

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 2, 2010**

In the Matter of:

The City of Wilmington, Ohio

09-MED-11-1377

and

International Association of Fire Fighters,
Local 3011

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

For the Union:

David S. Blaugrund, Attorney

Henry A. Arnett, Attorney

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated January 13, 2010 to serve as Fact-Finder in the matter of the City of Wilmington (hereinafter referred to as "Employer") and International Association of Fire Fighters, Local 3011 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until March 2, 2010. Hearing was held at Wilmington, Ohio on February 24, 2010. The Union was represented by Henry A. Arnett, Attorney, and the City was represented by David S. Blaugrund, Attorney. The parties agreed to submit the outstanding issues to the Fact-Finder based upon the documentary evidence submitted by the parties in their pre-hearing position statements. The parties agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service via email.

FACTUAL BACKGROUND

The City of Wilmington is the county seat of Clinton County, Ohio with a population of approximately 12,000. As is now well known due to extensive media coverage, the City's fortunes have changed dramatically since the closure of the DHL air hub in 2008 which resulted in the loss of approximately three thousand local jobs. Unemployment in Wilmington is higher than state averages, and City revenues have been seriously affected virtue of the job losses.

The City's fire department covers a geographic radius of one hundred forty-four square miles, and includes coverage of the City as well as three adjacent townships. The City employs approximately nineteen full-time fire fighters as well as ten intermittent fire fighters. The fire fighter bargaining unit is represented by the Union. The City also has collective bargaining agreements with employees in two police bargaining units. The remainder of the City's employees are non-represented employees. Both the police bargaining units and the non-represented employees have accepted a freeze in wages for the current year.

The Collective Bargaining Agreement between these parties expired on December 31, 2009. Pursuant to the terms of the prior Collective Bargaining Agreement, the members of this bargaining unit were to receive a 4% wage increase in 2009. In light of the changed circumstances since the closing of the DHL facility, however, the parties engaged in mid-term bargaining and agreed to forego that increase. The parties agreed to a Memorandum of Understanding which memorialized that agreement and further provided that base wage rates would include the deferred 4% increase in negotiations for the current Agreement. The Union has filed a grievance concerning the meaning and enforcement of the Memorandum of Understanding. That grievance is pending at the current time.

After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.

The unresolved issues are as follows:

Article 15 - Layoff and Recall

Article 17 - Hours of Work and Overtime

Article 19 - Wages and Compensation

Article 31 - Personal Day Leave

Article 47 - Health and Safety

Memorandum of Understanding and Grievance Regarding Wages

Based upon the considerations enumerated in Ohio Revised Code §4117.14 including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted, the Fact-Finder makes the following recommendations.

ISSUES

ARTICLE 15 - LAYOFF AND RECALL

Recommendation:

Current Language

ARTICLE 17 - HOURS OF WORK AND OVERTIME

Recommendation: Add the following provision to the Article:

6.1 In the case of special events in which pay is not provided by the City, but rather by the event host, the opportunity to work such event shall first be offered to full-time bargaining unit members in order of next available, from the rotating seniority list. If the event remains uncovered after the full-time seniority list has been gone through, the opportunity will then be offered to intermittent employees who are eligible according to the rotating seniority list.

6.2 In the case of pre-scheduled overtime (not including shift-fill which is scheduled less than twenty-four (24) hours in advance) in which pay is provided by the City, the opportunity to cover shall be offered to department members in accordance with the rotating seniority list of the bargaining unit.

6.3 Shift-fill scheduled less than twenty-four (24) hours in advance and any other "unforeseen" overtime opportunities shall be filled at the Fire Chief's discretion. Discretion shall be in a pre-determined manner with effort being given to fill the first four (4) hours of a shift with a member of the off-going shift and the last eight (8) hours of the shift with a member of the next days' on-coming shift. Pre-scheduled employees, intermittent or full time, may be used to fill the vacancy.

6.4 The Fire Chief will make every effort to keep the above listed lists current and available for future fill opportunities.

Balance of the Article: Current Language.

ARTICLE 19 - WAGES

Recommendation: Amend Article as follows:

9.1 Effective on January 1, 2010, the pay ranges to which bargaining unit employees are assigned shall be frozen at the 2008 level in accordance with Appendix A of this Agreement, except for employees who received a step increase in 2009, who shall retain that step increase. The parties agree to re-open this Agreement for Article 19 - Wages on or about November 1, 2010 for 2011 and November 1, 2011 for 2012. The parties acknowledge that the Dispute Resolution Procedures under R.C. 4117.14 are available to the parties if impasse

is reached in either the 2010 or 2011 re-opener negotiations.

Delete references to prior years and change percentages in following paragraph to 0%

19.2 Except in 2010, each bargaining unit employee who has not reached the top step in his salary range in the Employer's pay plan shall be granted the appropriate step level increase on his anniversary date as provided for in such pay plan. The parties shall address whether or not such step increases shall be awarded as part of the re-opener negotiations for the 2011 and 2012 wages.

Delete reference to July 1, 2006 in Section 19.5 as agreed, and balance of Article to remain the same.

ARTICLE 31 - PERSONAL DAYS

Recommendation: Current Language.


ARTICLE 47 - HEALTH AND SAFETY

Recommendation: Current language

MEMORANDUM OF UNDERSTANDING AND GRIEVANCE REGARDING WAGES

Recommendation: Since the pending Grievance regarding the Memorandum of Understanding Regarding Wages will be rendered moot if the above recommendations are accepted by both parties, the Fact-Finder recommends that the Grievance be withdrawn in the event that both parties ratify the Collective Bargaining Agreement.

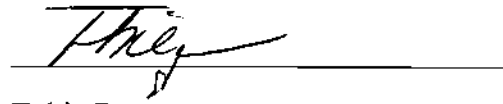
Dated: March 2, 2010



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was delivered via email and this 2nd day of March, 2010 to David S. Blaugrund, counsel for City of Wilmington, dsb@bhmlaw.com and to Henry A. Arnett, Counsel for IAFF, Local 3011, henryarnett@livornoandarnett.com.

A handwritten signature in cursive script, appearing to read "Tobie", is written over a horizontal line.

Tobie Braverman

APPENDIX A

YEAR 2010

	A	B	C	D	E
RANGE 1A	\$36,173.04	\$37,439.10	\$38,749.47	\$40,105.69	\$43,769.29
RANGE 1B	\$38,343.42	\$39,685.45	\$41,074.44	\$42,512.03	\$46,395.45
RANGE 2A	\$41,779.94	\$43,242.23	\$44,755.71	\$46,322.16	\$50,553.23
RANGE 2B	\$44,286.74	\$45,836.77	\$47,441.05	\$49,101.49	\$53,586.43

* Although noted as the 2010 scale, this is the 2008 scale that was in effect for employees in 2008 and 2009. This scale continues the wage freeze for 2010. In 2008 and 2009 employees received step increases if they were eligible. This scale provides that no step increases will be given in 2010.