

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING
BETWEEN**

Case No. 2013-MED-10-1497

**ROCKY RIVER FIRE FIGHTERS LOCAL
NO. 659, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,
NORTHERN OHIO FIRE FIGHTERS,**

“Employee Organization/Union”

and

CITY OF ROCKY RIVER,

“Employer”

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

DATE OF REPORT AND DATE OF TRANSMISSION: December 11, 2013

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I. INTRODUCTION.

This matter comes before the Fact-Finder as a result of a referral on November 27, 2013, by the State Employment Relations Board (“SERB”) pertaining to fact-finding protocol between the Local No. 659, Rocky River Fire Fighters, Northern Ohio Fire Fighters International Association of Fire Fighters, as the collective bargaining representative and collectively referred to as the “Union”, and the City of Rocky River (“Employer”).

A fact-finding hearing was held on December 5, 2013 at the Rocky River City Hall located at 21012 Hilliard Boulevard, Rocky River, Ohio. Prior to the scheduled fact-finding, the Union and the City had met and bargained on November 21, 25 and 27 and December 2 and 3, 2013.

The Fact-Finder received and has taken into consideration the numerous exhibits and materials presented by both parties, including the parties’ respective pre-hearing position statements and the current Collective Bargaining Agreement. Although not every exhibit or document has been enumerated or analyzed in this Report, the Fact-Finder has reviewed each and, in light of the exigencies of time and with the parties’ understanding, the Fact-Finder is addressing the issues in summary fashion. In that context, the Fact-Finder would be remiss if he did not commend the representatives of both the Union and the City for their presentation, their efforts and the materials presented.

In addition to the material presented and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f). In particular, Subsection (e) states in pertinent part: “In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.” Subsection (G)(7) identifies the considering factors as:

“(a) Past collectively bargained agreements, if any, between the parties;

- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interests 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;
- (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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.”

Consistent with the provisions of Revised Code §4117.14(C)(4)(e) and (G)(7)(a)-(f), SERB has set forth similar standards in Administrative Code 4117-9-05(J) and (K)(1) through (6).

II. COLLECTIVE BARGAINING AGREEMENT.

The parties’ current Collective Bargaining Agreement (“CBA”) was initially operative for the period January 1, 2009 through December 31, 2011. On December 30, 2010, the Union and the city entered into an “Addendum to the Collective Bargaining Agreement.” The Addendum essentially extended the CBA for the period January 1, 2012 to December 31, 2012 but did provide some adjustments, particularly as to wages. Item 2 of the Addendum provided:

“That the 2.50% wage increase due each bargaining unit member beginning January 1, 2011 under the CBA is hereby waived for the entire year of 2011, with the effect being that the wage rates for the year 2010 shall become the wage rates applicable for the year 2011. The wage rates which were to become effective January 1, 2011 shall now become payable commencing January 1, 2012.”

It was noted that a salary increase of 2.25% effective January 1, 2009, a 2.5% increase effective January 1, 2010, zero increase effective January 1, 2011, a 2.5% increase effective January 1, 2012 and an equity adjustment of 1% effective July 1, 2012.

On February 7, 2012, the Union and the City entered into a “Second Addendum to the Collective Bargaining Agreement.” Once again, the Addendum substantially reincorporated the original CBA but adjusted the wage rates and provided that, as modified by the Second Addendum, the CBA was to be in full force and effect through December 31, 2013. Item 1 and Item 2 provided:

“ITEM 1. That the CBA and Addendum for the Rocky River Fire Fighters, Local #659 International Association of Fire Fighters Northern Ohio Fire Fighters, be further amended as provided hereinbelow from January 1, 2012 through December 31, 2013, regarding Article 15(A) of the CBA, titled Salaries, Hourly Rates and Overtime and further that the other terms of the CBA also be extended to cover the same period.

ITEM 2. That the 2.50% wage increase due each bargaining unit member beginning January 1, 2012 under the CBA and Addendum is hereby waived for the entire year of 2012, with the effect being that the wage rates for the year 2011 shall again be the wage rates applicable for the year 2012. The wage rates which were to become effective January 1, 2012 shall now become payable commencing January 1, 2013.”

As a result of the Second Addendum, the wage format was thus zero for 2011, zero for 2012, 2.5% for the period January 1, 2013 to June 13, 2013, and 1% for the period July 1, 2013 to December 31, 2013.

III. BACKGROUND.

The City of Rocky River is essentially a residential, suburban community located in the western part of Cuyahoga County and is part of the Greater Cleveland community.

In addition to the instant bargaining unit, the City has other collective bargaining units, including service personnel and the Ohio Patrolmen’s Benevolent Association. The Police

Union's CBA was entered into for the period January 1, 2013 to December 31, 2015 and some comments pertaining to the police contract will be stated later in this Report.

The fire fighters' bargaining unit consists of all full-time employees (28) of the Fire Division except the Chief.

As part of its overall argument and position, the City has, to a degree, asserted financial difficulties although it is not in any way under the State Auditor's supervision or under any type of governmental fiscal control agency. The City has contended, however, that it has been necessary to reduce its budget each year since 2008 such that the general fund has been cut from \$25,331,598 in 2008 to \$18,064,041 in 2014. This was accomplished, in part, by elimination of positions, having 24 fewer full-time employees, and certain wage freezes for Union and non-Union employees, some of which have been previously mentioned. The City also contends that property tax values have not recovered to previous levels and that the City continues to experience flat property tax revenue based on a decline of assessed value from \$722,829,575 in 2008 to \$683,024,720 in 2012.

The City also contends that because of a decrease in local government funding by the State, the elimination of the Ohio estate tax and tangible personal property taxes, the City has lost over \$2 million per year. Further, the City contends that the U.S. Environmental Protection Agency has required the City to invest an estimated \$40 to \$50 million to upgrade its aging and deteriorating sewer infrastructure system to prevent resident flooding and overflows into Lake Erie. Further, it was indicated that in the general elections of November 2013, the City had placed a proposed income tax increase from 1.5% to 2% with a 50% tax credit, estimated to produce approximately \$2 million in additional revenues with the intent that the increased revenues would be used for capital and equipment purposes. The tax increase failed and the City

contends that it must now look to its general operating fund for any anticipated capital or equipment expenditures.

IV. INCLUSION OF CURRENT CONTRACT.

Except as otherwise set forth in this Report and Recommendations, or as agreed to by the parties in writing, the Fact-Finder recommends retention of current contract language.

V. AGREED ISSUES.

The Fact-Finder finds that as a result of the parties previous bargaining sessions, the parties have reached preliminary, tentative agreement on the following:

Article 3 - Non-Discrimination (proposed City language adopted)

Article 13 - Hours (agreed to deletion of reference to Rocky River Codified Ordinance 141.02)

Article 15(B) – Overtime (formalized acceptance of practice already in place; City language accepted by fire fighters)

Article 16 – Uniforms and Uniform Maintenance (fire fighters agreed to City proposal of one time payment of \$1,250 in July instead of two separate payments of \$625 each)

Article 20 – Job-Related Medical Leave of Absence (the City agreed to fire fighters’ proposal to extend hazardous duty disability to 60 tours or 180 days; language to be negotiated)

Article 22(A) – Military Leave (fire fighters agreed with City proposal)

Article 29 – Compensation and Resignation, Dismissal, Retirement, Lay-Off or Death (there is tentative agreement pending approval of language)

Article 31 – Duration of Agreement (the parties agree to a three year Collective Bargaining Agreement for the period January 1, 2014 through December 31, 2016)

Article 35 – Fire Prevention Officer (adoption of procedure spelled out in Ohio Revised Code; language to be determined)

Article 39 – Direct Deposit (adoption of City proposal)

The Fact-Finder Recommends approval of the above-cited tentative agreements and incorporates those provisions in this Report and Recommendation.

VI. UNRESOLVED ISSUES.

Article 10 – Discipline and Discharge. Based on discussions occurring during fact-finding, and without the need for elaboration, the Fact-Finder recommends that the present Article 10 be deleted in its entirety and the following be substituted in lieu thereof:

“No employee shall be disciplined or discharged without just cause. All disciplinary actions, including discharge, shall be as prescribed by the Civil Service Code of the State of Ohio. The Director of Public Safety-Service shall make and/or approve all reductions and suspensions in said Division. The employee so affected by reductions and/or suspensions shall have the right to appeal said penalty within 10 days of the disciplinary action to Step 3 of the Grievance Procedure. In addition, in the case of any reductions and/or suspensions of more than one (1) 24-hour tour of duty, or removal, the appointing authority shall furnish such employee with a copy of the order of reduction and/or suspension or removal, which order shall state the reason(s) therefor. Such order shall be filed with the Civil Service Commission. For the purpose of determining penalty for only those employees assigned to platoon duty of the Fire Division, such penalty shall be based on hours of duty.”

Article 14 - Job Description. Current Article 14 sets forth various job descriptions and functions of fire fighters, paramedics and emergency medical technicians (“EMTs”). As a result of the discussions which ensued during the fact-finding, the Fact-Finder recommends that current Article 14 be deleted in its entirety and that the subject matter presently set forth in Article 14 be referred and reviewed by the Labor Management Committee which presently exists under the provisions of Article 11(A).

Article 15(A) – Salaries, Hourly Rates and Overtime. The Fact-Finder has alluded to the various salary adjustments made to the present CBA, as amended. The Union has proposed salary raises of 1.5% effective January 1, 2014, 2% effective January 1, 2015 and 2.5% effective January 1, 2016. The City’s proposal is 0% for 2014, 0% for 2015 and a wage re-opener for 2016. The essence of the City’s position is that both the service employees and the police had

agreed to 0% for 2013, 0% for 2014 and a wage re-opener commencing January 1, 2015, the re-opener to be governed by Ohio Revised Code §4117.14. The Union counters that in 2012, while the fire fighters agreed to a wage modification resulting in zero increase, nevertheless, the police received a 2.5% increase in 2012. The Fact-Finder is not going to engage in a debate or the justifiable rationale pertaining to either the police adjustments or the fire fighters' previous adjustments. It is apparent that there have been "wage freezes" by police and fire fighters over the past few years. However, considering the wage freezes that the fire fighters have previously agreed to and, even assuming that there were good and valid reasons for what transpired, to adopt the City's position would mean further wage freezes for 2014 and 2015, although it remains to be determined what would result from the police re-opener in 2015 and its potential applicability to the fire fighters.

The Fact-Finder, however, cannot disregard that wage freezes have been agreed to by the police and service employees for two of their years under their 2013-2015 contract. However, the Fact-Finder is of the view that the employees in the bargaining unit should be paid in accordance with the following: 0% for the year commencing January 1, 2014; 1% commencing January 1, 2015, and negotiations for salaries and hourly rates shall be re-opened on or before November 1, 2015 to determine wages effective for the year commencing January 1, 2016. Such re-opener will be governed by Ohio Revised Code §4117.14.

Article 23(A) – Educational Differential. Current Article 23(A) states:

“As described in the Codified Ordinances of the City of Rocky River, §153.14, as of the effective date of this Agreement, attached hereto as Exhibit F.”

Rocky River Codified Ordinance§153.14 is entitled “Compensation for Education Achievements of Safety Force” and establishes an education panel within the Police Division and an education panel within the Fire Division. The ordinance is rather extensive and, in part,

provides for a point system which, upon attainment thereof, provides for a certain level of additional compensation. The ordinance provides in part, for example:

“The rate for computing benefits shall be one percent (1%) for each ten (10) points accumulated up to and including one hundred (100) points and one-half (.5%) for each twenty-five (25) points accumulated in excess of one hundred (100) points.”

In addition, each member of the Fire Division who completes and passes the State of Ohio Emergency Medical Technician Ambulance Course and remains certified shall receive 1% of their base salary.

The ordinance provides that the maximum that an individual can receive under this point system determination is 7% of the individual’s base salary. The City presented Exhibit V setting forth the education percentage which each of the bargaining unit members had achieved. It was noted that 19 members of the Fire Division have reached the 7% maximum. The City has proposed that the percentage computation of the individual’s “base salary” should be frozen at the individual’s 2013 pay scale. The Fact-Finder does not concur with the City’s position as he is of the view that it is unfair to build in a set compensation rate for the educational differential notwithstanding that the individuals may have some adjustment in their compensation or as negotiated. Further, the educational expenses may have certain built-in inflationary factors. Also, for 2014, inasmuch as the Fact-Finder has recommended a freeze in pay, the educational differential for 2014 would be determined at 2013 rates. Accordingly, the Fact-Finder recommends that the educational differential continue to be determined based on “the member’s base salary.”

As an additional factor, the Fact-Finder notes that the 7% computation is specifically enunciated in the particulars of Codified Ordinance §153.14. The Fact-Finder is of the view that if he were to recommend that the educational differential is to be computed based on the

compensation set in 2013 and not on the basis of the member's base salary, he would, in effect, be overriding the specific language and provision of Ordinance §153.14. Changes to legislative ordinances are a matter left to the legislators of the City of Rocky River and not to this Fact-Finder.

The City has also requested that the educational differential for those hired after January 1, 2014 should be fixed at \$1,500 for paramedic certification and \$1,000 for associate's degrees. Here, again, although the City's proposal is understandable and does have some sympathy with this Fact-Finder, nevertheless, Fact-Finder considers that the suggested proposal runs in conflict with the specific provisions of Ordinance §153.14. For this Fact-Finder to recommend changes to §153.14, he would, in effect, be exercising a legislative function in amending the Ordinance, a function which he considers beyond the scope of his authority. If the City Council is of the view that Ordinance §153.14 needs to be amended, the function lies with them, not with this Fact-Finder. The Ordinance sets forth in very specific language the educational differential and the CBA specifically incorporates the City's Ordinance §153.14. As mentioned, the Ordinance spells out the particulars of the eligible compensation and provides "in no event shall any payment under this section exceed seven percent (7%) of the member's base salary." The Fact-Finder does not find any language in the Ordinance which sets forth a specific amount of compensation for employees hired after January 1, 2014 nor is there any language in the Ordinance which can be interpreted as authorizing the Fact-Finder to unilaterally impose or even recommend a compensation schedule which runs afoul of Ordinance §153.14.

Also, within the scope of Article 23(A), the Union has proposed an additional and new educational differential of \$650.00 for each unit employee upon completion of eight (8) hours of fire or EMS continuing education to be paid in 2014, the sum of \$1,300.00 upon completion of

twelve (12) hours of fire or EMS continuing education in 2015, and for 2016 and beyond, in addition to the employee's current educational differential, the sum \$1,900.00 upon completion of sixteen hours (16) hours of fire or EMS continuing education. The origin of this proposal germinates from Article 19(A) of the police officer's CBA which states in pertinent part: "All employees shall be entitled to annual compensation of One Thousand Nine Hundred Dollars (\$1,900.00) for state certification in the use of firearms." The City is opposed to extending this provision to fire fighters. The Fact-Finder recognizes that no matter how one cuts the pie, or designates various benefits, the bottom line is always additional compensation versus additional expenditures. However, in this instance, the Fact-Finder notes with particularity that the police officers and fire fighters are both covered under the educational differential under City Ordinance §153.14 and the entitlement to point determinations, credits and the like are similar. The firearms certification under Article 19 of the police officer CBA is an additional benefit but it is directed toward a police officer's requirement to meet a state certification in order to use a firearm, an instrument which is incidental and necessary to a police officer's job function. In similar fashion, however, the educational requirements for fire or EMS continuing education are no less incidental to a fire fighter's requirement to maintain educational standards in order for the fire fighter to continue his or her classification to function as a fire fighter.

Accordingly, the Fact-Finder recommends that in addition to the provisions of present Article 23(A), the CBA be amended to provide during calendar year 2014, upon completion of eight (8) hours of required fire or EMS continuing education, an employee shall be paid the sum of \$500.00. Upon the completion of twelve hours (12) of fire or EMS required continuing education, an employee shall be paid the sum of \$750.00 in 2015. In 2016, in addition to an employee's current educational differential, an employee, upon completion of sixteen (16) hours

of required fire or EMS continuing education shall be paid the sum of \$1,000.00. Such continuing education shall not take place on or within the confines of the City of Rocky River property and all costs associated with said continuing education shall be the responsibility of the employee.

Article 26 – Health Benefits. For a number of years, the City maintained a City-wide health benefit program offered under a Plan A, which had a lower-type deductible and provided for a 13% contribution and a Plan B which had a higher deductible but no employee contribution for the premium. In 2013, the City adopted a three tier health plan, with a Plan A for single, single plus one and family coverage, and a Plan B, likewise for single, single plus one and family. For 2014, the City has contended that there are several factors contributing to an increase in the cost of health coverage, such as general healthcare cost increases and the impact of the Affordable Care Act. As stated by the City, “to mitigate the effects of these increases, the City will assume additional risks and has modified the in-network deductible for Plan A from \$400/single, \$800/family to \$500/single, \$1,000/family but with no increase in the out-of-pocket maximum. The Union has proposed that the increase from the present 13% to a 14% premium contribution should be imposed throughout the life of the CBA with no changes in plan design. The City’s basic proposal is to increase contribution rates to 14% in 2014, 15% in 2015 and 16% in 2016 for Plan A participation and, again, Plan B would have no employee contribution for premiums. The City, in its Exhibits W, W-1 and W-2 has set forth the projected increases in employee contribution per year. The City has represented that the proposed increase in employee contribution to 14% and 15% is the same participation percentage as set forth in the police CBA (Article 26) and agreed to by the service employees, as well as this plan is applicable to all employees, Union and non-Union. The Fact-Finder appreciates that there may be instances

in which there is differentiations between employee groups within a city, however, in the area of healthcare, the Fact-Finder believes that where a city is maintaining a city-wide healthcare plan, all parties are in equipoise with each other and that it would be inappropriate to set forth differing percentage contributions for premiums for different segments of the city. Accordingly, the Fact-Finder recommends that Article 26 provide as follows:

“During the term of this Agreement, employees shall contribute through payroll deduction for Plan A health benefits; there shall be no employee contribution for Plan B health benefits. The employee contribution for Plan A health benefits shall be a percentage of the total cost of medical, prescription drug and dental premiums, as negotiated and established by the insurance providers and the City at the beginning of each plan year as follows: 14% for 2014, 15% for 2015 and 16% for 2016. However, in the event that the percentage of contribution for other employee units shall be less than 15% for 2015 and less than 16% for 2016, said percentage shall be reduced to that extent.

Plan designs may be modified and/or insurers may be changed if plan costs (medical, prescription drug and dental), jointly or separately, increase by more than 5% per year.

The parties shall continue in their efforts to reduce hospitalization and other costs, to which a joint medical/hospitalization insurance committee will be maintained and convened as necessary to review alternative insurance coverage plans and make recommendations to the City. Such recommendations do not obligate either party contractually.”

The Fact-Finder appreciates that there will be an increase participation cost by the employees but that percentage of increase is borne equally by each employee participating in Plan A and is not irrational or discriminatory.

Article 34 – Minimum Workforce. The present CBA states:

“The Employer shall maintain a minimum of twenty-eight (28) full-time employees of the Fire Division (such number not to include the Fire Chief) unless personnel reductions are made in conformance with Article 8(A) and (B) above.”

The Union has proposed that specific language be inserted in the CBA establishing a six (6) man minimum daily workforce. The City counters that the question of minimum workforce is a management right reserved under the statutory management rights provisions and the

management rights provisions of the CBA. The Fact-Finder recognizes that for safety and other purposes, a minimum workforce is desirable and, if the workforce is evidenced to be insufficient, it is reasonable to presume that the general populous will voice their objections and concerns to the City officials. One could engage in extensive debate as to the exact numbers that are necessary for a minimum workforce and also the practice of utilizing overtime in the event the minimum workforce should fall below the six (6) person current minimum. The Fact-Finder, however, is of the view that a certain measure of management discretion must be vested in the Mayor and the Fire Chief in determining how best to manage the Fire Department's personnel. Accordingly, the Fact-Finder recommends that current CBA language be retained.

Article 40 – Substance Abuse Policy. On the basis of discussions arising during the fact-finding, the Fact-Finder recommends that the present Article 40 be deleted and that matters of a substance abuse policy are to be referred to the Labor Management Committee established pursuant to Article 11(A) of the Collective Bargaining Agreement, which Committee shall meet and recommend a substance abuse policy by June 30, 2014.

* * * * *

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 11th day of December, 2013.

Respectfully submitted,



DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via email transmission, this 11th day of December, 2013, on the following:

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