

2011 DEC -5 P 12: 33

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
December 2, 2011

In the Matter of:)
)
The City of Bedford)
)
vs.)
)
International Association of)
Firefighters Local 1683)
)

SERB Case No.
10-MED-09-1113

APPEARANCES

For the Union:

Thomas Hanculak, Attorney for the IAFF
Chris Neading, President of Local 1683
Pat Guhde, Local 1683 bargaining Committee
Seth Miller, Local 1683 Bargaining Committee

For the City:

Ken Schuman, City of Bedford Law Director
Hank Angelo, City of Bedford
Frank Gambosi, City of Bedford Finance Director

Fact Finder: Dennis M. Byrne

STATE EMPLOYMENT
RELATIONS BOARD
2011 DEC -5 P 12: 33

Background

The fact finding involves the members of the Bedford Fire Department represented by the International Association of Fire Fighters (IAFF) Local 1683 (Union) and the City of Bedford (Employer). Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions; but they were unable to come to an agreement. The Fact Finder conducted a mediation session on September 13, 2011, but the parties still were unable to reach agreement on a new contract; and one (1) issue remains on the table: 1) base wage parity. Consequently, a Fact Finding Hearing was held on November 10, 2011. The hearing commenced at approximately 9:30 A.M. in the Bedford City Hall and ended at 10:30 A.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 only outstanding issue is whether the firefighters should have base pay parity with the police patrolmen. Base pay parity has been a feature of the respective contracts between the City and its safety forces for over twenty years. The relevant comparison statistic between the firefighters and patrolmen is base pay because of the different schedules worked by the two bargaining units. That is, base pay equalizes the differences in hourly wage rates caused by the firefighters' twenty-four hours on duty and forty-eight hours off duty schedule compared to the patrolmen's eight hours per day schedule. The firefighters demand that parity be maintained between the two units.

The City's position is that the firefighters made an agreement that saved a job in the fire department and part of that agreement led to a parity break between the base pay of the police patrolmen and the firefighters. The City maintains that the firefighters accepted a wage freeze but saved a job while the patrolmen accepted a cut in the number of patrolmen but kept a higher wage. The City believes that the firefighters are trying to renege on the deal that they accepted. That is, the City argues that the firefighters are trying to avoid the choice made by the police officers. The City's position is that a deal is a deal and that the firefighters must live with the deal that they negotiated.

Historically, the two safety units maintained parity until 1989.¹ In 1989 the firefighters accepted a wage freeze in return for a reduction in the number of hours worked per week. This agreement broke the base wage parity that existed between police patrolmen and firefighters. However, in all of the subsequent negotiations the firefighters

¹ There was some discussion as to the exact date when parity became the wage policy in Bedford. There was no exact agreement on the issue, but it appears that base wage parity was maintained from the start of negotiations between the safety forces and the City.

demanded parity between the units be restored. The City agreed to reestablish parity as a quid-pro-quo for the firefighters' assistance in passing a Fire Medic Levy that raises \$900,000.00 annually. Full parity was reestablished over a three-year period from 1998 – 2001, and base pay parity was maintained from January 1, 2001 until January 1, 2010

In 2008 the fire and police department staffing levels were reduced because of the budgetary problems cause by the national recession. In 2009, the parties worked together for the passage of a Safety Forces Tax Levy that ameliorated the City's financial problems. In addition, all City workers were asked to accept a pay freeze in lieu of layoffs for 2010. The firefighters agreed to the pay freeze, but the police officers did not. Therefore, the police department lost a patrolman and received a previously negotiated 3.5% pay raise. The fire department did not lose a position, but the firefighters did not receive the previously negotiated 3.5% pay increase. The firefighters now demand that parity be restored.

The firefighters believe that parity is the only fair way for the City to pay its safety forces. Moreover, the Union argues that parity would have been maintained except for the financial crisis faced by the City starting in 2007 - 2008. The Union also presented evidence that the Fire Medic bonus payment had been amended to make it equal to the police Fire Arms Proficiency bonus. That is, the Fire Medic bonus was reduced to maintain parity with the Fire Arms Proficiency bonus. In addition the Union also presented evidence that the City asked the firefighters to amend their contract language for newly hired employees to maintain parity with newly hired police officers. This Union argued that these two changes in the parties' labor agreement show that parity was a major consideration in the City's relationship with its safety forces. Finally, the

Union put evidence into the record that shows that all benefits between the police patrolmen and the firefighters are equal. These benefits include vacations, holidays, uniform allowances, and health care coverage, payments, etc. The Union believes that the concept of base rate parity is so ingrained in the respective contracts that it cannot be dismissed.

The City does not contest any of the information in the preceding paragraphs. Rather, the City argues that the Union made an agreement and that it now wishes to back out of that agreement. The City maintains that it lived up to its part of the agreement and did not reduce the staffing level in the fire department and that it expects the firefighters to live up to their part of the agreement.²

In a nutshell, the foregoing paragraph explains the difference that divides the parties. Some further explanation of the issue is needed, but the main question before the Fact Finder is when is a deal a deal; or conversely, when is a deal not a deal?

Issue: Article IV – Salary:

Union Position: The Union demands that three and one-half percent be added to the base pay of firefighters to recompense them for their acceptance of a modification of a previously negotiated raise. That is, they want parity with the police patrolmen on base wages.

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

² It must also be noted that the parties reached an agreement on a new contract and that agreement was overwhelmingly rejected by Local 1683 because it did not have base wage parity with the police officers as part of the agreement.

Discussion: Before a detailed discussion of the issue is given, a few facts should be included in the record. First, the Union had an expert examine the City's financial records and offer an opinion on the City's ability to pay the Union's demand. The result of that analysis was put into a report that was entered into the record. The report stated that the City's financial condition was recovering from the low point of the recession and that the City could afford to fund the Union's demand. The City did not quibble with this analysis. The City did claim that its financial condition was worse than it was in 2007 before the recession began, but the City agreed that it could afford to pay the Union's wage demand. The parties agreed that the cost of the demand was approximately \$80,000.00.

Without going into a long and unwarranted discussion of the City's finances because the City is not claiming an inability to pay, the Fact Finder has examined the financial records and agrees with the Union expert's report. Therefore, the Fact Finder finds that the City has the ability to pay the Union's demand. The question is not the ability to pay, but the willingness to pay.

The Union's strongest arguments for base pay parity are a) the historical record, and b) the fact that the firefighters contend that they were not given the same information as the police officers when deciding whether to accept a wage freeze to save positions within the Fire Department. The historical record proves that the City and its safety forces have a long history of parity bargaining. The record proves that the City asked the firefighters to change (reduce) the Fire Medic Bonus to maintain parity with the police patrolmen's Fire Arms Proficiency payment. The firefighters also changed the language

in their contract to allow the City to maintain base wage parity between newly hired patrolmen and firefighters.

With regard to the information argument, the firefighters stated that they were not offered the same deal (tradeoff) offered to the police officers. According to the testimony, the City told the firefighters that if they refused to accept a wage freeze, the roster of firefighters would be reduced by two positions. The police officers were told that the department's manpower would be reduced by one position if they refused to accept the wage freeze. The police department took a wage increase and an officer was laid off. However, later in the year a senior officer retired and the laid off officer was recalled. The net result was that the police department has one less position, but all of the officers still have jobs.

The firefighters argue that they would have accepted the same deal. A senior firefighter was scheduled to retire at the end of November 2009, and the Union stated that it would have accepted a layoff of one individual for a number of months with the same person being recalled a few months later. The Union stated that because the Department's staffing was reduced in 2008 that it could not accept the loss of two positions. The firefighters also stated that they understood that the workload of the remaining personnel would increase, but they were willing to take on more work to maintain base pay parity with the police officers.

The City rebutted this testimony by stating that during the campaign to pass the Safety Forces Levy in 2009, that it guaranteed the public that it would maintain its current staffing levels. The City contends that it made an agreement with the public and that it cannot renege on that deal. Therefore, the firefighters' willingness to absorb the

loss of one position and have the remaining officers pick up the slack is not an acceptable solution to the impasse according to the City's logic because it would change the implicit agreement that it has with the citizens of Bedford.

A final point has to be made on the manpower issue. The labor agreement between Local 1683 and the City specifies that each shift will be equally manned. However, at the current time the shifts are not manned equally as a result of the 2008 layoffs. The bargaining unit currently has twenty-five members. This means that one platoon has nine firefighters with a six man minimum staff. The other two shifts are scheduled with eight officers with a five man minimum staff. This agreement is an example of the parties' ability to work together to find solutions to the financial problems facing the City. However, it also shows that the Fire Department can safely operate with eight man platoons.

If two members of the Department were laid off, then there would be one seven-man platoon and two eight-man platoons. It is unclear what the minimum staffing would be for the seven-man platoon. However, it is clear that staffing levels would be unbalanced, and the seven-man platoon would have approximately twenty-three percent (23.0%) less manpower than the same platoon had prior to the 2008 reduction in force. Overall, the Department would have a fifteen percent (15.0%) fall in manpower. This level of staffing may be untenable and, at a minimum, overtime costs would have to increase.

Manning is a management right and the Fact Finder has no say or interest in the overall staffing of the Fire Department. The question before the Fact Finder is a question of base pay parity. However, the Union argues that it believed that the choice presented

to the firefighters would have lead to one seven-man platoon.³ The Union contends that if it had understood that it would only suffer the loss of one position, then it would have chosen to keep the previously negotiated pay increase because eight-man platoons had been proved to be a viable option for the union membership. However, the move to a seven-man platoon was a move into uncharted territory.

The firefighters decided that a loss of two members was untenable. That is, the firefighters found that the choice of a pay freeze or a two-man reduction in staffing was unworkable *from their point of view* (emphasis added). The City's negotiator stated that he did not remember stating that two positions were at stake. He stated in both the mediation and Fact Finding that he thought that the City was projecting the loss of one position as the quid-pro-quo for the Union accepting the previously negotiated 3.5% pay increase. In this instance, the marginal position makes a difference.

There is one final factor to be considered. The parties introduced Fact Finder Stanley Wiener's Report for the Police Department into the record. That report contains a recommendation that the police officers have a "Me Too" clause inserted into the contract. If the police contract does contain a "me too" clause, then the police officers have the ability to insure any benefit negotiated by any other City bargaining unit will be added to their contract. "Me Too" clauses almost always lead to parity being a major consideration when safety force contracts are negotiated.

The City objected to the inclusion of a "Me Too" clause into the police contract, and this Fact Finder is unsure if the clause found its way into the police contract.

³ The Union characterized this as a "Hobson's Choice." A Hobson's choice is a situation where there is no real choice involved at all. It is basically a take it or leave situation. The Union's position is that negotiations did not take place over the choice. The City presented a "take it or leave it" offer because of its financial problems.

However, at a minimum, the demand for a “me too” clause shows that the police officers are interested in preserving parity with other City bargaining units. That is, parity matters to the police officers as well as the firefighters.

The City’s contention that the firefighters made a decision and that they have to live with the results of that decision is an amazingly powerful argument. Collective Bargaining is based on the notion that each party protects its own interests and makes the best deal that it can. A deal is a deal. There are almost no exceptions to this rule. However, both parties must understand the deal. In this instance, the firefighters were negotiating with the City under the impression that the deal was a wage freeze as a way to save two jobs. The City believed that the deal that it was proposing was a wage freeze as the way for the firefighters to save one job. In a Department that has already undergone a reduction in force, that marginal position is vitally important.

The question is whether the deal was a wage freeze to save one job or two jobs. If the deal was a wage freeze for one job, then a deal is a deal and the firefighters have to live with the consequences of their actions. If the deal is two jobs for the wage freeze, which is different than the offer to the police officers, then the situation is different. The City never argued that it intended to offer different deals to the police and fire departments. Rather, the City’s representatives stated that they did not remember offering different deals to the different units.

The Union introduced its notes for the negotiations into the record. These notes show that the City gave the Union a choice between two positions and a wage freeze. The City’s representatives again stated that they did not remember this, i.e., they thought that one position was on the table. In the absence of any proof (other than memory) that

the Union's documentary evidence is false, the Fact Finder must conclude that the Union's position on this matter is correct.

The Fact Finder is uncomfortable with finding that the firefighters should have base pay parity with the police officers. Collective bargaining requires hard decisions and compromises in order to reach a final agreement; and the parties should have to live with the consequences of their decisions. Some bad decisions are codified in labor contracts, but the next round of negotiations is the place to remedy any problems with a contract. If the record showed that the City intended to cut two positions in the Fire Department or if the firefighters understood that only one position was at stake, then the Fact Finder would recommend the City's position on this issue. However, in light of the difference in the parties' perceptions, the long history of parity between the two bargaining units, and the emphasis put on parity by both units as exemplified by the police union attempting to add a "Me Too" clause to its contract, the Fact Finder believes parity, in this instance base pay parity, should be maintained at this time.⁴

It seems clear that the current City Administration does not wish to maintain strict parity between its bargaining units. If that is the situation, then that position should be made clear to both units in future negotiations, and parity should become less important over time. Parenthetically, it should be noted that this Fact Finder does not believe a reliance on parity leads to either unit's ability to negotiate contracts that fully meets the needs of its membership.

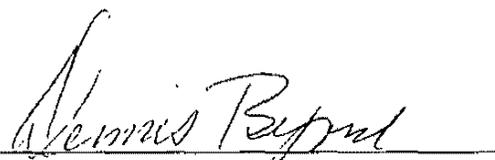
⁴ However, the Fact Finder recognizes that this may mean that if a position is open in the Department it may not be filled and/or the next hire for the safety forces may be filled in the Police Department.

The Fact Finder is recommending that the firefighters base pay be increased by three and one-half (3.5%) over the life of the new labor agreement. The recommendation is that the negotiated wage rates should increase by an extra 1.15% each year. This is not a new or expanded benefit, and it is not an extra wage increment that should be covered by any "Me Too" language in any other contract. It is recognition of the fact that the current wage bargain was reached under imperfect and asymmetric information.

Finding of Fact: The evidence in the record shows that the parties had different understandings about the terms of the City's proposed tradeoff between a pay freeze and job security.

Proposed Language: The parties shall amend their agreement to show an increase of one and fifteen hundredths (1.15%) percent per year of the proposed agreement as a catch-up wage increase to maintain parity between the police contract and the fire contract.

Signed this 2nd day of December 2011, at Munroe Falls, Ohio.

A handwritten signature in cursive script, reading "Dennis M. Byrne", is written over a horizontal line.

Dennis M. Byrne, Fact Finder



Dennis M. Byrne

272 Cheltenham Lane
Munroe Falls, OH 44262
Phone/Fax: (330) 630-3363
Email: DByrne@uakron.edu

December 2, 2011

Mr. Donald Collins Esq.
General Counsel
State Employment Relations Board
65 E. State Street, 12th Floor
Columbus, Ohio 43215-4213

Re: Bedford v. IAFF Local 1683: Serb # 10-MED-09-1113

Dear Mr. Collins:

I have enclosed the report in the above referenced matter. As you will read, I found for the Union on the only issue in dispute. Hopefully, the report is self-explanatory. However, if you have any questions, please contact me.

Have a safe and happy holiday season.

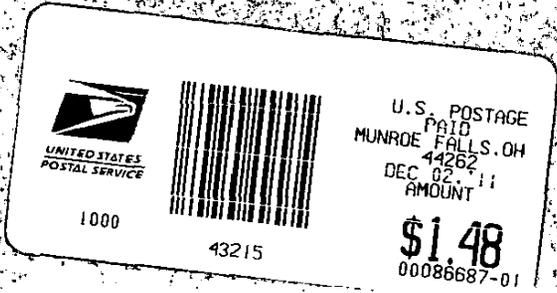
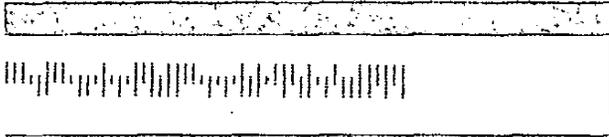
Sincerely,

Dennis M. Byrne
Arbitrator

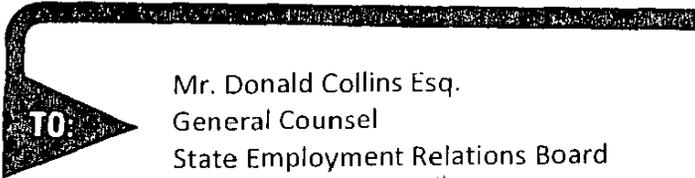
Encl.

2011 DEC - 5 12:33

STATE EMPLOYMENT
RELATIONS BOARD



DMB
Dennis M. Byrne, Ph.D.
Arbitrator
272 Cheltenham Lane
Munroe Falls, OH 44262



Mr. Donald Collins Esq.
General Counsel
State Employment Relations Board
65 E. State Street, 12th Floor
Columbus, Ohio 43215-4213