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In the Matter of Factfinding

Between SERB Case No. 12-MED-09-0974

Berea Firefighters Association/IAFF Local 1836

And Before: Harry Graham

The City of Berea, OH.

APPEARANCES: For Berea Firefighters Association:

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For The City of Berea, OH.

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Introduction: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the

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parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of argument in Berea, OH. on February 7, 2013.

Background: The City bargains with a number of Unions including IAFF Local 1836. Among the other Unions with which it bargains is the Ohio Patrolmen's Benevolent Association which represents police officers. It developed that the City and the OPBA went to Factfinding before Factfinder Nels Nelson in December, 2012. His report was issued on December 11, 2012. Factfinder Nelson recommended the following wage increases:

2013	0%
2014	2%
2015	2%

His report was accepted and became the pattern in City service. The IAFF has accepted the wage increase recommended by the Factfinder. Obviously this proceeding is concerned with other elements of the Agreement covering the Firefighters. In sum, the Union urges the status-quo be maintained on all other articles in the Agreement. The City is seeking substantial change. It requires no belaboring to observe the burden is always upon the party seeking change in a collective bargaining agreement. This is particularly the case when language has been in place for many years. That is the situation in this matter.

The issues in dispute between the parties are:

1. Article 21, Sick Leave
2. Article 22, Vacation Leave
3. Article 23, Holiday Leave
4. Article 24, Personal Leave

Articles 23 and 24 will be treated together.

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Issue 1, Article 21, Sick Leave

Position of the Employer: As noted above, it is the City that is seeking change. In Article 21, Sick Leave, the City proposes to eliminate Section 21.09 of the Agreement. That language deals with the ability of an employee with 20 or more years of service to sell back to the City up to twelve (12) twenty-four (24) hour tours of duty in any one calendar year. The City points out that no other group in City service has this benefit. In the recent Factfinding proceeding the police sought to secure it but were denied. They accepted the report of the Factfinder.

In the Fire Service firefighters accumulate sick leave more rapidly than other employees who work different schedules. The hours worked by firefighters enables them to sell back time to the City and continue to retain time on the books. Such time remains available to them. This is a benefit unavailable to other City employees. Hence its proposal is justified according to the City.

Position of the Union: The Union points out that Article 21 was negotiated between the parties in 1996. It is of longstanding in the Agreement. As seen by the Union the City has not advanced a compelling reason to eliminate it.

This benefit does not extend to all firefighters. Only those with 20 or more years of service are eligible to sell leave back to the City. In any given year this is a small number of people. In fact, the price to the City to purchase sick leave from a 20 or more year employee is lower than that likely to be in effect when that employee retires. Thus, the City is advantaged by the terms of Article 21. The Union points out that the award of the Factfinder in the police negotiations did not contemplate the sort of “give-backs” being sought by the City in these negotiations. Local 1896 accepted the terms of the

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recommendation of Factfinder Nelson regarding the police. No further changes should occur it asserts.

Discussion: As pointed out above a party seeking change in an Agreement bears a heavy burden. It is insufficient to assert change is desirable. Change must be justified. In this situation Article 21 has been in the Agreement for 17 years. It has not been shown that the burden upon the City to buy back sick leave from those with 20 or more years of service constitutes a hardship. This benefit is an established term and condition of employment in the Berea Fire Department.

Of note is the fact that the parties have agreed upon no (0.00%) wage increase for 2013. Thus, for some small number of long serving employee's adoption of the proposal of the City will result in a wage decrease. In a year with no wage increase, when the City has not shown it is in financial extremis that is unreasonable. No change in Article 21 is recommended.

Issue 2, Article 22, Vacation Leave

Position of the Employer: Presently the terminology of Article 22, Vacation Leave, references "weeks" of vacation. For instance, Section 22.01 (a) refers to "two (2) weeks" of vacation. Section 22.01(b) references "three weeks" of vacation and so on throughout the Article. The City proposes to change the concept of "weeks" to "tours of duty." Under its proposal the Agreement at Article 22, Section 22.01 (a) would reference "Four (4) tours of duty." At Section (b) the current three weeks would be changed to "Seven (7) tours of duty." The same change would occur throughout Article 22.

The City points out that given the work schedule of firefighters which is specific to the fire service, there are 48 hour work weeks and 72 hour work weeks. As seen by the

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City, firefighters schedule vacation in such a fashion as to secure vacation weeks in which they are scheduled for 72 hour work weeks. This practice results in more overtime hours than if firefighters took vacation based upon “tours of duty” rather than “weeks.” The City also asserts that its proposed change permits greater flexibility in vacation scheduling for employees and thus advantages them.

Position of the Union: The Union proposes no change in the existing Agreement. The present language dates from its inception. In fact, the practice of scheduling vacation based on “weeks” predates the advent of collective bargaining. It has been in effect in Berea for many, many years. As seen by the Union there is no reason to change the existing contract language.

The Union asserts there is the proverbial “flip side” to the vacation scheduling language. Berea firefighters work some 72 hour weeks. Thus, they should be able to take such weeks as vacation time as well. Equity as well as history supports its position on this issue according to the Union.

The issue of vacation scheduling has been a contentious one in City service. In May, 2012 the parties received an arbitration decision from Arbitrator Mitchell Goldberg (AAA Case No. 53 390 00010 12). That decision was concerned with a dispute over vacation scheduling. Suffice it to say that Arbitrator Goldberg found on behalf of the Union. In his decision he relied both on the language of the Agreement and past practice which he determined provided a reliable guide for implementation of Article 22. As the language therein has remained unchanged for many years and its preexisting operation has been sanctioned by an Arbitrator, the Union insists that no change be recommended in Article 22.

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Discussion: Much of the discussion above is relevant to this issue. The present vacation selection method has been in effect in Berea since 1976, some 37 years. It predates collective bargaining. The practice was codified in the Agreement. It worked to the mutual satisfaction of the parties until recently when the City attempted to change it unilaterally. Its attempt was rebuffed in arbitration. That history is impossible for the City to overcome. Precise equality of contract terms should not be expected between various jurisdictions, e.g. Berea, Strongsville, Middleburg Heights, Brookpark. This characteristic of employment has been a feature of the fire service workplace in Berea for many, many years. It should not be altered by a Factfinder. No change in Article 22 is recommended.

Issues 3 and 4, Articles 23 and 24, Holiday Leave, Personal Leave

Position of the Employer: The Agreement currently provides that firefighters are to receive “an additional four (4), twenty-four (24) hour tours of duty, to be scheduled on days chosen by the employee with prior notification to the chief.” The City proposes that the words “notification to” be changed to “approval of.” That language is found at Article 23. In Article 24, “Personal Leave” the same change is proposed. That is, at Article 24, Section 24.02 the present language which permits firefighters to schedule personal leave “with prior notification to the Chief” would be changed to “with prior approval of the Chief.” As is clear to all concerned with the concept of “notification” comes the concomitant requirement for overtime as firefighters must be called-in or held over in order to staff the Department. The City points out that only rarely would the Chief withhold “approval.” Was it the case that sufficient personnel were available approval of time off would be granted. Most time off requests today can be accommodated without

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use of overtime. However, on occasion the use of time off with notice results in overtime. Its proposal will rectify that situation without hardship to employees the City asserts.

Position of the Union: As was the situation with the issues preceding the Union points out that the language in Articles 23 and 24 has been in effect for many, many years. It dates from the 1987-88 Agreement. Thus, approximately 25 years have elapsed with this language in the Contract. Calculations by the Union indicate that only six percent (6%) of all possible time off duty is available at the discretion of the employee.

In 2004 these parties went to Factfinding before Factfinder Gregory Szuter. (SERB Case No. 03-MED-09-0945). One of the issues before Factfinder Szuter involved time off in the form of a floating holiday in Article 23. In speaking of the floating holiday specifically and time off generally Factfinder Szuter was of the view that:

> Working 24 hour tours and staffing the department 365 days annually through the legal holidays and weekends is particularly difficult on the members and families. The additional freedom is especially needed. The overtime that the City cites as its objection, while it happens, is not as common as the City alleges and other burdens are no different than the existing three floating holidays. Moreover, staffing, which is set by the City, is the true cause of overtime. If there were larger staff the overtime and manning issues would not happen. (p.8).

The observation of Factfinder Szuter is true today as well according to the Union. As that is the case no change should occur in Articles 23 and 24 the Union asserts.

Discussion: The conclusions of Factfinder Szuter are apt and applicable to this situation as well. The City has some flexibility and discretion in the manner in which it staffs the Fire Department. Furthermore, as was the case with the other issues in dispute in this proceeding, the relevant language has been in the Agreement for many years. The City faces a high hurdle to change it. That is especially the case when the

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Union has agreed upon no (0%) wage increase for 2013. In this situation the Employer is seeking from the Firefighters a concession of substantial magnitude. It was not shown that other unions with whom the City negotiates, particularly the police represented by the Ohio Patrolmen's Benevolent Association, agreed upon the sort of serious restructuring of their agreement proposed by the City in this proceeding. The concession being sought by the Employer from the IAFF represents a substantial alteration in the longstanding terms and conditions of employment of firefighters. The need for that alteration has not been supported by evidence. No changes in Articles 23 and 24 are recommended.

All tentative agreements of the parties are incorporated into this Award by reference and recommended to the parties.

Signed and dated this _____ day of February, 2013 at Solon, OH.

_____
Harry Graham
Factfinder