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STATE EMPLOYMENT
RELATIONS BOARD

2007 OCT 19 AM 11:54
October 19, 2007

Paul R. Berninger, Esq.
Wood & Lamping
600 Vine St., Suite 2500
Cincinnati, OH 45202-2491

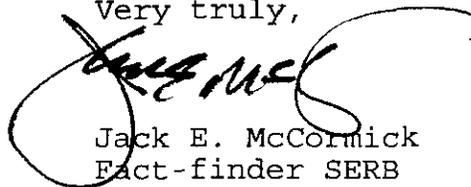
Larry White, Jr.
President, Local 3024, IAAF
12201 West Kemper Rd.
Forest Park, OH 45240

Re: City of Forest Park, OH & Forest Park OH Firefighters
Assoc., SERB Case No. 07-MED-04-0518

Dear Gentlemen:

Enclosed please find my Fact-finding report and fee statement
on the above. Thank you for your professionalism and best wishes.

Very truly,



Jack E. McCormick
Fact-finder SERB

cc: Edward Turner, SERB

2007 OCT 19 A 11:54

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING BETWEEN

FOREST PARK FIREFIGHTERS ASSOC., LOCAL 3024

AND

CITY OF FOREST PARK, OHIO

FACT FINDER: JACK E. McCORMICK
HEARING: OCTOBER 5, 2007
Case No. 07-MED-04-0518
Issued: October 19, 2007

FACT FINDING

FOR THE EMPLOYER:

Paul R. Berninger, Esq.
Wood & Lamping, LLP
600 Vine St., Suite 2500
Cincinnati, OH 45202-2491

FOR THE UNION:

Larry White, Jr.
President, Local 3024 IAFF
12201 West Kemper Rd.
Forest Park, OH 45240

BACKGROUND

On October 5, 2007, pursuant to the order of the State Employment Relations Board (SERB), a Fact-finding/Mediation was held between the City of Forest Park, Ohio and the Forest Park Firefighters Association, Local 3024, at the Municipal Building, Forest Park, Ohio. The hearing commenced at 10:00 a.m. and terminated at approximately 7:00 p.m. the same day.

Present for the hearing were the following:

For the Employer:

Paul Berninger, Esquire, Attorney for the City
Trish Brooks, Fire Chief
Mike Rupp, Assistant Fire Chief
Tye Smith, Human Resources Director
Lois Reynolds, Director of Finance

For the Union:

Larry White, Jr., President Local 3024
Kelan Wilson, Union Representative

The parties were fully informed of the authority of the Fact-Finder/Mediator as well as the rules under which the hearing would be held. They were further offered the opportunity to mediate any and all issues and, after several hours of fact-finding there was a brief attempt of mediation on wages which was unsuccessful and the fact-finding resumed.

The Fact-Finder would extend his congratulations to all the parties who participated in this fact-finding as he found their presentations, demeanor, and professionalism, in the face of difficult and contentious issues, to be outstanding. It is noted

that the Union representatives were conducting their first fact-finding/mediation and in this experienced Fact-Finder's opinion their presentation was equal to any presentation he has seen from seasoned employee representatives. Likewise, the Employer's presentation and technical assistants were equally competent. This Fact-Finder does not normally comment on the presentation of the respective parties, however, in this case he felt that it was merited.

The City of Forest Park is located in northern Hamilton County and in 2007 had a population of 19,463. The bargaining unit currently consists of two captains, six lieutenants, and sixteen line firefighters. There are currently two existing vacancies and for the purposes of this fact-finding the Fact-Finder assumes these vacancies will not be filled during the period of this contract, which assumption, will be explained later.

The parties mutually agreed that there are two issues for fact-finding, those being wages and health insurance. The Firefighters contend, and the City opposes, a third issue, that being an issue surrounding Kelly Days. The parties are currently working under a contract that expired on December 31, 2006 and the Agreement under consideration is for the period of 2007 through 2009. Bargaining commenced approximately one year ago. The Union submitted a written proposal to the City on October 16, 2006 and the City presented its own proposal on November 7, 2006. After an exchange of proposals the Firefighters introduced a new issue regarding Kelly Days. The City, to this date, vehemently asserts

that this new issue is not properly before the Fact-Finder for a variety of reasons.

ISSUES

KELLY DAYS

The Firefighters are seeking a contractual provision which would allow members to place themselves in a paid work status on a member's Kelly Day. The Kelly Days reduce a member's average weekly hours from fifty-six to the current fifty-two. Current staffing schedules take into consideration the scheduled days off.

The Firefighters' new proposal would allow a member to report for work at the member's discretion, and without regard to staffing needs, and earn wages at time and one-half for all hours worked.

The City contends that the proposal should not be entertained by the Fact-Finder because it was introduced belatedly and radically altered the City's understanding of what was at issue. The City further contends that this constitutes an unfair labor practice.

The City assumes that all of the bargaining unit employees would elect to work their 8.6 Kelly Days, thus resulting in an additional cost to the City of approximately \$200,000, or a fifteen percent wage increase. The City contends that had this proposal been part of the original proposal from the Union, the City would have approached the bargaining in a much different posture. It

further contends that the proposal is "radical and illogical". The City asserts that such a proposal, if adopted, would mean that if a firefighter does not have other employment or any other obligation, he could simply come to the fire house and "hang around" receiving time and one-half pay.

The Firefighters stated that the Kelly Day proposal was in response to the City's counteroffer that Local 3024 members pay increased health insurance contributions. They saw the Kelly Day proposal as an attempt to counterbalance the rise in health care costs that employees would incur under the new insurance program.

During the fact-finding the Firefighters representatives, with refreshing candor, advised the Fact-Finder that the Kelly Day proposal was the Firefighters attempt to increase the salary and benefits of their members, rather than to address any operational or existing inequity. With equal candor the Firefighters representative conceded that the proposal "infringes upon management rights."

In view of the candid statements of the Union representatives, the Fact-Finder will not have to address the issue as to whether this particular matter is a proper subject for this fact-finding, nor that it may constitute an unfair labor practice. Article II, of the current Agreement Management Rights, paragraph B clearly states that the City has the right "...to determine the number of personnel needed in any agency or department, or to perform any function..." Notwithstanding the express language of Article II this Fact-Finder believes that any provision, in any contract,

that allows an employee to unilaterally set his or her schedule and make a determination as to when he or she shall receive wages at time and one-half, is in direct violation of management rights.

Accordingly, this Fact-Finder makes the following finding:

The Firefighters' proposal to alter the current regime for Kelly Days cannot be supported factually, or legally and therefore is rejected.

HEALTH INSURANCE

The City currently provides health insurance for all full-time employees. It seeks to maintain the same plan and the same employee participation in the cost throughout the City. Currently bargaining unit members, as well as all other City employees contribute through payroll deduction, an amount equal to ten percent (10%) of the premium cost for the plan selected by the member of the bargaining unit. The City proposes to increase that amount to fifteen percent (15%) over the term of the Agreement. In order to provide some protection against disparate contribution from various groups of employees, the City's proposal guarantees that unit members will never pay more for health insurance than non-union represented city employees during the term of the Agreement. The City alleges that it cannot, however, extend this "me too" provision to other unit's contracts because of its duty to bargain separately on that issue, and because the Fraternal Order of Police health insurance benefits could be imposed through the statutory arbitration process of R.C. 4117.14.

The City's proposal for the purposes of this fact-finding increases the employee contributions to 12.5% in 2008, and 15% in 2009, and includes the limited "me too" protections.

The Firefighters oppose this increase as they say it would be unreasonable for them to accept salary increases currently being offered by the City, while at the same time having their health insurance contributions increase to 15%.

Normally the issue as to health insurance is an extremely difficult one for fact finders. However, in the City of Forest Park there occurs a convenient factor. That factor is that, with the exception of the Police Department, whose negotiations are upcoming, all City employees are now, or will be, contributing 12.5 in 2008, and 15% in 2009 of the health premiums. What this means is that there is an internal comparable which is compelling in nature. There can be no rationale for creating an anomaly in this area.

First, on the merits it is an unfortunate reality that all employees, both public and private, will have to share in the painful acceleration of health care costs which all Americans are currently incurring.

Secondly, it is both equitable, as well as logical, that inasmuch as all other City employees are going to be under the same regime there is no factual reason why this unit should not operate under the same regime.

As it relates to the "costs" incurred to the Firefighters for this increase it is agreed among the parties that the net effect would be a less than one percent reduction in their take home pay

for each of the two years of the increases. This can easily be absorbed into a wage increase for the Firefighters, which will be discussed herein below.

Accordingly, the Fact-Finder makes the following findings:

The City of Forest Park's proposal to increase the firefighters health insurance premium contributions to 12.5% in 2008 and 15% in 2009 along with the "me too" provisions are factually supported.

WAGES

The parties' wage proposals have shifted throughout the negotiations and indeed actually changed during the fact-finding. However, for the purposes of this report the Fact-Finder will consider the proposals that were presented to him in the prehearing statements rather than those, which will be discussed, that emanated from the hearing.

In the prehearing statements the City proposed that the non-supervisory bargaining unit's salaries be increased by three percent (3%) each year of the new Agreement.

The Firefighters ask for a ten percent (10%) increase in salary for three years, but indicated that they were open to a possible agreement of 4.25%, 4%, and 4%, depending on the outcome of other issues.

The Firefighters have presented the Fact-Finder with a proposal and then a contingent proposal, and then another proposal which was developed during the hearing. For the purposes of mediation this is perfectly acceptable, and in fact is encouraged. However, once fact-finding has recommenced it is necessary for the

Fact-Finder to identify, with specificity, each party's proposal on which it is seeking a finding of fact. In essence, a fact-finding is what it says it is. Any recommendation of a fact-finder must be based on facts, not affected by any alternative proposals. It is objective, not subjective in nature.

The issue as to wages for this unit is problematic. It is problematic because there are a great deal of facts which support an increase in the wages of the members of this bargaining unit. Those facts include, but are not necessarily limited to, that by the City's candid admission this unit is at the lower level of the wage scale for agreed upon comparables. Currently the City of Forest Park Firefighters's top level firefighter is paid \$55,276. In the nearby City of Fairfield the firefighters are paid \$63,425; in Colerain Township \$63,563; Springdale \$64,022; and Springfield Township \$63,250.

As to internal comparables, it is significant to note that a Forest Park Fire Captain is paid the same salary as a line police officer and a Fire Lieutenant is paid less than a police department patrol officer.

Accordingly, there is no factual dispute that, based on internal, as well as external comparables, a wage increase is factually supported.

As it relates to lieutenants and captains the Firefighters propose that there be a wage differential increase for lieutenants at top pay of \$1,500, \$2,000, and \$3,000 for 2007, 2008, and 2009 over the top pay of the fire/paramedic. The Firefighters allege

that this will create a more acceptable "gap" between the lieutenants, captains, and the top firefighters.

The Fact-Finder reviewed all the materials presented to him by all the parties prior to, and at the hearing, and subsequent to the hearing. Inasmuch it is mutually agreed by the parties, as well as the Fact-Finder, that there is merit in a wage increase for the bargaining unit, there will no discussion herein of the various factors (facts) which support an increase.

The City's prehearing proposal was for a 3% wage increase each of the years of the Agreement. The City provided a volume of documents indicating its inability to pay any "substantial increase" which might provide the City of Forest Park Firefighters with parity. That is, the City is in total agreement that these Firefighters merit wage increases, but does not agree as to the size of those increases. Thus, the question becomes what will be the size of the increases based on the facts developed at the hearing and by the materials submitted therein and after? As to that issue the Fact-Finder believes that there must be a thorough discussion of his analysis, at least for the purposes of providing a future conciliator with a clear understanding of the Fact-Finder's conclusions.

The Forest Park Fire Department operates exclusively on tax levies dedicated to Fire Department operations and federal grants. While the levies are permanent they generate a fixed monetary amount each year, unless citizens vote to renew the levy at the current assessed values. It is noted that there is a proposed levy

increase to be placed on the ballot in 2008, however, the revenues from any such levy, should it be passed, will not be realized by the City until 2009, or the third year of this Agreement.

In 2001 and 2004, the Fire Department's expenditures exceeded levy revenues and they are projected to exceed them again in 2007, albeit those expenditures in 2007 assume a four percent (4%) wage increase. The Fire Department has been able to build an operating reserve of approximately 2.5 million dollars on an annual budget of approximately 3.7 million dollars. It is anticipated that without the passage of the levy in 2008 this surplus will steadily decline and eventually be depleted.

The City has transferred from its general fund monies to make up the deficits in the Fire Department's fund in the past. It is anticipated that with the assumed four percent (4%) increase in 2007, the City will still enjoy an ending balance of 2.53 million dollars in calendar year 2007. Again, assuming another four percent (4%) increase, the ending balance would be 2.2 million in 2008, and 1.4 million in 2009. These appear to be comfortable balances at least through 2009, when the budget picture will become clearer following the passage or defeat of the new fire levy.

The wage increases recommended herein are costed by the Fact-Finder as being between \$515,000 and \$525,000 over the life of the contract. This cost factor assumes that the two current vacancies are not filled, as indicated by the City Manager, but does not include organic step increases, nor any other extraordinary increases in fringe benefits such as workers compensation premiums,

nor the cost savings that will be realized by the City for the increase health insurance contributions by the Firefighters. Inasmuch the City's current projections have assumed a four percent (4%) annual wage increase during the term of the Agreement, these recommendations still leave a cushion that could, if the City chooses, be used to fill the two existing vacancies. In other words, the recommendations herein, admittedly may not fulfill the needs and wants of the Firefighters, but does provide them with wage increases which are not necessarily inconsistent with the SERB benchmark wage increases, and allows the City a fiscal bridge to the next fire levy.

In addition, although the Fact-Finder finds this to be irrelevant when making a fact-finding, the recommendations herein are nearly identical to that which were proposed by the Union at its last informal meeting. The recommendations made herein merely take that last informal proposal and adds .25% to the first year to soften the impact of the increase in insurance premiums that will be paid by the membership as a result of the health insurance recommendation contained herein above.

As to lieutenants and captains, the finding herein may not cure the "gap" between them and the top firefighter pay, but at least ameliorates it.

The Fact-Finder certifies that his factual analysis finds that the City does have the current ability to pay the recommendations throughout the period of this Agreement. Accordingly, the Fact-Finder makes the following factual findings:

The City of Forest Park Ohio Fire lieutenants and Captains shall, upon the signing of this Agreement, receive lump sum payments of \$1,000 and \$1,500 respectively, which, for purposes of the following shall be added to their 2006 base pay rates. All members of the bargaining unit shall receive a 4.5% wage increase, effective January 1, 2007 and an additional increase in the amount of 4% effective January 1, 2008 and an additional 4% effective January 1, 2009.



Jack E. McCormick
Fact-Finder

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EIN 31-1410950
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October 19, 2007
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the enclosed City of Forest Park, Ohio and the Forest Park Firefighters Association, Local 3024 fact-finding report was faxed and mailed, via ordinary mail, postage prepaid, this 19th day of October, 2007, to:

Paul Berninger, Esquire
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2491
Attorney for the City of Forest Park, Ohio

Larry White, Jr.
President Local 3024
International Association of Firefighters
12201 West Kemper Road
Forest Park, Ohio 45240

and

Edward E. Turner
Administrator
Bureau of Mediation
State Employment Relations Board
65 Est State St., 12th Floor
Columbus, OH 43215-4213



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October 19, 2007
Columbus, Ohio

STATE EMPLOYMENT RELATIONS BOARD

Re: Case No. 07-MED-04-0518
Forest Park Firefighters Assoc., Local 3024

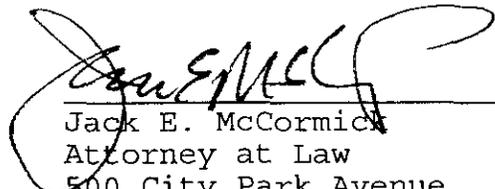
and

City of Forest Park, Ohio

Fee Statement of Jack E. McCormick,
Fact-Finder/Mediator

10/4/07 Scheduling, review pre-hearing materials - 2.0 hrs.	\$ 175.00
10/5/07 Travel and conduct hearing - 1 day @ \$700.00 + 4.0 hrs.	\$1,050.00
10/5/07 Travel: Dublin, Ohio-Forest Park, Ohio 240 miles @ \$.40 p/mile - one meal	\$ 96.00 <u>\$ 6.75</u>
Total \$2,027.75	

Due from City -	\$1,013.88
Due from Union -	<u>\$1,013.87</u>
	\$2,027.75



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Fact-Finder/Mediator
EIN 31-1410950

October, 2007
Columbus, Ohio