

FACT FINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD

State of Ohio
State Employment Relations Board

2004 SEP 13 A 10: 29

IN THE MATTER BETWEEN:

City of Campbell
Department of Fire

And

Campbell Firefighters Association
Local 2998 IAFF/OAPFF

SERB Case Number

03-MED-10-1299

ARBITRATOR: Thomas L. Hewitt
HEARING DATES: August 30, 2004
AWARD DATED: September 9, 2004

APPEARANCES

FOR THE COMPANY

Howard Heffelfinger, Attorney
Clemans-Nelson & Associates, Inc.
Nita Hendryx, Asst. Reg. Project Mgr-Auditor of State*
Michael Esposito, Sewer Consultant
John Leskovyansky, Jr. Director of Finance*
Todd Allen, Consultant
Clemans-Nelson & Associates, Inc.

FOR THE UNION

Dennis Haines, Attorney at Law
Green, Haines, Sgambati Co., L.P.A.
Michael Taylor, Vice President, OAPFF*
Greg Rosile, President Local 2998*
Frank Phillips, Vice President Local 2998*

* Witness

Statement of Facts

In compliance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board appointed Thomas L. Hewitt as Fact Finder to hear Case Number 03-MED-10-1299 between The City of Campbell, Ohio and Campbell Fire Fighters Association, Local 2998 IAFF & OAPFF.

The fact-finder takes into consideration all reliable information relevant to the submitted issues and makes recommendations based upon the following:

1. Past collectively bargained agreements, if any between parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The City of Campbell, located in Eastern Ohio has a charter adopted by the City on November 3, 1970 and the latest amendment was November 6, 2001. Under this charter it has an organized Fire Department which is represented by the Campbell Firefighters Association, Local 2998, IAFF & OAPFF. The Unit is currently comprised of seven (7) firefighters and two (2) captains.¹

A labor agreement exists between the City and the Firefighters Association which became effective December 1, 2000 and expired on December 31, 2003.

¹ Currently one firefighter is on layoff.

Under Section 8.04(A) of the Ohio Revised Code, the Mayor requested that the Office of the Audit of the State perform a fiscal analysis of the City of Campbell, Mahoning County, to determine if the financial condition of the city justified the declaration of fiscal watch or emergency. This analysis was made and it was found that there was substantial deficit balances in the City funds to warrant placing the City in the status of fiscal emergency under Section 11.03 of the Ohio Revised Code.

Faced with this economic plight of the City of Campbell, the parties went into negotiations and after ten (10) months have been unable to achieve a resolution. The contract expired December 31, 2003.

An impasse in negotiations of a new labor agreement resulted in a fact finding hearing through the services of **SERB** which was held at the City Offices in Campbell, Ohio on July 20, 2004 beginning at 10:00 AM and ending at 1:30 PM when the parties believed that they had a resolution as a result of private discussions. This resolution never came to fruition and the parties mutually agreed to extend the period of fact-finding as provided under Ohio Administrative Code Rule 4117-9-05(G). A second hearing was requested which was held on August 30, 2004 at 10:00 AM and was completed at 1:45 PM. All witnesses were sworn and both parties had full and equal opportunities to make statements, present evidence, examine, and cross examine witnesses.

Based upon the knowledge at the hearing, testimony, evidence, and the demeanor of the parties, the Fact-Finder made the following findings:

FINDINGS

Article 2 – Recognition

Section 2:

FACT FINDERS DIRECTION

There is a dispute over the inclusion of the Captain in the bargaining unit. The Fact-Finder directs the parties to jointly apply to the State Employment Relations Board for unit clarification on this issue.

RATIONALE

Problem Resolution

Article 5 – Leaves of Absence/Union Business

Section 1:

Upon successful completion of the probationary period, an employee shall be eligible, upon written request of the City, for a personal leave of absence without payor interruption of seniority for one (1) year and such continuation as may be necessary if one is selected for full-time work on the Union staff.

During any period of leave of absence granted under this Article, all of the employee's benefits shall cease accumulating and remain banked for use upon returning to work. The employee shall not earn or be entitled to benefits while off.

The Employer agrees to contribute its share towards health insurance for the calendar month following the commencement of leave under this Section. Thereafter, the employee on leave will be responsible for contributing the full cost of health insurance should he still wish to remain enrolled in the plan.

RATIONALE

Cost Containment

Article 6 – Rules and Regulations

Section 1:

The Union agrees that its members shall comply with all Fire Department rules and regulations, including those relating to conduct and work performance. The Employer agrees that departmental rules and regulations, which affect working conditions and performance, shall be subject to the grievance procedure.

Section 2:

Current rules and regulations provided on the signing date of this agreement to the Union shall remain unchanged. Within thirty (30) days after receipt, the Union shall have the right to grieve the reasonableness of any of these rules and regulations. Failing such, the rules and regulations shall be implemented unchanged. In the event that it becomes necessary to establish new rules or modify existing ones, the Employer will notify the Union and meet to discuss the matter prior to implementation. The Union reserves the right to grieve the reasonableness of any newly established or modified work rule. No work rule shall be applied in an arbitrary or capricious manner or conflict with the terms of this agreement.

RATIONALE

Problem Resolution

Article 11 – Safety and Health

Per regulations a fire may not be fought with fewer than two (2) firefighters at the scene, and it takes a minimum of four (4) firefighters on the scene to enable two (2) firefighters to go inside to fight a fire. To that end, the Fact-Finder adds the following language which supercedes any language in the contract in regard to this specific issue:

CONTRACT MODIFICATION

In order to meet the manning requirements established in the current Collective Bargaining Agreement, the City has the right to utilize the Chief while working on his regularly scheduled shifts (that normally being daylight, Monday through Friday).

CAVEAT

The above Article 11 contract modification is only in effect as long as the State of Ohio determines that the City of Campbell is on a fiscal emergency and becomes moot when the status is lifted and reverts to current contract language below:

SECTION 3, REPLACED – BELOW IS THE REPLACED CURRENT CONTRACT

Minimum-Manning Language

Sufficient personnel shall be maintained on duty and available for response to alarms. A minimum of two (2) firefighters on shift shall be maintained at all times. If sufficient personnel are not available to meet the minimum-manning requirement, firefighters shall be recalled or retained on overtime status. At no time will anyone but a bargaining unit member replace a bargaining unit member. If an apparatus is called out of the city on a mutual-aid call, two (2) members of the bargaining unit will be called to duty on an overtime status. This status will be paid out on an hour per hour basis, unless the department calling for mutual-aid needs manpower and/or equipment, then all responding members will be paid overtime in accordance with Article 13; Section1.

RATIONALE

Cost Savings

Section 4: Self-Contained Breathing Apparatus

MOVED TO ARTICLE 18-SAFETY

Language Housekeeping

Article 13

CONTRACT MODIFICATION

OVERTIME

Sick days and holidays shall not be used for the purpose of calculating overtime.

(THE ABOVE AND SECTION 5 BELOW ARE THE ONLY CHANGES in Article 13)

CAVEAT

This Article 13 contract OVERTIME modification is only in effect as long as the State of Ohio determines that the City of Campbell is on a fiscal emergency and becomes moot and the parties revert to the current contract application.

RATIONALE

Cost Savings

Section 5: Emergency Closings

THIS SECTION IS DELETED

In the event the Mayor or Director of Administration closes City Hall for unlisted holidays, emergencies, or any other reasons, only the employees' of the Fire Department that are on duty will be compensated overtime pay for the business hours that City Hall is closed(Monday through Friday, 8:30 AM through 4:30 PM)

RATIONALE

Not included in any other city employee or bargaining unit agreement.

Cost Savings

Article 14 – Wages

Section 1:

The rates of pay shall remain unchanged for the duration of this Agreement.

<u>Classification</u>	<u>Annual Salary</u>	<u>Base Hourly Rate</u>	<u>Base Overtime Rate</u>
Firefighter	\$35,400.00	\$12.8447	19.2671
Firefighter/Inspector	\$35,400.00	\$12.8447	19.2671
Fire Captain	\$37,153.00	\$13.4808	20.2212

RATIONALE

Fire Department expenditures for the year 2004 amounted to approximately twenty-seven percent (27%) of the money received from the general fund money. This includes payments on a fire vehicle. Based upon the total of the general fund deficit, twenty-seven percent (27%) of the deficit would be charged to the Fire Department which equals \$156,060.00. In an effort to cut this deficit, each department in the City is analyzed and the program is to be implemented in order to secure a balanced budget for the year 2005 as required by Ohio statutes. A new levy was issued and it expected to produce approximately \$100,000.00 and still there is a short coming in the Fire Department's portion of the budget.

Campbell City has laid-off one of the firemen in the year 2002 and as a result, the replacement cost of overtime to fulfill the manning requirements approximated \$23,000.00 for the year 2003 over and above the salary savings. It was this overtime which was the focal point of the parties, as it was unrealistic to layoff another fireman in order to balance the budget in the year 2005.

Both sides proposed new hours of work as well as shift schedules. The eight (8) day schedule of 212 hours decreased the total number of hours that a fireman worked during the year, thus if we used a salary basis, it would decrease the rate. If the Fact-Finder looked to the other proposal of the forty-two (42) hour workweek, based on system with a minimum of two (2) firefighters, this increases the annual salary earning of the firefighter. Therefore, neither proposal was acceptable to the Fact-Finder as a resolution at this time.

Article 15 – Longevity Pay

Language Housekeeping

Longevity pay for employees of the Fire Department shall be paid by the City of Campbell commencing on the first day of December following the completion of five (5) years of service. The rate of compensation of the longevity pay is hereby established at two dollars and seventy-five cents (\$2.75) per month for each month of service for each year of this contract. A maximum of six hundred dollars (\$600.00) per annum. Said compensation shall be added to the overtime rate of each eligible employee.

Article 16 – Vacation

NEW

The following replaces the current contract language contained in Section 2:

Section 2: Vacation Selection

Selection of vacations shall be on a seniority basis. Employees' vacation requests shall be submitted by December 15th of the year proceeding the year in which the vacation is to be taken to guarantee such vacation selection. From December 15th to January 2nd, no vacation requests will be accepted. The employee's selection shall be approved or denied by the Fire Chief by January 2nd. Denial shall be for reasons of manpower shortage only. Such denial shall be made in writing to the employee. Only one (1) Fire Fighter per shift shall be on vacation at a time. After an employee's vacation has been approved, it may be changed only by mutual consent.

Should vacation time be available, the Fire Chief may waive the notice requirement provided above. Vacation may be taken one (1) day at a time. After January 2nd, employees may request vacation time should it be available. The employee's request shall be approved or denied in writing by the Fire Chief within three (3) days of receipt. Requests shall be acted upon on a first-come, first-served basis, except that where two (2) employees submit requests for the same day, at the same time, seniority will prevail.

RATONALE

Mutual Agreement at Hearing

Article 18 – Uniform Allowance/Turn-Out Gear

Language Housekeeping

Section 1: Uniform

Bargaining unit members of the Fire Department shall receive a uniform allowance of five hundred dollars (\$500.00) per year for the duration of the contract. The uniform allowance shall be paid to the bargaining unit member the first pay of June in every calendar year.

Moved from Article 11

Language Housekeeping

Section 4: Self-Contained Breathing Apparatus

Language Housekeeping

Each full-time firefighter shall be assigned his/her own face piece for his/her exclusive use with the self-contained breathing apparatus.

ARTICLE 22

NEW LANGUAGE

REPLACES CURRENT CONTRACT LANGUAGE

HEALTH BENEFITS

Section 1. The Employer shall make available to all employees comprehensive major medical/hospitalization health care insurance, pursuant to the plan in effect as of the signing of this agreement. The Employer shall select carriers/providers and otherwise determine the method of provision and coverage. The participating employee may elect either single, with spouse, with children, or family coverage.

Section 2. Effective no later than thirty (30) calendar days following the execution of this agreement, bargaining unit employees shall be obligated to contribute, through payroll deduction, the following amounts toward the monthly premiums for their health care coverage/premium:

The first year of the agreement- ten percent (10%) not to exceed fifty dollars (\$50.00) per month.

The second and third years of the agreement-fifteen percent (15%) not to exceed sixty-five dollars (\$65.00) per month.

The above-referred to payments shall apply toward the plan the employee chooses to enroll in subject to the availability of such plans as offered.

Section 3. If, during the life of this agreement, it becomes necessary for the Employer to change carriers, the Employer agrees to meet with the Union in advance of such action and receive and consider input from the Union.

Section 4. Notwithstanding the provision(s) of Section 1-3 of this article, which provides for health care coverage, the Union agrees that the Employer may offer alternative health care coverage program(s) during the term of the agreement. The terms and conditions of such alternative programs shall be determined by the Employer. The costs and/or the terms and conditions of said program(s) shall be at the discretion of the Employer and may be subject to change.

RATIONALE

Per Police Agreement

Article 28 – Injury on Duty

NEW LANGUAGE

Section 1: A full-time employee who is injured while performing the duties of his position whereby such injury make it impossible for the employee to work shall be paid his regular rate of pay and benefits not to exceed one hundred twenty (120) calendar days.

Section 2: In order to be able to receive payment in accordance with the provisions contained herein, an employee injured in the line of duty shall apply to the Bureau of Workers' Compensation for medical benefits only. Pending the determination of the claim's compensability, an employee may use any accrued sick leave, vacation leave, personal leave, or compensatory time to cover the time during which he is unable to work. Upon the approval of the claim for medical benefits by the Bureau of Workers' Compensation, the employee will be re-credited with all paid leave that was used to cover the time it took for the claim to be initially determined as compensable, and will receive his regular rate of pay for the remaining time during the one hundred twenty (120) day period. Should a claim be denied at any time during the timer period described in Section 1 and 2, the Employer's obligation to provide such payment shall be terminated.

Section 3: After one hundred twenty (120) calendar days, should the employee still be unable to return to work, the Employer, at its discretion, may require the employee to submit to a fitness for duty medical exam to ascertain whether or not a light duty position may be available. The employee may also apply for lost wages and benefits through the Bureau of Workers' Compensation.

Section 4: Should the fitness for duty exam determine that the employee is capable of performing in light duty capacity, and the Employer determines that it wishes to offer a light duty position; an offer of light duty will be made to the employee. The light duty position will be compensated at seventy-five percent (75%) of the employee's regular hourly rate. It is within the employee's sole discretion whether or not he wishes to accept the Employer's offer of light duty. Nothing in this article shall obligate the Employer to offer or create a light duty position for an employee who is unable to return to work after the one hundred twenty (120) day period.

RATIONALE

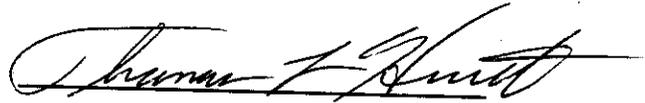
Per Police Agreement

Article 29 – Duration

Section 1: Contractual Term

This Agreement shall be effective as of **the first day of January, 2004 and shall remain in full force and effect through December 31, 2007.** It shall be renewed from year to year thereafter, unless either party shall have notified the other party in writing, at least sixty (60) days prior to the anniversary date that it desires to modify this Agreement.

All articles and issues not addressed in this fact-finding report are considered resolved and if not addressed in this report are denied. There shall be no other changes, additions, or modifications to this labor agreement and all unchanged language shall continue in effect and are incorporated into this new labor agreement. Included in this report are partial changes to current articles or provisions and the balance of these articles or provisions, unless specifically modified or replaced, remain unchanged.



Thomas L. Hewitt, Arbitrator

Issued on the 9th day of September 2004.