hours worked by this bargaining unit. In light of these factors, the Union proposes that the work week be decreased to 48 hours per week.

The Union proposes a change in Section 10.3 to delete the Chief's required approval of Kelly days. At the time this language was instituted, Kelly days were not approved on weekends and certain other days of the year. This is no longer the case, and the language is simply unnecessary. It further proposes an addition to Section 10.5 to permit the moving of a Kelly day to another unassigned Kelly day within a 28 day work cycle.

The Union further proposes that the definition of overtime be changed to include all hours outside of the employee's regularly scheduled shift. This language is similar to the

language of the Police Collective Bargaining Agreement and would bring the two into parity.

The Union finally proposes that language be added to prohibit the assignment of an employee who will be working a 40 hour work week to their regularly scheduled 24 hour shift on the Sunday before or Saturday after that 40 hour week. The purpose of this proposal is to prevent an occurrence wherein an employee in essence works an 88 hour work week if a week long training session occurs during a week on which he is scheduled on the Sunday before and Saturday after the week long training.

Employer Position: The Employer argues that the Union is in essence asking for more money and less work. The Union's proposal for a 48 hour work week would reduce employee hours by 312 per year. This would necessitate additional overtime at a high cost to the City. The Union's proposal is in essence a proposal to compel payment of additional overtime for the same hours that are currently paid at a straight time rate. Additionally, the current work schedule is not burdensome. There are a number of hours in any 24 hour schedule taken up with meals, sleep and other downtime. Due to the nature of Springdale, the peak period of activity for the fire service is during daytime hours, and most firefighters are able to get at least 6 hours of sleep. The scheduling of work is done with an effort to not schedule work other than emergency runs between 11:00 p.m. and 8:00 a.m. so that employees can sleep 6-8 hours per night. Actual work hours in a typical week are in reality

approximately 36 hours. Further, a review of comparable departments indicates that very few work a 48 hour work week. Those which do are larger departments that have the ability to cover the additional Kelly days necessitated by this schedule. A decrease in hours is simply not warranted.

The Employer agrees that in the past it was necessary to limit Kelly days to Monday through Friday. As the number of employees increased, it became unnecessary to continue to prohibit Kelly days to Saturday and Sunday. In each 28 day cycle, there are 10 Kelly days which must be scheduled. Although the Employer does not currently need to limit weekend Kelly days, it desires to retain the ability to limit Kelly days to certain days in order to have the ability to deal with scheduling requirements which may arise in the future.

The Employer argues similarly that the Union's proposal that all work outside of the employee's regularly scheduled shift be paid as overtime, again presents a high cost item for the Employer. The Employer would be required to schedule large amounts of additional overtime under the Union's work schedule proposal, and this would only compound the additional expense.

The Employer finally argues that the Union's proposal to prohibit scheduling on Sunday or Saturday on a 40 hour week schedule, would result in additional paid time off since the 40 hour schedule occurs only when an employee is scheduled for a training week. Because this is an occasional occurrence, there is no rational basis to require additional paid time off.

Discussion: The Union, as noted above, urges the change to a 48 hour work week primarily because its members desire to work fewer hours in order to spend more time with their families and in other personal pursuits. The change would also result in a de facto wage increase since more overtime would be available. As the Employer points out, however, the Union's proposal to reduce the work week from 54 to 48 hours would greatly increase the required overtime for the bargaining unit as well as the overtime expense for the Employer. Although theoretically the change to a 48 hour work week would reduce the number of hours of work, in reality, unless the Employer should opt to hire more full time employees, the number of hours of required overtime necessitated by the decreased work week and increased number of Kelly days, would likely result in employees working more rather than fewer hours. At the same time, the expense to the Employer would be dramatically increased since many more hours would be paid at overtime rates.

The reality of the situation is that the Union's proposal would result in greatly increased overtime thus resulting in higher pay, but less time off. This would in large part defeat the Union's stated goal of achieving a shorter work week. Although the Union anticipates that more full time employees would be hired to decrease the amount of overtime, thus eventually accomplishing the goal of a shorter work, there is no requirement in the proposal that the Employer hire additional full time employees. There is further no indication that the

Employer intends to do so. Under these circumstances, the Union's proposal would simply fail to meet its stated objective while increasing expenses to the Employer.

The Union's proposal to eliminate the Chief's discretion to designate Kelly days available in a 28 day cycle would remove the Chief's authority to limit the availability of certain days as Kelly days as deemed necessary to the efficient operation of the fire service. Both parties noted that Kelly days are currently readily available, and no employee has been denied a requested Kelly day. Under such circumstances, it does not seem reasonable to take away the Chief's discretion to limit the days available should it become necessary to do so due to currently unforeseen circumstances.

The Employer did not address the Union's proposal regarding Section 10.5 which would permit the moving of a Kelly day to an unassigned day during the 28 day cycle with the Chief's approval in any detail. Since the Agreement already permits the trading of Kelly days, it does not seem unreasonable to similarly allow an employee to re-schedule a Kelly day to a different available Kelly day. This has the same effect as a traded Kelly day.

The Union's proposal for a redefinition of overtime to permit overtime for all hours worked outside of the employee's regularly scheduled shift goes hand in hand with the proposal to base the work week on a 48 hour schedule. This proposal, together with the 48 hour work week proposal would greatly increase the payment of overtime. This would further exacerbate

the increased costs of overtime necessitated by the change in the work week by calculating overtime based upon the hours assigned to a specific shift rather than on a monthly hours worked basis.

The Union's final proposal in this Article involves time off on the Sunday before and Saturday after an assignment for a 40 hour training week. The evidence presented at hearing was that this occurred on a single occasion and resulted in a long 88 hour work week for one employee. This single incident, which from the testimony presented resulted in an inconvenience more than a hardship, does not seem sufficient as a basis for prohibiting its reoccurrence.

Recommendation: Change Section 10.5 to read as follows:

Kelly days may, with the Chief's approval, be traded by members of the same unit or moved to other unassigned days within the same 28 day work cycle.

Balance of the Article: Current Language.

ARTICLE 11 - WAGES

Union Position: The Union proposes an increase in the amount of 5% on the annual pay in each year of a three year contract. This together with a reduction in hours would result in an approximate pay increase of 15% which would result in parity in pay with the Employer's police officers and comparable fire departments. The employees are currently paid at an hourly rate well below that of the police officers who are considered comparable by the Department of Labor and below other comparable fire departments. A 1/2% payroll tax increase ballot initiative was recently successful, and the Employer therefore can afford

the increase requested. The increase should be retroactive to the expiration date of the Agreement.

Employer Position: The economic conditions of the Employer dictate a modest pay increase in the amount of 3% in each year of the three years of the Agreement. The Employer did pass a modest payroll tax increase. As a result of this increase, the Employer will be able to meet its expenses for the first time in several years. The increased revenue will begin to be received in the fourth quarter of this year. However, due to a decline in the number of jobs within the City, revenues from the earnings tax have declined in the past two years. The increase, thus will in part make up for lost revenues and will not be as great as would have otherwise been anticipated. Further, some of the increased tax revenues are already earmarked for capital improvements which have been postponed. These include a variety of projects including street repair, new police cruisers, improvements to the fire station and others. Additionally the increased funds will permit the filling of vacant positions in the police and fire departments. Finally, non-organized employees of the Employer have received a 3% wage increase for the current year. Police employees received a 4% increase pursuant to the terms of their collective bargaining agreement. The Employer further argues that any increase should not be retroactive.

Discussion: There is no question but that while the Employer is not by any means so flush that money is no object, the passage of a payroll tax increase has given the Employer the ability to

catch up on improvements which have been delayed and puts it in the position to afford a modest wage increase for its employees. Not surprisingly, the issue regarding wages is at its essence not whether the Employer has the dollars to pay the increase requested, but rather how the available dollars will be allocated overall.

Although the Union seeks absolute parity with the Employer's police employees, this is simply unrealistic at this time. While the police hourly rate is higher than that of fire employees, fire employees work far more overtime and are compensated at time and one-half far more often than police employees, thus increasing their annual pay. Further, the work week operates differently, making parity more difficult to achieve. Police employees do not get paid for sleep periods, and do not work a 24 hour shift. Thus, while the two jobs have similarities, they also include substantial differences. Finally, since the goal of absolute parity in hourly rate between the two could only be met through a double digit percentage pay increase, it is simply not practical based upon the Employer's economic circumstances.

While the Union and the Employer have chosen somewhat different comparable jurisdictions, in comparison with comparable fire departments, although lower than some, the figures demonstrate that this bargaining unit is within 80 cents per hour or less of the wage rate of three other comparable jurisdictions for both the fire fighter and firefighter/paramedic classifications and is, overall comparably paid. The bargaining

unit falls roughly in the middle of the entire group of comparable jurisdictions presented by both parties. While two of the comparable jurisdictions presented by the Union do in fact pay substantially more than the Employer, those two are substantially larger cities with substantially larger fire departments. The increase of 3% offered by the Employer would place this bargaining unit below the middle of the comparable jurisdictions. An increase of 5% in each year of the Collective Bargaining Agreement would result in this bargaining unit remaining comparable to surrounding fire departments, and would be within the Employer's ability to pay.

With regard to the issue of retroactivity, the negotiations here were commenced in a timely fashion, but for reasons not fully clear to the Fact-Finder have been unduly slow in their progress to this juncture. The Fact-Finder can discern no basis upon which to deprive the employees of the wage increase for a period of four months.

Recommendation: Wage increases in the amount of 5% in each year of a three year agreement, retroactive to the expiration of the Collective Bargaining Agreement on December 31, 2003.

ARTICLE 15 - SCHEDULED TIME OFF

Union Position: The Union proposes a change in the provisions of Section 15.5 to remove the ability of the Chief to refuse requests for time off which are submitted less than 144 hours in advance unless the time off will cause overtime or in

the event of a demonstrated need to refuse the time off. The Union additionally proposes a change in Section 15.6 language from "may" to "shall" in a provision permitting two bargaining unit members to be scheduled off, thus removing the discretion of the Chief to limit time off so long as the number does not exceed two. The Union argues that these are mere language changes calculated to ensure that employees can take their earned time off.

Employer Position: The Employer argues that the change in language from "may" to "shall" is more than a mere language change, but removes the Chief's discretion in the scheduling of time off. The proposal as to Section 15.5 would eliminate the 144 hour notice provision and place the burden on the Chief to demonstrate a need to deny the time off. The Chief is obligated to ensure that the fire service is sufficiently staffed, and can not be limited in this way. Employees are not being denied time off, but through this proposal are attempting to have more control over when they take the time off which is simply beyond what is reasonably necessary.

Discussion: The testimony presented demonstrated that the Fire Chief has never denied time off except in circumstances where the time off would create the necessity of additional overtime or in the rare instance wherein an event of some sort would require additional staffing. While it would be desirable for employees to have additional discretion with regard to scheduling their time off, this desire must be balanced against

the Employer's need to provide sufficient staffing while controlling overtime costs. Since there is no evidence that time off has been unreasonably denied or denied in such a way that employees cannot schedule their earned time off, there does not appear to be any justification for removing the Chief's discretion to control the scheduling of time off.

Recommendation: Current Language.

ARTICLE 16 - COMPENSATORY TIME

Union Position: The Union proposes an increase in available accrued compensatory time from 68 to 72 hours. It argues that the 68 hour figure was initially bargained since it is the same number of hours as available in the police collective bargaining agreement. The number does not, however coordinate well with a 24 hour shift schedule. The increase in hours would enable employees to take 3 full tours off as compensatory time.

The Union further proposes that shift officers be permitted to approve compensatory time off requests. The shift officer is present on duty when things come up, and is in a good position to know what staffing requirements are at the time last minute compensatory time requests arise. This is a convenience to the employees.

With response to the Employer's proposal discussed below, the Union contends that the police retain the ability to replenish the compensatory time bank. Further, compensatory time constitutes a benefit to the Employer since it does not have to

pay employees for overtime.

Employer Position: The Employer also has a proposal concerning compensatory time. The Employer similarly proposes an increase in the number of hours of available compensatory time to 72. However, in conjunction with the increase, the Employer proposes a change in the manner in which compensatory time is accumulated. This proposal would limit the ability to accumulate compensatory time to 72 hours on an annual basis. This would eliminate the ability which employees currently have to perpetually replenish their accumulated compensatory time as soon as it is used. The perpetual accumulation of compensatory time, frequently requires overtime by another employee.

The Union's proposal regarding approval of overtime by shift officers would permit bargaining unit members to approve the compensatory time requests of fellow bargaining unit members. This presents a concern for the Employer. The Chief did permit this procedure previously, and it became a problem with employees bringing pressure to bear on fellow bargaining unit members to approve compensatory time. The Chief is available 24 hours a day to approve last minute requests which may arise.

Discussion: Both parties agree that increasing the available accumulation of compensatory time to 72 hours make sense. Seventy-two hours is the equivalent of three full 24 hour shifts, and simply is far more logical than allowing compensatory time which amounts to two full shifts and a partial shift. The Employer, however, desires to accompany this increase in

available accumulation with an annual limit on accumulated compensatory time.

As the Union argues, compensatory time was originally thought to be a benefit for public employers who were required to pay overtime compensation to police and fire employees at the time of the when the overtime provisions of the wage hour laws first became applicable to them. The reality of compensatory time as it has evolved, however, is that it creates an economic burden on employers who become ensnared in a never ending cycle of time off in payment for overtime which necessitates the additional overtime work on the part of another employee who in turn may take time off in lieu of payment for the overtime. This is precisely the problem created here which the Employer's proposal attempts to remedy. It should be noted that the Union throughout these proceedings has indicated that its members desire to work fewer hours, including less overtime. In order to accomplish that goal, the Union must in turn be willing to give up some of the time off provisions which create the endless cycle of overtime. The Employer's proposal would benefit both parties in precisely that way.

As to the Union's proposal regarding the approval of compensatory time off by shift officers, there does not seem to be evidence of any problem with the current approval system. Further, there is evidence that the system proposed by the Union has created a problem in the past, thus indicating that it may be unwise to reinstate it.

Recommendation: Amend Article 16 to read as follows:

16.2 Employees may accumulate compensatory time in a comp bank up to a maximum of 72 hours. An employee may not use more than 72 hours of compensatory time in a calendar year. The City shall maintain a record of compensatory time usage on an annual basis for each employee.

Balance of Article: Current Language.

ARTICLE 17 - CALL IN PAY

Union Position: The Union proposes that the language of Section 17.1 which defines call in pay be changed to define work which is "outside of" the employee's normal shift rather than the current language which defines a call in as work "disconnected from" the regular shift. The Union further proposes language in Section 17.2 which would increase the two hour minimum payment for special event call in pay to six hours and would increase the payment for such events from time and one-half to double time pay. These events occur three times a year and include things such as July 4th events. This would compensate the employees for the inconvenience created by the disturbance in the employee's enjoyment of the holiday.

Employer Position: The Union's proposal would require the minimum call in pay payment any time an employee is held over on his shift for any reason. Further, the Union's proposal would require the payment of the equivalent of six hours pay for two hours of work on the three occasions per year when they are required to work for civic events. This is simply unwarranted. This would compensate fire employees at far greater levels than

other similarly situated employees who also work the same event.

Discussion: Although the Union stated at hearing that it was not the intent of its proposal with regard to Section 17.1 to require call in pay minimums for all work when an employee may be held over on his regularly scheduled shift, the proposed language would seem to require just that. The current language better defines the intent of the parties.

The proposal with regard to Section 17.2 would increase call in pay minimums from 2 to 6 hours and would require payment at double time rather than time and one-half. Although the Union argues that this increase constitutes fair compensation for the inability of the employee to enjoy the holiday uninterrupted, the minimum payment at the rate of time and one half already compensates the employee with three hours pay for two hours' work. None of the comparable jurisdictions presented by the Union has a minimum as high as that proposed, and none pays at double time rates. This proposal is additionally out of step with the compensation of all other City employees who work the same events. There was no evidence presented to demonstrate that the call in three times a year to work civic events for approximately two hours creates any greater burden on this group than on other groups of City employees.

Recommendation: Current Language.

ARTICLE 21 - VACATION

Union Position: The Union proposes a change in the number of hours of vacation given at each level of the vacation schedule. Vacation hours given currently reflect a 48 hour work week, but the employees work a 54 hour work week. This change would result in the vacation reflecting the actual work week. The proposal also adds a twenty-three year step with six weeks vacation which is a step which is included in the police collective bargaining agreement.

Employer Position: While the Union's proposal reflects their scheduled number of hours, the job is unique in that it includes sleep and meal time. The time spent on the job does not reflect 24 hours of actual work. These employees already receive considerably more time off than most groups, and more time off is simply costly and not reasonable.

Discussion: The Union's proposal makes sense in terms of providing a full work week off for vacation time. The current language provides only four work shifts off. Although some of the fire fighters' work time is of necessity sleep and meal time, this is still time which does not belong to the employee and is often interrupted. Further, in analyzing the comparable data submitted by the parties, it is apparent that the majority of jurisdictions with 50 hour or more workweeks, provide vacation time computed on the number of hours in the workweek or greater. Although the Employer has consistently expressed a need to limit rather than enlarge time off, the recommended limit on compensatory time above, should compensate for the slightly

increased vacation.

As the Employer points out, there is currently no employee within the bargaining unit who is at or near the twenty-three year vacation step proposed by the Union. This would provide six weeks of vacation in addition to the other time off which bargaining unit members already receive. Since it affects no one in the bargaining unit, it seems an unnecessary new benefit in light of the recommended increase in vacation hours above.

Recommendation: Article 21, Section 21.1(A) shall be amended read as follows:

After one year	108 hours
After seven years	162 hours
After twelve years	216 hours
After eighteen years	270 hours

Balance Article: current language.

ARTICLE 30 - UNIFORM ALLOWANCE

Employer Position: The Employer proposes language to eliminate the uniform allowance in favor of a quartermaster system which would permit for replacement of uniform items as needed. Not all employees utilize their entire allowance each year, but the current system allows employees to purchase unnecessary items to simply spend the allowance. The quartermaster system would be more cost effective for the Employer while still providing employees with all necessary uniforms.

Union Position: The Union argues that when this language was

negotiated, the purpose was to permit employees to purchase not only uniform items, but tools and other similar items which they might desire. Most employees do not spend the entire amount. It has not been abused, and there is no sufficient reason to change it.

Discussion: There is insufficient evidence to demonstrate the necessity of changing the current uniform allowance. The evidence demonstrates that the system works well. The majority of employees did not utilize their entire allowance in 2003, indicating that there is not widespread abuse of the allowance. Among the comparable data submitted, approximately half provide an allowance of \$400.00 or more, while the other half utilize a quartermaster system. There is no clear basis on which to alter the current uniform allowance.

Recommendation: Current Language.

ARTICLE 36 - INSURANCE

Employer Position The Employer proposes the initiation of an employee contribution for health insurance. The City is self insured. It purchases stop loss coverage only. Due to dramatically increasing costs it must for the first time seek an employee contribution for insurance. The City's cost for insurance claims has increased from \$465,000.00 in 2000 to \$1,000,102.00 in 2003. Currently employees contribute for insurance only if they choose to have dental coverage or if they utilize services outside of the network. The insurance plan has

co-payments, but no deductibles. The Employer proposes a flat payment of \$75.00 per month for single coverage and \$150.00 per month for family coverage. It is the Employer's intent to implement a payment for all employees in the event that it is successful in obtaining an employee contribution with this bargaining unit. However, it is inequitable to ask the non-organized lowest paid employees to make a contribution before the Employer is able to also obtain a contribution from the higher paid unionized employees.

Union Position: The Union acknowledges that the Employer has been generous with its insurance plan. The Employer made the same proposal to the police bargaining unit two years ago without success. In the intervening two years, the Employer could have asked the majority of its employees, who are non union, to pay a portion of the insurance premiums at any time. The Employer chose not to do so. Instead, it is asking this bargaining unit to be the first to pay an employee contribution for health insurance. There are only 19 employees in the bargaining unit which would make very little difference in the Employer's costs.

Discussion: There is no question but that the cost of providing health insurance has sky rocketed. The Employer's cost of providing health insurance has almost tripled in the course of four years and, as is the case nationwide, the increases show no signs of abating. The Employer is therefore seeking employee contribution. As the Union points out, two years ago, the Employer made the same attempt with the police bargaining unit,

but conceded on this issue. However, at that time, the Employer did not have the knowledge which it has now concerning the extent of its ever increasing costs. It is now eminently clear that the exponential increases will continue for the foreseeable future. Under these circumstances, the implementation of an employee stake in the cost of insurance is not only reasonable, but essential.

One hundred percent employer paid insurance is becoming a thing of the past. The ever increasing costs simply cannot any longer be entirely absorbed by employers. This is born out by the comparable data submitted by the parties. Of the nine comparable jurisdictions submitted by the parties, only three have entirely employer paid insurance. On the other hand, the amount of employee contribution proposed here is far beyond anything paid in any of the other comparable jurisdictions. The contribution level proposed by the Employer would clearly wipe out the effect of any pay increase and represent a burden on the employees. A far more typical contribution is between ten and twenty dollars per month for single coverage and between twenty and fifty dollars per month for family coverage. This being the first time these employees will be asked to make any contribution for insurance, a moderate initial contribution is appropriate.

Recommendation: Section 36.1 shall be amended to read as follows:

The City and the employee shall share the cost of the medical insurance of the Employee Group Health Insurance Program. The employee contribution toward the cost of medical insurance shall be \$15.00 per month

for single coverage and \$30.00 per month for family coverage.

Balance of the Article: Current Language.

NEW ARTICLE - UNION SECURITY

Union Position: The Union proposes the inclusion of a fair share provision in the Collective Bargaining Agreement. The union argues that all members of the bargaining unit should share in the costs of the bargaining and grievance processing which are performed on their behalf. Since the Union is obligated to represent all bargaining unit members, all should pay their fair share of the costs involved in that representation. All but one member of the current bargaining unit is a member of the Union. Further, the police bargaining unit does have a fair share provision in its collective bargaining agreement with the Employer.

Employer Position: The Union's obligation to represent the entire bargaining unit, whether members or not, is the price which was imposed by the legislature in exchange for the right under the collective bargaining law to be the exclusive representative. The Employer chooses not to agree to the optional fair share provision because it prefers to permit personal choice on the part of the employees.

Discussion: The arguments for and against fair share fees are ones which present long standing and deep seated philosophical and practical concerns on the part of unions and public employers. On the one hand is the Union's desire to

collect fees from all of those who receive the benefits of its representation and who it is obligated to represent. This is juxtaposed against the Employer's strongly held beliefs that public employees should not be required to pay fees to the Union as a condition of public employment. These two points of view can never be satisfactorily reconciled.

In this case, the Fact-Finder is persuaded by primarily two factors to recommend that the fair share provision proposed by the Union be included in the Agreement. First, the Employer's philosophical disagreement with fair share provisions is weakened by virtue of the fact that it has already agreed to the incorporation of a fair share provision in its collective bargaining agreement with the police bargaining unit. There were no persuasive arguments presented which would dictate that this bargaining unit should be treated differently in this regard. Further, the fact that all but one bargaining unit member are also members of the Union indicates that the attempt to obtain a fair share provision is not an effort on the part of the Union to obtain fees from a dissatisfied group of employees who have chosen not to become members based upon some inadequacy in the Union's representation.

Recommendation: Add new article as follows:

Union Security:

1. Each employee in the bargaining unit who is not a member of the Union, shall pay to the Union a fair share fee after sixty (60) days of employment.
2. The fair share fee shall be made in the same manner and subject to the same conditions as apply to the

deduction of dues under this agreement, except as noted below.

3. Fair share fee deductions shall be automatic and do not require a written authorization from the employee.

4. The Local Treasurer of the Union shall certify the amount of the fair share fee to the Employer.

a. Such fair share fee shall not exceed the amount of regular monthly union dues. Nor shall a fair share fee or a portion of it to be certified for collection include costs for activities that the Union is not legally entitled to finance with fair share (agency) fees.

b. Once fair share fees are deducted they shall be remitted to and become the property of the Union. The Employer assumes no liability for the amount certified or deducted.

5. The Union shall indemnify and hold the Employer, its officials, representatives, and agents harmless from any claims, actions, or liabilities arising out of or resulting from the deduction of fair share fees.

NEW ARTICLE - PROMOTIONS

Union Position: There is not provision for promotion in the current Collective Bargaining Agreement. These have historically been controlled by the rules of the Civil Service Commission. Changes in the promotion rules of the Commission resulted in an unfair labor practice charge which was resolved upon the basis that the parties agreed to bargain on this issue. The Union has presented a comprehensive proposal regarding promotions which in part mirrors the prior rules of the Civil Service Commission. The issue primarily in dispute when the rules were amended by the Commission concerned the inability of employees who are fire

fighters but not firefighter/paramedics to seek promotion. The Union's proposal would permit the four members of the bargaining unit who are fire fighters to seek promotional opportunities. It also includes requirements that the Employer create and fill certain command positions which should be filled for safety issues.

Employer Position: The Employer argues that the change by the Civil Service Commission to prohibit promotion of fire fighters without paramedic certification was based upon a decision that all supervisors who will be supervising firefighter/paramedics should similarly be certified as paramedics. This decision was made in conjunction with the decision that the fire department should move to a staff which is entirely made up of firefighter/paramedics since the work of the department is focused more and more on paramedic services. There remain four members of the bargaining unit who are not paramedics by virtue of their own choice to not seek that certification. The Employer further objects to the proposed language to the extent that it requires the Employer to abdicate its management rights to determine what positions will be created and/or filled. Finally, the proposal was submitted late in negotiations, and has never been fully discussed.

Discussion: Although the Union argues that the proposed promotional language mirrors that of the Civil Service Commission rules, there are in fact significant differences between the proposal and the rules. The most significant changes are that

the paramedic certification requirement is eliminated and waiver of certain other requirements are changed from discretionary to mandatory by changing the word "may" to "shall". Although the paramedic certification requirement excludes four members of the bargaining from promotional opportunities, the Employer's determination that this certification is necessary to the supervision of lower ranked paramedics is rational and reasonable. Since the parties have not discussed the ramifications of the changes in the waiver language from discretionary to mandatory, it would be inappropriate for the Fact-Finder to adopt this language. This could result in ramifications for promotions about which the parties have simply not had sufficient discussion to adequately consider.

The inclusion of language which dictates the creation and/or filling of new positions is one which should be left to management's discretion. This language skates dangerously close to a discussion of initial hire which is a prohibited subject of bargaining under the law.

Recommendation: Current Language

Dated: 4/14/04

Tobie Braverman
Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 16th day of April, 2004 to, Lenny French, President, Springdale Professional Fire Fighters, P.O. Box 18006, Cincinnati, OH 45218-0006 and to Paul R. Berninger, Wood & Lamping, LLP, 600 Vine Street, Suite 2500, Cincinnati, OH 45202-2491 by U.S. Mail Overnight delivery.



Tobie Braverman