

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT FINDING
BETWEEN THE
CITY OF DELAWARE
AND
THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, Local 606

STATE EMPLOYMENT
RELATIONS BOARD
2012 JUL -5 A 11: 56

SERB Case # 11-MED-12-1759

E. William Lewis, Fact Finder

Date of Mediation Session: May 11, 2012

Date of Evidentiary Hearing: June 4, 2012

Fact Finding and Recommendations

STATE EMPLOYMENT
RELATIONS BOARD
2012 JUL -5 A 11: 56

Appearances:

For the IAFF:

Mr. Henry A. Arnett, Esq.
Livorno & Arnett Co. LPA
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215

For the City:

Mr. Mark J. Lucas, Sr., President
Clemans, Nelson & Associates
6500 Emerald Parkway, Suite 100
Dublin, Ohio 43016

AUTHORITY

In the matter brought before Fact Finder E. William Lewis in keeping with applicable provisions of Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of Ohio Revised Code 4117, particular those that apply to Safety Forces and mutual directives of the parties.

Both sessions were held at the Delaware City Hall. All witnesses were sworn-in, in accordance with ORC 4117. The following were in attendance for the 5/11/12 mediation session and the Evidentiary Hearing on 6/4/2012:

For the City:

Mr. Mark Lucas	City Advocate
Mr. John Donahue	Fire Chief(witness)
Ms. Jessica Feller	HR Specialist
Mr. Darren Shulman	City Attorney
Mr. Dean Steltzer	City Finance Director(witness)

For the IAFF:

Mr. Henry A. Arnett	IAFF Advocate
Mr. Clint Archangel	Vice Pres., Local 606
Mr. Matt Kasik	President, Local 606(witness)
Mr. John Stuart	Fire Fighter

BACKGROUND:

The City of Delaware, hereinafter known as the City/Employer, is a full service City. It provides municipal and safety services to more than 34,000 citizens. The International Association of Fire Fighters, Local 606, hereinafter known as the Union/IAFF, represents a bargaining unit of approximately forty four members.

The parties are bargaining for a successor Agreement to the Collective Bargaining Agreement(CBA), that expired on March 31, 2012. This is a bargaining relationship that dates back to the inception of the Ohio Collective Bargaining Law. Prior to meeting with the fact finder, the parties had three bargaining sessions, with little success.

The first meeting with the fact finder was on May 11, 2012. After a review of the unresolved issues listed below, and a discussion with the fact finder, the parties agreed to use this Fact Finding date to mediate. Open issues as of May 11, 2012:

ARTICLE 2 RECOGNITION

ARTICLE 3 DEFINITIONS

ARTICLE 11 GRIEVANCE PROCEDURE

ARTICLE 14 CONTINUATION OF EXISTING BENEFITS & CHANGES OF AGREEMENT

ARTICLE 16 WAGES

ARTICLE 18 HOURS OF WORK & OVERTIME

ARTICLE 19 EDUCATION REQUIREMENT INCENTIVE

ARTICLE 23 INSURANCE

ARTICLE 24 HOLIDAYS

ARTICLE 25 VACATION

ARTICLE 26 SICK LEAVE

ARTICLE 27 INJURY LEAVE

ARTICLE 29 TRADES

ARTICLE 30 MILITARY LEAVE
ARTICLE 31 MINIMUM MANNING
ARTICLE 33 DUTY LIVING CONDITIONS
ARTICLE 36 RESIDENCY
ARTICLE 39 EARNED TIME
ARTICLE 41 DURATION

As a result of the mediation session, the following Articles were tentatively agreed to: Articles 2,11,14,17,27,29,30,31,33 and 36. Of the ten remaining unresolved Articles, seven have some proposed changes by the City ancillary to their proposal in Article 18. The City proposed in Article 18, to introduce twelve hour shifts. The ancillary Articles are: 3,16,24,25,26 &39.

THE FACT FINDING EVIDENTIARY HEARING:

By mutual agreement, the fact finder and parties agreed to schedule the Evidentiary Hearing for June 4, 2012, to address the remaining open issues. The Hearing was officially opened at 9:15am.

When making recommendations in accordance with Ohio Revised Code 4117.14(C) (4)(e), the Fact Finder takes into consideration the following factors:

- (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.

The format when addressing the unresolved issues, will be to list the issue or Article, followed by the positions of the parties, the fact finder discussion and his recommendation.

ARTICLE 18 HOURS OF WORK AND OVERTIME

Ancillary Articles and Sections impacted by the City proposal: Article 3 Definitions; Article 16, Section 1-add 42 hour pay rate, Section 2-add 42 hour work week, Article 24, Sections 3&5; Article 25, Section 1-E,F,G,K, Section 3&6; Article 26, Section 1, Section 3(b), Section 5, Section 6; Article 39, Section 3.

CITY POSITION:

Modify ARTICLE 18—HOURS OF WORK AND OVERTIME, and the ancillary listed provisions to provide for Fire Fighter/Paramedics to work twelve hour shifts and a forty-two hour work week.

UNION POSITION:

Current language.

DISCUSSION:

Evidence and testimony showed that the IAFF and the City have had three actual bargaining sessions. During these three bargaining sessions there was no progress made on this issue. From Hearing testimony, it appeared to the fact finder that the City proposed “their way”, and the Fire Fighters’ said “no way”. No alternative solutions or ideas appeared to be discussed, at least, as evidenced by Hearing testimony and submitted evidence. Hours of work is a mandatory issue for bargaining according to ORC 4117.08.

Evidence was introduced at the Hearing showing a two year City study of response calls(CE-Tb.6,Fg. 1).Eighty percent of those calls were EMS calls(CE-Tb.6). A large percentage of those calls occurred between 8a and 10p(CE-Tb.6).

The purpose of the Employer's twelve hour shift addition was to increase staffing during the peak incident times, per City witnesses. By the addition of new stations and personnel working at peak times the City would more efficiently meet the needs of the City residents, claims the City(Presubmittal).

The City passed a .3% increase to their income tax, solely for the Fire Division(CE-Tb.7(2). This increased fire levy was to allow for the addition of two new fire stations with increased staff, per evidence and testimony. Although no new stations are currently under construction, they are in the planning stages. The addition of the new stations, with equipment and personnel, will obviously meet increased peak demand and lessen response times.

There were a minimal number of comparables submitted by the City, and none were in this general geographical area(CE-22). In addition, Chief Donahue, in his testimony, identified some other communities using twelve hour shifts for Fire Fighters. No contract language was submitted with the comparables, and the fact finder finds the comparability of many of the submittals questionable.

The current CBA provides for forty hour Fire Fighter/Paramedics. City Exhibit Tab 7, #6 identifies that the peak demand periods fall between Monday and Friday, between the hours of 8a and 10p. According to Hearing testimony by City witnesses, the assignment of non fifty hour Fire Fighter/Paramedics is not restricted(Art. 18, Sec.1). If scheduled properly, those employees could cover nearly eighty percent of the peak demand response needs, in the fact finder's opinion.

There has been little bargaining on this proposed major change to the CBA, in the fact finder's opinion. ORC 4117.01(G), encourages and expects the parties to bargain, especially over significant contract revisions. It is the duty of the parties to negotiate on substantive changes to a CBA such as this. Unless there is a clear and convincing evidence to show that the proposed change is the only way to accomplish the necessary goal, a third party should not disturb long standing contract language. The fact finder is not convinced that the Employer's proposal is the only way to provide their increased desire to better serve the citizens of Delaware.

RECOMMENDATION:

Current language.

ARTICLE 16 WAGES

Section 1 Pay Ranges and Rates

Section 2 Application of Hourly Rates

Section 3 Forty Hour Employees

Section 4 Pension Pick-up

CITY POSITION:

Section 1: Year one, 0% wage increase

Year two, 2% across the board increase effective April 1, 2013

Add 42 hour/week employee

Add Fire Lieutenants

Section 2 Add 42 hour/week employee

Section 3 Forty hour employees

UNION POSITION:

Section 1 Add Fire Lieutenant

Year two—3% across the board wage increase effective April 1, 2013

Year three—3% across the board wage increase effective April 1, 2014

Section 4 Exchange the 10% Pension Pick-up for a 10% across the board wage increase effective the first pay period after execution of this Agreement.

DISCUSSION:

The City's financial condition has improved substantially over the last five years. The General Fund carryover percentage has increased from a reported ten percent in 2008 to 24 percent in 2012(CE-Tb.7(1)). City witness's testimony, stated that it really was not opposed to a general wage increase, however, they felt that the Fire Fighters were not cooperative when considering the City's needs.

Other City bargaining units that took a wage freeze did so when revenue concerns were heightened by the "great recession" fears. Not that we have recovered completely. However, the City has a better handle on its economic status now, as evidenced by their General Fund status(CE-Tb.7(1)). In 2011 the City moved the Fire/EMS financials to a separate fund. This, per testimony, was to reflect the .7% income tax "ear marked" for the Fire Division. It also has a substantial carryover balance(CE-Tb.7(1)). The increase to this funds revenue is necessary to support the increase of personnel, equipment and new fire stations(CE-Tb.7(2)).

The internal comparables are compelling. All bargaining units, and non-union employees are receiving a two percent wage adjustment in 2012(CE-Tb.7(13)). 2013 also evidences all bargaining units getting a two percent wage adjustment.

The fact finder is not convinced that the City submitted historical wage comparisons of Assistant Prosecutor and Plant Operator III, are relative comparables(CE-Tb.7(14)). It is accepted practice of third party neutrals, and statute, that the safety forces are considered most relative. In fact, the Authority to execute this process under ORC 4117, relates the safety forces to each other.

The City's projected wages for the Fire Fighters in 2012, included a two percent wage increase(CE-Tb.7(1)). The City Finance Director testified that was just an estimate for budget purposes, however it was included in the calculations for the 2012 budget. Evidence and testimony does not support the City's contention that a wage freeze is necessary at this time.

Section 4 of Article 16, has a ten percent Pension Pick-up(PPU) being paid by the City for the Fire Fighters. The Union has proposed the elimination of the City Pick-up and adding that ten percent to the current wages. This exchange is to be effective the first full pay period after the execution of the Agreement.

Evidence and testimony showed that the other major bargaining units in the City have already eliminated the Pension Pick-up by converting them to wages(UE-16). The City Finance Director testified that a PPU "swap" was not objectionable to the City. However, the "swap" had to be cost neutral. To be cost neutral, the adjustment to the Fire Fighter's wages would be 7.891%, not 10%, per the City. The City's 7.891% calculation was not disputed by the Union.

A three percent wage increase in years two and three, as proposed by the Union, is not reflective of internal comparable general wage increases. Furthermore,

SERB wage data for recent history does not support the Union's position(CE-Tb.7(15).

As for compensation for Lieutenants and Captains, the internal comparables available are with the Police contract. Evidence shows that the Police Sergeants and Captains have a 15% wage differential above the top Patrol Officer's wage rate. (ie. Sergeants 15% above Patrol Officer and Captains 15% above Sergeants (UE-16). When Lieutenants were part of this unit they were paid 15% above the top Fire Fighter(UE-16,1985-1987 CBA). However, at that time the paramedic differential was not included in the base rate of pay.

Captains are part of the current bargaining unit at a 29% differential above the top Fire Fighter rate. Which begs the question as to where to slot the Lieutenants when added to this unit. It certainly appears to the fact finder that the amount of the Captain differential(29%) does make room for a subordinate officer such as a Lieutenant. A Fire Fighter, Lieutenant, Captain hierarchy is common place for Fire Divisions. It is deemed to provide the quality of leadership that best delivers Fire/EMS services to the public. When in place, It's clear who the "in-charge" person is, when Fire/EMS services are provided.

Employer and Union witness testified that all Fire Fighters, Lieutenants and Captains will be paramedic certified in the future. Fire Fighter, Fire Fighter/paramedic, Captain differentials have been in existence for many contract renewals. Based on internal wage increase comparisons and the most recent SERB wage data, to add an additional increase of five percent to Fire Captains and commensurately to the new Lieutenant category, cannot be justified, in the Fact Finder's opinion.

RECOMMENDATION:

Section 1. Pay Rates and Ranges: to be adjusted as follows:

Year one, effective the first full pay period after the execution of this Agreement, eliminate the Pension Pick-up(Section 4), and provide a two percent (2%) across the board increase for all bargaining unit members. The across the board increase will total 9.891 %, including a cost neutral Pension Pick-up swap of 7.891%.

Section 3. Forty Hour Employees. To read as follows:

Forty hour employees who are not receiving the medic differential will receive an additional four percent (4) of their base salary as established above. The additional amount is included in the wage rates above. Employees temporarily assigned to a 40-hour work week, are not eligible for the 4% differential.

CITY Exhibit #23-Add Fire Lieutenants(50 & 40hr.) with the rates being adjusted by 9.891% upon the first full pay period after the execution of this Agreement, and to include a 40 hour Lieutenant rate per City Proposal Section 1. Page 2(see attached).

Year two: Effective April 1, 2013, a two percent (2%) ATB increase

Year three: Effective April 1, 2014, a two percent (2%) ATB wage increase

ARTICLE 41 DURATION

CITY POSITION:

Agreement to be Effective April 1, 2012 through December 31, 2013.

UNION POSITION:

Three year agreement, to be effective April 1, 2012 through March 31, 2015.

DISCUSSION:

With the Fire Division expansion plans of adding two new stations, with equipment and new staffing, a twenty month CBA would not work in the best interest of the parties, in the fact finder's opinion. The parties need a period of labor stability to address the upcoming changes.

"Whip-sawing", as alleged by the City, was not evidenced in the fact finder's opinion. There is no evidence to support changing the long standing three year agreement between the parties.

RECOMMENDATION:

ARTICLE 41—Current language, and change the dates to reflect a duration of April 1, 2012 through March 31, 2015.

ARTICLE 23 INSURANCE

CITY POSITION:

Section 1. Hospitalization, Surgical and Major Medical

---Increase employee's percentage share of COBRA premium rate to 11%, effective April 1, 2012.

---Effective April 1, 2013, increase employee's share to 15% of COBRA premium rate.

UNION SHARE:

Current language.

DISCUSSION:

In my over forty years of experience with collective bargaining, the escalating costs of healthcare has impacted the bargaining table more than any other issue. It truly has been the "white elephant" in the middle of the table. Not only have benefits declined and employee/employer costs risen, wage increases have been severely reduced by significantly increased medical costs.

The Employer argues that all but three City bargaining units, through earlier contracts, are currently paying 11% of the COBRA premium rate. This bargaining unit, testifies the City, pays about \$75/month for healthcare. Not fair to the other City employees, and the City, they claim.

Evidence confirmed that the Fire Fighters have the lowest premium contribution of 5%. Significantly below the statewide average of 10.7% employee contribution,

for family coverage, according to SERB's latest publication.

The Fire Fighters argue that the FOP makes more than them, and they only pay slightly more than the Fire Fighters(UE-23). However, other City bargaining unit members are now at 11%, and ultimately 15%, they generally earn less wages than the safety forces. With the exception of the Police Patrol Officers and Supervisors, all other City employees are currently paying 11%(CE-F(18)). Notably, the employee contracts now at 11% were negotiated after the FOP Patrol & Supervisor contracts were negotiated(CE-F(18)).

Health insurance costs for the Fire Division have increased 43% in the last four years(CE-7(1)). It is, in the fact finder's opinion, unrealistic not to expect the employees to bear a portion of that burden. Public employees, in general, enjoy high quality healthcare coverage, and this bargaining unit is no exception(UE-1).

RECOMMENDATION:

Section 1. Hospitalization, Surgical and Major Medical—to be changed to read as follows:

Effective the first full pay period after the execution of this Agreement, the employees will contribute to the cost of the health benefit plan in an amount equal to eleven percent (11%) of the established monthly COBRA rate, utilized by the City.

If the remaining two bargaining units (ie. Police Patrol Officers & Supervisors) increase their percentage premium contributions to 15% of the COBRA rate, then the first month following the effective date of that increase, the Fire Fighter's percentage contribution will be commensurately increased.

ARTICLE 26 SICK LEAVE

CITY POSITION:

Section 6. Payment upon Separation. Change to read as follows:

For employees hired after June 1, 2012 all sick leave hours transferred into the City will not be eligible for payment upon separation. Sick leave hours used by an employee hired after June 1, 2012 will first be charged to sick leave hours accumulated subsequent to employment with the City of Delaware. Once all sick leave hour accumulated subsequent to employment with the City are exhausted members will be eligible to utilize hours transferred into the City from prior employment.

UNION POSITION:

Current language.

DISCUSSION:

Although this proposed provision may exist in some other contracts, no official evidence was introduced to support that claim. No internal contracts were introduced to show it existence. This may be a cost control mechanism, as suggested by the City's testimony, however, no studies were submitted to show its estimated impact.

RECOMMENDATION:

Current language.

SUMMARY

The Fact Finding recommendations contained herein were arrived at giving consideration to the positions, arguments and submittals of the parties and criteria enumerated in ORC 4117,14(C)(4)(e). In addition, I also incorporate into

this Report, the tentative agreements of the parties reached through negotiations, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

Respectfully submitted this 3rd day of July, 2012.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis

Fact Finder

City of Delaware/IAFF
 Fact-Finding Hearing
 Spread Between Ranks
 Article 16
 June 4, 2012

EXHIBIT # 23

City Proposal	Based on Current Pay	% Spread	
50 Hr. Captain	\$ 76,169.60	10.9%	1/0.94.00
50 Hr. Lieutenant	68,692.00	10.94%	14/
50 Hr. Firefighter/Paramedic	\$ 61,958.00	5.0%	
50 Hr. Firefighter	\$ 59,030.40	0.0%	

Propromotional Increases

Firefighter/Paramedic Step 5	\$ 61,958.00	
to Lieutenant Step 1	\$ 63,523.20	2.5%
Lieutenant Step 3	\$ 68,692.00	
to Captain Step 1	\$ 70,387.20	2.5%

CERTIFICATE OF SERVICE

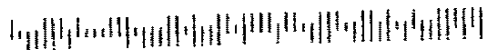
The undersigned hereby certifies that a true copy of this Fact Finding Report was served by regular U. S. mail upon Henry A. Arnett, Esq., for The International Association of Fire Fighters, at Livorno & Arnett, 1335 Dublin Road, suite 108-B, Columbus, Ohio 43215, and Mr. Mark J. Lucas, President, Clemans, Nelson & Associates, 6500 Emerald Parkway, suite 100, Dublin, Ohio 43016, and upon Donald M. Collins, General Counsel, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215, this 3rd day of July, 2012.

A handwritten signature in black ink that reads "E. William Lewis". The signature is written in a cursive style with a large, stylized initial "E".

E. William Lewis

Fact Finder

William Lewis
3 Silverleaf Ct
Columbus OH 43235



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State Employment Relations Board
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