



STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
DONALD G. RUSSELL, FACT-FINDER

In the Matter of the Fact-finding between

Forest Park Fire Fighters Association,

Local # 3024, I.A.F.F.,

Employee Organization,

Case No. 12-MED-08-0751

-and-

The City of Forest Park,

Employer.

Fact-finding Report

The State Employment Relations Board notified the fact-finder of his appointment by e-mail letter dated January 10, 2013. The parties were negotiating and submitted a joint agreement to extend the fact-finding period. A final joint agreement extended the statutory fact-finding timelines to allow the issuance of the fact-finder's recommendations until and through April 10, 2013. The fact-finding hearing was held by agreement on March 13, 2013, in a Second Floor Conference Room in Forest Park Municipal Building, 1201 W. Kemper Road, Forest Park, Ohio 45240-1617 from 10:00 a.m. to 5:15 p.m. Edward S. Dorsey, of Wood & Lamping, was attorney for and represented The City of Forest Park. Kevin Rader, of Arnett Rader Consulting, Inc., represented Local 3024, IAFF. Both parties submitted position statements prior to the hearing and a considerable amount of evidence during the hearing in support of their respective positions. The evidence is incorporated herein by reference. The parties also testified and argued their positions orally to the fact-finder.

The parties provided the fact-finder a copy of the current collective bargaining agreement. It is the touchstone of the successor agreement. That is, the proposals are framed as keeping current language, deleting current language, or adding language in a specific location in the agreement.

The parties came to the fact-finding with some successful bargaining behind them and had reached tentative agreements on several issues. Both parties asked the fact-finder to recommend that the articles upon which there is no disagreement, the tentative agreements, be included in the new collective bargaining agreement. Assuming that the parties have a set of tentative agreements, the fact-finder recommends they be included in the new agreement. The parties raised no issue as to what they have tentatively agreed upon.



At the opening of the hearing, the following issues remained unresolved. They were:

- Wages.
- The percentage of wage separation between firefighter/paramedics and supervisors.
- Holidays.
- Overtime call-in procedures.
- Fire inspector compensation.
- Out-of-class pay.
- Layoff procedure.
- Staffing.
- Health insurance.
- Drug Testing.
- Annual physical exams.

These issues remain for the fact-finder to make a decision on. Following is the fact-finder's decision and recommendations.

Background

The City of Forest Park is located at the northern edge of Hamilton County, Ohio, a few miles north of Cincinnati. U.S. Census data show the population is slightly declining and is currently about 18,500. The median annual household income is about \$46,600. 16% of Forest Park's population is below the poverty level. Forest Park has been hurt by the recession. Declining property values, mortgage foreclosures, and closed businesses have had a negative impact on revenue. State cuts to the general fund and loss of estate taxes also depressed Forest Park's revenue.

Forest Park negotiates collective bargaining agreements with three unionized bargaining units --- firefighters, police, and public works. The agreement for the firefighters, represented by Forest Park Firefighters Association, Local 3024, International Association of Firefighters, expired on December 31, 2012.¹ The Fraternal Order of Police and Forest Park have a current agreement that expires on December 31, 2013. The City and the Teamsters recently reached a new three-year tentative agreement for the public works department bargaining unit. The public works agreement calls for wage increases of 1.5% in 2013, 1.75% in 2014, and 2% in 2015.

¹ In their November 21, 2012, Extension Agreement, the parties agreed that "... in the event that a contract is not finalized by December 31, 2012, the parties agree that the contract, including any increases in the rates of compensation and other matters with cost implication negotiated, adopted or awarded by a conciliator, may be effective, if need be, January 1, 2013, the restriction of a conciliator imposed by R.C. 4117.14 to make an award effective fiscal year 2013 being expressly waived."



The Forest Park Firefighters Association, Local 3024, represents about 20 full-time firefighters including lieutenants and captains. There are currently 11 firefighter/paramedics, 2 lieutenants, and 3 captains. From the testimony, it appears the City is attempting to fill a third lieutenant position. There is also a public relations lieutenant. So, this brings the working number of lieutenants to 4. In addition to the shift captains, there is also a training captain bringing the total of captains to 4. Finally, there is a fire inspector/fire marshal position. There are about 20 positions in the unit, 11 firefighter/paramedics, 4 lieutenants, 4 captains, and 1 inspector/fire marshal. There used to be more than 30 positions in the bargaining unit.

The bargaining unit members work 24-hour shifts, "tours," followed by 48 hours off. There are five full-time firefighters on the first platoon and six full-time firefighters on the second and third platoons. There are also part-time firefighters scheduled as needed, but the part-time firefighters are not part of the bargaining unit.

Following is the decision and recommendations of the fact-finder on each of the issues remaining.

Factors

The fact-finder considered the following factors in deciding the issues in this case. The first factor considered the current collective bargaining agreement which was presented as evidence and is at tab 2 of the union's three-ring binder of evidence. The second factor was to make comparisons of the wages, benefits, and other terms and conditions of employment of the firefighters in the bargaining unit with those of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved. A third factor is the public interest --- "interests 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." A fourth factor is the lawful authority of the public employer. Finally, other factors are considered which are normally and 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 fact-finder does not consider fact-finding to be like grievance, or rights, arbitration where the arbitrator determines if there are rights in the contract that should be enforced on behalf of an employee, or the union, or the bargaining unit. In fact-finding, and interest arbitration, the fact-finder is present because the parties were unable to negotiate a collective bargaining agreement between themselves. The fact-finder should endeavor to give them the agreement they would have reached if they had not reached a bargaining impasse. This often means that issues that might appeal to a fact-finder as just and fair are not recommended because it is not likely they would be agreed to by these two parties at this time and place. It is an important consideration in Ohio fact-finding because, regardless of how a fact-finder views a particular issue, the fact-finding report must be submitted to the principals for a vote of approval. The acceptability of the recommendations, even if given unenthusiastically, is important because an agreement the parties would reach without third-party assistance would likely contain some good and some bad in the eyes of the negotiators. The recommendations that follow in this report should be seen in that light.



Drug Testing

The City and Union have an article on substance abuse testing, Article X, in their current agreement. It is in the nature of an agreement to continue to bargain on the issue of drug testing. No negotiations during the current agreement occurred.

Local 3024 made a contract proposal for this new agreement that was comprehensive. At tab 3 in the Union's evidence is the new proposal, a new Article X, Drug Testing, in three large paragraphs, some two-and-a-half pages long, marked as "Employee Proposal 3-13-2013."

Negotiation of drug testing provisions can be very complex and complicated. Even so, in listening to the parties at the fact-finding hearing, it is clear they essentially agree on what should be contained in a contract clause. The Union's proposed Article X, Drug Testing, provision embodies most of their agreement with disagreement on one point remaining.

"The main source of disagreement between the City and the Union at this point is that the Union has requested that provisions of the DOT regulations relating to the requirement of a split sample and the medical review officer be included in the contract language. The City opposes this proposal because of the possibility that the DOT will change its regulations in some respect, and the DOT regulations and the contract would be inconsistent. The City's proposed language essentially incorporates by reference the DOT regulations as those continue to evolve."²

The City is referring to Article X, 2, c, of the Union's proposal, second sentence, "The procedures utilized by the Employer and testing laboratory shall follow Department of Transportation standards." The City's proposed language on this point is, "The procedures utilized by the Employer and testing laboratory shall follow Department of Transportation standards as set forth in 49 C.F.R. Part 40 and as may be modified from time to time. In the event the DOT significantly modifies its drug testing procedures or standards, either party may request collective bargaining to negotiate changes in this Article."³

The City's concern is reasonable. The Union's proposed Article X would lock in current DOT standards. While this has the advantage of being determinable so that the parties know what they are doing, it has the disadvantage of utilizing the experience, growth, and development of technology that the DOT might use in modifying its standards from time to time.

The fact-finder recommends the replacement of the current Article X with a new Article X as proposed by the Union in its 3-13-2013 proposal except that the language will exclude the Union's reference to following DOT standards and include the City's language on using standards as set forth in 49 C.F.R. Part 40 and as may be modified from time to time. Also, include the City's next sentence providing for the negotiation of any significant modifications of standards by the DOT.

² See page 9 of the City's position statement.

³ See pages 7 and 8 of the City's position paper, proposed Article X, Drug and Alcohol Testing, section b.



Annual Physical

Local 3024 proposed that the City provide and pay for annual physical examinations for each member of the bargaining unit. The new article is set out in full at tab 9 of the Union's evidence. The City agreed with the Union that it would be willing to provide such physical examinations or testing as may be required by law. The City and Union discussed OSHA's requirement for a fit test on self-contained breathing apparatus and a pulmonary function test.

The City argued that the Union's proposal is overbroad and would require the City to provide each employee with an annual physical examination without limitation as to whether the exams are required by law.

The fact-finder finds that the City should provide examinations and testing that are required by federal and state statutes and regulations for these employees in their specific line of work. The City should provide whatever exams and tests are required as a part of doing and continuing in the bargaining unit jobs. Actually, the City agrees with this. Moreover, the City is willing to pay for these exams and tests specifically required by federal and state law.

The fact-finder agrees with the City that the Union's proposal is overbroad. Such an addition to the contract should specifically identify what is to be provided and paid for. The fact-finder agrees that the City should be able to select the health care provider of the tests and exams since the City is paying for it.

The discussion of this issue between the parties at the hearing showed that they are very much on the same page about what should be provided, who should pay, and when it might be provided while the employees are on duty in one of their tours. The fact-finder believes most of these procedures can be given during regularly scheduled hours and is reluctant to dive into whether the time should be reimbursed in some special category. If this becomes an issue, the contract administration procedures for grievances can be used to handle the issue.

The fact-finder recommends the following new article. The parties can appropriately give it a Roman numeral article number.

"The City will provide to each employee such physical examinations and testing as may be required by federal and state statutes and regulations. These examinations and tests shall be at no cost to the employee and shall be provided, as far as is practicable, during the employee's scheduled hours of work. If an examination or test is scheduled and given at some time other than the employee's regular scheduled hours of work, other provisions of this agreement as may be applicable will apply."



Overtime Call-in Procedure

Article XIII of the current agreement deals with Call-in Pay. It is straightforward and understandable. It says:

“Any time an employee is requested to work and is not scheduled to work at that time, he will be paid a minimum of two (2) hours at the fifty-two (52) hour rate, or the rate to which he is entitled. “

The fact-finder recommends that this current language be retained in the contract. It is standard fare found in many, many, collective bargaining agreements. If an employee is called to work, gets ready, drives to work, and interrupts what he has been doing, It is reasonable to pay him at least two hours pay for the trouble. Of course, if he works longer than two hours, then his pay is determined as provided for in the agreement.

There is a second paragraph to the current Article XIII and it deals with Call-in Procedure. The fact-finder would categorize what the remainder of the current contract clause is as an equalization of overtime clause. The fact-finder recommends the current clause on Call-in Procedure also be retained in the contract since it should have some acceptableness to both parties since they once agreed to it.

In its position statement, the City refers to two issues, No. 3 is “overtime call-in procedure” and No. 8 is “staffing.” The Union, at tab 10, included its new article on “call-in procedure / overtime” which includes a staffing provision, and includes page 2 of the current Article XIII, Hours of Work, which deals with call-in pay and call-in procedure. The fact-finder is dealing with all of these here in this section of the report. Hopefully it is not confusing.

The City is correct when it argues that the new article proposed by the Union is “confusing and vague.” The new article proposed by the Union is found at tab 10 of the Union’s exhibits. There are two reasons the fact-finder rejects this proposal. First is that it truly is confusing and vague. This is because it is a complicated matter and deserves more consideration by the Union and City. The testimony at the hearing indicates they seem to agree in large part with each other, but simply have not reduced their agreements to writing. The second reason for rejection of it, in part, is that paragraph 1 of the proposed new article on call-in procedure/overtime sets forth staffing requirements. The City argues, and the fact-finder agrees, that staffing levels are called for in its provisions. The fact-finder agrees with the City that staffing levels are a permissive subject of bargaining and should not be taken to impasse procedures under Ohio law. More importantly, in the fact-finder’s thinking, even if it were a mandatory subject of bargaining, the fact-finder would be reticent to tell the City how to operate the fire department. Staff size is normally a management prerogative, but once the City hires employees and they arrive at work, then the labor agreement may deal with wages, hours, benefits, terms and conditions of employment.



In addition to retaining the current language of Article XIII, the fact-finder recommends that the contract provide: "Within ninety (90) days of execution of this agreement, the City and Local 3024 will submit these issues surrounding a call-in procedure to the Labor-Management Committee for development of a call-in procedure for overtime and this agreed-upon procedure will be reduced to writing as a memorandum of understanding."

Working Out of Classification

Local 3024 proposed a new article entitled "working out of classification." The proposal is straightforward, short, and clear. It says:

"When an employee works out of his classification in the position of an officer or in a higher classification he/she shall be paid at the applicable hourly rate for all hours worked in the higher classification."

This proposal is located at tab 12 of the Union's evidence book.

The City explained this issue. A normal tour has a lieutenant and captain assigned to it. The parties discussed in negotiations what happens when, for whatever reason, both the lieutenant and the captain are absent. The issues between the City and Union concerned a fair way of selecting an acting lieutenant and compensation for that person while serving as an acting lieutenant.

There seems to be agreement that there should be at least one officer on each shift and that he should either be a lieutenant, or higher, or a fire/fighter/paramedic should be designated as a lieutenant for the tour. After consideration of the Union proposal and the City proposal on this issue, the fact-finder has selected the City's proposal because it seems to cover the issues well and clearly and meets the concerns of the Union. The City's proposal is recommended and it reads as follows:

"In the event that all or any part of a shift is without a Captain and a Lieutenant because of vacation, illness, injury, or other reason, management may appoint a firefighter/paramedic from the approved promotion eligibility list to be the acting Lieutenant for the duration of that shift. The person assigned to be the acting Lieutenant shall be the most senior firefighter/paramedic on the approved promotion eligibility list that is also on the affected shift. If there are no such firefighter/paramedics, then management may assign a firefighter/paramedic from another shift who is on the approved promotion eligibility list to be acting Lieutenant on the affected shift. In the event that there are no firefighter/



paramedics on the approved promotion eligibility list, then management may assign an off-duty Lieutenant or Captain to the affected shift.

In the event that a firefighter/paramedic is assigned to be an acting Lieutenant, he or she shall be paid at the firefighter/lieutenant rate for the time spent in that role. However, if a Captain is absent for some or all of a shift, the Lieutenant on that shift shall not be entitled to be paid at the Captain rate.”

The fact-finder realizes that the clause contains the word “may” and not the word “shall” with respect to whether management designates an acting Lieutenant. The fact-finder believes that the City sees a need for supervision and would not use this as a means of eluding the practice of designating an acting Lieutenant, but might, in some special cases, not feel a need to designate someone. Perhaps another officer not on the shift might nonetheless, for some reason, be present. In any case, the fact-finder believes this clause will serve to help with concerns about these issues.

Layoff Procedure

Article XXIV is the current contract language dealing with layoff procedure. The current language provides that the “youngest employee in point of service” will be the first employee laid off. Actually, the parties probably mean that the employee who is junior in service will be the first laid off, but since the parties drafted it as set out above, the fact-finder won’t change it.

The Union said that it initially put forth a proposal that would clarify the order in which layoffs would occur, but during negotiations the City clarified the Union’s concerns and now the Union is satisfied with retaining the current contract language.

However, the City then proposed language which would provide that layoffs could be done by classification. The proposal reads, “The City may lay off by job category such as Captain, Lieutenant, Firefighter/Paramedic, etc. as listed in Apx. I.”

There are only twenty employees in the bargaining unit. Laying off the employee with the least total time in service with the fire department would seem to be best in that those retained would normally have the experience necessary to carry on. The FOP contract provides that layoffs will be made “in the inverse order of the date when an employee first entered into service.”

Appendix I is a table for pay grades notwithstanding that it also sets out seven different positions --- Firefighter/EMT, Firefighter/Paramedic, Fire Inspector/EMT, Fire Inspector/Paramedic, Firefighter/Lieutenant, Firefighter/Captain, and Firefighter Training Captain. As the fact-finder frankly told the parties at the hearing, seven categories for twenty employees would



seem to be troublesome. However, the parties negotiated Appendix I and the fact-finder does not think it wise to change what the parties have previously agreed upon.

The same is true of the current Article XXIV. It was negotiated and there is no compelling reason supported by experience and evidence that it should be changed. The fact-finder is also concerned that layoffs by job category is a recipe for discrimination. This is not meant in the sense of illegal discrimination, although that could happen too, but more in the sense of discrimination against persons with personalities or other traits not valued by the person deciding where to layoff. By not recommending the City's proposal, the fact-finder believes he is saving the City from grievances and litigation.

The fact-finder recommends that the parties retain the current Article XXIV for layoffs because it (1) has been agreed to before by the parties, (2) seems to be working alright, and (3) is similar to the FOP procedure.

Holidays

The current agreement provides that employees working the "tour" system get 96 hours of holiday pay each year. This is the equivalent of four 24-hour days, eight 12-hour days, or twelve 8-hour days.

The Union proposed that the holiday pay for employees on 24-hour shifts be increased by 12 hours per year --- that is to 108 hours in 2013, to 120 hours in 2014, and to 132 hours per year in 2015. If 24-hour "tour" employees work on Thanksgiving, Christmas Day, or New Year's Day, the 24-hour "tour" employees receive time-and-a-half for 16 of the 24 hours worked.

The Union submitted a table showing that the 96 hours annually is low compared to Norwood (192), Fairfield (173), Mason (144), Sharonville (106), Cincinnati (120), and Delhi Twp. (120). On the other hand, Blue Ash has less (84) and Forest Park Teamsters, Forest Park FOP, Deerfield, and Colerain Twp. have the same number of holiday hours annually (96). While it can be said some other comparable units do better, the Forest Park IAFF is not lagging behind on this benefit.

The City is opposed to the proposed change and argues that the Union "relies on an aspect of the tour system that works against the employees while ignoring aspects of the tour system that work in their benefit. Thus, fire department employees working a tour system enjoy significant benefits that their FOP brethren do not enjoy. In a 21-day cycle, the tour system employee works seven shifts, and is off duty for 14 days. In the same 21-day cycle, the police officer works 15 days and is off duty for six days. This additional time off makes it far easier for fire department employees to have part-time jobs elsewhere, and most, if not all, do so."

The City also pointed out that on the tour system (1) employees are paid for sleeping and (2) has eight hours of awake time with no assigned duties. Of course, in each of these cases, the employee is on call should there be a call. The City also said that the firefighters have a benefit of longevity pay that police do not have. This benefit, the City says, is substantial. It provides employees with 25 years of service with a bonus of 3% on their base salary, employees



with 10 to 25 years receive a bonus of 2% of their base salary, and employees with less than 10 years receive a bonus of 1% of their base salary.

The City proposes that the current agreement on holidays, Article XVI, be retained.

The fact-finder notes that this is an ongoing ever present problem in dealing with firefighter bargaining units. The work schedule is different than almost any other line of work. Even employees who keep manufacturing plants operating 24/7/365, such as steelworkers, foundry workers, some chemical operations, and so on, don't work exactly like firefighters. While neither party mentioned it, the fact-finder has long been aware that the job, schedule and going from rest to crisis, plays a severe toll on the firefighter's body. Both parties to these negotiations know, but do not mention, that the life expectancy of a firefighter is less than the average person in the general population and the firefighter has a higher likelihood of on-the-job injury or death than the average worker. Quite frankly, this fact means that whatever firefighters might make, it is not really excessive. The question in a fact-finding is what the City pay with the finite resources it has.

Taking all of the above into consideration, and weighing the statutory criteria, the fact-finder recommends that the current Article XVI be retained in the new agreement. It represents what the Union and City found acceptable in the past and should be acceptable for the new agreement.

Insurance

The Union is satisfied with the insurance provisions in Article XXI of the current agreement. The City proposed some changes, mostly to reference the Affordable Health Care Act in the current language and to clarify the status quo on how insurance is obtained by the City for this bargaining unit, other bargaining units, and for non-union employees whether hourly or salaried.

First, the current agreement provides for term life insurance in the amount of the employee's base salary for all permanent full-time employees. There is no issue here and this should be retained.

The City said that "the subject of health insurance has been largely preempted by the Affordable Care Act. This Act mandates levels of coverage, covered procedures, affordability, limits on profits and administrative cost, free preventive care, no pre-existing condition exclusions, no annual or lifetime limits and so on. In addition, the requirements of the Affordable Care Act are (a) moving target; thousands of pages of regulations are yet to be published detailing the requirements of the Act. Employees are protected by the Act and its regulations, and the City needs flexibility to be able to meet the requirements of the Act."

The City's main concern, however, is to retain its current process by which it selects and purchases insurance for all City employees. While this may be affected by the ACA, the insurance selection process is basically the status quo, not specifically mentioned in the current agreement but nevertheless a part of it by past practice. The fact-finder finds that this process



is a part of the status quo and a real part of the current agreement, but probably should be incorporated by reference into the new contract.

The City proposed that the current sections B and D of Article XXI be deleted and replaced with the following:

“B. The Employee shall pay 15% of the premium charged by the insurer
In the health plans offered by the City, unless during any calendar year of
this agreement non-union employees of the City pay less than 15% of the
monthly premium, then Local 3024 members will contribute at the same
rate for the same period.”

This new section B sets out what is currently the provisions of the expiring contract without all the language in it that provided that the employee contribution go from 10% in 2007 to the current 15%. The current agreement also provides that if the non-union employees pay less than 15%, the Local 3024 members will pay the lower percentage. The City’s proposed new section B should be included in the new agreement and the old section B should be deleted.

The current agreement, Article XXI, section D, provides that the “City shall have the right to change insurance carriers provided the benefits of the existing insurance are substantially the same. The City shall not be liable for any unilateral change in coverage made by the insurance carrier.”

The City proposes dropping this language and inserting a new section D as follows:

“The City has a long-standing process for managing the health insurance
of City employees. This process is democratic, interdepartmental, and includes
both management and non-management employees. Provided the City
substantially continues to follow this process, the City may change:
carriers, coverages, deductibles, co-pays, or other terms and conditions
of the health insurance plan at any time. The City shall at all applicable times
comply with the Affordable Care Act and relevant regulations promulgated
thereunder. In the event the Affordable Care Act is repealed or substantially
amended, either party to this agreement may require collective bargaining
to negotiate with regard to the impact of such repeal or amendment on
the City’s health insurance plan.”



The fact-finder recommends that the City's proposal for a new section D be included in the new agreement. The City is required by this language to continue its process of including all employees in the decision-making in this process. The fact-finder believes that firefighters participating in the process should be appointed by Local 3024. The fact-finder notes that other representatives of other bargaining units are participating as well as management, administrative, and non-union employees. The process is the status quo and the City's language merely includes the past practice status quo process into the collective bargaining agreement. There are obvious benefits to all Forest Park employees pulling together in obtaining and administering insurance. If a group were to pull out of the process, it would probably be harmful to all. Even so, the fact-finder believes that notice of changes of any kind should be given to the Union, Local 3024, and employees as soon as possible, even before they happen if possible so that the employees can have input into the changes through the Union. The fact-finder also believes that the bargaining unit employees represented by Local 3024 should remain in the group throughout the term of the collective bargaining agreement, but should have the option to withdraw with notice of intent to do so given ninety (90) days prior to the expiration of the term of the agreement, in which case negotiations between Local 3024 and the City could occur. For this reason, the fact-finder recommends an additional two sentences to the language proposed by the City. It would read:

"The City shall give notice to the Union, Local 3024, of any such changes to the insurance as soon as possible when the City learns of them. The employees in this bargaining unit shall remain in the group participating in the health insurance decisions for the term of this agreement and be represented in the process by persons selected by the Union. The Union, Local 3024, may elect to withdraw from participation in the aforementioned process by serving notice on the City ninety days, or sooner, from the end of the term of this contract."

The current contract language on dental insurance, Article XXI, section E., shall remain in the contract without change.

Fire Inspector Compensation

Appendix I includes a sentence providing that "an inspector shall be paid an additional \$1,000 over the appropriate schedule and step." In the body of the appendix, there are separate classifications and pay schedules for "fire inspector/EMT" and "fire inspector/paramedic." The City wants to eliminate the sentence because the \$1,000 additional pay is included in the pay schedules already. For example, a Firefighter/EMT at Step 7 shows as making \$62,372.37 annually in 2012 while the Fire Inspector/EMT at Step 7 shows as making \$63,372.37 annually in 2012, exactly \$1,000 more.



The fact-finder agrees with the City and recommends that the sentence on the second page of Appendix I be deleted from the new contract as superfluous.

Wages

The Union proposed increasing all pay scales (steps) by 2.5% for each year of the three years in the contract. Both parties made proposals for a contract with a three year term. That means the contract should have a three year term and the first increase should be effective January 1, 2013, as agreed to by the parties in their extension agreement.

The City granted 1.5% raises for 2013 to non-union employees and, in doing so, noted that the City was in negotiations with the Fire and Public Works unions. Since then, the Teamsters and City have reached a tentative agreement on a new three-year contract granting increases of 1.5% in 2013, 1.75% in 2014, and 2.0% in 2015.

The Union submitted documents showing comparisons of Forest Park firefighter pay with that of other firefighter units including Norwood, Fairfield, Mason, Deerfield Twp., Blue Ash, Sharonville, Colerain Twp., Cincinnati, Anderson Twp., and Delhi. The fact-finder won't deal with each and every step and location here, but notes that in general Forest Park is slightly below the average base salary for the group, but compares acceptably when the Forest Park longevity pay, 2nd best in the group, is taken into account. For example, at 16 years of service, Forest Park's base salary is \$65,639 compared to the group average of \$66,422. Four of the ten others are below and Forest Park is about in the middle. Four of the comparable units get no longevity pay, and all but one get less than Forest Park. See the Compensation Comparison for Year 16 of Service in the Union's documents at tab 4.

The Forest Park FOP, police, is receiving 1.5% increase in 2013, the last year of a three-year agreement. The police get to the top of their schedule in three years while the firefighters reach it in five years. The FOP members make about \$4,300 more than the firefighters comparing the FOP 2013 settled schedule to the Firefighters' 2012 schedule without a 2013 raise.

Any raise given in these negotiations has to be considered in light of the background of negative financial facts. Property tax values in Forest Park were \$339,454,480 in 2004 tax year, 2005 collection year. The next year, 2005 tax year, 2006 collection year, they rose to their highest in this 10 year period. They were \$383,496,830. Property tax values have fallen to \$323,869,580 in 2012.

While the City has some other sources of revenue, property taxes are the lion's share of the revenue. In 2011 and 2012, the expenditures were substantially higher than the revenues. The result was a \$163,604 deficit (decline in cash balance) in 2011, and a \$901,720 deficit (decline in the cash balance) in 2012. The City ended 2012 with a cash balance of \$2,713,705. Expenditures for 2012 were \$3,445,496 for personal services, \$173,194 for capital outlays, \$906,950 other expenditures, for a total of all expenditures of \$4,525,640.

For the time being, the cash balance appears to be adequate, but obviously the City cannot reduce it by nearly \$1 million each year for very long and stay out of a serious hole.



Mortgage foreclosures would indicate this is not going to get better in the near term. Another concern is that the revenue from property taxes comes twice a year and does not present a healthy revenue stream, cash flow, so that the City really has to use its cash balance to survive for those months when there is no property tax revenue coming in.

In looking at the chart on expenditures on personnel services, other expenditures, and capital outlays, it is clear that most of the expenditures are for personnel. Running a city is labor intensive. It is also clear that there has not been a great deal of money devoted to capital outlay. The City explained that it has budgeted about \$700,000 for a new fire truck and an ambulance. The fact-finder believes these are reasonable plans (the last sizeable expenditures were in 2004) and finds it credible that they are necessary. Putting out fires with a bucket brigade is so 19th Century!

Against this backdrop, the City has offered the firefighters what it is paying the FOP this year and recently agreed to pay the Teamsters for Public Works employees, 1.5% for 2012. The City also offered 1.75% for 2014, and 2.0% for 2015.

There was some mention in the hearing about whether pattern bargaining is a good idea. The fact-finder would say it is not, but is pretty much unavoidable. First, the statute requires the fact-finder to look at amount paid other employees doing comparable work. What could be more comparable than agreements between the City and two other unions working under the same financial conditions? The reason that impasse procedures in statutes and third-party neutrals use comparable, cost of living, new money, cash balance, and all the other data looked at is not because there is a magic in them that decides what the result should be, but because the negotiators themselves look at them to determine what they can reasonably expect to receive and can be funded by the employer. In other words, they help the neutral find the common ground that the parties themselves probably would have agreed upon had they not reached an impasse.

In this case, the fact-finder recommends that the new contract include wage increases for all steps on the schedule in the amount of 1.5% for 2013, 1.75% for 2014, and 2.0% for 2015.

Wage Separation of Officers

There is an issue between the parties as to what the wage separation should be between the top firefighter/paramedic and lieutenants and captains. Historically there has been a separation. The current agreement provides that, in 2012, lieutenants are paid 3.6% more than the top firefighter/paramedic. In 2012, captains made 6.3% more than the top firefighter/paramedic, 2.62% more than lieutenants. No one would argue that officers should not make more than firefighters. The question is --- how much more?

The Union has proposed that the pay grade separation for Lieutenants and Captains be increased by 2.5% for each year of this agreement. At the end of the new agreement, in 2015, the pay grade separation between top fire fighter and lieutenant would be 11.12% and the pay grade separation between lieutenant and captain would be 10.12%.



Taking into account that the wage recommendation above, which the City will very likely accept, would give a lieutenant in 2013 a 1.5% wage increase plus a 2.5% separation increase under the Union's proposal, the lieutenant would receive a 4.0% increase in the first year; a 4.25% in 2014 over the higher base of 2013; and a 4.5% increase in 2015 over the higher base of 2014. By the end of the three-year contract, lieutenants would be earning 11.12% more than the top firefighter and captains will be earning 10.12% more than lieutenants.

There are several problems with the Union's proposal. First, the fact-finder is unaware of any place where employees have received 12-13% increases at the end of three year contracts. Second, this proposal benefits seven or eight of the members of the bargaining unit and doesn't really represent "brotherhood" as an across the board increase to all bargaining unit members would. Third, this benefits the best paid members of the unit, not the least. Fourth, according to the City's Deputy Finance Director, the total cost of the 1.5%, 1.75%, 2.0% increase recommended above is about \$101,000 per year while the Union's proposal on wage separation would cost about \$102,000. If this \$102,000 were available, which it is not, the fact-finder would recommend increases or benefits that flow to all bargaining unit members.

The fact-finder has carefully reviewed the Comparison of Fire Departments Rank Differentials at Maximum Base Salary for other cities and townships compared to Forest Park, found at tab 5 of the Union's submitted evidence, and it does appear that the wage separation for officers is higher in other places than in Forest Park. Perhaps this does need to be addressed, but the Union's proposal is a rather blunt instrument for correcting it. The parties in negotiations would consider with this, it would seem, the longevity pay received by Forest Park officers and firefighters compared to other places. The Union's proposal is too costly to add to this new agreement and the fact-finder is reluctant to recommend some scheme which might cost less for fear it would upset some other balance.

The fact-finder recommends that the wage separation for lieutenants remain at 3.6% more than the top firefighter/paramedic and for captains remain at 6.3% more than the top firefighter/paramedic. Since these percentages are used on a higher base each year due to the wage increases, they will produce some increase in take home dollars from the wage separation.

Summary

The statute requires a summary of the recommendation. Here is the summary.

RECOMMENDATION: The parties shall use the existing agreement as a touchstone for their new agreements to retain current language, delete language, or add language.

RECOMMENDATION: The parties shall include in their new contract the tentative agreements reached in negotiations prior to the fact-finding hearing on March 13, 2013.

RECOMMENDATION: The current Article X, Substance Abuse Testing, shall be deleted from the contract and replaced with a new Article X, Drug Testing, as proposed by the Union on 3-13-2013 and set out at tab 3 of the Union's submitted documents and evidence at the hearing, except, the new Article will not include the language about following DOT standards, to



wit: Article X, section 2 c, second sentence, "The procedures utilized by the Employer and testing laboratory shall follow Department of Transportation standards." Inserted and included in the place of this sentence shall be the City's proposed language, "The standards utilized by the Employer and testing laboratory shall follow Department of Transportation standards as set forth in 49 C.F.R. Part 40 and as may be modified from time to time. In the event the DOT significantly modifies its drug testing procedures or standards, either party may request collective bargaining to negotiate changes in this Article."

RECOMMENDATION: The parties shall add a new Article, Physical Exams and Tests, to the new agreement. There is no current article on this, so the parties shall have to assign it a Roman numeral to fit the current numbering scheme. This new Article on Physical Exams and Tests shall be as follows: "The City will provide to each employee such physical examinations and testing as may be required by federal and state statutes and regulations. These examinations and tests shall be performed at no cost to the employee and shall be provided, as far as is practicable, during the employee's scheduled hours of work. If an examination or test is scheduled and given at some time other than the employee's regular scheduled hours of work, other provisions of this agreement as may be applicable as to pay will apply."

RECOMMENDATION: The parties shall add a new Article, Working Out of Classification, to the new agreement. There is no current article on this subject, so the parties shall have to assign it a Roman numeral to fit the current numbering scheme. The new Article on Working Out of Classification shall be as follows: "In the event that all or any part of a shift is without a Captain and a Lieutenant because of vacation, illness, injury, or other reason, management may appoint a firefighter/paramedic from the approved promotion eligibility list to be the acting Lieutenant for the duration of that shift. The person assigned to be the acting Lieutenant shall be the most senior firefighter/paramedic on the approved promotion eligibility list that is also on the affected shift. If there are no such firefighter/paramedics, then management may assign a firefighter/paramedic from another shift who is on the approved promotion eligibility list to be acting Lieutenant on the affected shift. In the event that there are no firefighter/paramedics on the approved promotion eligibility list, then management may assign an off-duty Lieutenant or Captain to the affected shift. In the event that a firefighter/paramedic is assigned to be an acting Lieutenant, he or she shall be paid at the firefighter/lieutenant rate for the time spent in that role. However, if a Captain is absent for some or all of a shift, the Lieutenant on that shift shall not be entitled to be paid at the Captain rate."

RECOMMENDATION: The parties shall retain the current Article XXIV, Layoff Procedure, in the new agreement.

RECOMMENDATION: The parties shall retain the current Article XVI, Holidays, in the new agreement.

RECOMMENDATION: The parties shall retain the current Article XXI in the new agreement, except, the current section B shall be deleted and a new section B will be inserted to replace it and read as follows: "B. The employee shall pay 15% of the premium charged by the insurer in the health plans offered by the City, unless during any calendar year of this agreement non-union employees of the City pay less than 15% of the monthly premium, then



Local 3024 members will contribute at the same rate for the same period.” The current section D of Article XXI shall be deleted and a new section D will be inserted to replace it and read as follows: “The City has a long-standing process for managing the health insurance of City employees. This process is democratic, interdepartmental, and includes both management and non-management employees. Provided the City substantially continues to follow this process, the City may change: carriers, coverages, deductibles, co-pays, or other terms and conditions of the health insurance plan at any time. The City shall at all applicable times comply with the Affordable Care Act and relevant regulations promulgated thereunder. In the event the Affordable Care Act is repealed or substantially amended, either party to this agreement may require collective bargaining to negotiate with regard to the impact of such repeal or amendment on the City’s health insurance plans. The City shall give notice to the Union, Local 3024, of any such changes to the insurance as soon as possible when the City learns of them. The employees in this bargaining unit shall remain in the group participating in the health insurance decisions for the term of this agreement and be represented in the process by persons selected by the Union. The Union, Local 3024, may elect to withdraw from participation in the aforementioned process by serving notice on the City ninety days, or sooner, from the end of the term of this contract.”

RECOMMENDATION: The parties shall delete the following sentence from page 2 of Appendix I, to wit: “Inspector. An inspector shall be paid an additional \$1,000 over the appropriate schedule and step.”

RECOMMENDATION: The parties shall increase all salaries on the wage schedule, Appendix I, by 1.5% in 2013 over 2012, 1.75% in 2014 over 2013, and 2.0% in 2015 over 2014. The parties shall prepare a new Appendix I showing these increases.⁴

RECOMMENDATION: The parties shall retain the current wage separation in Appendix I for lieutenants at 3.6% more than the top firefighter/paramedic and for captains at 6.3% more than the top firefighter/paramedic.

The fact-finder wishes to thank the parties for excellent presentations and the opportunity to serve as fact-finder in this case.

These recommendations are made this 10th day of April, 2013,

By: _____

Donald G. Russell, Fact-finder

⁴ The fact-finder believes it is best that the parties prepare the new Appendix I from this recommendation since it is best accomplished with good computer software.

