

STATE EMPLOYMENT
RELATIONS BOARD

2008 APR 22 A 11: 27 **Before the State Employment Relations Board**
State of Ohio

In the matter of

City of Delphos
Employer

Case No. 07-MED-07-0737

And

Sandra Mendel Furman, Fact
finder

IAFF Local 686
Union

FACTFINDER'S REPORT

Procedural Matters

SERB appointed this fact finder by letter dated March 4, 2008. The matter was scheduled for hearing on April 10, 2008 by agreement of the parties. Pre hearing statements were received by the fact finder and served by each party upon the opposing party at or prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The hearing was held on April 10, 2008 at the City Building in Delphos. The fact finder offered to mediate any/all of the issues. The parties engaged in mediation then proceeded with their proofs. A full hearing was had. The parties presented witnesses and exhibits in support of their respective positions. Representing the Employer were Cheri Haas and Frank Hatfield, Counsel, Downes, Hurst and Fishel. Also present on behalf of the City were Michael Gallmeier, Mayor; Greg Berquist, Safety-Service Director; Chief McNeil and Councilperson James Hanser. The Union was represented by Roy Hollenbacher, First District Vice President Ohio Association of Professional Fire Fighters and two members of the bargaining committee, Don Moreo, President and Dale Carder, Secretary-Treasurer Local 686.

The parties had engaged in several bargaining sessions for a successor agreement prior to appointment of the fact finder. At the date of hearing, there were six (6) issues left for determination by the fact finder: wages; personal leave; health insurance; residency, call back pay, paramedic/EMT pay. The report is submitted at the date stipulated by the parties.

Findings of Fact

1. The City's population in 2000 was 6944, according to Census figures. There has been a slight decrease in population by 1.6 % according to July 2006 estimated figures.
2. Median household income is \$35, 817. Average annual income in the bargaining unit in 2007 was \$56, 458.80, including overtime.
3. The City's income relies in large part from tax receipts. Income for the first quarter of 2008 is down somewhat from the same period in 2007. There has been a four year upward trend in income tax receipts.
4. Several manufacturers are based in Delphos: these produce granite monuments, truck trailers, axles, air brake tubing, sheet metal, metal detectors, farm wagons, insulation, and service station equipment.
5. Wages, salaries and fringe benefits constitute the majority of City expenditures.
6. The City spent 52 million dollars in capital improvements to its water and wastewater treatment plants. These were completed within the past four years. There was no testimony concerning further major planned capital improvement projects.
7. There was a carryover in 2007 both city wide and in the fire department.
8. The City has the ability to pay for the various increases sought by the Union.
9. No employees have been laid off in recent memory.
10. There have been no wage freezes.
11. The City is a self insurer for health insurance. The City is informed of its premium payments on a yearly basis in late October. The current insurance contract expires in 2008. It is a HRA type plan. The employee caps are \$1000 or \$2000 depending on coverage.

12. The City in the last round of negotiations sought consistency for insurance benefits for its entire workforce. Therefore, the Union agreed through negotiations to parity in benefits. The current language has been in place only three years. The switch to a HRA began in 2005.
13. The City has no commitment to continue or to discontinue the HRA at this time.
14. The City has one fire station. It is manned 24/7. Each shift is staffed by two fire fighters. Due to the very small numbers of employees, vacation, sick and personal leave scheduling necessitates use of overtime. Also overtime is necessary simply due to the manning requirements in a non leave work week.
15. The bargaining unit has six positions. The positions provide fire prevention and emergency response services for the City of Delphos. Additional testimony was provided concerning emergency response services provided on an ad hoc basis to surrounding communities. (e.g. recent flooding in Hardin County). All six positions are currently filled The most recent hire is in his probationary (1 year) period. He is not a City resident but conforms to the current residency requirement in effect through ordinance. There are an additional nine persons on the current civil service certification list for firefighter.
16. The IAFF is the certified bargaining representative and has been since 1995.
17. The unit consists of the members of the Delphos Fire Rescue Department, excluding the Fire Chief.
18. The firefighters are the first bargaining unit of the two units in the City to proceed to fact finding this bargaining cycle. The other City bargaining unit is the OPBA, consisting of 15 employees. The OPBA unit is a recent change in representative from the Teamsters Local #908. The Teamsters' contract expired also in December 2007. No bargaining has occurred to date due to the change in representative. However, bargaining will occur in the immediate future with that unit.

19. There is no joint bargaining. However, the City usually follows the lead of the gains made by the IAFF with respect to the other unit and the non represented employees.
20. The contract when ratified will be retroactive to 1-1-08 by agreement of the parties. The current contract term was 2005-2007.
21. In 2005 -2006-2007, the IAFF percentage wage increase was 3.25%.
Neighboring communities of Wapakoneta and Celina firefighters received a 3% increase in 2008 and these two units will receive a 3% increase in 2009.
22. The OPBA unit received 3.25 % in wage increases from 2004-2007, the same rate as the IAFF.
23. The non bargaining unit employees received an average of 3.25% in 2007.
24. For municipalities in and around Delphos, it appears that Delphos is above the average for entry level positions in the Fire Department per the City's comparables and below the average for the top salary.
25. Wage comparisons presented by the City included areas of up to double the population size of Delphos, within up to 2 contiguous outlying counties. The City's data does not contain the size of the fire department. There was not a true equivalent comparable based upon population. Only Delphos does not have a step system. It was unknown whether the alleged comparables had PERS pick up or not.
26. The statewide comparables presented by the City in SERB's March 2008 benchmark report showed a range of 1-7 steps. Again, Delphos is somewhat higher than the average for entry level and is lower than the average for the top level salary. Few of the cities in the SERB report were in contiguous areas and none of the cities were of closely comparable size.
27. Statewide comparables from the SERB March 2008 wage increase report for cities 15000 population or less show increases for firefighters ranging from lows of 1.5% in 2008 to a high of 4.53%. All other factors are unknown. A cursory review of the benchmark report shows a decided trend towards 3% increases for this contract period.

28. The City has no recruitment issues. The majority of the unit's employees are long term employees. There was a retirement in 2007 and a hire in February 2008.

ISSUE NO. 1. Article 13.5 Hours of Work and Overtime

The Union seeks parity with the majority of the unrepresented employees who receive two hours minimum call in pay for emergency overtime.¹ Comparables showed cities paying from 1-3 hours as a minimum. (The union's comparables were within a 50 mile geographic range of Delphos).

The City argues that its other safety unit only receives one hour, and for parity purposes there is no need to adjust the firefighters' minimum call in pay. It also points to the "built in overtime" in the firefighters schedule as another reason to deny the adjustment from one hour to two hours minimum call in.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).² Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.³

There is no compelling reason to have the firefighters receive less than other city employees called in for overtime. The City presented no evidence as to the projected costs of this increased benefit. Regardless, it has not argued ability to pay. It is therefore apparent that the cost factor is negligible, or insignificant. The fact that the police receive currently a lesser benefit does not support the status quo for the fire fighters unit. The two hour call in pay is consistent with trends in comparable neighboring jurisdictions.

Recommendation

It is recommended that the parties approve the following language:

13.5 Employees required to return to work for emergency overtime shall receive one and one half (1 ½) times their training rate of pay (40 hour rate). Minimum pay received shall be two hours.

¹ The police unit receives a minimum of one hour pay for call in.

² The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

³ In this case, the lawful authority of the public employer was not in dispute on any issue submitted to fact finding. The effect on public services was not in dispute on any of the matters submitted to fact finding. The parties did not present the fact finder with any stipulations.

ISSUE NO. 2. Article 17 Residence requirement

The City requests a change in the residency language of the contract. It seeks parity with the language in the Teamsters' agreement.

The Union points out that there is no need for the fact finder to consider the City's proposal, as the parties had reached a tentative agreement on the language prior to fact finding.

The fact finder called for a caucus to determine the parties' interests in resolving this dispute. After taking into account the arguments and rationales, the fact finder concludes that no violence will be done to the parties' interests in adopting the city's proposed language.

Recommendation

It is recommended that the parties approve the following language.

Article 17

Section 17.1 All full time employees must be residents of the state of Ohio. All full time employees hired before November 14, 2009 must reside within a seven (7) mile radius of the City of Delphos. The point of beginning shall be the intersection of First and Main Street (St.Rt. 66). Any fulltime employee hired after the current civil service eligibility list expires on November 14, 2009 as a condition of employment shall be required to live within the City limits.

The enforcement of this section will be dependant upon the adjudication outcome of the current residency law (RC 9.481) If the Ohio residency law is upheld, state law shall prevail for all bargaining unit members.

17.2 If at the time of being hired the full time employee does not live within the boundaries set forth in 17.1, the employee shall move within the boundaries set forth in 17.1 within ninety (90) days after the completion of the probationary period or because of extenuating circumstances, with the written permission of the Safety-Service Director become a resident within one hundred eighty (180) days of being employed. Failure to comply after

the specified time will be reason for dismissal. Any further extension of time period of non residency must be approved by City Council.

ISSUE No. 3. Article 24 Vacation and Personal leave

The Union seeks to increase the amount earned at twenty years of service for personal leave. It seeks to increase the number of tours to three (3). It states that this is an appropriate recognition of tenure and loyal service. It points to the fact that the current schedule requires a firefighter to take a ½ day leave- working ½ shift, resulting in personal inconvenience not only to the firefighters but a scheduling issue for the remainder of the workforce. This will also provide a near equivalency to benefits enjoyed by other city employees who work a forty hour workweek. Further, the Union indicates that there will be only three members of the unit who will qualify for this benefit during the term of the contract.

The City argued that the adjustment is not compelled by equity or reasonableness. It stated that granting the Union's proposal would result in 72 hours of overtime to backfill. The costs over the term of the 3 year agreement are projected to be over \$10,000.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union's language is recommended. It serves the purpose of recognition of faithful service; the City has presented no countervailing arguments to outweigh the Union's proposal. This is a minimal cost item and will impose no great burden on the City. It also acts to minimize a scheduling anomaly of the ½ shift. It also acts to increase the likelihood of promoting an experienced workforce, as the incentive for long term service is increased.

Recommendation

The parties should approve the following language:

Article 24.4

All bargaining unit employees who have twenty (20) years of continuous service upon their seniority date of hire shall receive three (3) additional tours of personal leave to be used or cashed in at the end of the year.

28.5

For clarification purposes, those employees whose longevity date s January 1 shall receive three tours [of personal leave] on January 1 of each year. All other employees who complete 20 years of continuous service will receive an additional three (3) tours [of personal leave] that shall be prorated to the end of that year and then three (3) tours shall be credited on January 1 of each year thereafter.

28.6

If these days are not used by the designated date established by the auditor, the employee shall receive a cash pay off for the remainder of the days not used, not to exceed three (3) tours. All additional days not used will be lost.

ISSUE No. 4. HEALTH INSURANCE

The City seeks to maintain current language. It argues that the Union is seeking to lock the City into the current arrangement. The City argues that the future options for insurance coverage are unknown. It cannot safeguard that a HRA system will be an option in 2009-10. It expressed the inability to predict rate increases; it stressed that the City's experience factors were unknown, and indicated that providers only offer quotes at the very last minute. The City also proposes adding a non voting member to the Insurance Board- a member of council.

The Union predictably wants to maintain its current level of benefits. Recognizing that a new contract may lead to a new system of payment/reimbursement, it seeks language protecting its member's maximum reimbursement/out of pocket amounts at the current levels.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability and thus are outside of the record.

Balancing the fact that at present there is no showing of increased costs, and considering that this situation may likely change by the second and/or third years of the contract, the fact finder concludes that these anticipated but not yet actualized increased costs are equally disliked by both the payer (City) and the payees (members of the bargaining unit). This coincidence of interests is exemplified in the fact of the Insurance Board, and in the simple fact that the plan affects all City employees in the same manner. Therefore, there is mutual self interest in finding the lowest cost, maximum benefit plan for all parties concerned. Even though it is difficult for a jurisdiction of Delphos' size to compete and negotiate, the past year showed that some gains could be made when dealing with an insurer. Without firm data as to other options, the City's proposal appears to be more prudent. There was no counter argument made by the Union to the addition of a non voting city council member to the Insurance Board. As Council is the appropriations body, its knowledge of the insurance options at the front end may serve to expedite approval of the contract.

Recommendation

The parties' current language should be amended as follows:

Article 31.2

The Union may appoint one (1) member from the bargaining unit to the health insurance board. All health insurance board members shall have an equal vote except that city council may appoint one non voting member from city council to the health insurance board.

[All remaining language in the current agreement in Article 31 is to remain unchanged.]

Issue 5 Article 27 Paramedic and EMT Pay

The Union proposes the following increases: .50 for base; .75 for intermediate; and \$1 for paramedic. It is especially galled at the rates for supplements awarded to other city employees. It compares the level of knowledge, experience and training required to obtain its

varied certifications, and contrasts it to that of other city employees who are compensated at the same or even higher levels. It seeks these adjustments for reasons of equity and parity. It shows that the supplement rates have been stagnant since 2002.

The City proposes a different scheme: .30 basic; .60 intermediate and \$1 for paramedic. Current rates are .30 for basic; .30 for intermediate and .80 for paramedic. The City argues that there is no reason to adjust the base rate, as all paramedics hold the certification at present. It states that adjustment of that rate is a thinly disguised pay increase, and results in no incentive at all for the City to enhance its skill levels of the workforce. It argues that adjustments to its proposed levels resolve equity concerns.

The fact finder has taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the factors are not relevant. Others have no evidentiary support in the record.

The fact finder agrees that the base rate does not require adjustment; it is best addressed in the context of wage/salary increases. However, a review of the record supports additional adjustments in the paramedic and intermediate EMT supplement. The City stated it wanted a better trained, more proficient group of employees. Yet it continues to offer pay supplements for skill sets decidedly different than those needed for the safety force of firefighters. In order to provide appropriate incentives for these employees to achieve higher levels of certification, the City should make appropriate rewards and adjustments in the supplements. The following adjustments would support that goal: \$1 increase for EMT-I and \$1.50 for EMT-P. This adjustment provides parity, is in line with internal comparables (e.g. the water and wastewater department employees) and promotes the mutual self interest of the parties to support the goal of increasing skill sets. (It also offsets to some limited degree the union's request for a greater wage increase than is recommended below.)

Recommendation

The parties should adopt the following language:

Article 27.1

Any employee who holds or obtains a current state certification in one (1) of the following categories shall be compensated at the appropriate rate

outlined below: A. EMT P \$1.50 per hour

B. EMT I \$1 per hour

C. EMT B .30 per hour

[Remaining paragraph status quo)

Issue 6. Salary Schedule

The Union proposed 3%-3%-3% based upon a forty (40) hour workweek. The City proposed 2.5%-2.5%-2.5% based upon the firefighters actual 53 hour workweek. The Union argued that its past increases were larger. It argued the potential affect on wages of an increase in insurance premiums, and points out that the real increase will be less due to assumed premium increases. It indicated that the City's contentions about the relative higher wages received ignore the plain fact that firefighters work more hours than most if not all other employees. It compared and contrasted its hourly rate to that of the police unit, and argues that gap has been growing since 1999. It explained that overtime is built into the schedule by federal law, and must have no bearing on the equities of wage increases. The Union illustrated that the Firefighter EMT position is the lowest hourly paid employee in the City. ⁴ There has also been a wage disparity between the police and fire departments since 1991. The gap reached \$4.87 in 2007. Delphos also receives the lowest hourly rate of all area fire departments (American Township, Bellevue, Bellefontaine, Celina, Defiance, Kenton, Napoleon, St. Mary's, Van Wert and Wapakoneta.)

The City argued that the Union's proposed increase actually results in a 4% increase. The City stated that 2.5% is in line with current economic realities, is fair and reasonable and is consistent with equities. It pointed out that the Union has received a 4% increase in 1999-2004 and 3.25% In 2005-2007. It presented an article showing that four of the top ten paid city employees are firefighters. It further argued that its proposal is in line with internal equities in the OPBA/Teamsters unit. Regarding external comparables. The City represented that its proposals are appropriate and in line. ⁵

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and

⁴ The Platoon Chief is the third lowest paid position.

⁵ Both parties indicated that comparables for Delphos were difficult to establish. Each party presented information on some of the same jurisdictions.

(K). Certain factors however were not present in the record. Other factors were not relevant to the determination.

The City must be mindful of accounting principles, fixed expenses, the public trust, bond ratings and the inevitable “rainy day”. These are valid even if it is not a claim of inability to pay.

The Union failed to show these concerns were shallow, over dramatized or otherwise subject to challenge. It is not a classic “inability” to pay scenario argued by the City. It is an unwillingness to pay. But balancing all of the statutory factors, the fact finder agrees that 2.5% based on 40 hours is reasonable, fair, equitable, and consistent with the market. SERB’s wage report for 2008 showed the average increase in the state was barely over 3%.

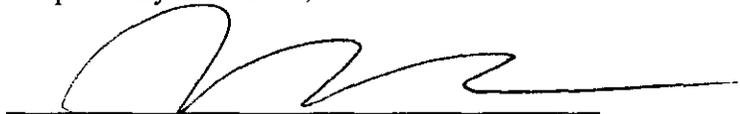
The recommended 2.5% wage increase based upon a 40 hour work week will be of course tempered by the potential of escalating health care costs and unknown external economics such as inflation. It is also unclear what the economic outlook will be for this area and northwestern Ohio, which historically since the 1990s is not a growth area for manufacturing and industry. The wage increase may also be affected in a positive manner by those employees who achieve additional certifications in the coming years. This is a benefit to employees. The recommended additional call in minimum payment is a benefit to employees.

Finally, the prospects for the City’s financial health and growth are not pessimistic nor are they clear. There is economic development in progress and in planning; the community is experiencing limited decline. Unknown developments may provide for more of an income base. The parties will meet again in three years to assess the situation and bargain again. The equities and facts will undoubtedly be different.

Recommendation

The language in the salary schedules found at appendix A, B, and C is amended to account for a 2.5% increase based upon a forty hour workweek.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized initial 'O' followed by several loops and a long horizontal stroke extending to the right.

Sandra Mendel Furman, Esq.
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Columbus, Ohio 43209
(614) 237- 7266

Certificate of Service

An original and true copy of the fact finder report were sent by ordinary US mail on the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; on Cheri Haas, 400 S. Fifth Street, Columbus, Ohio 43215 and Roy Hollenbacher, 150 St. Andrews, Lima, Oh 45804 on April 18, 2008. An electronic copy was also sent to the parties' representatives.



Sandra Mendel Furman, Esq.