



STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD 07 NOV 13 A 8:52
Case No. 07-MED-03-0245
OCTOBER 8, 2007

In the Matter of the Fact-Finding Between: }
The Washington Professional Fire Fighters I.A.F.F., Local 699 }
And }
The City Of Washington Court House }

APPEARANCES:

For the Union:

| | |
|-------------------|-----------------|
| Jason P. O’Dierno | Union President |
| Michael Myers | Firefighter/EMT |
| Larry McGarvey | Captain |
| Martin Rennison | Lieutenant |

For the Employer:

| | |
|---------------|------------------------|
| Brett Geary | Consultant to the City |
| Joe Denen | City Manager |
| Connie Watson | Personnel Director |
| Dan Fowler | Fire Chief |
| Tom Yontz | Assistant Fire Chief |

BEFORE RICHARD J. COLVIN, J.D., FACT-FINDER

**City of Washington Court House Administrative Offices-Conference Room, 105 N.
Main Street, Washington Court House
County of Fayette, State of Ohio**

INTRODUCTION

The Fact-Finder received his appointment on September 14, 2007 in compliance with Ohio Revised Code Section § 4117.14 (C) (3). The parties jointly agreed to a hearing date of October 8, 2007 and such hearing was duly convened as scheduled at 10:00 A.M. and was adjourned at 1: 22 P. M. The parties mutually agreed that the Fact-Finder mail and send a facsimile of his written report on November 8, 2007. The parties timely provided the Fact-Finder with their respective positions prior to the date of the hearing, § Section 4117-9-05 (F) of the Ohio Administrative Code.

The bargaining unit is comprised of twelve (12) full-time employees structured as follows: Fire Fighter, Lieutenant, Captain and Fire Fighter/EMT, Lieutenant/EMT. Captain/EMT. Bargaining unit employees primarily provide fire protection/prevention and emergency medical services to the residents of the City of Washington Court House, Ohio.

There is a long established contractual relationship between the parties that dates back to 1984. The Collective Bargaining Agreement was effective from the 1st day of July 2004 and was in full force and effect until the 30th day of June 2007.

BACKGROUND

As of the date of this hearing, the following unresolved issues were presented to the Fact-Finder:

1. Article 12.04: Duties
2. Articles 14-20: Vacation Leave and Personal Leave
3. Article 21: Health Insurance
4. Article 31: Drug/Alcohol Testing
5. Appendix A: Wage Tables

The parties jointly requested leave to address the open issues and requested that the Fact-Finder mediate as required. As a result, the issues of concern in Articles 14, 20 and 21 were successfully resolved. They are noted in Appendix B., attached to and made a part of this Fact-Finding decision and they are recommended by the Fact-Finder for adoption by both parties. All agreements made by the parties prior to this hearing are noted in Appendix A., attached to and made a part of this Fact-Finding decision and they are recommended by the Fact-Finder for adoption by both parties.

CRITERIA

When making his recommendations upon the unresolved issues, the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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, 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

DISCUSSION

Issue One

The City's position relative to Article 12.04 is that **all** (*emphasis added*) employees should be certified as Emergency Medical Technicians (EMT's). The current labor Agreement requires that all new employees and those hired on or after July 1, 1992, be certified as EMT's. The Employer points out that all but one (1) employee, a Captain, has the certification at issue here, and all but four (4) employees have to maintain such certification. Three (3) employees who either do not have the certification or who would be eligible to drop certification are in the Captain classification. There are only three (3) Captains in the department.

It is inconsistent that the department could have all three (3) Captains supervising employees with EMT certification when they do not have such certification. It is irrational that the City should allow those upper level supervisors to be unknowledgeable of life-saving techniques when they are working for a life-saving organization.

Furthermore, current trends suggest that the days of only being a fire fighter are over, and most departments around Ohio have fire fighters who perform EMT functions as a part of their jobs. The Employer's proposal would only require one (1) supervisor to obtain his EMT certification, and it allows such certification to be obtained within one (1) year.

The Union's resistance to this proposal is illogical and contrary to the trend in the department and nationally.

The Union's position is that Section 12.04 has been in the Agreement unchanged since July 1992. At the time it was added, less than half of the members had an EMT certification. The City included a \$.15 cent incentive to receive and maintain an EMT certification.

As a result today, eleven (11) out of twelve (12) members are EMT's. The purpose of adding this Section in the Agreement was to have trained personnel on fire scenes who could provide services to our members, in the event they were injured, until the squad arrived. Fayette County receives its squad service through the Fayette County Life Squad. Our department has, on occasion, assisted the squad by first responding for them when they are busy. To date our department does not have any primary EMS duties nor does it seem likely that we will have in the future.

Summarizing, Section 12.04 states that anyone hired after July 1992 must attain and maintain an EMT certification. This assures the City that as Firefighters retire they will be replaced with Firefighter EMT's. There are four (4) members who fall under the pre 1992 EMT exemption. The first will be eligible to retire in one (1) year; the second in six (6) years; the third in eight (8) years, and the last in nine (9) years.

Section 12.04 has two benefits for the City in that it provides trained EMT's to care for our employees and it puts the City in a better position to provide EMS to its citizens if anything would happen to the County service. In our opinion, if Section 12.04 is rewritten or if Section 12.04 remains as it is now written, neither result will have any impact on services provided by this department. Nor will it have an impact on the number of EMT's in our department over the next three (3) years. If it is rewritten though, it will change employment requirements for three (3) of our members, as the City's proposal does exclude one (1) member.

Currently, EMT's are required to recertify every three (3) years. This can be done by attending a thirty (30) hour refresher course or by having a minimum of forty (40) hours of continuing education over the three (3) year period. The current practice for the City is to have one (1) class per month for EMS all scheduled in the evenings, to start at 7:00.

These classes go until about 9:00 and we have nine (9) to ten (10) of these a year which means each shift has three (3) to four (4) a year on their duty days. With these classes being in the evening, it becomes difficult to attend when off duty. Because these classes are limited, members are required to obtain a good portion of their credits online. Recently, HB 401 was passed requiring Firefighters, Inspectors and Instructors to recertify every three (3) years. The EMS Board has until March 2008 to come up with the rules and training requirements.

Although the Board has officially stated nothing as yet, it appears it will be set-up like an EMS recertification, with the hours over fifty (50) for a Firefighter alone. This causes some concern that enough training hours can be received in the three (3) year period for a recertification. Although members hired after July 1992 will have no choice, they have to keep their EMT cards, we feel this would pose a significant change in employment requirements for our members now previously required to maintain this certification.

RECOMMENDATION/RATIONALE

I have studied the party's arguments, reviewed their documentation and have determined the Union's position is more persuasive. It is my recommendation that there be no change in the current language in the labor Agreement at Article 12, Section 12.04.

Seventeen (17) years ago, the parties wrote this Section into their labor Agreement. Nothing presented at this Hearing has indicated that the parties' bargain has failed in its original objective or that there has been serious harm done to the City, the County or to the public that requires the correction asked for by the City. Whatever might be the trend there is no compelling reason to mandate this change in Washington Court House at this time nor does it present any relevancy in this case.

I agree with the Union that the change requested could also adversely affect the conditions of employment of certain bargaining unit members. Additionally, the Union has emphatically stated it is willing to forego the City's proposal of \$.17 cents that accompanied their proposal.

The bargaining history of the parties indicates they should be capable of resolving their differences on this issue through the collective bargaining process. The Fact-Finder should, for the purpose of maintaining a good, on-going working relationship between the parties, back away from imposing a settlement on non-critical issues where feasible. There is always the possibility that the parties can eventually reach a mutually satisfactory resolution. The labor Agreement belongs to the parties

DISCUSSION

Issue Two

The Unions' position relative to the City's proposal to amend Article 31 is that their members do not believe it is necessary to negotiate away their constitutional rights protecting them from illegal search and seizure; that this issue has been before several courts over the years, and the members see no reason why they should have to prove that they are not using drugs.

In the current Agreement, Article 31 allows for reasonable suspicion and post incident testing. To date several individuals have been tested post incident with no positive results. No reasonable suspicion tests have been conducted, as there has been no reason to do so.

The City has stated the Police contract has random testing and they wanted our Agreement to have it also. The Police contract says: "These bargaining units agree to participate in a valid random drug testing program for employees in safety sensitive positions". To date, no program has been set up for the FOP even though this wording has been in the Contract for over three (3) years.

Local 699 also points out that the current City policy on drug testing is not being followed. Specifically, 5.11 E and 5.11 F, arguably the most important part of the policy. Section E covers the distribution of materials related to City Policy and assistance programs available to the employee. Section F covers required annual training for employees and supervisors, which has not been done for eight (8) plus years. Part of that training is how to spot drug abuse and the signs that a person may be using drugs. Our members think this training would be more beneficial and helpful in spotting a drug abuse problem than a test that may or may not catch the right person at the right time.

Finally, it is the Union's position that of the thirty-five (35) members of our Department only twelve (12) are covered under this Agreement. The City's Personnel Policy covers the remaining twenty-three (23) as well as the non-union members of the Police Department. To date, the City's Personnel Policy has no provision in it to conduct random drug testing. In the end, attrition will accomplish what the City is requesting.

The City's position on the changes it proposed to Article 31 is to point out that there was a tentative agreement reached by the parties on this issue, and that tentative agreement was clear, in that employees could be subject to drug/alcohol testing, including random and follow-up testing. While the Union did express reservations on this issue in negotiations, the City is perplexed by their resistance to this proposal. It should be both in the City's and the Union's interest to keep the workplace free from alcohol and drug use, especially in the safety forces. The other safety force in the City, the police unit represented by the FOP/OLC, Inc., has random testing in its labor agreement, and it is imperative that the same happen to this safety force. Further, CDL holders in the AFSCME unit have random drug testing pursuant to the CDL protocols. The system proposed (i.e., drug testing equivalent to protocols used for CDL holders) is a tried and true system, and there is no hint that such a system is unfair or biased.

RECOMMENDATION/RATIONALE

It should be noted that at no time during this Hearing did the City make any statement of fact or any allegation that current or past drug/alcohol use by Fire Fighters was the foundation for these proposals to initiate random drug and follow-up testing. The Union was quick to point out that while it opposes this proposal by the City, it does not support drug/alcohol abuse. It was apparent that this issue has, unfortunately, become emotionally charged.

The Union presents the proposition that the present system is working: The City contends, in effect, it will work better with these modifications added. The City points to other jurisdictions that have random drug testing including the City of Cincinnati's Fire Fighters, with 800 employees. It is reasonable to assume that in each of the jurisdictions mentioned, including the City of Cincinnati, there was give and take and, at the end each party was satisfied that it had reached the best agreement it could under the circumstances at the time.

Comparisons without all of the factual data peculiar to the area, the classifications and other relevant data can be misleading when attempting to make a bargaining position valid.

The interest and welfare of the public has not, to my knowledge, been compromised by the terms and conditions of the existing provisions of Article 31 in the past collectively bargained Agreement. The fact that the FOP in Washington Court House had already agreed to adopt random testing is not in and of itself a compelling argument that the Union also should adopt this change. Additionally, the Union has argued that all employees of the City do not undergo random testing and that related existing policies/programs are not all implemented.

Therefore, it is my recommendation that the Union's position has more merit. The terms and conditions of Article 31 should remain as they are now in the present labor Agreement.

DISCUSSION Issue Three

It is the City's position that its revised proposal of three (3) % effective upon ratification; three (3) % effective July 1, 2008; and three (3) % effective July 1, 2009 is fair and reflects the trend of the last few years in the State. The City contends that when the Union voted to reject the tentative Agreement on August 18, 2007, by a vote of 4-0, retroactivity was no longer on the table. It is a roll of the dice when you reject a contract: You ratify, or if you reject the issue is back in play.

In support of its wage proposal, the City referred to the settlement reached by the City of Cincinnati and the Cincinnati Fire Fighters effective June 2007 through June 2010 of 3% in each of those years.¹ Also offered were the: State Employment Relations Board Annual Wage Settlement Report² and finally data from the State Employment Relations Board Clearinghouse.³

The Union took no position on the City's wage comparisons in other jurisdictions and centered its arguments on the City's failure to keep its offer of retroactivity on the table.

The City's offer was 3% the first year, 3% the second year and 3.5%, (which included the \$.17 cents the Union was willing to give up) the third year with the first year beginning 7/1/07. The Union argued that the FOP and the City settled for 4%, 3% and 3.5%. In rebuttal the City provided a very detailed and rational explanation, providing the reasoning behind offering these amounts. The Union, however, still felt that retroactivity was a given.

¹ News Article dated Friday, September 7, 2007 source unknown

² Wage Settlement Breakdown (1997-2006)

³ Wage Increase Report October 02, 2007

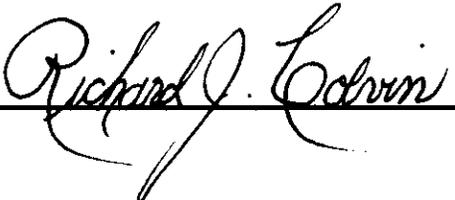
RECOMMENDATION/RATIONALE

I recommend that the City's revised wage proposal be adopted by the parties: three (3) percent effective upon ratification; three (3) percent effective July 1, 2008 and three (3) percent effective July 1, 2009 and that the applicable Appendices be adjusted to reflect this, as has been the practice of the Parties.

The City's wage offer was supported by the statistics it presented and its denial of retroactivity, in the absence of specific promises to the contrary, is a common practice in the collective bargaining process. The Union's claim to continuing wage retroactivity was not justified by any argument or by any evidence submitted at this Hearing.

Signed and dated in the City of Mason, County of Warren, State of Ohio this 2nd day of November 2007

Respectfully submitted,



APPENDIX A

Copies of Issues Agreed-Upon Prior To The Fact-Finding Hearing:

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| 4/30/07 | Housekeeping Issues Only |
| 5/ 3/07 | Article 1 Recognition Article 2 City Right To Manage Article 9 Discipline Article 11 Hours Of Duty Article 12 Duties Article 13 Working Out Of Classification Article 14 Vacation Leave Article 31 Drug/Alcohol Testing Appendix A (2004-2005) Letter Of Understanding Article 10 Compensation (First Real Change) initialed 8/8/07 Section 10.07 Per Tentative Agreement signed on 5/7/07 |
| 5/ 7/07 | Article 10 Compensation |
| 8/ 8/07 | Article 11 Hours Of Duty |
| 7/ 6/07 | Article 16 Sick Leave With Pay |
| 5/ 7/07 | Article 18 Funeral Leave Article 24 Safety And Health |
| 5/ 3/07 | Article 25 Residence Article 30 Labor Management Committee |
| 6/ 8/07 | Article 32 Family And Medical Leave |
| 8/ 8/07 | Letter Of Understanding |

APPENDIX B

Open Issues Agreed-Upon At The Fact-Finding Hearing

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| 10/ 8/07 | Article 14/20 Vacation Leave/Personal Leave Article 21 Health Insurance |
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact-Finding Report has been sent by overnight mail this 8th day of November 2007, to the following named persons:

Mr. Jason P. O'Dierno, President, IAFF, Local #699
2 Hampton Court
Washington Court House, OH 43160

Brett A. Geary, Regional Manager
Clemans, Nelson & Associates, Inc.
420 W. Loveland Avenue, Suite 101
Loveland, OH 45140

In keeping with the wishes of the above parties a true copy of this Fact-Finding Report has also been sent by Facsimile this 8th day of November 2007, to the following persons at the facsimile addresses noted herein:

| | |
|-----------------------|--------------|
| Mr. Jason P. O'Dierno | 740-335-0404 |
| Mr. Brett A. Geary | 513-583-9827 |

A copy has also been sent by regular mail to:

Edward E. Turner, Administrator, Bureau of Mediation
SERB
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213


Richard J. Colvin
