

OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT-FINDING BETWEEN

INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, LOCAL 3331

And

¹⁰
~~09~~-Med-09-1026

CITY OF PERRYSBURG

For Local 3331

Michelle T. Sullivan, Esq.
Patrick J. Fleming, Jr. Union President
Nathan Burtscher, Negotiations Team Member
Tom Granata, Negotiations Team Member

For the District

David M. Smigelski, Esq.
John P. Alexander, City Administrator/Director of Public Safety
Kelly Louderback, H.R. Manager
Dave D. Creps, Finance Director

STATE EMPLOYMENT
RELATIONS BOARD
2011 JAN -7 A 8:57

Before Fact Finder: Betty R. Widgeon

Introduction

This Fact Finding arises pursuant to the Ohio Revised Code Section 41117.14 between the International Association of Fire Fighters, Local 3331 (Union) and the City of Perrysburg (Employer). The report of Betty Widgeon who was selected as Fact Finder is issued below. A pre-hearing conference call with counsel for the parties and the Fact Finder was initiated by the Fact Finder on November 16, 2010. At that time the parties indicated that the sole issue for Fact Finding was the wage reopener for the third of their three year contract. Prehearing statements were received by the Fact Finder and were served by each party upon opposing party three days prior to the hearing.

In compliance with the Ohio Public Employee Bargaining Statute Rule 4117-9-05, representatives Michelle Sullivan (hereafter Sullivan), for the Union, and David Smigelski

(hereafter Smigelski) for the Employer, met with the Fact Finder for the hearing on December 13, 2010 at the Perrysburg Municipal Building. The Fact Finder reminded the parties that SERB authorizes the Fact Finder to act as Mediator and expects that mediation will be attempted before fact finding proceeds, if it appears to the Fact Finder and the parties that such would assist in the settlement of any outstanding issues. At this juncture, Sullivan indicated that the Union was of the opinion that some mediation might prove helpful. Smigelski indicated that the District doubted that anything would be gained by further attempts to mediate the remaining issue. Consequently, Fact Finder commenced the hearing. The parties summarized their positions and presented testimony, arguments, and exhibits in support. At the conclusion of their presentations, Sullivan and Smigelski waived the statutory time for receipt of the Fact Finder's report until Monday, January 4, 2011. This report is submitted by the date and in the manner (via email attachment) stipulated by the parties.

Rule 4117-9-05 sets forth the criteria the Fact Finder is to consider in making recommendations. Therefore, with the below listed criteria in mind, the Fact Finder commenced the hearing:

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, 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 stipulation 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

Positions of the Parties

The Union's position is that, historically, its employees have received increases below the state average. At this time it argues that the City has both the ability to pay a wage increase for the 3rd year of their contract and the responsibility to bring its Fire Fighters up to a pay level commensurate with other similarly situated local and state employees. The Employer does not dispute that it has the ability to meet the Union's request, but reiterates that the Union's 6.25% pay increase for year two of the contract places it well above the average pay for other Fire Fighters in comparable municipalities. The parties' exhibits included a notebook of 5 main exhibits with detailed supplemental annotations from the Union and a package of 12 individual exhibits from the Employer.

Findings of Fact

- 1) The City of Perrysburg is approximately 10.5 sq. miles.
- 2) It is a municipality located in Wood County, northwest Ohio, and has a population of approximately 20,000.
- 3) Unlike most of the comparable municipalities cited by the parties, the City of Perrysburg mandates that all Fire Fighters hired at entry level are also trained paramedics. Fighters are required to be re-certified as paramedics every three years.
- 4) The IAFF represents the city's Fire Fighters; 22 employees are in the bargaining unit. Eighteen of the twenty-two are Fire Fighter/Paramedics subject to the current wage reopener. Two-thirds of these (12/18) would be affected by the raise requested by the Union, as they are currently below the top step level of the pay scale.

- 5) In May 2009 Fact Finder Sandra Mendel Furman, Esq. recommended a 3.25% wage increase retroactive to March 1, 2009 and a 3% raise effective March 1, 2010 and a wage reopener for the year beginning March 1, 2011.
- 6) Initially, the City did not waive the ORC 4117.14(G) (11) limitation on the Conciliator regarding retroactivity of wages.
- 7) Subsequently, Conciliator Colman R. Lalka ruled that the Union's Final Settlement Offer of 0.00% wage increase for the first year of the Successor Agreement and a 6.25% increase in the second year be implemented.
- 8) At the hearing, the Union presented local and State-wide comparables based on of cities of a similar population, demographics, general fund and state revenue. (Union Exhibit 2).
- 9) The Union also presented starting pay and ending pay comparisons for Fire Fighters in eight local municipalities of Bowling Green, Toledo Probationary, Sylvania Twp, Findlay, Perrysburg, Maumee, Perrysburg Twp and Oregon. (Union Exhibit 2).
- 10) The Union presented a comparison of 2010 Step Increases for years 1-10 for each of the municipalities. (Union Exhibit 2).
- 11) The Union presented Statewide Pay Comparisons reflecting annual and hourly pay, years required to reach the top of the pay scale, 2009 and 2010 pay increases and hours worked. (Union Exhibit 2).
- 12) The Employer presented comparisons of 21 municipalities starting and top annual salaries for Fire Fighters, highlighting Perrysburg, Maumee and Findlay Ohio. (Employer Exhibit 9)
- 13) The Employer presented comparisons of Annual Base salaries of the 13 other municipalities with that of Perrysburg Fire Fighters. (Employer Exhibit 9).
- 14) The Employer presented comparisons of population and area in square miles of 15 municipalities with that of Perrysburg. (Employer Exhibit 9).

- 15) The Employer presented comparisons of the salaries of the Police Chiefs, Deputy police chiefs, Fire chiefs, deputy Fire chiefs, city administrators, finance directors, deputy finance directors, tax commissioners, law directors, prosecutors, director of public service and P & Z administrators of between four and eleven municipalities with salaries of those in the same position for Perrysburg. (Employer Exhibit 10).
- 16) The Employer presented a chart comparing the 2008, 2009, 2010, 2011 or 2010 salary increases for Perrysburg and 10 other municipalities. (Employer Exhibit 11).
- 17) The Employer presented a chart listing the Total Employee Compensation for 2009 for each of the Perrysburg Fire Fighters (Employer Exhibit 12).
- 18) During 2009 the city transferred \$3.5 million dollars to the Capital Improvements Fund from its General Fund Balance. Much of this money was put toward a public service building project with proper storage facilities. (Union Exhibit 5).
- 19) Through November 2010 the City had transferred \$3 million dollars to Capital Improvements account from its General fund Balance. (Union Exhibit 5).
- 20) The City ended the 2009 year with a 17.5% unencumbered fund balance. (Union Exhibit 5).
- 21) Income tax collections for the year 2008 were unusually high; both the Employer and the Union acknowledge that there are no expectations that such an anomaly will ever be repeated.
- 22) The City annexed several residential areas during the past several years and may annex additional residential or commercial properties during the contract period (City Administrator).
- 23) During contemplation and discussions about their three-year contract and the reopener with respect to wages, the Employer expressed that a real concern was the need to “better predict where [it] was and what [it] could provide” at the future date (Smigelski, Burtscher).

Testimony and Discussion

Throughout the testimony and discussions the City does not dispute that it has the ability to pay the increase sought by the Union. The Employer submits that its Fire Fighters are as well off as their counterparts or even significantly better off with respect to their financial compensation. To support this contention, the Employer offers a chart comparing Perrysburg's Fire Fighters with those of 10 other municipalities respecting percentage of wage increases for the years of 2009, 2010 and 2011 (Employer Exhibit 11). This exhibit depicts Perrysburg Fire Fighters as being at the top of the group. The other 10 cities included are: Westerville, Oregon, Fremont, Bowling Green, Sylvania, Tiffin, Maumee, Northwood, Perrysburg Township and Rossford.

The Employer supports its position by highlighting that the City's 2011 proposed budget includes no salary adjustments for the Executive Staff, senior administrative staff, administrative staff or special support staff. Employer's exhibit 12 shows that several Fire fighter salaries are higher than these City staff. Smigelski underscores the importance of this comparison in light of the City's concern about wage compression between classifications.

Likewise, Smigelski submits that when assessing Fire Fighters' true financial position relative to their counterparts, one must take into account that Perrysburg Fire Fighters make no contribution to their own health insurance plans when one is assessing their true financial position relative to their counterparts in other cities.

The Union offers a 2010 Step Increase comparisons to show that although Perrysburg starting salaries are at about the middle of the pack for starting pay and near the top of the pack for ending pay, because Perrysburg's step increases are spread out over 10 years, Fire Fighters fall to the bottom of the scale in year 6 and are only at the 37.5% level during years 3, 4, & 5.

With respect to exhibit 11, the Union objects that the list includes several municipalities that are very different from Perrysburg, either in their economic circumstances or in the type and extent of work generally performed by their Fire Fighters. It objects to the inclusion of Fremont, as Fremont is a rural city unattached to any major metropolitan areas. It further objects that both Tiffin and Bowling Green are cities facing serious fund deficits of approximately 9 and 10 million dollars, respectively. Likewise, the city of Maumee experienced the loss of a large employer with a Ford Motor Company plant closing. Northwood and Rossford Fire Fighters are volunteers, as opposed to full-time Fire Fighters, and their hourly rates are set accordingly. Although they are physically right next door to Perrysburg, both cities, the scope of the work duties, the make-up and entire setting of the group of employees and the hours worked are all very different from Perrysburg's.

In responding to the Employer's exhibit 12 (which sets forth the individual employee compensation for the Perrysburg Fire Fighters in 2009), the Union notes that this exhibit fails to list hours worked or number of hours they may have been on call. Because Perrysburg Fire Fighters work Monday through Sunday 365 days a year, of necessity overtime will be required. The Union takes special exception to the comparison between Fire Fighters' salaries and the salaries of many of those holding white collar office jobs. It emphasizes that the number of calls and volume of work has increased yearly. Perrysburg Fire Fighters work a 24/7 operation. Indeed, the Union points out that for the number of hours Fire Fighters are on-call, that compensation often equates to approximately \$1 per hour. Thus, any comparison with salaried individuals working ordinary business hours is inappropriate.

Analysis and Recommendation

Both sides set forth credible evidence endorsing their stated positions. The core disparity between the two sides appears to be grounded in a different philosophy and overall interpretation of the facts. Finance director Dave Creps described the city's financial condition as "steady", and testified that the City income tax collections have trended upwards about 6% for the 2010 year from 2009. The city has been conservative in managing its finances with a basic approach of paying down the debt it has on its books. Generally, it is the city's intention to pay cash for its construction projects and it is working to establish a budget stabilization fund.

The Union stresses that the parties' bargaining history up until now portrays a congenial relationship and respect for the mutual concerns. It points out that in previous contract negotiations the parties have never needed to resort to fact finding. Further, it observes that until now, the Employer's purported intention respecting a wage reopener for the third year of the contract had been definite and unambiguous: "to watch the economic climate and see where we are in the next year or so." From the Union's viewpoint, both sides made a commitment to a contract, and the 6.25% for the two years was not a deal breaker. Now Employer is seen as attempting to back away from its position. The Union views this "game changer" as a disingenuous switch.

The caliber of the evidence presented by both sides was impressive. Counsel were committed to providing the Fact Finder with as thorough and relevant data as possible in order to shed light on the strengths of each side's convictions. Moreover, it was evident throughout the hearing that the parties enjoy a long standing working relationship of mutual respect and cooperation. The Fact Finder understands the Employer's sentiments. Unlike many of its surrounding counterparts, it remains stable, strong and growing, even during this time of widespread economic downturn. It enjoys exemplary bond ratings. Perrysburg anticipates no

layoffs, no required employee furloughs and no request for contract concessions from its municipal employees for 2011. It has managed its assets prudently. Indeed, the City's revenues are now 6% ahead of where they were last year. However, in applying the set of 6 general criteria (p. 2) to the specifics of this case, the Fact Finder finds the Union's evidence to be stronger in several aspects.

Firstly, the bargaining history (criteria 1) of the City and Fire Fighters as recounted by the Union commends the Union's rendition of the facts. Their history is one of amicable negotiations resulting in mutually beneficial agreements. Resort to fact finding has been rare or non-existent prior to the present contract. Although the Employer would include the broader bargaining history between the City and its four additional bargaining units, at issue here is the history between the particular two parties this fact finding.

Secondly, criteria 2 addresses a comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related together public and private employees doing comparable work, given consideration to factors peculiar to the area and classification involved. The Union's comparables presents a clearer picture of similarly situated employees, giving consideration to factors peculiar to the area and classification involved. They are detailed and carefully set forth a range of measures relevant to pertinent comparisons, such as population, demographics, general fund and state revenue. The Employer presents a number of charts relating to comparables, but some of the data was unambiguous and details incomplete.

Thirdly, the Employer's ability to pay, set forth in criteria 3, is uncontested. Even so, the Union's exhibits more fully accentuate this message. During the period the Employer was gathering cues from the economy prior to addressing year three of the contract, it made decisions to continue or forge ahead on several fronts. It has annexed several sites of either vacant land or

existing single family homes. To a more limited extent it has also annexed commercial properties. The Employer is also looking into constructing a second fire station. This project has been in the discussion/planning stage for the past 4-5 years.

The Employer hired new personnel during the past two years (Union Exhibit 2), but explains that it looks at the replacements as cost saving, overall, because the new salaries and benefits are lower than those paid to the previous job holders. The Union disputes this claim and submits that some of the new positions were indeed more costly when the entire benefits packages are taken into consideration. Although both sides presented supporting evidence, the Fact Finder found the Union's arguments and rebuttals more persuasive of the two.

Regarding the Employer's allusion to Fire Fighters receiving free health care coverage (and thereby being better off actually than they might appear to be) the Union effectively rebutted that in a prior contract they contributed 10% of the costs. With that contract, however, their total health care package included significantly more benefits than does the package they have now with a 0% employee contribution. Because their actual benefits are reduced under the current contract, workers now have a pay a lot more out of pocket when they do need health care.

The Employer's defense has merit. It cautions that the view that, simply because the Employer currently has the ability to pay, employees should automatically receive pay increases, no matter what their standing in comparison with nearby localities, is precarious and, in the long run, unsustainable. The Employer properly focuses attention on the reality that during these uncertain economic times, wage freezes are common statewide as well as nationally. It concludes that the City cannot keep blinders on as if its actions neither affect nor are affected by what is going on all around it, deserves consideration. It offers the city of Maumee as a particular case in point is that of the city of Maumee. They are neighbors, merely a mile apart. The river divides the two counties, but Perrysburg cannot truly be disassociated with Lucas County. This line of

reasoning does not consider, however, that the same argument may be made for any two neighboring municipalities where the fortunes of one are significantly above those of the other.

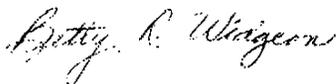
Lastly, criteria 6 address other factors which are normally taken into consideration in determination of issues. Taking into account the overall picture, one observes construes the following: The Employer recognizes that all its municipal employees are its greatest asset. It demands and consistently receives professionalism and commitment to complete assigned tasks. Indeed, the Employer openly acknowledges that “Perrysburg’s success is linked to their energy, time creativity and interest in serving the City’s residents and visitors.” Perrysburg’s Fire Fighters are thoroughly prepared for their responsibilities. They must have completed comprehensive paramedic training prior to being hired, and must they must pass recertification every three years. They regularly work extended hours and are continuously on call. The Union acknowledges Perrysburg Fire Fighters are not falling behind presently. Rather, it appeals that it is merely trying to catch up overall.

Recommendation

Having considered all of the evidence presented by the parties, in light of the charge given by the State and the above enumerated criteria she is required to take into account, the Fact Finder concludes that a fair wage increase for 2011 is appropriate for the Union. The Fact Finder defines a fair increase as one that is just and reasonable, given the parties’ initial apprehension and anticipation about the state and future of the economy, the reality borne out during the subsequent couple of years and viable comparisons of employee compensation for similarly situated employees in corresponding municipalities. The totality of the parties’ testimony, exhibits and summaries establishes a comprehensible rationale and justification for a

1.75% wage increase for the third year of the contract. Thus, the Fact Finder recommends a 1.75% wage increase for 2011.

Respectfully submitted,

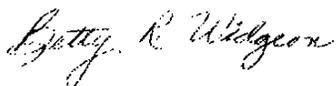


December 30, 2010

Betty R. Widgeon

Certificate of Service

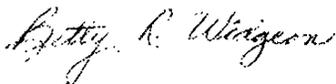
I, Betty R. Widgeon hereby certify that the above Fact-Finder's Recommendation Report was served upon the following parties, to wit, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3331, via Michelle T. Sullivan, Esq., (Allotta, Farley & Widman Co., LPA, 2222 Centennial Road, Toledo Ohio 43617) via email attachment to : Michelle Sullivan <msullivan@afwlaw.com> and THE CITY OF PERRYSBURG, via David M. Smigelski, Esq.(Spengler Nathanson P.L.L., Four SeaGate, Suite 400, Toledo, Ohio 43604-2622) via email attachment to: David Smigelski <dsmigelski@snlaw.com> **as stipulated to by the parties**, and upon the Ohio State Employment Relations Board (via **J. Russell Keith- Administrator, Bureau of Mediation State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213**) by first class mail, this 30th day of December, 2010.



Betty R. Widgeon, Fact Finder

1.75% wage increase for the third year of the contract. Thus, the Fact Finder recommends a 1.75% wage increase for 2011.

Respectfully submitted,

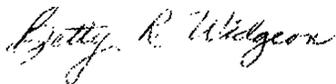


January 3, 2011

Betty R. Widgeon

Certificate of Service

I, Betty R. Widgeon hereby certify that the above Fact-Finder's Recommendation Report was served upon the following parties, to wit, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3331, via Michelle T. Sullivan, Esq., (Allotta, Farley & Widman Co., LPA, 2222 Centennial Road, Toledo Ohio 43617) via email attachment to : Michelle Sullivan <msullivan@afwlaw.com> and THE CITY OF PERRYSBURG, via David M. Smigelski, Esq.(Spengler Nathanson P.L.L., Four SeaGate, Suite 400, Toledo, Ohio 43604-2622) via email attachment to: David Smigelski <dsmigelski@snlaw.com> **as stipulated to by the parties**, and upon the Ohio State Employment Relations Board (via **J. Russell Keith- Administrator, Bureau of Mediation State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213**) by first class mail, this 3rd day of January, 2011..

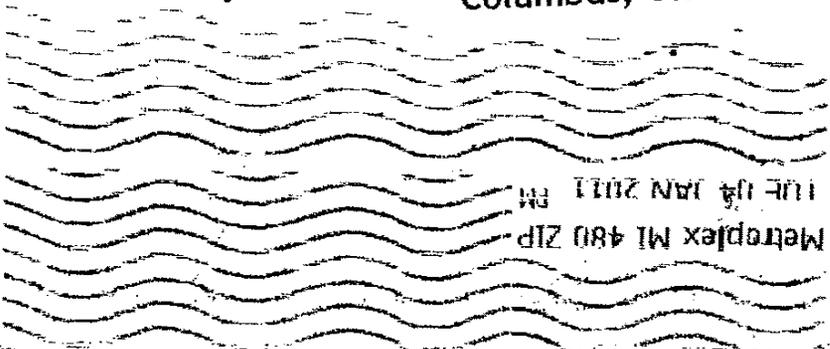


Betty R. Widgeon, Fact Finder

Betty R. Widgeon, Fact Finder
P.O. Box 3509
Ann Arbor, MI 48106-3500

U.S. POSTAGE
\$1.22
FCH LG ENV
48105
Date of sale
01/04/11
02 1P00 APC
FC0068000104751 06896246

J. Russell Keith- Administrator,
Bureau of Mediation State Employment Relations Board
65 East State Street, Suite 1200
Columbus, Ohio 43215-4213)



Metroplex MI 480 ZIP
TUE 10A JAN 2011 PM

