

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:)	
)	
International Association of Firefighters)	12-MED-09-0976
Local #2375)	
)	
And)	
)	Fact Finder:
The City of Independence, Ohio)	John T. Meredith

**FINDINGS, OPINION AND RECOMMENDATIONS
ISSUED JANUARY 9, 2014**

INTRODUCTION

The parties to this Fact-Finding proceeding are the International Association of Firefighters, Local 2375 (“IAFF” or “Union”) and the City of Independence (the “City” or “Employer”). The bargaining unit is comprised of all full-time and part-time Firefighter/Paramedics employed by the City. The Chief, Assistant Chief, four Lieutenants, and ten part-time Firefighters are excluded from the unit. The parties' most recent Agreement ran from January 1, 2011 through December 31, 2012.

The parties commenced negotiations for a successor agreement, but were unable to reach agreement on several issues. They initiated fact finding, and by letter dated July 17, 2013, SERB appointed the undersigned to serve as Fact Finder. A hearing was postponed indefinitely at the parties request so that they could make another attempt at negotiating a settlement on their own. When this attempt proved unsuccessful, a hearing was set for November 26, 2013.

At the outset of the hearing, the parties confirmed agreement on the following

issues: (1) Article 23, Sick Leave (accrual only). (2) Article 29, Hospitalization Insurance. (3) Article 31, Snow Plowing. (4) Article 40, Duration. (5) Article 44, Substance Abuse. (6) Article 45, Fax/phone. That left the following issues open for resolution by the Fact Finder: (1) Article 16, new section, Union job protection proposal. (2) Sections 19.03, 20.03 and new section 16.03, proposed use of seniority for scheduling time off. (3) Sections 19.01 and 19.02, vacation accrual. (4) Section 20.02 and Article 21, unused holiday and vacation time. (5) Section 23.03, sick leave buyout. (6) Section 24.04, light duty for disability. (7) New Section 32.04, longevity. (8) Article 33, OIC assignment. (9) Article 34, wage increases. (10) Article 43, perfect attendance.

Evidence was presented on each of the open issues. Witnesses testified, and the parties and their advocates presented arguments and numerous documentary exhibits. Appearing on behalf of the Union were: Jim Astorino, President, Northern Ohio Firefighters Association; John Butler, President, Local 2375; Phil Sedlon, member Negotiating Committee; Mary Schultz, Financial Analyst. Appearing for the City were: Joseph Lenciewicz, Labor Relations Representative; Joe Lubin, Human Resources Director; Steve Rega, Fire Chief.

The Fact Finder has evaluated the proposals and evidence submitted by the parties. His recommendations for resolving the open issues are fully explained in the Recommendations Section of this Report, infra. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” referenced in criterion no. 6 may include the desirability of consistent and equitable treatment for all of the public employer's employees.

FINDINGS OF FACT

A. Community Profile, Financial Background

The City of Independence is located in Cuyahoga County south of Cleveland off I-77. It borders the Cuyahoga Valley National Park and, on the South, the City of Brecksville. It's resident population is a modest 7133 (2010 Census), but its daytime population is much higher due to extensive commercial development, mostly near the intersection of I-77 and I-480. Thus, the Fire Department is responsible for protecting facilities and occupants of 35 restaurants, a dozen motels/hotels, medical facilities, and various other commercial establishments. Its daytime population during the workweek is estimated at about 21,000, and may significantly exceed this if vendors, patients, clients and customers are included. It appears that Independence is still in a growth mode.

Financially, Independence appears to be in good health. Like all Ohio cities, Independence is losing some annual revenue with the repeal of Ohio's estate tax, and also is

experiencing a decline in Local Government Fund monies from the state. However, the adverse impact on Independence has been less than on many other municipalities. Except for an occasional windfall year (most recently 2011), the estate tax has not been a major revenue source. Moreover, the City's major revenue source – the municipal income tax – has been steadily growing with the City's continuing commercial expansion. The City's unencumbered year-end General Fund balance has consistently and comfortably exceeded the 16% minimum recommended by the Municipal Finance Officers Association's Best Practices. The City does not dispute its “ability to pay” in these proceedings, but does argue that employee benefits (such as time off, retirement payouts and longevity) are excessive and are not sustainable in the long term.

B. The City's Workforce

In addition to the IAFF, Independence currently negotiates collective bargaining agreements with two other unions: FOP, representing three police units and AFSCME, representing City service workers. All of these groups have settled their negotiations for collective bargaining agreements commencing in 2013, and all accepted the same or substantially the same wage increase package, insurance adjustments and two-tier vacation and longevity provisions proposed by the City in these IAFF negotiations. For 2013, the City represents that non-union employees also have received comparable wage, insurance and benefits.

This pattern is consistent with bargaining history in Independence, as in past years the City has tried to achieve parity among the various employee groups. However, negotiations have not always produced exactly equal results.

ANALYSIS AND RECOMMENDATIONS

1. Article 16, New Section – Job Protection

Positions: The Union proposes to add language designed to protect bargaining unit members from loss of potential work to part-time employees. To this end, it proposes that the City agree to add either one of the following new paragraphs to Article 16 of the Agreement:

OPTION 1: The Employer shall not attempt to erode the bargaining unit or the rights of bargaining unit employees. Except in emergency circumstances, work normally performed by bargaining unit members shall be first offered to bargaining unit members.

OPTION 2: The Employer agrees to maintain a two-to-one ratio (2:1) full-time firefighter employees to part-time firefighter employees in daily suppression/response assignment for the duration of this Agreement.

In support, the Union argues that the City has increased its use of part-time employees, a practice which the Union considers less efficient and less safe than full-time employee staffing.

The City objects to the Union proposal. It argues that staffing levels and part-time employee utilization are permissive, not mandatory subjects of bargaining. Therefore, the Union cannot insist to the point of impasse on their inclusion in the Agreement. City of Cincinnati v. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, 61 Ohio St. 3d 658, 664-665 (1991). Since fact-finding is an impasse resolution procedure, it is not appropriate for the Union to continue to pursue these proposals at fact finding. The City also states that it does not over-utilize part-time employees – that, in fact, it is significantly less reliant on part-time employees than neighboring communities. It also affirms the safety of its limited use of part-timers, noting that all of the part-time employees are fully trained firefighters and pointing out that several full-time Independence firefighters apparently feel safe to supplement their income by working as part-time firefighters in other cities.

RECOMMENDATION: The Fact Finder cannot recommend adding the proposed new language to the agreement.

Rationale: In Ohio, the mandatory subjects of bargaining are “matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.” R.C. 4117.08(A). R.C. Ch. 4117 also excludes certain matters from bargaining, making them illegal subjects of bargaining. Matters which are neither mandatory nor illegal are considered “permissive” subjects of bargaining. The parties are may choose to bargain them if they wish, but neither party can insist on their inclusion in an Agreement to the point of impasse. Cincinnati v. Ohio Council 8, supra at 665.

Allocation of work among full-time and part-time firefighters is not generally considered a “term and condition of employment.” Of course, it may have some impact on employment conditions, but, like minimum manning provisions, it is not primarily itself a term or condition of employment. Rather, it is an exercise of the employer's inherent management rights to determine organizational structure, maintain efficiency and effectiveness of governmental operations, determine “overall methods ... or personnel by which governmental operations are to be conducted,” and to schedule employees. See Ohio's statutory management rights clause, R.C. 4117.08(C) (1),(3),(4),(5). For this reason, it cannot be pursued to the point of impasse.

Moreover, even assuming that it would be proper for the Fact Finder to make a specific recommendation on this issue, the Union did not make a persuasive case for including the proposed language. The evidence indicates that Independence is not making excessive use of part-time employees compared to other area cities, and there is no indication that bargaining unit jobs are threatened by current or intended levels of part-time staffing.

2. Sections 19.03 and 20.03, New Section 16.03 - Scheduling time off by seniority

Positions: The Union proposes adding language to provide that Kelly Days, vacations,

and holidays shall be selected in accordance with department seniority. This is consistent with current practice for Kelly Days and holidays, and consistent with the practice for vacation prior to September 2012, when the Chief promulgated a new policy which gave less senior OIC qualified firefighters priority during the first round of vacation selection. The Union also notes that scheduling time off by seniority is the industry standard. The City does not dispute this, but argues that scheduling, including scheduling of time off, is a management right and a permissive, not mandatory subject of bargaining.

RECOMMENDATION: Add new Section 16.03 and revise current Sections 19.03 and 20.03 to state:

16.03 Consistent with past practice, Kelly Days shall be selected in accordance with department seniority.

19.03 Vacations shall be taken at a time approved by the Chief, subject to the operating demands as determined by the Chief, keeping in mind that bargaining unit members are obligated to maintain their schedules unless specifically relieved. Within this framework, vacation days shall be selected according to department seniority.

20.03 Holidays shall be taken at a time approved by the Chief. Within this framework, holidays shall be selected according to department seniority. Should a full-time employee be required to work New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, or Christmas, the employee will be compensated at one and one-half (1 ½) times his normal rate of pay in addition to any other benefits.

Rationale: Although scheduling is a management right, paid time off is an aspect of compensation and definitely qualifies as a “term and condition of employment.” Thus, vacation, holidays and Kelly Days are mandatory bargaining subjects, and vacation and holidays have been bargained and included in the IAFF/Independence Agreement. The value of time off is not unrelated to when it is taken, and it is appropriate to bargain regarding use of seniority to determine the order in which employees may select their time off from available dates. Use of seniority as proposed by the Union does not impair the Chief's authority to maintain operational

standards, which is fully assured by other language in Sections 19.03 and 20.03 and by the reference to past practice in new section 16.03.

3. Article 19, Sections 19.01 and 19.02 – Vacation Benefit

Positions: Consistent with agreements negotiated with the FOP and AFSCME, the City proposes a two-tier vacation benefits provision. Current employees would continue to receive benefits under the current generous vacation provision, which tops out at 14 tours (six weeks) for employees with 25 or more years service. New employees' vacation would be reduced at all levels and top out at eleven tours at 25 years. The City argues that it is paying a disproportionate and unsustainable portion of payroll expenses for employee time-off benefit.

The Union objects to the City position. It asserts that the City has failed to demonstrate a current financial need to establish a two-tier system. Moreover, it says that the specific two-tier system proposed by the City would unfairly penalize firefighters relative to new hires in the Police Department. For example, under the current system, two weeks vacation in the FOP Agreement equates to five tours in the IAFF for firefighters; three weeks to eight tours, four weeks to eleven tours, and five weeks to twelve tours. In the City's proposal, these equivalencies for two, three and four weeks would be reduced to four, six and eight tours, respectively.

RECOMMENDATION: Adopt a two-tier schedule of vacation benefits as proposed by the City, but with the number of tours in the second tier adjusted to maintain the same relationship between benefits provided to police as now exists for current firefighters in the first tier. Revise Section 19.02 as proposed by the City to conform to comparable language in other City agreements. Revised Sections 19.01 and 19.02 are attached hereto and incorporated herein as Appendix A.

Rationale: Though the Fact Finder is does not generally favor two-tier systems, in this

case it is a reasonable quid pro quo for the recommended wage increases (see Article 34, infra) and further maintains parity with the City's other bargaining units, all of which have agreed to a two-tier vacation benefits system in exchange for comparable wage increases.

4. Section 20.02, Article 21 – Unused Holiday and Vacation Time

Positions: The Union proposes modifying the system for paying unused holiday and vacation time. Currently, there is a 48-hour cap, and payment requires approval by the Chief and subsequent appropriation by Council. The Union would eliminate this apparent discretion and require payment with the first payroll of December. The City objects, noting that the proposed early December payment would be required before the end of the calendar year in which holidays and vacation could be taken.

RECOMMENDATION: No change.

Rationale: While the language of current Section 20.02 and Article 21 is somewhat convoluted, evidence did not establish that the parties have had sufficient problems applying it to necessitate change it at this time. Payment in early December as proposed by the Union could be problematic.

5. Article 23, Section 23.03 – Sick Leave Buy-Out

Positions: At the time of retirement, an employee currently is paid 1/3 of his/her accrued but unused sick leave up to a maximum of 612 hours. The Union proposes to increase this payout to ½ of accrued sick leave to a maximum of 918 hours. Based on potential retirements, the Union anticipates that this proposal would cost the City an additional \$37,500 during the term of a new Agreement. In support, it submitted a list of sixteen Cleveland suburbs, almost all of which currently have more generous sick leave buyout provisions than Independence.

The City proposes retaining the current contract provision with no increase in benefits.

It views sick leave as time to be used if needed for illness or injury, not a retirement savings plan. It also favors allocating money to paying employees while they are working rather than making deferred payments upon retirement, and it notes that deferred compensation obligations have become a financial burden for some public employers. Regarding the Union's list of “comparable” cities, the City states that the more generous payouts in many of these cities are offset by the fact that they have less generous total compensation than Independence.

RECOMMENDATION: No increase in sick leave buyout provision. Retain current language in Section 23.03.

Rationale: The Fact Finder agrees that sound financial management dictates limiting future deferred compensation obligations when it is possible to fairly compensate employees with current income. Independence's salary schedule, and the salary increases recommended in this report, are competitive, and do not need to be supplemented with an increase in severance benefits. Moreover, the City's other bargaining units settled negotiations without obtaining increases in their sick leave buyouts in 2013 and 2014.

6. Article 24, Section 24.04 – Light Duty

Positions: Section 24.04 currently provides that the Chief may assign available transitional work to firefighters “who are injured on duty or incurred an illness,” providing that the assigned work “shall occur only on the firefighter's regular shift for a maximum of ten (10) hours per shift.” The City claims that this scheduling restriction has made it difficult to efficiently utilize light duty personnel. It also alleges that some individuals could abuse the provisions by choosing to schedule therapy and medical appointments so as to conflict with their duty days rather than scheduling their on off days. Therefore, the City proposes revising Section 24.04 to provide that “assignment to transitional work shall be on a forty (40) hour work week and scheduled by the Fire Chief or his designee to be either four (4) 20-hour shifts

or five (5) 8-hour shifts during a seven (7) day work period.”

The Union objects, stating that employees and their families rely on the established 24 on/48 off schedule when making other commitments and taking on other obligations. It would, however, agree to modify current Section 24.04 to permit the City and an employee to agree to a schedule changing the employee's schedule for the light duty period.

RECOMMENDATION: Modify Section 24.04 to state:

“The Chief may assign transitional work to firefighters at his discretion, who are injured on-duty or incurred an illness, assuming work is available. The assignment to transitional work shall occur only on that firefighter's regular shift for a maximum of ten (10) hours per shift, unless the City and the firefighter otherwise agree. Firefighters who chose not to agree to a different shift will make reasonable efforts to avoid scheduling conflicting appointments on assigned shift days. The assigned transitional work shall be within the parameters set forth by the employee's physician of record.”

Rationale: The Fact Finder shares the City's concern with inefficient use of light duty time, but also agrees with the Union that an abrupt change to a five-day workweek often could impose a hardship on the firefighter. To accommodate the legitimate but conflicting interests of both parties, the recommendation provides for adjusting shift time only by mutual agreement between the City and the employee, but also attempts to discourage alleged abuse of light duty assignment time.

7. Article 32 – Longevity

Positions: Consistent with agreements reached with the FOP and AFSCME, the City proposes to eliminate longevity pay for new employees. The City states that this proposal, like the two-tier vacation benefit schedule, is dictated by long-term financial management concerns. It argues that elimination of longevity for new employees is a quid pro quo for the above average increases offered by the city and recommended herein, (Article 34 infra).

The IAFF would agree to a reduced longevity schedule for new employees, but argue

that firefighter longevity should not be eliminated entirely because some longevity is necessary to offset the fact that firefighters annual salary scale is a bit lower than the annual salary scale for police.

RECOMMENDATIONS: Longevity should be abolished for new employees . Add the following language as new Section 32.04: “Employees hired on or after January 1, 2013 will not be eligible for longevity compensation.”

Rationale: The justifications for this recommendation are: (1) Parity with the City's settlements with the FOP and AFSCME. (2) Quid pro quo for the above average wage increases proposed by the City and recommended in this Report, (Article 34, infra). Although the FOP's annual salary schedule is, as it has been in past contracts, a bit above the firefighters' schedule, this difference may be offset in whole or in part by the \$1000 annual paramedic payment received by all firefighters. No current employee will be affected by excluding new employees from the longevity provision.

8. Article 33 – OIC Assignment

Positions: The Union proposes new language which would require that Officer in Charge assignments be based on seniority. It notes that seniority is an objective factor which prevents favoritism and recognizes the value of experience.

The City argues that the Chief's current practice is to give OIC assignment priority to officers who have completed training and qualified for promotion when promotion opportunities become available. This practice recognizes the value of training and provides an opportunity for promotion qualified employees to gain experience and be observed as they perform supervisory functions. More fundamentally the City asserts that selection of employees to act as supervisors is a management right.

RECOMMENDATION: No change in Article 33.

Rationale: While there certainly is value in experience, there also is value in training. How much weight to give to these considerations is properly the Chief's call, as selection of acting supervisors is a management right.

9. Article 34 - Compensation

Positions: The City proposes wage increases of 2% effective January 1, 2013, 2% effective January 1, 2014, and 3% effective January 1, 2015. The Union has no problem with this proposal, but declined to sign off on it because it was tied to resolution of other open articles. Hence, the need for a Fact Finder recommendation.

RECOMMENDATION: 2% increase effective January 1, 2013; 2% increase effective January 1, 2014; 3% increase effective January 1, 2015.

Rationale: The parties basically agree that 2%/2%/3% is a fair wage increase. The City states it is comfortable with its ability to pay the increases, and this is consistent with financial information introduced into evidence by the Union at the hearing. The increases are the same as increases accepted by the City's other bargaining units, and exceed the average increases being awarded to Ohio public employees.

10. Article 43 – Perfect Attendance

Positions: Except for the effective date, the parties have agreed to the City's proposal to abolish the “perfect attendance bonus” provided in the prior Agreement. The City proposes to abolish the bonus effective July 1, 2013, as was agreed in the FOP and the AFSCME contracts. The Union wants to make elimination of the bonus effective January 1, 2014. It notes that firefighters have worked the entire 2013 year under the terms of the prior Agreement and those who meet criteria have fully earned the bonuses for the second half of 2013.

RECOMMENDATION: The perfect attendance bonus will be eliminated effective January 1, 2014. Delete Section 43.02 and amend Section 43.01 to state:

43.01 Effective January 1, 2013, sick leave incentive will be paid in accordance with these guidelines. If an employee does not utilize any of his sick leave within a three month period, i.e., January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, and October 1st through December 31st, he/she shall be paid a bonus of three hundred seventy-five dollars (\$375) at the end of that three month period. Effective January 1, 2014, sick leave incentive shall be eliminated for a one-time payment of \$1000 to be paid upon execution of this Agreement.

Rationale: The Union correctly notes that the firefighters have worked a full year under the prior contract system, and some firefighters may have relied on the system then in effect. This justifies the variation from the FOP/AFSCME pattern. Moreover, both the FOP and AFSCME received one-time payments in other areas of their contracts which are not being offered to firefighters.

INCORPORATION OF AGREEMENTS

The Fact Finder incorporates by reference unchanged language in the parties 2011-2012 collective bargaining agreement and the agreements reached and confirmed by the parties prior to conclusion of this Fact Finding proceeding, (page 2 of this Report).

ISSUED this 9th day of January, 2014.

Shaker Heights, Ohio

s/John T. Meredith
John T. Meredith, Fact Finder

APPENDIX 1

Revised Article 19 – VACATION

Section 19.01 Vacation eligibility shall be determined as of January 1st for that calendar year. On January 1st employees will be credited for vacation hours based on the completion of the years of service that employees will attain during the calendar year:

For employees hired prior to January 1, 2013 the following vacation schedule shall apply:

1 st full year	3 24-consecutive duty hours or equivalent time
2 nd - 4 th full year	5 24-consecutive duty hours or equivalent time
5 th - 9 th full year	8 24-consecutive duty hours or equivalent time
10 th - 14 th full year	11 24-consecutive duty hours or equivalent time
15 th - 19 th full year	12 24-consecutive duty hours or equivalent time
20 th - 24 th full year	13 24-consecutive duty hours or equivalent time
25 th full year and above	14 24-hour consecutive duty hours or equivalent time

For employees hired on or after January 1, 2013 the following vacation schedule shall apply:

Date of hire 1 st partial year	Pro rata share of full months service prior to December 31
1 st full year	2 24-consecutive duty hours or equivalent time
2 nd full year	3 24-consecutive duty hours or equivalent time
3 rd - 7 th full year	5 24-consecutive duty hours or equivalent time
8 th - 12 th full year	8 24-consecutive duty hours or equivalent time
13 th - 17 th full year	9 24-consecutive duty hours or equivalent time
18 th - 24 th full year	11 24-consecutive duty hours or equivalent time
25 th full year and above	12 24-consecutive duty hours or equivalent time

Section 19.02 Employees must schedule and take their vacation during the calendar year for which their eligibility is determined on January 1st. Unused vacation hours shall not be carried over to the next calendar year. At the sole discretion of the City, employees may be compensated for such unused vacation hours in accordance with the provisions set forth in Article XXI hereof, and when so approved unused vacation days shall be paid at the employee's regular hourly rate.

An employee who quits, is terminated, laid-off, dies, retires or in any way separates his/her employment with the City shall be entitled only to the pro-rata share of credited but unused vacation hours on the basis of full months of service in the calendar year when the separation from service occurs.

Section 19.03 Vacations shall be taken at a time approved by the Chief, subject to the operating demands as determined by the Chief, keeping in mind that bargaining unit members are obligated to maintain their schedules unless specifically relieved. Within this framework, vacation days shall be selected according to department seniority.

Section 19.04 No change.

Section 19.05 Delete

Section 19.06 Becomes 19.05

CERTIFICATE OF SERVICE

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing same to their representatives, listed below, this 9th day of January, 2014.

Jim Astorino, President
Northern Ohio Firefighters Association
PO Box 301053
Cleveland, OH 44130-09152650

jastorino@nofforg

Representative of the Union

Joseph F. Lenciewicz
J.F. Lenciewicz & Associates, LLC
33 River Street, River Level
Chagrin Falls, OH 44022

jlence@att.net

Representative of the Employer

s/John T. Meredith
John T. Meredith, Fact Finder