

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

August 29, 2011

In the Matter of:

City of Brooklyn)
)
 and)
)
 Brooklyn Firefighters,)
 International Association of Fire Fighters,)
 Local 1145)

Case No. 10-MED-09-1115

APPEARANCES

For the City:

Gary C. Johnson, Attorney
Scott Claussen, Law Director

For the Union:

Susannah Muskovitz, Attorney
Jeff Lee, President
Jason Black, Vice President
Gary Husak, Executive Board

Fact-Finder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Brooklyn and the Brooklyn Firefighters, IAFF Local 1145. The city has a population of 11,169 and occupies 4.3 square miles. It has one fire station, which provides fire and rescue service to the entire city. The union represents the full-time, uniformed members of the Fire Department excluding the Chief.

In the fall of 2010, the city and the union began negotiations for a successor agreement to the one set to expire on December 31, 2010. The parties engaged in negotiations on a number occasions and reached agreement on many of the issues. However, when they could not reach an overall agreement, the fact-finding process was invoked.

The Fact-Finder was notified of his appointment on June 22, 2011. The fact-finding hearing began on July 21, 2011, and continued on August 4, 2011. Despite the efforts of the Fact-Finder to reach a mediated settlement, the parties opted to have the Fact-Finder issue recommendations for a settlement based on his discussions with them.

On August 24, 2011, the parties entered into a Mutually Agreed Dispute Resolution Procedure pursuant to Section 4117.14 of the Ohio Revised Code. The MADD allows the parties 15 days to reject the Fact-Finder's recommendations. All of the other requirements of Section 41167-9-05 regarding the fact-finding process remain in effect.

The recommendations of the Fact-Finder are based upon the criteria set forth in OAC 4117-9-05(K). They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;

(c) 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 standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted ten issues to the Fact Finder. In order to expedite the resolution of the dispute, they agreed that the Fact-Finder should present his recommendations for each issue without discussing their positions or providing a rationale for his recommendations.

1) Article XVIII – Duty Hours, Section 18.04 – Scheduled Time-Off –

The current contract provides that no more than three employees on a shift are allowed off on vacation, comp time, Kelly day, or holiday. It also states that no less than one employee shall be scheduled off on all shifts. The union wishes to delete the sentence indicating that no less than one employee shall be scheduled off on all shifts. The city wishes to retain it.

Recommendation - The Fact-Finder recommends that the requirement that no less than one employee be scheduled off on each shift be retained.

The Fact-Finder offers the following contract language:

Each employee shall select a Kelly day each cycle when an employee is scheduled to work in excess of eight (8) tours of duty. Kelly days shall be selected by rank and seniority in the initial cycle on an annual basis. The same tour in each succeeding cycle shall be the employee's Kelly day. No more than three (3) employees shall be entitled to be scheduled off at any one (1) shift on vacation, comp time, Kelly day or holiday. No less than one (1) employee shall be scheduled off on all shifts at all times.

2) Article XX - Holidays, Section 20.10 – Paid Holidays – The current contract lists 12 holidays and specifies that each is equivalent to a 24-hour tour of duty. The city proposes reducing all of the holidays to 16 hours. The union opposes the city’s demand.

Recommendation - The Fact-Finder recommends that two holidays be eliminated but that holidays remain equivalent to a 24-hour tour of duty.

The Fact-Finder offers the following contract language:

All full-time employees shall receive the following paid holidays:

- | | |
|------------------|----------------------------|
| Veteran's Day | President’s Day |
| New Year's Day | Columbus Day |
| Good Friday | Thanksgiving Day |
| Memorial Day | Day after Thanksgiving |
| Independence Day | Christmas Day |
| Labor Day | Martin Luther King Jr. Day |

A holiday is equivalent to one (1), twenty-four (24) hour tour of duty for those employees of the Fire Department whose tour of duty is equivalent to twenty-four (24) hours. Effective January 1, 2012, Good Friday and the Day after Thanksgiving shall be eliminated as paid holidays. When a holiday arises, each employee shall be credited with twenty-four (24) hours of holiday time.

3) Article XX – Holidays, Section 20.03(a) – Scheduled Work on Holiday – The current contract requires the city to pay employees who are scheduled to work on Christmas Eve, Christmas, or the day after Christmas time and one-half for all

hours actually worked. The city wishes to eliminate Christmas Eve and the day after Christmas. The union proposes adding six holidays to the list of days where employees must be paid time and one-half when they are scheduled to work.

Recommendation - The Fact-Finder recommends that Christmas Eve and the day after Christmas be dropped from the requirement for time and one-half for employees who are scheduled to work.

The Fact-Finder offers the following contract language:

Any employee who is scheduled to work and actually works on Christmas Day shall be paid for all actual hours worked at the rate of time and one-half (1 ½). For purposes of this Article, a Holiday is defined as the tour of duty commencing at 08:00 hours and ending at 08:00 hours the following day.

4) Article XX – Holidays, Section 20.03(b) – Mandated Holiday

Work – The current contract requires the city to pay double time to employees who are forced to stay over or are called in on Christmas Eve, Christmas, or the day after Christmas. The city wishes to eliminate Christmas Eve and the day after Christmas from the requirement for double time. The union wishes to maintain the current contract language.

Recommendation - The Fact-Finder recommends that Christmas Eve and the day after Christmas be dropped from the requirement for double time for employees who are called in or are forced to work over.

The Fact-Finder offers the following contract language:

Employees who are forced to work on or stay over or called in to work on Christmas Day shall be paid double time.

5) Article XX – Holidays, Section 20.04 – Holiday Bank – The current contract allows employees to bank up to 240 hours of unused holiday time in a holiday time bank to be paid to retiring employees at their 40-hour rate of pay. The city wishes to delete this provision. The union seeks to retain the holiday bank and to add language indicating that the holiday bank can be used only after the employee has made it clear that it is his last year of employment and to specify that an employee can enter the DROP program and remain in the employ of the city.

Recommendation - The Fact-Finder recommends that the holiday bank be retained and that the addition to the language sought by the union be included in the contract.

The Fact-Finder offers the following contract language:

An employee shall be allowed to bank up to two hundred forty (240) hours of unused holiday time in a holiday time bank. Any employee who quits or is terminated shall receive payment for the bank time at the employee's current straight time rate. Upon service retirement or disability retirement, employees shall receive payment for the banked time at the employee's current regular rate of pay at a forty (40) hour rate. This bank shall be used one time in the career of the employee after he has declared to the employer that it is his last year. Last year shall not be interpreted as the employee will retire. The employee may enter the "DROP" program and remain in the employment of the employer such as the "DROP" rules apply.

6) Article XX – Holidays, Section 20.05 –Personal Leave – The current contract provides for two 24-hour tours of personal leave each year. The city demands the elimination of personal leave. The union wishes to retain personal leave.

Recommendation - The Fact-Finder recommends that personal leave be maintained with the stipulation that there will be no personal leave during 2012.

The Fact-Finder recommends the following contract language:

Employees shall be allowed two (2) twenty-hour (24) hour tours of personal leave per year. Personal leave must be utilized by the employee in that calendar year or shall be considered waived. There will be no personal days in the year 2012 only.

7) Article XXII - Sick Leave, Section 22.08 - Pay-Out at Retirement -

The current contract specifies that employees are entitled to a pay-out upon retirement of one-half of their accumulated sick leave at their current daily rate of pay with no cap on the number of hours. The city proposes that the pay-out rate be reduced to one-third of the accumulated hours and subject to a cap of 900 hours. The union rejects the city's demands. The city also committed that, if the language is changed, it would not apply until three months after the effective date of the contract so that current employees who retire within three months will not be affected.

Recommendation - Given the positions of the parties and the commitment for a three-month grace period, the Fact-Finder recommends that the pay-out rate be set at one-third and be capped at 1165 hours.

The Fact-Finder offers the following contract language:

Upon immediate retirement of a full-time employee who has not less than ten (10) years of continuous service with the Employer, and who has qualified for retirement benefits under the Police and Firemen's Pension Fund, such employee shall be entitled to receive a cash payment equal to his daily rate of pay at the time of retirement multiplied by one-third (1/3) the total number of accumulated but unused sick days earned by the employee as certified by the Finance Director, but not to exceed one thousand one hundred sixty five (1165) total hours paid.

8) Article XXIX – Uniform Allowance, Section 29.03 – Annual

Allowance – The current contract includes an annual uniform allowance of \$900 for Firefighters and \$950 for Lieutenants. The city proposes reducing the uniform allowance

to \$450 for Firefighters and \$475 for Lieutenants and suspending the payment for 2011 and 2012. The union opposes both demands.

Recommendation - The Fact-Finder recommends that the amount of the allowance be maintained but that its payment be suspended for 2012.

The Fact-Finder recommends the following contract language:

Effective January 1, 2011, all non-probationary Fire Fighters shall receive an annual uniform allowance in the amount of nine hundred (\$900.00) dollars and Lieutenants shall receive nine hundred fifty (\$950.00) dollars. Uniform allowance will be pro-rated in the year of retirement. Such allowance shall be paid in two (2) installments with a separate check during the first pay period in January and July of each year. There shall be no uniform allowance paid or owing in year 2012.

9) Side letter – Utilization of Part-Time Firefighter/Paramedics and Maintenance of Station – January 1, 2008 – The side letter dated January 1, 2008, permits the use of part-time Firefighter/Paramedics on 12-hour shifts to meet minimum staffing. It requires time that is not filled by part-time employees during “pick day” be offered to full-time members on an overtime basis and prohibits the use of more than one part-time Firefighter/Paramedic at any one time. The side letter was replaced by a side letter dated March 3, 2010. The city demands the elimination of the letter. The union proposes that the letter remain in the contract.

Recommendation - The Fact-Finder recommends that this side letter be deleted from the contract.

10) Side letter – Utilization of Part-Time Firefighter/Paramedics – March 3, 2010 – The side letter dated March 3, 2010, permits the use of part-time

Firefighter/Paramedics on 12-hour shifts to meet minimum manning. It prohibits the use of more than one part-time Firefighter/Paramedic at any one time and requires five full-time personnel to be on duty at all times. The letter is to be terminated if the city reduces minimum manning below six and the letter dated January 1, 2008 is to be reinstated.

The city proposes a number of changes retroactive to January 1, 2010. First, it wants to make this letter permanent and delete the January 1, 2008, letter. Second, the city wishes to increase the number of part-time Firefighter/Paramedics who can be on duty from one to two. Third, it seeks to reduce the number of full-time personnel who must be on duty from five to four. Fourth, the city demands the elimination of the provision calling for the return to the January 1, 2008, side letter if it reduces minimum manning below six.

The union offers a different proposal regarding the side letter. First, it opposes the changes sought by the city. Second, the union seeks to add a provision that no more than 16 part-timers can be employed at any time and that no part-timer can be employed more than 36 hours per week.

Recommendation - The Fact-Finder recommends that a modified version of the March 3, 2010, letter replace the January 1, 2008, letter; that the limit on the number of part-timers on duty remain at one; that the requirement for five full-timers to be on duty be retained; that the requirement that the letter dated January 1, 2008, be reinstated should the city reduce minimum manning below six be eliminated; and that the union's proposed limit on the number of part-timers and their hours be adopted.

The Fact-Finder offers the following contract language:

Title: Letter of Understanding
Subject: Utilization of Part-Time Firefighters/Paramedics
Date: January 1, 2011

This is a letter of understanding between the City of Brooklyn and Brooklyn Fire Fighters IAFF Local #1145 concerning the utilization of part-time firefighter/paramedics.

All "available open time" that needs to be filled in order to satisfy the minimum manning requirement shall be offered to part-time firefighter/paramedics first. Available time that is not filled by part-time personnel shall then be filled by full-time members on overtime. Part-time firefighter/paramedics will not be eligible for "backfill" time unless a departmental recall is needed.

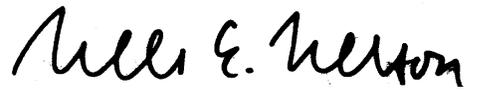
No more than one (1) part-time firefighter/paramedic shall be on duty at any one time. At no time shall less than five (5) full-time personnel be on duty.

Part-time personnel who are absent from monthly group drill without prior authorization shall lose the privilege for picking scheduled available open time for the following month, but shall be eligible to work any other available open time as it occurs.

Part-time personnel picking scheduled available time shall pick in 12 hour shifts.

There shall be no more than 16 part-timers employed at any time. No part-timer may be employed more than 36 hours per week.

11) Tentative Agreements – All of the tentative agreements reached by the parties are incorporated in this report.



Nels E. Nelson
Fact Finder

August 29, 2011
Russell Township
Geauga County, Ohio