

STATE EMPLOYMENT RELATIONS BOARD

2005 DEC 20 P 2:24

In the Matter of the Contract :  
of International Association :  
of Firefighters, Local 1729 :  
Bargaining Unit, : Case No. 04-MED-10-1200  
and : Fact-Finder  
City of Whitehall, Ohio : Jack E. McCormick  
Employer. :

REPORT OF FACT-FINDER

December 19, 2005

For the Bargaining Unit:  
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For the Employer:  
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Fact-Finder  
Jack E. McCormick  
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## DISCUSSION

On December 9, 2005, a Fact-Finding/Mediation was held at the offices of the City of Whitehall, 360 South Yearling Road, Whitehall, Ohio 43213. In attendance at the hearing were the following:

For the City:

Mark Landes, Esq.  
Lynn Ochsendorf, Mayor City of Whitehall  
Michelle Carberry, City of Whitehall

For the Firefighters:

Henry A. Arnett, Esq.  
Mike Mason, President International Association of  
Firefighters, Local 1729  
Gary R. Keiffer, Firefighter  
Dale Shepherd, Secretary/Treasurer Local 1729  
Mark Simpson, Negotiation team member, Local 1729

The hearing was brought to order by Fact-Finder Jack E. McCormick at 9:45 a.m.

The bargaining unit includes all the firefighters and fire dispatchers employed by the City of Whitehall, which total approximately thirty-nine.

The City and Local 1729 have been operating under a contract that ran from January 1, 2002 through December 31, 2004. The parties have been attempting to negotiate a new three-year contract since December of 2004, and have met approximately ten times over the last twelve months without a resulting contract.

At the initiation of the hearing both parties were fully informed of the statutory guidelines of O.R.C. 4117 et. seq. and were offered mediation. After lengthy discussion it was found that

mediation on most of the issues was not possible and the matter was submitted to fact-finding based on the issues raised in the parties' joint letter dated December 5, 2005, which is attached hereto as Fact-Finder's Exhibit 1.

#### WAGES

The parties have agreed that any wage increases recommended in this fact-finding or mediation shall be retroactive to January 1, 2005.

Local 1729 proposes that the base rate for the bargaining unit members be raised by 3.5% in 2005, 4% in 2006, and 4% in 2007. The City proposes wage increases for the same years of 3.5%, 2.5%, and 2.75%.

The Firefighters, in making their wage request, asked the Fact-Finder to consider certain comparables contained in their Exhibit 1, which includes the Whitehall Police Department which is represented by the Fraternal Order of Police (FOP). It should be noted at this juncture that the Firefighters' legal representative indicated that one of the reasons for the delay in finalizing this contract was that the Firefighters wanted to wait and see the results of the FOP contract negotiations. This is not atypical in a political subdivision which has multi-unit bargaining units. Bargaining units in such jurisdictions always want to be the last to negotiate their contract. The Fact-Finder makes this observation as it will become relevant later on in this report.

When viewing the Firefighters' comparables it does in fact appear that they are at the low range of other departments and lag behind the Whitehall's City Police Department somewhat. However, their proposed increases in wages appear to be above the statewide average as well as that granted to their brethren in the FOP. The Firefighters, having deliberately waited to see the results of the FOP contract, now wish to become a trendsetter by having wage increases that are one-half percent greater than granted to the FOP. In addition the FOP accepted the health insurance plan which the City is proposing to the Firefighters and which they have rejected at this fact-finding.

Notwithstanding the issue as to affordability, which will be discussed later, this Fact-Finder finds no facts that would support the Firefighters requested wage increases. On the other hand, the City's proposed wage increases of 3.5%, 2.5%, 2.75% are likewise unsupported by any facts. This is especially so in light of the fact that the City is asking the Firefighters to accept a health insurance package which would truncate any wage increases received henceforth.

The City, in making its wage proposals, points to a "shrinking carryover" of funds for each of the last two calendar years. The Mayor indicates that she has made every attempt to keep the increase in expenditures at a minimum while revenues have been falling. She pointed out to the Fact-Finder that loss of a major insurance company and another manufacturer from the tax rolls of the City of Whitehall has diminished the tax revenue available.

Certainly the critical issue for the City of Whitehall in 2005 was the federal government's decision as to the Defense Construction Center and the Base Realignment Commission's recommendations. Whitehall was fortunate in the fact that the DSCC jobs were not lost in Whitehall and that it will eventually gain an additional 600 jobs. Also Target and Wal-Mart stores are intending to open new facilities in Whitehall in 2007, which hopefully will offset the loss of the Kroger and Big Bear warehouses.

Inasmuch as the parties have agreed to the wage increase for 2005 at 3.5%, no discussion as to affordability for that year needs to be made. However, the question as to affordability remains as to calendar years 2006 and 2007. This particular Fact-Finder strictly interprets fact-finders' statutory duty to find that there is an ability to pay on the part of any political subdivision. This makes recommendations for the out-years problematic for this, or any other fact-finder. How does a fact-finder make a recommendation on future wages and at the same time fulfill his or her statutory duty to make a finding that such recommendations can be afforded by the employer? The only solution known to this Fact-Finder is to ensure that any current recommendation, as it relates to future wage increases, be coupled with a recommendation that provides for adequate funding for those future years. That is, the fact-finder must find adequate funds for future wage increases from his or her own present day recommendations.

Along those lines this Fact-Finder finds that, when considering the fact-finding package in toto there will be adequate funds to provide the following wage increases for the Whitehall City Firefighters:

**RECOMMENDATION**

**The Whitehall City Firefighters shall receive wage increases in the amount of 3.5% in 2005, 3.5% in 2006, and 3.75% in 2007.**

The funding for the above recommendation is set forth in Fact-Finder's Exhibit 2 herein.

EMT-PRO-PAY

Approximately twelve years ago the City required that all Firefighters become a certified EMT-Medic. In order to assist current Firefighters in this endeavor the City negotiated with the Firefighters to implement "EMT-Pro-pay" which was (and still is currently) paid to all Firefighters on a semiannual basis for the purpose of subsidizing Firefighters for training in the certification process. In the year 2005 the Firefighters were paid \$2,300.00 premium pay under this plan.

The City proposes that the Pro-pay amount of \$2,300.00 be placed in the firefighter's base salary beginning in 2006. This proposal would allow the City to complete their responsibilities in a more efficient manner, as currently it has to dedicate two full work days to processing of Pro-pay checks. Actually the Firefighters would benefit from having this \$2,300.00 added to their base pay rather than receiving a lump sum payment as it will

increase their overtime, as well as their unused vacation and sick leave payouts.

The Firefighters would prefer to keep the lump sum payout as it was indicated that the membership likes to receive one paycheck for things like "Christmas shopping". In addition they would like to increase the Pro-pay in 2005 to \$2,400.00; in 2006 \$2,500.00; and in 2007 \$2,600.00.

First, as a factual matter the Fact-Finder finds that the lump sum payouts are, in fact, an administrative complication for the City and that it would be much easier to add them to the base pay of the Firefighters and since that creates no real harm, but actually a benefit to the Firefighters, it is so recommended. Inasmuch as the Firefighters have already received their Pro-pay for 2005, the only issue is what the Fact-Finder recommends for the years 2006 and 2007. In an attempt to achieve some level of wage equalization between the Firefighters, the City Police, and the Firefighters' colleagues throughout central Ohio, this Fact-Finder is recommending a modest increase in the Pro-pay premium. The Fact-Finder finds there is sufficient facts to support the following:

#### **RECOMMENDATION**

**Members classified as full-time Firefighters of the Division of Fire who are certified EMT-P shall receive a one time raise of their base salary in the amount of \$2,500.00. This raise will be paid on the first payday of January, 2006. Thereafter EMT-P Pro-pay will no longer be part of the Agreement.**

## HEALTH INSURANCE

The rising cost of health insurance is problematic to both employers and employees. It is gratifying that in their position statement the Firefighters concede that they must begin paying a monthly portion of the insurance and an increase in member costs, but have not agreed to the plan offered by the City.

Currently, the City maintains comprehensive hospitalization, surgical, major medical, physicians services coverage, and prescription drug coverage for all employees, with the City paying all premiums for both single and family coverage.

The City in order to keep up with the rising costs providing health care to the Firefighters have proposed a plan in which the employees share part of the health care costs. This plan has already been approved by two other bargaining units (including the Whitehall Police Department) and has been adopted for all exempt employees. The City estimates its savings under this plan would be \$59,426.00 per year, in 2006 and 2007.

Returning once again to the issue as to affordability, it is noted that the Fact-Finder estimates that the base wage increases which he proposes would increase the City's wage costs by approximately \$132,400 in 2005; \$126,465 in 2006; and \$140,241 in 2007. Thus, the adoption of the City's health insurance program is not only justified by the treatment of other units in the City, but also partially funds the wage increases proposed herein.

The Firefighters did not adequately articulate why their health care plan should be different from other City employees. Accordingly the Fact-Finder finds that there are sufficient facts to support the following recommendation:

#### **RECOMMENDATION**

The City of Whitehall's proposed contract language for health insurance as set forth in Exhibit 14 of their pre-hearing statement is adopted, effective January 1, 2006, provided that the City will not seek to recover any copays or deductibles from the Firefighters prior to that date.

#### **TUITION REIMBURSEMENT**

Currently members of the bargaining unit may be reimbursed for tuition up to a maximum of \$1,750.00 a year. The parties agree that tuition rates have gone up and the Firefighters request a modest increase in the amount of tuition reimbursement to \$2,000.00 in 2005; \$2,250.00 in 2006; and \$2,500.00 in 2007. The Firefighters submitted an exhibit showing that currently only one member is taking advantage of this particular provision and that his tuition at Franklin University far exceeds the City's tuition reimbursement plan. Accordingly the Fact-Finder finds there is sufficient facts to support the following recommendation:

#### **RECOMMENDATION**

The City's language contained for section 16.2 Tuition Reimbursement at Exhibit 4 of its pre-hearing statement be adopted, except that tuition shall be reimbursed up to \$2,500.00 per calendar year for covered employee.

### UNIFORM ALLOWANCE

This may be a first in fact-finding history. Here the City proposes to increase the Firefighters uniform allowance in a greater amount (\$850.00) than the Firefighters (\$800.00). Like the tuition reimbursement herein above, the fiscal impact on the City in this recommendation is minimal and accordingly the Fact-Finder finds there are sufficient facts for the following recommendation:

### **RECOMMENDATION**

**That the City's proposed language at Article 25, Uniforms, set forth in Exhibit 15 of its prehearing presentation be adopted effective January, 2006.**

### WELLNESS BENEFIT

At the fact-finding the parties agreed to the City's proposed language on this issue contained at City's Exhibit 9 of its prehearing statement.

### SICK LEAVE

At a post-hearing meeting the parties have agreed to new language as it relates to sick leave.

### SERVICE CREDIT PAY (LONGEVITY)

Currently members of the Firefighters' bargaining unit receive \$500.00 for five years of service, plus \$50.00 for each year beyond five years. The Union request \$500.00 for five years of service, plus \$75.00 for each year beyond five.

The City proposes that it continue the amount of service credit pay at the current amounts.

It is noted that the current service credit pay for Firefighters is identical to that of the Whitehall Police Department. Also there was a factual determination at the hearing based on evidence provided by the Union that turnover within this particular bargaining unit is not a major problem. Therefore based on the lack of a factual rationale for deviating from the longevity plan under which the Whitehall Police Department works the following recommendation is made:

#### **RECOMMENDATION**

**The City of Whitehall's proposed language for section 16.5 of the proposed contract as set forth in Exhibit 7 of its prehearing materials be adopted.**

#### **TENTATIVE AGREEMENTS**

Prior to the fact-finding the parties entered into tentative agreements concerning the issue as to adding Martin Luther King, Jr. Day to the bargaining unit's holidays and increasing the rate that Firefighters will accrue vacation.

It is the City's position that the signing of these tentative agreements take them outside the parameters of this fact-finding.

The Union argues that tentative agreements are subject to ratification by the bargaining unit and the legislative body and that, in any event, the tentative agreements were reached with the understanding they would be part of a total package and that the Agreement, unlike the one herein, was going to be one year and not three years.

At the instruction of the Fact-Finder both parties submitted briefs concerning the issue as to whether the previously reached tentative agreements should be issues for this fact-finding. The City points to SERB v. City of Martins Ferry, (June 6, 1991) a Seventh District Court of Appeals case which states that: "A proposed agreement submitted for acceptance or rejection to a legislative body represents an ultimate effort of the bargaining parties toward a settlement and therefore cannot be rejected by the legislative body." Those, of course, are not the facts in this particular case, but in any event the Firefighters state that a tentative agreement is not binding until it is reduced to writing and approved by the employee organization and the employer's legislative body. In support of their position, the Firefighters point to SERB v. City of Barberton, (1990) a Summit County Common Pleas Court decision. Neither of these decisions are particularly enlightening and at least, in part, are contradictory. However, for the purposes of this fact-finding this Fact-Finder will allow consideration of these two issues to be part of this fact-finding report.

MARTIN LUTHER KING, JR. HOLIDAY

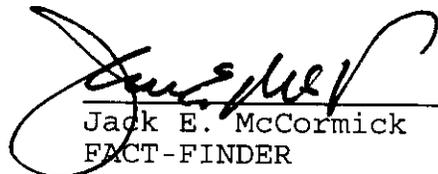
The Firefighters are requesting that they have one additional holiday, that being Martin Luther King, Jr.'s birthday. No real justification was provided by the Union as to why this bargaining unit unlike all others in the City of Whitehall should be granted this additional holiday, and it is noted that the City of Whitehall Offices are open on that holiday. Accordingly:

**The Firefighters request for an additional holiday for Martin Luther King, Jr.'s birthday is not factually supported and therefore not recommended.**

VACATION ACCRUAL

The Firefighters assert that the amount of vacation earned by Whitehall Firefighters is considerably behind earned by most other department in central Ohio. While this may be true, the current Firefighters' vacation accrual plan is the same as it is citywide as it is in the City of Whitehall. This Fact-Finder gives preference to internal comparables as opposed to external comparables unless they are in great deviation. Accordingly:

**The Fact-Finder finds that there are insufficient facts to modify the current vacation accrual plan of the Firefighters of the City of Whitehall.**

  
\_\_\_\_\_  
Jack E. McCormick  
FACT-FINDER

# ISAAC, BRANT, LEDMAN & TEETOR LLP

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December 5, 2005

Jack E. McCormick, Esq.  
500 City Park Avenue  
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FACT FINDING  
EX-1

Re: Case No(s). 04-MED-10-1200

International Association of Fire Fighters, Local 1729 and City of Whitehall

Dear Mr. McCormick:

We write to provide the requested joint letter indicating the items which will be the subject of fact finding. The following represent items both sides agree are ready for fact finding:

- 1) Article 15 (Wages), Section 1 (Pay plan for 2005, 2006, and 2007).
- 2) Article 16 (Benefits);
  - a) Section 2 (amount of Tuition Reimbursement);
  - b) Section 3 (amount of EMT-P Pro-pay);
  - c) Section 4 (amount of Pension Pick-up); and
  - d) Section 5 (amount of Service Credit Pay).
- 3) Article 21 (Sick Leave);
  - a) Section 2 (Use of Sick Leave); and
  - b) Section 5 (continued use of Wellness Payment).
- 4) Article 24 (Insurance), Section 1 (employee premium for Hospitalization, Surgical, Major Medical).
- 5) Article 25 (Uniforms), Section 1 (B) & (C) (amount of maximum uniform allowance).
- 6) Article 28 (Duration), Section 1 (Effective Dates, Duration).

December 5, 2005

Page 2

Additional items have been tentatively agreed upon during the bargaining period, and to the extent that a party believes they should be submitted to fact finding, that party will set forth those items in their position statement.

Thank you for your attention to these matters.

Very truly yours,



Mark Landes

  
for Henry A. Arnett, per email authorization

12/5/05 11:58

FACT-FINDERS EXHIBIT 2

FACT-FINDER'S COST CALCULATIONS

Wages & Pro-Pay -

2004 salaries -	\$2,677,548
add .30 roll-ups	\$ 803,326
sub-total	\$3,480,874
add .035 raise -	\$ 93,714
add .30 roll-ups -	\$ 28,811
sub-total	\$3,603,399
add \$200 Pro-pay per man (38) -	\$ 7,600
add .30 roll-ups -	\$ 2,288
Grand total	<u>\$3,613,287</u>

Total 2005 costs - \$ 132,413

2006 Total wage costs -	\$3,613,287
add .035 raise -	\$ 126,465
	<u>\$3,739,752</u>

2007 Total wage costs -	\$3,739,752
add .0375 raise -	\$ 140,241
	<u>\$3,879,993</u>

Increased wage costs to City over three years:

2005 -	\$132,413
2006 -	\$126,465
2007 -	<u>\$140,241</u>
	\$399,119

Tuition reimbursement -

2005 -	0
2006 -	\$ 750.00
2007 -	<u>\$ 750.00</u>
Total -	\$1,500.00

Uniform Maintenance -

2005 -	0
2006 -	\$ 9,500
2007 -	<u>\$ 9,500</u>
Total -	\$19,000

Wellness Benefit -

2005 -	0
2006 -	\$12,250
2007 -	<u>\$12,250</u>
Total -	\$24,500

Total increased costs of Fact-Finder's Recommendations:

2005 -	\$132,413*
2006 -	\$148,965
2007 -	<u>\$162,741</u>
	<u>\$444.119</u>

\* City estimates a \$1.3 million surplus for 2005.

City's savings from Health Insurance Recommendation:

2005 -	0
2006 -	\$ 59,426.00
2007 -	<u>\$ 59,426.00</u>
Total -	\$118,852.00

CERTIFICATE OF SERVICE

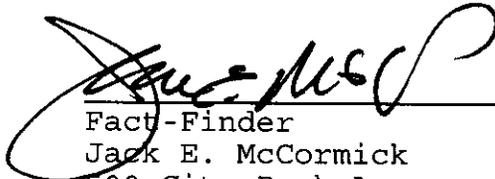
A copy of the foregoing was served upon the following via U.S. mail, postage prepaid, this 19th day of December, 2005.

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Acting Administrator, Bureau of Mediation  
State Employment Relations Board  
65 E. State Street, 12th Floor  
Columbus, OH 43215-4213

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