



BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF OHIO

ALLIANCE PROFESSIONAL : CASE NO. 2012-MED-04-0510
FIREFIGHTERS ASSOCIATION, IAFF
LOCAL 480

:

AND

HEARING DATE
JANUARY 29, 2013

:

CITY OF ALLIANCE, OHIO

REPORT OF FACT FINDER JACK E. McCORMICK

FEBRUARY 4, 2013



Pursuant to an Appointment letter dated November 7, 2012 from the State Employment Relations Board a fact-finding hearing was held at 10:00 am January 29, 2013 at the Alliance Ohio City Hall.

Present at the hearing were the following:

For the Employer: W. John Gross, Director, Public Safety Service..

Kevin G. Knowles, Alliance City Auditor

Robert J. Tscholl, Esq. Attorney for the City of

Alliance

John B. Blaser, Public Safety Director (Ret.)

Barb Sferra, Safety Service Co-Ordinator

For the Employees: Timothy R. Piatt, Esq. , Attorney for Local 480

Douglas M. Miner, President, IAFF Local 480

Brian G. Lam, City of Alliance Firefighter

Jeremy S. Rhome “ “ “ “

Christopher L. Waffler “ “ “ “

The parties were fully advised by the Fact-Finder of the applicable law as well as the Rules regarding fact-finding. Attempts at mediation were made throughout the hearing, but were unsuccessful.

The City of Alliance is located in the Stark County Ohio with a population of 22,294. The Bargaining Unit is comprised of 28 firefighters (with two vacancies). The collective bargaining agreement under consideration is for the years 2012 through 2014. The current agreement expired on June 30, 2012.

BACKGROUND

The negotiating teams have formally met six times since May 2012. Several Tentative Agreements were signed, however the City is not willing to now make them part of the new CBA.

Accordingly the following are the unresolved issues between the parties:



- ARTICLE 4: SAFETY PROVISIONS- EQUIPMENT
- ARTICLE 7: GREIVANCE PROCECDURE –DEFINITIONS
- ARTICLE 10: HOURS OF WORK –LEAP YEAR SCHEDULE
- ARTICLE 11: JOB DESCRIPTIONS –DEFINITIONS
- ARTICLE 13: WAGES-RATES, LONGEVITY, CERTIFICATION PAY
STRUCTURE, EMS DUTY
- ARTICLE 20: VACATION ACCRUAL
- ARTICLE 21: SICK LEAVE RETIREMENT PAYOUT, TIME-OFF
- ARTICLE 22: BEREAVEMENT LEAVE
- ARTICLE 23: FEES-REIMBURSEMENT FOR DAMAGED
CLOTHING/ITEMS
- ARTICLE 27: DURATION

For clarity sake the Fact-Finder shall take these issues out of order, beginning with the issue of duration. The Union proposes a three year agreement while the City proposes a one year agreement. The thrust of the City's argument on this issue is that due to the lack of knowledge of what the future holds for revenue and expenses it cannot agree to anything beyond one year. This would necessarily abrogate all of the current CBA, including those items that are not in dispute in the current CBA. In other words, the parties negotiate a new CBA in July 2013. Further it proposes no changes in current language, other than the expiration date.

If the lack of foreseeability for more than one year was adopted as a criteria for limitation on multi-year contracts there would be few, if any, multi-year CBA's. These parties have a history of signing three year agreements and the City fails to provide compelling reasons why this should not continue. There are better methods (which will be discussed later) than throwing out years of bargained for provisions.

This Fact-Finder was charged with preparing five **biannual** budgets for the State agency which he headed in his ten year career. This had to be reviewed and approved by the Office of Management and Budget and then presented, in detail, to the General Assembly in an oral presentation at least ninety days before the beginning of the

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next biennium. It was difficult, but not impossible to do. However, even though the State of Ohio was in financial distress during at least two of those budget periods it was accomplished, as it was, and still is, with numerous other state agencies. There are methods (which will be discussed later) for projecting budgets over a multiyear time frame.



THERE ARE NO FACTS THAT SUPPORT THE CITY'S POSITION THAT THIS SHOULD BE A ONE YEAR CONTRACT.

As stated above the City opposes any and all changes to the current CBA, except the issue of duration. This includes changes that are both economic and those that clearly are not.

The thrust of the City's opposition to change surrounds its assertion that it has an inability to pay. The ability to pay is required to be found by any Fact-Finder by rule and law. Therefore the Fact-Finder will address that assertion before discussing any economic issues, since if there is no ability to pay, there can be no recommendation no matter the merit of any proposal(s).

It is absolutely true that local governments have been hit hard by several recent events. The State and Local Funds from the state have been drastically reduced, the economy has since 2007 been poor; the estate tax has been eliminated as has the personal property tangible tax.

In 2012 the City's General Fund Balance (GRF) was \$1,651,749 having begun the year with a carryover of \$2,854,511. This occurred in spite of record income tax receipts.

GRF expenses have exceeded revenues in four out of the past five years. In order to supplement the GRF the City has reallocated funds from non-dedicated funds from other line items that are not considered GRF. These reallocations have come from the master capital and street income tax fund.

It has prudently reduced its work force from 234 full-time and 93 part-time positions in 1999 to 209 full-time and 81 part-time in 2012.



In spite of these measures it now calculates that its 2013 ending balance will be \$153,507.00 down from \$1,651,749.00 in 2012. This is even with a reallocation of \$670,925 by the City Council to the GRF.

All of this makes any recommendation for increase wages and/or benefits problematic.

However, there is one perplexing item in the City's budget documents. In a document titled "City Alliance General Fund History" located at Tab #3 of its presentation there appears to be some anomalies.

The first and most troublesome is that the City's auditor's estimated expenditures of \$12,000,000 for the year 2013. It is troublesome for two separate reasons. First, by his own assertion he has made similar estimates in prior years and thankfully they have always been too high. However, it is noted that his estimate for 2013 is \$395,543 higher than actual expenditures in 2012. Further analysis shows that, as a percentage that increase (3%) far greater than the actual percentage increases since 2008, excepting 2011.

Actual expenditures for 2009 were up 1%, for 2010, down 1%, for 2011, up 3% and 2012 up 1%. The Auditor asserts that he makes these over estimates to insure that there is adequate coverage. It is totally perplexing to this observer that one month into a budget year this City cannot provide to the Fact-Finder, or the Union, estimates by line item, for thorough examination and analysis.

The Auditor's "estimate" is, at best, an educated guess.

This may be adequate for the governing body, but not for this Fact-Finder. At the very least there should be a footnote to explain why expenditures are going to up 3% when the City is attempting to husband its funds. Where are the increased expenses of \$395,543 going at a time when the City is attempting to reduce costs?

As stated above, there is a widely accepted method used both by private industry and the Office of Management and Budget to calculate future expenses and revenue. Furthermore, they should be calculated long before the beginning of a budget year, usually in the last month of the prior year. It would have been more helpful if the City and the Union had waited until the City had developed a consolidated line item budget before any fact-finding.



devices.

The City's expenditures, taken from its own document, for the years 2008 through 2012 increased by a total of \$758,698, or on average \$151,740 per year. However, the City estimates that in the year 2013 they will increase by \$395,543, more than twice the previous five year average! Of course, this may be explainable and would, presumably be contained in the line item estimates that would be contained in a consolidated budget document, but alas, it does not exist. Accordingly:

THERE ARE NO FACTS TO SUPPORT THE CITY OF ALLIANCE'S ESTIMATE OF EXPENDITURES FOR THE YEAR 2013.

The typical and accepted methodology to project budgets is to establish a base line. First, as it relates to expenditures one takes the prior year's total and adds to that organically caused increases, e.g. step increases, contract obligations, health and other insurance costs, etc.. That becomes the base line. To that you add known inflation factors, e.g. energy, non-durable supplies and reoccurring replacement items, etc.. Then you add any new costs caused by the change in any law or new regulation. Then you add any known extraordinary items, e.g. retirement, vacation and sick leave pay-outs, replacement of durable equipment, etc.. Depending on the type of company or governmental agency there may be a variety of other factors to be considered, however if done correctly this will give a CEO, a legislature, a mayor, governor, or fact-finder something more than an educated guess. Can the CFO of General Motors tell the CEO exactly what GM's cost will be in a coming year, no, but he can give him an estimate based on reasonably known factors.

AS THERE ARE NO FACTS TO SUPPORT THE CITY OF ALLIANCE'S ESTIMATED EXPENDITURES, THERE ARE NO FACTS TO SUPPORT ITS ESTIMATED END OF YEAR BALANCE FOR 2013.



As noted above, since 2008 through 2011 the City's expenses have increased by approximately 1% per year. The City has done an outstanding job to keep expenditures in line. Assuming they will continue this effort the Fact-Finder estimates their expenditures will increase no more than 1.5% in 2013 as opposed to the Auditor's "estimated" 3%. That would bring the total expenditures to \$11,778,524 or \$221,476 less than the Auditor's "estimate". The ending balance estimate would then be projected as \$374,983 as opposed to the Auditor's "estimate" of \$153,507. Lacking a footnoted budget document supporting the Auditor's higher figures, one must substitute instead historical patterns to make a more reasonable estimate.

IF WARRANTED THERE ARE FUNDS AVAILABLE FOR INCREASES IN THE WAGE RATES OF THE ALLIANCE FIREFIGHTERS IN THE YEARS 2012 AND 2013.

So far there has been no discussion of the City's 2013 revenues herein. As alluded to herein above, the City will lose revenue from the elimination of estate, tangible personal property taxes and the cuts to the Local Government Fund by the State. The only glimmer of hope for the City is that city income taxes are coming in at a record high along with the fact the State predicts that Stark County will over the next few years be one of several counties that will benefit from the boom in oil and gas drilling. Undoubtedly Alliance will should see an increase in economic activity in the next three to five years. However, that is speculative in nature. Therefore, any economic increases, such as public employee raises, cannot count on revenue enhancement at this time.

WAGE INCREASES

The mere fact that a neutral has determined facts that there are sufficient funds to grant pay increases does not mean they are a categorical imperative. There also must be a finding that the employees merit the increases.

The City's firefighters are currently under a raise freeze. In addition they have experienced increases in their health care insurance, deductibles and their pension

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contributions. Leaving aside inflation, this has resulted in a diminution in their net
income.



On this issue was the City's asserted in its prehearing statement that:
"[Alliance] Firefighters are adequately paid;" However the City presented no facts in
support of that assertion and it will therefore not be considered.

The Union, on the other hand at their Exhibit 9 provided over thirty such
comparables. Of those only Ashtabula and Tiffin firefighters make less than this unit.
However, the Fact-Finder notes that the nearby city of Canton pays its firefighters
\$50,679 per year and the city of Wooster pays its firefighters \$57,949. Meanwhile
Alliance Firefighters are paid \$44,254.

**FOR ALL THE REASONS SET FORTH ABOVE THE CITY OF
ALLIANCE FIREFIGHTERS DESERVE A MINIMUM INCREASE IN THEIR
CURRENT WAGE RATES.**

The question now becomes: what shall that increase be?

The Union makes a rather unorthodox proposal that this unit receive 0% in
the first year with cost of living increases in the 2013 and 2014. Presumably the COLA's
would be those published by the Bureau of Labor Statistics. This is not only unorthodox,
but also unworkable. It would only make budget planning more difficult, and could lead
to unaffordable increases.

Instead, and based on the facts developed the following finding is made:

**CITY OF ALLIANCE FIREFIGHTERS SHALL RECEIVE A ONE
PERCENT (1%) INCREASE IN THEIR BASE PAY FOR THE YEAR 2012 AND
AN ADDITIONAL ONE PERCENT (1%) IN THEIR BASE PAY FOR THE
YEAR 2013. THE PARTIES SHALL ENTER IN TO WAGE RE-OPENER
NEGOTIATIONS FOR THE YEAR 2014 AT THE APPROPRIATE TIME.**

The total costs to the City for these increases, including fringe, will be
\$19,825.30 for 2012 and \$20,023.25 for 2013, according to City of Alliance Auditor.

these increases.



*** THE CITY OF ALLIANCE DOES NOT HAVE THE ABILITY TO FUND ANY OTHER SUBSTANTIAL ECONOMIC INCREASES PROPOSED BY THE FIREFIGHTERS AT THIS TIME.**

*** below denotes inability to pay**

Article 4.A Section 1 (A) (18) elimination of pagers is left up to City under Management Rights. Proposed Union change is denied

Article 11.A Job Description Suppression (B)

By agreement of the parties sub-section (B) will be stricken and replaced by the following:

“There is hereby created and established a First Responder Unit of the Fire Department of the City of Alliance. The Director of Public safety and Service shall issue rule and regulations for the staffing and operation of the First Responder Unit, which rules shall be in accordance with the Ohio Revised Code and the Ohio Administrative Code, and which rules and regulations shall be submitted to City Council pursuant to Section 139.03. The level of emergency medical service provided by the Fire department may exceed the “first responder “ certification level so long as such service is provided in compliance with the Ohio Revised Code and the Ohio Administrative Code”

The Union proposes to insert certain language in Article 11.A, Section 2(A) RELATING TO EMERGENCY RESPONSE:

The Fact-Finder finds that these proposed insertions encroach on the City’s Management Rights and are therefore rejected.

Section 4. EMS and Fire Certifications – At the hearing the Union withdrew this new language.



The Union proposes to replace Section 2. Definitions. It asserts that the current language is “too broad in nature”. However, it did not indicate that there were any past problems with this language. In these kinds of situations this Fact-Finder adheres to the principal of: “If it is not broken don’t fix it”. Accordingly, lacking facts to support the Union’s propose change, current language should be retained.

Article 10.B LEAP YEAR SCHEDULE

The Union proposes to delete this entire section as it no longer an issue for the membership. The parties signed a tentative agreement deleting this section and accordingly the Union’s proposal is accepted.

Article 13.A: WAGE RATES AND POSITONS - Rejected see above *

Article 13.B: LONGEVITY - Rejected see above*

Article 13.F: Personnel of the Day Pay - Rejected see above*

Article 13.G: EMS Certification – Rejected see above*

Article 20.A: Vacation - sub-section F of Section 5 (**Suppression personnel shall be allowed to take a minimum of four (4) hours vacation.** This should be made part of this CBA (was previously a tentative agreement). All other changes to this Article are rejected see above*

Article 21.C: RETIREMENT – The Union’s proposed language changes were subject of a tentative agreement between the parties and should be made part of this CBA.

Article 21.F: TIME OFF LIMITATION – same as above (21.C).



The Union proposes that the two (2) hours off with pay should not come from sick time, as in the current CBA, but rather be granted as "Death in the Family" time off. The Fact-Finder observes that most CBA's in this state allow some paid time off for deaths in the immediate family and usually it is for a much longer period, e.g. 8 hours to three (3) days. This change will have minimal impact on the City's budget and accordingly it should be made part of this CBA. This is not a "substantial" increase in costs.

Article 23.B. Personal Items, Limits & Subrogation

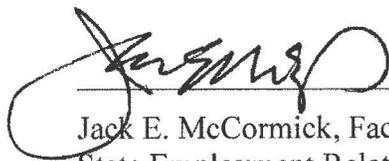
The Union proposes to increase that the current amount of \$250.00 allowed for certain on the job personal property, to now include uniforms, be increased to \$500.00. The Union notes that this is the same reimbursement rate currently provided in the Alliance Police Officers CBA. The Fact-Finder finds this to not only be reasonable, but also believes it grants parity with the Police Officers and therefore should be part of this CBA. It will not have "substantial" impact on the City's budget.

Section 1. Contract Term

As discussed above there are no facts, nor rationale to support discontinuing the history of these parties of agreeing to a three (3) agreement.

THE FACT-FINDER RECOMMENDS THAT THE TERM OF THIS AGREEMENT SHOULD BE JULY 1, 2012 THROUGH JUNE 30, 2015.

February 4, 2013



Jack E. McCormick, Fact-Finder
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The foregoing was served on the following by email.pdf on February 4, 2013:

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Jack E. McCormick, Fact-Finder



FACT-FINDER'S FEE STATEMENT

Scheduling & review prehearing submissions - 1.0 hr -	\$ 118.75
January 29, 2013 travel and conduct fact-finding 1.0 day -	\$ 950.00
Study and write report 1.5days -	\$1,425.00
Mileage 300 miles @ \$.50 -	<u>\$ 150.00</u>
Total -	\$2,643.75

City' portion - \$1,321.88

Union's portion - \$1,321.87

A handwritten signature in black ink, appearing to read "Jack E. McCormick", written over a horizontal line.

Jack E. McCormick, Fact-Finder

Tax ID 31-1410950

W-9's will follow under separate cover