

Received Electronically @ SERB Feb 27, 2012 2:04pm
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

FEBRUARY 27, 2012

CITY OF XENIA

and

XENIA PROFESSIONAL FIREFIGHTERS IAFF LOCAL 698

Case No. 11-MED-10-1479

For the City

David A. Weaver	Representing Attorney for the City
Brent Merriman	Assistant City of Xenia Manager
Jackie Porter	Human Resources Director
Ken Riggsby	Xenia Fire Chief
Ryon Duke	Assistant Finance Director

For the Union

James Skogstrom	Representing Attorney for Local 698
John H. Vannlyne	Firefighter, IAFF
Lind J. Bird	Firefighter, IAFF
Logan Mathews	Firefighter, IAFF
Dary Vandebos	Firefighter, IAFF

Fact Finder

John P. Downs

INTRODUCTION

This case involves the fact finding process between the City of Xenia and the Xenia Professional Firefighters IAFF Local 698. This unit is made up of members consisting of 3 Captains, 6 Lieutenants, and 33 Firefighters/Paramedics.

The parties met on February 15, 2012, for approximately seven hours. Mediation was attempted and resolved the following three articles: Article 9 Section 1 Sick Leave Accumulation, Article 9 Section 8 Sick Leave Transfer, and Article 15 Section 9 Daylight Savings/Time Changes.

The tentative agreements are to be included in any agreement between the parties. The following tentative agreements were agreed to prior to fact finding:

Article 1	Legal Reference (current contract)
Article 2	Recognition (current contract)
Article 3	Nondiscrimination (current contract)
Article 6 Section 6	Promotions, Demotions, Reassignments, Merit, Right of Appeal - Limitations Period
Article 8	Retirement (current contract)
Article 10 Section 3	Group Insurance Benefits - Payment of Premiums
Article 10 Section 6	Group Insurance Benefits - Substitution of Coverage
Article 12	Holiday (current contract)
Article 14	Court Time (current contract)
Article 17	Residency (current contract)
Article 19	Travel, Conference, and Training Expenses (current contract)
Article 20	Tuition Reimbursement (current contract)
Article 21 Section 2	Uniforms
Article 21 Section 3	Uniforms
Article 21 Section 8	Uniforms
Article 21 Section 10	Uniforms
Article 22	Grievance Procedure (current contract)
Article 23	Association Business (current contract)
Article 24 Section 2	Labor Management Committee Agenda
Article 24 Section 3	Labor Management Committee Agenda
Article 24 Section 4	Labor Management Committee Agenda
Article 25	Fitness for Duty Testing (current contract)
Article 26	No Strike or Lockout (current contract)
Article 27 Section 4	Training - Field Training Officer (Payment of stipend of \$480 per year will be distributed among the trainers involved)
Article 28	Separability (current contract)
Article 29	Entire Agreement, Waiver of Bargaining Clause (current contract)

The City of Xenia is located in Southwest Ohio, is comprised of 27,000 residents within Greene County, and has approximately 12 square miles.

The City Fire Division provides a wide range of services to residents of the City

including fire suppression, EMS/rescue, hazardous materials, fire prevention, fire inspection and plan review. The Fire Division handles more than 4,900 calls for service annually, 75% of which are for emergency medical assistance. The Fire Division is currently staffed by a Chief, 3 Captains, 6 Lieutenants and 33 Firefighters.

The fire department is currently operating under a .5% income tax levy which passed on November 2, 2010.

The City has recognized IAFF Local 698 as the collective bargaining representative of the Fire Division personnel since November 1984. The bargaining unit consists of all full-time uniformed Fire Division personnel in the rank of Firefighter, Fire Lieutenant, and Fire Captain.

For comparables the Union used the following fire departments:

Moraine	Montgomery County
Beavercreek	Greene County
Butler Township	Montgomery County
Oakwood	Montgomery County
Miamisburg	Montgomery County
Dayton	Montgomery County
Kettering	Montgomery County
Miami Township	Montgomery County
Huber Heights	Montgomery County
Harrison Township	Montgomery County
Trotwood	Montgomery County
Fairborn	Greene County
Vandalia	Montgomery County
Englewood	Montgomery County
Washington Township	Montgomery County
Jackson Township	Montgomery County
Bellbrook	Greene County
New Lebanon	Greene County
Clayton	Greene County
Germantown	Greene County
Jefferson	Greene County
Brookville	Greene County

The City used the following comparisons:

Fairborn
Forest Park
Washington Courthouse
Trotwood
Miamisburg
Piqua
Marysville
Delaware
Riverdale
Beavercreek Township
Lebanon

The fact finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Financial Analysis

The Union stated, “they gave a concession in 2009. Prior to the levy passage in November 2010, the City approached the bargaining units and requested a unilateral 5% wage reduction to help the City through a financial hardship. Local 698 was the only bargaining unit in the City that agreed to concessions. An MOU was signed on August 28, 2009, that reduced base wages by 5% and suspended the wage increase scheduled for February, 2010 for all members. The MOU also stipulated wage re-instatement in the case of layoffs of Fire Division personnel. Unfortunately, layoffs did occur and wages were reinstated in June, 2010. Union members suffered greater loss than 5% wages for those months since it was calculated on base pay. Overtime, holiday pay and ultimately retirement was adversely affected by a reduction that can never be recovered.”

The City of Xenia experienced a .5% income tax levy that failed on May 4, 2020. On November 2, 2010, a .5% income tax levy passed.

The City of Xenia has a budgeted \$807,866.15 cash flow deficit in the key operating fund for 2012. The City is projected to see a slight increase in cash balance in 2012. This is because the full affect of a passed income tax levy will kick in while only a portion of the state cuts will be effective. In 2013 and 2014 the state cuts will go into full effect and the City’s cash balance will fall below minimum cash reserve levels.

Article 4 Management Rights and Responsibilities Section 2 - Privatization

City’s Position

The City proposes to delete Section 2 Privatization and have minimum manning levels be calculated with full-time employees, and return the rights to hire temporary or part-time employees. This conflicts with the change to the City Charter effective November 2, 2010. Mr. Weaver presented the SERB decision and 1st Ohio Appellate District Court decision stating they have created a limited exception to Section 4117 of the ORC. He stated the CBA can be modified without negotiations and agreement if there is legislative action taken by a “higher-level legislative body” after the CBA becomes effective and the legislative action conflicts with, and requires, a change to the CBA.

Reference Toledo City School Board of Education (SERB opinion) and the 1st Ohio Appellate Court upheld this exception.

Union’s Position

The Union's position represented by their attorney James Skogstrom is that they disagreed with the City's position. They oppose the deletion of this language since it has been in effect for over 20 years.

The City would like to expand to other cities by offering coverage to them. This matter was never brought to the table in negotiations. The Union would allow part-time fire fighters. The City also wants to allow volunteers/auxiliaries. However, this change would take the unit to a voluntary fire division.

Mr. Weaver stated the City can't violate the City Charter. Mr. Skogstrom stated state law supersedes city law. He referenced gun control and residency issues. He feels the Toledo case is permissive to bargaining.

RECOMMENDATION

I recommend the City's position based on the information submitted at fact finding. (However, as I stated in the hearing this matter belongs in the courts, perhaps the Supreme Court will decide the matter.)

Article 5 - Wage Rate Section 1

City's Position

The City requested a wage freeze for years one and two with a reopener in the third year.

Ryon Duke, Assistant Finance Director, stated there is a big difference between the various bargaining units. The City is in a financial crisis. The property tax levy for 2009 failed, and 12 employees were laid off and none were brought back. The City negotiated a MOU that got a 5% reduction in wages that later expired. In May, 2010 an income tax levy failed. Layoffs and the closing of a fire station resulted. A .5% income tax levy did pass later. In 2012 the City is okay finically but they are not in 2013 and 2014. The City is projecting a cash flow deficit of \$807,886. Mr. Weaver also stated health insurance costs will go up as well.

Union's Position

The Union asked for zero in 2012, 2% in 2013, and a reopener for the third year. This request is closely aligned with other bargaining units in the city (0% to 4%). It was pointed out the Union was the only bargaining unit to take a 5% wage reduction.

RECOMMENDATION

I recommend the Union receive 1% for 2012, 0% for 2013, and a reopener for 2014.

Rationale

The Union accepted a 5% wage reduction in the past and now asks for a modest increase which was granted for the year the City indicated they would have funds.

Article 5 - Wage Rate Section 7 - Longevity

City's Position

Ryon Duke stated the City is trying to combine contracts and other bargaining units bargained out longevity, however, dispatchers put it back in their contract. The City also opposes longevity for the economic cost it will incur.

Union's Position

Members who have 5 years continuous service with the City of Xenia or greater as of December 1 of any year are eligible.

They propose with 5 years of service \$150 and \$20 for each additional year. Payment will be made between December 1 and December 20. Payment shall be pro-rated to the nearest pay period for any members terminating employment. Applicability for overtime, longevity payments will be added to the base salary for the purposes of computing rates for scheduled and unscheduled overtime.

RECOMMENDATION

I recommend the City's position to not grant longevity.

Rationale

The City is trying to consolidate its bargaining unit contracts and does not wish to incur the additional costs this change would make.

Article 7 - Plus Rating Section 3 - Acting Officer

City's Position

The City is asking to overturn an arbitrator's decision which ruled OFC 15 is part of the contract utilizing two acting officers per shift. Articles 16.3 and 18.3 need to be removed. Also OFC 15 needs to go back to being a policy only. Mr. Ryon expressed concerns over overtime over the last five years of \$510,432.

Union's Position

The Union stated this could have been negotiated since it's a safety issue to them. The Union wants an experienced officer. The Union requested the current contract language of leaving OFC 15 in the contract.

RECOMMENDATION

I recommend the Union's position that Article 7, Section OFC 15 stay in the contract. I believe the City lost at arbitration on this matter and could not explain how OFC-15 become part of the collective bargaining contract. There, this fact finder will not recommend a change thus over ruling the Arbitrator Cynthia Stanly.

Article 9 - Sick Leave Section 9 c. False Claim

City's Position

The City's position is to delete "on any day on which the employee is normally scheduled" and add "while the employee is unable" to perform the essential functions of the job".

Union's Position

The Union requested the current contract language.

Article 9 - Sick Leave Section 10 - Duration of Benefits

City's Position

The City's position is if the employee is unable to perform the essential functions of his or her job the employee will apply for disability retirement.

Union's Position

The Union's position is to retain the current contract language.

Article 9 - Sick Leave Section 12 - Sick Leave - FMLA

City's Position

Mr. Weaver asked to use leave concurrently with paid leave before any leave becomes unpaid. This is what other bargaining units have currently.

Union's Position

The Union wants to maintain the current contract language, paid leave first and unpaid leave second.

Article 9 - Sick Leave Section 13 - Non-Use Incentive

City's Position

The City's position per Mr. Weaver is that people who are sick use sick leave, if they are not sick they come to work.

Union's Position

The Union's proposal requests compensatory time of 12 hours for not using sick leave (January 1 through June 30) and (July 12 through December 31). Do not count sick leave used for a work related injury or illness, required leave allowances due to ADA or FMLA law, or funeral leave for an immediate family member.

RECOMMENDATIONS

Article 9 - Sick Leave Section 9 c. - False Claim. I recommend the City's position.

Article 9 - Sick Leave Section 10 - Duration of Benefits. I recommend the City's position.

Article 9 - Sick Leave Section 12 - Sick Leave - FMLA. I recommend the City's position.

Article 9 - Sick Leave Section 13 - Non-Use Incentive. I recommend the City's position.

Article 11 - Vacations Section 1 - Accumulation

City's Position

Mr. Weaver stated the extra union steps will have an economic impact on the City as vacation would come earlier. He questioned the Union's comparables to which they responded that they came from SERB. The City also proposes to delete the word "unscheduled" in Section 1 a.

Union's Position

The Union proposes to change the times for vacation leave accrual from 10 to 5 years. Less than 5 completed years of service will earn 6 shift days; 5 years but less than 10 years of completed years of service will earn 8 shift days; 10 years but less than 15 years of completed years of service will earn 9 shift days; 15 years but less than 20 years of completed years of service will earn 11 shift days; over 20 years of completed years of service will earn 12 shift days.

RECOMMENDATION

I recommend the Union's proposal which did not increase the total of 12 shift days.

Article 11 - Vacation Section 2 - Vacation Scheduling and Selection

City's Position

First two rounds of picks are guaranteed. They can not be cancelled if transferred to another shift - picks transfer with the member. The City wants to delete open picks per the Fire Chief.

Union's Position

The Union's position is to retain the current contract language.

RECOMMENDATION

I recommend the Union's proposal to maintain the current contract language.

Article 11 - Vacation Section 3 - Vacation Approval

City's Position

The City wants not more than one can be an officer on vacation during a 24 hour period. Open picks are subject to cancellation not later than the last shift day prior to the scheduled vacation when it will cause the shift to drop below minimum manning levels.

Union's Position

The Union's position is to retain the current contract language.

RECOMMENDATION

I recommend the Union's position to maintain the current contract language.

Article 11 - Vacation Section 6 - Vacation Call In

City's Position

The City proposes overtime will be charged after 212 hours worked.

Union's Position

The Union's position is to maintain the current contract language.

RECOMMENDATION

I recommend the Union's proposal to maintain the current contract language.

Article 13 - Injury Leave

Second paragraph regarding contracting a communicable disease as a result of on-duty exposure qualifying for injury leave was agreed to by both parties. The City's language will be used in the contract.

Article 13 - Injury Leave - Section 1 - General Provisions

City's Position

The City proposes that if a member can not work after 3 or more calendar days of an on the job injury it will cause the member to apply for Worker's Compensation.

Union's Position

The Union proposes maintaining the language in the current contract.

RECOMMENDATION

I recommend the City's position.

Article 13 - Injury Leave Section 2 - Workers' Compensation

City's Position

The City proposes that in the event workers' compensation denies a claim all injury leave must be paid back by deduction of leave balances or full restitution by a mutually agreed to arrangement.

Union's Position

The Union proposes to maintain the current contract language.

RECOMMENDATION

I recommend the City's proposal.

Article 13 - Injury Leave Section 6 - Work Hardening Program

City's Position

The City opposed this new Union recommended section concerning the Labor Management Committee involvement.

Union's Position

The Union proposed a new transitional work program for officers who are injured on or off duty. The guide lines of this program will be made and approved by the Labor Management Committee.

RECOMMENDATION

I recommend the Union's proposal.

Article 15 - Hours of Employment Section 8 - Scheduled Day Off

City's Position

The City proposes that each member shall receive 6 scheduled days off per contract year. Ryon Duke state there is an economic cost for the two additional SDO's.

Union's Position

The Union proposes that each member shall receive 10 scheduled days off per contract year.

RECOMMENDATION

I recommend the current contract language of 8 scheduled days off per contract year.

Article 15 - Hours of Employment Section 10 - On Call Assignments

City's Position

The City had a new proposal which included having officers on call by phone to receive \$1.50 per on-call hour. Overtime will be paid after 212 hours in a pay period.

Union's Position

The Union referred to the contract language of OFC 15 and requested to change 212 to 206 hours in a pay period.

RECOMMENDATION

I recommend the City's proposal.

Article 16 - Overtime Pay Section 1 - Scheduled Overtime

City's Position

The City proposes maintaining the current language in the contract.

Union's Position

The Union proposes changing the hours required to work for overtime eligibility to change from 212 to 206.

RECOMMENDATION

I recommend the City's position.

Article 16 - Overtime Pay Section 3 - Unscheduled Overtime

City's Position

The City proposed deleting this section of the contract.

Union's Position

The Union proposed maintaining the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal of maintaining the language in the current contract.

Article 16 - Overtime Pay Section 4 - Compensation for Unscheduled Overtime

City's Position

The City proposes that when the hours worked do not exceed 212 hours the member will be paid for unscheduled hours at the member's regular rate of pay.

Union's Position

The Union proposes maintaining the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal to maintain the language in the current contract.

Article 16 - Overtime Pay Section 5 - Overtime vs. Leave Hours

City's Position

The City proposes the following, "Hours Worked for purposes of computing unscheduled overtime will include only actually worked by the member. Sick leave hours, SDO's, and injury leave hours will not be included in the total hours worked to determine unscheduled overtime hours."

Union's Position

The Union proposes maintaining the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal to maintain the language in the current contract

Article 16 - Overtime Pay Section 7 - Call-in Time

City's Position

The City proposes employees will be compensated for call-in time at regular hourly rate until their total number of hours worked exceeds 212 hours in a 28 day period. An employee who is called in will be credited with a minimum of 2 hours of work. An employee who is called in and works more than 2 hours will be paid for the actual hours worked.

Union's Position

The Union proposes maintaining the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal to maintain the language in the current contract.

Article 16 - Overtime Pay Section 10 - Overtime Availability

City's Position

The City proposes that when unscheduled overtime is offered it will be offered equally within the respective rank.

Union's Position

The Union proposes unscheduled overtime be offered equally to all members of the unit which is the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal.

Article 16 - Overtime Pay Section 11 - Eligibility

City's Position

The City proposes payments for scheduled and unscheduled overtime will be made following the 28 day period.

Union's Position

The Union proposes payments for scheduled and unscheduled overtime will be made following the pay period worked which is the language in the current contract.

RECOMMENDATION

I recommend the Union's proposal to maintain the language in the current contract.

Article 18 - Emergency Recall Section 2 - Pagers

City's Position

The City proposes deleting alpha numeric pagers which cost \$3,400 pr year. Members are not required to carry pagers.

Union's Position

The Union proposes to maintain the language in the current contract.

RECOMMENDATION

I recommend the City's proposal to delete alpha numeric pagers and Section 2 of the contract.

Article 18 - Emergency Recall Section 3 - Notification

City's Position

The City proposes to delete this section. Ryon Duke stated this will not work.

Union's Position

The Union proposes leaving OFC 15 in and any changes to OFC 15 will be made by the Labor Management Committee.

RECOMMENDATION

I recommend the Union's proposal to maintain the current language. The Union stated it was willing to work with the City on a new notification system through the Labor Management Committee.

Article 30 - Duration Section 1

City's Position

The City proposes a duration of 3 years, February 6, 2012 through February 5, 2015.

Union's Position

The Union proposes a duration of 3 years, February 6, 2012 through February 1, 2015.

RECOMMENDATION

I recommend a 3 years contract beginning February 6, 2012 through February 5, 2015.

TOTALITY OF AGREEMENT

It is recommended that all agreed to articles listed prior to fact finding be included in the agreement.

This will affirm the foregoing report consisting of 20 pages, including the findings and recommendations set forth in the award by the fact finder and all tentative agreements reached by the parties. This report is retroactive to February 6, 2012.

Any matter presented before the fact finder and specifically addressed in this determination and award were given consideration but are not recommended for inclusion in the agreement.

If there is found conflict in the report between this fact finder's discussions and recommendations, the language in the recommendations shall prevail.

To the best of my knowledge, said report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I, therefore, offer my signature at my address in the County of Pickaway in the State of Ohio this date of February 27, 2012.

John P. Downs, Fact Finder