

Received Electronically at SERB Aug. 16, 2012
8:30 a.m.

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 11-MED-11-1640**

**CIRCLEVILLE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 1232**

and

THE CITY OF CIRCLEVILLE

FACT FINDING REPORT

**Submitted by John F. Lenehan
August 16, 2012**

TO:

VIA E-MAIL

Union Representative

**Mr. Bradley Rankin, Secretary/ Treasurer
IAFF Local 1232
P.O. Box 308
Circleville, Ohio 43113
Phone: (614) 805-3067
Email: btrankin1@yahoo.com**

Employer Representative

**Mr. Benjamin S. Albrecht
Downes Fishel Hass Kim LLP
400 South Fifth Street, Suite 200
Columbus, Ohio 43215
Phone: (614) 221-1216
Fax: (614) 221-8769
Email: balbrecht@downesfishel.com**

SERB

Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On April 12, 2012, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Circleville International Association of Firefighters, Local 1232 (IAFF or Union) and the City of Circleville (Employer or City), SERB Case No. 11-MED-1640. A Fact Finding Hearing was held on July 20, 2012 at the City of Circleville Administration Building, 130 S. Court Street, Circleville, Ohio 43113. Present for and on behalf of the Employer were: Benjamin S. Albrecht, Attorney; Gayle A. Spangler, City Auditor; Tom Hamman, City Safety Director; and, Valerie Dilley, Human Resource Assistant. Present for and on behalf of the Union were: Joey Eveland, President of IAFF Local 1232; Sam Cavanaugh, Vice President of IAFF Local 1232; and, Bradley Rankin, Secretary/Treasurer of IAFF Local 1232.

During the Fact Finding Hearing an unsuccessful effort was made to mediate the outstanding issue. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on August 16, 2012

A. Description of the Employer and Bargaining Unit

According to the 2010 census, the Employer, the City of Circleville, has a population of 13,314. It provides a number of services to its citizens, including fire protection and emergency services. In providing these services, the Employer has bargaining agreements with three (3) groups of employees. They are: International Association of Firefighters, Circleville Local 1232 (“IAFF”); Ohio Patrolmen’s Benevolent Association (“OPBA”); and the Non-Uniformed Employees Organization (“NUEO”).

The IAFF bargaining unit consists of fifteen (15) employees of the Fire Division of the City in the following classifications: nine (9) fire fighters, three (3) lieutenants, and three (3) captains. The Fire Chief, part-time, seasonal and temporary employees are excluded from the bargaining unit.

B. History of Bargaining

The parties have a Collective Bargaining Agreement (“CBA”) in effect from January 1, 2010 through December 31, 2012. Under the provisions of that agreement, the parties agreed to 0% salary increase for 2010 and wage reopeners for 2011 and 2012. For the wage reopener for 2011 an agreement was reached for a 1.5% salary increase. To resolve the 2012 wage reopener, the parties engaged in one bargaining session. Unfortunately, no agreement was reached. As a result, the 2012 wage reopener under the CBA was submitted to this Fact Finder for a finding and recommendation.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendation contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUE

ARTICLE 18 SALARY SCHEDULE

IAFF'S POSITION

The IAFF has proposed a six percent (6%) wage increase for 2012. Although the IAFF acknowledges that its wage proposal is “not consistent with the economic times”, it claims that such is justified because the wages of the bargaining unit employees are low and a substantial increase is necessary in order for the employees to make a comparable and adequate wage. To support this position, the IAFF submitted both documentary and testimonial evidence.

The documentary evidence consisted of the following: 1) external and internal comparables; 2) Circleville Fire Department Wage Progression & Comparison for 2007-2011; 3) insurance premium increases over the term of the CBA; 4), The Memorandum of Understanding regarding vacation sell back and forfeiture and tuition reimbursement; and, 5) total EMS runs by day of week in eight hour blocks. Bradley Rankin, Scott Cavanaugh and Joe Eveland testified in support of the Union's position for a six (6) percent wage increase.

The external comparables submitted by the IAFF were charts and bar graphs comparing the hourly and annual compensation in ten Ohio Cities with the hourly wages and annual salary paid to firefighters in Circleville for 2011. These exhibits indicated that the average wage in the ten comparison cities was \$5.75 per hour higher and the average annual salary was \$14, 602.50 higher than it is in Circleville Fire Department. The exhibit also indicated that Circleville fire fighters work on the average of three (3) more hours during a pay cycle, serve fewer citizens, work with less manpower and have a higher volume of calls than the comparison cities. Both the aforementioned charts and the bar graphs had the hourly rate and annual salary for Circleville firefighters as the lowest of the comparison cities.

Likewise, the internal comparables submitted by the IAFF indicated that the average hourly wage paid to the Employer's nine other classifications of employees was \$5.01 per hour higher than that of a firefighter. However, the average annual salary for a fire fighter is \$327.72 higher than that of other city workers. This according to the chart was because a fire fighter worked sixteen (16) more hours during a pay cycle and eight hundred thirty-two (832) more hours annually than the other city employees. The bar chart which was part of this exhibit shows the fire fighters as the lowest paid hourly workers in the city.

The Exhibit titled CFD Wage Progression & Comparison 2007-2011 was a comparison of the actual wages paid and the increases received by the fire fighters with what they would have received had they been paid the cost of living increases under Social Security or the average increase paid to employees throughout the state according the SERB figures on the average wage settlements. Had the Circleville fire fighters received pay increases under either Social Security or the average statewide settlement, they would have done better over this time period. This exhibit also demonstrated that the 2012 insurance premium increases either offset or exceed any wage increase.

The testimony of Bradley Rankin identified and corroborated the information set forth in the external and internal comparables exhibits. He also testified that at one time the firefighters' wages were comparable to the wages paid to the OPBA units, but over the years the IFFA wages fell behind. Scott Cavanaugh's testimony identified and corroborated the CFD Wage Progression & Comparison exhibit.

The President of the IAFF Local 1232 Joey Eveland testified that the IAFF had worked with the City during the recent economic hard times on saving overtime costs, and capping vacation and forfeiting tuition reimbursement (Memorandum of Understanding). Also, in 2010 the Union agreed to a 0% wage settlement.

CITY'S POSITION

The City proposes a 0% wage increase for 2012. It claimed that the economic, demographic and other budgetary data submitted at the Fact Finding hearing supports its position.

In addition, it claimed that the other bargaining units, NUEO and OPBA, agreed at the table to no net wage increase for 2012. By agreeing to a reduction in the amount of retirement system contributions paid ('picked up') by the City on behalf of employees, the wage increases for these units were completely offset, resulting in no net increase in wages. For OPBA, the parties agreed to a 33% reduction of the retirement contribution which was 3.3%. In order to offset the reduction in the retirement pickup of the bargaining unit employees, wages were increased by 2.5%. Similarly, the NUEO had its retirement contribution reduced by 3%. In order to offset the retirement contribution reductions for this bargaining unit, the employees' wages were increased by 2.25%. Further, both units agreed to reduce by 2014, the City's contribution on behalf of the employees to the retirement system to 0%.

The Employer noted that it had enacted similar legislation for its non-bargaining unit employees for 2012. Thus, as a result non-bargaining unit employees will receive no effective wage increase in 2012.

To summarize its position regarding the internal comparable of no net wage increase for other city employees the City argued that any wage increase provided to other City employees for 2012 was the result of a reduction to the retirement contribution made by the City. Thus, the increase was simply a manner of offsetting the reduction. The net result was that the City was expending no additional funds for employee compensation

The City claims that because the sole issue presented to the Fact Finder is a wage re-opener for 2012 and the pension is addressed elsewhere in the collective bargaining agreement, the City is unable to make a similar proposal to the IAFF. As such, for internal consistency, it must make a 0% wage increase proposal, as it cannot propose a corresponding pension contribution reduction as agreed to by the two other City unions.

In support of its position, 0% wage increase, the City submitted seventeen (17) exhibits. Fourteen (14) exhibits were set forth in a note book submitted into evidence at the hearing. Three (3) other exhibits were also submitted regarding external comparables on salaries paid to firefighters, firefighters/emts and lieutenants in other Ohio cities of similar size in population.

The first eight (8) exhibits or tabs contained in the City's note book related to the finances of the city and gave an analysis of future revenues and expenditures. Tab 10 is a listing of the internal wage settlements and pension pick up for all employees for 2010, 2011 and 2012 (included non-bargaining unit employees). Tabs 12, 13 and 14 were the recently negotiated agreements with the other bargaining units. Tab 15 contained fact finder reports and a conciliation award which the employer claims supports its position on giving greater weight to internal comparables. The three (3) other exhibits submitted at the hearing compare firefighter, firefighter/emt and lieutenant salaries of the bargaining unit employees with nine other Ohio cities. SERB was the source indicated for this information.

The City offered testimony claiming the following: 1) that overall tax revenue is not growing; 2) that the estate tax is being eliminated as a source of revenue; 3) that the City is still recovering from the loss of 1700 job in 2000; 4) that other unions took a net zero per cent wage increase; 5) that it cannot discuss reducing the pickup; 6) the turnover had been greater in the police department; 7) that there was a spike in revenue during 2011 due to the collection of unusually large inheritance tax; 7) that it has been unable to fund three (3) positions in the Fire

Department and five (5) positions in the Police Department; 8) that wage increases have been the same for all employee groups: and, 9) that everyone had taken cuts.

FINDING AND OPINION

The followings findings are made based upon the prehearing statements of the parties and the evidence and arguments submitted at the hearing.

1. The IAFF's proposal for a 6% increase cannot be justified. As the Union acknowledges its wage proposal is "not consistent with the economic times". There is nothing to support this proposal. Neither the external nor internal comparables indicate any wage increase approaching 6%. Assuming, *arguendo*, that bargaining unit wages were low in comparison to other firefighters, such would not be made up during the last year of a wage reopener. Any inequity in wages, did not occur overnight, and should not be made up overnight.
2. While the City's financial condition is not dire as is the situation with many governmental entities in Ohio, its future is somewhat uncertain. Income tax revenues may be increasing, but other sources of revenue are declining or being eliminated. Thus, it has a need to be cautious in budgeting for future years. It would not serve the public interests of its citizens to agree to the Union's proposal.
3. The external comparables submitted by the City are to be given greater weight than those submitted by the IAFF. The City's comparables were based upon data collected by SERB on wage comparisons of cities that were more similar in size than the cities set forth in the comparables submitted by the IAFF. While it is not unusual for the parties in a fact finding to select the comparables most supportive of their positions, the City's comparables appear more objective and relevant in this case. An examination of the of the City's external comparables indicates that the wages for the bargaining unit are in the middle range or higher, while those submitted by the IAFF have the City's firefighters as the lowest paid.
4. Internal comparables are more relevant than the external comparables in this case. There has been a consistency in granting the same pay increases to all employees for the past several years. If equity adjustments need to be made to wages, such should be done at negotiations for a new CBA, not during the term of an existing contract at negotiations for a wage reopener.

5. The IAFF is not in the same situation as the other bargaining units. The IAFF and the City are negotiating a wage reopener, not a new CBA as were the other units.
6. The City granted pay increases to the OPBA bargaining units of 2.5% effective January 1, 2012, and the NUEO bargaining unit of 2.25%, effective May 13, 2012. These wage increases were offset by reducing the pension pickup. For the OPBA units, the effective date of the reduction was sometime after April 23, 2012, and for the NUEO bargaining unit the effective date of the reduction was after the first full pay in September, 2012.
7. The reduction in the pension pickup eventually resulted in a net 0% increase for the OPBA and NUEO bargaining units.
8. According to statements made at the fact finding hearing, the implementation of the reduction in the pickup would take a couple of months.
9. The City and the IAFF will be negotiating for a new CBA the later this year.

Based upon the evidence and the circumstances of the parties, internal comparables are to be given greater weight in this case, and the Employer's position on no wage increase for 2012 should prevail. However, since the IAFF bargaining unit was not in the same situation as the other bargaining units. i.e., negotiating a new contract, equity requires that consideration be given to this factor. The scope of negotiations in this case is limited to provisions of the CBA which provides for the right to reopen on wages, only. There is no mandatory requirement as there would be in negotiations for a new contract to discuss the pension pickup. Although the parties could agree to negotiate on the pension pickup, there is no obligation to so, and for this reason such is outside the scope of the Fact Finder's authority.

Under the three agreements negotiated during 2012 with the other bargaining units, the wage increases were offset by the pension pickup. However, the offset was not effective immediately for these bargaining units. The police bargaining units received wage increases of 2.5% retroactive to January 1, 2012 and the offset was not in effect until sometime after the execution date for the new agreement on April 23, 2012. Likewise with NUEO, the wage increase of 2.25% was effective May 23, 2012 and the offset will not occur until the first full pay in September, 2012.

Considering that the City's other bargaining units and non-bargaining unit employees received for a number of months an actual wage increase which was later offset by reductions in

the pension pickups, the inference that the Employer's proposal is identical to what has been done for the other bargaining units is not valid. While there is no practical way to duplicate for the IAFF what has been done with the other units, some compensation is warranted in order to have true internal comparability and equity. Had the IAFF and the City been able to negotiate the same agreement as the OPBA units, the employees in the IAFF bargaining unit would have received a 2.5% increase in salary for approximately six (6) months before any offset became effective (assuming a two (2) month delay for implementation of the reduction in the pickup). Based upon the salary schedules, an estimated increase would have resulted for a six (6) month period of approximately \$500.00 for the firefighters' classification and \$600.00 for the lieutenants and captains' classifications. Although the Fact Finder concurs with the Employer's position of no increase in the base salary schedules for 2012, he believes that a signing bonus would be appropriate.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no increase in the wages rates for 2012 and that employees in the classification of firefighter be paid a signing bonus of \$500.00, and employees in the classifications of lieutenant and captain be paid a signing bonus of \$600.00.

IV CERTIFICATION

This fact finding report is based on the evidence and testimony presented to me at a fact finding hearing conducted July 20, 2012. The recommendation contained herein was developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 16th day of August, 2012, to the persons named below.

Union Representative

Mr. Bradley Rankin, Secretary/ Treasurer
IAFF Local 1232
P.O. Box 308
Circleville, Ohio 43113
Phone: (614) 805-3067
Email: btrankin1@yahoo.com

Employer Representative

Mr. Benjamin S. Albrecht
Downes Fishel Hass Kim LLP
400 South Fifth Street, Suite 200
Columbus, Ohio 43215
Phone: (614) 221-1216
Fax: (614) 221-8769
Email: balbrecht@downesfishel.com

SERB

Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

/S/ John F. Lenehan
John F. Lenehan

