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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2007 JUN -4 P 12: 17
STATE EMPLOYMENT
RELATIONS BOARD

In the Matter of Fact Finding Between

SPRINGDALE PROFESSIONAL FIRE)	Report of Fact Finder
FIGHTERS, IAFF LOCAL 4027)	Findings and Recommendations
)	
Union)	Case No. 06-MED-10-1177
)	
and)	June 1, 2007
)	
CITY OF SPRINGDALE)	Fact Finder:
)	Saundria Bordone
City)	

APPEARANCES

For Union:: Leonard French, President Local 4027
William E. Quinn, Ohio Association of Professional Fire Fighters

For City: Paul R. Berninger, Wood & Lamping LLP
Derrick Parham, Assistant City Administrator
Daniel M. Shroyer, Fire Chief

I. Introduction

The Springdale Professional Fire Fighters, IAFF Local 4027 (Union) represents the Springdale full-time fire fighters, fire fighters EMT, fire fighters EMT-P, and captains, excluding the chief, assistant chief, and chief of the inspection bureau, as certified by Ohio SERB July 13, 2000. The bargaining-unit is currently composed of 4 Firefighter/EMTs, 17 Firefighter/Paramedics, and 3 Firefighter/Paramedic Captains. The hearing in this matter was held April 30, 2007, at the City of Springdale Municipal Building in Springdale, Ohio. At the hearing, the parties were afforded full opportunity to present evidence and their positions on the issues.

The parties' most recent collective-bargaining agreement expired by its terms December 31, 2006. The parties met for negotiations in November and December, before a mediator joined the negotiations in January 2007.

Prior to the hearing, the parties timely submitted their pre-hearing position statements. The outstanding issues for fact finding pertain to Article 8 Discipline, Article 10 Hours of Work and Overtime, Article 11 Wages, Article 21 Vacation, Article 36 Insurance and a proposed new article entitled Certifications.

In rendering these Findings and Recommendations, the Fact Finder has given full consideration to all provided, reliable information relevant to the issues and to all criteria specified in O.A.C. Rule 4117-9-05(J) and (K):

- (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.

II. Findings and Recommendations

A. Economic Issues:

The outstanding issues in Articles 10, 11, 21, and 36 are economic and interrelated.

1. Current and Proposed Language

Article 10 – Hours of Work and Overtime:

Current Language

10.1 Unless assigned to a forty-hour workweek, the regular work period of a bargaining unit member shall be comprised of a tour of twenty-four consecutive hours of work followed by forty-eight hours off duty. The sequence of tours shall include a “Kelly day” on which a member is not scheduled to work his/her regular tour. A Kelly day shall occur every 28th tour. Effective January 1, 2005 a Kelly day shall occur every 19th tour.

10.7 Effective January 1, 2005 the FLSA work cycle shall be 19 consecutive days.

Union’s Propose Language

10.1 Unless assigned to a forty-hour workweek, the regular work period of a bargaining unit member shall be comprised of a tour of twenty-four consecutive hours of work followed by forty-eight hours off duty. The sequence of tours shall include a “Kelly day” on which a member is not scheduled to work his/her regular tour. ***at the signing of this agreement the work-week shall be reduced by 1 hour to a 52 hour work-week. January 1st 2008 the work-week shall be reduced by 2 hour to a 50 hour work-week. January 1st 2009 the work-week shall be reduced by 2 hour to a 48 hour work-week. The City and the Union shall develop Kelly dates & FLSA Cycles as required to meet these hours.***

Eliminate Section 10.7.

City’s Proposed Language

Retain the current existing language.

Article 11 – Wages:

11.1 Retroactive to the first pay cycle for 2004, an increase of 5% on the base straight time rates for all bargaining unit personnel,

11.2 Effective the first pay cycle for 2005, an increase of 4% on the base straight time rates for all bargaining unit personnel,

11.3 Effective the first pay cycle for 2006, an increase of 3% on the base straight time rates for all bargaining unit personnel,

11.4 The rates for these various pay steps will be as follows:

		2004 Hourly	2005 Hourly	2006 Hourly
Firefighter	Step 1	\$14.97	\$16.01	\$16.49
	Step 2	\$15.73	\$16.81	\$17.31
	Step 3	\$16.52	\$17.65	\$18.18
	Step 4	\$17.35	\$18.53	\$19.09
	Step 5	\$18.23	\$19.46	\$20.04
	Merit I	\$19.14	\$20.43	\$21.05
	Merit II	\$20.09	\$21.45	\$22.10
Firefighter/ Paramedic	Step 1	\$15.73	\$16.81	\$17.33
	Step 2	\$16.52	\$17.65	\$18.20
	Step 3	\$17.35	\$18.53	\$19.11
	Step 4	\$18.23	\$19.46	\$20.07
	Step 5	\$19.14	\$20.43	\$21.07
	Merit I	\$20.09	\$21.45	\$22.12
	Merit II	\$21.09	\$22.55	\$23.23
Fire Captain	Step 1	\$19.14	\$20.47	\$21.08
	Step 2	\$20.09	\$21.49	\$22.14
	Step 3	\$21.09	\$22.57	\$23.25
	Step 4	\$22.14	\$23.70	\$24.41
	Step 5	\$23.25	\$24.88	\$25.63
	Merit I	\$24.42	\$26.13	\$26.91
	Merit II	\$25.64	\$27.43	\$28.25

Union's Proposed Language

11.1 *Effective* the first pay cycle for 2007, an increase of 5% on the base straight time rates for all bargaining unit personnel,

11.2 Effective the first pay cycle for 2008, an increase of 5% on the base straight time rates for all bargaining unit personnel,

11.3 Effective the first pay cycle for 2009, an increase of 5% on the base straight time rates for all bargaining unit personnel,

11.4 The rates for these various pay steps will be as follows:

		2007 Hourly	2008 Hourly	2009 Hourly
Firefighter	Step 1	\$17.31	\$18.18	\$19.09
	Step 2	\$18.18	\$19.09	\$20.04
	Step 3	\$19.09	\$20.04	\$21.04
	Step 4	\$20.04	\$21.04	\$22.10
	Step 5	\$21.04	\$22.10	\$23.21
	Merit I	\$22.10	\$23.21	\$24.37
	Merit II	\$23.21	\$24.37	\$25.59
Firefighter/ Paramedic	Step 1	\$18.20	\$19.11	\$20.07
	Step 2	\$19.11	\$20.07	\$21.07
	Step 3	\$20.07	\$21.07	\$22.12
	Step 4	\$21.07	\$22.12	\$23.23
	Step 5	\$22.12	\$23.23	\$24.39
	Merit I	\$23.23	\$24.39	\$25.61
	Merit II	\$24.39	\$25.61	\$26.89
Fire Captain	Step 1	\$22.13	\$23.25	\$24.41
	Step 2	\$23.25	\$24.41	\$25.63
	Step 3	\$24.41	\$25.63	\$26.91
	Step 4	\$25.63	\$26.91	\$28.26
	Step 5	\$26.91	\$28.26	\$29.66
	Merit I	\$28.26	\$29.66	\$31.14
	Merit II	\$29.66	\$31.14	\$32.70

11.5 Any contractual reduction in the work week hours will result in the employee's pay increase % to be added to the 2006 annual salary and adjusted hourly from there.

City's Proposed Language

Increase of 6%, at the rate of 2% per year, from ratification of successor agreement through December 31, 2009.

Article 21 – Vacation:

Current Language

21.1 Full-time fire fighters who are regularly scheduled to work a 24 hour on, 48 hour off work schedule shall be entitled to vacation leave with pay each calendar year according to the following schedule:

(A)	After one year	106 hours
	After seven years	159 hours
	After twelve years	212 hours
	After eighteen years	265 hours

Union’s Proposed Language

21.1 Full-time fire fighters who are regularly scheduled to work a 24 hour on, 48 hour off work schedule shall be entitled to vacation leave with pay each calendar year according to the following schedule:

(A)	After one year	106 hours
	After seven years	159 hours
	After twelve years	212 hours
	After eighteen years	265 hours
	<i>After twenty years</i>	<i>277 hours</i>
	<i>After twenty-three years</i>	<i>289 hours</i>

City’s Proposed Language

Retain the current existing language.

Article 36 – Insurance

Current Language

36.1 **Medical Insurance.** The City and the employee shall share the cost of the premium for the Medical Insurance Section of the Employee Group Health Insurance Program. The employee contribution towards the cost of the medical insurance shall be not more than \$25.00 per month for single coverage and \$50.00 per month for family coverage. As part of the Medical Insurance Program, the City shall institute a managed care program in which a network of physicians and hospitals will be identified as the preferred choice for service. If an employee avails himself/herself to a provider within the network, the City will pay for the employee’s benefits at their current levels.

Union’s Proposed Language

Retain the current existing language.

City’s Proposed Language

The City is proposing that the employee contribution be increased to \$50.00 for single coverage and \$100.00 for family coverage.

2. Parties' Positions

The Union proposes a 15 percent increase in wages: 5 percent each year over the 3 years of the 2007-2009 collective-bargaining agreement with implementation retroactive to January 2007. The City proposes a 6 percent wage increase: 2 percent each year over the 3 years of the agreement with no retroactivity. The Union proposes a gradual reduction of its average workweek over the 3 years from 53 hours to 48 hours. The City resists any such change in work hours. The Union proposes the addition of two tiers to the vacation entitlement schedule by adding 12 hours each after the twentieth and twenty-third years of service. The City proposes an increase in employees' monthly contribution for health insurance of \$25 for single coverage and \$50 for family coverage, bringing the employees' monthly contribution to \$50 and \$100, respectively. The Union resists any increase in employee contributions to health insurance coverage.

The parties submitted comparability, workload, work qualifications, work duty, financial, and other data in support of their positions. The City recently passed an earnings tax increase, the revenue from which enabled the City to recover from the results of a tight revenue situation and left the City with some financial flexibility. The parties disagree on whether the voters anticipated the use of any of this revenue to increase salaries and benefits for City employees. The City argues that the city's population is mostly of modest income, and the fire fighters' wages and benefits already far exceed the median for the population. The Union argues that much of the population is retired and has significant financial resources which are not considered in arriving at the income figure the City is relying on in this regard. The parties do appear to agree, however, that a substantial majority of the earnings tax revenue comes from nonresidents of the City.

The parties both provided economic data of "comparable communities." Each party generally questions the validity of the other's data, arguing that it is skewed by the party's selection of communities to include. The nature and form of the submissions do make it difficult to compare data in order to get a clear picture of where the city stands with regard to other similar communities for several reasons. For example, each of the parties use different communities from each other as well as among its own comparison charts. Further, the parties use different wage steps for their computations; the bases for the comparable

comparisons are not fully explained; and it appears the parties have used a different number of hours in computing the total hours for which employees are paid on an annual basis.

Regarding its vacation proposal, the Union notes that this will not cause an immediate increase in costs because there are no unit employees who currently have twenty or more years of qualifying employment. The City argues that, given the unit employees' work schedules of 24 hours on and 48 hours off, and the inclusion of Kelly days off to make the FLSA work cycles and annual work hours come out correctly, the fire fighters already have a sufficient amount of time off. The Union argues that their proposal will bring their vacation entitlement more in line with other City employees and fire fighters of comparable communities.

As to its proposal to increase the unit employees' contribution to the costs of health insurance coverage, the City contends that, even with the proposed increase, the City's employee health plan will still be far more generous than private and most public employers. The City is self insured. Prior to the last collective-bargaining agreement, the employees did not contribute anything. Even with the increase, the City argues, the employees will be contributing a very low percentage of the cost of coverage. Further, existing language which is not subject to change in the new agreement provides that the contribution will not become effective before the date it will become effective for non-represented City employees. The City explained how it arrived at the additional contribution amount; that about 75 percent of City employees are enrolled in family as opposed to single coverage; and that the proposed employee contribution increases would result in the employees with family coverage contributing an average of about 4 percent of the cost of their coverage and those with single coverage contributing about 15 percent of the cost of their coverage. The Union contends that it agreed to begin employee contributions in the expired agreement to be of assistance when the City was suffering a revenue deficiency, but that assistance is no longer needed. The Union further argues that the City should get the police to agree to any increase first, because, last time, the fire fighters were the ones to agree to it first. The Union argues that always being first puts the Union in the position of negotiating for all the City's employees – a position with which the Union is not comfortable. The City explains that this contract is the first to be negotiated in the bargaining cycle and if it waited until the increase was in the

police agreement, it would have to wait a whole other three-year bargaining cycle before approaching the fire fighters on the subject.

The Union's wage and hours of work proposals are very interrelated. At the hearing, the Union indicated that, if it is able to get its weekly work hour reduction proposal, it will agree to no increases to the annual salary schedule over the term of the agreement. Also at the hearing, the City indicated that it did not anticipate that the Fact Finder's Report would limit any wage increase to the City's proposed 2 percent per year or comply with the City's stated position of non-retroactivity. By reducing the unit employees' average hours of work per week, but maintaining the current annual salaries, the hourly wage rates would gradually increase over the three years of the agreement, for a total hourly rate increase of about 10.4 percent. At the hearing, the City asserted that the fire fighters have plenty of time off work and the Union is just pushing this work hours reduction to create overtime opportunities for its members. In response, the Union stated that it would agree to include in the agreement, language to the effect that any and all coverage necessitated by the reduction in the unit employees' weekly hours of work can be provided through the use of part-time employees. The Union's arguments in support of the weekly work hour reduction include an assertion, with some supporting calculations, that the shifts could operate with eight positions rather than ten as they are currently staffed, thus, minimizing the cost impact of the reduction. The Fire Chief responded by explaining that the shifts are staffed as they are for operational reasons, and the Union's conjecture that the staffing could be easily reduced was unfounded. The Union provided a chart showing the number of hours in the work weeks of fire fighters in 14 communities in the Cincinnati area. The chart shows one community with a 42-hour workweek, six with 48-hour workweeks, one with a 51-hour workweek, four with 52-hour workweeks, one with a 53-hour workweek, and one with a 54-hour workweek. The City generally contends that not all the communities in the Union's chart are comparable with Springdale for one reason or another, and if the non-comparable ones were removed, the data would probably show an average of 53 hours per workweek. The City provided workweek data for nine communities, five of which are the same as those included in the Union's chart. The City's data show one community with a 42-hour work week, one with a 48-hour workweek, three with 52-hour workweeks, three with 53-hour workweeks, and one with a 54-hour workweek.

The parties provided wage data from “comparable” communities as well. The City’s most comprehensive chart shows minimum and maximum annual salaries for Firefighter/Paramedic positions in 16 communities compared with figures for Springdale. When this data is averaged, it shows the average minimum to be \$45,550.48 and the average maximum to be \$59,061.38, as compared to Springdale’s minimum of \$47,761.48 and maximum of \$58,069. The Union’s chart entitled “Compensation Comparison for Maximum Base Salary, Career Departments with Labor Agreements in Hamilton County, OH,” shows an average base salary for 15 communities of \$56,306 as compared with Springdale’s of \$55,282. The chart labels this as a 1.9% lag. The Union’s chart, which gives an effective date of 1/1/2006, does not give hourly wage rates, but shows annual scheduled hours of work for each community which were roughly equivalent to hours per workweek as follows: one community with a 42-hour workweek, five with 48-hour workweeks, two with 52-hour workweeks, five with 53-hour workweeks, and two with 56-hour workweeks.

3. Fact Finder’s Recommendation and Rationale

The Fact Finder believes that the most equitable, reasonable, and perhaps even most cost effective resolution to the economic issues is to follow the City’s proposal regarding increasing the employees’ contribution to health insurance coverage; make no change to the vacation entitlement schedule; and follow the Union’s proposal to reduce the unit employees’ workweek over the life of the contract, with no additional wage increase and with the Union’s agreement that any and all coverage necessitated by the weekly work hours reduction can be accomplished by the use of part-time employees. This resolution gives the employees an increase in their hourly wage rate over the three years of about 10.4% (without considering the expense of the increased employee contribution to health insurance coverage), although the scheduled annual salaries remain unchanged. The Union indicated at the hearing that it would be happy with such a result regarding wages and a reduced workweek. The additional employee contribution to the health insurance is not onerous for the employees and still leaves them with a low contribution rate compared with the rest of the working world. Further, increasing the health insurance contribution rate helps to reduce the cost to the City of the overall economic package. According to the Union, the proposed increase in vacation time would not result in an immediate benefit for any of the unit employees because there are none with sufficient time in service to be impacted.

The Fact Finder made calculations regarding the cost to the City of this economic package for each of the three years of the new agreement. The calculations assume the City will staff for the same number of work hours as currently and assume, contrary to reality, that the package were to be implemented at the beginning of 2007. The calculations consider the savings to the City of the additional employee contribution for health insurance coverage (\$12600/year for current unit employees); the City's obligation to contribute an amount equal to 24 percent of employees' salaries to the retirement plan; and the changes in employees' hourly wages as the plan is phased in. The resulting percent of increase over current costs varies based on how the City chooses to cover the hours currently worked by the existing unit employees, as the unit employees' workweeks decline in number of hours. The calculations consider the options of: (A) Hiring a new unit employee to cover the hours based on three different wage rates (includes the 24% retirement contribution): (1) an average of step 5 of the three unit employee classification rates, proportionate to each of the three classifications' representation in the current unit work force (4 firefighters, 17 firefighter/paramedics, and 3 fire captains); (2) step 1 of the firefighter wage rate; and (3) step 1 of the firefighter/paramedic wage rate; (B) using part-time employees to cover the hours based on the same three different wage rates as in A; and (C) Covering the hours using overtime at a rate of one and one-half times the regular rate of pay which is represented by an average of step 5 of the three unit employee classification rates, proportionate to each of the three classifications' representation in the current unit work force (4 firefighters, 17 firefighter/paramedics, and 3 fire captains). The hours to be covered for each of the three years are: 2007 – 1248 hours which is equivalent to .46 of a position working 52 hours weekly; 2008 – 3744 hours which is equivalent to 1.44 positions working 50 hours weekly; and 2009 – 6240 hours which is equivalent to 2.5 positions working 48 hours weekly;

According to the calculations, for each of the three years of the agreement, the percentage of cost increase over current wage costs for each of the above-defined options follows:

	Opt. A.1	Opt. A.2	Opt. A.3	Opt. B.1	Opt. B.2	Opt. B.3	Opt. C.
2007	1.49%	.93%	1.03%	1.04%	.59%	.66%	2%
2008	6.5%	4.77%	5.1%	5.1%	3.7%	4%	8.1%
2009	11.9%	8.9%	9.45%	9.52%	7.1%	7.5%	14.7%

The City's proposed wage increase was 2% per year for each of the three years. Considering the City's obligation to pay an amount equal to 24% of unit employees' salaries into the retirement fund, such an offer represents an actual increase over current costs of about 2.4% for 2007, 4.96% for 2008, and 7.44% for 2009. Comparing those increased cost percentages to the chart above, it is apparent that the City's proposal would contribute to a greater increase in costs for 2007 than any of the options given; would contribute to about the same increase in costs for 2008 as most of the options; and would contribute to about the same increase in costs for 2009 Options B.2 and B.3. Further, the savings from the first year would contribute to flexibility in choosing options in subsequent years at no or little greater increase in costs than that which would result from the City's wage proposal.

When the options are examined regarding their resulting percentage of cost increase over current wage and retirement costs they appear even more reasonable:

	Opt. A.1	Opt. A.2	Opt. A.3	Opt. B.1	Opt. B.2	Opt. B.3	Opt. C.
2007	1.2%	.75%	.83%	.84%	.48%	.54%	1.6%
2008	5.24%	3.85%	4.08%	4.1%	3%	3.2%	6.5%
2009	9.6%	7.2%	7.62%	7.68%	5.7%	6.07%	11.88%

Implementation: This recommended economic package will become effective on or about July 1, 2007. Therefore, tweaking is necessary to compensate unit employees for the inability to make this package retroactive to January 1, 2007 as one could with a straight forward salary increase. Accordingly, the recommended language will provide for payment to each bargaining-unit employee, of a one-time bonus of 1% of his or her current annual base salary. It is estimated that this should cost the City less than \$14,200, which is about .81% of the City's current wage and retirement contribution costs for bargaining-unit employees.

Recommended Language¹

Article 10 – Hours of Work and Overtime

10.1 Unless assigned to a forty-hour workweek, the regular work period of a bargaining unit member shall be comprised of a tour of twenty-four consecutive hours of work followed by forty-eight hours off duty. The sequence of tours shall include a “Kelly

¹ The hourly wage schedule at Section 11.4 may not be precisely accurate and should be appropriately adjusted, as necessary, to maintain the current annual salaries for each of the 63 categories.

day” on which a member is not scheduled to work his/her regular tour. Effective July 1, 2007, the work-week shall be reduced by 1 hour to a 52-hour work-week. January 1, 2008 the work-week shall be reduced by 2 hours to a 50-hour work-week. January 1, 2009 the work-week shall be reduced by 2 hours to a 48-hour work-week. The City and the Union shall develop Kelly dates & FLSA Cycles as required to meet these hours.

Eliminate Section 10.7.

Article 11 – Wages

11.1 The schedule of annual salaries will remain unchanged during the three-years of this collective-bargaining agreement.

11.2 Upon the signing of this agreement each bargaining-unit employee will receive a one-time bonus payment in an amount equal to 1% of his or her current annual salary.

11.3 The reduction in the work week hours as provided for in Section 10.1 will result in the employees’ hourly rates of pay increasing to maintain the same annual salaries.

11.4 The hourly wage rates for the various pay steps will be as follows:

		2007 Hourly effective 7/1/07	2008 Hourly effective 1/1/08	2009 Hourly effective 1/1/09
Firefighter	Step 1	\$16.80	\$17.48	\$18.21
	Step 2	\$17.64	\$18.35	\$19.11
	Step 3	\$18.53	\$19.27	\$20.07
	Step 4	\$19.46	\$20.24	\$21.08
	Step 5	\$20.43	\$21.24	\$22.13
	Merit I	\$21.45	\$22.31	\$23.24
	Merit II	\$22.53	\$23.43	\$24.40
Firefighter/ Paramedic	Step 1	\$17.66	\$18.37	\$19.14
	Step 2	\$18.55	\$19.29	\$20.10
	Step 3	\$19.48	\$20.26	\$21.10
	Step 4	\$20.46	\$21.27	\$22.16
	Step 5	\$21.47	\$22.33	\$23.26
	Merit I	\$22.55	\$23.45	\$24.42
	Merit II	\$23.68	\$24.62	\$25.65
Fire Captain	Step 1	\$21.49	\$22.34	\$23.28
	Step 2	\$22.57	\$23.47	\$24.45
	Step 3	\$23.70	\$24.65	\$25.67
	Step 4	\$24.88	\$25.87	\$26.95
	Step 5	\$26.12	\$27.17	\$28.30
	Merit I	\$27.43	\$28.52	\$29.71
	Merit II	\$28.79	\$29.95	\$31.19

Vacation 21 - Vacation

21.1 Full-time fire fighters who are regularly scheduled to work a 24 hour on, 48 hour off work schedule shall be entitled to vacation leave with pay each calendar year according to the following schedule:

(A) After one year	106 hours
After seven years	159 hours
After twelve years	212 hours
After eighteen years	265 hours

Article 36 – Insurance

Current Language

36.1 **Medical Insurance.** The City and the employee shall share the cost of the premium for the Medical Insurance Section of the Employee Group Health Insurance Program. The employee contribution towards the cost of the medical insurance shall be not more than \$50.00 per month for single coverage and \$100.00 per month for family coverage. As part of the Medical Insurance Program, the City shall institute a managed care program in which a network of physicians and hospitals will be identified as the preferred choice for service. If an employee avails himself/herself to a provider within the network, the City will pay for the employee's benefits at their current levels.

B. Non-economic Issues:

1. Current and Proposed Language

Article 8 - Discipline

The Article 8 issues involve Sections 8.4, 8.5, and 8.7. The City's position regarding these issues is to retain the current existing language.

Current Language

8.4 Pre-Disciplinary Hearing - A pre-disciplinary hearing shall be conducted before formal charges are prepared and a penalty is imposed. An employee may be represented by a Union representative at a pre-disciplinary hearing. An employee may waive his right to a pre-disciplinary hearing by giving written notice to the Chief prior to the hearing. When an employee is charged with misconduct which may result in suspension, reduction, or dismissal, he shall be given, at least seventy-two (72) hours prior to any hearing, a written notice of the potential charges and general description of the evidence supporting the charges. The notice shall advise the employee of his right to be represented by a Union representative at a pre-disciplinary hearing.

8.5 If the City intends to proceed with disciplinary charges following a pre-disciplinary hearing, a formal statement of the charges shall be prepared and served upon the employee and the Union, except in the case of dismissal, at least 48 hours prior to the effective date. The charges shall be in writing and shall contain a clear statement of the alleged misconduct or violation with sufficient specifications so as to enable the employee to understand the charges against him, and if he so chooses, to make an appeal.

8.7 Appeals of written reprimands will begin at Step 2 of the Grievance Procedure and shall be made within ten (10) days of the reprimand.

8.8 Appeals of any suspension, reduction in pay or position, and/or dismissal shall be made exclusively to the Springdale Civil Service Commission in accordance with Civil Service rules.

Union's Proposed Language

8.4 Pre-Disciplinary Hearing - A pre-disciplinary hearing shall be conducted before formal charges are prepared and a penalty is imposed. An employee may be represented by a Union representative at a pre-disciplinary hearing. An employee may waive his right to a pre-disciplinary hearing by giving written notice to the Chief prior to the hearing. When an employee is charged with misconduct which may result in suspension, reduction, or dismissal, he shall be given, at least **one hundred forty four (144) hours** prior to any hearing, a written notice of the potential charges and **copies of all reports, letters and all** evidence supporting the charges. The notice shall advise the employee of his right to be represented by a Union representative at a pre-disciplinary hearing.

8.5 Discipline - If the City intends to proceed with disciplinary charges following a pre-disciplinary hearing, a formal statement of the charges shall be prepared and served upon the employee and the Union, except in the case of dismissal, at least 48 hours prior to the effective date. The charges shall be in writing and shall contain a clear statement of the alleged misconduct or violation with sufficient specifications so as to enable the employee to understand the charges against him, and if he so chooses, to make an appeal.

8.7 Appeal - Appeals of **discipline** will begin at Step 3 of the Grievance Procedure and shall be made within ten (10) days of the **discipline**.

Eliminate Section 8.8.

New Article - Certifications

Current Language

None

Union's Proposed Language

1. *Employees shall maintain certifications as stated in 31.1 as a condition of employment. Any additional certifications that the city requires the employee to obtain and/or maintain shall not be considered a condition of employment.*
2. *Employees shall be paid an additional 3% of their base straight time rate for each of the following certifications that they possess, up to a maximum of four (4) certifications.*
 - a: *Fire Inspector*
 - b: *Haz-Mat Technician*
 - c: *EMS Instructor*
 - d: *Fire Instructor*
 - e: *CPR Instructor*
 - f: *Car Safety Seat Technician*
 - g: *ACLS Instructor*
 - h: *PALS Instructor*
3. *Employees shall be paid the additional certification pay as an increase in their hourly rate and added to their regular bi-weekly pay.*
4. *The Union recognizes there is benefit to the City and the citizens of the City of Springdale as well as our members in obtaining these additional certifications. The City shall not require the member to obtain more than four (4) of the certifications listed in section 2 of this article. Employees shall be compensated for obtaining and maintaining these additional certification in accordance with article 27 of this agreement.*

City's Proposed Language

No Article on Certifications.

2. Parties' Positions

In the discipline article, the Union has proposed (1) that some of the paragraphs be labeled as to the subject they address; (2) an increase from 72 to 144 hours in the amount of time required between when written notice is given the employee and the holding of the pre-disciplinary hearing; (3) that the written notice include copies of all reports, letters and all evidence supporting the charges, instead of only a general description of the evidence supporting the charges, as is now required; and (4) that all discipline be appealable to arbitration. The Union argues that the increase from 72 to 144 hours is to allow the employee

more time to consult with the Union and prepare for the hearing. The City counters that this is only a due process hearing and the actual merits of the discipline are addressed by the Springdale Civil Service Commission in accordance with Civil Service rules if the employee chooses to appeal. The City further argues that it cannot put the employee in non-pay status until after the pre-disciplinary hearing, and doubling the time from 72 to 144 hours is an unnecessary expense. The Union counters that, inasmuch as the City can put the employee in non-pay status after the pre-disciplinary hearing, it is a very important hearing for which the employee should have adequate time to prepare.

The Union maintains that the employee needs to know and be able to examine the evidence against him/her prior to the hearing, so he/she can be well prepared. The City argues that a full-fledged pre-disciplinary hearing is already more than it is required to provide in order to meet Ohio due process requirements, and to commit to provide all the evidence at that point would preclude it from using any later discovered evidence at the appeal proceeding. The Union counters that the intention is not to preclude the later use of later discovered evidence, but rather it is to assure that the employee is fully informed of the evidence the City has at the time disclosure is required.

The proposed labels on the paragraphs did not seem especially important to either party; however, the City objected to them because they could be adding understandings to the wording in the paragraphs.

The Union argues that “it is imperative that any discipline that is deemed to be unjust be able to be appealed through the grievance procedure. By allowing an unbiased neutral to review the facts, the due process that these matters require would be assured. The union does not enjoy the relationship with the civil service commission that the city enjoys nor [does it] have input into the make up of the commission.” The City contends “that the Civil Service Commission is as a matter of law the overseer of the civil service in the City. It is not a city department and is not controlled by the city administration. The city council and the mayor believe that the local commissioners should determine the standards of acceptable conduct.”

With regard to the proposed new Certifications article, the Union maintains that it has strongly protested “the ongoing additions of new certifications that the City continues to add to the fire fighters’ job descriptions.” According to the Union it filed an unfair labor practice charge regarding this which resulted in, or was tabled to allow for negotiation about the

effects of the additions. The Union contends that the City has not bargained regarding this issue; the City responds that it has bargained, it just has not agreed with the Union.

According to the Union, “with this article [it] is attempting to define what certifications are required and what compensation would be fair for the added work, responsibility and stress these certifications bring.”

The City contends that fire suppression activity takes less time each year and providing these services during the periods of unassigned time is a proper and effective use of paid time for which the City should not be expected to pay more. According to the City, the duties attendant to these certifications is a part of providing safety services for the community, and the fire fighters are a part of the city’s safety force.

At the hearing the Union pointed out that, not only does one have to received training to obtain the certifications, but must also attend training to keep them current. The Union contends that the more certifications that are required, the more time that has to be spent in training. The City pointed out that it pays for the training and for the employees’ time while in training, be it on or off duty time. The Union countered that maintaining a number of certifications unfairly cuts into the fire fighters’ off-duty time, even if they are paid for it.

As to the proposed additional compensation, the Union argues that the duties associated with the certifications represent an additional responsibility and liability for which the fire fighters should be compensated. Apparently, three of the eight listed certifications are not required at this time.

3. Fact Finder’s Recommendation and Rationale

The Fact Finder recommends that the article on Certifications not be added and that Article 8, the Discipline article remain the same except that the language be changed to allow appeal of all discipline to arbitration. The issue of the certifications seems important to the Union, but achievement of the reduced work hours through the recommended economic package discussed above appeared to be more important. To add in compensation for certifications at this time would add another cost factor to this agreement, and, thus, decrease the chance that this report will be deemed acceptable by the City. Further, inasmuch as the employees are paid when they receive the training for the certification and to keep it current, the City pays for the training, and the employees are on paid time when they perform the

duties attendant to the certifications, it would appear that the above economic package provides more to the employees than the certification pay. Additionally, one of the Union's stated reasons for limiting the number of certifications required for any given employee was that the training to obtain them and keep them up to date unfairly cut into off-duty time. If the reduced hour package recommended above is accepted, each employee will have more off-duty time to enjoy.

As to the discipline article, the last sentence of the existing Section 8.1 states: "Any discipline imposed will be for just cause and progressive in nature." The City contends that "the Civil Service Commission is as a matter of law the overseer of the civil service in the City," and that "the local commissioners should determine the standards of acceptable conduct." The parties did not provide information as to the duties or procedures of the Commission or the qualifications of its members. However, arbitrators deal with just cause for discipline and discharge very regularly and there is a large body of "arbitration law" developed on the subject. The arbitrator's job is not to set "standards of acceptable conduct" or to second guess the standards of conduct the employer consistently requires its employees to meet. The arbitrator's job is to impartially evaluate the facts presented to him/her to assure that the standards of just cause have been met. The parties' agreement has already set the standard by which discipline is to be reviewed – just cause. It is just a question of who is best able to evaluate whether that standard has been met.

The proposed extended time between the employee notice and the pre-disciplinary hearing and the proposed change to require more in-depth discovery prior to the hearing, will not produce as great a benefit to the employees as the recommended change which would allow all discipline to be appealed to arbitration. The longer time might make the employee and Union feel more prepared, but is not likely to change the outcome given the nature of pre-disciplinary hearings. The same is true of the requirement that more evidence be disclosed in advance of the pre-disciplinary hearing. If the employee prevails in arbitration, the employer will most likely have to make the employee whole with backpay, so whether the employee gets three days or six days before the City can put him/her on non-duty status will have relatively little impact in the long run.

From the City's point of view, this recommended resolution allows the City to keep its ability to more quickly place a person in non-pay status and leaves the City where it is as to

evidence disclosure prior to the pre-disciplinary hearing, in addition to maintaining the status quo with regard to certifications. Indeed, if the City applies its “standards of acceptable conduct” consistently and only for good reason, it has nothing to fear from an arbitrator.

Recommended Language

8.4 Pre-Disciplinary Hearing - A pre-disciplinary hearing shall be conducted before formal charges are prepared and a penalty is imposed. An employee may be represented by a Union representative at a pre-disciplinary hearing. An employee may waive his right to a pre-disciplinary hearing by giving written notice to the Chief prior to the hearing. When an employee is charged with misconduct which may result in suspension, reduction, or dismissal, he shall be given, at least seventy-two (72) hours prior to any hearing, a written notice of the potential charges and general description of the evidence supporting the charges. The notice shall advise the employee of his right to be represented by a Union representative at a pre-disciplinary hearing.

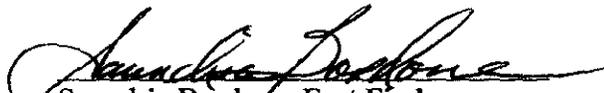
8.5 If the City intends to proceed with disciplinary charges following a pre-disciplinary hearing, a formal statement of the charges shall be prepared and served upon the employee and the Union, except in the case of dismissal, at least 48 hours prior to the effective date. The charges shall be in writing and shall contain a clear statement of the alleged misconduct or violation with sufficient specifications so as to enable the employee to understand the charges against him, and if he so chooses, to make an appeal.

8.7 Appeals of all discipline will begin at Step 2 of the Grievance Procedure and shall be made within ten (10) days of the discipline.

8.8 Deleted

Conclusion

I have recommended modified language for Articles 8, 10, 11 and 36; that the language of Article 21 remain unchanged; and that the proposed new Article regarding certifications not be added to the agreement. I also incorporate by reference into this report as recommendations, the tentative agreements of the parties, and the language of the expired agreement which remains unchanged by the parties’ tentative agreements or the other recommendations of this report.


Saundria Bordone, Fact Finder

CERTIFICATE OF SERVICE

I certify that on the 1st day of June, 2007, I served the foregoing Report of Fact Finder upon each of the parties to this matter at their respective addresses given below by express U.S. mail and upon the Ohio State Employment Relations Board at its address given below by regular U.S. mail:

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