

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on May 26, 2005, pursuant to Ohio Administrative Code Rule 4117-9-05(D). The parties mutually agreed to extend the fact-finding period until June 24, 2005 as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Salem Firefighters, IAFF Local 283 (Union) and the City of Salem (City). Salem is a city of slightly more than twelve thousand (12,000) residents and is the northern most city in Columbiana County. It is located in Perry Township.

The fact-finding involves the City and employees of its Fire Department. The bargaining unit is comprised of fifteen (15) full time sworn and uniformed employees. The unit is represented by the International Association of Firefighters Local 283. The parties have had a collective bargaining relationship for a number of years.

Prior to the fact-finding, the parties engaged in bargaining. Negotiations were dominated by the City's desire to form a joint fire district with Perry Township. The City believes that creating a fire district would enable it to cut costs. The Union objected to its formation and an impasse was reached. The parties agree that the issue of forming the fire district is not within the jurisdiction of the Fact Finder. The City is pursuing its formation and there is currently litigation to determine that issue. The Fact Finder agrees with the parties that the only matters before him are those relating to terms of the collective bargaining agreement.

II. THE HEARING

The fact-finding hearing was held on June 20, 2005 at the Salem City Hall. The parties provided their position statements. The hearing began at 1:20 p.m and adjourned

at approximately 2:30 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties jointly introduced the following exhibit into evidence:

1. Collective Bargaining Agreement, effective July 1, 2002 through June 30, 2005 (Agreement).

The issues remaining at impasse for fact-finding included:

1. Duration of the Agreement.
2. Manpower requirement.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the 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 interests and welfare of the public, 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;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in

private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Unresolved Issues

Issue: Article XXXV, Term of Agreement

Union Position: The Union seeks a three (3) year agreement.

City Position: The City proposes that the agreement be in effect only until the fire district is formed.

Findings: The City has long had a Fire Department. It has one (1) of the few full time, paid Fire Departments in the County. The chief factor in the City's desire to form a fire district is cost savings. Perry Township has an all volunteer or part time Fire Department. In creating the fire district, the City's Fire Department will be abolished. The fire district will not employ full time, paid employees, saving the City, in its estimate, six hundred thousand dollars (\$600,000.00), approximately half of its current budget for the Fire Department.

The Union argues that creating the fire district will take some time. The City has been pursuing this for almost a year. It put two (2) voter initiatives before its residents last fall and the voters indicated by approximately a two-thirds ($\frac{2}{3}$) vote that they did not want the Fire Department abolished without having some input. The parties are litigating the issue of the fire district. At a recent hearing on the matter, no one from the City was able to say what the terms and conditions would be. The City is exploring creating the district

and desires to do so, but there is no certainty that it will be created. With such uncertainty, it could take an extended period for its creation. The Fire Department has existed for a long time and the City and the firefighters have had a long standing relationship. The current Agreement is for three (3) years and this has been the norm. Unless there is some compelling need, the Agreement should be renewed for three (3) years.

Additionally, the Union argues that one (1) of the factors in Rule 4117-9-05(K) that the Fact Finder is to consider is the interest and welfare of the public. The public has indicated its concerns by the vote on the initiatives. Further, it is in the best interest and welfare of the public to have certainty as to the duration of the Agreement between the parties. The bargaining unit was created under the SERB process and must be continued except through the SERB process. SERB provides that the collective bargaining agreement does not expire until the Fact Finder or Conciliator states that it expires. If the Agreement is not continued, it would be tantamount to abolishing the unit without using the proper processes under the law.

Finally, the City currently has a balanced budget. The Union has proposed to continue the current Agreement for another three (3) years, providing the City with a cost freeze. As the Union is proposing no added costs, the City should be able to continue to provide fire protection. The Police Department is currently negotiating with the City. The police are not accepting a freeze.

The City argues that the Agreement should exist only until the fire district is created. Its balanced budget is irrelevant. Ohio law requires cities to balance their budgets. Thus, it is a question of what cuts have to be made to continue balancing the budget. The City has lost some revenues in the last few years while costs have increased. The question

here is the length of the contract. The contract will continue. SERB has jurisdiction over the creation of the fire district; it is a separate legal entity.

There seems to be no question that the City can save money by forming a fire district with Perry Township. However, that is not the issue before the Fact Finder. The issue is how long the Agreement is to be renewed while the parties and the appropriate legal forum (SERB or a court of law) determine whether the district can be created. This issue is one (1) of first impression for the Fact Finder. The parties know of no other City or municipality facing this issue currently. Given this situation, the Fact Finder agrees that the most relevant factor under Rule 4117-9-05(K) is the interest and welfare of the public.

The public has made its wishes known by its vote. The Fact Finder concludes that he should take this into account in his recommendation. Additionally, there are some safety concerns here. The Salem Fire Department, with its full time, paid employees, has a response time of four (4) minutes. Perry Township, with its volunteer and part time department, has a response time of fifteen (15) minutes. The Salem firefighters typically have greater training than a volunteer, part time unit in such areas as emergency services and hazardous materials. The chiefs of the Salem and Perry Township fire departments have opposed creating the fire district. While the current fire service would continue as is under either the Union or City's proposal, there would be heightened uncertainty if the contract has no specific expiration date. In the current situation, it is likely that Salem firefighters would look elsewhere for more stability. If faced with an indefinite contract, which is what the City is essentially asking for, the Fact Finder concludes that it is even more likely that firefighters would leave for a more stable environment. The City concedes that the publicity surrounding this issue has made it difficult to replace employees. In such

a situation, the Fact Finder believes that any added uncertainty could interfere with the public welfare.

The City admits that the creation of the fire district is in its early stages. It is exploring the issue with Perry Township. It has the legal right to establish such a district. However, it is not a certainty that it will be created. Given the level of uncertainty in this situation, the Fact Finder concludes that the interest and welfare of the public would best be served by continuing the status quo as much as possible. A three (3) year agreement would provide more stability without affecting the legal right of the City to pursue creating the fire district.

Recommendation: The Fact Finder recommends that the duration of the Agreement be for three (3) years, through June 30, 2008.

Issue: Article XXI, Safety Equipment, paragraph (E), Manpower levels

City Position: The City seeks to change paragraph (E) to allow three (3) men per shift.

Union Position: The Union proposes no change from the current level of four (4) men per shift.

Findings: The City states that overtime costs typically are between twenty-five and forty thousand dollars (\$25,000.00-40,000.00) per year. Currently, though, the bargaining unit is two (2) men short and to meet the four (4) man requirement necessitates more overtime. The last couple of years, overtime has cost the City approximately one hundred twenty-five thousand dollars (\$125,000.00). It is also difficult to find replacements given the publicity surrounding the creation of the fire district.

The Union contends that this is a safety issue while the City simply sees this as a

cost issue. Various regulations require four (4) men per shift. The Ohio Administrative Code was recently amended to require four (4) men on a structural fire. OAC 4123:1-21-07(C)(3) provides:

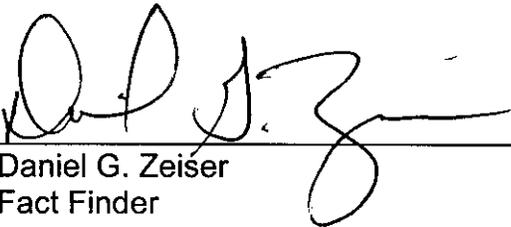
At working structural fires a minimum of four employees shall be required, consisting of two employees working as a team in the hazardous atmosphere, who shall remain in voice or visual contact with each other; and two members who are located outside the hazardous atmosphere, who shall be responsible for maintaining a constant awareness of the number and identity of those operating in the hazardous atmosphere and be prepared to perform rescue of those members if required.

This rule became effective on June 1, 2005. Additionally, the four (4) man provision has been maintained in recent conciliation and fact finding. Finally, state law allows the City to use provisional or temporary employees to fill out the unit. Instead of doing so, the City has chosen to use overtime at additional cost.

Given that the OAC requires a minimum of four (4) men to fight structural fires, the Fact Finder concludes that the four (4) man requirement should not be changed. Additionally, the City has not shown a compelling need to reduce the requirement. While its overtime costs have increased, the Fact Finder determines that safety should override the additional cost of overtime. It appears that there are ways for the City to save some money here, perhaps through the use of provisional or temporary employees. Without a showing that the City has tried other methods and has not been successful in keeping costs down, the Fact Finder concludes that the four (4) man requirement should not change.

Recommendation: The Fact Finder recommends that paragraph (E) of Article XXI remain unchanged.

Dated: June 24, 2005



Daniel G. Zeiser
Fact Finder