

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 MED 10 A 10: 28

In the Matter of Fact-finding Between:

THE CITY OF NEWARK : Case No. 03-MED 10-1234

And : Recommendations

INTERNATIONAL ASSOCIATION OF : Margaret Nancy Johnson
FIRE FIGHTERS, LOCAL 109 : Fact-finder

Appearances

For the City:
Priscilla Hapner

For the Union:
Henry Arnett

In accordance with Ohio Revised Code Section 4117.14(C), the State Employment Relations Board (hereinafter "SERB") appointed Margaret Nancy Johnson as fact-finder in the above referenced bargaining impasse. The parties convened on July 26, 2004, in Council Chambers of the City Hall in Newark, Ohio, to present argument and evidence upon respective issues in dispute. At the scheduled hearing the fact-finder heard sworn testimony of witnesses and admitted into the record documentary evidence pertaining to the matters under contention. Prior to the hearing, both parties had timely submitted position statements for review by the fact-finder. Procedural requirements having been met, the fact finder now issues her report setting forth recommendations for those issues upon which the parties had not been able to reach consensus.

Background

With a population of approximately 46, 000, the City of Newark, hereinafter "City," has a bargaining relationship with the International Association of Fire Fighters, Local 109, hereinafter "Union" or "IAFF." Bargaining unit members provide fire safety, prevention and rescue for the residents and businesses of the Licking County seat. Currently consisting of approximately eighty-three (83) fire fighters, the bargaining unit includes all full time uniformed employees excluding the Fire Chief. Ranks within the Union are fire fighter, lieutenant, captain and assistant chief.

The current contract between the parties expired on December 31, 2003. Relying upon evidence of its deteriorating financial ability, the City sought contractual changes designed to curtail increasing expenses and to off-set declining revenues. Unable to reach agreement on a successor contract, the parties reached impasse on April 28, 2004.

Issues

Issues upon which the parties remain in impasse include: Union Representation, Manning of Companies, Holidays, Vacation, Sick Leave, Conversion of Unused Sick Leave, Hours, Overtime Pay, Compensatory Time, Longevity, Paramedic Differential, and Wages.

Criteria

In submitting the recommendations which follow, the fact-finder has given consideration to those factors regularly relied upon by neutrals in impasse situations and as outlined in Ohio Revised Code, Section 4117.14(G)(7) and in Ohio Administrative Code Rule 4117-0-05.

Position of the Parties

I Article 5- Union Representation

In its contract proposals, the Union seeks to increase the amount of time granted for union representation that may be carried over from one calendar year to another. With the Agreement authorizing a total of 215 hours for conferences, meetings, seminars and union activities, 48 unused hours may be carried over to the next calendar year. The Union proposes increasing the carry over to 96 hours.

For the reasons which follow, the City opposes the Union proposal and seeks to maintain current contract language. In the absence of compelling reasons, the economic situation of the City dictates the denial of increases in benefits. Moreover, internal comparables with the organized as well as non-organized work force and external comparables with similarly situated cities warrant the rejection of this proposal. Finally, the leave granted to fire fighters for union activity is quite adequate and has not been fully used.

II Article 9- Manning

Consistent with a negotiated grievance settlement, dated February 7, 2003, the Union seeks to increase the minimum manning level from 15 bargaining unit members to 19 members per shift or platoon. In the grievance brought under a Memorandum of Understanding on staffing, the Union protested manning levels in the City. Rather than arbitrate the merits of the grievance, the Union and the City agreed upon a resolution increasing manning, on a temporary basis, to the level of nineteen fire fighters. The Union argues that the City is now renegeing on its agreement. Additionally, the Union contends that the City proposal on staffing will not affect the savings anticipated by the City. Finally, challenging the City contention that the increased overtime cost for 2003 was generated by the mandated manning levels, the Union argues that the overtime arose from inadequate staffing in the fire department and points out that when the City added fire fighters, then, its overtime needs diminished. To further sustain its position on this issue, the Union contends that the overtime cost to date for 2004 has been substantially less than the overtime accumulated in the same time frame in 2003, and that the budgeted overtime exceeds usage.

The City opposes maintaining the negotiated agreement on manning levels because it was only intended to be temporary while the parties discerned the impact of the increase and the effect of the recently enacted safety levy. After one year of implementing the

manning standard, the City argues the consequences have been debilitating. Doubling overtime, increasing salaries by 13.5%, adding to benefits such as pension contributions and medical insurance, the increased minimum manning standards have had severe financial repercussions and created a staffing dilemma. As they drain revenues generated by the safety tax levy, the City asserts overtime costs must be curtailed. A review of manning standards in comparable cities shows that many comparable cities have no manning standards. Only Mansfield has manning levels similar to those sought by the Union, but the city points out that Mansfield has been unable to provide any rate increases to its bargaining unit within the last two years. Moreover, the City contends that no other unit including the police, has a similar contractual provision on manning. Consistent with safety standards contained in the 2001 National Fire Protection Association Standard, the City suggests its proposal is an effort to ensure appropriate and safe staffing levels while limiting expenditures.

III Article 13- Holidays

The Union seeks to retain current language while the City wishes to eliminate one holiday and modify language on banking and earning holidays. Current contract language provides for 13 holidays, one floating holiday, and an accrual of 200 holiday hours which may be subsequently used or cashed out at a higher rate. Maintaining that holidays is one of those issues having hidden costs arising from the manning, overtime and hourly rate provisions of the Agreement, the City is willing to provide an incentive of $\frac{1}{2}$ of a percentage wage increase for the elimination of one holiday and exchanging the holiday bank to reflect hours actually worked on a holiday.

IV Article 14- Vacation

Because of difficulty in scheduling vacations especially during the peak vacation season, the Union seeks to increase the number of employees who may be off on vacation per shift and to eliminate the limitation on the amount of unused vacation that may be carried forward. Testimony indicates that employees have not in the past been able to take desired vacation time because of manning problems. To secure vacation time for employees and at the same time to limit the City's liability for vacation accrual, the Union proposes that the amount of vacation leave that could be paid upon termination or separation of employment would be limited to three years of accrual. The Union argues its proposal provides the employee with greater flexibility with vacations while protecting the City from potential payout liabilities.

Contending that the current language provides an adequate vacation policy, the City seeks to maintain current language. In spite of the testimony elicited by the Union on this issue, the evidence indicates that there is no need to increase the number of employees permitted to utilize vacation or to eliminate the limitation on vacation carry-over. The City maintains that its need to secure replacements for the vacationing employees renders the proposal fiscally irresponsible. Moreover, a review of comparable bargaining units does not justify the proposal.

V Article 15.1-Sick Leave

Agreement to retain current language on this issue is dependent upon action taken in regard to the hourly rate benefit set forth in Article 38.2. If the computation of the

hourly rate is modified as requested by the City, then the Union wishes to change the accrual rate to reflect the change in the hourly benefit rate.

VI Article 16- Conversion of Unused Sick Leave

Because of some confusion as to intent of this Article, the Union proposes clarifying language providing eligibility to receive payouts to all employees who voluntarily leave employment with the City. Thus, the Union proposes employing the term "separation from employment" rather than retirement, as currently used. The City seeks to maintain current language as it cannot afford to make the substantial payments required by the Union proposal.

VII Article 19- Hours of Work

While the Union seeks to maintain current language arrived at through collective bargaining, the City proposes eliminating contractual restrictions on week-end and evening training, inspections and hydrant maintenance. In addition, pointing out the Union has the shortest work week of any comparable or nearby city, the City proposes elimination of the Kelly Days and increasing the work week from 48 hours per week to 53 hours per week over a twenty-eight day period. For these cost savings measures, the City would pay an additional ½ per cent wage increase.

VIII Article 20-Overtime Time

Pointing out that the increase in overtime cited by the City as the basis for its proposal on overtime is attributable to staffing, the Union is opposed to the demand to concede monetary benefits previously achieved through collective bargaining. In order to contain spiralling overtime costs, however, the City proposes a ½ %wage increase in exchange for modifications to overtime provisions. Components of the changes pursued by the City include a 53 hour work week and overtime calculations based on hours actually worked, including call-back, as well as more realistic increments on overtime. To support its proposal, the City compares overtime usage in its Fire Department with usage in comparable cities. In Newark overtime accrues after a 48 hour work week, while the average in comparable Ohio cities is a 50.8 hour workweek, and in cities within the geographic region, the average is a 52.45 hour work week.

IX Article 25 – Longevity

The City contends it cannot afford the longevity increase sought by the Union. Citing comparability with the police force and other fire departments, the Union proposes increasing longevity payments to \$450, \$575, \$740, \$900 and \$1,000 for employees with at least five (5) years of service, ten (10) years of service, fifteen (15) years of service, twenty (20) years of service and twenty-five (25) years of service, respectively. In further support of its position, the Union points out the longevity provisions have not been increased in many years.

X Article 31 – Paramedic Differential

Even without increasing the differential, the City argues that the economic package for paramedics is already superior to that of comparable Fire Departments. Relying upon its financial restraints, the city justifies the rejection of the Union proposal to increase the

differential to 10% and to increase the annual bonus paid by \$100 each year of the contract. The City, however, is willing to increase the paramedic bonus to \$700 when it reaches 49 non-officer certified paramedics.

XI Article 38- Wages

By proposing a wage increase of 6%, 5% and 5%, and a 10% wage differential for officers, the Union endeavors to achieve comparability with the pay increases previously negotiated for the police department. External comparables are also cited to further justify the demands of the Union. Although the residents of the City of Newark authorized a tax to ensure funding for its safety forces, the Union suggests that the City is attempting to balance its budget by making concessionary demands on this bargaining unit and argues that no other unit has been asked to make comparable give-backs.

Offering the same increase negotiated for AFSCME employees, the City proposes a 2% across the board increase with no increase in the differential. In doing so, the City seeks calculation of the base rate pursuant to hours worked rather than the fictitious 40 hour work week. The City proposes changing the calculation of hourly rates for benefits and overtime from 2080 hours to 2496 hours. Additional incentives have been offered for economic proposals, which if accepted would result in an across the board wage increase of as much as 4%. Despite its budget crises, the City contends that it has not sought to freeze wages and that its economic proposal is reasonable considering its financial abilities. As it is consistent with comparables, the City contends that its position on wages ought to be implemented.

Discussion

In addition to an adjustment in wages, both parties bring to the bargaining table proposed changes to existing language on eleven contractual provisions. Prior to addressing the issues upon which the parties have not been able to reach agreement and rendering her recommendations thereon, the fact-finder observes the statutory criteria and several principles deriving there from which have been utilized in the fact-finding process in Ohio.

First, it is generally incumbent upon a party moving to modify language to demonstrate that there is a compelling reason for the proposed change. In the absence of conclusive evidence of fiscal or operational needs, the hearing neutral will defer to existing language previously implemented by the parties. Deference to existing language derives from the statutory directive to consider the bargaining history of the parties, including prior collectively negotiated agreements. Existing contract language will usually have been mutually accepted by parties in the "give and take" of bargaining and with an understanding of the future impact of the language. Accordingly, except for routine monetary adjustments, there is a presumption in favour of existing language.

Second, the criterion of comparability, internal as well as external, does not warrant an expectation of uniformity. While the ranking of specific benefits provided to different bargaining units of the same or a comparable public employer, is useful, such evidence does not account for the variables within each Collective Bargaining Agreement. Because of extraordinary contractual diversity, without reference to the ranges, the ranking of isolated provisions have limited probative value.

Similarly, the use of averages in viewing comparable wages and benefits is of limited value. As averages are a compilation of different cities, they tend to distort rather than to reflect the high and the low end of the spectrum. Again, the significant financial figures are the ranges, not the averages.

Moreover, in considering comparable bargaining units, unique features of the geographic region and the governmental entity must be recognized. For example, Newark is the county seat for Licking County. Although the representative of the City referred to Newark as essentially "rural," in fact, Licking County shares a border with a major metropolitan area within the State of Ohio. While it is certainly not a metropolis, the residents of Newark, nonetheless, enjoy amenities more typical of urban areas, such as the ice rink and swimming pool referenced by the mayor in his testimony, and they anticipate the services of an urban community. Indeed, the residents of Newark have specifically expressed this anticipation by passing an income tax of one-half of one percent for general operating revenues dedicated to police and fire protection.

Third, while the Ohio Collective Bargaining statute directs an analysis of the "ability of the public employer to finance the issues proposed," it does not specifically reference concessionary bargaining. It may be anticipated, however, that should a public employer be financially unable to continue to provide *existing* benefits, then all of the units with which the employer negotiates will be engaged in concessions. For example, several years ago, when public employers in Ohio were initially confronted with spiralling health care costs, modifications to generous insurance provisions were implemented through negotiating terms such as co-pay and introducing or increasing premium sharing with employees. These amendments, however, affected all of the bargaining units with which an employer had collective bargaining agreements. Although fiscal caution may be warranted during current negotiations, an absence of city wide lay-offs or concessionary bargaining, as well as an ability to negotiate some wage increase, however modest, does not sustain a need to concede either benefits or the method of calculating benefits, which have previously been agreed upon and implemented for this bargaining unit.

Applying these general observations to the criteria for impasse resolution, the fact-finder next addresses the specific issues presently in dispute.

I Article 5 - Union Representation

As the Union has failed to demonstrate the inadequacy of the present provisions on Union representation, the fact-finder recommends current contract language. There is no evidence that a unit member has been unable to attend a Union conference because of contractual restraints. The sole instance of one member being required to use vacation time does not warrant modification. Given the severe financial strictures of the City, increasing monetary burdens on the City should be avoided unless the evidence justifies change. Accordingly, the fact-finder recommends current contract language.

II Article 9 – Manning

Recommendation of a resolution to the dispute on Manning is uniquely complicated. First, recognizing that the current language requires adjustment, both parties insist upon changes to Article 9, but the positions of the parties on this issue are vastly different. Second, the issue has already been the subject of mediation and a tentative agreement

between the parties reached. Much evidence and argument was presented on the issue and it appears to be a subject of mutual concern to the parties.

Addressing, first, the extent to which the City ought to be bound by its tentative agreement with the Union reached on February 7, 2003, the fact-finder is cognizant of a preference for a negotiated settlement rather than a unilaterally imposed contract modification. While it is undisputed that the parties reached a resolution to this issue, provision is explicit that the terms of the agreement are tentative and expire with the labor agreement on December 31, 2003. Thus, acknowledging that the settlement is a "temporary fix," the parties failed to express an intent that the provision be incorporated into the successor agreement and rather, recognized that Article 9 would, in fact, become the subject of future bargaining.

The fact-finder has also considered the "contractual" nature of the settlement. Prior contractual provisions are given significant weight in the fact-finding process because they typically involve offer, *consideration*, and acceptance. In other words, one party gives something for receiving something else. Applying this principle to this instant dispute, it may be argued that the Union relinquished its right to arbitrate the issue by accepting the settlement offer. However, by including the proviso that the Agreement is "tentative," rather than being probative evidence of intent, the grievance settlement is similar to a non-precedent setting resolution.

Finally, the fact-finder considers the evidence on the financial impact of the settlement terms. The extraordinary overtime costs incurred by the City because of the manning requirement justify a modification to the provision. Although the Union contends that staffing rather than manning is the issue and that overtime costs declined with additional fire fighting personnel, the fact-finder concurs with the City that the exorbitant overtime expenses are at least partially associated with the present manning provisions, are ongoing, and must be addressed. It is fiscally irresponsible to continue current practices under the tentative agreement. Accordingly, the fact-finder recommends implementing, with two conditions, the City proposal on manning, based upon staffing of response vehicles in accordance with the National Fire Protection Association Standard 1710.

Given the dramatic change in the manning proposal and the uncertainty of its accomplishing the goals of safety and efficiency of operations, the fact-finder recommends that the contractual language state the implementation of the manning standard is provisional for the duration of the current contract. Upon the conclusion of this Agreement, the parties shall agree to review the operational and fiscal efficiency of the manning standards with an intent to either negotiate permanent inclusion in the agreement or to revert to prior manning levels. The conditional implementation of the provision will enable the parties to assess the changes and to either adopt them on a permanent basis or resolve to return to prior manning standards.

Second, the fact-finder does not recommend the final sentence of the City proposal, which merely rephrases the intent of the first and second sentences of Article 9 in language certain to result in future conflict. The Union has argued that the City proposal will result in the need to take fire fighting apparatus out of operation and jeopardize safety. Since the first paragraph of Article 9 insures that efficiency will not replace safety of employees or the protection of residents, the fact-finder recommends the language of the first sentence should not be diluted by the supplemental language now proposed by the City.

III Article 13- Holidays

Holidays and the holiday bank constitute provisions which the parties have previously negotiated and agreed upon, and, in the absence of evidence of *need* for the modification, the fact-finder recommends current contract language. Arguments as to comparability lack persuasion for a couple of reasons. First, the City *agreed* to the holiday pay provisions cognizant of what other cities were providing their fire fighters in the way of this benefit. Second, because of the unique scheduling of fire fighting personnel, internal comparables are inappropriate.

Although the City contends that the basis for holiday pay—compensation for lost time—is not applicable because fire fighters perform services on holidays, the argument fails to take into account another feature of the benefit for fire fighters. Holiday pay for fire fighters compensates employees who are required to work at times when other employees are traditionally with family and friends. The City has failed to sustain its argument for modification of the holiday provisions, and the fact-finder recommends retention of present provisions.

IV Article 14- Vacation

Evidence elicited by the Union does not sustain its proposals to modify the Vacation provisions of the Agreement. Challenging the number of employees permitted off, the Union contends that some fire fighters are not able to take vacation time when desired. This dilemma, however, is not unique to fire fighters. Typically, greater choice of vacation comes with greater length of service. Such evidence does not justify either of the modifications sought by the Union in this matter.

The Union has already agreed to modifications of section 14.5 including the elimination of the second paragraph. To the extent the parties have agreed upon changes to section 14.5, the fact-finder incorporates the changes into these recommendations.

V Article 15.1- Sick Leave (See XI below)

VI Article 16 – Conversion of Sick Leave

By proposing language to permit employees leaving the employment of the City to request sick leave payout, the Union is seeking to broaden the class of employees eligible to receive such accrued benefits. To some extent the proposal of the Union misconstrues the function of Sick Leave accrual. Sick Leave accrual is intended to be an incentive to retain employment and foster attendance, rather than to facilitate separation from employment. Accordingly, the fact-finder does not recommend the proposal of the Union but suggests, instead, current contract language.

VII Article 19- Hours of Work

While the Union seeks retention of current language, the City proposes extensive changes to provisions on work hours. As to the proposal to eliminate weekend and evening restrictions on training, inspections or hydrant maintenance, the fact-finder concurs with the City. This proposal does not unduly burden the bargaining unit, because the department must be staffed on weekends and evenings anyway. Nothing in the evidence elicited demonstrates that this is a hardship for the unit. The contention of the

Union that the water department does not work on weekends has no bearing on the propriety of the proposal. Accordingly, the fact-finder recommends the elimination on the weekend and evening restrictions set forth in Section 19.5 as proposed by the City.

As to the City proposal on hours of work, the fact-finder is of the opinion that such a change ought to be achieved through negotiation and reflect mutual agreement. Indeed, the Hours of Work have been changed in the past with a corresponding consideration. Given the economic climate of these negotiations, the extent of the consideration proposed in current negotiations is a ½% additional increase in wages. As the Union has rejected the proposal, the fact-finder is of the opinion that such changes should not be unilaterally imposed. The non-traditional hours worked by fire fighters, including Kelly Days, have evolved from the around the clock service rendered by fire fighters. Even when sleeping, fire fighters are on duty. Non-traditional scheduling is ingrained – institutionalized—among fire units. Any changes thereto ought to be mutually adopted and not be swept along in the wake of extensive proposals for contract modification and cost savings. Accordingly, the fact-finder recommends retention of the language in Sections 1 through 4 of Article 19, and the modifications to Section 5 as referenced above.

VIII Article 20 – Overtime

Changes proposed by the City to contract language on overtime are fundamental and extensive. Again, the fact-finder is of the opinion that such modifications ought to be the result of negotiation and not imposition. As previously stated, for a fact-finder to recommend a change of this nature without the concurrence of the Union, the reason for the modifications must be compelling. While the proposal is a cost saving measure, the City has not demonstrated an over-riding need to re-write the overtime provisions of the Agreement.

One basis for the City proposal is that “Newark firefighters currently earn overtime after working fewer hours each week than any other comparable Fire Department” (City Position Statement p. 20). Differences within agreements, however, are not unusual and not *per se* a reason for unilateral change. Note the variety of overtime within the cited cities. Rather than what other cities provide, the crucial question on overtime is the impact of the contract language on operational needs and the financial structure of the particular employer.

In this regard, the fact-finder observes that the “firefighters would not be greatly affected by increasing the overtime threshold from 48 to 53 hours/week since, until last year, many firefighters worked comparatively little overtime” (*Ibid* p. 21). Conversely, the City would not be greatly affected by maintaining current language. The evidence establishes that at the time of the fact-finding hearing substantially less than half of the overtime budgeted for 2004, based upon usage in 2003, had been used. Moreover, extraordinary overtime costs were, apparently, not incurred until 2003. These costs, however, were not attributed to the provisions of Article 20. Rather, they were the result of the implementation of modifications tentatively agreed to by the parties on mandatory manning. Recognizing that the current contract provisions on manning were not acceptable to either party and that the tentative agreement was costly, the fact-finder has recommended conditional changes to the mandatory scheduling provisions of the

Agreement, and she now suggests the parties work with the manning modification before implementing overtime changes.

Except to the extent the parties have agreed upon modifications to this provision, the fact-finder recommends retaining current contract language.

IX Article 21 – Compensatory Time

To the extent the parties have agreed upon modifying the cash out provisions of the Agreement, the agreed upon modification is incorporated into these recommendations.

X Article 25 – Longevity

While the City argues for retention of current language, the Union seeks increases in the longevity payments to firefighters. The principal basis for the Union proposal on longevity, which has not been changed since 1997, is internal comparability with the police. The fact-finder cannot concur that comparability with the police department mandates a change in the longevity scale since, as the City indicated, across the board the terms and conditions of employment in the two units are so varied. Nonetheless, a comparison of longevity provisions in comparable jurisdictions indicates that only after eleven years of service do fire fighters in the City acquire longevity comparable to that paid to employees having completed six years of service in comparable cities. Accordingly, some adjustment is appropriate, and the fact-finder recommends increasing the longevity payments to \$450, \$575, \$700, \$850, and \$1,000.

XI Article 31- Paramedic Differential

Arguing the greater skill, training, responsibility, and usage of the paramedics within the fire department, the Union seeks an increase in the paramedic differential and in the lump sum payments made to paramedics. In reliance upon financial restraints the City rejects the proposal for increasing the differential but proposes an increase in the lump sum payment to \$700 as soon as the unit reaches a level of 49 certified non-officer paramedics.

As for the proposed increase in the differential to 10%, given the evidence of rising expenditures exceeding revenues, the fact-finder does not recommend the proposal. Although she acknowledges and respects the additional training, skill and responsibility of the paramedics, the fact-finder observes that the paramedics already have a 5 1/2 % wage differential to compensate for these qualifications. Therefore, at the current time an additional increase in the amount proposed by the Union ought not to be adopted.

As to the lump sum payments, however, the City has indicated a willingness to increase the lump sum payments as soon as there are 49 certified non-officer paramedics. Through its proposal, the City recognizes the value and import of the services rendered by the paramedic. In this instance, the fact-finder does not understand the direct ratio or relationship of the value of the service to the number of employees so engaged. As the City implies that the paramedic service warrants an increased lump sum and that the City is willing to make such payment, the fact-finder recommends increasing the lump sum to \$650 in 2004, \$700 in 2005 and \$750 in 2006.

XII Article 38- Wages

The Union proposes increases of 6%, 5% and 5% for each of the three years of the contract. Part of the justification for the high increase sought by the Union is the increase given to the FOP during the last negotiations. Additionally, the Union cites comparables as a justification for its wage proposal. The Union seeks to increase the wage differential for ranks to 10% and to retain current language in Section 38.2 on the calculation of the base rate.

Relying upon its economic projections, the City proposes a 2% increase tied to changing the calculation of the base rate for purposes of determining hourly benefits and overtime. It argues the proposed 2 % increase is the same as the one negotiated for the AFSCME unit with which the City bargains. Moreover, it contends substantial increases given to the FOP in prior negotiations were justified on the basis of comparability, internal and external. Additionally, in Section 38.2, the city proposes changing the method in which the hourly base is computed so that it reflects hours actually worked rather than a fictitious number of hours based upon a non-existent work week.

In recommending an increase of 3.25%, 3% and 3%, the fact finder notes that although it argues financial restraint, the City has not implemented either wage freezes or lay-offs, indications of fiscal inability. Instead, in negotiations with AFSCME, the City has agreed to increases of 2% in wages and 1 ½% in pension pick-ups

As to external comparability, the fact-finder takes note of the range of benefits that are tied into an economic package. While wages are never negotiated in a vacuum, pension pick-ups are frequently associated with the wage rates. In the case at hand, the City has argued that it has offered pension pick-ups to the unit but it has rejected this particular benefit. For whatever reason the Union may resist pension pick-ups, the fact remains that in those jurisdictions where it is provided, it is a factor in the financial package offered to employees, even if the pick-up does not have an impact upon taxes or other benefits paid by the City. Thus, while the City contends that this unit fares as well as or better than the fire fighting unit in the neighboring city of Heath, incorporating the pension pick-up alters that perception (See Union Exhibit 22). Indeed, a review of comparable cities in the region establishes that the Newark Fire Department is *not* overpaid .

The change sought by the City in the manner in which the hourly rate is calculated for the purpose of benefits and payments such as overtime, is, indeed, sweeping, and should not be unilaterally implemented. In the absence of concessionary bargaining, modifications to economic provisions of the Agreement ought to be negotiated rather than imposed. While the changes sought by the City may not constitute pay-cuts, they do have financial ramifications. The Union is being asked to relinquish benefits which have been negotiated and have been included in its economic framework for many years.

In considering the economic data, the fact-finder observes that much of the testimony and evidence elicited by the City is based on projections. For example, overtime costs for 2004 were based upon usage in 2003. In fact, actual overtime usage to date is far less than projected by the City. Moreover, the 2004 budget for the Fire Department is based upon a full complement of fire fighting personnel. In fact, the number of personnel is less than the number for which the City has budgeted. Similarly, while unemployment in Licking County remains under the national and state averages, the Auditor anticipates,

without explanatory testimony, that unemployment in Newark will exceed those averages and impact general revenues. In fact, general revenues for the past several years in Newark have remained fairly constant. It is costs that have risen, giving rise to concerns over diminishing balance carry-overs.

While the City has charted out a dramatic increase in Fire Expense (City Appendix C-9), in fact, the chart indicates fluctuations in expenses over the past eight and one-half years until 2003, during which expenses did rise considerably. Then, based upon current costs, the City projected expenditures for 2004 exceeding those of 2003 and has charted expenses for 2004 accordingly. The evidence establishes, however, that in some instances, such as overtime, budget costs for 2004 exceed actual expenses to date.

By enacting the fire and safety levy, the citizens of Newark have expressed their priorities and intent to support the Fire Department. While the levy does not cover all the expenses associated with the operation of the Fire Department, the City can make reasoned and appropriate adjustments to the contractual provisions for fire fighters. Although it would be erroneous to suggest that the financial structure of Newark requires no caution, it is also fallacious to suggest that it lacks the ability to provide this unit with some meaningful wage adjustment consistent with averages as well as living cost increases. As the testimony of the mayor indicates, cost-cutting measures have been implemented by the City to ensure fiscal vitality. These should be continued and expanded *prior* to requesting this bargaining unit to modify monetary benefits and the means of calculating the same which have been in place for many years.

The fact-finder recommends a 3.25%, a 3% and a 3% increase for each year of the contract. She does not, however, recommend an increase in the differential or in the method in which the base rate is calculated for overtime and other economic benefits.

Summary

To the extent the parties have agreed upon modifications to the Collective Bargaining Agreement, these changes are hereby incorporated into this report and included with these recommendations. In addition, the fact-finder makes the following recommendations:

I Article 5 – Union Security:

The fact-finder recommends retaining current contract language.

II Article 9 - Manning

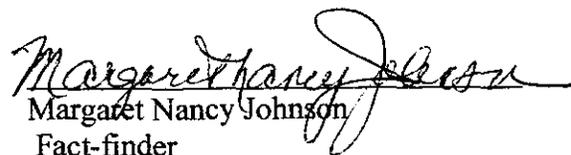
For the duration of this Collective Bargaining Agreement, the fact finder recommends provisional modifications implementing manning based upon the 1710 Standard of the National Fire Protection Association. Upon the conclusion of the contract term, the parties should assess manning with regard to the efficiency and safety of operations and determine either to return to standards in place at the time of these negotiations or to retain the 1710 standard. The fact finder does not recommend the additional language suggested by the City expounding upon managerial authority.

III Article 13 – Holidays

The fact finder recommends current contract language.

- IV Article 14 – Vacations
The fact-finder recommends current contract language.
- V Article 15- Sick Leave
The fact-finder recommends current contract language.
- VI Article 16- Conversion of Sick Leave
The fact-finder recommends current contract language.
- VII Article 19- Hours of Work
Except for implementing an elimination of the week-end and evening work restrictions as proposed by the City, the fact-finder recommends current contract language.
- VIII Article 20- Overtime
Except for the changes agreed upon by the parties, the fact finder recommends current contract language.
- IX Article 21 – Compensatory Time
The fact finder incorporates negotiated changes in these recommendations.
- X Article 25 –Longevity
The fact finder recommends increased longevity increments as follows; \$450, \$575, \$700, \$850, and \$1000.
- XI Article 31- Paramedic Differential
The fact finder does not recommend increasing the paramedic differential. She does recommend increasing the annual bonus by \$100 for each year of the contract as follows: \$700, \$800, and \$900.
- XII Article 38 – Wages
The fact-finder recommends a wage increase of 3.25%, 3%, and 3% for each year of the contract. Further, she recommends retaining the current differential and current method of calculating the hourly base rate.

Respectfully submitted,


Margaret Nancy Johnson
Fact-finder

Dated this 9th day of August and personally served upon the bargaining representatives for the respective parties at 779 Chelsea Avenue, Bexley, Ohio and 280 North High Street, Columbus, Ohio, and upon the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215.

A handwritten signature in cursive script, reading "Margaret Mary Johnson". The signature is written in black ink and is positioned to the right of the main text block.



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AMOUNT

\$0.83

U.S. POSTAGE
PAID
COLUMBUS, OH
43216
AUG 09, '04
00064301-21
43215



MARGARET NANCY JOHNSON

ATTORNEY AT LAW

670 CITY PARK AVENUE

COLUMBUS, OHIO 43206

TO:

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