

**FACTFINDING REPORT AND RECOMMENDATIONS**

STATE EMPLOYMENT  
RELATIONS BOARD

**In The Matter Of**

2009 SEP -8 A 10: 54

**City of Blue Ash, Ohio**

**-and-**

**International Association of Firefighters, Local No. 3203**

**SERB Case No. ~~03-MED-09-0935~~**

*08-MED-11-1346*

**Mollie H. Bowers  
Factfinder**

**Representing the City:**

Kirk M. Wall, Esq., Attorney, Spokesperson  
Margaret Main, Human Resources Officer  
James Pfeffer, City Treasurer  
Kelly Osler, Assistant to City Manager  
Richard Brown, Fire Chief  
Greg Preece, Assistant Fire Chief

**Representing the Union:**

Stephen S. Lazarus, Esq., Attorney, Spokesperson  
Mike Bolte, Assistant to Mr. Lazarus  
Steve Ludmann, President, Local 3203  
Steve Ford, Vice President, Local 3203

**Date of Hearing:**

August 27, 2009

**Report Issued:**

**BACKGROUND**

The parties to this dispute are the City of Blue Ash, Ohio (the 'City') and the International Association of Firefighters, Local 3203 (the 'IAFF' or the 'Union'). These parties have negotiated several collective bargaining agreements in the past. The last

agreement was in effect between February 22, 2006 and February 21, 2009. This is not the first time that the City and the Union have been resorted to Factfinding.

The City is located in Hamilton County in southwest, Ohio. The population base is between 12,000 and 13,000 residents. Everyday approximately 45,000 to 50,000 people commute to Blue Ash to work at such businesses as Proctor and Gamble, Michelman, Inc., Toyota Districtuion and Training Center, Duke Energy, and Ethicon Endo-Surgery. In the recent past, the residents agreed to a quarter percent increase in taxes to provide revenue to finance three projects that they sought to improve the quality of life in Blue Ash. These projects are: (1) construction of a state of the art recreation center where the membership is \$55.00 per year (completed); (2) purchase, from the City of Cincinnati, of more than a hundred acres of the Blue Ash Airport which will be turned into a park; and (3) construction of a banquet center at the golf course. The City does not claim an inability to pay. It does claim, however, that the City has been affected by the nationwide economic downturn resulting in consequences like the leveling off of growth and of tax revenues, while the wages of its employees have increased. City administrators are well aware of the financial crises being experienced by their neighbors, the City of Cincinnati and the City of Norwood. While Blue Ash is not in such dire straights, the administrators have a strong interest in balancing its flat revenue and growth situation with equitable treatment of its employees; both union and non-union, and at all levels of City government.

The Union represents two bargaining units in the Blue Ash Fire Department. One unit is comprised of Lieutenants, and is not involved in the instant proceeding. The other unit contains twenty-two personnel classified as Firefighter I (EMT), Firefighter II

(Arson Investigator), and Firefighter III (Paramedic). The last collective bargaining agreement encompassed three years, in each of which Firefighters received a three percent increase, plus \$3,000.00 in the base. All but two of the twenty-two Firefighters in the bargaining unit are at the top of the wage scale of nearly \$67,000.00 per year. Additionally, this bargaining unit is unique in that its members have never paid anything for health insurance, deductibles, and prescriptions. Obviously, the Union would like to retain this benefit but, if that is not possible, it has serious concerns about accepting the City's percentage pay increase and health care insurance package that all other union and non-union employees have accepted unless there is a financial offset by way of direct and or indirect wages and/or a reduction in the work schedule.

In November of 2008, the Union notified the City that it wanted to begin negotiations for the next collective bargaining agreement. The first time that the parties met at the bargaining table was in February of 2009. During the course of these, and subsequent negotiations, the parties were able to resolve some issues. However, the existing agreement expired before the parties were able to agree on a new contract. The terms of the existing contract have been extended until new terms and conditions are in place. The parties applied to the State Employment Relations Board (SERB) for Factfinding. On May 26, 2009, SERB appointed Mollie H. Bowers to be the Factfinder. The parties agreed on August 29, 2009 for this proceeding.

For the purpose of this Report, all unchanged or unopened contract articles, and all articles agreed upon by the parties prior to Factfinding are adopted, included, and incorporated into this Report. Additionally, some articles that had been tentatively agreed to by the parties, in whole or in part, were resolved, in their entirety, through pre-

Factfinding mediation or through mediation in the course of the Factfinding proceeding. These agreements, too, are incorporated into this Report. As a result, this Factfinder's task is to make recommendations on three disputed contract articles: (1) Article 17, Work Period and Overtime; (2) Article 19, Wages and Compensation; and (3) Article 25, Insurance.

### ISSUES

#### **I. Article 17. Work Period and Overtime**

##### **Union Position:**

The Union seeks a change in the work schedule from fifty-three to forty-eight hour shifts per week. It presented four key arguments in support of its proposal. First, comparable data was introduced showing that Firefighters in: (1) both the cities of Cincinnati and Norwood, neighbors, have already adopted forty-eight hour shifts; (2) the City of Beachwood (near Cleveland) has 51.7 hour shifts; (3) the Cities of St. Bernard, Montgomery, and Forest Park have fifty-two hour shifts; and (4) five cities, Sharonville, Mason, Madeira-Indian Hill, and Fairfield have fifty-three hour shifts. The average hours worked per week for these jurisdictions was 51.7.

Second, the Union argued that the decrease in work hours, for full-time Firefighters, would have no demonstrable effect on the provision of Fire services in Blue Ash because part-time employees are available to work instead, and at a lower cost per employee.

Third, the Union advised that shift hours per week need to be reduced because Firefighters in the bargaining unit want to spend more time with their families.

Fourth, the Union said that, if its proposal was adopted, then 'Kelly Days' would be predicable and, thus, make it easier for Firefighters to schedule their off-duty time with their families.

**City Position:**

The City strongly opposes the Union's proposal. With respect to comparability, it asked that the Factfinder take judicious note that the City of Cincinnati and the City of Norwood are not comparable to Blue Ash, and that the City of Beachwood is not in the geographic region.

The City then provided evidence and testimony from Fire Chief Brown about why the Union's presumption is not valid that part-time Firefighters could "fill in" if the hours of full-time Firefighters were reduced. These arguments are: (1) the Department has been unable to consistently maintain a roster of dependable, part-time Firefighters because they leave when they can get a full-time job; (2) part-time Firefighters do not always show up, when needed, because they are scheduled to work in other departments; and (3) there is a lack of continuity and coverage, most especially for specialized tasks, if the City has to depend on part-time employees to fill in for full-time, experienced Firefighters.

According to the City, the two major objectives of the Union's demand on shift hours per week are to give bargaining unit Firefighters even more time off than they already enjoy and, through the establishment of predictable 'Kelly Days', to afford them more time to 'moon light' on other jobs.

Important to the City is its position that staffing is a management right that belongs solely to the Chief of the Fire Department. In this regard, the City asks this

Factfinder to adopt the reasoning applied by Factfinder Mitchel Goldberg in his 2004 Factfinding Report involving these same parties. Factfinder Goldberg wrote:

The reduction of the 53-hour schedule to 48 is too radical of a change to impose upon the parties at this time. The economic costs to the City and the operational results from the change are too uncertain. Any such change and the ramifications from such a change should take place from further negotiations between the parties. However, the Union was persuasive in demonstrating the need for further time off on a paid basis to bring compensation levels in line with some of the other comparable departments. The present provision of one-half Kelly days as time off presents particular personal scheduling problems for the members. Accordingly, Section 17.2 shall be amended as follows to retain the present 53-hour workweek, but the members shall receive seven paid full Kelly days per year, which shall be selected in advance. There shall be no more than one Kelly day per employment cycle. This, in effect, provides for a substantial pay increase because the members are receiving more time off, but with pay. . . .

**Recommendation:**

The Factfinder recommends for the City that the current fifty-three hour per work week schedule be maintained. No showing was made by the Union that the cities of Cincinnati and Norwood are, in fact, truly comparable to Blue Ash. Similarly, the City of Beachwood may have the more comfortable economic conditions that Blue Ash enjoys vis-à-vis other jurisdictions in the geographic area but, again, other factors necessary to establish comparability were not provided by the Union.

Furthermore, the evidence and the testimony provided by Fire Chief Brown was persuasive in determining that it is not as simple as the Union would have the Factfinder believe to replace qualified, experienced, full-time Firefighters in the bargaining unit with part-time employees. In fact, the Union's own evidence corroborated his testimony that

there are existing gaps in coverage by part-time employees, regardless of their credentials, dependability, and availability to work when needed in Blue Ash.

The Union's position that bargaining unit Firefighters wanted/needed more, predictable time off to be their families was unsubstantiated by anything other than testimony provided by IAFF Local 3203 President Steve Ludmann. Thus, the Factfinder agreed with the City that one of the primary reasons for the Union's claim was that a forty-eight hour schedule would provide bargaining unit Firefighters with predictable Kelly Days off which would only enhance their opportunities for "moon lighting".

The Factfinder also considered the City's positions about staffing. She found that staffing is a management right. The Fire Chief is the person who is responsible for the operations of the Department and that the occupation of that position is accountable to both the City Administration and to the public for the Department's performance

Furthermore, Fire Chief Brown's testimony was persuasive when he described the reasons why the current work schedule should be maintained, and why a reduction in shift hours for bargaining unit Firefighters could not simply be filled by part-time employees. Based on the Union's own evidence, never mind this testimony, it would be disingenuous for this Factfinder to recommend in favor of the Union. Support for this conclusion is contained in Factfinder Goldberg's 2004 Report. She agrees with him that, if a change in work schedule is to occur, then it should be negotiated by the parties at the bargaining table. If they are unable to do so, then they can apply for Factfinding and ultimately, to conciliation for resolution of their differences. In the instant case, the Factfinder does not recommend in the Union's favor.

## **II. Article 19. Wages and Compensation**

### **Union Position:**

The Union is first asking for a 3.5 percent base wage increase for the 2009-2010, contract year, retroactive to February 22, 2009, when the current collective bargaining agreement expired. Additionally, in each of the next two years of a three year contract, the Union is seeking an additional 3.5 percent increase in pay for bargaining unit Firefighters. In support of its claim, the Union provided an array of documents to show that the City could afford the increases it is proposing while also maintaining quality service and a positive bond rating. Additionally, the Union provided data to show that the “run volume” for Blue Ash Firefighters has increased thirty-six percent between 2005 and 2008 due, in part, to mutual aid arrangements that the City has made with other jurisdictions.

The Union also provided comparability data using the cities of Sharonville, Montgomery, Forest Park, Mason, Fairfield, Springdale, St. Bernard, Norwood, Cincinnati, and Beachwood, Ohio to support its position. Factors used were: (1) municipalities of 10 square miles or less; (2) population between 11,500 and 13,500; (3) earnings tax revenue of between \$20 and 30 million annually; (4) median household income between \$68,000.00 and \$78,000.00; (5) daytime population increases of at least 100%; and (6) median home value greater than \$200,000.00. These data all reinforced the Union’s claim that the City could pay.

Additionally, the Union introduced other comparability data, excluding Beachwood, that showed differences among these jurisdictions with respect to such

factors as: (1) base pay; (2) pension pick-up; (3) longevity pay; (4) paramedic pay; (5) attendance incentive; (6) shoe/uniform replacements; (7) certification pay; (8) re-certification pay; (9) retirement health saving account; and (10) merit. Then, a comparison of Blue Ash and Beachwood was provided, on factors applicable to both jurisdictions, and used to show that an 8.68% increase would be needed for bargaining unit Firefighters to equal the average pay for Beachwood Firefighters. These data were supplemented by the Wage Increase Report, dated August 25, 2009, from the SERB.

Finally, the Union provided testimony from IAFF Local 3203 President, Steve Ludmann, that, if the insurance arrangements that all other union and non-union employees in Blue Ash have agreed to were imposed on Firefighters, then this could, potentially, result in some bargaining unit members having to pay \$10,000.00 a year to cover their health insurance obligations.

**City Position:**

The City does not claim an inability to pay, but it does assert that it cannot continue to pay, as all union and non-union employees in Blue Ash have recognized, big wage increases.<sup>1</sup> It therefore, rejects the Union's demand for a 3.5 percent increase in each of the years of a three year contract, and retroactively, and for a three year contract.

Like the Union, the City presented comparable data. Since all but two Blue Ash Firefighters are at the top step, it compared base pay, for 2009, with the jurisdictions of Loveland-Symmes, Sycamore Township, Springfield Township, Mason, Forest Park, Springdale, Cincinnati, Indian Hill-Madeira, St. Bernard, Norwood, Fairfield, and Sharonville. These data showed that the base pay for bargaining unit Firefighters in Blue

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<sup>1</sup> A 3003 letter from Moody's Investors Service, the December 2004 Auditor's Report for Norwood, and other evidence was introduced by the City in support of its claim.

Ash is only slightly below that in Norwood, Fairfield, and Sharonville, none of which, the City contends, are truly comparable, even using the Union's factors, in most, if not all, respects. The City maintains that acceptance of its proposal would maintain the Blue Ash Firefighters' position as among the top paid in the geographic region. It argues that the goal in these negotiations is not to advance these Firefighters to an even higher ranking.

Furthermore, the City contends that the 2.5 percent pay increases it offers are more than adequate since the economics show that these increases exceed the cost-of-living in a deflationary cycle. And, now that the seven Kelly Days are on a twenty-four hour basis, Firefighters who believe that they need additional income can work any or all of these days and be paid at the overtime rate.

Another factor that the City asked the Factfinder to consider is that, if the increases in base pay sought by the Union were to be adopted, then the differential between the pay of Lieutenants and Firefighters would be turned up-side-down so that Firefighters would be earning more than Lieutenants. This is a result that the City rejects.

Finally, the City opposes making any pay recommendation retroactive to February 22, 2009. It argues that, if granted, this would represent a 'wind fall' to Firefighters because they would be receiving a gain while the City realized nothing in return.

**Recommendation:**

In the best of times, a three percent increase in pay per year for any public employees, union or non-union, was considered to be good. These are not the best of times, even in cities like Blue Ash which has retained economic advantages that other jurisdictions have not. The City does not claim an inability to pay. Therefore, the matter

before this Factfinder is to determine whether the City should give a greater percentage pay increase to bargaining unit Firefighters than that which has been accepted by all other employees, union and non-union, in the City?

The Union's presentations on comparability, in this instance, were not persuasive based on the jurisdictions it selected.; even given the criteria utilized. Blue Ash Firefighters are well paid both in terms of base pay and of total compensation. In this negotiation, the Firefighters are attempting to do everything possible to cushion the fact that, for the first time ever, they might have to pay something for health care; a free ride that most public employees, including those in Blue Ash, either never had or long ago lost.

The Factfinder recommends in favor of the City with respect to the 2.5 percent increase in base pay, however, this recommendation is contingent upon three things. First, the City's acceptance of a three year collective bargaining agreement for the Firefighters. Second, the City's acceptance that a 2.5 percent increase in base pay be afforded to bargaining unit Firefighters in each of the three years. Third, the City's acceptance of the retroactivity of this increase to February 22, 2009. To recommend otherwise would leave these parties in the poor state of believing that, if negotiations were protracted to the point of Factfinding, and even beyond, that an advantage could be gained.

### **III. Article 25. Insurance**

#### **Union Position:**

This is a critical issue for the Union because Firefighters in the bargaining unit have never had to pay **anything** for health insurance, co-pays, and deductibles. While

they understand that their situation is unique, they are fearful of the consequences of being incorporated into the plan that the City proposes and of the potential costs of same. Therefore, the Union rejects the City's proposal to include bargaining unit Firefighters in that health care plan.

**City Position:**

The City understands that health care benefits, however they are provided, are of significant importance to the Firefighter bargaining unit. However, the City maintains that it cannot continue to provide, for the Firefighters, alone, the free ride that they have enjoyed heretofore. In support of its position, the City provided testimony by Human Resources Officer, Margaret Main, that in order to negotiate most effectively with health care providers, it is essential for the City to utilize economies of scale. This means that the more employees that the City can bring into coverage, the better the chance it has to negotiate reasonable rates with an insurance provider.

Additionally, the City provided a plethora of information about comparables and so forth. These data showed that Blue Ash Fire fighters are way ““off the radar screen”, in a favorable sense, where health insurance costs are concerned.

Therefore, the City asserts that bargaining unit Firefighters should accept inclusion into the health care plan that all other union and non-union employees have accepted. It further notes that only if the Mayor agrees, and is subjected to the same, could premium costs be increased in the third year of a three year collective bargaining agreement.

**Recommendation:**

Given the Factfinder's previous recommendations on pay, retroactivity, and duration of the collective bargaining agreement, if accepted, by both parties, this Factfinder agrees with the City. It is now common knowledge that economies of scale can make a big difference when employers negotiate with health care plans. Separate treatment of the Firefighter bargaining unit is not in their best interest, even though they may have to pay something toward healthcare, for the first time, and in future. Furthermore, unless and until triggers occur that affect **all** Blue Ash employees, including Administrators, the Union's worse case scenario will not occur. Therefore, this Factfinder recommends that the City's insurance plan be adopted by the Firefighters in the bargaining unit.

**IV. Issues Agreed upon During Mediation in the Course of Factfinding**

Issue 13. Universal changes

Article 15. Layoff and Recall

Section 15.1

Section 15.2

Section 15.6

Article 17. Work Period and Overtime

Section 17.2

Article 20. Working out of Classification

Section 20.1

Article 21. Trades

Section 21.1, (d) and (f)

Article 22. Special Events

Section 22.1  
Section 22.4

Article 24. Longevity

Section 24.1  
Section 24.2

Article 28. Holidays

Section 28.1

Article 29. Vacation

Section 29.3

Article 30. Sick Leave

Section 30.5  
Section 30.8

Article 33. Light Duty Assignments

Section 33.1

New Article. Fair Share Fees

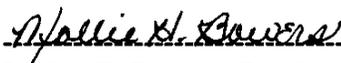
Memorandum of Understanding Regarding Fire Inspector

**V. Proposals Withdrawn**

Article 26. Travel and Training Allowances

New Memorandum of Understanding Regarding Automatic Overtime

Date: September 4, 2009

  
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Mollie H. Bowers, Factfinder