

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In The Matter of Fact Finding Between

Communications Workers of	}	
America, Local 4340	}	Case No.(s): 2013-MED-02-0080
Employee Organization	}	
	}	
AND	}	
	}	
The City of North Cleveland	}	Fact Finding Report
Ohio Public Employer	}	Michael King, Fact Finder
	}	

This matter was heard on November 7, 2014, and December 11, 2014, in the City of Cleveland, Ohio.

APPEARANCES:

For The Union:

Charles DeGross, Esq.
1400 E. Schaaf Road
Brooklyn Heights, Ohio 44131

Leonard Brooks, Business Agent
Clarence Moore, EMS Captain, Chief Steward
Michael Threat, EMS Captain, Steward
Margerit Moore, EMS Captain

For The Employer:

Jon M. Dileno, Esq.
Zashin & Rich Co., L.P.A.
950 Main Avenue, 4th Floor
Cleveland, Ohio 44113

Nicole Carlton, Commissioner, Cleveland Division of EMS
David Miller, Deputy Commissioner of EMS
Nycole West, Labor Relations Manager

I. **Introduction And Background**

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on October 10, 2014. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a Collective Bargaining Agreement (CBA) to succeed the CBA that expired March 31, 2013.

The bargaining includes all fulltime employees in the Emergency Medical Services division with the title EMT Supervisor (captain) who have completed their probationary period. At the time of hearing, the unit consists of approximately ten (10) supervisors, or captains in the City's Division of Emergency Medical Services. Captains are the line supervisors within the city's EMS unit. They oversee emergency medical technicians in the field, and the EMS dispatch operation. Cleveland's EMS operation differs from many Ohio jurisdictions in that it isn't a fully integrated part of the fire department or fire rescue operation. Instead, it functions alongside of police and fire departments as a separate unit within the public safety division.

The City of Cleveland has more than 5,000 unionized employees, represented by approximately thirty-four (34) unions. The City states that it relies heavily on pattern bargaining as the only way it can effectively and fairly deal with that number of unions.

Negotiations on a new contract began in October 2013. The parties met for negotiation on approximately four (4) occasions, and were able to reach tentative agreements on numerous issues.

At a scheduled hearing on November 7, 2014, efforts to mediation agreement on the still unresolved issues failed.

The fact finding hearing was set for December 11, 2014. Prior to that hearing the parties submitted pre-hearing statements pursuant to SERB Rules.

The Parties identified seven (7) issues at impasse. These were: [1] Wages; [2] Attendance Policy; [3] Shift Assignments; [4] Uniform Allowance; [5] Overtime; [6] Working Hours; and [7] Duration and Right to Modify.

II. **Fact-Finder's Report**

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 1] Past collectively bargained agreements, if any, between the parties;
- 2] Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3] The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4] The lawful authority of the public employer;
- 5] Any stipulations of the parties;
- 6] Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In preparing this report I have attempted to make recommendations that are based on the facts as contained in the testimony and exhibits offered by the parties.

The fact-finding hearing in this matter occurred on December 11, 2014, and the record was closed immediately thereafter.

III. Unresolved Issues

Issue # 1 Wages

Employer Position:

The City of Cleveland is engaged in pattern bargaining. Already it has reached final or pending resolution for at least thirteen (13) labor contracts during this cycle. The established wage pattern is as follows:

1% increase effective 4/1/13
2% increase effective 4/1/14
2% increase effective 4/1/15

However, the specific wage proposal made for this Union differs somewhat. That proposal is as follows:

Wage Freeze for year one
3% increase effective 4/1/14
2% increase effective 4/1/15

The pattern established involved interrelated proposals including wage increases and modification to the employee health insurance cost structure. Insurance changes increased employee contributions to their plans.

According to the City, the Union unreasonably extended negotiations. In fact, the City argues, at least on some issues the Union engaged in regressive bargaining. The result is that the City didn't timely receive the benefits of changes to the health insurance program. Further, the City states that the consequence of the unreasonable delay and alleged regressive bargaining was to "unfairly (advantage) these employees over the thousands of employees who began paying more for their insurance coverage as long as fourteen months ago."

For those reasons, Cleveland argues that a downward deviation from the wage pattern is reasonable.

Next, the City argues that the importance and appropriateness of pattern bargaining must be respected. The Employer notes that many neutrals have recognized the usefulness of pattern bargaining as a means to maintain labor peace for employers who must negotiate with multiple unions. Pattern bargaining promotes a “fundamental trust” among employees that no group will be favored over another. Cleveland has more than thirty (30) union labor contracts covering more than 5,000 employees. Because of its pattern bargaining, City contract proposals have been vetted, analyzed and refined more than the Union’s proposals.

It must be fully recognized that the City’s position on many of its proposals in this conciliation is not an untested set of initial proposals -- it is the opposite. The City’s proposals, by and large, are the product of good faith collective bargaining with a significant number of the City’s unions. In reaching this position, the City has already made the compromises and concessions that come with full, good faith negotiations, with strong and competent adversaries. Thus, unlike the Union’s demands, many of the City’s proposals in this proceeding were not set unilaterally, but were the product of negotiated agreements.

Union Position:

The Union compares its wages with wage rates of captains within the police and fire departments, and believes its members are significantly underpaid in comparison to those other departments. For that reason it urges acceptance of a significantly higher wage increase. Specifically it offers what it terms a Competitive Salary Adjustment Proposal:

	CURRENT	2013	2014	2015
Start	53,291.14	56,924.80	59,624.80	61,823.62
1 year	53,824.80	57,911.39	60,611.39	63,096.54
2 year	54,473.83	59,159.36	61,859.36	
3 year	55,211.39			
4 year	56,459.36			

Although its proposal is substantially above the established wage pattern, the Union insists that it isn’t seeking to break or avoid the pattern. The Union says it starts with the wage pattern number, then incorporates “a wage equity increase” that brings EMS Captains’ wages closer to what a fire or police Captain earns. “Our EMC captains do more work than captains in the fire department. EMS captains are vastly underpaid,” the Union states, adding that it is asking that this fact finding include a “job audit” for EMS captains to determine whether pay for EMS captains should be more nearly equivalent to that of police and fire captains. All three are considered part of the City’s public safety force.

Analysis, Finding and Recommendation

JOB EVALUATION

In order to support their position that EMS Captains are entitled to a “wage equity increase,” the Union has requested that this fact finding include a “job audit” to determine whether pay for EMS Captains should in some way be more closely related to that of Fire and Police Department Captains. The Union offers no guidance as to the methodology it deems appropriate for such an audit. A job audit, often referred to as a job evaluation by human resource management experts is a systematic way of determining the relative value or worth of one position as related to another within the same organization.¹ Job evaluations are done with the clear purpose of establishing a rational pay structure for different job roles in one organization.²

Job evaluations are most commonly performed internally by a committee of employees who come from a variety of perspectives and who have detailed information about the jobs and responsibilities in question. Often job evaluations can be a tremendously subjective process, and though it can be performed by an external party, evaluators who work within the organization naturally have more in-depth information at their disposal for decision making.

When job evaluations are performed by external parties, though there may be less implicit bias, the quality of the evaluation depends completely on the breadth and depth of information provided to the evaluating party. In this fact finding, we will need to determine whether or not we have been provided enough information to effectively undertake a job evaluation with regard to EMS Captains.

The five most common methods used to perform job evaluations are: ranking, classification, external valuation (i.e. market pricing), factor comparison and points.³ Employers and external consultants performing job evaluations often use more than one of the following evaluation methods to assess internal job equity. The use of multiple evaluation tools provides a kind of cross-check and validation of results.

¹ “Compensation & Benefits,” *HR Council for the Nonprofit Sector*, nd. Web. <Hrcouncil.ca>

² “Job Evaluation Methods,” *Open Learning World*, 1999-2011. Web. <www.openlearningworld.com>

³ “Job Evaluation,” *HR Guide to the Internet*, 1999. Web. <hr-guide.com>

EVALUATION METHODS

RANKING

The ranking method is the simplest of job evaluation methods. This method uses one or two factors such as perceived difficulty of the job and level of education required to rank jobs from least important to most. The ranking method is best limited to use in small organizations, and for creating new job roles because it can be overly simplistic. It is not the most effective method for re-evaluating existing jobs whose actual responsibilities may be different than the original job description would suggest. Ranking works to establish a clear hierarchy of positions within an organization and the results are often presented in a revised organizational chart. Positions closer to the top are of more relative value than positions closer to the bottom. However, the ranking method is not the most effective method for comparing the relative value of jobs in different departments with different hierarchical structures.

In this case, we are comparing EMS Captains with Fire and Police Captains—roles that exist within the Cleveland safety forces but in different departments. Without information about the relative hierarchies in each of the departments in question, (perhaps through organizational charts) we do not have enough information to utilize the ranking method. In addition, the complexity of this issue and of the role in question, suggests that even with the appropriate information, the ranking method would not be an appropriate match for this analysis.

CLASSIFICATION

The classification method places groups of jobs into predetermined classes or grades. Each job class corresponds to a pay range, and establishes a hierarchy of job categories. However, two jobs of the same relative status or classification may differ tremendously in actual job requirements and expectations, making the outcomes of the classification process a greatly oversimplified comparison of existing jobs within an organization. In addition, if a job description seems inconsistent with the job class it has been placed into, an additional method of evaluation must be employed to rectify the discrepancy, or else the decision will have to be made subjectively, as the classification method provides no process for addressing such issues.

In order to use the classification method in this case to determine whether there is a wage equity issue, we would need the existing classifications for jobs in the Fire, Police and Emergency Medical Services departments. We would also need information outlining the factors that were used to establish the existing classifications. With that information, we could closely re-examine the job descriptions and classifications of EMS Captains as compared to Fire and Police Captains.

The Union has provided limited information showing the job classifications as defined for the Cleveland Division of Police, (summarized in the table below). However, without the corresponding information for the Fire and EMS Divisions, and the explanation of factors used to determine the classifications, this method cannot be used to evaluate wage equity for EMS Captains.

Cleveland Division of Police Commander and Superior Officer Definitions	
Command Officer	An officer appointed as Chief, deputy chief, commander or traffic commissioner.
Superior Officer	An officer who has attained the rank of captain, lieutenant, or sergeant.
Sector Supervisor	A superior officer who supervises officers assigned to a sector.
Officer-in-Charge (OIC)	A superior officer given charge of a unit, section or district facility by the Chief of Police (Chief) or a commanding officer.
<i>*Taken from Cleveland Division of Police General Police Order: Duties of Command and Superior Officers, rev. 12.31.07</i>	

EXTERNAL VALUATION (Market Pricing)

Utilizing external factors in job evaluation can include reviewing and analyzing competitive salary survey information, (generally collected and prepared by consulting companies) and adjusting for similarities and differences in factors like company size, industry, and geography⁴. Rarely are external factors like market pricing utilized individually, but they are often used in combination with other job evaluation methods. Utilizing the existing value of a job in the market place (based on its salary) assumes that competitors and the market have valued the role correctly. Additionally, accounting for differences in organizational structure can be tremendously difficult to do in practice.

The Union has provided information regarding the wages of Police Captains in Lorain and Fire Captains in Cleveland, Elyria, Painesville, Columbus, and Cincinnati as evidence for comparison to the wages of EMS Captains in Cleveland. However, we must return to the fact that the EMS Division in Cleveland is independent, and not fully integrated into the Fire Division, as is the case in the cities provided for comparison. Without additional information provided about the cities presented for comparison, including organizational structure, job descriptions, department size, population and population growth, it is not possible to determine whether these cities would be appropriately comparable to Cleveland. Neither could we determine whether Fire and Police Captains in these cities would be appropriately comparable to EMS Captains in the city of Cleveland.

FACTOR COMPARISON

⁴ "Job Evaluation," *Human Resources, The University of Texas at El Paso*, nd. Web. <admin.utep.edu>

In the first step of the factor comparison method, the decision-making parties must determine the relevant factors that will be used to compare each job. Then decision-makers assess the level to which each factor is present in the jobs being compared. For this first step, the most commonly used compensable factors are skill, effort, responsibility and working conditions.⁵ The U.S. Equal Employment Opportunity Commission utilizes these same criteria to evaluate wage equity between jobs, as dictated by the Equal Pay Act.⁶ These factors, as considered by the EEOC, are summarized in the table below.

FACTORS FOR DETERMINING WHETHER JOBS ARE SUBSTANTIALLY EQUAL*	
SKILL	Measured by factors such as the experience, ability, education, and training required to perform the job. The issue is what skills are required for the job, not what skills the individual employees may have. For example, two bookkeeping jobs could be considered equal under the EPA even if one of the job holders has a master's degree in physics, since that degree would not be required for the job.
EFFORT	The amount of physical or mental exertion needed to perform the job. For example, suppose that men and women work side by side on a line assembling machine parts. The person at the end of the line must also lift the assembled product as he or she completes the work and place it on a board. That job requires more effort than the other assembly line jobs if the extra effort of lifting the assembled product off the line is substantial and is a regular part of the job. As a result, it would not be a violation to pay that person more, regardless of whether the job is held by a man or a woman.
RESPONSIBILITY	The degree of accountability required in performing the job. For example, a salesperson who is delegated the duty of determining whether to accept customers' personal checks has more responsibility than other salespeople. On the other hand, a minor difference in responsibility, such as turning out the lights at the end of the day, would not justify a pay differential.
WORKING CONDITIONS	This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

**Taken from the U.S. Equal Employment Opportunity Commission*

⁵ "Job Evaluation," *HR Guide to the Internet, 1999*. Web. <hr-guide.com>

⁶ "Facts About Equal Pay and Compensation Discrimination," *U.S. Equal Employment Opportunity Commission*, nd. Web. <www.eeoc.gov>

The factor comparison method also utilizes ranking and market pricing, and can therefore be a very complex method of job evaluation. After determining the relevant factors, the evaluating parties select a set of benchmark jobs—a selection of jobs that represent a range of available jobs in the organization. Each job is allocated a rate of pay for each factor, totaling the full wage for each job. The result is based on the following assumption:

$$\text{Pay Range}^7 = \text{Pay from Skill} + \text{Pay from Effort} + \text{Pay from Responsibility} + \text{Pay from Working Conditions}$$

Once a rate of pay has been determined for each factor, within each benchmarked job, this information can be used to evaluate the rate of pay of any job within the organization. The factor comparison method is complex. Its advantage is that it results in a sophisticated and analytical model for evaluating internal job equity.

If we were to attempt to use the factor comparison method to evaluate the wages of EMS Captains, we would first need to analyze in detail the five compensable factors. The following list contains key issues needed to help assess jobs in this method.

*FACTORS TO ASSESS IN JOB EVALUATION*⁸

1. SKILL

- a. Education and training required
- b. Breadth and depth of experience required
- c. Problem-solving skills needed
- d. Degree of discretion/ use of judgment
- e. Degree of creative thinking needed

2. EFFORT

- a. Mental demands of the job
- b. Physical demands of the job
- c. Degree of potential stress

3. RESPONSIBILITY/ACCOUNTABILITY

- a. Breadth of responsibility
- b. Specialized responsibility needed
- c. Complexity of the work
- d. Degree of freedom to act
- e. Number and nature of subordinate staff
- f. Extent of accountability for equipment/facility
- g. Extent of accountability for product/materials

⁷ Sah, Mahesh Kumar. "Job Evaluation," *Department of Mechanical Engineering, Khulna University of Engineering & Technology*, March 19, 2014. Web Presentation. <www.slideshare.net/maheshksah5/job-evaluation-32503274>

⁸ List adapted from "Job Evaluation Methods," *Open Learning World*, 1999-2011. Web. <www.openlearningworld.com> and "4th Edition Hay Operating Manual," *Minnesota Management and Budget Website*, 2015. Web. <<http://www.beta.mmb.state.mn.us/doc/comp/hay/hay-manual.pdf>>

4. WORKING CONDITIONS

- a. Hazards
- b. Difficulty of physical circumstances including temperature, fumes, ventilation or other factors that may contribute to unpleasant circumstances
- c. Sensory stimulation

Though the civil service announcement for EMS Captains, and table of duties and responsibilities for EMS, Fire and Police Captains was provided as evidence for this fact-finding, much crucial information was lacking. For example, detailed information about the education, training and experience required for Fire and Police Captains, and evaluations of the working conditions for Captains of all departments was not provided. Without information for all three Captains' positions in multiple areas of comparison, we cannot utilize this method of evaluation.

POINTS

The point method generally uses the same compensable factors as the factor comparison method (skill, responsibility, effort, and working conditions) to examine and compare jobs. However, in this method, points are assigned to each factor used to evaluate a job. Each job is then examined as the sum of its individual factors, and the number of points totaled for each job has a numerical score that dictates its relative value within the organization. This method also can be used in combination with classification methods as ranges of total scores can be used to establish job categories. While the point method can be complex, the outcome of the deep job analysis needed to utilize this method can provide a clear determination of relative job value, and the associated differences in wage rates. However, in order to utilize the point method, the key factors and their associated weight (points) must be clearly defined and agreed upon by relevant internal parties, or by a combination of organizational staff and external consultants. In addition, it can be increasingly difficult to use the point method for evaluating managerial jobs where the nature of the work is increasingly varied, complex and difficult to quantify.⁹ Given these reasons, and the lack of sufficient information on compensable factors for Fire and Police Captains, we cannot use the point method to evaluate the wages of EMS Captains.

⁹ "Job Evaluation Methods," *Open Learning World*, 1999-2011. Web. <www.openlearningworld.com>

FINDING

Job evaluations utilize a combination of qualitative and quantitative data to look beyond job titles to assess the wage equity of existing jobs, and to create new jobs within existing organizational structures. Whether performed internally or by an objective external party, the success of these evaluations rests on finding a process that fits the organization and the time, resources and amount of information available.¹⁰

In this matter the Union has requested an examination of the internal equity of pay rates for EMS Captains as related to Fire and Police Captains within the City of Cleveland. The burden of persuasion rests with the Union. Job audits of the ilk sought by the Union are problematic at best in fact finding. Having closely reviewed every document provided by the parties, and having thoroughly re-examined all of the testimony, I find that the Union hasn't put forward sufficient data to accomplish the kind of job audit sought. It may well be that an equity pay adjustment is appropriate for members of this bargaining unit. However, I am unable to make such a finding based on the record in this matter. Therefore, I do not recommend the wage equity adjustment sought by the Union.

I note in passing that ability to pay plays no role in this analysis. The City concedes that because this is a very small bargaining unit, it could in fact pay the total amount of wage increase sought by the Union. Such a result, however, would be inconsistent with its pattern bargaining strategy, and might result in contumacious behavior by other bargaining units.

I also note that the Union, while seeking a substantial wage increase, stated that it had "no problem" with the City's pattern wage number. The Union simply felt that it should receive that pattern number within the context of an "equity wage adjustment."

The City has argued that this bargaining unit should actually receive somewhat less than the pattern wage increase. That's because this Union failed to promptly settle, and thus deprived the City of the savings that would have resulted from the changes to the health insurance program.

I find that the delay in settlement wasn't unreasonable under the circumstances. The economic harm to the City from this small bargaining unit was *de minimus*. The parties bargained hard, with each side refusing to agree on certain items. The time period

¹⁰ Note: The following additional resources were utilized for fact-checking and validation of this analysis: Heathfield, Susan M. "Job Classification," *Human Resource Management Glossary*, nd. Web. <humanresources.about.com>; Heery, Edmund, and Mike Noon. *A Dictionary of Human Resource Management*. Oxford University Press, 2nd revised edition: 2008. ; "Job Evaluation," *Wikipedia*, 2013. Web. <en.wikipedia.org/wiki/Job_evaluation>; "Job Evaluations," *Small Business Index, Houston Chronicle*, 2015. Web. <<http://smallbusiness.chron.com/job-evaluations/>>

used to complete these negotiations was generally within the range of similar negotiations for Cleveland and its other unions.

For the reasons set forth above, I recommend that members of this bargaining unit receive the pattern wage increase amount the City of Cleveland has offered to other unions. That amount is as follows:

1% increase effective 4/1/13
2% increase effective 4/1/14
2% increase effective 4/1/15

Issue #2 Attendance Policy

Employer Position:

Here again the City seeks to continue a pattern policy already negotiated with some other unions during this round of negotiations. According to the City, the policy is designed to curb sick-leave abuse, and to relieve the City of the productivity and economic costs that can result from sick-leave abuse. The Employer proposes to amend the collective bargaining agreement by adding the following contract language:

The City reserves the right to implement a no-fault attendance policy. The City will notify the Union prior to implementing such a policy and will negotiate with the Union regarding the policy wherein the City may implement a policy if an impasse is reached in those negotiations. The Union reserves the right to file a grievance regarding the reasonableness of a newly-implemented policy.

According to the City, the idea for this proposed provision is to allow the City to avoid having to check physician excuses, and other absence rationale. Absences governed by the Family & Medical Leave Act wouldn't be punished, or otherwise affected by this provision. The proposal doesn't come with a specific policy because the City would attempt to develop the policy in conjunction with discussions with the various unions.

As evidence that some policy change is needed, the City produced records showing that the ten (10) members of this bargaining unit took a combined one thousand forty (1,040) hours of sick leave, funeral leave, and FMLA leave during the period from January 1, 2014, through October 31, 2014.

The City submitted information showing that the following City of Cleveland Labor Contracts contain No-Fault attendance language:

Teamsters Local 244 (City, County & Waste Paper Drivers Union)
International Union of Operating Engineers Local 10
Service Employees International Union Local 1
Cleveland Building & Construction Trades Council
Service Equipment Maintenance Employees Local 1
Machinists Local 439
Fingerprint & Scientific Examiners FOP/OLCI
Ohio Nurses Association
Ohio Patrolmen's Benevolent Association (Chief Dispatchers)
International Union of Allied Painters & Trades
International Brotherhood of Electrical Workers Local 38
Plumbing Inspectors Local 55
Teamsters Local 507 (Corrections Officers)
Laborers Local 1099
OPBA (Chief Dispatchers)

Union Position:

The Union opposes any change to the existing leave policy. It is especially concerned that the proposed new contract language isn't accompanied by a specific policy. The Union is reluctant to agree to a plan that could result in a policy with which it wholly disagrees.

Also, the Union believes that in mentioning that other unions have agreed to no-fault language, the City is making inappropriate comparisons. Unions accepting no-fault language are primarily non-safety force unions. This bargaining unit argues that because it falls within the area of public safety, the only appropriate comparison is with other public safety unions. Generally, those other public safety unions haven't yet agreed to no-fault attendance language.

Finding And Recommendation

I find that the City's reference to non-public-safety unions isn't inappropriate with respect to this issue. I find that the City is attempting to address a citywide problem of unscheduled absenteeism. I find that the City's proposal doesn't amount to a unilateral change of policy, and that even if the parties fail to agree, an adequate remedy exists for the Union to challenge the City's policy.

I recommend that the proposal offered by the City on this issue be accepted and incorporated into the collective bargaining agreement.

Issue # 3 Shift Assignments

Current Contract Language

Article XIV. Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to four (4) employees to an alternate shift and/or key.

Union Position

The Union proposes new language that it says will clarify policy and assure that disruptions to individuals will be held to a minimum. It offers the following language as a substitute for the above referenced paragraph:

Prior to implementation of the shift selections (January 1), the Commissioner may transfer up to two (2) employees to an alternate shift and/or key. The employees transferred will be those having the lowest classification seniority of the bargaining unit. However, this shall not apply if staffing drops below 17 EMT Supervisor Captains.

The Union says the proposed language would assure that all new captains don't end up on the same shift. The seniority provision would help with that concern also. Currently, gender and race may come into consideration as the City may be inclined to seek a certain racial or gender balance on a given shift. The seniority language would override such considerations.

Additionally, the Union complains that each move affects two (2) people. Under the current system the City has the authority to move four (4) people and disrupt the lives of eight (8) people. The Union proposal would minimize the number of disruptions.

Employer Position

The City of Cleveland believes that current language should be maintained. What the Union proposes is an unreasonable restriction on management rights, when there isn't any evidence that management has abused the current system. There isn't any evidence that the current system has caused hardship for bargaining unit members. Of equal concern, the City says, is that the Union again is engaged in bad faith bargaining. According to the City:

The current language allows for the City to change the shifts or "shift keys" up to four times per year for the entire bargaining unit. The City currently has a limited ability to change the shift-bids of employees. The City has exercised this right very judiciously -- circumstances such as where it may want to balance the number of minorities or females on a shift, or where two supervisors with limited experience may be on the same shift.

During negotiations, the parties reached an understanding wherein the City agreed to an interpretation of this language which would count the switching of shifts or shift keys between two employees as two moves. The impact of that agreement was that the City would generally be limited to only two exchanges per year.

However, at mediation, the Union reneged on the understanding and has again re-introduced its opening proposal... .

Finding And Recommendation:

I find that despite the argument here, the parties actually are saying the same thing. Both sides agree to minimize the number of displacements that result from a management initiated change in shifts or shift keys. I find that no evidence was put forward of actual excessive numbers of disruptions based on the current language. I recommend that the current language be maintained. Further, I recommend that the City issue a policy clarification consistent with what it believes it previously reached a tentative agreement on. As I understand it, that policy would provide in pertinent part that "the City would generally be limited to only two exchanges per year."

I find that a diverse city like Cleveland must maintain some flexibility in assignments. For that reason, I do not find that injection of a seniority limitation in this section is appropriate. Again, I recommend current contract language.

Issue # 4 Uniform Allowance

Current Contract Language

Article XXXII

Beginning in 2010, all regular full-time employees shall receive an annual maintenance allowance of One Hundred Dollars (\$100), payable on March 1 and an annual uniform allowance of Four Hundred Dollars (\$400), payable on June 1, of each year.

Union Position

The Union seeks to modify the contract to increase the uniform allowance. The Union proposes the following contract language:

Beginning 2013, all regular full-time employees shall receive an annual maintenance allowance of Three Hundred Dollars (\$300), payable on March 1 and an annual uniform allowance of Five Hundred Dollars (\$500) payable on June 1 each year. Newly promoted Captains shall be entitled to a one-time payment of One Hundred and Fifty Dollars (\$150)

According to the Union, upon promotion to captain, members must purchase name plates and uniform insignia. Though members aren't routinely involved in direct patient care, there are exceptions. When those exceptions do occur, members' uniforms may become soiled by blood or other bodily fluids.

This bargaining unit seeks an increase in the uniform maintenance rate and the uniform allowance rate more in line with what some other City bargaining units receive. For example, persons newly promoted to the rank of Fire Lieutenant or above receive a one-time \$150 uniform allowance payment. In addition most fire department officers receive a \$500 annual uniform maintenance allowance. They also receive a \$300 annual uniform clothing allowance in the form of a voucher.

EMTs receive an annual uniform allowance of \$475, and an annual uniform maintenance allowance of \$325.

Employer Position

Management believes the Union's proposal amounts to regressive bargaining. The proposal presented at fact finding included an additional one hundred fifty dollars (\$150) above the Union's initial proposal. That amount would be the one-time payment the Union proposes for all newly promoted captains.

The City of Cleveland believes that current contract language should be maintained. It opposes any increase in the uniform allowance as unnecessary. It makes the following argument:

Although a conciliator awarded a \$250 increase to the uniform allowance of the Division's paramedics, the magnitude of that increase was simply not warranted by a review of the annual uniform-replacement costs. Here, the increase is less warranted because the supervisors do not provide the day-to-day hands-on patient care that the front-line paramedics do. Therefore, the soiling of clothing that results from hands-on patient care is nowhere near as prevalent with this unit as it is with CARE's members. (The CARE union represents the EMTs who are supervised by the EMS Captains.) For these reasons, the Union's proposal should be rejected.

According to the City, EMS captains are rarely involved in hands-on patient care, and aren't routinely exposed to uniform soiling.

Finding And Recommendation:

Here, I find that the distinction in clothing and maintenance allowances provided for EMS captains and that provided for fire department officers is difficult to explain. Fire officers are supervisors who under ordinary conditions aren't normally on the front lines of fire suppression. Likewise, EMS Captains are supervisors who under ordinary conditions aren't normally on the front lines of EMS patient care. Neither party has put forward information explaining this discrepancy. Absent persuasive information, I find that the allowance and maintenance gaps aren't justified at current levels. Therefore, I recommend that the annual uniform maintenance payment increase to two hundred dollars (\$200). I recommend that the annual uniform allowance increase to four hundred fifty dollars (\$450). I recommend that these increases become effective and be paid during the third year of the contract, 2015.

Issue # 5 Overtime

Current Language

Article XXII Overtime – Premium Pay

All employees who work overtime shall receive time and one-half (1 ½) their regular rate of pay for all hours worked in excess of forty (40) in one (1) work week or eight (8) in one (1) day (excluding employees on a twelve hour schedule, who shall receive overtime pursuant to Article XIV

Employer Position

Management seeks new contract language regarding overtime pay. Specifically, the Employer would delete reference to overtime paid for hours worked in excess of eight (8) (or twelve (12) in one day.). In support of this proposed change, Cleveland reasons as follows:

The City, again, is seeking a change to constant sick-leave abuse. Sick leave is not counted as hours worked under current contract language. However, because the contract also requires the payment of overtime for hours worked in excess of 12 hours, an employee who calls in sick in a pay period will still get an overtime payment for working an extended tour. The City seeks to synchronize these two provisions and attain the benefit of the current sick-leave language.

If implemented, the proposed new contract language would only have an impact if an employee called in sick during a work period, according to the City.

Union Position

The Union objects to the proposed changes. It believes that the City is using the proposed overtime changes “as a wedge to try to gain traction” on the proposed no-fault attendance policy. Moreover, it says the current attendance policy is working. Some bargaining unit members have struggled with catastrophic illnesses, as well as issues with aging parents and children. Nonetheless, no one in the bargaining unit is abusing sick leave, the Union argues.

Finding And Recommendation:

I find that the City put forth persuasive evidence that it does face meaningful problems related to unscheduled absences, and the attendant economic and customer service costs associated with absenteeism. For that reason, I recommend that the City's proposal on this matter be accepted and incorporated into the collective bargaining agreement.

#6 Working Hours

Current Contract Language

Article XVI. All regular full-time salaried employees shall be on a compensation basis of two thousand eighty (2,080) hours per year. The City will provide employees in the RED Center with a thirty (30) minute lunch break and two (2) fifteen (15) minute breaks during their shift, at times selected by the City. Where an employee has not received a thirty (30) minute lunch break or their fifteen (15) minute breaks, they shall receive straight-time pay for the time not received.

Union Position

The Union seeks to modify the current contract language to provide that just as is the case with RED Center employees, those employees in the field also will be provided with the lunch break and the two additional breaks. To the existing contract language the Union proposes to add the words "*and field*" following RED Center.

According to the Union, bargaining unit members working in the field don't get either the designated lunch break, or the other two breaks identified in the contract. To the Union, this is further evidence that the City doesn't value either their service or the conditions under which these employees work.

Employer Position

Cleveland objects to any change in the existing contract language for this section. It argues that the Union's proposal is both unnecessary, and evidence of bad faith bargaining. Those working in the field are free to take their breaks. "The structure of your day is if you need to take a break you can take it anywhere," EMS Commissioner Nicole Carlton explained. "You can even go home. We asked you to (record when and where the break is being taken) so we can have a record."

Particularly frustrating, the City says, is that the parties reached agreement on this issue, but that agreement is being ignored. “The Union had agreed to withdraw its proposal with a commitment from the City to issue a policy describing the lunch break parameters for the field supervisors,” according to the City. “The City did just that, yet the Union has continued with its bad-faith tactics by maintaining its proposal.”

Finally, the City claims that what the Union seeks is operationally unworkable. The nature of assuring prompt response to emergency situations means that lunch times and break times must be flexible. The City insists that its policy of allowing employees in the field to determine the time and place of their breaks is flexible, while the Union’s proposal isn’t.

Finding And Recommendation

I find that the new contract language proposed by the Union is unnecessary. There is no rebuttal to the Commissioner’s testimony that EMS Captains in the field currently have flexibility to take the identified breaks. I recommend that current contract language be continued without change.

#7 Duration and Right to Modify

Current Contract Language

Article XLV

This Contract represents a complete and final understanding on all operational policy between the City and the Union and it shall be effective upon execution and remain in full force and effect until March 31, 2016.

Union Position

The Union proposes to amend that Article by adding the following language:

The City or the Union reserves the right to modify, amend, or add to these proposals if and when integration is implemented.

The Union states that it has no problem with the duration of the collective bargaining agreement. However, the prospect exists that in the future EMS activities may be fully integrated into the fire department. If that occurs the Union wants clear language of a right to revisit the agreement.

Employer Position

The City opposes this change. It believes that the proposed language isn't needed, and doesn't add clarity to the agreement.

Finding and Recommendation

I find that nothing in the record addresses the probability of departmental integration within the time period applicable to the collective bargaining agreement discussed herein. In prior negotiations the parties have speculated about such integration, but nothing in the record concretely addresses that. The Union hasn't established either the appropriateness or the need for the proposed new language. For that reason I am unable to recommend inclusion of the new language as proposed by the Union. I recommend no change to the contract language as said change would relate to integration.

IV. Tentative Agreements

The parties reached tentative agreements on all other issues. Those tentative agreements are incorporated herein by reference, and their approval and inclusion in the collective bargaining agreement is recommended.

Michael King
Appointed Fact Finder

Date: January 20, 2014