

2009 DEC -9 A 11: 54

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 8, 2009

In the Matter of:)
)
The City of New Philadelphia)
)
)
and)
)
International Association of)
Firefighters Local 1501)
)

SERB Case No.
09-MED-09-1049

APPEARANCES

For the Union:

Michael Taylor, 3rd District Vice President OPFFA/ IAFF
Brian Graham, Local 1501 President
Kendall Bick, Local 1501 IAFF Representative
Keith DeVault, Local 1501 IAFF Staff Representative
Matthew Graham, Local 1501 IAFF Representative
Michael Peach, Local 1501 IAFF Representative

For the City:

Michael Seyer, Clemans-Nelson and Associates
Michael Taylor, Mayor of the City of New Philadelphia
James Parrish, Fire Chief City of New Philadelphia

Fact Finder: Dennis M. Byrne

Background

The fact finding involves the members of the New Philadelphia Fire Department represented by the International Association of Fire Fighters (IAFF/Union) Local 1501 and the City of New Philadelphia (Employer). The parties engaged in Interest Based Bargaining (IBB) with the assistance of a State Employment Relations Board (SERB) facilitator and were able to come to a tentative agreement. The Union membership voted unanimously to accept the tentative agreement, but the New Philadelphia City Council rejected the agreement because they had problems with five (5) articles of the proposed agreement. Subsequently, the parties scheduled a fact-finding hearing over the five issues at impasse. The Fact Finder conducted a mediation session before the hearing, but the parties were unable to reach a new agreement. Consequently, five (5) issues remain on the table: 1) wages, 2) hours of work, 3) severance pay, 4) compassionate leave, and 5) health benefits. However, it must also be noted that a number of tentative agreements reached by the parties during the IBB sessions were acceptable to both sides.

The Fact Finding Hearing was held on Tuesday November 24, 2009 at the New Philadelphia City Building. The mediation effort started at 10:00 A.M., and the fact-finding hearing commenced at 1:15 P.M. The hearing concluded at 3:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria 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 City Council's rejection of the tentative agreement is based on a number of factors. However, the major stumbling block to reaching a final agreement is the Council's unwillingness to accept the wage settlement in the tentative agreement. The Council believes that the City faces an uncertain financial future because of the ongoing nationwide recession that impacts both the State of Ohio and the city of New Philadelphia; and, it argues that income taxes, sales taxes, property taxes, and state payments to the City are all likely to fall in the coming year(s). The Council believes that these factors cause a great deal of uncertainty about the size of the City's future revenue stream, and it was unwilling to ratify the tentative agreement based on this uncertainty about the City's financial future.

Consequently, the Council demanded that the Union agree to no more than a one (1%) percent wage increase in the first year of the proposed agreement and agree to a wage re-opener for the second and third years of the contract. The Union was not willing to agree to these conditions. Furthermore, the Union believes that the tentative agreement that it reached with the City is reasonable, and the union can see no reason to agree to what it believes are the unreasonable demands put forth by the City Council.

The Fact Finder believes that the Council has some legitimate concerns about the proposed agreement. However, the parties agree that the IBB exercise led to a full and

complete discussion of the issues and that both parties understood the potential ramifications of their agreement. That is, the parties were aware of the facts surrounding the City's finances and understood that if the City's revenues declined during the term of the proposed agreement, then there might be the potential for layoffs in the fire department. Both parties believed that prospect was real albeit remote, and they were willing to accept that eventuality in order to reach what they considered to be a reasonable agreement.

The Council also had reasons for rejecting the tentative agreements on the other issues. For example, the Council had problems with the definition of immediate family in the compassionate leave language in the proposed contract. In a similar vein, the Council found that the language in the severance pay article was in error and wants the language changed to reflect the agreement of the parties. With respect to health benefits, the Council rejected what it believes was language that gave the firefighters a veto over changes in the health insurance plan.

The hours of work issue is somewhat different. The tentative agreement continued the hours of work language found in the current agreement. This represents a concession by the firefighters on their demand that workweek be shortened by four (4) hours. The firefighters made the concession as part of an agreement on a total package, including the wage agreement. When the Council rejected the proposed agreement, the firefighters put their demand for a reduction in the workweek back on the table. That is, the Union does not believe that it should make concessions and then have the quid of the quid pro quo taken away. In many ways, the Union believes that the City Council is

second-guessing the bargaining process without truly understanding what was discussed at the bargaining table.

A complete discussion of the outstanding issues and the rationale for the Fact Finder's recommendations will be given below.

Issue: Article 24 – Salaries

City Position: The City demand is that any salary increase in the first year of the proposed agreement be for no more than one (1%) percent. In addition, the City rejects paying a signing bonus to the firefighters. Finally, the City demands that there be a wage re-opener for the last two years of the proposed agreement.

Union Position: The Union demands that the agreement run for three years and that the general wage increase be for one (1%) in year one; two and one-half (2 1/2%) percent in year two; and two and three quarter (2 ¾ %) in year three of the prospective contract. Furthermore, the Union demands a signing bonus of four hundred (\$400.00) dollars be paid on the execution of the contract, and that a three hundred (\$300.00) dollar bonus be paid in year two and year three of the proposed agreement.

Discussion: The Union's demand(s) mirror the IBB settlement. The Union argues that the parties agreed on the settlement at the bargaining table and there is no reason that it should not be accepted. The parties discussed the issue during the mediation effort before the hearing. The City's representative explained that the City Council was unwilling to ratify the agreement because of uncertainty about the City's revenue and because of its objection to paying a signing bonus to the firefighters. The Council stated

that the City had never paid a signing bonus and that it did not want to put a new “benefit” into the contract.

This is a reversal of the parties’ usual positions on this issue. Usually an employer proposes a signing bonus because it is a payment that does not go into the base rate and therefore is not used in the calculation of overtime, etc. That is, the bonus is a much cheaper way to increase the take home pay of the employees than a general wage increase. As a result of these discussions, the Union amended its wage proposal. The total percentage increase negotiated by parties during their IBB meetings is approximately eight and two fifths (8.4 %); based on the discussions during the mediation over bonus payments, the Union amended its wage demand to two (2%) percent in year 1; three (3%) percent in year two; and three (3%) percent in year three of the proposed contract. This represents a concession on part of the Union because the total demanded is less than the total amount agreed upon in the tentative settlement.

The Council’s main objection to the tentative agreement was that it was unwarranted given the economic climate in New Philadelphia. The City’s representatives reiterated that all of New Philadelphia’s major revenue streams were generating less income in 2009 than in previous years. Consequently, the Council believes that it must be careful of making new financial commitments. To support this contention the City presented an analysis 1) of its income tax numbers, 2) of its General Fund position, and 3) of its Police and Fire levy. Each of these documents showed that during 2009 the City’s major sources of funding generated approximately five and one-half (5 ½ %) percent less revenue than in previous years. Furthermore, the City’s representatives

argued that there was a realistic possibility that revenues would fall again in 2010 because on the ongoing economic problems in Tuscarawas County.

The Union disputed this presentation with an analysis of the City's financial condition by its financial experts based on data provided by the City Auditor's office. The Union's analysis showed that the City could easily afford to pay the firefighters the wage increases agreed upon in the tentative settlement. The City agreed that the Union's analysis was based on data supplied by the City Auditor, but argued that the Union's analysis stopped at the end of 2008 and the real economic problems emerged in 2009. Therefore, the City contends that the Union's analysis is dated and of little relevance.

The Fact Finder has extensively examined the financial information supplied by the parties. It is undoubtedly true that the City's financial position is weaker today than it was a year ago, and there is some chance that it will be weaker a year from now than it is today. However, the City's overall financial health is still excellent. An examination of the General Fund numbers put into evidence by the City shows that it has a projected cash carryover of over \$1,600,000.00 for 2009. This amount would pay the City's entire General Fund obligations for approximately three months. This is far in excess of the amount that is recommended by *Moody's on Municipals* (Moody's Investor Services) as a safe fund balance.

A further examination of the data shows that during calendar year 2008 there were significant increases in a number of fund balances. The Fact Finder cannot comment on the reasons for any decisions made by the political leadership of New Philadelphia. However, the data does show that there is money available to increase the funding of various city departments. Furthermore, the record shows that the City has not

laid off any employees and continues to fund capital expenditures. These last two factors are significant because layoffs and delayed capital expenditures are two of the main way that governmental units attempt to cut costs in unfavorable economic times.

The City also presented evidence on the labor cost of running the fire department. The Auditor testified that during 2009 the total labor cost is estimated at \$1,305,000.00. This means that a one (1%) percent general wage increase will cost \$13,000.00 per year. If it is assumed the roll-up will be approximately thirty (30%) percent, then the total cost of a one percent general wage increase will be approximately \$16,900.00.

The Fact Finder believes that the evidence presented by both sides during the hearing proves that the City has the ability to pay either the tentative agreement reached by the parties or the revised demand submitted by the Union. The evidence proves that the City is well run and that its finances are sufficient to meet its current and expected expenditures. If the national and state wide economic malaise continues, then New Philadelphia will face the same problems that other jurisdictions currently face; that is, the prospect that employees must be laid-off, wages frozen, capital expenditures deferred, etc. However, at this time, the City's financial condition is relatively robust and there is money to fund the tentative agreement reached during the IBB sessions.

The parties also discussed comparables during the hearing. Most of the discussion was about the City of Dover. The evidence presented was that the Dover firefighters would receive wage increases of eleven (11%) percent over the 2008 – 2010 three year period. In addition, the Dover firefighters also received a \$1,200.00 signing bonus. The New Philadelphia firefighters demanded eight (8%) percent. One reason that the New Philadelphia firefighters demanded less than the Dover firefighters is that the

current negotiations are taking place in 2009 when the local economy is significantly worse than it was when the Dover contract was signed. Moreover, there was no evidence presented on Dover's financial condition. However, these data do show that firefighters in the local labor market have been able to negotiate wage increases well in excess of the one (1%) percent offered by the City.

Finding of Fact: The City can afford to fund the wage increases agreed upon by the parties during their negotiations for a new contract.

Suggested Language: The language of Article 24 shall be amended to show general wage increase of two (2%) percent in year 1 of the prospective contract; a three (3%) increase in year two of the prospective contract; and, a three (3%) percent increase in year three of the prospective contract.

Issue: Article 25 – Hours of Work

City Position: The City demands current contract language.

Union Position: The Union is demanding that the workweek be reduced from fifty-six (56) hours to fifty-two (52) hours.

Note: The City contends that this issue was settled during the IBB sessions and objected to the Union raising the issue at Fact Finding.

Discussion: The problems surrounding firefighters' schedules are myriad. However, the cost considerations of reducing the workweek by four (4) hours or over seven (7.2%) percent are significant. Without a change in the firefighters' base rate, the change in hours corresponds to an increase in pay. Furthermore, a change in the workweek affects overtime, call-out pay, etc.

The parties also discussed the implications of this language change in the mediation session. The City noted that it often cannot fill all of the overtime hours available and has on occasion used non-bargaining unit personnel to cover some hours. The suggested change in the workweek would necessitate hiring more firefighters, and the City is adamant that it cannot consider this option in the current economic climate. Finally, the City reiterated that the tentative agreement between the parties did not have any changes in Article 25. The firefighters agreed that they did not change the language of Article 25 during the IBB sessions, but they contended that once the City Council turned down the tentative agreement that they should be able to discuss issues that are important to them.

The Fact Finder does not find that the Union proved its need to change the language in Article 25. The cost ramifications are significant, and the change in the workweek might necessitate hiring more firefighters. Given the economic climate and the uncertain revenue projections in the coming years, the Fact Finder cannot recommend any change in the workweek, especially give the recommendation on wages detailed elsewhere in this report.

Finding of Fact: The Union did not prove that there was a need to change the current language of Article 25.

Suggested Language: Current Language

Issue: Article 37 – Severance Pay

City Position: The City demands current contract language.

Union Position: The Union is demanding that the formula placed into the contract during the IBB session remain in the agreement.

Discussion: The difference between the parties' positions centers on the language found in Article 37. The current language reads:

Section 2: Severance pay shall be computed at a rate of seventy-five (75%) percent of accumulated sick leave, up to nine hundred and sixty (960) hours.

During the IBB sessions it was decided to place the formula that represents the above language into the agreement. The wording (formula) added to the contract was:

Example: 1280 Accumulated hours X 75% = 960 hours

This is incorrect and does not represent the current agreement. Accumulated sick leave buyout language is contained in the Ohio Civil Service Regulations. Prior to the passage of ORC 4117, an employee upon retirement was paid up to one quarter of his/her accumulated sick up to 960 hours. This means that an employee was paid a maximum of 240 hours of accumulated sick leave time. That is, 960 accumulated hours X 25% = 240 hours.

After the passage of ORC 4117 negotiations took place over the size of the buyout. Increasing the percentage of hours paid one way that negotiators increased the buyout. That is rather than paying twenty five (25%) percent, the parties agreed to pay more than twenty five (25%) percent. Over time, in New Philadelphia the parties agreed to pay for seventy five (75%) percent of the accumulated time or seven hundred and twenty (720) hours. The City wished to incorporate the formula into the contract language and made that request in the IBB sessions. The Union agreed to the City's request, but the language proposed by the City mistakenly increased the pay out by an

extra twenty five (25%) percent. The City testified that it had no intention of increasing an already generous payout. The Fact Finder believes that the change in question was a mistake on the part of the City and that mistake should not lead to a significant increase in the buyout.

Finding of Fact: The formula contained in the IBB agreement is wrong.

Suggested Language: Example: 960 Accumulated hours X 75% = 720 hours.

Issue: Article 43 - Compassionate Leave

City Position: The City's demand is for current language.

Union Position: The Union demands 1) a change in the definition of immediate family, and 2) an increase in the number of hours of compassionate leave for funerals over 150 miles from New Philadelphia.

Discussion: This is another issue that was settled under the tentative agreement; however, the Council objected to the definition of immediate family in that agreement. The dispute apparently centers on the inclusion of grand parents (in-law) in the definition. According to the parties, there are a number of different definitions of immediate family in the various bargaining contracts between the City and its organized employees and these definitions are not the same as the definition in the City policy manual. The Fact Finder does not find that either party is attempting to gain an advantage with the language that it suggested for inclusion in the contract. Rather, it seems that there is no uniformity in the definition of immediate family as it relates to compassionate leave. In addition, there was no example of any instance where the current language has created a problem.

Consequently, the Fact Finder recommends that the language of immediate family found in the New Philadelphia policy manual be included in the contract.

The second point raised by the Union is related to the firefighters' unique schedule. For funerals more than 150 miles from New Philadelphia all other city employees can get up to forty hours of compassionate leave, i.e., five days (shifts) off. However, forty hours of leave for individuals on a twenty-four hour on and forty-eight hours off means that the firefighters might have to return to work for the last eight (8) hours of their shift after attending a funeral that is more than 150 miles away from New Philadelphia.

This is an example of the fact that firefighters' schedules cause unusual problems. In this instance the parties (tentative agreement) raised the number of hours of leave to forty. That is, all employees are treated equally in that all get the same number of hours off (even if the number of shifts differs between bargaining units). In addition, the forty (40) hour figure is an increase of sixteen (16) hours from the current language found in the contract. Given the facts in the record, the Fact Finder believes that 1) an increase of sixteen hours in one contract is a significant gain, and 2) absent any concrete examples of problems caused by the current language; the Fact Finder recommends the language in the tentative agreement be added to the contract.

Findings of Fact: The definition of the term "immediate family" should be uniform throughout the City. Also, an increase of sixteen hours of compassionate leave is a substantial increase in the hours of compassionate leave.

Suggested Language:

Section 1: An Employee shall be granted one (1) shift compassionate leave in the event of a death of a member of the immediate family. If the family member's

funeral is more than 150 miles from the City of New Philadelphia the employee shall be granted sixteen (16) additional hours of compassionate leave.

Issue: Article 49 – Health Benefits

City Position: The City demands that it be allowed to have the right to search for the best (most economical) health insurance carrier. That is, the City does not want to be tied to Aultcare.

Union Position: The Union agreed to allow the City to accept bids from various insurance companies, but wants some language in the contract guaranteeing that it will not have its health insurance changed to its detriment.

Discussion: In this instance the Union changed its position during the mediation session. Originally, the Union proposed adding the term “mutual decision” to Article 49 (1). The City objected and the Union withdrew its language when the parties realized that similar language in all union contracts would give each union a veto over changes in the City’s health insurance plan. The Union then proposed adding the phrase “equivalent or better coverage” to Article 49 (1). The City did not disagree to the reasoning behind the proposed language, but it did object to adding the phrase because it believed the language is superfluous.

The City pointed out the three Options listed in Article 49 (1) would remain in the contract. If the City decides to add another insurance plan, that plan would be a new Option 4. This would be an addition to the already existing coverage, and by definition it would be better coverage. Therefore, the City believes that the Union’s fears about a diminution of coverage are misplaced.

The three Options listed in Article 49 (1) outline different payment structures and give the employee a choice of a 90/10 plan, an 80/20 plan and a health saving account (HAS). That is, these options outline the amount that an employee will pay for health care. The payment options do not guarantee any specific procedures that an employee is entitled to. The procedures are listed in Appendices to the contract because the provider, in its bid for the insurance contract, determines the procedures. The City pointed out that it cannot guarantee that the provider will always include exactly the same procedures in its bid. That being said, the policy will cover emergency room care, hospitalization, office appointments, etc.

The City wants to have the ability to look for different insurance carriers and not be tied to Aultcare. The City guarantees that any new plan will include a 90/10 option, an 80/20 option, and an HSA. That is, the City guarantees that the employees will have the same coverage that currently exists for the life of the prospective contract.

Finding of Fact: The disagreement on this issue does not reflect a true disagreement between the parties of health insurance. As long as the three insurance options listed in Article 49 (1) remain in the contract, the union membership is protected from any drastic changes in its medical insurance.

Suggested Language:

Section 1: The City will continue coverages and employee contributions under the current health care benefits program until March 1, 2010, Ault Care renewal. Effective March 1, 2010, through March 1, 2013, the City agrees to provide all bargaining unit employees with health and medical insurance under the three plan options as follows. (Option 1 is a 90/10 plan; Option 2 is an 80/20 plan, and Option 3 is a Health Savings Account.) The Employer shall have the option to contract with any qualified health care insurance provider for health insurance coverage.

Option 1 – Option 1 is a derivative of the current (pre 3/1/07) 90/10 plan with a \$10/\$20/\$30/\$40 co-pay prescription plan with a two co-pay for three fill mail order provision. A summary list of coverages under Option 1 is attached to this Agreement as Appendix 2.

Option 2 – Option 2 is an 80/20 plan with a \$10/\$20/\$30/\$40 co-pay prescription plan with a two co-pay for three fill mail order provision. A summary list of coverages under Option 2 is attached to this agreement as Appendix 2.

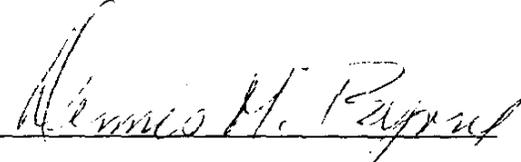
Option 3 – Option 3 is an Employee Health Savings Account (HSA). A summary list of coverages under Option 3 is attached to this agreement as Appendix 2A.

Employees shall advise the Employer of their Option 1, Option 2, or Option 3 selection by submitting the furnished health and medical provider forms during the annual enrollment period.

Conclusion: The Fact Finder believes that the tentative agreement between the parties with a few minor modifications is a reasonable agreement. Therefore, the Fact Finder is recommending a settlement that closely follows the tentative agreement. The tentative agreement meets the needs of the parties, and the City has the ability to fund the agreement. The City Council's concerns over the cost of the agreement are understandable. However, the City's finances are in very good condition compared to many other jurisdictions throughout the State, and a one (1%) percent, one year wage offer is not reasonable given all of the facts in the record.

Note: The language in Article 24 (5) shall be amended to show the percentage wage increases for Squad Coordinator and Emergency Vehicle Technician positions. In addition, all tentative agreements not in dispute are included by reference in the Fact Finder's recommendations.

Signed this 5th day of December 2009, at Munroe Falls, Ohio.


Dennis M. Byrne, Fact Finder



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Dennis M. Byrne

December 8, 2009

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2009 DEC -9 A 11:54
STATE EMPLOYMENT
RELATIONS BOARD

Re: SERB No. 09-MED-09-1049

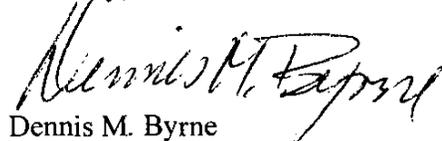
Dear Mr. Keith:

I am enclosing the fact-finding report in the above referenced case. As you will see there was a tentative agreement reached with the help of a SERB facilitator. The agreement was overturned by the City Council. The Mayor, who negotiated the agreement, conferred with the head of Council Finance Committee, who then led the discussions leading to the rejection of the report.

As far as I could ascertain the agreement was reasonable and the individuals involved in the negotiations all believed that it was fair and reasonable. It is somewhat rich in today's economy; however, New Philadelphia's finances are in much better shape than most jurisdictions throughout the state and the City can easily afford to finance the agreement. In addition, Dover (sister city) negotiated an even richer agreement with their firefighters.

I followed the tentative agreement because it was reasonable give all the data that was in the record. I do not know whether the Council will accept or reject the report. If you have any questions, please contact me.

Sincerely,


Dennis M. Byrne
Arbitrator



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TO:

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