

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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Correct Case# 2015-MED-12-1274

In the Matter of Fact-finding Between:

The City of Mansfield, Ohio : Case No: 2015-MED-01-1274
and : Report and Recommendations
International Association of Fire Fighters : Margaret Nancy Johnson
Local 266 : Fact-finder

Statement of the Case

This matter came on for hearing on June 14, 2016, in a conference room at the Terminal of Lahm Airport, in Mansfield, Ohio. In contention are provisions to be included in a successor Collective Bargaining Agreement, "CBA," between Mansfield, hereinafter, "City," and the International Association of Firefighters, Local 266, hereinafter "IAFF," or "Union." Selected by the parties and appointed by the State Employment Relations Board, hereinafter "SERB," Margaret Nancy Johnson served as fact-finder with a statutory directive to take evidence on unresolved contractual issues and to render recommendations thereon.

Human Resources Director, David L. Remy, argued the case for the City. Local 266 was represented by its President, Firefighter Daniel Crow. Lori Cope, Safety Services Director, was in attendance throughout the hearing as were members of the Local Negotiating Committee.

The bargaining unit consists of full-time employees holding the rank of firefighter, lieutenant, and captain. In addition to the Fire Chief, there are three (3) assistant Fire Chiefs. While authorized for ninety-two (92) personnel, currently there are approximately ninety-one (91) uniformed personnel in the Department, eighty-seven (87) of whom are in the bargaining unit.

Effective April 1, 2013 through March 31, 2016, the prior CBA was implemented while the City was in a state of Fiscal Emergency. Terms and conditions included therein addressed the need of the City to engage in significant cost containment so that City expenditure did not exceed revenue. In July 2014, the City was removed from Fiscal Emergency, having successfully eliminated deficit spending.

Prior to the expiration of its Agreement, the parties engaged in meaningful negotiations for a successor Agreement. As a consequence of good faith bargaining, the parties were able to resolve and tentatively agree to nineteen (19) contractual issues (City Exhibit 1). Those tentative agreements are incorporated herein as if fully rewritten.

Two outstanding issues remain unresolved and have been submitted to the Fact-finder for consideration. Prior to the hearing, the parties submitted position statements setting forth respective rationale on the matters remaining in contention. Testimony and argument on those issues were presented to the fact-finder for the purpose of resolving the impasse. Recommendations which follow have been issued in compliance with procedural requirements.

Issues

Two issues remaining unresolved pertain to: 1) Article 17, Section 17.3, B.2, bid positions at Station 4; and, 2) Article 21, Section 21.3, Wages.

Statutory Criteria

In rendering the recommendations which follow, the Fact-finder has taken into consideration criteria specifically enumerated in Ohio Revised Code Section 4117.14(G)(7).

Position of the Parties

Bid Positions- Station 4

The City

Article 17.3.B.2 specifies the number of bid positions at each one of the five (5) fire stations maintained throughout the City. Station 4, with four bid positions, houses the City's hazardous material response equipment and vehicles. Twenty-five (25) firefighters certified as hazardous material technicians hold bid positions throughout the City. The City proposes changing Article 17.3.B.2 by requiring by the end of the Agreement that all four (4) personnel assigned to Station 4 be hazardous material technicians: two (2) in contract year 2016; three (3) in contract year 2017; and four (4) in contract year 2018.

Rationale for the change is to ensure a rapid response to a hazardous material incident. Additionally, having all firefighters at Station 4 be certified technicians would ensure proper maintenance of the equipment. Since the City has the lead hazardous material unit in the region and it services a large geographic area, it is important that the team respond quickly and effectively so as to avoid contamination and a potential environmental crisis.

The Union

While the Union disputes the need for four certified technicians at Station 4, it counters with a proposal that one (1) of the bid positions be a haz-mat technician. One technician is sufficient to maintain the equipment so as to ensure readiness when the infrequent call for a haz-mat team occurs. The Union questions the need to restrict bidding in the manner proposed by the City. By the bidding process, Firefighters coalesce as a team which works effectively together, and the City proposal undermines that cohesion. Moreover, the proposal of the City will have unintended, adverse consequences as far as safety issues, relief assignments, and emergency responses.

Wages- Article 23

The City

The City proposes a 2%, 2%, and 2.5% wage increase in this three year contract, a 6.5% increase over the life of the Agreement. Its proposal matches what was negotiated by the AFSCME unit in May, 2015. Included in the AFSCME contract is a "reopener" clause which may be triggered should this or another unit receive more than the AFSCME bargaining unit. Moreover, the proposal is consistent with increases received by non-unit personnel as well as with what the City plans to offer to two FOP units with which it bargains.

Considering external comparables, the City offer is in line with the 2015 statewide average wage increase of 2.02% , and it exceeds the 1.93% statewide increase for firefighters. Data for fire personnel in north central Ohio indicate the City wage offer is comparable to similarly situated jurisdictions.

Moreover, in these contract negotiations, the City has agreed to additional compensation available to qualifying firefighters, including a physical fitness incentive. These financial benefits enhance a reasonable wage proposal consistent with the financial ability of the City.

The Union

The Union advocates for a 4% increase for each year of the Agreement. During negotiations for the prior Agreement while the City was in Fiscal Emergency, IAFF made or was required to make significant concessions. Since the City is now on firmer financial footing, this Union seeks a fair and comparable pay increase.

Externally, in 2015, firefighters in Ohio received a 1.93 % increase, compared to the 1% paid to this unit. A review of median income and paramedic compensation paid firefighters in five County seats indicates that Mansfield is below the average, respectively. Considering total compensation paid in comparable jurisdictions, including longevity, uniform allowance, holiday pay and other allowances, for services rendered from one through twenty years, Mansfield not only is below the average pay, but the disparity in pay has increased from 2008 until the present. Compensation for Officers also lags behind.

Internally, pay increases are disproportionate. Between 2012 and 2015 employees in other departments received significantly greater increases than this unit. For the 2016 budget, the City anticipates 3% increases for non-unit employees.

Discussion

Context- Prior Bargaining

Negotiations for the current Collective Bargaining Agreement must be viewed in context. Indeed, statutory criteria requires the fact-finder to consider bargaining history and prior Collective Bargaining Agreements. During bargaining for the preceding Agreement, effective April 1, 2013 through March 31, 2016, the City of Mansfield was in fiscal emergency. At that time the City engaged in extensive cost saving measures to eliminate deficit spending and to bring expenditures in line with revenue. Concessions and reductions occurred throughout every department in the City. Moreover, public services were eliminated or reduced. While this unit received a 1% increase in each contract year, it had made significant adjustments to contract language.

In addition to cost containment, to address operating needs, between October 2012 and April 2014, the City created four (4) separate monetary funds: a Budget Stabilization Fund; a Separation Fund; a Health Insurance Fund; and a Worker's Compensation Fund (City Exhibits 10-13). Having specified purposes, none of these funds is available for salaries. To increase revenue, however, the City ratified a .25% levy known as the PRIDE levy, dedicated to parks, recreation, street lighting, demolitions, and with most of the generated income (.125%) for safety services operations. Other sources of revenue include the 1% permanent levy, a .25% Street Resurfacing levy, and a .50% Safety levy dedicated to safety services.

As a result of its financial recovery plan and increasing revenue, the City successfully emerged from deficit spending and in July 2014, the City was removed from fiscal emergency. While the City is presently operating with a balanced budget, to ensure future stability, monetary enhancements in bargaining agreements must be measured and circumspect. Evidence establishes the City has made a recovery, but it must take precautions to avoid a relapse.

I – Article 21.1 Wages

A. *Financial Considerations*

Both parties submitted extensive documentation regarding the finances of the City indicating that the financial condition of the City has certainly improved from when the 2013-2016 labor contract was implemented. In looking at years 2012 through 2014, an IAFF analysis (Union Exhibit 5, p.6) concludes:

Most notably, the general fund balance and the asset to liability ratio increased more than 86% and 47%, respectively. The General Fund balance as a percentage of general expenditures is above the GFOA's threshold for all years under review. The City has positive governmental fund balances and positive asset to liability ratios. The total governmental fund balance has increased over 20% from FY13 to FY14.

This improvement has been the consequence of restrained spending and resource development on the part of the City as delineated in the Financial Recovery Plan revised December 12, 2013 (City Exhibit 7).

The Union points out that the City continues to budget conservatively and that consistently, actual revenue exceeds the budgeted revenue (Union Exhibit 4) Yet, this is expected of governmental entities, and given the financial history of the City, conservative planning is crucial. Nonetheless, current data indicates the City has the ability to adjust the wages and compensation paid to its firefighters.

Revenue in 2015 and into 2016 continued to increase. The Finance Department for fiscal year 2015 summarized the end of year financial condition of the City: "There are many factors that go into the revenue and expenditure cycles of the various funds, and there are no apparent concerns at this time" (City Exhibit 14). Of special interest are ending balances in the General Fund and in the Safety Services Fund, specifically addressed by the Finance Director in the year-end Report. The December 31, 2015 Report indicates a cash balance of \$4,804,229 in the General Fund and \$1,908,951 in the Safety Services Fund (Id.). As of April 30, 2016, the cash balance in the General Fund was \$5,198,254, and \$1,915,613 in the Safety Services Fund (City Exhibit 15).

For 2015, General Fund revenues increased 6.98%, leaving a year-end cash balance of \$4,248,596, after appropriations had been made for capital improvements, operational needs, and to the Budget Stabilization Fund. While year-end balances in a General Fund are expected to provide sufficient "cushion" for economic variables, in this instance, the City has created a separate Stabilization Fund specifically designated for the unanticipated and nonrecurring needs that may occur.

Similarly, Safety Fund balances have steadily increased from 2012 through 2015. In 2015, the Safety Fund experienced an increase in revenue of 1.95%, leaving an unencumbered year end cash balance of \$1,434,032. Although the City points out that a significant percentage of total general fund revenue is transferred to the Safety Fund, this is exactly what operating funds do-- they pay for the costs of managing an entity and services provided to operate effectively and safely (See City Exhibit 16).

Unencumbered year-end balances in the General Fund are indicative of an ability to provide a reasonably prudent wage increase. In ascertaining what might be a reasonable wage increase, consideration has been given to comparable data, both internal and external.

B. Comparability

Wage comparability, especially for safety forces, is challenging to analyze. Not only are there multiple distinguishing factors among jurisdictions, such as demographics, economic and geographic characteristics; but also there are many financial variables within a particular labor agreement. Moreover, in negotiating the terms of a Collective Bargaining Agreement, including financial issues, parties have set priorities, and the give and take of bargaining differs among jurisdictions depending on those objectives.

Nonetheless, patterns and trends in bargaining are helpful in determining a reasonable wage increase. In wage analysis, comparable percentage increases tend to be more informative than annual salary or hourly rates of pay, which have been established in mature units, such as IAFF Local

266, over years of collective bargaining. Thus, generally-- though not always-- a rate of pay appropriately falls within an acceptable range.

The fact-finder notes, too, that averaging rates of pay is not always a reliable measure in determining a wage increase. Using dissimilar jurisdictions to establish an average may potentially distort data. For example, salaries paid to bargaining units by a suburb of a major metropolitan area may not be apt in determining a wage rate for similar employees in a less densely populated community.

At the hearing and in the City's pre-hearing statement, references were made to salaries paid to AFSCME employees as well as to the median income in the County. In the opinion of the fact-finder these comparisons are inapt. This unit provides a safety service to residents of the community, performing hazardous duties and working non-traditional schedules. Through negotiations, the parties have agreed upon an appropriate salary for this service. In dispute in this proceeding is not the salary but an appropriate wage adjustment to that salary.

Applying these concepts to the instant proceeding, the fact-finder has focused on percentage increases rather than on rates of pay or annual salaries; and while the City has agreed to various monetary enhancements and incentives, the objective in this proceeding has been to determine an appropriate rate increase. In discussing the statutory criterion of comparability, references are also made to past collective bargaining agreements, another factor to be considered in impasse resolution.

Both parties have submitted evidence on percent increases paid to firefighters in Ohio as reported in the Annual Wage Settlement issued by SERB (Union Exhibit 7; City Exhibit 21). Since 2008, the increase paid to this unit has been less than the statewide percentage. As previously mentioned, context and bargaining history are relevant in determining a rate increase. For four (4) years, from 2009 through 2012, this unit received no increase. During this same period of time, with *all* governmental entities feeling the impact of a national recession, the average percent increase for fire units in Ohio was 2.47%, 1.74%, 1.23% and 1.2%. In 2013, 2014 and 2015, this unit received a 1% increase compared to the statewide average of 1.66%, 1.86% and 1.93% for those years.

Certainly, bargaining history for the unit was shaped by an order of fiscal emergency in the City (City Exhibit 6). But, analysis of current percent increases should also take into consideration the fact that for eight years the unit received less than the statewide average for firefighters. Thus, while the City cites comparables indicating that 2% is a fairly consistent rate increase going into these negotiations (City Exhibit 22), still, bargaining history justifies a greater increase for this unit.

Moreover, internal comparables suggest the same. Although for bargaining wage rates, non-unit employees are not typically cited, in this case both the Union and the City have referenced salaries paid to such employees. Evidence establishes that while a list of non-unit employees received approximately a 2% increase effective April, 2016, they also received a 2% increase plus a \$500 bonus effective July, 2015 at which time the IAFF contract provided for a 1% increase (City Exhibit 20). In the July 7, 2015 Finance Committee Meeting, a 2% increase for non-unit employees of the Mayor and a 3% increase for employees of the Court and a 3% increase for Finance Department employees in 2016 are referenced, again when this unit was receiving a 1% increase (Union Exhibit 9). Even if non-union rates of pay are deemed beyond the scope of review, this evidence establishes an ability to pay.

Clearly relevant to this proceeding is the current three year contract between the City and AFSCME, effective May 1, 2015. In that Agreement the parties negotiated a 1% increase, a 2.5% increase and a 3% increase for the first, second and third years of the Agreement. The parties also agreed to a reopener option "in the event another City bargaining unit receives a greater general wage increase (anything added to the base) for the concurrent period of their agreement...." The City appropriately expressed concern that the "me-too clause" not become activated. Even so, a wage rate

comparable to that received by AFSCME employees is reasonable, reflective of ability to pay, and consistent with the referenced Side Letter.

A 2.5% increase for contract year 2016 and a 3% increase for contract year 2017, is exactly what the City agreed to pay AFSCME employees. A 3% increase for contract year 2018 is reasonable, cautionary, and consistent with statutory criteria. An additional bonus, not to be added to the wage base, is intended to provide additional compensation for services rendered without building on future annual expenses of the City. In making this recommendation, the fact-finder is mindful that the employees in the unit have, in recent negotiations, received percentage increases below their peers state-wide.

Accordingly, the Fact-finder recommends a 2.5 % increase effective April 1, 2016; a 3% increase effective April 1, 2017, and a 3% increase effective April 1, 2018. Additionally, the fact-finder recommends each unit member receive a non-pensionable annual Readiness Bonus of \$300, \$350, and \$400, for the first, second, and third years of the Agreement, respectively.

II – Article 17.3.B.2: Station 4 Manning

The City has proposed language requiring the four (4) bid positions at Station 4 be certified hazardous material technicians. Language presented by the City would phase in the requirement over the three years of the Agreement: 2 technicians the first year of the contract, 3 in the second year and 4 in the final year. Rejecting the City proposal, the Union has countered with language providing that one of the four bid positions be a certified hazardous material technician.

Presently the City operates five (5) fire stations with personnel assigned by bid in accordance with Article 17.3.B. 2 of the Agreement. Station 4 houses the City's hazardous material response equipment, deployed in the event of a chemical crisis occurring not only in the City but also in the surrounding counties. Twenty-five (25) firefighters in the unit are certified technicians currently holding bid positions in fire stations throughout the City.

The City proposes the change in contract language for two reasons: 1) to ensure a rapid and efficient response to a hazardous material situation, and 2) to maintain the material and equipment in proper working order. At the hearing the Fire Chief described problems with equipment malfunctioning on a Haz-Mat call-out. He also testified that during mandatory training, delays have occurred because equipment has not been functional. No evidence was presented, however, as to inefficient deployment of personnel.

The Union points out that having all four bid positions at Station 4 be Hazardous Material technicians will not improve the actual response to Haz-Mat incidents since the Haz-Mat truck can only transport two persons. Furthermore, the Union argues that one technician at the Station is sufficient to maintain the equipment in working order.

As a general precept in fact-finding, the party advocating change to current contract language must justify that change. When a proposed modification to contract language affects negotiated seniority rights, such as bidding, justification for the proposal should be compelling. In the case at hand, evidence does not confirm the need for all four bid positions at Station 4 to be Haz-Mat technicians. While there was some testimony as to malfunctioning radios during a Haz-Mat incident, there was no evidence as to delays in response time due to the locations of technicians throughout the City.

Agreeing with the Union, the neutral finds that one technician should be sufficient to ensure the Haz-Mat equipment is in working condition. In the event this proves not to be the case, the issue may be revisited in subsequent bargaining. During the past twenty years, however, the City has maintained a Haz-Mat crew without imposing bid restrictions on the bargaining unit. For the purposes of this

contract impasse, the Union proposal for one of the bid positions at Station 4 to be a Haz-Mat technician is a reasonable compromise.

The fact finder recommends the following language be added to Article 17.3.B.2 referencing Station 4: **Minimum of one (1) shall be a Haz-Mat Tech.**

Recommendations

The fact-finder makes the following recommendations:

1. All tentative agreements are incorporated into these recommendations;
2. Section 21.3 – Wages:
 - 2.5% increase effective April 1, 2016;
 - 3 % increase effective April 1, 2017;
 - 3 % increase effective April 1, 2018;

A non-pensionable Safety Readiness bonus be paid to all unit employees as follows:

- \$300 in the first year of the Agreement;
- \$350 in the second year of the Agreement;
- \$400 in the third year of the Agreement.

3. Section 17.3.B.2
Station 4 – Minimum of one (1) bid position shall be a Haz-Mat Technician.

Respectfully submitted,

s/s Margaret Nancy Johnson

Certification of Service

This Report and Recommendations have been electronically served this 28th day of June, 2016, on: Daniel Crow at dcrow@iaff266.com; David Remy at dremy@ci.mansfield.oh.us; and the State Employment Relations Board at MED@serb.state.oh.us.