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IN THE MATTER OF IMPASSE	X	
	X	
BETWEEN	X	
	X	
DEERFIELD TOWNSHIP, OHIO	X	<u>REPORT OF</u>
	X	<u>THE FACT FINDER</u>
AND	X	
	X	
INTERNATIONAL ASSOCIATION	X	
OF FIREFIGHTERS (IAFF)	X	
AFL-CIO	X	
LOCAL 4286	X	

SERB FILE NO.: 2013-MED-10-1321

HEARING: February 13, 2014; Deerfield Township, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the Township

Thomas A. Swope, Law Director
Bill Becker, Township Administrator

For the Union

Jon D. Harvey, IAFF 4th District Vice President
Andrew Register, IAFF Local 4286 President

ADMINISTRATION

By way of a letter from the State Employment Relations Board (SERB) dated November 26, 2013, the undersigned was appointed to serve as a fact finder regarding a successor labor contract, negotiations impasse. On February 13, 2014, a fact finding hearing was held following a mediation session which took place the same day where testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

BACKGROUND

This impasse involves a bargaining unit made up of 31 employees of the Deerfield Township Fire and Rescue Department (“the Department”) who are represented in collective bargaining by IAFF Local 4286 (“the Union”). The bargaining unit is comprised of the Department’s 20 Firefighter/Paramedics, 7 Lieutenants, 4 Captains and 1 Mechanic. The Department’s Fire Chief, 3 Battalion Chiefs, and 58 part-time Firefighter/Paramedics are not included in the bargaining unit. In noting that Deerfield Township (“the Township”) has approximately 36,000 residents and is located in Warren County, Ohio, the Department was initially formed in 1998. This bargaining unit, which was first certified by SERB in 2004, is the only one as to the Township’s overall workforce.

The most recent labor contract became effective in 2010 and expired on December 31, 2013. Accordingly, successor contract negotiations began on October 21, 2013, and continued until January 6, 2014, for a total of eight sessions. While noting that this is the first time the Parties have gone to fact finding, these negotiations have largely been successful and labor relations generally positive. Thus, tentative agreement has been reached on almost all of the contract articles – including those concerning wages and health insurance. What remains

unresolved and has now been brought to fact finding are two contract article proposals of the Union that largely concern the subject of promotion, where in accordance with O.R.C. 4117.14 the undersigned is to submit recommendations in light of the following criteria:

* * *

- Past collectively bargained agreements between the parties;
- 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;
- The interest and welfare of the public, and 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,
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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.

* * *

Initially, the Township contends that the Union violated ORC Chapter 4117 when it bargained the subject of promotion to impasse since the expired labor contract contained language in the Article 3 “management rights” clause which provided that “the Employer reserves all the customary rights, privileges or authority of management. . .” while explicitly referring to the right to “promote” – thus mirroring wording contained in ORC 4117.08(C) that “. . . specifically makes promotion a permissive, non-mandatory subject of bargaining” as set forth in its “Pre-Hearing Statement”. In essence, the Township argues that there is no legal foundation upon which the Union’s proposal can be recommended instead of its proposal to maintain the

status quo. In other words, the Township asks that the proposal of the Union to include a new “Promotions” article be rejected since it seeks to limit its Article 3 management right to “promote” in violation of ORC Chapter 4117. Upon fully considering this argument as well as the position of the Union that “promotion” is a mandatory subject of bargaining and therefore no violation of Chapter 4117 is involved; the undersigned finds that it is less than clear that fact finding is the proper forum for resolving this question of law. Importantly, neither party in citing various court decisions, regarding whether or not “promotion” is a permissive or mandatory subject of bargaining, included a decision involving a legal determination made by a fact finder *while performing his/her central function of issuing recommendations in order to assist in the resolution of a labor dispute*. Indeed the undersigned has never before while acting as a fact finder been asked to make a legal determination. Therefore, and while greatly emphasizing that other avenues are specifically provided for under ORC Chapter 4117 as to resolving questions of law under the State Employment Relations Act, no legal determination finding will be made in this matter.

1.

Union’s Position: Inclusion of a new contract article as to bargaining unit, full-time Firefighter/Paramedics being solely included on a “Promotional Eligibility List” (Union Exhibit – C) regarding promotion into the officer ranks of Lieutenant and Captain.

Township’s Position: No change.

In addressing this new “Promotions” article question, which the Union first brought to the bargaining table three years ago during the negotiations that preceded the 2010 labor contract being finalized, the external “comparables” submitted by each side as to other fire departments (Township Exhibit – 12), Union Exhibit – O) are found to be of little usefulness. This follows

mainly since the mixture of part-time and full-time employees, a defining characteristic of the Department, was not fully established by either party regarding the other fire departments cited. Moreover, even on the surface the usefulness of these external comparables is seen to be limited. Ultimately and upon fully considering the record on this issue, it is felt that compromise is greatly called for where the arguments made by each side are virtually equal in terms of persuasiveness. This follows where it is reasonable that the instant full-time Firefighter/Paramedics, who have committed themselves to a career with the Department, after several labor contracts would aspire to a clearly defined process of promotion which includes consideration being given to promotion from within. Indeed the morale boosting and operational advantages of a policy to promote from within are widely understood. At the same time, the contention of the Department that having available as large a pool of qualified candidates as possible when filling the key leadership positions of Lieutenant and Captain – where the part-time Firefighter/Paramedics, whose skills and personal qualities are readily known, have primarily been looked to – is also reasonable. Here, this clearly has been important to the successful development and expansion of the Department over the past 15 years.

Accordingly, the undersigned recommends the adoption of a new “Promotions” article which contains the following elements:

A.

A section that includes the requirements and process reflected in the current policy on promotion (Township Exhibits – 7 and 8):

Fire Lieutenant

Requirements:

- Certified Ohio Firefighter Level 2
- Certified Ohio Paramedic
- Certified Fire Safety Inspector

- Hazardous Material Technician
- Two Years of Service as a Career Firefighter
- DTFR Fire Apparatus Operator
- Current DTFR Employee

- Within Three Years of Employment
 - Certified Fire or EMS Instructor

Process:

- Written Examination
- Physical Ability Test
- Assessment Center (Operations Based)
- Interview I
- Interview II

- Contingent Job Offer
 - Psychological Examination
 - OP&F Physical and Drug Testing
 - Hiring by Trustees
 - Start Date

* * *

Fire Captain

Requirements:

- Certified Ohio Firefighter Level 2
- Certified Ohio Paramedic
- Certified Fire Safety Inspector
- Certified Fire or EMS Instructor
- Hazardous Material Technician
- Five Years of Service as a Career Firefighter
- Two Years of Service as a Career Lieutenant
 - Two Years of Service as a Part-time Lieutenant with DTFR is acceptable
- DTFR Fire Apparatus Operator
- Current DTFR Employee

Process:

- Physical Ability Test
- Assessment Center (Operations & Administrative Based)

- Interview I
- Interview II
- Contingent Job Offer
 - Psychological Examination
 - OP&F Physical and Drug Testing
 - Hiring by Trustees
 - Start Date

B.

A section which specifies that the full-time, Firefighter/Paramedics have a “preference” as to the process of promotion *if* he/she has taken full advantage of the educational benefits provided for in Article 10 of the expired labor contract (Township Exhibit – 9) or is on a clear track for doing so.

C.

A section which specifically states as set forth in the “Promotions” article proposed by the Union (Union Exhibit – C) that “disagreements or challenges based upon the promotional process shall be subject to the Grievance and Arbitration Procedure of the Collective Bargaining Agreement. If in the event a grievance is filed, the promotional process will be placed on hold until the grievance is resolved.”

Essentially, it is strongly felt that this recommendation reasonably balances the interest of the full-time Firefighter/Paramedics in being considered for promotion with the interest of the Department in having a system of promotion that is based on the highest qualifications. At the same time, it is fundamental to collective bargaining that any dispute as to the administration of a labor contract provision be resolved by way of the grievance procedure and/or arbitration.

2.

Union's Position: That Article 40, the "Working Out of Classification" clause, contain additional language further addressing this subject which includes reference to the aforementioned "Promotional Eligibility List" (Union Exhibit – C):

Township's Position: No change to Article 40.

It is recommended that there be no change to Article 40 and that the current practice be maintained when there is an officer temporary vacancy, where it is the most senior, full-time Firefighter/Paramedic on the same shift or an available Lieutenant who normally fills the position.

3.

It is recommended that all tentatively agreed upon contract provisions be adopted.



William C. Heekin
March 14, 2014
Cincinnati, Ohio

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STATE EMPLOYMENT
RELATIONS BOARD

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March 14, 2014

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IAFF Local 4286
919 Baccarat Drive
Cincinnati, OH 45245

Bill Becker
Deerfield Township
4900 Parkway Drive, #150
Mason, OH 45040

RE: SERB Case No.: 2013-MED-10-1321, Deerfield Professional Firefighters, IAFF
Local 4286 – Deerfield Township, impasse/fact finding

Gentlemen:

Enclosed, please find two (2) copies of the **REPORT OF THE FACT FINDER**. Also,
enclosed is a copy of the INVOICE.

It has been a privilege to have served as fact finder.

Cordially yours,



William C. Heekin

WCH:bwh
enclosure

cc: Mary Laurent ✓