

2010 SEP 10 P 2: 22

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of:)	
)	
CITY OF ST MARYS,)	
Employer)	Date of Hearing:
)	July 28, 2010
-and-)	
)	
UTILITY WORKERS UNION OF)	
AMERICA, LOCAL 552)	
)	
)	
Case No. 2009-MED-09-0873)	
)	Date of Award:
)	September 7, 2010

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES

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FACT FINDER

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Background

The fact-finding involves the members of the Strongsville Fire Department represented by the International Association of Fire Fighters (IAFF/Union) Local 2282 and the City of Strongsville (Employer). Prior to the Fact Finding Hearing, the parties engaged in only two negotiating sessions, and they were unable to come to an agreement on a new contract. The Fact Finder conducted a mediation session before the hearing, but the parties still were unable to reach agreement; and a number of issues remain on the table. The unresolved issues are: 1) ground rules, 2) wages, 3) paramedic pay including training time, 4) personal leave, 5) exercise time, 6) sick leave as hours worked, 7) sick leave conversion, 8) injury leave, 9) holidays, 10) health insurance including plan design, and 11) labor management committee including training time. The parties reached tentative agreement on the following issues: 1) vacation scheduling, 2) layoff language, 3) grievance procedure, and 4) layoff of part time employees.

Consequently, a Fact Finding Hearing was held on August 4, 2010. The mediation effort started at 10:00 A.M. in the Strongsville Building. The formal hearing commenced at approximately 1:30 P.M. and ended at 4:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria that the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.

- (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 private employment.

Introduction:

The Union raised a procedural issue during the Fact Finding Hearing, and that issue must be decided before a discussion of the outstanding issues is undertaken. The Union put a document entitled Ground Rules into the record. This document outlined the parties' agreement with respect to the way that they would conduct their negotiations.

The tenth ground rule is:

Upon reaching agreement on the ground rules, the Union shall submit all of its proposals, if any, to the Employer and the Employer shall submit its proposals, if any, to the Union. Upon receipt of these proposals, if any, neither party shall be permitted to submit any additional proposals, unless otherwise mutually agreed otherwise. Each party shall be free to counter-propose from either its own proposals, if any, or those of the other party, if any, providing the counter-proposals contain the same subject matter as the original proposals.

The Union argued that in its Fact Finding submission that the City added proposals to its list of proposed changes to the contract. The Union requested that the Fact Finder reject the City's additional proposals because the City's actions violated the agreed upon Ground Rules.

The situation presented here is somewhat unusual. Sometime after the first meeting between the parties where the Ground Rules were codified and proposals submitted, the City terminated its outside Labor Counsel and hired a new attorney. The Ground Rules were agreed upon at the original meeting that took place on January 14, 2010. The only negotiating session took place on February 11, 2010. There was no further contact between the parties until June 29, 2010 when the City's new Labor

Counsel, John Dileno, contacted the Union to ask for some dates in order to schedule further negotiating sessions. On July 13th, Neil Rozman the Union President, called Dileno and stated that the Union did not believe that further negotiations would be useful until the Fraternal Order of Police Fact (FOP) Finding Report was submitted by Fact Finder James Mancini. Rozman stated that the City had rejected all of the Union's proposals and that he did not think that the City's position would change before the Mancini Report was issued.

Mancini issued his report on July 13th, and on July 16th Dileno contacted the Union and stated that the City was willing to extend the terms of the FOP fact finding to the firefighters with no changes. The Union was unwilling to agree to this position, and subsequently a Fact Finding between the firefighters and the City took place. The City claimed that because the firefighters refused to schedule further negotiating sessions in July, it was forced to submit a revised list of demands in its Fact Finding submission.

This line of reasoning does not convince the Fact Finder that the City's position with regard to the ground rules issue is meritorious. Even if further negotiating sessions had been scheduled, the Union would not have accepted new proposals from the City. The Union argues that both sides were bound by the ground rules that they agreed to on January 14, 2010. Both sides agreed that any proposed changes would be submitted during the first meeting and no further proposals would be accepted after that time without the agreement of both sides. The Fact Finder does not believe that the Union would have agreed to the City's modified proposal list.

An exhaustive search of cases from various jurisdictions shows that when Ground Rules are agreed upon, the rules are followed¹. Because ground rules are considered a permissive item for negotiations, albeit an important item because they add structure to the negotiation process, the parties do not have to agree on ground rules. Therefore, failure to agree on ground rules cannot be a reason for an impasse in negotiations. Nonetheless, when ground rules are established and agreed upon, they are binding on the parties.

In this instance, the City's decision to change its Labor Counsel during negotiations undoubtedly caused problems for both the City and the new Counsel. However, the Union agreed to the ground rules in good faith with the City's former representative(s). Given the facts, the Fact Finder accepts the Union's position regarding ground rules and will not consider proposals that were untimely submitted.

Issue: Article XVI – Hours of Work

Union Position: The Union demands a comp time provision be added to the contract.

City Position: The City rejects the Union's demand.

Discussion: The Union argues that other City employees have the ability to schedule comp time in lieu of overtime payments. In addition, the Union contends that comp time with appropriate safe guards is cheaper for the City than paying for overtime because there is no rollup on comp time use. Furthermore, the Union stated that it would agree to language protecting the City from obligatory overtime when banked comp time was

¹ The Fact Finder could not find any case law where the issue before the Court was whether mutually agreed upon ground rules were binding on the parties.

scheduled. That is, comp time use cannot cause overtime hours. Given these facts the Union does not understand the City's position on this issue.

The City is against the proposal for two reasons. First, the City argues that the firefighters have ample time off and often do not use all of the contractually earned free time that is available. In addition, the City also cited case law (*Beck v. Cleveland*) that it claimed meant that it was possible that the use of comp time might lead to increased overtime payments. Consequently, the City rejects the Union's proposal.²

Finding of Fact: The Union membership is paid for overtime hours. Therefore, the City's position does not harm the membership. Given the City's reluctance to agree to the proposal, the Fact Finder does not recommend inclusion of a comp time clause in the contract.

Suggested Language: None

Issue: Article XVI (5) - Sick Time as Hours Worked

Union Position: The Union desires to maintain the status quo.

City Position: The City's demand is that sick leave hours not count as hours in the calculation of overtime.

Discussion: The City presented an exhibit based on its analysis of labor agreements from comparable jurisdictions that showed that most municipalities do not count sick leave hours as hours worked in the calculation of overtime (City Exhibit 32). The City used this information to buttress its claim that the language in Article 16 (5) should be changed. The Union did not dispute this information, but did make the argument that the

² *Beck v. Cleveland* 6th Circuit No. 02-3669.

current language had been negotiated into the contract and without some reason it should not be deleted without a quid pro quo. Parenthetically, the Union also questioned the usefulness of City Exhibit 32 because the Union claims that some municipalities have enacted Ordinances that mandate sick leave hours must be counted as hours of work in the calculation of overtime. However, the Union did not present any evidence on this contention.

It is possible to go through any contract and find sections that appear objectionable. However without knowing the bargaining history that led to the inclusion of the disputed language into the contract, and without some evidence that the language in question is creating problems, a Fact Finder often recommends a continuation of the status quo. In this instance, there was no testimony about the bargaining history of the issue and/or evidence presented that the sick leave provision was causing any hardship on the Employer.

Finding of Fact:

The City did not prove that the language in question has or is causing any problems.

Suggested Language: Current Language

Issue: Article XXIV - Wages

Union Position: The Union demand is for three (3.0%) in each year of the prospective contract.

City Position: The City's offer is for a wage freeze in the first year (0.0%), two and one-half (2.5%) in the second year, and three (3.0%) in the third year of the prospective contract.

Discussion: The City claimed that the hard economic times are causing problems in Strongsville and the surrounding area. The City pointed out that its General Fund Balance had declined over the past few years and that all of the City's revenue streams were producing less income than in previous years. The City claimed that it had to be careful when making wage decisions. The City's representatives also testified that the City had imposed a wage freeze on its non-unionized labor force. Consequently, the City argued that it was justified in seeking a wage freeze in the first contract year.

The Union presented evidence from Ms. Mary Schulz, a CPA who examined the City's finances. While Ms. Schultz did not testify in person, her analysis painted a picture of a well run municipality that could afford to pay three (3.0%) percent to its firefighters over the next three years. In addition, the Union presented evidence that it claimed showed that the City had been able to pay for projects that it wished to complete, but that were according to the Union of questionable value. The Old Town Hall project and some capital expenditures in the Fire Department were used as examples.

Moreover, the wage discussions took place against the backdrop of the FOP Fact Finding Report. The Fact Finder in the FOP/City negotiations heard essentially the same presentation from the parties and recommended that the police officers should receive a one and one-half (1.5%) percent raise in the first year of their contract, two and one-half (2.5%) percent in the second year of the agreement, and three (3.0%) percent in the third year. The parties agreed to this settlement.

The current Fact Finder has examined the evidence closely and finds that the City's financial condition has deteriorated over the past years. However, the City's finances are in much better condition than the finances in many other Ohio

municipalities. Therefore, the Fact Finder does not believe that Strongsville's financial condition warrants a first year wage freeze. This is the same conclusion reached by the Fact Finder in the police negotiations. Moreover, when the police contract was ratified an internal comparable was established, and wage parity was an important consideration for both parties to this dispute. Consequently, the Fact Finder is recommending a one and one-half (1.5%) percent raise in the first year, a two and one-half (2.5%) raise in the second year, and a three (3.0%) raise in the third year of the prospective contract.

Finding of Fact: The City's financial condition is not so severe that a first year wage freeze is justified.

Suggested Language: The wage scale shall be amended to show a one and one-half (1.5%) percent general wage increase in the first year of the contract, a two and one-half (2.5%) general wage increase in the second contract year, and a three (3.0%) general wage increase in the last year of the proposed agreement.

Note: There was a second part of the Union's compensation demand.

Union Position: The Union demanded an increase in the paramedic's pay either by increasing the number of paid training hours or an increase in the stipend to twenty-five hundred (\$2,500.00) dollars per year.

City Position: The City rejects the Union's demand.

Discussion: Earmarked payments to certain employees who possess unique skills are common throughout the economy. At one time firefighters were mainly involved with fire suppression and fire prevention activities. However, with the rise in Emergency Medical Services the job of a firefighter changed. Firefighters became first responders on most accident/emergency medical calls. That is, the job evolved into something other

than firefighting. In recognition of the changed(ing) skills needed to be a firefighter, a paramedic bonus became a common feature in most firefighter contracts. Furthermore, as medical care continues to evolve and become more complex, the skills of a paramedic must be continually refined.

In this context, training and the number of hours of paid training time were discussed. The Union contends that the job of a paramedic is becoming more difficult all the time because the population is aging and the complexity of medical treatment(s) is increasing. Therefore, the Union argues that there needs to be an increase in the skills of paramedics. This, according to the Union, necessitates more (paid) training hours. The Union also agrees that more paid training hours would also increase the pay of the paramedics.

The City argued that it paid for the hours of continuing education mandated by the State of Ohio and Southwest General Hospital. Consequently, the City refused to discuss an increase in training hours as a way to increase the paramedic stipend. The City also pointed out that it was not required to pay for state mandated training under the Fair Labor Standards Act. However, the City's representatives testified that it pays for the training and continuing education that the paramedics need to be State certified.

The Union presented evidence that the paramedic stipend paid in Strongsville is substandard. The evidence shows that the current fifteen hundred dollar (\$1,500.00) stipend is well below the average of other paramedics in the local area.³ In addition, the Union stated that the paramedic stipend had not increased in over twenty years. The Union argues that the Strongsville paramedics are asked to handle more difficult

³ The local area is defined as the Southwest General Hospital coverage zone.

situations every year and that the stipend should reflect the difficulty of the job. On the other hand, the City argues that the paramedics are well paid and that it cannot be asked to pay the firefighters both a general wage increase and increased stipends in the current economic climate. In effect, the City is arguing that the overall compensation of the firefighter paramedics is reasonable and no increase is warranted at this time.

The Fact Finder reluctantly agrees with the City's position on this issue. There was no information presented on the total compensation of the firefighters. Moreover, there was no analysis of the total compensation of Strongsville firefighters compared to other firefighters in the local labor market. In addition, the City's finances are deteriorating. Therefore, the Fact Finder is not recommending an increase in the paramedic stipend. However, the evidence presented by the firefighters is compelling and without any real evidence presented by the City to show that the data presented by the firefighters is misleading, the Fact Finder would recommend an increase in the paramedic stipend in a more normal economic climate.

Finding of Fact: The firefighters proved that the paramedic stipend paid in Strongsville is below the average of stipend paid in comparable fire departments. However, the condition of the City's finances precludes an increase in the stipend at this time.

Suggested Language: None

Issue: Article XXXIX - Personal Leave

Union Position: The Union is demanding that language be added to the contract that will allow employees to earn additional personal leave if no sick time is used.

City Position: The City rejects the Union's demand.

Discussion: The City's main reason for rejecting the Union's demand is that firefighters work a different schedule than other City employees. That is, firefighters work for twenty-four hours and then are off for forty-eight hours. The City argues that the combination of Kelly days, holidays, vacation days, and a firefighter's schedule mean that firefighters have large blocks of time away from work. The City contends that the firefighters' schedule makes any comparison between firefighters and other City employees on issues related to paid time off misleading. The City presented no evidence on sick leave use.

Most other Strongsville employees can earn personal leave at the rate of two (2) hours per calendar month of service completed without using sick leave. The Union sees this as a parity issue, and its membership believes that it should have all of the benefits enjoyed by other employees. This is a powerful argument, but somewhat beside the point on this issue. The language in question is an incentive for an employee not to use sick time. The Fact Finder is unaware of the facts that led to the City and its eight-hour shift employees to agree on the language in question because there was no testimony about sick leave abuse, etc.

There was little factual data presented on this issue; therefore, the Fact Finder cannot evaluate the situation fully. It is true that other employees have the Union's suggested language in their contracts. However, it is also true that the firefighters work a unique schedule, and the Union did not prove that there was any reason for its demand other than parity considerations. Moreover, the language in question would allow a firefighter to earn a full twenty-four shift off every year. The implications for overtime use, etc, must be examined before the Fact Finder can recommend inclusion of this

language into the contract in light of a) the firefighters' work schedule, and b) the City's position on the issue. In this instance, the Fact Finder does not have enough information to adequately evaluate the Union's need for the incentive language. In such situations, the status quo is a reasonable position.

Finding of Fact: The Union did not prove that it needed an incentive equal to one full twenty-four hour shift to counter an excessive use of sick leave.

Suggested Language: None

Issue: Article New - Exercise Time

Union Position: The Union demands that language regarding exercise time be added to the contract.

City Position: The City rejects the Union's demand.

Discussion: Currently the firefighters are allowed to exercise one hour per day while they are on duty if there is no call for their services. This exercise period was part of a quid pro quo between the City and the firefighters memorialized in a Memorandum of Understanding (MOU) between the parties as part of the settlement of a grievance over promotions within the Department. Both sides have adhered to the agreement for a number of years. The Union also stated that exercise time will never (has never) interfered with any job related activities. The City agrees with this recitation of the facts.

The current Fire Chief is close to retirement, and the Union now wants the understanding (language regarding exercise time) added to the contract to ensure that a new Fire Administration does not try to change the existing agreement. The City adamantly rejects this position. The City does not believe that the contract should

contain side agreements either in the body of the document or in a letter of understanding attached to the document. There was no testimony that the agreement was causing any problems or was being abused by either party. In addition, the City's representatives testified that there were no internal discussions, etc., about changing the agreement.

The Fact Finder understands the City's position, but believes that the facts of the matter are in the Union's favor. There was no testimony that the Union was misstating the reason for the parties' MOU, i.e., both parties agree on the basic facts. The Fact Finder does not believe that any language about the MOU should appear in the body of the contract. However, some side letter either kept on file in the City or appended to the contract is a reasonable compromise to this issue. Again, the Fact Finder notes that the use of the hour for exercise time was a quid pro quo as part of the settlement negotiations for an outstanding grievance. As such, the Union's position is reasonable.

Finding of Fact: The parties agreed that the firefighters could use one shift hour as exercise time in a Memorandum of Understanding. The firefighters agree that any call for their services will be answered promptly.

Suggested Remedy: The parties will draft some document that outlines their understanding on exercise time and its use in the Fire Department.

Issue: Article XVIII - Sick Leave Conversion

Union Position: The Union wishes to maintain the status quo.

City Position: The City's proposal is to reduce the sick leave buyout at retirement from one-half (1/2) of the accumulated benefit to one third (1/3) of the accumulated benefit.

Discussion: (No Discussion)

Finding of Fact: The City did not raise this issue in a timely manner, i.e., the proposal was not raised according to the parties' ground rules.

Suggested Language: None

Issue: Article XIX - Injury Wage Continuation

Union Position: The Union wishes to maintain the status quo.

City Position: The City demand is to delete the words "non-hazardous" from Section 19.02.

Discussion: (No Discussion)

Finding of Fact: The City did not raise this issue in a timely manner, i.e., the proposal was not raised according to the parties' ground rules.

Issue: Article XXII – Vacations

Union Position: The Union wishes to maintain the status quo.

City Position: The City's proposal is to modify the current vacation use language to specify that a firefighter must use one-half (1/2) of his/her accrued vacation per year from the current one (1) week use requirement.

Discussion: The City argues that vacation is earned time off, and it should be used.

While there was little discussion on this issue, it appears that the City believes that it is paying for vacation time twice. That is, if a firefighter takes his/her vacation, then he/she is paid for the time used. However, if the firefighter does not use his/her vacation days, the department pays the employee for the shift that was worked and also for the accrued vacation time at the end of the year.

The Union could see no benefit to its membership in the City's proposal. The Union pointed out that the current contract language requires that all vacation must be paid in the year it is earned. That is, there is no carryover that creates an unfunded liability when a firefighter retires. The Union also believes that the City's proposal may (probably would) increase overtime use and as a result cost the City more than it would save. Moreover, some number of firefighters would see a fall in their yearly income. Consequently, the Union does not believe that the City's position is reasonable.

Vacations are a benefit that allows an employee to get away from the rigors of his/her job. Vacation time is often used for family trips, etc. The concept of a vacation is to give the employee some time to "recharge their batteries". Given the pressures of a firefighter's job, a vacation is a necessity. Consequently, the City has valid reasons for wanting the firefighters to use some of their vacation time for vacations. That is, the City will pay less for vacation time, and the firefighters will have some time away from the pressures of their jobs. The question of whether or not overtime use will also rise because there will be less available manpower is imponderable, but the City's insistence on the firefighters using more of their vacation time away from their jobs may result in higher wage costs in the Department.

The Fact Finder believes that the City's position is reasonable given all of the facts of the situation. It is not clear how many firefighters use less than half of their vacation time for vacations, but some of the members of the department will see some fall in their W-2 income as a result of this change assuming everything else remains the same. If overtime hours rise because of manpower shortages, then the change will not benefit the City. But, given the stress of a firefighters' job, it is reasonable for the

Employer to want the Fire Department personnel to spend vacation time away from the job.

Finding of Fact: The City's position that at least one-half (1/2) of earned vacation be used for vacations is reasonable.

Suggested Language: Article 22 (06) Employees must use at least one-half (1/2) of their earned vacation time each year...

Note: The parties reached an agreement on the scheduling of banked vacation time.

Issue: Article XXIII – Holidays

Union Position: The Union wishes to maintain the status quo.

City Position: The City proposes to amend the current contract language to insure that all holiday time is used in the year in which it is earned.

Discussion: (No Discussion)

Finding of Fact: The City did not raise this issue in a timely manner, i.e., the proposal was not submitted according to the parties' ground rules.

Issue: Article XXIX- Health Insurance

Union Position: The Union proposes that its membership pays the average dollar amount paid by all other City employees for health insurance.

City Position: The City demands that the Union membership pay eighty dollars (\$80.00) per month for health insurance. The City also proposed changes in the medical plan.

Discussion: To a large extent the firefighters demand parity with the Police Department in terms of wages and benefits. Parity between bargaining units is reasonable in some

cases and less so in other cases. Specifically, the firefighters' schedule must be considered when changes in paid time off are considered. However parity on other items, especially benefits enjoyed by the Police Department as well as other City employees is reasonable. Health insurance is one benefit where all City employees are covered by the same plan and should pay the same premium. Often the Employer demands parity.

The Fact Finder's Report in the FOP negotiations recommended that the police officers pay eighty dollars (\$80.00) per month for health insurance. This recommendation was based on an analysis of the cost of medical care throughout Ohio and the premium costs paid by the police officers. The City and the FOP both agreed to the eighty-dollar (\$80.00) figure. The current Fact Finder has examined the evidence in the record and finds that an increase in the current premium payment is warranted for the firefighters.

In this instance, the firefighters propose that they pay the average cost charged to all other City employees. The difference is that some non-unionized employees pay somewhat less for insurance. The Union's proposal would mean that the firefighters would pay less than other unionized employees for insurance. In response to this argument, the City's representatives stated that most non-union employees' wages had been frozen. Therefore, the lower insurance cost was intended to partially make up for the forgone wages of the non-union employees.

Parity between police and fire departments on insurance premiums is standard throughout Ohio and the nation. Consequently, the Fact Finder is recommending that the firefighters pay eighty dollars (\$80.00) per month for insurance. However, the testimony also showed that the firefighters had paid more for health insurance over the years than

other City employees. The Union had figures that proved that the firefighters had paid \$960.00 more than other City employees for the same coverage. In recognition of the fact that the firefighters have paid more over the years for insurance, the Fact Finder is also recommending that the firefighters pay the increased premium starting on October 1, 2011 instead of January 1, 2011. This recommendation will partially recompense the firefighters for the higher medical premium costs they have paid over the years.

Finding of Fact: Parity considerations mean that the firefighters should pay eighty dollars (\$80.00) per month for health insurance.

Suggested Language: Article 29 (02): All full-time employees eligible and receiving any benefits listed and described in Section 29 (01) shall pay to the Employer eighty dollars (\$80.00) per month starting on October 1, 2011.

Note: The Employer also proposed medical plan changes to take effect on January 1, 2012. These changes would be used as a template for changes in the City's insurance plan throughout Strongsville. The City did not raise these changes in a timely manner, i.e., the proposal was not raised in accordance with the parties' ground rules. In addition, there were no negotiations on this issue. The Fact Finder believes that health insurance is too important to all employees of Strongsville, including the firefighters, to be changed without full and wide-ranging discussions and serious negotiations by all stakeholders involved.

Issue: Article XI – Labor Management Committee

Union Position: The Union wishes to maintain the status quo on this issue.

City Position: The City wishes to delete section 2 of the article.

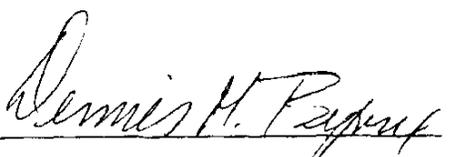
Discussion: Section 2 is concerned with paid training hours within the fire department. The wording states that a minimum of 1000 hours per year will be available for training and that the Labor Management Committee will discuss the distribution of these hours. Training is a disputed issue between the parties, but the wording of Article XI does not reflect the actual number of training hours in the department and, as such, the language of Section 2 is not a binding constraint on training time. Consequently, there was little discussion of this proposed change.

Finding of Fact: The language in Article XI is not a serious issue between the parties.

Suggested Language: Current Language

Note: All other tentative agreements between the parties are included in this report by reference.

Signed this 13th day of September 2010, at Munroe Falls, Ohio.


Dennis M. Byrne, Fact Finder