

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

IN THE MATTER OF FACT-FINDING BETWEEN

THE CITY OF GREEN

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 2964

FINDINGS AND RECOMMENDATIONS

SERB CASE NO: 10-MED-09-1232

WILLIAM C. BINNING PH.D.
FACT-FINDER

For City of Green

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The undersigned was appointed Fact-finder by the State Employment Relations Board (SERB) pursuant to Section 4117.14 of the Ohio Revised Code.

The first meetings of the parties with the Fact-finder were scheduled for mediation on May 2, 2011 and June 24, 2011. Those mediation sessions lasted all day both days. A number of issues were settled and are part of the tentative agreements of this contract.

HEARING ON JUNE 30, 2011

The parties met at 10:00 A.M. and worked continuously until 6:30 p.m. when it was determined that the remaining issues could not be addressed by the parties because there was insufficient time, another hearing was held on July 21 to complete the review of the outstanding issues. Those issues include health care and Hours of Work.

The following issues remained unresolved after mediation:

1. Grievance Arbitration
2. Layoff and Recall
3. Negotiation Procedure
4. Application of Civil Service Rules
5. Vacation
6. Holiday
7. Sick Leave
8. Wages
9. Longevity
10. Health Care
11. Hours of Work – which has been divided by the parties into 4 sub issues

CRITERIA

In compliance with the Ohio Revised Code Section 4117.14 and Ohio Administrative Code Rule 4117-9-05 (j) and 4117-9-05 (k), the Fact-finder considered the following criteria in making the findings and recommendations contained in this report:

1. Past Collective Bargaining 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 the 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, 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;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

Financial Condition of the City of Green

It is the custom of this Fact-finder to divide the non-economic issues from the economic issues. Prior to the introduction of the economic issues the parties introduced testimony and evidence on the financial condition of the City of Green. The Union had Mary Schultz CPA CFF of Sargent and Associates, give a report based on the cash balances of the City. The City offered the testimony of Larry Rush, the Finance Director of the City of Green, to report on the fiscal condition of the City. There were few disagreements between the two experts on the fiscal condition of the City. There were some differences in the methods used for their analysis.

The City of Green is in very good condition financially and carries a very significant cash balance forward at the end of the year. However, there are challenges ahead brought on by the new state budget with cuts in the local government fund and the eventual loss of the estate tax.

The fact that Green has a very good cash reserve does not entitle the Fire Fighters to expect that they should be granted their every wish.

By the same token, the City cannot argue inability to pay and does have a burden to argue that financial circumstances support their proposals that request concessions from the Fire Fighters.

The City seems unwilling to give credit to the fact that the Fire Department's ambulance service generates substantial revenue.

ISSUES AND RECOMMENDATIONS

GRIEVANCE ARBITRATION PROCEDURE

CITY PROPOSAL

The City proposes to delete existing language which offers a panel of seven (7) respected northeast Ohio arbitrators. The City infers that the panel, which was agreed to in a previous contract, has a bias towards the union and proposes to scrap the list and go to FMCS for a panel of fifteen(15).

UNION PROPOSAL

The Union prefers to maintain existing language and restrict the selection of an arbitrator to the list agreed to by the City and the Union in the previous CBA.

DISCUSSION AND PROPOSAL

This arbitrator recognizes the standing of the existing list of arbitrators named below, but also recognizes that both parties need to believe that they will have a fair chance for their case to be heard at an arbitration hearing. Since the City is concerned about the alleged bias of this limited list, this Fact-finder proposes the following language: (In fact, the Fact-finder took the unusual step of offering a bench recommendation on this issue.)

Section 1 Selecting Arbitrator

No later than ten (10) days after a notice to arbitrate is given, representatives of the City and the Local shall meet and mutually agree upon an arbitrator selected from the following panel of seven (7) previously agreed upon arbitrators who are located in northeastern Ohio:

1. Patricia Thomas Bittel
2. Paul F. Gerhart
3. Linda Dileone Klein
4. Alan Miles Ruben
5. Susan G. Ruben
6. Robert G. Stein
7. Gregory Van Pelt

Section 2.

Within the above mentioned ten (10) days, one of the parties may reject all of the above named arbitrators. If that occurs, the parties will immediately contact FMCS and request a panel of arbitrators from FMCS and after receipt of a panel of seven (7) will select an arbitrator within ten (10) days by alternate strike. All costs of this selection process, which are minimal, shall be split between the parties.

All other language in this Article is recommended for retention. Although FMCS is recommended to provide the list, the Contract states that the American Arbitration rules are recommended to be followed, that language should be retained because AAA requires a shorter time period for an arbitration decision than FMCS rules require. In discipline cases, the parties should make every effort to reach a final and binding decision by an arbitrator. There is a growing concern at FMCS about delays in the Arbitration process, especially if the grievant is discharged.

LAYOFF AND RECALL

THE CITY POSITION

The Employer is proposing a new Article on Layoff and Recall for this contract. It proposes that "All reductions in force shall be conducted in accordance with the Ohio Revised Code and the local rules and regulations of the City of Green Municipal Civil Service Commission. Appeals of such action shall be heard by the City of Green Municipal Service Commission and are not subject to the parties' grievance and arbitration procedure."

The City asserts that this insures respect for the rights of all parties.

THE UNION POSITION

The Union offers either existing language or proposes quite extensive new language. They offer language that explicitly supersedes explicit sections of the Ohio Revised Code. They offer language that specifies the causes of a layoff.

DISCUSSION AND RECOMMENDATION

The state statutes, preferred by the City, do seem to give the City more latitude on layoffs and job abolishment. The City's language explicitly rules out any layoff and recall dispute from going to arbitration. The City maintains that its language eliminates the problems of legal issues arising in Ohio between current Ohio state statute and language in the collective bargaining agreement as reflected by the Batavia case. However, in Batavia as Judge Douglas wrote for the Ohio Supreme Court "Accordingly, we hold that, in order to negate statutory rights of public employees, a collective bargaining agreement must use language with such specificity as to explicitly demonstrate that the intent of the parties was to preempt statutory rights" (City Binder Tab 2 p. 000014). This Fact-finder believes the Union's proposed language on layoff and recall meets Judge Douglas' test. The Union entered into the record a Conciliation Award that addressed a similar issue in an Akron Police Contract that focused on "lack of work or funds" in the layoff language (Union Binder, Tab 15).

The Union's new language is recommended. Offered below:

Section 1. It is the intent of the parties, through this article, to establish an objective procedure by which a reduction in force may be accomplished and explicitly supersede the provisions of ORC 124.321 to 124.328, and 124.37, and all local rules and regulations of the City of Green Municipal Civil Service Commission which expressly address order of layoff and displacement, layoff procedures, and reinstatement rights.

Section 2 Notice. When it becomes necessary in the Green Fire Division, through lack of work or funds, or for causes other than disciplinary reasons, to have a reduction in force (i.e., layoff or job abolishment), the Employer shall provide fourteen (14) days advance notice of a layoff or abolishment to those employees affected by the reduction. Employees shall notify the Employer of their intention to exercise their displacement rights within five (5) days after receiving notice of layoff. Upon the request of the Union the employer agrees to discuss the impact of the reduction on bargaining unit employees and/or alternatives to layoff/abolishment.

Section 3 Procedure . When a reduction in force occurs, the Employer shall first determine the classification/rank (i.e. firefighter/medic, lieutenant, captain, etc.) where the reduction is to occur. In the event that there is a layoff from or abolishment involving a position within the classification/rank above firefighter/medic the incumbent with the least amount of classification seniority within the affected classification/rank shall be reduced to the next lowest classification/rank and shall displace the member with the least amount of rank/classification in the rank that he is bumping into. Classification/rank is calculated in

accordance with Article ____, Seniority. Displacement shall continue in this manner until such time as the member with the least amount of classification/rank seniority from the classification/rank of Lieutenant is displaced. A member who is displaced from classification/rank of Lieutenant shall be reduced in rank to the rank of Firefighter/Medic and afforded displacement rights, if possible, based upon his Division seniority so that the Firefighter/Medic with the least amount of Division seniority is subject to reduction. In the event that the layoff or job abolishment is conducted within the classification/rank of Firefighter/Medic, the member with the least amount of Division seniority shall be first subject to reduction.

Section 4 Recall Rights. The names of bargaining unit members who have been laid off under the provisions of this Article shall be placed on an appropriate "recall list" in order of their classification/rank seniority and Division seniority for a period not to exceed three (3) years, provided that the individuals remain eligible for reinstatement. Whenever discontinued positions are re-established or other cause for layoff is terminated and a request is made for certification of those eligible, former employees of the department who have been laid off and whose names appear on the "recall list" shall be the first to receive appointments. It shall be the responsibility of the employee to keep the Employer advised, through written notice, of his current and accurate mailing address.

Section 5 Training/ Certification. It shall be the responsibility of the laid off personnel to obtain training and/or classes necessary to maintain their certification. However, while eligible for recall, the Employer shall provide laid off personnel the opportunity to attend training and/or classes put on by the employer so that the laid off personnel may maintain their certification.

Section 6 Notice of Recall. Affected employees shall be notified in writing by the Employer of their eligibility for reinstatement upon the Employer determining to recall such employees. Written notice shall be given by certified mail. Affected employees shall have fourteen (14) calendar days from date of receipt within which to notify the Employer, in writing, of their acceptance or rejection of the offer of reinstatement. Failure of the employee to notify the Employer of his decision shall be considered a rejection of the offer of reinstatement and forfeiture of recall rights.

Section 7 Promotional Recall Rights. In the event that a promoted position in the Green Fire Division is abolished and made unnecessary, and it is found necessary to re-establish the position within three (3) years from the date of abolishment, the employee who previously held that position shall be entitled to return to the position. The names of individuals holding promoted positions in the classified service who have been demoted shall be placed on an appropriate "recall list" in order of their original date of promotion.

Section 8 Waiver of Displacement Rights. An employee who does not exercise the option to displace under this Article shall be entitled to reinstatement or reemployment in the classification from which the employee was displaced or laid off.

Section 9 Probation and Reinstatement. Any employee reinstated or reemployed under this Article shall not serve a probationary period upon reinstatement or reemployment except that an employee laid off during an original or promotional probationary period shall continue their probationary period.

ARTICLE 32 NEGOTIATING PROCEDURE

CITY POSITION

The City proposes to strike in Article 32 NEGOTIATING PROCEDURE under Section 3 Proposals

The last sentence "At the first bargaining meeting, the parties shall exchange initial proposals."

The City argues this language is not found in comparable jurisdictions and is an undue hardship on the City and reduces their flexibility since it requires "a kitchen sink approach".

UNION POSITION

The Union argues that they have only recently reached this agreed upon language with the City. They placed on the record the signed agreement July 9, 2008 (Union Binder, Tab 16).

DISCUSSION AND RECOMMENDATION

This Fact-finder does not think this is an unusual negotiating procedure. It is often done in practice by insistence of the parties and it is occasionally embedded in a contract. This Fact-finder sees no reason for it to be removed.

The Union position is recommended. Current Contract language.

APPLICATION OF CIVIL SERVICE RULES

CITY POSITION

The City is offering a new provision that addresses the application of the Ohio Revised Code to language in this contract. The City proposes "that no section of the civil service laws contained in the Ohio Revised Code Sections 9.44; 124.01 through 124.56 nor any local

ordinance of the City of Green nor Rules and Regulations of the Civil Service Commission of the City of Green, pertaining to wages, hours, terms and other conditions of employment shall apply to bargaining unit employees where such matter has been addressed by this agreement.

The City proposes to exempt Sections 124.388 and 124.57 ORC. See above Layoff and Recall.

The City offers the Batavia decisions and a number of arbitration awards in Ohio, where there has been ambiguity and conflict between the CBA and the provisions of the ORC.

UNION POSITION

The Union argues that over eight months of bargaining they have never bargained over the “Application of Civil Service Rules” nor discussed the application or lack of ORC provisions of the issues mentioned by the City, except for the issue of Layoff and Recall. The Union states that “Neither the City nor a neutral can unilaterally strip away the members’ rights under State law...” (Green Firefighters, Position Statement p.11)

DISCUSSION AND AWARD

The City is right in raising concern about the Application of Civil Service Law in relation to its Collective Bargaining Agreement. The evidence presented of recent Ohio Court decisions and arbitration awards, some very costly, shows evidence that this issue is ripening. However, the Fact-finder is concerned about the Union’s claim of a lack of the discussion of this issue with the exception of the Layoff clause. The Union’s proposed and recommended language on Layoff and Recall demonstrates they are also familiar and concerned with this emerging issue in Ohio. Given the lack of certainty over collective bargaining in Ohio at this time, and the Union’s claim of a lack of bargaining over this complex issue, for now, this Fact finder is reluctant to support the City’s broad statement with such significant legal implications.

The Fact-finder recommends the Union position.

ARTICLE 13 VACATION LEAVE

CITY POSITION

The City has proposed a number of changes in the vacation language. It proposes to do away with the top level of vacation leave of six weeks after twenty years of service. The City focuses on internal comparables (See City Binder p. 00091). The City also proposes a number of procedural changes to expedite the selection process. The Employer has also proposed to “enhance its ability to manage overtime and deal with vacation requests so that it is not unnecessarily forced into overtime based on simultaneous EDO and vacation requirements” (Employer’s Position Statement June 29, 2011 p. 6).

UNION POSITION

The Union supports current contract language. They maintain, based on their offered comparables, that “If the City’s proposal were recommended, the Green Firefighters would receive the lowest amount of vacation leave among all of their comparables” (Green Firefighters Position Statement p. 12). For Comparables (Firefighters Binder Tab 18).

DISCUSSION AND RECOMMENDATION

The Fact-finder is not persuaded that there is evidence supporting a concession on amount of earned vacation. The City did make a case to change the selection procedure.

The following language on Article 13 Vacation leave is recommended. Only Sections where contract language changes by the City are proposed are addressed below. Otherwise Current Contract language is recommended.

Section 1 Leave Schedule -- Current Contract language

Section 4 Leave Selection

(b) Selection Deadlines *The vacation selection sheet will be forwarded to the shift commander on or before October 15 of each year. The shift commander is responsible for coordinating the selection process affording employees adequate time to make their selection, and if needed, preventing employees from delaying the selection process.*

(1) *Employees may be required by the shift commander to make their primary selection within seventy-two (72) hours of being eligible for selection.*

(2) *Employees may be required by the shift commander to make both their secondary and final selections within twenty-four (24) hours of being eligible for*

selection.

(3) In order for the employee's selection to be honored by the City, the employee is required to record the date and time he/she made his/her selection on the on the selection form AND inform the shift commander in a timely manner that he/she has made his/her selection.

Extensions of the selection time periods are at the discretion of the shift commander. The shift commander will make every effort to contact employees that are off on extended leave to advise them of the need to make their selection, but it is at the sole discretion of the shift commander if the process will be delayed to accommodate an employee. Failure to comply with the aforementioned time-lines will result in forfeiture of selection. The vacation sign-up sheet, which shall include the Primary, Secondary and Final selections, will be collected by the Fire Chief on November 20. The Fire Chief will post the watch schedule for the forthcoming year by December 5.

Continued Section 4: Leave Selection

(c) Primary Selection Current contract language.

Section 5 Approval of Leave after Annual Scheduling Period. On January 1, and from that date forward, employees are required to submit a request for leave form to their shift commander and will be awarded the leave on a first come- first serve basis. When leave is simultaneously submitted, the Shift Commander will apply *division* seniority.

(please note the Fact-finder is trying to put the contract sections in proper numerical order. The ordering sequence seems logical; however for some reason in the current contract Section 6 precedes Section 5)

Section 6 Cancellation of Leave

(a) Current contract language

(b) Current contract language

HOLIDAY LEAVE ARTICLE 14

CITY POSITION

The Employer has proposed to reduce the amount of holiday leave for response employees from 24 hours to 18 hours. The City argues that the response employees receive a disproportionate amount of vacation time. The City also requests that Holiday time sold back to the City be prorated (reduced) taking into account the pension costs.

UNION POSITION

The Union objects to the City's proposals on vacation. It supports current contract language except that it proposes language to make the members sellback/cash out holiday leave pensionable.

DISCUSSION AND RECOMMENDATION

There is no question the Holiday benefit is very generous. It is a wonder they do not get a Holiday for Ground Hog day. However, the City has not made a sufficient case for concessions on these benefits gained in the past at the bargaining table.

Furthermore, this is part of the employees' total compensation and should be pensionable. The Union needs to recognize that this becomes an ongoing and increasing cost to the City over time, and will be taken into consideration by this Fact-finder in considering other financial issues.

The Fact-finder recommends the Union's position of retaining Current Contract language For Sections 1 through 7 of Article 14 Holiday Leave and the addition of Union proposed

Section 8 Payment for Holiday Leave Pensionable Payment for Holiday leave made by the City to the employee in the year-end leave sale, as set forth under Article 24 Section 3 (Miscellaneous –Leave Sale) of this agreement, shall be used in the employee's pension/benefit calculation, per Ohio Administrative Code 742-3-02 (C) (1) (b).

ARTICLE 16 SICK LEAVE

CITY POSITION

The Employer makes numerous proposals in the Sick leave language some are procedural and many are proposed concessions. “The Employer has proposed language that brings the Union’s sick leave accumulation in line with other City employees in terms of percentage of hours worked and reflects the Employer’s proposed fifty-three (53) hour workweek” (City, Position on Outstanding Issues page 7). Also “The Employer’s proposal increases the maximum amount of sick leave that response shift employees can cash out upon separation to reflect the Employer’s proposed increase in average weekly hours worked” (City Position on Outstanding Issues page 7). Also the Employer proposes to limit the incentive leave for those employees who have used “...not more than one (1) shift of sick leave, excluding sick leave utilized for work-related illness/injuries on an initial BWC approved claim” (City Position on Outstanding Issues page 7).

UNION POSITION

The Union opposes virtually all of the City’s proposed language changes on Sick Leave characterizing them as “concessionary” and supports existing Contract language with few exceptions. As to Section 12, the Union proposes language clarifying that sick leave utilized for work-related illness/injury will not count against an employee for determining sick leave incentive benefits (Green Firefighters, Position Statement pp. 15-16 and in Union Binder Exhibit 23).

DISCUSSION AND RECOMMENDATIONS

First of all, the positions of the City on Sick Leave are somewhat complicated by the fact that they are based on their proposed 53 hour workweek (See City above and City Position on Outstanding Issues p.7). This Fact-finder is not recommending any change in the workweek neither the City’s proposed fifty-three (53) hour workweek , nor the Union’s proposed (50) hour workweek. Since there are such extensive proposed language changes by the City and some proposals by the Union each change will be addressed individually by Section.

Recommendation

Section 1 Requirements for Use: current contract language

Section 2 Accrual

- (a) Current contract language
- (b) Current contract language
- (c) Current contract language
- (d) When an employee is moved from days to response or response to days, he shall be credited with his existing accrued sick leave balance in accordance with Article __ Shift Bidding/Time Conversion Section 4 C.

Section 10 – old Section 11 Separation from Employment

- (a) Current contract language
- (b) In the event of the death of any employee, the employee’s estate shall be entitled to receive the same benefit as if the employee retired on the date of the death.

Section 11 old Section 12 Incentive Personal Leave

- (a) Full time employees that have more than one (1) year of service as of January 1 and have used not more than one (1) shift of sick leave during the previous calendar year will be eligible to receive one (1) shift off as “personal leave”.
- (b) Employees may use the personal leave after February 15, at a mutually agreeable time during the year.
- (c) This day of personal leave can be used for any reason and must be pre-approved by the Fire Chief.
- (d) Personal leave will be counted as hours worked for the purposes of determining overtime pay for the pay period.
- (e) No Penalty for Utilization of Sick Leave for Work Related Illness/Injury Sick leave utilized for work-related illness/injury on an initial BWC approved claim shall not be counted against full-time employees for purposes of determining the employee’s entitlement to sick leave incentive benefits under this section.

WAGES ARTICLE 22

CITY POSITION

The City is proposing a lump sum payment of \$600 in 2011, which would not become part of the base and then 1.5% in 2012 and a 1.5% in 2013 and argues that “...the Employer’s proposal to increase the average hourly work week to fifty-three (53) hours but still pay employees the fifty-two (52) hour results in one and nine-tenths (1.9%) wage increase in the first year “ (City, Position Statement on Outstanding Issues p.8). The City maintains this is an overall package of ten and two tenths percent (10.2%) over 2010 compensation levels.

The City is also proposing a two-tier pay for new hires.

UNION POSITION

The Union is asking for 3% Effective January 1, 2011

3% Effective January 1, 2012

3% Effective January 1, 2013

The Union offers comparables to support its request and draws attention to the increase in the call volume for Green Fire Fighters. The Union gives attention to the very large carryover balance of the City of Green's budget. They rejected the two-tier pay at the hearing arguing that Green would simply be training Fire Fighters for other political subdivisions. This is a common argument against two-tier pay rates. Two-tiers are now being adopted in private sector union contracts.

DISCUSSION AND RECOMMENDATION

The City's view that the 53 hour work week is a pay raise will not be taken into account since that proposed work week is not supported by this Fact-finder.

In their previous contract, the Union received a generous raise of 4% a year based on the recommendation of Fact-finder Gregory Van Pelt who wrote at the time "...the evidence does indicate that Green's Firefighters are marginally below market wage rates in the Akron-Canton metropolitan area.." (See SERB Case No 08-MED-01-0011 p. 9). That was in 2008. There are very few workers, if any, who received 4% wage increases a year over the past three years. Today, based on Fact-finder Van Pelt's analysis, Green Firefighters are either equal to or above the area market wage rates.

After reviewing the offered comparables and taking into account the required factors required by SERB the following wage increase is recommended.

1% Effective January 1, 2011

1.5% Effective January 1, 2012

1.5% Effective January 1, 2013

The Fact finder is also recommending part of the two-tier wage schedule offered by the City. The reason is: It is one solution to the overtime problem, the hiring more Fire Fighters. This lower rate is being recommended to encourage the City to hire more Full time bargaining unit members to reduce overtime. Two points: 1. If these new hires are leaving after being trained as the Union maintains, (This Fact-finder is very interested in how that will work out) and if it is a problem, then the parties can revisit the issue in the next contract. 2. There are flaws in the City's two-tier proposal but they arise in future steps, which will not arise during this contract. These problems will have to be resolved in the next contract negotiation; however the lower start salary can begin under this contract. Even with overtime, with the lower pay rates the overtime pay will be lower for the new hires. See below:

RECOMMENDED ISSUE * APPENDEX C WAGE SCHEDULE

All bargaining unit members hired after September 1, 2011, shall be governed by the following pay scale. (This Sept 1 date is recommended because it is not known if the city is hiring someone currently and if hired before September 1, 2011, they would go under the existing rate – The Fact finder is reluctant to use the offered January 1, 2011 date since someone might have been hired.)

Only the starting scale is offered because there seemed to be confusion on how/when/if these new hires would transition to higher rates. This offered proposal is to encourage new hires to lower their costs, improve service, lower overtime costs and deter the City from pursuing a part time force, which the Union is strongly opposed to. If the City hires at the new rates, the overtime issue will be reduced since more Fire Fighters should reduce the need for overtime and for those new hires, the overtime hourly rate will be lower.

Classification	Hourly Rate	Annual
F/M 1	14.51	
F/M 2	15.24	
F/M 3	16.00	
F/M 4	17.60	

(Note I did not do the annual column because I do not know if the City advocate used the City's proposed 53 hour work week for his calculations—which has not been recommended. The parties can calculate that out at 52). These rates have absolutely no impact on members hired prior to September 1, 2011.

Also recommend: City Note (The above wage schedules would be adjusted by the amount of the general wage increase effective January 1, 2012, and January 1, 2013)—which means they do not get the recommended wage increase recommended for January 1, 2011.

There are a number of other complicated and not fully developed issues in the City's proposal. I am only recommending what is offered above. Those other outstanding issues can be negotiated out in future contracts since they will not arise in this contract.

ARTICLE 23 LONGEVITY

CITY POSITION

The City's proposed language for Longevity is to express it as a fixed dollar amount rather than current language which currently uses a percentage of their salary. Over time, the City's proposal would be a concession.

UNION POSITION

The Union is proposing a fourth step at 20 years and continued increases in the percentages over the life of the proposed contract. (See Green Fire Fighters, Position Statement p. 18 and Union Binder 31) The Union argues it is behind other departments in its offered comparables for longevity.

DISCUSSION AND RECOMMENDATION

The Fact-finder recommends continuation of the final schedule in the current contract language. The schedule:

Years	Payment for each year of the contract
5	1.5%
10	2.0%
15	2.5%

If this total Fact-finding proposal was adopted then the longevity check would be incrementally larger each year reflecting the increases in wages.

ARTICLE 20 SECTION 1

HEALTH COVERAGE

CITY POSITION

The City is proposing to eliminate the requirement to provide “substantially similar” health insurance” (City, Final Position p. 8).

The City proposes under Section 1 Coverage new language *The City shall provide all full-time employee(s) covered by this Agreement group hospitalization, surgical, medical, prescription drug, vision and other related health insurance benefits under the same terms and conditions as provided to other employees of the City* (City Binder p. 000169).

Also, The City proposes to add a Section 4 Committee. The City will establish a joint committee on health care benefits which includes representatives (s) from each of its bargaining units. The joint committee will evaluate, periodically, the benefits and cost and make recommendations to the City for cost containment measures (under the current contract this language is under Section 1 Coverage(i)) The new added language, under the proposed Section 4 states: “Should the City find it necessary to change the levels of benefits during the term of this agreement, the Employer will present any proposed changes to the Health Insurance Committee and the Union at least thirty (30) days prior to the effective date of any such changes. Upon the request of the Union, the Employer will meet with the Union to discuss the proposed changes and any alternatives. If the parties are unable to reach agreement, the Employer may implement the changes” (See City Binder p 000169).

UNION POSITION

The Union claims that “Under the City’s proposal, the members’ health care benefits are no longer a mandatory subject of bargaining.” (See Union Final Position p 19). The Union asks for Current Contract Language.

DISCUSSION AND RECOMMENDATION

The City does not make a very strong case for its proposed language. It rests its case largely on pattern bargaining. Its proposed language certainly creates unease among the bargaining unit members because of the uncertainty. They do not know what benefits they will receive if

“substantially similar” is removed. Although not very exact, that clause offers some assurance of continuation of past benefits. (See Union Binder, Tab 34). The Union is also very concerned, for good reason, with the proposed language “If the parties are unable to reach agreement, the Employer may implement the changes.” The Union advocate is correct in asserting that under City’s proposed language health care is very close to no longer being a subject of bargaining between the parties. Furthermore, as the Union advocate points out the City already has unusual authority with its “unique ability to unilaterally impose plan changes on the members (i.e. increase employee costs) when its total health care cost exceed 15% in a given year.” The Union points out that the City is not reluctant to exercise this language. (See Union, Final Offer p. 20).

RECOMMENDATION: Current Contract language.

ARTICLE 21 HOURS OF WORK

The parties agreed to divide up the issues under this article into a number of sub-issues, some of which were settled as tentative agreements. Two of the sub-issues were put before the Fact finder. Those included first, Article 21 Section 1-2; 4-5, Sub issue 1, Hours of Work/ Overtime Pay and second Article 21 Section 5 Minimum Staffing.

FIRST ISSUE

CITY POSITION: HOURS OF WORK OVERTIME PAY

The City is very concerned about the extraordinary amount of overtime it is required to pay. “The Employer has proposed to increase the current average of a fifty-two (52) hour work week to fifty-three (53) hours by lowering the amount of unpaid days off. In return for the extra hour of work, the Employer has offered continue to compensate employees at the fifty-two (52) hour rate and actually pay them to work an additional fifty-two (52) hours of work during the year” (City, Final Position p. 9).

UNION POSITION

The Union is proposing a fifty (50) hour workweek. The Union offers comparables in support of its work hour reduction. (Union Binder Tab 19)

DISCUSSION AND RECOMMENDATION ON WORK WEEK

Any decrease in the work week for the Union will result in greater overtime costs for the City.

RECOMMENDATION: Current Contract Language Section 2 Work Hours Defined

SECOND ISSUE

HOURS OF WORK ARTICLE 21 SECTION 5 MINIMUM STAFFING

CITY POSITION

The Employer proposes “to revise the burdensome language that requires a certain amount of employees to be scheduled depending on the number of fire stations” (City , Final Position on Outstanding Issues p.9)” The Employer maintains this language is “the subversion of Management’s rights is nothing short of an abomination that stands for public sector excess cloaked in the guise of a convenient safety argument” (City, Final Position p. 10).

The Employer offers extensive language changes on minimum staffing. “The Employer proposes a core staff of thirty-six (36) full-time to be deployed into response. The Employer also proposes to agree to schedule a minimum of twelve (12) bargaining unit members per turn. Additionally, provided that unit members continue to work at least a workweek averaging fifty-two (52) hours, the Employer will make a commitment to maintain a minimum of ten (10) fire/medic personnel (both full & part time) per turn except in instances where bargaining unit members (full-time) are off due to injury leave or sick leave. If sick leave or injury leave usage by bargaining unit members (full-time) causes the number of fire/medic personnel (both full & part time) to drop below ten (10), the Employer would not be required to incur overtime to fill the shift during the applicable time period unless there would be less than eight (8) fire/medic personnel (both full & part time) working” (City Binder, Tab 13).

The City maintains “The current language must be seen for what it represents an attempt to maintain a ‘featherbedding’ practice (under the guise of safety) that drives up costs irrespective of management’s assessment of need.” (Id.)

Heated rhetoric aside, the most significant evidence presented by the City on this issue is the data on the overtime cost. It was over \$300,000 in 2010 and has increased significantly each year over the past four years (City Binder p. 000317).

UNION POSITION

The Union is opposed to the changes proposed by the City on staffing language. They argue this staffing language has been in existence for the past ten years. The Union argues that “The Department’s increase in overtime over the last three years can be attributed to increased

work volume, insufficient response staffing and the progression of more senior personnel in the leave schedule”(Union, Final Position p. 22).

DISCUSSION AND RECOMMENDATION

Minimum manning is often a contentious issue in Fire Fighter contracts because it is seen by many as a management right. In these difficult times for local governments, it is a point of contention because it contributes to overtime costs. The Green Fire Fighters have long had minimum manning language in their contract. They made it clear to this Fact-finder during mediation and at the Fact-finding hearing that the “manning clause” was very important to them. The City is also very interested in getting back some of its management rights and control of overtime costs. In an effort to protect language the Union has gained at the negotiating table in the past, but also to try to give the City some relief from the growing overtime costs. The following language is recommended:

ARTICLE 21

HOURS OF WORK/OVERTIME PAY

Section 1 Work Period Bargaining unit members assigned to Response will be assigned to a twenty-eight (28) day work period.

Section 2 Work Hours Defined

- (a) Bargaining unit members shall be designated either as Response Shift employees or Day Shift employees. Day Shift employees will be assigned to a forty (40) hour week consisting of either five (5) consecutive eight (8) hour days of four consecutive ten (10) hour days. Response Shift employees will be assigned to a work schedule wherein the employee works an average of fifty two (52) hours per week , or two hundred and eight (208) hours in the twenty-eight day work cycle period , during which the employee shall be scheduled to work shifts of twenty four (24) consecutive hours followed by forty-eight (48) hours off duty.
- (b) Shift assignments are to be made at the discretion of the Fire Chief within the provisions of this agreement with respect to shift bidding.
- (c) Day Shift employees shall commence work at the time designated by the Fire Chief. *Non-traditional shift schedules in terms of days of the week and hours of the day may be used to increase day shift coverage for the management of overtime.*
- (d) Response shift employees shall commence work at 0700 hours with “normal work hours” from 0800 to 1600 hours. After 1600 hours these employees shall be permitted to use the time as they desire, within the policies and procedures established for fire division by the Fire Chief.

- (e) Whenever possible, at the sole discretion of the Shift Commander, scheduled evening training's and events shall be considered part of the "work day" and where practical and possible, equivalent hours shall be removed from the 0800-1600 work day.
- (f) Both Day shift and Response shift employees are required to remain available to perform duties as required during "break" or "lunch" periods. The starting/stopping times for the breaks and lunch periods are to remain flexible and are to be taken as designated by the shift supervisor.

Section 5 Staffing/Supervision

- (a) No more than ten (10) bargaining unit employees shall be assigned to a forty (40) hour work week at any one time.
- (b) The City reserves the right to deny leave and/or make necessary changes in an employee's schedule to maintain a minimum staffing level "per shift" as follows. For the purposes of this section a "full response" station is a station equipped and staffed to respond, at minimum, a medic unit and/or an attack pumper, a "limited response" station is a station that is equipped and staffed to respond a medic unit. Specialty and /or support vehicles may be responded from either a full response or a limited response fire station, depending on staffing and equipment assignments.
- (c) For the purposes of this article, a shift supervisor shall hold the rank of Lieutenant or Captain, a Shift Commander shall hold the rank of Captain, or higher.
 - One (1) Fire Station
Five (5) full time fire medics and a minimum of one (1) shift supervisor with the rank of Lieutenant, or higher on duty "per shift".
 - One (1) "full response" fire station and One (1) limited response fire station.
Six (6) full time fire medics and a minimum of two (2) shift supervisors, with the rank of Lieutenant, or higher, on duty "per shift".
 - Two (2) "full response" fire stations
Eight (8) full time medics and a minimum of two (2) shift supervisors, with the rank of Lieutenant, or higher, on duty "per shift".
 - Three (3) or more fire stations
The Union and the City agree to negotiate minimum per shift staffing levels if said expansion occurs during the life of this Agreement.
- (d) The City reserves the right to assign on-duty employees to work at any of the City's fire station(s) to maintain adequate response staffing levels at each station, at the sole discretion of the Fire Chief.
- (e) The City agrees to maintain a Shift Commander on duty at all times.

- (f) *The City, to reduce overtime costs, may utilize dayshift personnel on their regularly scheduled hours of work to meet the minimum staffing requirements of this Article.*
- (g) *The City, to reduce overtime costs, may reduce on-duty full time staffing to nine, in the following manner: When there are two full time response shift personnel scheduled off on EDO and additional vacation leave is scheduled, the City will only be required to fill overtime to maintain seven (7) full time fire medics and two (2) shift supervisors, with the rank of Lieutenant, or higher, on duty.*

Section 6 Overtime

Existing Contract language.

This Fact-finder respectfully submits the tentative agreement agreed to by the parties, and the recommendations stated above on the outstanding issues to the parties this 4 day of August in Mahoning County.



William C. Binning Ph.D.

Fact-finder