

Daniel L. Merritt Esq. as the impartial Fact Finder in compliance with Ohio Revised Code Section 4417. 14 (c)(3).

A mediation and fact-finding hearing was scheduled for 13 and 14 January 2009 respectively. The mediation sessions and the hearing were scheduled and conducted on the above dates at the airport terminal conference room at 1895 Harrington Memorial Road, Mansfield, Ohio. Mediation was conducted on Tuesday the 13th of January 2009 and a number of issues were resolved as a result of the mediation sessions. The parties reached tentative agreements on the following issues: ARTICLE 6.7 Discipline; ARTICLE 7.58 Grievance Procedure; ARTICLE 19.1 Paid Leave of Absence; ARTICLE 20.2 Family Medical Leave Act; ARTICLE 23 Holidays/Emergency Leave; ARTICLE 24.1 Medical Insurance Coverage; ARTICLE 26 a new provision which allows a bargaining unit member to purchase their fire helmet for one dollar and fire prevention Bureau members with at least three years of active service may upon retirement purchase their service weapon for one dollar; and ARTICLE 27 Scope and Duration which set the Collective Bargaining Agreement to begin on 1 December 2008 and expire at the end of 30 November 2011.

The following issues remaining to be resolved included: ARTICLE 8 Hours of Duty; ARTICLE 9 Overtime; ARTICLE 18 Minimum Manning in ARTICLE 21 Wages and Fringe benefits.

The parties presented a great deal of documentary evidence to support their respective position on each issue. Witnesses spoke on behalf of both parties to provide additional general and financial information for particular issues.

The Fact Finder considered all testimony given and all of the detailed documentation submitted by the parties in reaching conclusions and recommendations stated below. The Fact Finder also considered the criteria listed in rule 4117-9-05(k) of the State Employment Relations Board.

The following statutory criteria serve as guidelines.

The Fact Finder in making recommendations shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) past collective bargaining agreements, if any, between the parties;
- (2) comparison of unresolved issues related to other public and private employees during comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) the interest in the welfare of the public, and the ability of the public employer to finance administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) the lawful authority of the public employer;
- (5) any stipulations of the parties; and

(6) such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

APPEARANCES

For the Employer

Don Bartlett	Director Human Resources City of Mansfield
Ronald Kreuter	Service-Safety Director City of Mansfield
Kelly Blankenship	Finance Director City of Mansfield
Denise Kudrall	Assistant Finance Director City of Mansfield

For the Union

Henry Arnett	Attorney for the Union
Andy Heth	Lead Negotiator I.A.F.F. Local 266
Daniel Cron	Firefighter I.A.F.F. Local 266
Matt Shafley	Firefighter I.A.F.F. Local 266
Phillip Dollish	Firefighter I.A.F.F. Local 266
Joe Boebel	Captain I.A.F.F. Local 266

**ISSUES AND CONSIDERATIONS
ARTICLE 8
HOURS OF DUTY**

Union Position

The Union proposes that the current language for the hours of duty should be retained. The current language is the standard shift for firefighters in the state of Ohio. Currently firefighters work a standard twenty four (24) hour shift with forty eight (48) hours off. The city has suggested that this standard be changed to twelve (12) hour shifts which the union asserts would be unworkable. The number of personnel needed to staff the proposed twelve (12) hour shifts would double the presence staffing level and possibly triple the current number of personnel needed to maintain the schedules. The proposed schedule would create an inequity in scheduled work for some firefighters. Crews would lack continuity. Certainly personnel turnover would increase and new recruits would soon leave for departments with a standard schedule. The City's proposal also would change the shift time for Fire Prevention Investigators and create similar problems.

The proposed changes asserted by the City are not realistic, untried and speculative at best. The costs would increase with this untested proposal. The twelve (12) hour shift model is not used anywhere in the state of Ohio. The Union contends that the current language for hours of duty should be retained.

Employer position

The employer proposes a change from the current twenty four (24) hours on and forty eight (48) hours off to two twelve hour shifts. The Employer would also change the Training Captain's schedule so that it would be consistent with the 12 hour schedule. In Section 8.2 the employer proposes to change the starting and ending times of shifts to be consistent with in a twelve (12) hour shift. Finally the Employer proposes a new Section 8.2 (c), which would allow Fire Prevention Captains to work a four day schedule of ten (10) hours each day and establish a schedule for the Fire Prevention Captain.

The Employer asserted that these changes would be unnecessary if ARTICLE 18 Minimum Manning was removed from the collective bargaining agreement. The changes were proposed as a way to reduce overtime and thus reduce costs to the city.

Discussion

The City's proposed change in Hours of Duty ARTICLE 8 is a significant departure from the norm in the state of Ohio. The community comparables submitted by the Union (which have been used by comparables for many years in negotiations and other labor relations in Mansfield) clearly show that the twenty four (24) hours on and forty eight (48) hours off is the normative shift for the comparable communities.

The other claims raised by the Union regarding the inefficiency of the 12 hour shift proposal are well-founded. The city failed to produce significant evidence to support their significant cost reductions and overtime reduction that were supposed to be related to the 12 hour shift proposal.

Recommendation

The Fact Finder recommends that the current language of ARTICLE 8 Hours of Duty be retained in the collective bargaining agreement.

ARTICLE 9 OVER TIME

Union position

The Union opposes the city's attempt to eliminate the method for calculating overtime pay for bargaining unit members. The provision would be, under the employer's plan, replaced by a provision that would only pay over time for hours "actually worked" and not for all unscheduled hours worked "in active pay status." The overtime provision has been a part of the collective bargaining agreement for over 20 years and has functioned well. The city had higher overtime costs because they did not hire replacements for firefighters with long-term injuries, in a timely fashion.

The overtime eligibility and pay structure comparables clearly showed that the city of Mansfield is in line with the other cities usually compared with Mansfield. Indeed the Mansfield uses a forty eight (48) hour rate of pay and is behind those cities using a forty (40) hour rate of pay base. Finally, no other city pays straight time rate for extra work outside an employees normal schedule. The City proposal would pay straight time for unscheduled hours worked.

The Union also proposed a change in the "out of class pay" from an extra one dollar per hour to the hourly rate of the position to which the employee is temporarily assigned. The position demands different duties and should be paid accordingly. These

minor changes in section 9.7 are the only changes negotiated for ARTICLE 9 Over Time. The Union believes that the rest of the language of ARTICLE 9 Over Time in the collective bargaining agreement should be retained.

Employer position

The Employer proposes to eliminate standby pay section 9. In addition the employer proposes to remove "hours in active pay status" from inclusion in "hours worked" when calculating overtime pay. Furthermore the employer would follow FLSA standards for the calculation of pay. The city seeks to reduce overtime payment. In section 9.9 contains a much too expansive version of overtime pay for all hours in "active pay status." The Employer would change ARTICLE 9 over time as noted above.

Discussion

The Employer is seeking to reduce costs by redefining what work hours would actually qualify as overtime hours. They would also reduce costs by eliminating standby pay.

The Union stated that the changes in ARTICLE 9 Over Time as proposed by the city could result in frequent situations where employees could work double shifts and not receive any credit for overtime. The Union asserted that the failure to timely hire replacement firefighters caused an increase in over time in 2008. The Union also stated that the overtime provisions are comparable to relevant communities similar to Mansfield.

Recommendation

The Fact Finder recommends that the current language of the collective bargaining agreement be retained.

ARTICLE 16 MINIMUM MANNING

The Union asserted that it has the right to "bargain collectively with the City to determine wages, hours, terms and conditions of work and the continuation modification or elimination of an existing provision of the Collective Bargaining Agreement, (See ORC 4117.03). Nothing in the case according to Serb restricts issues submitted to fact-finding to mandatory subjects of bargaining. (See 21 OPER section 290) (See also a 21 OPER Section (a) 323) the matter of Minimum Manning is properly before the Fact Finder.

The City proposes to eliminate article 18 Minimum Manning from the Collective Bargaining Agreement. The Union seeks to remove the phrase "until November 30, 2005, but only for" from Section 18.4 of the ARTICLE. The Union proposes that the rest of the article 18. Minimum Manning should be maintained and untouched. The Union opposes any attempt to delete this very important ARTICLE. The Minimum Manning ARTICLE has been part of successive Collective Bargaining Agreements since 11 June 1979. Years later in 1988 the Minimum Manning provision was linked to a 0.5% safety forces levy that was passed to secure funding for police and fire services. The City and the Union have worked together since that time to secure the renewal of the levy. In 2007 the levy passed with the highest margin in its history. The levy provides about one third of the safety forces budget.

City safety is linked to adequate numbers of firefighters being available to operate the fire equipment at each station. The Minimum Manning as it exists now does not meet the minimum staffing levels set by the nationally recognized NFPA 1710. The city has about nine positions needed to meet the national minimum standards. Any further reduction in standards of staffing would have serious safety consequences. Firefighters in Mansfield have a large area to cover with over 31 square miles Mansfield also has a high number of fire responses to answer.

The city has argued that the Manning provision created a high amount of overtime. The Union asserts that the City failed to hire new firefighter recruits in a timely fashion and that resulted in more overtime in 2008. Finally, Mansfield Fire Chief Mike Bailey believed and stated that he supports a minimum staffing level for safety reasons. The city runs with about nineteen (19) to (21) firefighters and provides income to the City from its E.M.S. Work. *The minimum staffing provision must remain in the Collective Bargaining Agreement.*

Employer position

The City asserted its belief that the Minimum Manning provision of the Collective Bargaining Agreement is a permissive subject and is not eligible to be taken to Fact Finding (impasse). In 1995 Serb ruled that the inclusion of the subjects in the contract does not make it a mandatory subject after contract expiration (See In re a Serb v. Youngstown city school dist. Bd. of ed. SERB 95-010) Thus the City asserts that it is an unfair labor practice for the Union to present the issue at Fact-Finding. (See also 61 Ohio St. , 3rd 658, 576 N.E. 2nd 745 1991)

The City proposed to eliminate the minimum staffing provision because of the high overtime costs it generated in 2008. A total of \$877, 519.41 was paid in overtime for firefighters in 2008. The city also asserted that staffing is a management right and responsibility. The employer proposes that the ARTICLE 18 Minimum Manning be eliminated from the Collective Bargaining Agreement.

Discussion-1

The City objected to the Union's submission of ARTICLE 18 Minimum Manning to the Fact Finding process. The Employer viewed the subject as a permissive subject and thus not subject to discussion since the city objects to any discussion of staffing. The city views the submission of article 18 minimum Manning as a violation of ORC 4117.11B2 and B3.

The Union countered with the statement that fact-finding is not limited to a continuation of mandatory subjects alone and that modification or deletion of an existing contractual provision is proper for Fact Finding.

Recommendation-1

The Fact Finder agrees that the public employer has otherwise agreed to staffing requirements and limitations in the Collective Bargaining Agreement. This agreement concerning staffing has existed in successor contracts between the parties for about 30 years is properly submitted to the fact-finding process.

Discussion-2

The City of Mansfield has had some high overtime expenses during the year 2008 which the City attributes to overtime earned by firefighters. The Union countered with the fact that the Employer delayed hiring new recruits to replace firefighters who were out with long-term injury. The delay created a gap which was filled by firefighters who were asked to work overtime. Money is the driving force behind the dissatisfaction with the language of the minimum staffing provision. However safety of the citizens of Mansfield is an even greater force for realistic minimum staffing provisions. At present the minimum number of firefighters needed is below the guidelines of N.F.P.A. 1710. However I suspect that such is the case in many communities and has been for some time. There are presently between nineteen (19) and twenty one (21) firefighters who are serving daily to protect the City of Mansfield. The Chief of the Fire Department of Mansfield was quoted as saying "Mansfield runs with a daily minimum staffing level of 21 firefighters" (See Exhibit K Article from Elyria Telegram.) He was very concerned about safety of the citizens and strongly supported minimum staffing levels.

Recommendation

The Fact Finder recommends that the language of Section 18.4 be changed to read as follows:

Section 18.4 so long as the city of Mansfield has a .5% safety levy generating income for police and fire, the city agrees not to reduce the divisions total number of the filled fire suppression positions below 88.

The rest of article 18 Minimum Manning shall be retained as presently worded in the Collective Bargaining Agreement.

**ARTICLE 21
WAGES AND FRINGE BENEFITS**

Union position

The Union proposed that wage increases 4%, 4% and 4.5% be given for the three years of the contract. The Union also proposed to retain the longevity provision in the current contract. It views the City's proposals to eliminate longevity for new hires as an attempt to divide bargaining unit members. The Union also proposes to retain the current uniform allowance provision. This provision is comparable to the uniform allowance provided in the communities traditionally compared with Mansfield.

The compensation comparables showed that the Mansfield firefighters are receiving below average compensation. The pay for Mansfield Captains is, according to the comparables, also below average.

The Union offered another proposal before the start of the Fact Finding process of 2%, 2% and a re-opener for the third year of the contract. The parties could not reach agreement on that offer. The union contends that the city has the funds to support the wage and fringe benefit proposal that the Union has submitted.

Employer position

The Employer proposes a one-time lump sum payment to each employee in lieu of a wage increase for the first year. The Employer further proposes that a wage increase reopener in 2009 and a second wage increase reopener for 2010.

The Employer proposes to eliminate longevity pay for all employees hired after 1 December 2008. Employees hired before that date would continue to be eligible for longevity pay according to the contract scale.

The Employer proposes to eliminate the uniform allowance provision and replace it with a quartermaster system. The Employer would provide all uniforms and equipment at no cost. They would replace worn or damaged uniforms and equipment.

Finally the Employer would change the language in Section 21.4(D) from a twenty four hour (24) base to a twelve hour (12) base to be consistent with the employer's proposal for twelve hour (12) shifts.

The Employer submitted financial data which based upon current spending levels could result in a deficit in the safety services fund and to the general fund. The city did not plead an inability to pay a cited top economic times and in uncertain financial future through the introduction of numerous exhibits and testimony.

Discussion

The City of Mansfield and the State of Ohio are currently experiencing tough economic times. However some areas have a tougher time than other areas. Indeed the manufacturing base within Mansfield provides some promise for future recovery. The City will continue to hold or cut future spending wherever possible and should have a more positive financial future. Time is needed for both parties.

Recommendation

Section 21.1 the Fact Finder proposes that the City pay a 2% wage increase for the first year of the collective bargaining agreement followed by a wage reopener for a wage increase to become effective 1 December 2009 and a second wage reopener for a wage increase to become effective 1 December 2010.

Section 21.2 retain current language of the collective bargaining agreement.

Section 21.3 retain current language of the collective bargaining agreement

section 21.4 (D) retain current language of the collective bargaining agreement.

The Fact Finder in reaching the above conclusions and recommendations carefully consider the testimony of witnesses, exhibits and Fact Finder reports submitted in support of their respective position of the parties

Entered this day
28 January 2009
Sylvania, Ohio


Daniel L. Merritt Esq.
Neutral Fact Finder