

Before Louis V. Imundo, Jr., Fact Finder

In the matter of fact finding between the

City of Marion

and the

International Association Of Fire Fighters Local No. 379

SERB Case No. 2009 – MED-01-0247

This matter was heard before Louis V. Imundo, Jr., Fact Finder, in Marion, Ohio on September 28, 2009.

1.0 Introduction

1.1 Appearing For The City

- Michael D. Esposito, Account Manager, Clemens-Nelson Associates, Inc.
- Brian Butcher, Senior Consultant, Clemens-Nelson Associates, Inc.
- Tom Robbins, Safety Director
- Allen Gruber, Fire Chief
- Amy O'Connor, Director of Human Resources
- Mark J. Pettitt, CEO, Preferred Benefits Services, Inc.

1.2 Appearing For The Union

- Kevin Lytle, President & Firefighter
- Kevin Hill, Secretary-Treasurer & Firefighter
- Adam Fetter, Firefighter
- Kevin Murphy, Firefighter
- Larry S. Hartly, Firefighter
- Richard L. Kelley, Firefighter

2.0 Unresolved Issues

Article 10 – Probationary Award

Article 12 – Personnel Reduction

Article 16 – Salaries

Article 27 – Injury With Pay

Article 29 – Health, Hospitalization, Dental And Prescription Insurance

Article 33 – Minimum Manning

Letter Of Understanding – Economic Re-opener

3.0 Findings And Recommendations

Article 10 – Probationary Period

At the Hearing, with suggestions from the Fact Finder the Parties agreed on language, which subject to ratification, will be in the successor agreement.

Article 12 – Personnel Reduction

Management proposed a comprehensive revision of the existing language. At the core of the proposed revision was the desire to have Article 12's language supersede various provisions of ORC 123, 124, local civil service regulations, and for layoffs to be by seniority in affected job classifications with bumping rights into lower job classifications.

The Union proposed to retain the current language.

In the Fact Finder's opinion, Management's rationale to have Article 12's language supersede the above cited is based on sound reasoning and should be adopted.

Management proposed that the language, which appears in Section 12.4 of the expired agreement be revised to eliminate redundancy. The Union agreed with this change.

As noted, the Parties had very different positions with respect to the procedure for personnel reduction, i.e., layoff to the street. In the Fact Finder's opinion, given the size and composition of the bargaining unit the procedure proposed by Management could, if a layoff(s) becomes necessary, prove to be very costly to the City because of the multiple bumping, which would likely occur. In the Fact Finder's opinion the current procedure that appears in Section 12.1 of the expired agreement should be carried over intact into the successor agreement.

The Parties agreed that the language that appears in Section 12.2 of the expired agreement should be carried over intact to the successor agreement.

The Parties agreed that the language that appears in Section 12.3 of the expired agreement should be memorialized in the successor agreement.

The Parties disagreed on the matter of the distribution of separation payments for laid off employees. Management proposed to have the authority to make such payments in bi-weekly increments. The Union wanted to retain current language, which requires a lump sum payment. The Fact Finder found merit in both Parties' respective arguments. The Fact Finder recommends a compromise. The compromise is that Management should have the discretionary authority to either make a lump sum payment, or in the alternative payout 50 percent of what is owed on the effective date of the layoff and the remainder in successive bi-weekly increments.

Management proposed that the continuation of health insurance benefits that appears in Section 12.5 of the expired agreement be put in a new section of the successor agreement with a new sentence that speaks to COBRA election. The Union did not disagree with this proposal.

The Fact Finder recommends that Article 12's language read as follows:

Section 12.1 It is the intent of the parties, through this article, to establish an objective procedure by which a reduction in force may be accomplished, should the need arise, and supersede the provisions of ORC 124.321 to 124.328, 124.37, OAC 123: 1-41-01 to 123: 1-41-22, and all local rules and regulations of the City of Marion Municipal Civil Service Commission governing work force reductions.

Section 12.2 The Employer shall notify the Union and each affected employee member of its intention to layoff or otherwise reduce the number of employees at least 14 days prior to the date of the reduction.

Section 12.3 In the event of personnel reduction, the employee with the least seniority shall be laid off first. Employees shall be placed on a recall list and recalled in the order of their seniority calculated from the date of original appointment. No new employees shall be hired until all laid off employees have been given the opportunity to return to work in their former capacity, providing such recall occurs within 3 years from date of layoff. Employees laid off in excess of 3 years shall be removed from the recall list.

Section 12.4 Notification of recall shall be by certified mail to the address on file and the employee shall report for work within 14 calendar days of the receipt of the notification. It is the employee's responsibility to provide the latest address to the Employer. Failure to report to work within 14 days or refusal of recall shall forfeit recall rights and the employee's name shall be removed from the recall list.

Section 12.5 The Employer may require a physical examination upon recall to determine the employee's ability to perform the job for which recalled. Such physical examination will be conducted by the Employer's physician examiner at the Employer's expense.

Section 12.6 If the employee is laid off from the Fire Department, he will be normally be paid up to 100 percent of his unused holiday/vacation and any unused compensatory time immediately upon the date of the layoff. At the Employer's discretion, 50 percent will be paid immediately and the balance in successive bi-weekly payments until full payment is made.

Section 12.7 The Employer shall also maintain all health insurance benefits for any laid off employee for the month in which the layoff occurs and the month following his layoff providing the employee pays the appropriate employee co-payment portion of the premiums. Thereafter, employees may make a COBRA election for coverage continuation.

Article 16 – Salaries

Management proposed a restructuring of the City's pay schedule for firefighters hired after August 1, 2009 and an incentive for firefighters nearing the end of their careers. Management also proposed no wage increases for the life of the successor agreement.

The Union sought a 3 percent per year hourly wage rate increase for the life of the successor agreement. The Union proposed that newly hired firefighters start at \$32,500 and they top out in 5 years. The Union proposed an early retirement incentive (ERI) that was similar, but not as comprehensive as what Management proposed.

The Fact Finder recognizes that unless the economy significantly improves, despite Management's best efforts to reduce the City's operating costs without resorting to layoffs, the City's financial condition will continue to deteriorate. The firefighters, relative to comparable cities in Ohio, are well paid particularly when the number of hours they work annually is compared with the hours worked annually by firefighters in comparable cities.

In the Fact Finder's opinion, considering what Management has proposed with respect to sharing the cost of healthcare insurance, and no wage increase for three years, even if the cost of living remains relatively flat for the next three years, something the Fact Finder believes is highly probable, is tantamount to a potentially large cut in pay. In the Fact Finder's opinion, Management has proposed too little and the Union has asked for too much. The Fact Finder recommends a 1.0 percent wage increase for the first year of the successor agreement retroactive to April 1, 2009, a 2.0 percent wage increase for the second year and a 3.0 percent wage increase for the third year. Bargaining unit employees need to work closely with Management to look for ways to reduce operating costs and be more productive.

The Fact Finder believes that a two tier wage structure is justified and that Management's proposed structure should be adopted with one modification. The modification is that the newly hired firefighters should receive the same percentage wage rate increases as all other firefighters.

The Fact Finder rejects the Union's longevity component proposal.

The Fact Finder recommends that Management's ERI proposal be adopted and memorialized in the successor agreement.

The Fact Finder recommends that Article 16's language read as follows:

Section 16.1 The following changes in regular hourly rate of pay will become effective with this Agreement dated April 1, 2009 and on the first full pay period after April 1st each year.

PERMANENT FIREFIGHTER/EMT

04-01-09	1.0 percent increase
04-01-10	2.0 percent increase
04-01-11	3.0 percent increase

LIEUTENANT STEP

E (Probationary)	6.0 percent above top rate of Firefighter/EMT
F (Permanent)	12.0 percent above top rate of Firefighter/EMT

CAPTAIN STEP

E (Probationary)	5.0 percent above top rate of Lieutenant
F (Permanent)	10.0 percent above top rate of Lieutenant

*Includes 40 hr. Captains with rate converted to 40 hour week basis.

PLATOON CHIEF STEP

E (Probationary)	5.0 percent above top rate of Captain
F (Permanent)	10.0 percent above top rate of Captain

The regular hourly wage rates and pay schedule for all bargaining unit members hired after August 1, 2009 should be as follows:

<u>Classification/Step</u>	<u>Hourly Rate</u>	<u>Annual Salary</u>
Firefighter (Entry)	\$10.82	\$27,000
Firefighter (Step1)	\$11.32	\$28,250
Firefighter (Step 2)	\$11.82	\$29,500
Firefighter (Step 3)	\$12.62	\$31,500
Firefighter (Step 4)	\$13.42	\$33,500
Firefighter (Step 5)	\$14.42	\$36,500
Firefighter (Step 6)	\$15.42	\$38,500
Firefighter (Step 7)	\$16.83	\$42,000
Firefighter (Step 8)	\$18.23	\$45,500
Firefighter (Step 9)	\$19.63	\$49,000

Bargaining unit members hired after August 1, 2009 shall advance to the next successive step in the scale upon the completion of each successive year of full-time service as a City of Marion Firefighter. Bargaining unit members without an EMT card at the time of hire shall be hired at the Entry Level Rate. Bargaining unit members possessing an EMT card at the time of hire shall be hired at the Step 1 Rate.

Newly hired firefighters will be paid the same annual percentage wage rate increases as all other firefighters.

Section 16.2 The Employer's contribution to the Police and Fire Disability and Pension Fund shall remain at 6.0 percent for the duration of the Agreement.

Section 16.3 During the term of this Agreement, the Employer may offer employees an early retirement incentive program. If offered, the program shall consist of a participating employee being offered one (1) year's base salary, at his existing rate of pay, in exchange for his agreement to voluntarily leave his employment with the city of Marion by a date determined by the Employer and not electing to participate in the Deferred Retirement Incentive Program (DROP) offered through OPFPDF. The employee shall be required to execute an agreement that permits the incentive payment and all monetary severance payments to be paid over five (5) years, and contains all other terms and conditions of the program that the Employer determines to be necessary for legal compliance and liability waiver purposes.

Article 27 – Injury With Pay

The Parties agreed that a light duty program was a good idea. Management proposed a program that would be administered by the Chief. The Union proposed that Section 27.1 in the expired agreement be slightly changed and that the Parties jointly draft and implement a light duty program.

After considering the Parties' respective oral arguments and their supporting information the Fact Finder recommends that the Union's proposal be memorialized in the successor agreement with one minor change. The change is that the program be mandatory and not voluntary.

The Fact Finder recommends that Article 27's language read as follows:

Section 27.1 If an employee becomes unable to work because of a job related disabling condition, the Employer shall pay to the employee his normal rate of pay for a period of 180 calendar days, and if necessary The Safety Director may grant an additional 90 calendar days, under the following conditions:

1. The Industrial Commission of the State of Ohio determines the injury occurred as a result of performance of the employee's job.
2. The Industrial Commission of the State of Ohio determines the medical records indicate the employee's inability to work.

Section 27.2 No sick leave shall be deducted during the period of time determined above by the Industrial Commission of the State of Ohio.

Section 27.3 In the event an employee is found to have been exposed to an infectious/contagious disease in the course or scope of employment with the Employer, the Employer shall inform the employee of such exposure as soon as the Employer acquires such knowledge.

In the event the examining physician for such exposure deems it necessary to require immunization, booster and/or antibiotic as a preventative measure, the Employer will bear full burden of any cost not accepted by the Industrial Commission of Ohio or the employee's insurance carrier.

Section 27.4 The City of Marion and the Union agree to meet through the Labor/Management Committee to draft and implement a mandatory Light Duty Program. This Light Duty Program will use the F.O.P. voluntary Light Duty Program as a guide.

Article 29 – Health, Hospitalization, Dental and Prescription Insurance

The City, like every other private and public sector employer in the country has had to deal with healthcare insurance premium costs that have risen at an astonishing rate. These usurious rate increases have, in large part, been due to incompetent management, executive greed, and an obsession with profits at the expense of social responsibility. In the Fact Finders' opinion, management's strongly encouraging employees to maintain healthy life styles can help to reduce the rate of increase in premium costs.

Management proposed that employees' pay a larger percentage of healthcare insurance premium costs and their healthcare costs. The Union recognizes the city's financial dilemma and is willing to pay more for their healthcare insurance premium costs, but not nearly as much as the City wants them to pay.

In the Fact Finder's opinion, before the end of the year it is likely that the Congress will pass a health care reform bill that will embody the President's goal that such a bill endeavors to reduce healthcare insurance costs and the costs of medical services including prescription medicines. While, whatever results will be far less than a cure all for all of the problems associated with healthcare in the country it should provide some relief for employers and employees with respect to premium costs.

In the Fact Finder's opinion, management's proposal to have employees pay 15 percent of the premium cost and ancillary coverage with no cap is asking for too much. In the Fact Finder's opinion, the Union's proposal with respect to premium sharing and caps is better than what Management has proposed. However, the Fact Finder believes that the caps should be changed.

In the Fact Finder's opinion, Management's proposed language relating to HSA contributions is necessary and well reasoned. However, given the recommended change in the healthcare premium caps the HSA caps should be increased.

In the Fact Finder's opinion, the language that appears in Section 29.3 of the expired agreement should be carried over intact to the successor agreement.

The Fact Finder recommends that Article 29's language read as follows:

Section 29.1 The Employer shall continue to offer Health, Dental and Prescription insurance coverage as is decided by the Joint Health Care Committee for the life of this Agreement, providing the employee contributes each pay period to the premium costs of such coverage on an 85/15 percent basis with annual caps as follows:

	Single Coverage	Employee & Spouse Coverage	Family Coverage
1 st year	\$45.00	\$50.00	\$60.00
2 nd year	\$50.00	\$55.00	\$65.00
3 rd year	\$55.00	\$60.00	\$70.00

Section 29.2 The City agrees to offer a \$100.00 monthly opt-out clause, paid quarterly to employees who have alternative coverage. Only one (1) monthly opt-out will be made per family.

Section 29.3 Health Care Committee Bylaws.

City of Marion Administration and Labor's Joint Health Care Committee.

This Agreement, being entered into this ___Day of_____, 2001, in Marion County, Marion Ohio, by and between I.A.F.F. Local 379, F.O.P. Lodge 24, COCO, AFSCME Local 1158, Steelworkers Local 1949, Non-Bargaining Unit employees of the City of Marion (collectively referred to As "Units") and the Administration of the City of Marion (hereinafter referred to as "The Administration").

Whereas, the parties hereto, the Units and the Administration, acknowledge and agree that it is the best interest of both the City of Marion and all its; employees, that all employees are afforded appropriate health insurance. To ensure this end the parties hereto agree to the formation of the Health Insurance committee whose purpose is to review and study Health Care and other insurance benefit costs to the City and propose plans and systems by which insurance benefits can be addressed, reviewed, and the cost thereof kept under reasonable control, and,

Whereas, the parties recognize and acknowledge the significant effect of those health insurance benefits offered by the City to its employees have on said employees and that the same should be distributed equitably to all employees and in a joint effort to achieve these out-lined goals, the parties agree to the formation of the City of Marion Administration and Labor's Joint Health Care Committee, now.

Therefore, in consideration of all of the above, each signatory to this Agreement agree to the following:

The Committee shall consist of two representatives and one alternate appointed by each signatory to this Agreement.

Each duly appointed representative shall have an equal right to participate in all activities and issues that come before The Committee except for regards to voting.

Each Unit signatory to this Agreement shall have one vote on any proposal or decision made by The Committee except as otherwise provided herein.

All decisions made by The Committee regarding insurance benefits must be approved by a unanimous vote of all participating signatories to this Agreement. Any change in present insurance benefits also requires a unanimous vote.

A Committee Chairperson shall be elected by a majority vote of all signatories to this Agreement. The Chairperson's duties will include coordinating all discussions and presentations occurring during Committee meetings, establishing the agenda for each meeting, serve as spokesperson for The Committee outside of Committee meetings and any other duties determined by the members of The Committee.

A Committee Vice-Chairperson will be elected by a majority vote of all signatories to this Agreement. The Vice-chairperson shall perform the duties of the Chairperson if they are unavailable.

A Secretary shall be furnished by The City. The Secretary will keep record of all business conducted during each meeting and shall provide each representative with a copy of the minutes of the prior meeting before each subsequent meeting and maintain a record of all correspondence, documents and records accumulated by the Committee.

A quorum shall consist of no less than the presence of one representative from each signatory. No vote shall take place unless each signatory is represented by at least one duly appointed representative.

Except as otherwise declared in this Agreement, (except as voted upon and approved by a unanimous vote each signatory to this Agreement) The Committee shall be governed by Roberts Rules of Order.

All representatives will be given at least seven days notice of any and all Committee Meetings.

No provision presented in this Agreement can be altered or changed with less than a unanimous vote of all signatory to this Agreement.

Each signatory understands, acknowledges and agrees The Health Insurance Committee shall determine the insurance benefits provided by The City to all employees, subject to the approval of the City Council of Marion, Ohio. This Agreement is hereby merged and incorporated into any other separate contract of agreement that a signatory may have with The City now or in the future so long as the signatory maintains representative on The Committee and that the decisions made by The Committee concerning insurance benefits will be deemed addendum's to any present or future contract between any signatory if so applicable.

If at any time, any signatory to this Agreement determines they no longer intend or desire to participate as a member of The Committee, they can terminate their membership by providing to the Chairperson of The Committee written notice or their intent to terminate their membership in The Committee.

No Unit shall terminate their participation in The Committee inside of sixty days of the expiration of that Units' Collective Bargaining Agreement. Nor shall any proposal be presented by either the Unit or The City in that Units' negotiations unless notification prior to the sixty days has occurred.

All signatories to this Agreement consent and agree that upon the withdrawal of any signatory from The Committee, those insurance benefits in effect on the date of withdrawal from The Committee shall be in full force and effect for the withdrawing Unit until that Units' Collective Bargaining Agreement expires or any time of extension on the Collective Bargaining Agreement expires. In such case The City wishes to withdraw, then The Committee will be considered to be terminated and those insurances benefits in effect on the date of the termination of The Committee shall remain in full force and effect until each Unit's Collective Bargaining Agreement in effect at that time expires or any time of extension on the Collective Bargaining Agreement expires.

Upon the withdrawal of any Unit signatory to this Agreement, a quorum shall consist of all those signatories remaining as members of The Health Insurance Committee. Signatory Unit Representatives:

I.I.F.F. Local 379

F.O.P. Lodge 24

COCO

AFSCME Local 1158

Steelworkers Local 1949

Non-Bargaining Unit Employees

City Administration

Section 29.4 The Employer will contribute 78 percent of the applicable deductible amount under its NDHP with an annual cap of: \$1,500 family plan, \$1,200 employee and spouse plan, \$900 single plan, to an HSA account. Contributions will be made quarterly. However, if an employee's medical expenses are such that an advance payment into his HSA account is needed in a given year, the Auditor will be provided with the necessary documentation and advanced monies will be placed into the employee's account.

Section 29.5 The Employer and the Union agree to explore a wellness program modeled after the City of Sandusky's wellness plan.

Article 33 – Minimum Manning

Management proposed that this Article not be carried over in any form to the successor agreement. The Union proposed not only to retain this Article, but to strengthen its language to require that the City maintains a minimum of 13 firefighters on duty at all times.

In the Fact Finder's opinion, given the City's current financial situation and an uncertain future it is unreasonable and unrealistic to require that a staff of 65 people be maintained. In the Fact Finder's opinion, Management clearly recognizes their obligation to have an adequately staffed Fire Department in order to effectively serve the community at large. However, the City's obligations to the community must be balanced against harsh economic realities.

The Fact Finder found the Union's arguments with respect to minimum staffing to be compelling and persuasive.

In the Fact Finder's opinion, there is good and sufficient reason to include a minimum staffing requirement in the successor agreement.

The Fact Finder recommends that Article 33's language read as follows:

Section 33.1 The Employer agrees to maintain a minimum of 13 firefighters on duty at all times.

Section 33.2 The Employer and the Union shall, through the Labor Management Committee, meet to address mutual concerns pertaining to Fire Department staffing.

Letter Of Understanding – Economic Re-opener

In the Fact Finder's opinion, each union representing City employees is responsible for negotiating the best agreement it can get for its members. The Fact Finder recognizes that since all agreements covering the City's employees do not expire at the same time and that at different points in time the overall economy and the City's financial condition will vary. In the Fact Finder's opinion, while so called "me too" provisions in negotiated labor agreements are great for employees they are a risky proposition for employers. However, given that agreements are usually three years in duration and in those three years an employer's financial situation can significantly change, a wage and benefits re-opener can potentially benefit employees and employers.

In the Fact Finder's opinion, employers are usually in a far better position to predict their financial future than employees. When it comes to negotiating three year labor agreements the majority of managements do a credible job in calculating future costs and revenues.

The Fact Finder recommends that the Letter Of Understanding read as follows:

Should another City general fund bargaining unit settle their agreement, either through regular negotiations or a re-opener provision for general wage increases or insurance conditions better than that contained in this Agreement, but after the execution date of this Agreement, then the Union may file to re-open negotiations. The re-opener will be limited to those matters having cost implications to the Parties.

The Fact Finder recommends that all previously executed tentative agreements be memorialized in the successor agreement.

October 8, 2009

Date

Louis V. Imundo, Jr.
Fact Finder