

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2007 OCT 12 A 11: 55

CITY OF MARYSVILLE, :

Employer, :

-and- : Case No. 07-MED-04-0539

INTERNATIONAL ASSOCIATION OF :
FIREFIGHTERS, LOCAL 3032, :

Employee Organization. :

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: October 10, 2007

PRINCIPAL REPRESENTATIVES:

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FOR THE EMPLOYER

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FOR THE EMPLOYEE ORGANIZATION

STATEMENT OF THE CASE

The parties, the City of Marysville, represented by Brian F. Dostanko, Human Resource Manager, and the bargaining unit, including all full-time firefighters and lieutenants employed by the City of Marysville Fire Department (26 employees), represented by Henry A. Arnett, counsel for the International Association of Fire Fighters, Local 3032 (IAFF), have entered into negotiations for a successor contract to the contract which expired June 30, 2007.

The parties met and bargained in good faith. The parties without dispute or through negotiation accepted thirty-two of the articles of the expired contract. The parties failed to reach agreement on issues contained in eight articles of the expired contract.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen as fact-finder.

The parties agreed to a fact finding hearing on October 1, 2007, and the meeting was convened at 1:30 p.m., at the Marysville City Service Center. In addition to their principal representative, Kathy House, Director of Administration, and Gary R. Johnson, Fire Chief, appeared on behalf of the City. In addition to their principal representative, James P. Strayton, Local 3032 President, Nathan Weirick, Local 3032 Vice-President, Todd Disbennett, Local 3032 Secretary Treasurer, Lt. Keith Watson, Nathan Burns, 1-Unit representative, and Matt Gleason, 3-Unit representative, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties. The parties engaged in fruitful mediated discussions that resulted in resolution of several issues that will be discussed along with the issues still to be determined.

The remaining issues were not amenable to additional mediation. The matter was submitted upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

Specifically, with respect to comparables, I note that the parties do not use any of the same communities in their presentations. The City disparages the bargaining unit comparables as being too large in population, different in funding, and too close to Columbus and Franklin County. The bargaining unit provided me with a map of Ohio, on which it has marked the City's comparables as being nowhere near Marysville (London is the closest) and not even half of the communities available for choice if the City's stated criteria: population, county seat, and source and type of funding, are considered.

Admin. R 4117-9-05(2) provides that a fact finder consider: "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." Neutrals consider such things as location, size, income, economic base, workload, urban v. rural, and other related circumstances in deciding whether an entity is comparable. But such information provides a base line to set the boundaries of the negotiating range, not exactly what should be awarded.

UNRESOLVED ISSUES:

Article 7 - Corrective Action

Article 21 - Sick Leave

Article 28 - Insurance

Article 29 - Longevity Pay

Article 30 - Incentive Pay

Article 31 - Hours of Work and Overtime

Article 33 - Uniform Allowance

Article 35 - Wage/Pension Pickup

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

ARTICLE 7 – Corrective Action

Three issues were raised in Article 7; the bargaining unit's proposal to add language to Section 1. Discipline regarding "higher standards" being applied to Safety Service employees when they engage in "conduct unbecoming" a City employee; the bargaining unit's proposal to delete language from Section 2. Discipline Procedure and add language with respect to paid administrative leave pending disciplinary action; and the City's proposal to change Section 4. Duration of Records regarding an increase in the amount of time the City may maintain a written reprimand in a bargaining unit member's record from 12 months to 24 months.

The City's Position: The City proposes no change in the expired contract to Section 1. The City argues that the City Policy that the bargaining unit objects to has not been used to discipline bargaining unit members, and that there is no real issue for determination, because the City is bound by the existing language of Section 1.

The City also opposes the change and addition to Section 2. The City presented no argument concerning this issue, except to offer to agree to this change in return for an agreement on its proposal to increase the time the City maintains written reprimands in a bargaining unit member's record. The City's proposal is similar to that of the bargaining unit.

The City proposed extending the amount of time written reprimands remain in a bargaining unit member's records from 12 months to 24 months. The City keeps a record of oral warnings for 12 months and the additional time reflects the more serious nature of a written reprimand. The City argues for internal consistency between the bargaining unit and all other City employees, because the Police Division and all other City employees already have written reprimands maintained for 24 months. External comparables also support the City's position.

The IAFF's Position: The bargaining unit proposes the following additional language to be added to Section 1: "No member of the Local shall be held to any higher standard than that of any other City employee or the general public. Rank shall have no bearing on disciplinary actions, i.e.: officers cannot be held to higher standards than firefighters."

The concern is that the City's adoption of a policy January 1, 2007, titled "Off-Duty Behavior" amounts to a change in the City's position that could impact a bargaining unit member if he or she is charged with some sort of off duty misbehavior.

The bargaining unit also proposes a change in the second paragraph of Section 2. Discipline Procedure. That paragraph would provide: "When the nature of the offense is such that immediate disciplinary action is required, the City is not prohibited from taking immediate action by this provision; however, an employee may be conditionally suspended and placed on paid administrative leave pending the outcome of the disciplinary process." The bargaining unit argues that such language is required by legal decisions that require formal charges and an opportunity to be heard before a suspension without pay can be imposed.

The bargaining unit opposes the change from 12 to 24 months for retention of written reprimands in a member's records, but offered to agree to the change in return for the City's approval of the two changes proposed by the bargaining unit.

Discussion and Recommendation: I recommend the language of the current (expired) collective bargaining agreement for Section 1. Discipline. There is no clear evidence of a problem in need of correction.

While the bargaining unit is correct that the language of the second paragraph of Section 2. Discipline Procedure in the expired agreement does not accurately reflect the current state of the law, the language proposed by the bargaining unit does more than correct that problem. I recommend the City's proposal, which provides: "When the nature of the offense is such that immediate disciplinary action is required, the City is not prohibited from taking immediate action by this provision; however, an employee may only be conditionally suspended with pay pending a conference on the matter."

I recommend the change to the expired collective bargaining agreement in Section 4. Duration of Records to retention of written reprimands for 24 months. I don't see the great value or necessity of internal consistency in discipline policy and procedures between all of the City work units, but coupled with all of the comparables presented by both sides, the City's proposal has merit.

ARTICLE 21, Sick Leave

The parties agreed to a change in Section 1. Accrual and Use. Paragraph "2" after the "*" will now read in its entirety: "2. Sick leave repeatedly taken on the same day of the week."

The City also proposes a change to Section 3. Sick Leave Buy-Out Program that would include the concept that the ability to sell back sick leave is dependant on non-usage.

The bargaining unit proposes a pay out of one hour for three hours of sick leave at retirement, and the addition of "father-in-law or mother-in-law," and "brother-in-law, sister-in-law" in Section 4.

The City's Position: The City would not oppose the bargaining unit's proposal to increase the pay out at retirement for sick leave hours at a rate of 3 to 1 instead of the current statutory 4 to 1 pay out in Section 2 if its proposal to reattach a penalty for usage as proposed in Section 3 is recommended.

The City would replace Section 3 as follows:

“Section 3. Sick Leave Incentive Program

Employees may annually sell up to 40 hours of sick leave (at current hourly rate) provided that they retain a minimum of 240 total hours after the sale. Total hours sold for any year is calculated by subtracting hours used that year from 40 (example: used 8, can sell 32). For the purposes of processing the buy-out prior to that year's holiday season, the program's year is defined as starting the day after the second pay period in November and going to the date of following year's second pay period in November. Payment is made the last pay period in November. The employee must fill out HR Form-30 (Sick Leave Incentive Request) and send to the Finance Director by October 1st for the payment to take effect.

The City argues that the concept of cutting down on sick leave usage has disappeared from the program because the bargaining unit members have used sick leave in increasing amounts and some have still been able to sell back up to 48 hours of their accumulated benefits. All of the City's other employees have the same requirement that the City proposes. The incentive program benefit is reduced when the employee uses sick leave. The City urges that internal consistency is a valuable goal to meet. The City also claims that all but one of its comparable cities that have incentive programs tie it to a penalty for usage during the year.

The IAFF's position: The bargaining unit supports its proposal to increase the retirement payout to one hour's pay to 3 hours of accrued sick leave in Section 2 as another effort to reduce usage of sick leave. The bargaining unit also deleted the sentence it proposed for Section 3 concerning a notice to be sent out by the City, and the last sentence in Section 4. Funeral Leave, which extended the funeral leave where the funeral is held out of state.

The bargaining unit does not agree to the change proposed by the City. The bargaining unit's position is that the current expired agreement's language properly allows bargaining unit members who are fortunate enough to have large balances in their sick leave accounts to reduce the balance at a beneficial rate. The bargaining unit points out that most of its members use 24 hours sick leave each time they are ill, and the City's argument that the current language has led to increased costs without a reduction in usage will balance out as the large accumulations are reduced.

The bargaining unit proposes adding "father-in-law or mother-in-law" to the first paragraph of Section 4 and "brother-in-law, sister-in-law" to the second paragraph.

Discussion and Recommendation: I recommend current language for Section 2. The parties should negotiate the amount of sick leave that can be redeemed on retirement.

The parties agreed to the change in Section 3 in the last contract negotiation, and the City has not persuaded me that the change back to the previous contract language is necessary. The incentive buy back of sick leave will limit itself as the bargaining unit members with high balances take advantage of the program.

I recommend the addition of "father-in-law or mother-in-law," and "brother-in-law, sister-in-law" as proposed by the bargaining unit in Section 4. It seems appropriate to me to include those "relatives" to the funeral leave definitions of "immediate family."

Article 28 – Insurance.

The City has proposed increases in out-of-pocket expenses in the drug co-pay portion of the health insurance plan, and the potential for the establishment of a Health Reserve or Savings Account, with all other provisions under this article at status quo.

The bargaining unit proposes an opt out provision that allows members to participate in other programs through their spouses, and provides for payment to the members who opt out by the City. The bargaining unit also proposes an increase in the City provided life insurance from \$50,000 to \$75,000.

The City's position: The City would increase the drug co-pays to \$10 for generic drugs, \$20 for Brand/formulary drugs, and \$30 for Non-formulary drugs. The City claims that both its insurance carrier and its insurance broker that an increase in drug co-pays would significantly reduce the increase in premium that is being proposed if the plan does not change. The City seeks to make the drug co-pay proposal applicable to all City employees, and asserts that internal consistency in the plan across the entire City is the only way to properly address the continuing problem of increased health insurance costs. The City offers to increase its offer on wages from 3% to 3.5% for 2008 in order to compensate the members for the increased cost to them caused by the change in the drug co-pay.

The City asserts that it is considering establishment of either a Health Savings Account or a health Reserve Account in the future, and such plans would not affect the basic coverage of the plan, but such plans would provide benefits to the bargaining unit members.

The City opposes increasing the life insurance amount because of increased cost, and it proposes to delete and change language in Section 2. Life to provide that bargaining unit members who choose to purchase additional life insurance through the City's group policy will have the cost per \$1,000 determined by the carrier "at a rate that may vary based on individual circumstances."

The IAFF position: The bargaining unit opposes the increased cost to its members outlined in the City's new drug co-pay proposal. The Police agreement does not contain the proposed drug

co-pay change, so the City's promise to apply it to all employees is dependant on issues not completely under the City's control. The bargaining unit does not accept the accuracy of the City's calculations of how the increased .5% in wages offsets the variable costs to bargaining unit members.

The bargaining unit supports its opt-out provision with its comparables, and asserts that the City would save money by its implementation.

The bargaining unit points out that several of the bargaining unit members earn more than \$50,000 per year, and argue that an increase in life insurance would seem appropriate because such group life insurance programs are often tied to the income of the employee.

Discussion and recommendation: I recommend existing language from the expired collective bargaining agreement in Article 28. As I understand the City's evidence, in order to obtain the 3.5% decrease in premium from Anthem (almost \$48,000 in 2007) the drug co-pay and the mail-in drug co-pay would be substantially increased. The bargaining unit does not accept the offered increase in wages as a fair trade. If the City wants a change in its single health insurance program with all of its employees that change should come as a result of negotiation. Similarly, the bargaining unit's proposal for increased life insurance and the opt-out proposal should be agreed. Finally, there just isn't enough information to support the City's proposed savings plans. The bargaining unit should have the opportunity to see the fleshed out proposal and to bargain before agreeing to it.

Article 29 – Longevity

The parties agreed to the Longevity article as proposed in the City's presentation.

Article 30. Incentive Pay

The parties agreed to changes in Section 1 and Section 2 that create a split pay scale for medic and non-medic status, and a separate pay scale for members permanently assigned to the duties of Fire Safety Inspector.

The City proposed no increase in any of the other incentive payments under this Article, and proposes language that specifies that the employee who holds such a position will be evaluated in his performance of that special duty as a part of his general performance evaluation.

The bargaining unit proposes combining Sections 3 and 4 and increasing to \$60 per pay incentive for performance of the duties of Shift Inspector Assistant, EMS Coordinator, Maintenance Coordinator, Fire Instructor, and EMS Instructor.

The City's position: The City agreed to the split pay proposal and the Fire Safety Inspector proposal, but is only willing to agree to no change on the other extra duty positions and addition of performance evaluation of those duties. The duties should be a regular part of fire fighters' employment, and the City would like to get away from incentive pay.

The IAFF position: The bargaining unit proposes a \$60 per pay incentive for all of the remaining extra duty positions in acknowledgment of the additional duties performed. It presented no objection to the addition of those duties to the City's performance plan so that the member can be evaluated on his performance.

Discussion and recommendation: Although the parties agreed on Sections 1 and 2, they did not submit identical language. I recommend the City's proposed language as contained in its presentation on Sections 1 and 2, and I recommend the City's proposed language on Sections 3 and 4. The City is paying for the extra duties and should evaluate that performance as well. The bargaining unit did not persuade me that an increase in the incentive was warranted.

Article 31- Hours of Work and Overtime

The parties agreed to language in Section 4 concerning compensatory time. The bargaining unit proposes changes in Section 1 with respect to the ability of a 40 hour member to work flex time in accordance with the City's policy, and Sections 5, 6, and 7, which would provide that all earned time used except sick time will count as hours worked for purposes of calculating overtime.

The City's position: The City takes the position that flex time is in the Chief's discretion and no change is necessary to reflect that. The City opposes the changes in calculation of overtime because it "bought and paid for" the change to the current language two contracts ago.

The IAFF position: The bargaining unit argues that most contracts use all but sick leave to calculate when overtime is earned. The analysis includes communities chosen by the City as comparables.

Discussion and recommendation: I recommend current language in Sections 1, 5, 6, and 7. The bargaining unit did not provide me with any information on how often the perceived problem occurs, and the change was negotiated just two contracts ago.

I recommend the following language for Section 4:

Compensatory time shall be available for all Local 3032 members and shall be used as described in Article 18 of this contract.

Employees will receive overtime or compensatory time for any hour worked over 106 hours within the 14 day work period. Compensatory time is accrued at a rate of one and one half hour for each overtime hour. Each employee is permitted to accrue and carry year-to-year two hundred forty (240) hours of compensatory time.

Employees are paid the first pay period in January at the fifty-three (53) hour rate for all compensatory time exceeding the two-hundred and forty (240) hours.

Article 33-Uniform Allowance

The City proposed no change to the Article except to agree to the bargaining unit's proposal to add "one (1) belt" to Section 1, Initial Issue.

The bargaining unit proposed an increase of \$150 to Section 2. Annual Incidental Allowance.

The City's position: The City claims the current quartermaster system is the pattern throughout the City, and that the increase proposed by the bargaining unit would skew the benefit in favor of the bargaining unit at the expense of all other City employees.

The IAFF position: The bargaining unit claims the increase is necessary to pay for incidentals that the members purchase as needed.

Discussion and recommendation: I recommend the addition of one belt to the initial allowance. I recommend current language on all other Sections.

Article 35, Wages/Pension Pickup

The City offers a 3% across the board increase in wages and the agreed to additional pay rates for Emergency Medical Technician-Paramedic and Fire Safety Inspector, effective on the date of ratification of the contract; a 3% across the board increase in wages effective July 1, 2008, and a 3% across the board increase in wages effective July 1, 2009. In addition, the City proposes a 2% increase to Step A, the entry level firefighter in each of the years of the contract.

The bargaining unit proposes a 4% across the board increase in wages (including the two additional pay rates established by agreement), effective July 1, 2007; a 4% across the board increase in wages effective July 1, 2008; and a 4% across the board increase in wages effective July 1, 2009. The bargaining unit also proposes the replacement of the current language of Section 2. Pension Pick-up to the following: "The City shall pay one hundred percent (100%) of the employee's share of the pension contribution."

The City's position: The city has examined its position and adjusted its position from its previous contract negotiations to more accurately reflect Marysville's position and prospects. The

voters have rejected a tax increase and the Mayor ran on a no new taxes platform. The City is spending more than it is taking in on an annual basis. The City is incurring additional increases by creating the two new pay scales, the City already provides a 10% pension pick-up, and its total benefit package is very adequate. The City points to its increased debt since the last negotiations, and argues that the wage proposal is in line with the City's budget planning. Holding the line on increases may also allow the City to hire additional firefighters, who are desperately needed. The offered increases maintain the City's position among its comparables and it is fair and reasonable.

The City opposes the change in the pension pick-up language because there is no way of knowing what changes in the employee contribution might be made by the legislature and the pension fund during the contract term.

The IAFF position: The bargaining unit proposes the change in the pension pick-up language to reflect the current situation. The 10% pension pick-up is 100% of the employee's required payment to the retirement fund.

The bargaining unit's proposal on wages is within the range of its comparables and is an increase that the City could fund. The City maintains a carryover balance that is much larger than is recommended for a City of Marysville's size, and the last contract increases were somewhat low.

Discussion and recommendation: My analysis of the submissions of the parties leads me to recommend a modification of the party's positions. Each party's proposal is reasonable and the City has the ability to pay. The parties raised valid concerns about opposing comparables, and I am more persuaded by the history of the parties with respect to wages. I recommend that the parties adopt the City's submitted language and procedure with respect to establishing the two new pay scales. I further recommend a 3% across the board wage increase effective July 1, 2007; a 3%

across the board wage increase effective July 1, 2008; and a 3.5% across the board wage increase effective July 1, 2009.

I recommend current language from the expired agreement in Section 2. Pension Pick-up for the reasons stated by the City.

Article 40 Duration of Agreement

The parties agreed that the Agreement shall be effective as of July 1, 2007 and shall remain in full force and effect until June 30, 2010 or until otherwise terminated as provided in the agreement.

CONCLUSION

The parties have jointly asked that the tentative agreements between them be confirmed and adopted and I do so based upon the documents submitted to me. The parties cooperated in presenting their positions to me, and in our mediation efforts. The courtesy and professional behavior was evidence of the good relations between the parties, and I encourage them to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,



PHILIP W. SHERIDAN, JR.
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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by Regular U.S. Mail, postage prepaid, and by email transmission this 10th day of October, 2007, to the principal representatives of the parties and by Regular U.S. Mail, postage prepaid, to the State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.


PHILIP W. SHERIDAN, JR. (0006486)