

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB  
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received  
2:30 pm  
May 10, 2011

In the matter of: :  
: :  
Forest Park Firefighters Association : Case No. 09-MED-11-1404  
IAFF Local 3024/City of Forest Park :

**FACT-FINDING REPORT AND RECOMMENDATION**

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report and recommendations:

**I. HEARING**

The Fact-Finding was heard at the City of Forest Park offices on April 19, 2011 at 10:00 a.m.

The following were present:

Forest Park Firefighters Association IAFF Local 3024 - Henry Arnett, Attorney  
Sean A. Brown, Pres., Local 3024  
Steven Stein, Secretary, Local 3024  
Leonard Brooks, V.P., Local 3024  
William Black, Treasurer, Local 3024

City of Forest Park – Alfie Jones, Fire Dept.  
Trish Brooks, Fire Dept.  
Harlita Robinson, Finance Dept.  
Paul Berninger, Attorney  
Tye Smith, Human Resources Director  
Paul Brehm, Economic Development Director

**II. CRITERIA**

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, between the parties;
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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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 in private employment.

### **III. ISSUES AND RECOMMENDATIONS**

Prior to hearing the parties attempted mediation, without result. The parties did agree to a revised Article XXVII attached and incorporated herein. All other provisions are to remain identical to the last agreement which expired December 31, 2009, with the exception of the following issues remaining for fact finding: Article IV, Wages; Article XXII, Uniform Allowance; Article XIX, Other Leave; and Article XXIV Lay Off Procedures. At the Fact Finding hearing the issues of dispute were argued in that order. The City refused to negotiate with the union in 2010 based upon the alleged failure of the union to timely notify the City for negotiations upon the expiration of the 2009 agreement. The last contract contained no “evergreen” clause (i.e. a provision carrying over the last year of the agreement to the next) and thus expired by its terms December 31, 2009.

#### **Finding of Fact No. 1: Wages – Article IV**

The City proposed no increase for 2010, a 2011 wage increase of 1%, and a 2012 increase of 1.25%. The union proposed increases of 2% for 2010 (retroactive), 2.5% for 2011, and 2.5% for 2012. The City’s sole argument against the union’s proposal was the City’s asserted inability to pay.

Unlike other city services, the City has chosen to fund its fire department through a fire levy. The department also receives income from other sources such as insurance proceeds, but the vast bulk of the budget is from the levy. Prior to 2008 the city's general fund also contributed amounts to the Fire Department for hydrant maintenance, IT services, longevity pay, and testing and employment costs (including polygraphs). In 2008, the City stopped those contributions and also began sequestering increasingly large amounts of the levy's income to a capital improvements fund. The capital improvements fund has been set aside to be used for the purchase of two squad vehicles in 2010 at \$205,000 each. Also, In 2013 the City has budgeted a new fire engine at \$600,000, and in 2015 a new aerial ladder truck at approximately \$990,000. The incoming Chief also testified the department may receive monies via a federal grant for the new fire engine. He fears that a wall that has bowed in the fire station may need repair before 2015.

Harleta Robinson, the City's Finance Director testified for the City. The City offered as evidence its Comprehensive Annual Financial Report, dated June 25, 2010. It also offered a November, 2010 analysis of the Fire Levy Fund, and tax collection figures for tax years 2004-2010. Ms. Robinson testified that withholding taxes were reduced at the end of last summer because of a reduction in employment within the City. The 2010 city budget was reduced and she expects further reductions to the General Fund in the future. The City has laid off a number of employees. She states that the general fund cannot assist in any fire department wage increases. The City anticipated \$1,000,000 cut to the 2011 general fund budget. Directly affecting the Fire Budget, she noted a \$9,000,000 reduction in assessed property values in 2009, and \$12,000,000 for 2010. The valuations placed in evidence are as follows:

Tax Year

2004	\$339,454,480
2005	\$383,496,830
2006	\$381,022,910
2007	\$382,579,680
2008	\$373,685,060
2009	\$372,861,130
2010	\$360,513,150

For 2010 the City projects that the decline in values will lower collections by \$107,658 which is 2.45% below the approved budgeted revenue of \$4,352,963 (not including capital expenditures).

In the Governor's proposed state budget, the personal property tax reimbursement, which originally was phased out over seven years, is modified so that the City would receive nothing for 2011 and thereafter. The Fire Department benefited by \$364,000 from those proceeds for 2010.

The Fire Levy Fund contained an actual carryover from the previous budget of \$2,624,355 as of December 31, 2010. Currently that amounts to approximately a 50% carryover of the entire budget. Moody and Standard & Poors suggest that cities carry over a mere 20%, and other experts suggest as low as 15%. Ms. Robinson admitted (as did the City in its November, 2010 analysis) that the Fire Fund is doing well. The Fund is decreasing largely due to capital purchases. \$563,000 in capital expenditures are budgeted for 2011. A "spike" in capital expenditures, actual and projected, appears to be the central reason for the drop in the carryover monies from a projected \$2,647,447 in the 2010 budget to \$2,080,898 for 2011. Thereafter, this source of a "drain" upon the budget drops drastically, by the City's own projections.

The Fire Levy Fund revenue increased from \$4,176,741 in 2007 to \$4,494,547 in 2009. The budgeted revenues for 2010 were \$4,352,963, and \$4,245,305 is projected by the City for 2011. On the expenditure side, total expenditures increased from \$3,993,959 in 2007 to \$4,017,452 in 2009. Budgeted expenditures for 2010 are \$4,351,265 and \$4,248,735 is budgeted for 2011 (all excluding

capital expenditures). In 2008, the City transferred \$34,473 from the Fire Levy Fund to the separate capital expenditures fund and increased that to \$278,612 in 2009, and budgeted \$300,000 for 2010 and \$563,121 in 2011. The City, in its analysis of the Fire Levy Fund acknowledges that these expenditures “spike” in 2011, dropping to \$13,433 projected for 2012, and \$79,573 in 2013. In its November, 2010 analysis of the Fire Levy Fund, the City states “In planning for this Fund, it was the goal of the Fire Department as well as the City to have the fund to be structurally balanced. Excluding the transfer to set aside funds in the Fire Capital Improvement Fund, this goal is achieved.” Even with this “spike” in capital improvement expenditures, a reasonable carryover does not appear to be seriously imperiled by the wage increases proposed by the union. The union argues that the City can transfer cash back into the operating fund from the capital fund if necessary, and even with current projections the carryover would only be reduced to 25% after all capital purchases. The current balance in the capital expenditures fund is \$900,000, with \$410,000 to be paid this year for equipment already ordered.

Each percentage increase to fire personnel wages amounts to approximately \$24,000, making the differences in proposed wage increases by the parties relatively insignificant to a \$4,811,856 Fire Department budget for 2011. The total percentage difference, over three years between the two proposals is 2% in 2010, 1.50% in 2011, and 1.25% in 2012. The difference in dollars over the three years appears to be under \$125,000. An assistant chief position will not be filled after the retirement of the current chief. The fire department also has two unfilled positions which have been included in the budget for years, when in actuality there are no plans to fill them at least through the term of any new agreement. The cost of the union’s proposed increase over that offered by the city is roughly equal to the projected expense of the two budgeted positions which are not expected to be filled.

In addition to contesting the City's position as to a fiscal emergency, the union also argues that the firefighters are underpaid when compared with City of Forest Park policemen and firefighters of comparable communities. The run data for the department is comparable to larger fire departments such as Colerain, Norwood, Springfield Township and Mason. The Forest Park Fire Department averages 10.9 runs/day per person. The union presented six firefighter comparables from cities of 20,000-30,000 in population, and also figures from the SERB Clearinghouse showing average wage increases of 2.5% in 2010, 3.28% in 2011, and 2.45% in 2012 (for all employees of all subdivisions).

The union also argued that a "gap" has developed between the police and fire department wages. A "topped out" police officer makes more than a captain in the Fire Department. The union introduced a graphic demonstrating this "gap" which was not rebutted by the City. If the fire department employees are not granted an increase for 2010, they will apparently be the only city employees not receiving one, a truly inequitable result, whoever is to blame for the lack of a 2010 agreement. Most City employees received a 2% wage increase in 2010 (City's Prehearing Statement) and higher ranking officials received a 1% increase, and that was despite other general fund employees being laid off.

The City offered a large number of comparables, but no explanation as to why they were comparable. Most of those comparables support the union's position.

The only two comparables common to both presentations were Norwood and Sycamore Township, both of which demonstrate that the Forest Park firefighters are underpaid on an hourly basis. The City did not argue that the union's proposed increases would place the firefighters outside of the range of salaries for other departments similarly situated, and in fact a review of their comparables belies any such an assertion.

This fact finder is persuaded that the City's proposals are inadequate to keep minimal parity between the police and fire departments and to maintain reasonable compensation for a highly trained, professional, and hardworking staff, and that the union's proposal is reasonable.

**Recommendation**

The union's proposed Article XIV, attached hereto, should be adopted.

**Finding of Fact No. 2: Uniform Allowance – Article XXII**

The union proposes a \$30 yearly increase from \$420 to \$450. The uniform allowance has remained at \$420 for the past fourteen years. The City opposes any increase, without any argument to support its position. The union's proposal is manifestly reasonable, with no other evidence than the passage of time and obvious increases in costs over such a long period.

**Recommendation**

The union's proposed Article XXII, attached hereto, should be adopted.

**Finding of Fact No. 3: Bereavement Leave – Article XIX**

The union proposes a change to "Article XIX. Other Leaves" as it applies to bereavement leave, paragraph E. The current policy grants up to 40 hours, or one week of such leave. The policy, as now written, does not detail the family members for whom such leave should be granted. The union's proposal would define the family relationships for which such leave is permissible, yet gives the Department head the final discretion as to whether or not to include other than immediate family members.

The testimony revealed but one situation involving a dispute over such leave, involving a father in law dying in a distance place. The issue apparently did not involve whether some leave was

justified, but whether a full week could be granted. The employee's vacation leave was already scheduled, and for whatever reason, a shift trade, though offered, could not solve the problem.

The City complains that the leave provision, as it has been applied, is generous, and that in the few instances where a conflict would exist that shift change and vacation leave should be sufficient to avoid undue hardship.

The fact finder believes that this isolated instance of difficulty in obtaining leave was compounded by the distance involved and the vacation plans of the affected employee. Though some leave would certainly be indicated for a father in law, the fact finder was presented with no evidence that the Department acted unfairly. Moreover, the language proposed by the union appears to give the department head the authority to do precisely what was done in that instance.

Perhaps the article should be revised to dictate the family members for whom such leave is available, but the fact finder believes that the union's proposal is vague and not, in view of past practice, necessary.

#### **Recommendation**

Article XIX should remain unchanged from the last agreement.

#### **Finding of Fact No. 4: Layoff Procedure – Article XXIV**

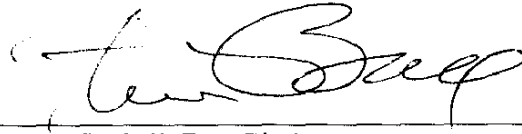
The union proposes a revised layoff procedure to insure that part time employees would be laid off prior to full time employees. The impetus for this appears to be more or less the union's perceived threats by some in city management to gradually reduce the force to all or substantially all part time personnel by laying off full time employees. The City denied any such intent, but opposes the language proposed by the union as unfairly impinging upon management's rights. The parties agreed that no layoffs are contemplated through 2012, i.e. the life of this agreement.



With virtually no prospect of layoffs during the term of the agreement the changes proposed by the union are not necessary to the preservation of the bargaining unit. Layoff policies are the subject of statutory pronouncements not provided to the fact finder, which further complicates, and clouds, the issue. The union's proposal should not be accepted and the current language should remain.

**Recommendation**

Article XXIV should remain unchanged from the last agreement.

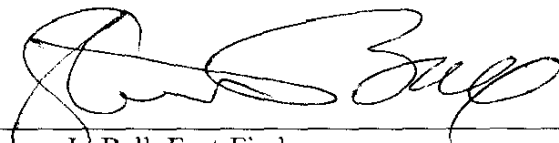


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Steven L. Ball, Fact-Finder  
May 9, 2011

**CERTIFICATE OF MAILING**

I hereby certify that a copy of the Fact-Finding Report and Recommendation was sent via email to: Henry A. Arnett, Livornio & Arnett, 1335 Dublin Road, Suite 108-B, Columbus, Ohio 43215 at [counsel@oapff.org](mailto:counsel@oapff.org); Paul R. Berninger, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202-2491 at [prneringer@woodlamping.com](mailto:prneringer@woodlamping.com); and the original Fact-Finding Report was sent via first class U.S. mail, postage prepaid, to J. Russell Keith, General Counsel and Assistant Executive Director, Bureau of Mediation, SERB, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215, on this 9th day of May, 2011.



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Steven L. Ball, Fact-Finder

**ARTICLE XXVII. TERM OF AGREEMENT**

This Agreement shall remain in full force and effect until midnight December 31, 2012 unless either party serves written notice on the other party not less than sixty (60) days prior to December 31, 2012 that it desires to terminate or modify the terms of this Agreement. If neither party serves written notice, this Agreement shall remain in full force and effect for one more year until a party serves written notice on the other party not less than sixty (60) days prior to December 31 of any subsequent year.

IN WITNESS WHEREOF, the parties to this Agreement affix their signatures this \_\_\_\_ day of \_\_\_\_\_, 2011.

FOR THE UNION

FOR THE CITY OF FOREST PARK

\_\_\_\_\_  
President IAFF 3024

\_\_\_\_\_  
Ray H. Hodges, City Manager

\_\_\_\_\_  
Vice-President IAFF 3024

### Article XIV. Wages

Wages: The wages paid to employees in classifications covered by this Agreement are set forth in Appendix I. For 2010, all wage rates shall be increased 2% above the rates for 2009; for 2011 all wage rates shall be increased 2.5% above the rates for 2010; for 2012, all wage rates shall be increased 2.5% above the rates for 2011.

## **Article XXII. Uniforms And Protective Clothing**

### **Clothing Allowance:**

Each employee of the Fire Department subject to this Agreement shall be entitled to a clothing allowance of four hundred and **fifty** dollars (\$**450**.00) per year after the first year of employment.

Clothing allowance moneys shall be used for the purpose of uniforms, uniforms shall include but are not limited to shirts, pants, jackets, sweaters, and protective shoes or boots and other duty-related items.

Employees shall submit in writing their requests for purchasing uniform items. Requests shall be reviewed in a timely manner and shall be fairly and consistently administered.

### **Uniform Changes:**

The Fire Department will not change any particular item of the Fire Department uniform any sooner than every four (4) years. However, this provision shall not apply if a uniform item is no longer available or discontinued.

The Fire Department agrees as to any particular uniform item that said to be an old uniform to be replaced may continue to be worn until no longer serviceable or three (3) years from the date that the uniform change was announced, whichever event occurs first.

Should the Fire Department vary from the above agreed upon replacement schedule, the City will be responsible for the cost of the uniform item changed in addition to the clothing allowance. In the event that a fire department uniform is damaged on duty and in the course of his duty the City will replace the article(s) of clothing as needed. The City will be responsible for the cost of the uniform item needing to be replaced, in addition to the clothing allowance.

### **Turnout Gear Issue:**

The following articles of protective clothing shall be provided by the City to newly employed Fire Fighter classed employees without reference to the clothing allowance: NFPA approved for structural fire fighting PBI bunker coat, PBI bunker pants, each of these items are to have vapor barrier/thermal liner, laminated with Gore-Tex breathable film, suspenders, fire boots, helmet complete with face shield and chin strap, 2 pairs of fire gloves, and 2 PBI hoods.

If a clothing material is proven to offer a weight and protection value equal to or better than PBI and/or Gore-Tex and that material is NFPA approved for structural fire fighting then it may be substituted in lieu of the named materials.

If the turnout ensemble to be issued is previously used then it must be cleaned, per manufacturers instructions prior to re-issue.

The City will provide, without reference to the annual clothing allowance, the necessary replacements of any component of the turn out ensemble, which are found to be unserviceable at any time.

#### **Duty Uniform Issue:**

The following articles of apparel, four (4) duty uniforms consisting of shirt and trousers, one (1) leather belt, one (1) lightweight duty jacket, one (1) heavy weight duty coat, two (2) department badges, and one (1) pair of safety shoes or boots, shall be provided by the City to newly employed Fire Fighter classed employees, without reference to the clothing allowance. All articles above will be new at the time of issue. If the Employee chooses a shoe or boot that exceeds seventy dollars (\$70.00) then the Employee will be required to pay the difference. However, if the value is less than seventy dollars (\$70.00) no refund will be issued.

The City will provide, without reference to the clothing allowance, one set of badges and collar pins upon promotion, if applicable.

The City shall provide dry cleaning service with a dry cleaning company located within the Forest Park Fire District or if delivery service is available then the location restriction does not apply.