

Received after business hours on 12/4/15, processed next business day

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

TWINSBURG FIREFIGHTERS,)	CASE NO. 2015-MED-01-0043
IAFF LOCAL 3630)	
)	
Employee Organization)	
)	REPORT AND RECOMMENDATION
and)	OF THE FACT-FINDER
)	
CITY OF TWINSBURG)	
)	
Employer)	

APPEARANCES:

EMPLOYEE ORGANIZATION

Jim Astorino	President, Northern Ohio Firefighters
John Kraus	President, Local 3630
Kevin Luskin	Vice-President, Local 3630
Kevin P. Rott	Secretary, Local 3630

EMPLOYER

David Maistros, Esq.	Law Director
Timothy A Morgan	Fire Chief
Karen Howse	Finance Director
Kolette Woloszynck	Human Resources Director

December 4, 2015

Received after business hours on 12/4/15, processed next business day

BACKGROUND

Twinsburg Firefighters, IAFF Local 3630 (hereinafter, the IAFF) and the City of Twinsburg (hereinafter, the City) were parties to a collective bargaining agreement, effective April 1, 2012 to March 31, 2015, covering all full-time employees in the classifications of Firefighter II, Paramedic and Lieutenant Firefighter II, Paramedic. The parties negotiated for a successor collective bargaining agreement. Various tentative agreements were reached, but numerous issues remained unresolved and the matter proceeded to Fact-Finding.

The Fact-Finder was appointed on September 8, 2015. The parties were notified of the appointment and were requested by the Fact-Finder to provide their Position Statements, including proposals in final contract language form in advance of the Pre-Hearing Telephone Conference which was to be held the on the day prior to the Fact-Finding Hearing. By agreement of the parties, the Fact-Finding Hearing was scheduled for November 19, 2015 and the Pre-Hearing Telephone Conference was scheduled for November 18, 2015.

The parties timely provided their Position Statements. The Position Statements of the parties were reviewed. The City identified five (5) open issues for Fact-Finding; Article 19, Working out of Classification, Article 24, Education, Article 26 Health Benefits, Article 31, Minimum Manning and Article 35, Wages. The IAFF identified open issues with respect to the same articles of the collective bargaining agreement, but identified a separate open issue with respect to Article 31, an issue relative to the granting of Kelly Days. Entering Fact-Finding, the major issue was wages, the IAFF seeking an equity adjustment to bring the Fire Fighters' wages equal to the wages in the Police Department.

The Pre-Hearing Telephone Conference was held on November 18, 2015. The parties confirmed the composition of the bargaining unit and confirmed that under the terms of Article 38, Duration of Agreement, the Fact-Finder, has the authority to order increases in the wage rates and other economic terms.

Received after business hours on 12/4/15, processed next business day

The Fact-Finding Hearing was conducted on November 19 at the Twinsburg City Hall. Mediation was suggested by the Fact-Finder. After mediation, the parties indicated that they were able to reach a complete tentative agreement on a collective bargaining agreement to be effective from April 1, 2015 through December 31, 2017. The City prepared a draft of the tentative agreement which contained agreed modifications to the provisions listed below, all other provisions of the collective bargaining agreement remaining unchanged:

- Article 8, Section 8.01
- Article 14, Section 14.011
- Article 19, Section 19.01
- Article 19, Section 19.02
- Article 20, Section 20.03
- Article 22, Section 22.01
- Article 22, Section 22.06
- Article 24, Section 24.02
- Article 26
- Article 27, Section 27.06
- Article 31, Section 31.01
- Article 38, Section 38.01
- Article 39, Section 39.04
- Exhibit A – Wages

The Fact-Finder reviewed the draft forwarded by the City and discovered errors in the titles of articles listed in the Table of Contents as compared to the titles of the articles in the body of the collective bargaining agreement and errors in the page numbers listed in the Table of Contents. Those errors were corrected and the date of November 19, 2015 was removed from the cover page of the draft to avoid confusion as to the effective date of the collective bargaining agreement.

The Fact-Finder also reviewed the language of Article 38, Duration, as included in the draft of the tentative agreement prepared by the City. The language of the prior collective bargaining agreement indicated that authority was granted to order increases in wages and

Received after business hours on 12/4/15, processed next business day

other economic conditions commencing March 31st of the calendar year in which the preceding contract expired:

ARTICLE 38

DURATION OF AGREEMENT

Section 38.01. This Agreement shall be effective as of the 1st day of April, 2015, and shall continue in full force and effect, until midnight, the 31st day of December 2017. It shall automatically be renewed from year to year thereafter, unless either party shall have notified the other in writing, at least sixty (60) days prior to the anniversary date that it desires to modify the Agreement.

An arbitrator-conciliator appointed pursuant to the provisions of Chapter 4117 of the Revised Code shall have authority to order increases in wage rates and other economic items commencing March 31st of the calendar year in which the preceding contract expired.

Several problems were noted with that language. The neutral granted the authority by the language was identified as an “Arbitrator-Conciliator”. The intent of the parties appeared to be that Fact-Finders and Conciliators were both to have authority to order economic increases. To avoid confusion, the Fact-Finder recommended to the parties that the titles of the neutrals be clarified. In addition, the expiration date of the new tentative agreement was changed to December 31st, making the reference to March 31st in the second paragraph of Section 38.01 inappropriate. Therefore, the following language was recommended to the parties and was confirmed by the parties as appropriate:

ARTICLE 38

DURATION OF AGREEMENT

Section 38.01. This Agreement shall be effective as of the 1st day of April, 2015, and shall continue in full force and effect, until midnight, the 31st day of December 2017. It

Received after business hours on 12/4/15, processed next business day

shall automatically be renewed from year to year thereafter, unless either party shall have notified the other in writing, at least sixty (60) days prior to the anniversary date that it desires to modify the Agreement.

A Fact-Finder or Conciliator appointed pursuant to the provisions of Chapter 4117 of the Revised Code shall have authority to order increases in wage rates and other economic items commencing with the date which this contract, expires.

During the course of the Fact-Finding Hearing, the wage scales in the collective bargaining agreement were discussed. The Fact-Finder, noting that there was no language in the collective bargaining agreement concerning the operation of the wage scales, inquired as to what step in the wage scale a person would earn when being promoted from Firefighter to Lieutenant and inquired into the general operation of the Step System. The City indicated that a person being promoted to Lieutenant would receive the first step in the wage scale that would provide a wage increase and that the person would then progress to the next step of the Lieutenant classification upon his anniversary date in the Lieutenant classification. The City also indicated that the steps in the wage scale were interpreted as follows:

Step 1	Hire
Step 2	6 months
Step 3	1 year
Step 4`	2 years
Step 5	3 years
Step 6	4 years

The City also maintained that the advancing of an employee to Step 2 at six (6) months was “discretionary”, but did not indicate what criteria were utilized in deciding whether to award

Received after business hours on 12/4/15, processed next business day

the increase to Step 2. The City also maintained that under the Step System in the collective bargaining agreement it reserved the right to hire new employees at any step of the wage progression as it deemed appropriate.

Review by the IAFF of the draft of the tentative agreement provided by the City created a request by the IAFF as to the retroactivity date of the collective bargaining agreement. The IAFF maintained that the past practice had been to award retroactivity from January 1st, despite the fact that the effective date of the collective bargaining agreement had been April 1st. The IAFF, therefore, requested that the Fact-Finder recommend retroactivity with respect to wages and other economic items from January 1, 2015. The IAFF also requested the Fact-Finder to make a recommendation with respect to the operation of the wage scale to codify the existing past practice.

RECOMMENDATION

The best agreements in both private and public sectors are those reached by the parties through collective bargaining, rather than those imposed by third parties. The main issue in contention between the parties had been the issue of wages, the IAFF seeking an equity adjustment to approach parity with the Police Department. Through mediation, the parties reached an accord to reduce the wage gap between the Police and Fire Departments by modifying the wage structure in a way to provide future savings to the City. In addition, the term of the collective bargaining agreement was shortened, having the agreement expire at the same time as the collective bargaining agreement for the Police so that effective parallel negotiations could be conducted.

The Fact-Finder finds that the tentative agreements relative to wages and the other tentative agreements of the parties clearly meet the considerations stated in the Ohio Administrative Code and are therefore recommended. The only issues left to be addressed by the

Received after business hours on 12/4/15, processed next business day

Fact-Finder is the request of the IAFF for retroactivity from January 1, 2015 and the question of the codifying the past practice with respect to the operation of the wage scale.

The IAFF seeks retroactivity from January 1, 2015, claiming that the practice of the parties had been to grant retroactivity from January 1st despite the April 1st effective date of the past agreements. No evidence, however, has been provided to support the assertion that retroactivity had been afforded from January 1st. The most that can be said from the evidence provided is that the Wage Appendix in the prior agreement was ambiguous in only listing calendar years for the application of the various wage scales, rather than specific dates. Even if there had been a past practice, the language of the 2012 to 2015 agreement, specifically states that the “Arbitrator-Conciliator” has the authority to grant retroactivity to March 31st.

An arbitrator-conciliator appointed pursuant to the provisions of Chapter 4117 of the Revised Code shall have authority to order increases in wage rates and other economic items **commencing March 31st** of the calendar year in which the preceding contract expired.

The request of the IAFF with respect to retroactivity to January 1 can not be reasonably read to have been included in the Position Statement and thus should not be considered. Even if this request were properly before the Fact-Finder, supported by past-practice, and not controverted by the language of the duration clause, that proposal must be rejected. It should be noted that the IAFF bargaining unit, will be receiving more than the equivalent of the January 1st retroactivity for 2015, by receiving essentially three (3) months of “retroactivity” in 2016 and in 2017 by the advancing the due date for the increases from April 1st to January 1st. for those contract years. The package for the IAFF, based on a April 1st to March 31st contract, is, in terms of costs, 3.75%, 3.75% and 3%, in addition to the equity adjustment. The proposal of the IAFF for retroactivity from January 1st for 2015 is rejected.

Received after business hours on 12/4/15, processed next business day

The IAFF also requests the Fact-Finder to clarify the operation of the wage scale, essentially to codify the existing past practice. There was some discussion of the operation of the Wage Scale during the mediation phase of the Fact-Finding, the City indicating that the granting of an increase at Step 2 was discretionary. The City, since hearing, provided to the Fact-Finder a copy of portions of the City Salary Ordinance which is applicable to non-bargaining unit employees which states in pertinent part:

B. Upon the expiration of 12 months after the anniversary date of their hire, all employees shall, be eligible to be advanced to the next pay step or within the range depending on performance.

E. New employees or those newly promoted may advance to the next step or within the range after six months for good performance with the Mayor's approval.

The City, in describing the effect of the Salary Ordinance, expanded the alleged discretionary power of the City to deny wage increases arguably at any step. Without the legislative history of the Ordinance as compared to the bargaining history of the IAFF wage scale, and without direct evidence as to the actual past practice, the evidence offered by the City does not establish that it has discretion to deny wage increases at any step.

There is no evidence to establish the actual past practice, therefore, no evidence upon which to base a codification of the past practice. The Fact-Finder will, therefore adhere to the admonition well-known to paramedics, "*primum non nocere*," which means "do no harm". The Fact-Finder rejects the proposal to codify the past practice with respect to the operation of the pay scale.

While the request of the IAFF is rejected, it must be understood that this award is not intended to in any way alter the existing past practice. Neither is this award to be read to endorse the interpretation of the existing language advanced by the City or to reject that interpretation.

Received after business hours on 12/4/15, processed next business day

The parties can address any disputes with respect to the pay scale through the grievance procedure.

Upon due consideration of the issues, the proposed collective bargaining agreement Attached hereto as Exhibit A is recommended.

Respectfully submitted,

/s/ GREGORY J. LAVELLE
27346 Edgepark Boulevard
North Olmsted, Ohio 44070
(440) 724-4538
lavellearb@aim.com

Fact-Finder

CERTIFICATE OF SERVICE

A true copy hereof was sent by electronic mail to Twinsburg Firefighters, IAFF Local 3630 c/o Jim Astorino at jastorino@noff.org and by electronic mail to the City of Twinsburg c/o David Maistros, Esq. at davidmaistros@maistroslaw.com and to the State Employment Relations Board by electronic mail this 4th day of December, 2015.

GREGORY J. LAVELLE

Received after business hours on 12/4/15, processed next business day