

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 29, 2007**

STATE EMPLOYMENT
RELATIONS BOARD

2007 DEC -3 A 9:20

In the Matter of:

The City of Piqua, Ohio

07-MED-06-0692

and

Piqua Firefighters Local #252 (Fire Officers)

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Stacy M. Wall, Law Director
Cynthia Holtzapple, Finance Director
Elaine Barton, Human Resources Director
Gary Connell, Fire Chief

For the Union:

William Hogston, President
Michael A. Peltier, Assistant Fire Chief

INTRODUCTION

The undersigned was selected by the parties, and was duly appointed by SERB by letter dated October 15, 2007, to serve as Fact-Finder in the matter of the City of Piqua (hereinafter referred to as "Employer") and Piqua Fire Fighters, Local 252 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until November 29, 2007. Hearing was held at Piqua, Ohio on November 19, 2007. The Union was represented by William Hogston, President, and the City was represented by Stacy M. Wall, Law Director. The parties were permitted to present testimony and exhibits concerning each of the outstanding provisions on which agreement had not been reached. In addition, at the Employer's request, post hearing briefs were filed with the Fact-Finder on November 26, 2007.

Pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered the past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted.

FACTUAL BACKGROUND

The City of Piqua is a City located in Miami County, Ohio with a population of approximately 20,700. The City employs a total of 213 employees. Of those, 153 are employed in one of five bargaining units represented by FOP, IAFF and AFSCME. The City operates a single fire station from which it provides fire and emergency medical services for the City of Piqua as well as for Washington and Springcreek Townships on a contract basis. The geographical area for which services are provided is 64.5 square miles. IAFF, Local 252 represents two separate bargaining units within the fire department. The Firefighter bargaining unit includes 21 firefighter/paramedics, and

has had successive collective bargaining agreements with the Employer since 1970. The officers' bargaining unit, which is the unit which is the subject of this case, was formed as a separate bargaining unit in 2001, and has bargained two previous collective bargaining agreements with the Employer. It consists of 3 Shift Captains and 3 Assistant Chiefs. The remaining 3 Fire Department employees, an Administrative Assistant, Assistant Chief for Fire Prevention, and Fire Chief, are not represented. The Collective Bargaining Agreement between the parties expired on August 31, 2006. The Employer has not waived any statutory claims concerning the award being effective in the following fiscal year. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.

The unresolved issues are as follows:

Article 13 - Hours of Duty and Overtime

Article 14 - Wages

Article 17 - Sick Leave

Article 22 - Training

Article 23 - Promotions and Appointments

Article 33 - Term of Agreement

ISSUES

ARTICLE 13- HOURS OF DUTY AND OVERTIME

Union Position: The Union proposes that Section 2 of this Article concerning compensatory time be amended to permit the accumulation of compensatory time at the rate of one and one half hours for each hour worked beyond the regularly scheduled work week. This provision applies to the three Assistant Chiefs in the bargaining unit. The Union argues that since these members of this bargaining unit are considered to be exempt employees for purposes

of payment of overtime, this additional accumulation of compensatory time would fairly compensate them for overtime hours worked. It would further encourage these three employees to come in for call-ins on a volunteer basis. Since non-exempt employees are paid for overtime and time and one-half of their hourly rate, it is equitable that these employees should be compensated with compensatory time at the rate of one and one half hours for each hour of work in excess of their regularly scheduled work week.

Employer Position: The Employer contends that these employees are already well compensated for their work, and additional compensatory time is unwarranted. These members of this bargaining unit were granted a 21% pay increase when placed in exempt status several years ago. Further, they are the only employees who receive compensatory time beginning at the first hour worked beyond their regularly scheduled work week. Other similarly situated employees must work five hours beyond their scheduled work week before earning compensatory time. Additional compensatory time taken results in increased overtime costs to the Employer as other employees must be assigned to cover compensatory time off. Finally, to the extent that compensatory time is accumulated to its maximum limit of 240 hours, this results in additional retirement costs to the Employer when compensatory time is paid out.

Discussion: As the Employer points out, these employees are exempt from overtime pay under the FLSA. Despite the fact that they are exempt, they are granted one hour of compensatory time for each hour which they work over their regularly scheduled work week. Other management level employees are similarly granted compensatory time, but must work five hours more than their regularly scheduled work week before they receive any compensatory time. While, as the Union points out, fire officers work more hours in a scheduled work week than other employees, they also receive compensatory time immediately unlike other management employees. By virtue of the fact that the typical fire department schedule of 24 hours on 48 off is never completely compatible with a standard 40 hour work week, there are necessarily differences between those who work a standard work week and fire fighters. This difference

appears to be adequately compensated by providing compensatory pay for the first hour of work over the scheduled work week for fire officers. It should be noted, that while the Union contends that the increase in compensatory time would encourage officers to respond to call-ins, there was no evidence presented to demonstrate that there has been any reluctance to respond under the current compensatory time provision. Finally, the Assistant Chiefs who accumulate compensatory time at a maximum of 240 hours, have accumulated substantial balances. All are within less than 100 hours of the maximum accumulation, and one of the three is within less than 10 hours of the maximum accumulation. The proposed change in compensatory time would move the three Assistant Chiefs closer to the maximum for pay out purposes upon retirement slightly faster, but it appears that all will easily reach that mark and likely surpass it without the change. There is simply insufficient basis to grant a benefit greater than that provided to other management level employees within the City.

Recommendation: Current Language.

ARTICLE 14 - WAGES

Union Position: The Union proposes a 5% increase in each year of a three year agreement retroactive to the expiration of the Agreement on August 31, 2007. Surrounding comparable fire departments have provided wage increases greater than that offered by the Employer. Many of these fire departments have greater manpower than this one, and these employees should be comparably compensated. Since all other bargaining units within the City have been awarded pay increases retroactive to the expiration of their Collective Bargaining Agreements, this bargaining unit should be awarded a retroactive wage increase as well. There is no basis for singling out this bargaining unit in this regard.

Employer Position: The Employer proposes a 3% increase in each of the first two years of the Agreement, and a 3.25% increase in the third year. This is the increase already granted to each of the Employer's other bargaining units which have finalized their Collective Bargaining

Agreements. The Employer's finances simply will not support the greater increase proposed by the Union. While the Employer is not yet in dire straits, its tax collections have been flat, and increased costs for fuel beyond those budgeted have negatively impacted its financial situation. The Employer further proposes that any wage increase not be retroactive to the expiration of the Agreement. Although the other bargaining units were granted retroactivity, the Employer's recently completed budget for 2008 indicates that the payment of retroactivity to these 6 employees will create a financial hardship. Further, this bargaining unit has delayed negotiations by insisting upon the promotional language which borders on bad faith bargaining. It should not be awarded a retroactive pay increase.

Discussion: Although the Employer's economic situation is not dire at this point, its fiscal position is not what had been anticipated. While the 2007 budget anticipated a 2.8 million general fund balance at the conclusion of the year, it is clear based upon current information, that the general fund balance will be significantly less. Tax collections are relatively flat, and have come in at 2% below the amount budgeted for 2007. It is expected that the 2008 general fund balance will be depleted to 1.7 million dollars. In the absence of increased revenues, which are not anticipated, it is expected that there will be a 1.3 million dollar general fund deficit at the conclusion of fiscal year 2009. Clearly, budgeted numbers are never firm numbers, but they do indicate a reasonable predication in the absence of unanticipated income or expenditures. Thus, while the Employer is not currently in a financial crisis, its outlook for future years indicates that it must exercise fiscal caution in its spending.

The Union's proposal of a 5% increase in each year of the Agreement is not supported by the evidence. While the Union has submitted evidence demonstrating that command officers in comparable communities have received greater percentage increases, those increases in two cases were within .25% of the Employer's offered wage increase. Further, there was no evidence presented which permitted these wage increases in comparable communities to be analyzed in light of the actual annual wages of the employees involved. The percentage increases themselves

have less meaning when their impact on the overall wages of the comparable employees relative to this bargaining unit cannot be determined.

Finally, the evidence presented at hearing demonstrated that each of the Employer's other bargaining units has received the Employer's proposed wage increase. There was simply no evidence presented at hearing to justify a significantly greater wage increase for the six employees of this bargaining unit.

The Employer argues that the wage increase here, however, should not be granted retroactively to the expiration of the Collective Bargaining Agreement. While the Employer contended at hearing that its current budget information indicates that retroactivity is now inappropriate, the total estimated cost of retroactivity is \$5,000 according to the Employer's estimates. This amount clearly is not sufficient to make any huge impact on fiscal solvency, particularly since the 2008 budget anticipates a general fund balance of over one million dollars.

In its post hearing brief, the Employer contends that the delay in completion of bargaining is the fault of the Union which insisted upon the promotional language of Article 23 discussed below. While the Employer characterizes this insistence as "bad faith bargaining", there was no evidence presented at hearing to demonstrate any refusal to discuss or negotiate concerning the issue on the Union's part. The Union's perseverance on this issue, clearly indicates that it is an issue of great importance to the Union. There is not, however, any indication that this equates to bad faith bargaining which has unduly delayed an agreement. It should therefore not serve as a basis for the denial of a retroactive pay increase. This bargaining unit should be granted the same pay increase retroactive to the expiration date of its Collective Bargaining Agreement as was granted to the Employer's other bargaining units.

Recommendation: 3% wage increase effective September 1, 2007; 3% increase effective September 1, 2008; 3% increase effective September 1, 2009.

ARTICLE 17 - SICK LEAVE

Union Position: The Union proposes a change to Section 3 relating to the conversion of sick leave to cash. The proposal would increase the annual eligibility to convert a second week of sick leave to cash. The current language permits conversion of a second week of accumulated sick leave to cash in the event that the employee has used no more than 24 hours sick leave in a 12 month period. The proposal would increase the number of hours of sick leave used in a 12 month period to 72 for a 56 hour employee, and to 40 hours for a 40 hour employee. This permits the Employee to utilize a reasonable amount of sick leave while still maintaining this benefit.

Employer Position: The Employer argues that there is no justification for this increase. Other employees are permitted absences of no more than 24 hours, or 3 days, in order to convert a second week of sick leave to cash. There is no basis for these employees to be granted more simply because they work a 24 hour shift. Further, the provision already leaves room for abuse since the sick leave can be cashed out at any time during the year. An increase simply is not justified.

Discussion: The evidence presented at hearing demonstrated that among the six employees in this bargaining unit, four were eligible to convert a second week of sick leave to cash. One of the two remaining employees would be eligible to convert a second week of sick leave to cash pursuant to the Union's proposal. Although the Union contends this makes the conversion eligibility of these employees more comparable to those of other bargaining units, there does not appear to be any significant need for the change with its concomitant additional expense to the Employer since the change, at least in year 2007, would impact only one employee. It should be additionally noted, that under the current language, sick leave may be converted at any time during the calendar year after it is accumulated. The Union's proposal would thus make it easier for an employee to cash out a second week of accumulated sick leave and then utilize additional sick leave, which, if taken sooner, would have rendered him ineligible

for the benefit.

Recommendation: Current Language.

ARTICLE 22 - TRAINING

Union Position: The Union proposes the addition of language reimbursing an employee for college tuition and expenses. Although the Union's proposal is open ended as to both the type of education which may be pursued and as to the amounts which are reimbursable, the Union in its post hearing brief indicates that the Employer's proposal which limits the types of education to fire related courses of study and caps the amounts of reimbursement, is acceptable to the Union. This proposal, however, was withdrawn by the Employer. This provision is included in the Police Command Officers' Letter of Understanding, and should be granted to Fire Officers as well.

Employer Position: The Union's proposal is open ended and seeks reimbursement for all educational expenses without regard to either the course of study or cost. This proposal is obviously unacceptably expensive. Further, although police command officers have an education benefit, those Officers' wage increases are tied to whether or not they possess an advanced degree. That restriction does not exist in this bargaining unit, and the situations are therefore not comparable.

Discussion: As noted above, the Union's proposal regarding tuition reimbursement is open ended both regarding the type of college degree which may be pursued and in terms of the amount of compensation. Such an unlimited provision is clearly prohibitively expensive and unacceptable. The Union has indicated, however, that it would accept the Employer's proposal which requires that the education be related to work as a fire officer and further limits annual reimbursements. That proposal, however, was withdrawn by the Employer which had presented the proposal as part of a package to resolve negotiations. While similar language is incorporated into the police command officers Letter of Understanding, as the Employer pointed

out, those employees' movements in pay grade are tied to obtaining an Associates Degree or its equivalent. There is no such linkage in the fire command officers' Agreement, making the situation here distinguishable. There was no evidence presented at hearing as to the numbers of the members of the bargaining unit who desired to take advantage of such an educational benefit, and thus, even under the Employer's withdrawn proposal, there is no clear estimate as to the cost of the proposal during the term of this Agreement. In light of the Employer's more recent budget information, the new benefit should not be added to the Agreement.

Recommendation: Current Language

ARTICLE 23 - PROMOTIONS AND APPOINTMENTS

Union Position: The Union proposes that the current language from the Civil Service Commission Rules regarding promotions be incorporated into the Collective Bargaining Agreement. In the past year, the Employer has attempted to make several changes to the civil service promotion rules which have been opposed by the Union. The Employer has proposed elimination of anonymity rules, the addition of an interview process, and a change which would allow the City Manager to select employees to be promoted from the list without regard to the ranking of scores. Each of these proposals was vehemently opposed by the Union. In addition, the Union filed a grievance regarding the conduct of the most recent promotional examination. Although none of the proposed changes have been implemented, and the grievance was withdrawn, the attempts to change the current Civil Service promotional rules remain an issue between these parties. Changes to the Civil Service Commission rules have in actuality been negotiated with the Union in the past. The Union's proposal would insure that the current rules could not be altered during the term of the Agreement without the agreement of the Union.

Employer Position: The Employer argues that the language proposed by the Union would unnecessarily inhibit the ability of the Civil Service Commission to make changes to its rules. This is contrary to the concept of civil service as set forth in the City Charter. The impetus for

this proposal was the implementation of an interview process for police promotions. The Employer did not implement the process for fire fighters and fire officers based upon the Union's objections. The process, however, has proved to be valuable, and both the Fire Chief, who was initially opposed to the change, and the Civil Service Commission believe that it adds a useful tool to the promotion process. The Civil Service Commission should not be prevented from implementing this or any other change in the process which it deems appropriate. This is part of the duty with which it is charged by the City Charter, and it should not be restricted. The Employer further argues that the contractual language should not supersede statutory rights based upon a prior recommendation of this Fact-Finder in Case No.2001-MED-10-1010.

Discussion: The provision proposed by the Union is the major bone of contention between the parties in this case. The Union desires to incorporate current Civil Service Commission rules regarding the procedures for promotions into the Agreement in order to insure that the procedures will not be altered at the behest of the Employer. The current contractual language provides only that "...vacancies and promotions shall be filled in accordance with the Civil Service Rules and Regulations...". Although to date, the Civil Service Commission has not made proposed changes without the agreement of both the Employer and the effected bargaining units, without contractual language, it is clear that such changes could be made without meaningful input or agreement by the Union. The Employer has proposed at least three significant changes to the Civil Service Rules within the past year. The evidence demonstrated that the Union was permitted to have input before the Civil Service Commission, and the Commission did not make changes based upon the lack of agreement of the Union. Although none of the Employer's proposed changes was adopted based upon the Union's opposition, a Commission with different members might well reach a very different result. This has justifiably raised concerns on the Union's part that the promotional procedures or requirements could be changed without its agreement absent the protection of contractual language.

There is no doubt but that even though the Civil Service Commission is not the

Employer, it has in effect negotiated changes in its promotional rules with the Unions effected in the past. On each occasion that the Employer has proposed changes, the Commission has listened to all parties, and refused to implement changes with which the Union did not agree. The evidence further demonstrated, that changes, such as the addition of the Assessment Center, were made after full participation and agreement by both the Union and the Employer. Since the parties have a history of negotiating on this issue, the continuation of negotiation should be protected against changes in the make up of the Civil Service Commission.

The Union's proposal, however, goes beyond its permissible purposes in this case. The Union's proposal seeks to include not only requirements for promotion from Captain to Assistant Chief, but also promotional rules for promotion to Assistant Chief for Fire Prevention and Fire Chief. These two positions are not included within the bargaining unit. It is therefore beyond the scope of the collective bargaining process to attempt to control the manner in which these promotions will be accomplished. To that extent the Union's proposal must be rejected.

The Employer contends that the Union's proposal would effectively emasculate the Civil Service Commission by preventing it from exercising one of its crucial duties granted by the City Charter. While the proposal would indeed inhibit the Commission's ability to amend its rules relating to fire promotions during the term of the Collective Bargaining Agreement, the removal of authority which was once the exclusive province of civil service commissions through collective bargaining is a common occurrence. As collective bargaining has expanded the role and influence of civil service commissions has contracted. In fact, these parties have agreed that *discipline, which was reviewed solely by civil service commissions pursuant to Ohio Revised Code Chapter 124* prior to the advent of collective bargaining in the public sector, shall be reviewed through the grievance procedure culminating in final and binding arbitration. The removal of the ability of the Civil Service Commission to amend its rules on this issue is therefore insufficient reason to reject the Union's proposal.

The Employer contends that this Fact-Finder's decision in the Greenville Patrol Officers

Association & City of Greenville, Case #2001-MED-10-1010 is on point and should be controlling here. The Employer's argument, however, misreads that decision. In the Greenville case, the Employer made a broad proposal which would have provided that contractual language controlled over all statutory provisions which might relate to matters covered in the Agreement. The purpose of this proposal was to react to a decision by the Ohio Supreme Court which held that where a contract is silent, statutory provisions prevail. The language was deemed to be unnecessary and potentially ineffective for the purpose for which it was proposed. The Fact-Finder did not determine, however, that contractual language may not and should not prevail over statutory language as a matter of course. Such a conclusion would be contrary to the concept of collective bargaining.

In light of the history of effectively negotiating changes in the Civil Service Commission's rules through the Civil Service Commission which as an entity is not the Employer, and is therefore not technically obligated to bargain with the Union, it is reasonable to incorporate those rules into the Agreement in order to protect them against un-negotiated change. The Employer's repeated attempts to alter the rules in the past year indicate that in the event of changes in the membership of the Civil Service Commission, the rules could well be changed without Union agreement.¹

Recommendation: Change Section 2 as follows:

Section 2. Promotions and Disqualification. Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position.

A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has

¹ While there was a significant amount of testimony presented by both sides concerning the necessity for, efficacy of, and procedures for a new interview component of the promotional test, it must be stressed that that issue is not before the Fact-Finder. The new interview requirement for police, which the Employer would also like to adopt for fire, while a driving force behind the disagreement between the parties on the proposed contractual language, was not the subject of negotiation or of a specific proposal. The Fact-Finder does not, therefore make any recommendation as to whether or not such an interview component should be added to the promotional process.

been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

A . Testing. Scoring from the position of Captain to Assistant Chief shall be as follows:

1. Written Test - 50%
2. Assessment Center - 50%
3. Seniority Points per O.R. C. 124.45

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g.. if the written score is 80% and the assessment center score is 90%. the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

B. The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.

ARTICLE 33 - TERM OF AGREEMENT

Union Position: The Union proposes a change in the language of Section 2 of this Article, which requires the Union to submit its proposals for a successor Agreement to the Employer 120 days prior to the expiration of the Agreement. The Union proposes that both parties submit their proposals 90 days prior to the expiration of the Agreement. The Union argues that the requirement that it submit its proposals 120 days prior to the Agreement's expiration while the Employer need submit nothing until actual negotiations creates an undue burden on the Union.

Employer Position: The Employer argues that the language should remain the same. The Employer can not submit its proposals 90 days in advance of the expiration of the Agreement due to the uncertainties of the budget process at that time.

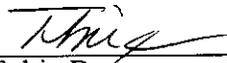
Discussion: As the Union points out, the current language requires it to present its proposals *four months in advance of the expiration of the Collective Bargaining Agreement*, while requiring nothing of the Employer. The Employer does not argue that this period should not be shortened for submission of the Union's proposal. Instead, it argues solely that it cannot

present its proposals this far in advance of the expiration of the Agreement due to the uncertainty of the budget at that point in the year. This contention assumes that negotiations will not begin until the expiration of the Agreement, a situation which clearly should be avoided. In fact, the Agreement expires on August 31, but the Employer's current budget for 2008 was not completed for presentation to the City Commission until mid November. Thus, whether the Employer's proposals are submitted 90 days prior to the expiration of the Agreement or at the time of the first negotiation session of the parties, it is clear that they will of necessity be presented well in advance of the completion of the budget for the forth coming year. Presumably, the goal of negotiations is to complete the new Agreement prior to its expiration. An exchange of proposals 90 days prior to the Agreement's expiration would contribute to that end. Further, a mutual exchange of proposals prior to the first meeting of the parties allows both parties to meet at the bargaining table on an equal footing having reviewed and become informed about the other's proposal. This procedure aids in expediting the negotiation process.

Recommendation:. Change first sentence of Article 33 Section 2 as follows:

The Union and the City shall present their proposed changes for a successor agreement in writing no later than 90 days prior to the termination of this Agreement.

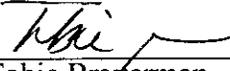
Dated: November 29, 2007



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 29th day of November, 2007 to, William Hogston, President Piqua Fire Fighters Local 252, P.O. Box 565, Piqua, OH 45356 and to Stacy M. Wall, Law Director, City of Piqua, 201 W. Water Street, Piqua, OH 45356 by U.S. Mail Overnight delivery.


Tobie Braverman