

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

Report and Recommendation of the Fact-Finder

In the Matter of:

The City of St. Marys, OH)	
)	
and)	Case No. 13-MED-10-1495
)	
Local 3633, International Association Of Firefighters)	

APPEARANCES

For the Employer:
 Pat Hire, Regional Manager
 Clemans, Nelson & Associates
 417 N. West St.
 Lima, OH 45801

For the Labor Organization:
 Michelle T. Sullivan, Esq.
 Allotta, Farley Co., L.P.A.
 2222 Centennial Rd.
 Toledo, OH 43617

Factfinder:
 Richard P. Gortz

Date of hearing: June 5, 2014
 Date of Recommendation: July 8, 2014

INTRODUCTION

St. Marys (“City” or “Employer”) a statutory city with a population of approximately 8,200, is located in Auglaize County, west central Ohio. The City recognizes five bargaining units: OPBA patrol, sergeants and dispatch units, UWUA service workers unit and International Association of Firefighters, Local 3633 (“Union” or “IAFF”) for firefighters/paramedics. There are twelve firefighter/paramedics in the IAFF unit. The City also has non-bargaining employees.

The current agreement between the City and the IAFF expired on December 31, 2013. The parties held five negotiating sessions. On March 12, 2014, the Ohio State Employment Relations Board notified the undersigned that he had been appointed as Fact Finder in the case. By mutual agreement, the Fact Finding hearing was postponed while additional negotiations were attempted. On May 21, 2014, impasse was declared and the Fact Finding hearing was held on Thursday, June 5, 2014. The parties requested an extension of the Fact Finding report date to Tuesday, July 8 to fit City Council schedules.

Prior to the hearing, the parties reached tentative agreement on the following issues:

Article 4 – Discrimination

Article 6 – Grievance Procedure

Article 11 – Discipline

Article 17 – Paramedic Requirements and Fire Training

Article 18 – Firefighter-Paramedic Training Expense

Article 20 – Drug/Alcohol Testing (with the exception of Section 20.6)

Article 27 – Sick Leave

Article 28 – Injury Leave

Article 34 – Union Business

Article 35– Hours of Work, Overtime

Article 37 – Swing Personnel

Article 44 – Annual Medical Exam

Article 45 – Physical Exam

Article 48 – Equipment

Article 49 – Duration

The above articles are included herein by reference and are recommended in this Fact Finding report.

Issues certified to Fact Finding by the parties are as follows:

Article 20 – Drug/Alcohol Testing, Section 20.6

Article 25 – Holidays/Personal Leave

Article 39 – Wages

Article 40 – Longevity

Article 41 – Health Insurance

Prior to the hearing, this Fact Finder queried the parties on the possibility of mediation. Neither party had an objection to attempting mediated settlement of any or all outstanding issues. Both parties made numerous package proposals in an attempt to reach settlement, however none was acceptable to both parties. During

mediation the parties agreed on Article 41, Health Insurance and Article 40, Longevity. Generally, Health Insurance benefits, premiums and deductibles/co-pays will be similar to the other units, and Longevity will be eliminated for all firefighter/paramedics hired on or after January 1, 2014. Those articles and sections are included herein by reference as the Fact Finder's recommendation.

The hearing opened on Article 20, Drug and Alcohol Testing, Article 25, Holidays/Personal Leave, Article 39, Wages.

Present at the hearing were:

For the IAFF:

Michelle Sullivan	Legal Counsel, Allotta & Farley
Matt Schrolucke	Firefighter/Paramedic
Hector Hernandez	Firefighter/Paramedic
Curt Gabel	Firefighter/Paramedic

For the City of St. Marys:

Patrick Hire,	Regional Manager, Clemans, Nelson & Associates
Catherine Kouns Born	Senior Consultant, Clemans, Nelson & Associates
Susan Backs	Personnel Director
Greg Foxhoven	Director of Public Service and Safety

The parties were ably represented at the hearing by their respective spokespersons. Both parties had excellent documentation and presentations, and were well prepared. The hearing was held informally, without swearing an oath or formal

testimony of witnesses. Witnesses added to the mutual discussion and presentation as necessary.

The recommendation of the Fact Finder is based upon the criteria set forth in O.R.C. 4117.14(C)(e). They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

**ISSUES AT IMPASSE
AND
POSITION OF THE PARTIES**

Article 39, Wages.

Position of the Union

3.0% on the base wage each year of the agreement, retroactive to January 1, 2014.

Rationale: The cost of health insurance to members of the bargaining unit impacts considerably upon the wage demands of the unit. The Firefighters have paid considerably more for their health insurance than other city bargaining units, reducing their take-home pay. Members of the IAFF unit have paid \$165 per week for conventional family health insurance while other city bargaining units pay considerably less. This unit received a wage increase of 2.0% for 2012 and 2013, but health premiums paid by employees rose so steeply that the effective increase was 1.0% for 2012 and 0.4% for 2012. With inflation taken into effect, the unit's members lost expendable income which must now be recouped.

Due to its stable income tax base and 1.5% tax rate, the City has the ability to pay the requested increases. Further, comparables show St. Marys with a median household income exceeding forty thousand dollars. City general revenue fund has a balance of \$3.1 million, or 79% of the city's annual expenditures – well above any other city in the area, and well above the recommendation of the Auditor of State. While Firefighter/-Paramedic starting wages are the highest in the area, employees lose over the years. Wages drop relative to other comparable cities in the area, placing below the cities of Napoleon and Lima. Accordingly, Captain

starting wages are the lowest when compared with nearby Bellefontaine, Van Wert and Wapakoneta. St. Marys Firefighters pay much more in health insurance premium than any of the comparable cities, and much more than the averages according to SERB data.

City gross tax receipts have turned the corner, bottoming out in 2011, and increasing in 2012 and 2013. There is no reason to believe that revenue will again decline.

While the Union's request is for a wage increase greater than other city units have received, the increase requested is justified. There is no pattern of bargaining in the city. Some units receive benefits this unit does not receive. Police receive \$1.05 per hour for an associate's degree, while firefighters receive no educational bonus. The Utility Workers receive nine holidays, while fire has eight. The police units receive compensatory time, but Firefighters do not. Accordingly, it is not really possible to compare "apples to apples" when looking solely at the percentage of wage increase from unit to unit. The entire compensation package, including the cost of health coverage, educational bonus, holidays and comp time must be considered. The City's claim that all units must be treated equally should not be taken seriously since no pattern of settlements or pattern of wages and benefits exists.

The Union's proposal for a wage increase of 3.0% in each of the three years is not only affordable, but will only put us on equal footing with other City units and our peers in the area.

Position of the Employer

Year 1: 2.0% lump sum on base. Year 2: 2.25% general increase. Year 3: 2.0% lump sum on prior year's earnings.

Rationale: The City is fast approaching a deficit and major moves must be made to control expenses. General revenue expenses have exceeded income in nine of the last twelve years. Unencumbered balance has shrunk from \$4.35 million in 2007 to less than \$1.5 million this year, or a decrease of 37%. In the current year, the balance has been reduced by \$900,000, that is, the City spent \$900,000 more than it has taken in in revenue through May, 2014. Auditors recommend an unnumbered carry-over of \$1.9 million for our city, and we are already below that and dropping fast. Each bargaining unit and non-bargaining employees must help contribute to reducing costs now, and not in the future. While the city is not yet in deficit, it will be in two years without major changes. The situation is dire and without major changes, result in reduction of services and personnel.

Each of the other bargaining units has cooperated with contract modifications to assist with the mutual problem. New wage steps, wage schedules, classification changes and promotional opportunities have been negotiated along with changes in college tuition reimbursement to help save money. These concessions were made in return for a wage package the same as that proposed by the City to this unit. It would be unfair and cause considerable morale problems within the workforce if this unit were to be given wages in excess of those granted to all the other units.

The Union complains that its members pay more for health insurance than others, but that differential is of its own making. The Union negotiated a premium package different from other units in that the formula for absorbing future

increases in premium would be shared differently between the city and the employees than the formula applied to the rest of the city employees. The premiums went up much higher than anticipated by either party, leading to bargaining unit employees absorbing much more of the increase in costs than others under the formula which they proposed. It was the Unions proposal which caused the problem. They gambled and lost. In any event, the City has agreed to put this unit on the same plan as others in this contract, leading to a greatly increased take-home pay for those on the standard plan, and a greater cost to the City in premium sharing.

The Union's wage proposal will cost \$143,000 over the three year agreement, including roll-up, but excluding overtime costs. The City's proposal will cost \$77,000 calculated on the same basis, or a difference of \$67,000.

The City's offer is fair, and is in pattern with the other units. Further, the Union's comparables are not fair, since they compare with communities with considerably larger tax bases and larger departments. The City's comparables with the communities of Napoleon, Wapakoneta, Bryan, Van Wert, Celina and Kenton, nearby communities with populations plus or minus 2,500 of St. Marys, shows our starting pay for Firefighter/Paramedics being the highest with the Captain/Paramedic being the third, with only Van Wert and Wapakoneta being higher. The City is keeping pace with the competition, and history shows that St. Marys employees don't leave for jobs in other communities.

Article 25, Holidays/Personal Leave

Position of the Employer

The City proposes that Columbus Day be removed from the holiday list, and that employees who do not work on a holiday receive 1/10 of the weekly wage for the holiday rather than the current 1/6 of the weekly wage.

Rationale: The three police units have 7 holidays. Utility workers have nine. All of the bargaining units understand the need to reduce costs, and have granted some concessions. The reduction of one holiday and the reduction of holiday pay for those not working on the holiday would help in a small way to bring costs down.

Position of the Union

Stats Quo.

Rationale: Comparables show that of twelve cities in the area, only four, including St. Marys, have eight holidays. Others have between ten and 13 holidays. By agreeing to a reduction from eight to seven holidays, St. Marys would be the lowest in holiday benefits in this part of the state. Even within the City, the Utility Workers have nine holidays. The City's proposal to reduce all holiday pay for those not working a holiday would further decrease the wages of members of the bargaining unit, and is not acceptable.

Article 20, Drug and Alcohol Testing

Position of the Employer

The Employer proposes to modify Article 20 as follows:

Section 20.6 In all cases of drug and alcohol abuse, the Employer will give strong consideration to the use of rehabilitation in conjunction with discipline. However, if circumstances warrant, the Employer reserves the right to impose appropriate discipline up to and including termination.

Given the nature of the bargaining unit employees' job as safety-sensitive employees, employees who test positive for use of any illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription, shall be terminated from employment. Nothing within this section shall be construed as a waiver of any rights to appeal in accordance with Article 11 herein, however, in the case of an employee who tests positive for use of any illegal drugs or any controlled substance not prescribed by a licensed physician and taken in accordance with such prescription, an arbitrator shall be limited to determining whether the positive test is accurate and otherwise conforms to the procedural requirements of this article, and if so, shall be without any power to modify the termination.

If an employee is not terminated for just cause, as stated above, the Employer may require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. Discipline allowed by the positive findings provided for above may be deferred pending rehabilitation of the employee within a reasonable period. An employee who

participates in a rehabilitation or detoxification program shall be allowed to use sick time, vacation leave and personal leave days for the period of rehabilitation or detoxification program. If no such leave credits are available, the employee shall be placed on medical leave of absence without pay for the period of the rehabilitation or detoxification program. Upon completion of such program, and upon receiving results from a retest demonstrating that the employee is no longer abusing a controlled substance, the employee shall be returned to the employee's former position. Such employee in a rehabilitation or detoxification program in accordance with this article will not lose any seniority or benefits should it be necessary for the employee to be placed on medical leave of absence without pay for a period not to exceed ninety (90) days.

Rationale: The City's proposal seeks to affirm that a positive test for illegal drugs, or any controlled substance not prescribed and taken in accordance with the prescription, will result in termination of employment.

Firefighter/Paramedics have access to controlled substances, and a strong policy is warranted. Several IAFF units in the area have adopted similar language as proposed by the Employer, as well as the Hancock County Sheriff's office. Recent court decisions have held that Ohio law has no dominant and well defined public policy that renders unlawful an arbitration award which returns an abuser to work. This proposal would prohibit an arbitrator from returning an employee with a positive test to work if all just cause tests were met by the employer in imposing termination. Sending an employee who violates the policy to rehab, and then

returning them to work greatly weakens the impact of the policy and sends the wrong message to the public.

Position of the Union

Status Quo

Rationale: The Employer already has the right under current policy to terminate employees for abuse of drugs. The IAFF strongly supports that policy, but members are reluctant to give up the right to argue that the employer violated their rights in imposing discipline, nor to argue that rehabilitation is appropriate under some limited circumstances. If an employee took a prescribed drug more frequently than that directed by the physician, the employee would face immediate termination without recourse –even if that drug was taken only an hour or two before it was directed to be taken.

DISCUSSION AND RECOMMENDTION

Article 39, Wages.

The Union proposal is for three percent per year justified by a differential in benefits with other employee units. The Employer proposes a lump sum of two percent in the first year on the base, 2.25% on the base in the second year, and two percent lump sum based upon the prior year's earnings in the third year. The Employer's justification is based upon similar settlements with the City's other units, as well as the financial situation of the City which demands reduction of ongoing expenditures.

While the Union makes a strong case that many of its members' take home pay was severely impacted by the rising cost of health care, and the premium sharing agreement negotiated with the employer, the Employer's argument that other unions gave up benefits and work rules to save money, as well as accepting the same wage package as offered by the Employer to this unit, is compelling.

Even using Union's comparable data, the Firefighter/Paramedics in this unit are fairly paid. The Union failed to show that St. Marys Fighter/Paramedics are behind the competition, and the City argues that employees do not leave for employment elsewhere.

The City makes a strong case that, considering the current economic conditions, costs must be brought under control. The City cannot assume that the future will be brighter and income tax receipts will start to come rolling in. It must play the cards as dealt, and err on the side of caution. If the fiscal bleeding is not stopped, within two years employees will be facing wage freezes and layoffs, and the citizens of the City will suffer loss of services.

The most important comparable in this case, then, is that of internal equity. The IAFF argues that other units have benefits which they do not have, and that no pattern of bargaining exists. I find that, while benefits vary from unit to unit, a pattern of wage settlement does exist in the current round of negotiations. Each unit has different jobs requiring different work rules and benefits. Firefighters have a work schedule which is unique. Police have an educational benefit, and such may be justified by the quasi legal work which they perform. An examination of the dispatch and utility workers agreements would undoubtedly uncover similar differences based upon job requirements.

The IAFF also argues that their medical premium costs were considerably higher than others. There was uncontroverted testimony by the City that the IAFF proposed the current plan at the previous contract negotiations, and some members were negatively impacted because of the plan which the Union proposed.

It is difficult for a Fact Finder to take into consideration the reasons why benefit differentials exist from one unit to another. What give and take may have been responsible for a particular benefit may now be lost, or arguable at best. We must take into account conditions as they exist today and give little weight to differentials such as that of the health care premium issue. The parties agreed to the program three years ago, and how it got there is almost immaterial. In this round of negotiations, the Firefighters will receive the same plan for the same cost as other units of the city and non-bargaining employees. The City agreed to that proposal at a cost to the package. It will cost the City more to provide that benefit than it did under the previous agreement. Many bargaining unit members will see a considerable increase in take-home pay as a result.

I find that the most compelling argument for wages is that of the Employer, and that the wage package similar to that negotiated with the Police units, the Dispatch unit and the Utility unit is most appropriate. A settlement with the IAFF which exceeds the pattern would undoubtedly cause considerable loss of trust between the City and the other units, resulting in more difficulty reaching future settlements. The City has certainly justified the need to cut costs, and the IAFF must participate in that cost cutting in a fair and equitable manner.

Accordingly, I recommend a lump sum payment to those bargaining unit members on the payroll before January 1, 2014 of 2.0% of their base salary in effect on that date. As of the first Monday in January, 2015, the wage scale shall be increased by two and one-quarter (2.25%), and all bargaining unit employees on the payroll as of January 1, 2016 shall receive a one-time lump sum payment equal to two percent (2.0%) of the employee's gross wages for 2015.

Article 25, Holidays/Personal Leave

The Employer proposes that the holidays be reduced by eliminating Columbus Day, and reducing the holiday pay for those not working on a holiday to 1/10 of the weekly wage rather than the current 1/6. The Union proposes status quo.

This is one area where no pattern exists. Police units have seven holidays, utility workers nine, and firefighters eight. Holidays are generally meaningless to safety forces, and to workers in units where 24/7 manning is necessary. Holidays are not a day off for all employees to enjoy with their families, but a premium day, where employees are compensated for having to work while others are off.

The Union's comparable data of similar communities shows that no other cities have less than eight holidays. The City states that reducing the number of holidays from eight to seven, and reducing the holiday pay for those not working is necessary to help bring costs down.

I find that the reduction of one holiday from eight to seven so as to match that of the police units is appropriate, but I find no rationale to reduce the pay for holidays from 1/6 to 1/10, other than a purely cost saving measure. The City provided no

data to show that 1/6 the weekly wage was more than others receive, either in the City or in other comparable cities.

Accordingly, I recommend eliminating the Columbus holiday, but retaining the compensation for those not working a holiday at 1/6 the weekly wage.

Article 20, Drug and Alcohol Testing

The City proposes an addition to the article on drug and alcohol testing which, for all intents and purposes, would mandate termination from employment for a positive controlled substance test, without recourse. While the City maintains that an employee so terminated has access to the grievance procedure, the clause limits any arbitrator to solely determining whether or not the test was accurate, and the City followed procedure.

The City argues that the clause is necessitated by recent court rulings that upheld arbitrators' right to return employees to work after a positive drug test and subsequent rehabilitation. The City argues that bargaining unit employees are in safety-sensitive jobs, and have access to controlled substances. Public trust must be established through a strong public policy on drugs.

The City further argues that this clause is generally being adopted by employers and unions, but offered only two examples.

The Union rightly argues that the Employer has the right to terminate for drug use on the job, but an employee should maintain the right to a defense.

I find that the addition of the proposed clause to the Drug and Alcohol Testing policy would negate all other provisions of the policy. If an employee has a positive test, even for taking more than the prescribed amount of a prescription drug which he is legally taking, the employee “shall be terminated from employment”. This negates completely any possibility of rehabilitation as specified in the first paragraph of the policy. “(A)ny controlled substance” may include alcohol, so any rehabilitation is not possible under the Employer’s proposed addition. If you have a positive test, you’re gone. The burden of proof shifts from the Employer to the employee to show that the just cause tests have been violated by a faulty test or procedural error.

The Employer showed no compelling reason for this clause other than some court cases in which an arbitrator may have been soft on drug abuse by safety force employees. The parties mutually select arbitrators, and may have input on which arbitrator they choose. The burden of proof remains with the employer where it is traditionally in discipline cases. I do not find it appropriate to shift that burden to the employee.

I recommend no changes to Article 20, Drug/Alcohol Testing.

RECOMMENDED CONTRACT CLAUSES

Article 39, Wages

Section 39.1 All bargaining unit employees employed by the Employer before January 1, 2014 shall be given a one (1) time lump sum payment equal to two percent (2.0%) of the employee’s base salary. Such payment shall be made within fourteen (14) calendar days of the signing of the agreement.

Effective the first Monday in January 2015, the wage scale shall be increased by two and one quarter percent (2.25%).

All bargaining unit employees hired prior to January 1, 2016 shall be given a one (1) time lump sum payment equal to two percent (2.0%) of the employee’s gross wages for 2015. Such payment shall be made by February 15, 2016.

These lump sum amounts are a result of negotiations between the parties in SERB Case No. 13-MED-10-1495.

All other sections of this article shall remain unchanged.

Article 25, Holidays and Personal Leave

Section 25.1 Except as otherwise provided herein, all full-time permanent employees shall be compensated for the following recognized holidays:

New Year’s Day	January 1
President’s Day	3 rd Monday of February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	4 th Thursday in November
Christmas Day	December 25

All other sections of this article shall remain unchanged.

Issued this 8th day of July, 2014 in Pepper Pike, Ohio:



Richard P. Gortz
Fact Finder

Proof of Service

I certify that an exact copy of this report has been sent by email this 8th day of July, 2014 to the following:

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