

THE CITY OF EYLRIA, OHIO

AND

PROFESSIONAL FIRE FIGHTERS, I.A.F.F. LOCAL 474

SERB CASE NO. 2015-MED-09-0945

BEFORE WILLIAM C. BINNING PH.D.

SERB FACT-FINDER

FACT-FINDING AWARD

FOR THE CITY

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In accordance with SERB procedures, this Fact-finder was appointed by SERB on August 15, 2016 to hear a case between the City of Elyria Ohio and IAFF Local 474.

The parties agreed to hold a hearing on the above matter on October 28, 2016. The hearing was held at the City of Elyria Offices. The parties delivered to the Fact-finder their parties' positions on the outstanding issues on October 27, 2016. The Fact-finder made the exchange. The parties were well prepared and well represented by their respective counsel. On the first scheduled day, the parties engaged in mediation. Through good faith efforts, the parties tentatively agreed to a number of outstanding issues.

A second day of hearing was held on November 29, 2016. The parties were asked to provide the Fact-Finder a statement on the remaining outstanding issues by noon of November 28, 2016. The Fact-finder made the exchange of positions on that date. That hearing addressed the financial condition of the City of Elyria. The salary proposals were reviewed in that hearing.

A third hearing date was scheduled for December 16, 2016 to consider the remaining issues. A fourth and final hearing date was held on January 10, 2017.

Statutory Criteria

In Fact-finding the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered by the Fact Finder. The criteria are listed below and were given weight by this Fact Finder in his recommendations for this matter. The criteria are:

CRITERIA

- (a) Past collective 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 employers 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 adjustment on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties; and
- (f) Such other factors, not confined to those listed in this section, which are normally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation or other impasse resolution procedures in the public service or in private employment.

Background of the City of Elyria

The City of Elyria is an incorporated municipality in Ohio located in Lorain County Ohio. Elyria Firefighters IAFF Local # 474 represents a bargaining unit of approximately 62 employees, who work for the City of Elyria Fire Department. The City and the Union are parties to a Collective Bargaining Agreement that covers July 1, 2014 through December 31, 2015.

The City has a population of 53, 775 with a median income of \$42,272. The City is experiencing a decline in its manufacturing base. Bendix, the City's largest taxpayer, has announced that it will be closing its Elyria facility to build a new facility in Avon, Ohio. Also, Riddell, another large corporate tax payer, announced it will be leaving in 2017 to locate elsewhere.

Hearing

The first hearing was scheduled for 10 am on October 28, 2016 at the City Hall Offices of the City of Elyria. A number of issues were tentatively agreed to on that day. The parties continued talking in the period from the first hearing date of October 28, 2016 until the second date, November 29, 2016. To their credit, the parties resolved a number of outstanding issues in that intervening period. The financial condition of the City of Elyria was the focus of that 2nd hearing day. A third hearing day was held on December 16, 2016. A great deal of attention was given to manning issues on that date. A fourth hearing date was held on January 10, 2017. On that day, the parties focused on language regarding paramedics. At the conclusion of the hearing, the parties agreed that the Fact-finder was to issue his recommendations on February 15, 2017.

Financial condition of the City of Elyria

It was determined at the November 29, 2016 hearing that presentations on the financial conditions of the City would be addressed by the parties. The Union presented first.

The Union presented as its expert witness, Mary Schultz, CPA CFE of Sargent and Associates. She reviewed the City of Elyria's budgets from 2011 through 2015. She also reviewed: the City of Elyria 2014 Audit report and CAFR for 2014, 2015; and the City of Elyria 2017 Tax Budget.

The City income tax is 77% of the General Fund. The City residents recently approved a 0.5% wage tax increase for 5 years. This is expected to generate an additional \$6,000,00 annually for the City.

The City Fire Department is supported by the General Fund.

Ms. Schultz's review showed that Elyria, like all Ohio municipalities, were impacted significantly by budget cuts by the State of Ohio, brought on by the Great Recession. Ms. Schultz's financial data revealed that in 2011 Elyria's share of the Local Government Fund was \$2,637,000, and the Estate tax was \$641,000. (the death tax collection is variable). The estate tax was eliminated in Ohio. In 2015, the Local Government Fund for Ohio was \$1,271,000.¹ In a few short years, Elyria, like other Ohio local governments, lost millions in state aid. Ms. Schultz reported: "Based on the City's 2017 Elyria's Tax Budget, filed with the County Budget Commission in July, 2016. The document provides a snapshot of the City's

¹ Union Exhibit Tab 4 Sargent & Associates 3.

projections for 2017. The Tax Budget reflects an expected 12-31-16 General Fund balance of \$1,351,000.”²

The Union’s financial expert took up the 2016 special levy of ½ of 1% or expressed as .50% increase in income tax in 2016 for 5 years. The Union maintained there was not a specific plan for these monies. Mary Schultz wrote in her report “It seems highly unusual that the City would request a specific tax increase percentage to raise a specific levy amount without knowing exactly what the plans are for the money over the 5-year span.”³ Projected revenue from the tax is \$6,200,000 per year. She projected that a 1% wage increase would cost \$61, 844 with the roll up costs included.

The Union asserted that they had made concessions in 2015. They argued they were the only bargaining unit to make concessions in 2015.⁴

The City of Elyria’s financial position was presented through the testimony of Elyria’s Finance Director, Ted M. Pileski C.P.A. The Mayor of Elyria, Holly Brinda M.P.A., also testified primarily on the recent wage tax.

The City maintained that revenue forecasts for Elyria are uncertain because of recent announcements of plant closures. Bendix, the City’s largest taxpayer, has announced that it will be closing its Elyria plant to move to Avon, Ohio. That will be a loss of 550 jobs. The Riddell Corporation, another large employer, is moving in 2017 to North Ridgeville, Ohio. These losses will result in a projected loss of revenue of between \$1,300,000 to \$1,500,000.⁵

Another notable point in the City’s case is the restrictive use of the monies generated by the recently passed .5% wage tax increase. The City argues that the ballot language was very specific. The point emphasized was that the funds cannot be used for any other purposes. Counsel for the City offered the following:

² Id.

³ Id. 4.

⁴ Amended Fact-Finding Position Statement of the Elyria Fire Fighters IAFF 474 8.

⁵ The City of Elyria’s Fact-Finding Position. 3.

The 2016 Levy is a special levy. A special levy is a tax that is levied for a specific purpose. 1999 Op. Att’y Gen. No. 99-015. The language of the ballot issue enacting the tax levy does not need to include the term “special levy” for the tax to be deemed as such. If the language of the ballot designates a particular purpose for the tax revenue, other than the current expenses of the subdivisions, the levy will be deemed a special levy. Ohio Op. Att’y Gen No 2016-002 (Feb 1, 2016) citing Op. Gen. No.. 2013-005, at page 2. According to Ohio Revised Code 5705.09, the proceeds of the special levy may be used only for the purposes specified and in the amounts specified on the ballot. 1999 Op. Att’y Gen. No. 99-025.⁶

Counsel goes on to argue that “With respect to the 2016 Levy, the Ballot language demonstrates that the electorate approved the use of the 2016 Levy for the several specific purposes, and nothing else. The Ballot language stated:

Shall the ordinance providing for an additional 1/2 of 1% levy on income to provide funds for resurfacing and repair of residential streets and infrastructure, additional police officers and equipment, an amount necessary to address the capital needs of the city including projects of Elyria City Parks and Recreation Department as they may be determined in accordance with the Parks Master Plan, and economic development and promotion of the City for the period of July 1, 2016 through June 30, 2021 be passed?⁷

The City maintains that the monies collected from this new levy are very restricted in what they can be used for.⁸

Elyria Mayor Holly Brinda, in her testimony on the above matter said the City has been advised to take a restricted view on the use of the new money.

The Counsel for the Fire fighters argued that some of the expenditures permitted by the new money would free up general fund monies.

This Fact-finder gives attention to the loss of intergovernmental aid from the state of Ohio to local governments. City leaders, public employees and the citizens of Elyria need to be aware of the challenges faced by Ohio local governments going forward. It would be foolhardy to assume that sometime in the future, the state of Ohio will restore Elyria’s intergovernmental aid.

⁶ Id. 5..

⁷ Id.

⁸ Id.

ISSUES

The parties brought 5 open issues to Fact-finding. They will be presented and addressed in this report in the order they were taken up during the hearing days. The first issue was wages, it was addressed in the 2nd day of the hearing.

ISSUE 1

WAGES

UNION POSITION

Wages and Longevity (Article 13) Wage Increase

The Union is proposing the Following:

Effective January 2016 2% wage increase

Effective January 2017 2% wage increase

Effective January 2018 2% wage increase

CITY POSITION

There shall be a 2% increase in base pay for 2016, with a wage reopener for 2017 and 2018.

DISCUSSION

The parties presented made their case using selected comparables and available financial data. Seldom did they use the same political subdivisions to justify their position.

The Union made the argument that they would be back at the bargaining table within a few weeks from this hearing if the City's proposed reopener was accepted. The City expressed concerns about the limited carry over balance and the uncertainty of future revenue resulting from the expected job losses due to the loss of major employers.

The Fact finder gives weight to the concerns of both parties. The Union's point is that if the City position is recommended this process will be endless with a reopener for 2017.

The City is cautious because of the unknown impact of the plant closures, which have not occurred yet.

RECOMMENDATION

The following is recommended:

Wages and Longevity Article 13

Effective January 2016: 2% wage increase

Effective January 2017: 2% wage increase

Effective January 2018: 2% wage increase

ISSUE 2

Minimum Apparatus Staffing (Article 34)

The second issue taken up by the parties was minimum staffing language proposed by the Union.

UNION PROPOSAL

The Union proposed to add:

Section 34.3 In an effort to provide for the safety of the Firefighters and the citizens of the City of Elyria, there shall be a minimum of fourteen (14) bargaining unit members on duty at all times.

The Union maintains that the Elyria Fire Department shifts “are insufficiently staffed with 13 response personnel on-duty each shift”.⁹ The union maintains that Elyria does not meet the NFPA (National Fire Protection Association) Standard 1710. That indicates that a fire department should be able to deploy an initial full alarm assignment within an 8 minute response time. “Per NFPA 1710, a single family house fire requires a minimum of 15 personnel for response...”¹⁰

Union Exhibit 19, the Implementation Guide for NFPA 1710 states “The standard indicates that a fire department shall have the capability to deploy an initial full

⁹ Union Preliminary Statement 17.

¹⁰ Id.

alarm assignment within the eight-minute (480 seconds) response time. The number of people required falls between 15 and 17, depending on if an aerial is used, and/or if two pumpers are being used to provide for a continuous water supply.”¹¹

The Union argues more personnel are needed each shift. The Elyria IAFF is not proposing the NFPA minimum of 15 but is asking for 14. They ask for just one Fire fighter above the current normal shift staffing.

Exhibit 10 in the Union Exhibits shows the drop in the number of Fire Fighters went from 75 in 2008 to 52 in 2009. The Union also shows an increase in the number of calls.

The existing manning language, which is expressed as Minimum Apparatus Staffing with minimums and recommendation for various Fire Department, Vehicles, was imposed on Elyria through Conciliation by the noted neutral, Susan Grody Ruben. She wrote in her award, “Nowhere in Northeast Ohio is it more necessary than in Elyria to impose manning levels. Over the past 10 years, the City has decreased the Department’s staffing levels to unheard of levels, diverting these funds back to the City’s General Fund. Until receiving the SAFER grant, the fire manning level of the City was at 35% to 50% less than cities of similar size, some even smaller than Elyria. The Department’s manning levels and response times were hazardously low under NFPA standards. The only thing keeping the manning levels at their current levels is the SAFER grant.The only means of protecting the firefighters and the public from a return to unsafe manning levels is by awarding the above language and establishing minimum staffing levels in the Agreement.”¹²

¹¹ NFPA 1710 Implementation Guide 1-5.

¹² Susan Grody Ruben, ESQ. In the Matter between the City of Elyria and Elyria Firefighters IAFF Local 474. Conciliation Award SERB case No. 09-MED-06-0677. 10-11.

This strong language was not directed at the current City Administration. However, as noted below, city administrations change over time.

One concern Conciliator Ruben focused on in her award was the safety of the Fire fighters and its relationship to minimum manning.

The existing manning language, which was awarded by Conciliator Grody Ruben, focuses on manning per vehicle. Under the current operation of the Elyria Fire Department, that reaches a level of 13. That does not necessarily create a fixed minimum manning force of 13. Policy changes can reduce the force by taking vehicles out of active service.

The Union is asking for a minimum manning level of 14. A great deal of their case is based on the National Fire Protection Association (NFPA) 1710 *Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments*. On the first page of that report, under Origin and Development of NFPA 1710, it states:

In 2001, the first edition of NFPA 1710 was issued. The development of that benchmark standard was the result of considerable amount of hard work and tenacity by the Technical Committee members and the organizations they represented. That standard was the first organized approach to defining levels of service, deployment capabilities, and staffing levels for substantially career fire departments.¹³

The Union argues “Currently the EFD’s shifts are routinely insufficiently staffed with 13 response personnel on-duty each shift. NFPA (National Fire Protection Association) Standard 1710 indicates that a fire department should have the capability to deploy an initial full-alarm assignment within 8-minute response time. Per NFPA 1710, a single-family house fire requires a minimum of 15 personnel for response, an open-air strip shopping center or a garden

¹³ NFPA 1710. Elyria’s Exhibit List Tab 27.

apartment fire requires a minimum of 28 personnel, and high rises and apartment buildings at least 7 stories tall require a minimum of 43 personnel to respond. In 2014 the EFD responded to a total of 84 structure fires. In 2015, the EFD responded to a total of 109 structure fires with 6 less full-time employees in the EFD. THE EFD has relied upon mutual aid at times. However, mutual aid response, on average, does not show up on-scene until over 15 minutes after the mutual aid call is made. If an 8-minute response time or a response time remotely close to 8 minutes is going to be achieved the EFD cannot rely upon mutual aid or calling in off-duty EFD personnel on overtime to adequately respond to a structure fire. The EFD needs more personnel on-duty each shift.”¹⁴

The Union gave considerable attention to Chapter 5 5.2.4.2.2. The initial full alarm assignment to a structure fire in a typical 2000 ft. (186 m²) two-story single-family dwelling, without basement with no exposure, shall provide for the following:

1. Establishment of incident command outside of the hazard area for the overall coordination and direction of the initial full alarm assignment with a minimum of one individual dedicated to this task.
2. Establishment of an uninterrupted water supply of a minimum of 400 gpm (1520L/min) for 30 minutes with supply line (s) maintained by the operator.
3. Establishment of an effective water flow application rate of 300 gpm (1140L/min) from two handlines each of which has a minimum flow rate of 100 gpm (380L/min) with each handline operated by a minimum of two individuals to effectively and safely maintain the line.
4. Provision of one support person for each attack and backup line deployed to provide hydrant hookup and to assist in laying of hose lines, utility control , and forcible entry.
5. Provision of at least one victim search and rescue team, with each team consisting of a minimum of two individuals.

¹⁴ Union, “Amended Fact-Finding Position Statement November 28, 2016” . 17.

6. Provision of at least one team, consisting of a minimum of two individuals, to raise ground ladders and perform ventilation
7. If an aerial device is used in operations, one person to function as an aerial operator and maintain primary control of the aerial device at all times.
8. Establishment of an IRIC consisting of a minimum of two properly equipped and trained individuals.

An IRIC is the 3.3.44.1. *Initial Rapid Intervention Crew*. Two members of the initial attack crew who are assigned for rapid deployment and rescue lost or trapped members.¹⁵

The Union leaders of IAFF Local 474, at the table, gave passionate testimony about their concerns about safety, particularly expressed concern for the need to staff number #8 above (IRIC); and that is the most significant justification of the request for 14 or greater. That life saving and vital task cannot be met in a timely manner by mutual aid. It is defined as “initial attack crew”.

In addition to the concerns over safety of personnel supported by the NFPA, the Union argues that its call volume increases, while the size of the force remains the same.

¹⁵ NFPA 1710-6.

CITY PROPOSAL

Current Language

The City proposal recommends the retention of current language. The City's first concern is the increased cost. There would be a need for increased personnel if the Union language is accepted. There could also be an increase in overtime to meet the staffing requirement.

The City defends its current practice of 60 frontline firefighters which enables it "to operate 3 stations and keep all of its frontline apparatus in service."¹⁶ The City advocate continues: "The department schedules two shifts with 20 members and one shift with 21 members. However, when factoring in scheduled time off, sick leave, bereavement leave, military leave, and other types of leave available to Union members, the Chief's goal is to have 13 members actually working a shift to keep three stations open."¹⁷

The Fire Department has the capacity to call in employees if call-offs fall below that number and it is the Chief's practice to do so. This is done at the prerogative of the City, as part of its management rights, and this level of staffing has proven effective, allowing the City to maintain three stations and allowing the department to operate all of its frontline trucks if necessary to do so. The advocate states: "This staffing level has proven effective for the City in the years since it has been implemented."¹⁸

The City advocate argues: "There is simply no reason to include this substantial abridgment of the City's management rights in the CBA. The CBA already includes a minimum apparatus staffing requirement that falls in line with

¹⁶ THE CITY OF ELEYRIA FACT FINDING POSITION STATEMENT . p. 30.

¹⁷ Id

¹⁸ Id. 31

the common practice of departments its size, and there is no factual basis to assert this requirement for safety reasons. ¹⁹

The City asserts: “ Moreover, given all of the City’s unknowns regarding its financial outlook, it cannot be subject to minimum manning requirement that will only increase costs to the City, particularly in light of the fact that the fire department is already over budget this year.”²⁰

The City advocate offers comparable city fire departments that do not have minimum manning requirements and where they exist they are not significant.

The City concludes: “ Such a substantial restriction on the City’s ability to staff and manage its fire department is simply not supported when the department has been operating at a staffing level that has not put any member of the department at risk and that enables the City to keep 3 stations open and all of its frontline apparatus in operation.”²¹

At the December 16, 2016 hearing on this issue the City’s advocate made the point that only 20 percent of the calls for the Elyria Fire Department were for fire.

The point was also made that nothing was ever said to expect any reduction in equipment use or size of the force. This administration said it was committed to keeping the current staffing levels.

¹⁹ Id.

²⁰ Id.

²¹ Id.

DISCUSSION AND RECOMMENDATION

There was no evidence offered to question this City's administration's commitment to maintain the current force size or staffing levels. However a labor contract is not with a particular administration. Conditions change over time, and this City has a history of reducing force levels below a safe number.

This Union suffered significant cuts in manpower in the past. To quote Conciliator Grody Ruben, " Nowhere in Northeast Ohio is it more necessary than in Elyria to impose manning levels. Over the past ten years the City has decreased the Department's staffing levels to unheard of levels, diverting the funds back to the City's General Fund." Grody Ruben wrote: "The Department manning levels and response times were hazardly low under NFPA standards. .. The only means of protecting the fire fighters and the public from a return to unsafe manning levels is by awarding the above language and establishing minimum staffing levels in the Agreement. " ²²

In 2009, the force was reduced to 53 total. In subsequent years the force was increased because of SAFER Grants, which are temporary. The data provided in Union Exhibit Tab 10 shows a continuing decline in force totals. ²³

That decision was made only a few years ago. There is no reason to assume this concern will not reoccur in the future. Conciliator Ruben was limited in her choice because the staffing levels were expressed in terms of vehicles by the parties for the Conciliation hearing. Therefore, she was only able to award "manning level " by vehicle. The number of vehicles in service is discretionary.

The Union relied heavily on NFPA 1710 standards in support of this language for their safety and the safety of the community. The City dismissed this as a recommendation. However, at another point in the proceedings, the City

²² Grody Ruben pp 10-11

²³ Union Exhibits Tab 10.

presented its current The Agreement between the City of Elyria and **LIFECARE AMBULANCE, INC.**

In that Contract under III PERFORMANCE STANDARDS

1. Lifecare must meet the National Fire Protection Agency (NFPA) 1710 standard 4.1.2.1 (2) and 4.1.2.1 (5) objectives for turnout time and arrival at the scene within a total of nine (9) minutes after receiving a 911 emergency medical service call ninety percent of the time.
2. For purposes of this Agreement, the standards outlined above will be measured each calendar month and will be subject to allowances for weather or traffic construction problems that cause delayed response time over prolonged periods of time.²⁴

The National Fire Protection Agency 1710 standard for Elyria's Fire Department requires minimum manning of 15. The Union is proposing 14. The City of Elyria imposes this NFPA standard on a private contractor and will not offer the same level of protection for Fire calls by its residents. How can the City hold its contractors to this standard and then be dismissive of the value of the NFPA standard for its own Fire service? It cannot. The proposed 14 requirement by the EFD is one member below the NFPA standard; that is a start to protect the citizens of Elyria, and the members of this Fire Department.

The City has a history of not abiding by the safety standards it recognizes and imposes on others. The minimum manning requirement should be 15. The Union proposal of 14 is a step in the right direction.

Based on the history of the treatment of Fire Department by previous administrations; and the inadequate safety provided for the fire fighters and the community by a shortage of manpower, the following language is recommended:

²⁴ EYLRIA's EXHIBIT LIST. Tab 17. 5.

RECOMMENDATION:

MINIMUM APPARATUS STAFFING (ARTICLE 34)

Section 34.1 -34-34.2 [Maintain Current Language]

Section 34.3 In an effort to provide for the safety of the Firefighters and the citizens of the City of Elyria, there shall be a minimum of fourteen (14) bargaining unit members on duty at all times.

ISSUE 3

STIPEND FOR OPERATING FIRE DEPARTMENT APPARATUS.

UNION PROPOSAL

The Union proposes to “modify the terms of the EFD driver/operator pay so that any Class A Fire Fighter with 5 years of service is assigned to operate EFD apparatus receives the \$600 annual driver pay (currently only Class A Fire Fighters with 5 years of service “qualified” to operate EFD apparatus and eligible for acting officer pay receive the pay).”²⁵ The Union’s proposed language is offered below:

H. All shift (50 hours per week) Class ‘A’ Fire Fighters with five (5) years of service ~~or assigned qualified~~ to operate Fire Department Apparatus, ~~and eligible for acting officer pay (Chief Bulletin #67 3/1/2000 & Bulletin #25 9/10/1992)~~ shall receive six hundred dollars (\$600) on the first pay of July. They shall be responsible for the operation, daily checks, and readiness of apparatus they are assigned. If maintenance is required, the operator shall be responsible to see that the proper work orders are filed with the department mechanic. The operator shall notify the officer of the apparatus if it is determined the apparatus should be taken out of service for mechanical or safety reasons. The officer shall then take the apparatus out of service until the Fire Department mechanic determines that the apparatus is safe and reliable for emergency service.

The Union argues that this stipend was agreed to as part of a package deal when the 15% health care premium share was agreed to.²⁶

The Union maintains since that deal was agreed to, there has been a reduction in the force and bargaining unit members, with less than five (5) years of service, now drive vehicles.

The Union states that this is unfair since it is members with less seniority and at a lower pay scale do not receive this benefit.²⁷

²⁵ Union Amended Fact-Finding Position Statement of the Elyria Fire Fighters IAFF Local 474. .14.

²⁶ Hearing Testimony, January 10, 2017.

The Union maintains that “The Less-senior Fire Fighters are performing the same work, responsible for the same duties that their co-workers are receiving \$600 each year for. Less–senior Fire-fighters already work more hours, are paid less in base wages and are paid significantly less in longevity than the more-senior IAFF members. The IAFF’s proposal goes to lessening (albeit slightly) the pay disparity in a reasonable manner at a miniscule cost to the City.”²⁸

CITY POSITION

The City proposes retention of current language.

On the matter of the substance of the language the City argues “ This ensures that Union members who have demonstrated longevity with the department and the characteristics and qualifications necessary to operate the apparatus, receive this extra economic benefit. Moreover, the term “assigned” as used in the Union proposal is ambiguous and can lead to claims of a Union member asked to drive an apparatus just one time in an emergency situation as being eligible for this stipend.”²⁹

DISCUSSION AND RECOMMENDATION

This was a difficult issue for this Fact-finder to resolve since both parties make valid points. Since the Fact-finder is in a quandary, he finds for the City, and recommends current language.

RECOMMENDATION

Current language.

²⁷ Id.

²⁸ Union, **Amended Fact-Finding Position of the Elyria Fire Fighters IAFF Local 474.. 15.**

²⁹ **THE CITY OF ELYRIA ‘S FACT-FINDING POSITION STATEMENT.** (submitted for November 29, 2016). 28.

ISSUE 4

RECOGNITION (Article 1)

UNION POSITION

The Union recommends the following language:

Section 1.1 The City recognizes the Union as the exclusive bargaining agent for all the employees of the Elyria Fire Department, with the exception of the Fire Chief and the Assistant Fire Chief who has been designated by the Fire Chief to serve as Fire Marshall, that are covered by the State of Ohio Fire Fighters Pension Laws.

[Maintain current language]

Section 1.2 If City employees (directly employed by the City) are required to be certified to perform advanced life support services (ALS), those City employees shall be considered members of the Union's bargaining unit and the City and the Union shall enter into negotiations regarding the terms and conditions of employment for those employees pursuant to the attached Letter of Understanding regarding Paramedics.

**LETTER OF UNDERSTANDING
PARAMEDICS**

The Elyria Fire Fighters, IAFF Local 474 (Union) and the City of Elyria (City) hereby agree that if the City seeks to mandate Elyria Fire Department

employees to be a certified Paramedic (Advance Life Support response) or create new City positions that will be required to be certified as a Paramedic, the Union and the City shall immediately reopen the Collective Bargaining Agreement for the limited purpose of negotiating the terms and conditions of employment of those Paramedics. The City shall provide the Union at least thirty (30) calendar days' notice of its intent to employ Paramedics (i.e. required to be certified as a Paramedic). Should the parties reach an impasse in their reopener negotiations the dispute resolution procedure shall be as set forth under Ohio Rev. Code 4117.14, except the conciliation restrictions set forth in Ohio Rev. 4117.14 (G) (11) regarding award cost implications are waived for the reopener negotiations. ³⁰

The Union believes/suspects that they will be required to attain Paramedic certification and perform Paramedic services. They are asking for this language to protect themselves when this happens. The City maintains this will not happen.

Union argues: " While City Council has previously favored having the City's transport duties performed by Life Care, Inc [a private ambulance service, with an apparent monopoly to transport in Elyria] the EFD [Elyria Fire Dept.] is increasingly assuming EMS duties with Elyria. "³¹

Union continues: "As stated, this past year the Fire Chief ordered IAFF members to begin performing Advance Life Support duties in medical responses, and as of June 2016, the EFD is the primary first-responder for EMS ALS responses. The Fire Chief has issued several SOGs on EMS Patient care and EMS job duties. The Fire Chief has strongly advised IAFF members to maintain their Paramedic certification, but is not currently requiring the IAFF members to do so. As the EFD's role grows in providing EMS services within Elyria, the IAFF anticipates the City will require IAFF members to maintain Paramedic certification and perform Paramedic work."³²

³⁰ **ELYRIA FIRE FIGHTERS IAFF LOCAL 474 AMENDED FACT-FINDING PROPOSALS** SERB Case No. 15-MED-09-0945 As submitted on January 10, 2017. Received by e-mail January 12, 2017.

³¹ **AMENDED FACT FINDING POSITION STATEMENT OF THE ELYRIA FIRE FIGHTERS < IAFF LOCAL 474.** submitted for hearing November 29, 2016. 12.

³² !d. 12-13.

The Union offers as evidence an ADMINISTRATIVE /CHIEF' S BULLETIN (effective date January 1, 2016). The stated "PURPOSE: This Bulletin is designed to inform all Elyria Fire Department members of changes to our delivery of pre-hospital care. It also recognizes those members of the department certified by the State of Ohio as Emergency Medical Technician- Basic (EMT-B) and Paramedic (EMT-P)"³³

The BULLETIN goes on: "After the reformation of Elyria's EMS Joint Quality Review Board by Mayor Brinda, all parties recognized the need, and ability, to deliver a higher level of pre-hospital care by our Firefighters/Paramedics. The Joint Quality Review Board is represented by the City Administration, Fire Department, University Hospitals EMS and Life Care Ambulance Service.

Effective January 1, 2016 Elyria Firefighters certified by the State of Ohio as EMT-Paramedic will be authorized and equipped to provide this higher level of care. "³⁴

A Standard Operating Guideline issued on 1/1/2016, entitled PATIENT CARE, states under sub-heading Patient Care Authority: "The most qualified EMS provider (Emergency Medical Technician, advanced EMT or paramedic) first on-scene at a medical trauma emergency shall assume responsibility for patient care. This individual is in charge of patient care until it is formally transferred to a transporting agency."³⁵

There were 16 Standard Operating Guidelines issued on 1/1/2016. These were issued while this current contract was being negotiated.

The Union also offered for the record, an e-mail sent by the City's attorney which stated, " In regards to paramedic certification, the City's expectation is that firefighters with the paramedic certification will continue to maintain that certification during their employment. " ³⁶

³³ Union Exhibits Tab 12.

³⁴ Id.

³⁵ Id.

³⁶ Union 28.

The Union also points out that the protocol for Dispatch has been changed and that the Elyria Fire Department is called before the private ambulance service.

There is good reason for the Union to take the position that: “While the IAFF is open to the City assuming all EMS responsibilities within Elyria, requiring the IAFF members to be certified Paramedics and perform the duties of certified Paramedics is a mandatory subject of bargaining.”³⁷

Union states further: “ The IAFF’s proposal ensures the matter will be bargained consistent with the dispute resolution procedures of R.C. 4117.14 when the transition formally takes place.”³⁸

CITY POSITION

The City favors current language.

The City does not accept the Union’s statement above “when the transition formally takes place.” The City does not foresee this change in practice.

The City points out that the contract with the private ambulance service provides all transport on EMS calls . The Company has an “exclusive contract”³⁹ for emergency services that exceed beyond the term of the IAFF labor contract. That contract also requires the company to build a new building in the City. There is no evidence that the City is moving away from Life Care (the private ambulance service) to having the IAFF provide this service beyond what it currently does.

Furthermore, the City points to a City Council Resolution No. R213-15 dated 7-1-2013. The caption is “A RESOLUTION DECLARING THAT THE CITY OF ELYRIA WILL NOT INVEST FURTHER RESOURCES INTO PROVIDING EMERGENCY MEDICAL TRANSPORT WITHIN THE CITY.”⁴⁰

³⁷ IAFF Amended Fact-Finding Position Statement 13.

³⁸ Id.

³⁹ Elyria’s Exhibit List.17.

⁴⁰ City Exhibit

The City states, “This is a significant issue for the City, and the Union’s proposed revision must not be incorporated into the CBA. Currently, Advanced Life Support services are not a required condition of employment for bargaining unit employees. It is *not* required in any of the department’s job descriptions and only 23 of the 63 Union employees carry the ALS certification. For those who carry the certification, they are authorized to perform ALS in the event they are the first responder and such services are deemed necessary, but once Lifecare arrives on the scene, or if Lifecare is the first to arrive, patient care is the responsibility of Lifecare.”⁴¹

The City states, “The City has no plans in the foreseeable future to *require* Union members to perform ALS services...”⁴²

The City states: “However, the Fire Department is often able to respond to calls more quickly due to the location of its stations, and because the Department has numerous paramedics on staff, City administration engaged in discussions with LifeCare and University Hospitals to garner agreement that the City could provide Advanced Life Support in the event that a fire EMT with such certification arrived on scene first. These discussions were greatly supported, if not urged, by the Union, because its members were interested in using their paramedic skills.”⁴³

In concluding the City’s position on this issue the City states “There is simply no factual or legal justification for this provision to be inserted into the collective bargaining agreement. Collective bargaining between a public employer and public employees is governed by a comprehensive framework of laws, administrative regulations and jurisprudence from the State Employment Relations Board, all of which set forth the scenarios under which a public employer is required to bargain with a union; if and when the City were ever actually decide to mandate that employees perform ALS as a condition of

⁴¹ The City of Elyria Fact-Finding Position Statement. (submitted November 29, 2016) 20.

⁴² Id.

⁴³ Id.. 20-21.

employment, the Union can invoke whatever statutory or collective bargaining it has at the time...”⁴⁴

The City acknowledged its obligation to bargain any change in this practice.⁴⁵ It cited Article 1, RECOGNITION: “The City recognizes the Union as the exclusive bargaining agent for all the employees of the Elyria Fire Department ...”⁴⁶ Furthermore, the City recognized its obligation to bargain any change in the current practice [with regard to paramedics and obligation to attain paramedic certification] : and the City cited Article 30, EMPLOYMENT STANDARDS: Section 30.1 D. Any standard not being practiced at the contract date (July 12, 2000) shall be agreed to by the union and the employer before being implemented.”⁴⁷

DISCUSSION AND AWARD

The Union has reason to be concerned about their changing role as providers of Paramedic services. A number of recent events in Elyria have fueled those concerns.

The City stated for the record that it is obligated to bargain with the Union if it does require ALS certification of IAFF bargaining unit members.

⁴⁴ Id. . 22

⁴⁵ City Testimony January 10, 2017.

⁴⁶ Agreement Between the City of Elyria, Ohio and the Elyria Fire Fighters Local #74 of the International Association Effective July 1, 2014 through December 31, 2015..1.

⁴⁷ Id.

The contract with the private ambulance service extends beyond what is likely to be less than the two year life of the contract under consideration between the City and the IAFF.

This Fact-finder does not consider this issue settled. If it continues to ripen, it will need to be addressed in future bargaining.

RECOMMENDATION

Current language.

ISSUE 5

PARAMEDIC TRAINING

UNION POSITION

The Union recommends the following language:

K. For any member that is a certified Paramedic and performs the duties of Paramedic, the City shall provide the training associated with maintaining the Paramedic certification. Such members shall be compensated in accordance with Article 14, Section 14.1 (C) for participating in any training occurring on the member's scheduled day off.

This proposed language is related to the expectation of the Union that the City will require Paramedic Training in the near future for a variety of reasons. They are stated by the Union and summarized by the Fact-finder under Issue 4 above. The Union asserts in support of this proposal, "If the City wants IAFF

members to maintain their Paramedic certification and to perform Paramedic work in emergency medical responses, at the very least the City should provide those IAFF members the training necessary to maintain the Paramedic certification, including compensating those members the applicable wages for the work necessary to maintain the Paramedic certification. ⁴⁸

THE CITY POSITION

The City is opposed to Union Paragraph K. The City argues: “The City’s current practice is to make paramedic training available to Union members, despite the fact that holding a paramedic certification is not a necessary prerequisite to employment. While the City intends to continue to offer the training, the onus must remain on Union members to make certain they receive all appropriate training; after all, it is the personal obligation of the Union member to maintain his or her certification, not the department’s obligation.”⁴⁹

On the second part of proposed language the City argues” “Moreover, Union members already have a very generous overtime structure in the CBA and that financial burden on the City should not be increased by requiring the City to pay overtime to its members when the City is already going beyond what is legally required of it by providing this training to Union members when holding the certification is not even a requirement of the job.”⁵⁰

⁴⁸ Elyria Firefighters, IAFF Local 474 Amended Fact-Finding Position Statement November 28, 2016. 15- 16.

⁴⁹ **THE CITY OF ELYRIA’S FACT-FINDING POSITION STATEMENT for November 29, 2016 hearing.** 29.

⁵⁰ Id.

DISCUSSION AND RECOMMENDATION

This Fact-finder sees this issue of Paramedic training tied to the Union's concerns that Paramedic training and provision of Paramedic services will be required of Fire Fighters in the future by the City of Elyria. The view of the Fact-finder is that the concerns of the Union have merit, however, this issue is not ripe enough to require adding this proposed language to a contract for something that might happen in the future.

The testimony by the parties at the hearing is that the Chief goes out of his way to provide ample opportunity for those who have Paramedic certification to receive the training necessary to retain that certification. Beyond that the City is trying to meet new protocols that expect Fire Fighters to provide Paramedic services to victims until the private ambulance service arrives. Given the current situation, there is no reason to assume the City will not continue to provide ample Paramedic training free of charge. This might change, and if and when it does, then this issue will have to be addressed in bargaining.

RECOMMENDATION

Current language is recommended.

The Fact Finder recommends the above and all tentative agreements arrived at by the parties.

Dated February 15, 2017

Mahoning County Ohio

William C. Binning Ph.D.

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SERB Fact-finder