

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Numbers:
	:	2016-MED-02-0174
Between:	:	2016-MED-02-0175
	:	
Washington Township,	:	
Montgomery County, Ohio	:	
Employer	:	Date of Hearing: October 18, 2016
	:	Date of Report: November 03, 2016
And:	:	
	:	
Washington Township Professional	:	
Firefighters, Local 3369	:	Felicia Bernardini, Fact Finder
Washington Township Fire Alarm	:	
Operators, Local 3369	:	
Union	:	

Fact Finder Report and Recommendation

Appearances:

For Washington Township, Montgomery County, Employer

Daniel G. Rosenthal, Esq., Denlinger, Rosenthal & Greenberg, Fact Finding Spokesperson

Emily Gelhaus, Esq., Denlinger, Rosenthal & Greenberg

Jesse K. Lightle, Washington Township Administrator

William Gaul, Washington Township Fire Chief

**For Washington Township Professional Firefighters, Local 3369 and,
Washington Township Fire Alarm Operators, Local 3369, Union**

Kevin Rader, ArnettRader Consulting, Inc., Fact Finding Spokesperson

Lieutenant Ed Kuzminski, President, IAFF, Local 3369

Captain Michael Guardano, IAFF, Local 3369

Dispatcher Carla Countryman, IAFF/FAO, Local 3369

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on August 17, 2016 in compliance with Ohio Revised Code (ORC) Section 4117.14C (3). The case concerns a fact finding proceeding between Washington Township, Montgomery County (hereafter referred to as the “Employer” or the “Township”) and the Washington Township Professional Firefighters, IAFF, Local 3369 and Washington Township Fire Alarm Operators, Local 3369 (hereafter referred to as the “Union” or “Unit”).

Prior to the hearing, the parties engaged in contract negotiations resulting in several tentative agreements (TAs). At fact finding, eight (8) issues remained unresolved in the Firefighter contract and six (6) issues remained unresolved in the Fire Alarm Operator contract. The fact finding hearing was scheduled for October 18, 2016. All parties timely filed the required pre-hearing statements. The day of the hearing, the parties and the fact finder discussed whether an effort at mediation prior to moving to the evidentiary hearing might be worthwhile. It was determined that the parties would proceed to hearing.

Daniel Rosenthal represented the Employer.

Kevin Rader represented the Union.

Issues

The remaining open issues in the Firefighter contract addressed by the parties at the hearing are as follows:

Article 2: Recognition

Article 19: Layoff and Recall

Article 24: Sick Leave

Article 26: Vacation

Article 36: Uniforms

Article 38: Hours of Work

Article 41: Safety and Health

Article 42: Wages

The remaining open issues in the Fire Alarm Operator contract addressed by the parties at the hearing are as follows:

Article 24: Sick Leave

Article 25: Personal Day

Article 26: Vacation

Article 32: Call-in Pay

Article 39: Overtime

Article 42: Wages

General Background Information

Washington Township is located in southern Montgomery County off of Interstate 675, close to Dayton, Ohio. The Township covers 31.18 square miles and has a population of 56,607 as of the 2010 census. The Washington Township Fire Department is internationally accredited and provides professional firefighting and emergency medical services to the Township. There are five fire stations throughout the service area staffed by a combination of fulltime and part time employees. The Firefighter Unit consists of all fulltime firefighters (24), lieutenants (9) and captains (4). The Fire Alarm Operator Unit consists of five fulltime dispatchers who answer 911 calls and dispatch services. Provided data show that the Department responded to over 7000 calls in the past year, 85% of which were for emergency medical services.

Positions, Discussions and Recommendations

At the hearing the parties presented their respective arguments on an issue by issue basis in Article numeric order. All firefighter issues were grouped and presented first, followed by FOA issues. Several of the FOA issues are the same as those in the firefighter contract and the parties relied on their respective presentations from the firefighter portion of the hearing and did not repeat all of the arguments for each issue. This report is organized in the same manner (i.e, all firefighter issues grouped first, followed by all FOA issues). Below the position of each party is briefly summarized, position summaries are followed by a brief analysis and discussion, which is followed by the fact finding recommendation. Analysis and discussion of FOA issues are referenced back to the relevant firefighter sections of this report.

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c). The 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). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 2: Recognition

Union Position

The Union proposes to amend the current contract language by adding a phrase stating, “Shift Commanders shall have the title and insignia of Battalion Chief.” In the Washington Township Fire Department, captains function as battalion chiefs, however they are not recognized as such. In the 2013 re-accreditation report it was recommended that the Department develop a succession plan, and provide knowledge and leadership skills that would allow for professional advancement. Captains in Washington Township are not recognized for their role as battalion chiefs and therefore are hampered in their professional development. Training for advancement into the executive levels of the firefighting profession is more readily offered to those with a ‘Chief Officer’ designation. Adding language that clarifies this working title and acknowledges the role of the captains would open up professional advancement opportunities.

Employer Position

The Employer prefers to maintain existing contract language. Ranks in the Township have remained the same since the Department was organized. The captain’s duties have not changed in

the organization since the Department's inception. With the Fire Chief's approval, captains are eligible to attend professional development programs. Their rank is no obstacle to professional advancement.

Discussion and Recommendation

The Union's case for change is based on a desire to open up professional development opportunities to the captains. There are both State and National professional certification training programs. Hearing testimony indicates that the State program allows any level firefighter to apply for executive training. Whereas, the National program lists specific Chief ranks that are eligible to apply and allows for an equivalency at each rank. The website for the National program indicates that captains will be "considered" for admission, suggesting that both a class vacancy and an attestation of equivalency would be necessary for a captain's admission to the program. During the course of the hearing it became evident that no current Washington Township captain had sought or been denied enrollment in executive level training, either at the State or National level.

There simply is not adequate evidence to support the Union's case for change, at least not the way the case was framed at this hearing. Although changing the language is seemingly innocuous and a noneconomic matter that could in fact make it easier for captains to pursue executive level training, there could be significant future cost ramifications if this language were to become a toehold for future claims of pay comparability or other such comparisons by job title. This is the type of change that is best negotiated rather than granted by a third party, so that all of the implications can be explored and appropriate parameters understood by both parties.

Recommendation

The fact finder recommends current contract language.

2. Article19: Layoff and Recall

Union Position

The Union seeks to add language specifying an order of layoff within an effected classification and change the basis of layoff to seniority rather than ability and performance. The Department employs both part time and fulltime firefighters. In fact, there are more part time employees than fulltime. Part time employees are not part of the bargaining unit, so under the

current language, in the event of a layoff, the Employer would be able to layoff bargaining unit employees and keep non-bargaining unit employees. Furthermore under current language, the Employer is able to layoff bargaining unit members based on a subjective assessment of ability and performance rather than on tenure with the Department as represented by seniority. In support of its position the Union presents contract language from a sampling of comparable fire departments in the area. All of these comparable jurisdictions have both an order of layoff similar to that sought by the Union in this proposal, and all use seniority as the basis of layoff.

Employer Position

The Employer opposes the Union's proposed change and seeks to maintain current language. Since its inception, the Washington Township Fire Department has used both fulltime bargaining unit firefighters and part time non-bargaining unit firefighters to makeup the full complement of required staff. A restriction on layoff that would require the layoff of all part time employees before fulltime employees would be crippling to the orderly functioning of the Department. Furthermore, provisions that bargain the conduct of employees outside of the bargaining unit are permissive subjects of bargaining and not subject to binding dispute resolution. As for the Union's proposal concerning seniority, the Employer's AFSCME unit, which is the only other organized unit within the jurisdiction, has the exact same layoff language; and like the firefighter contract, the AFSCME contract has had the language in question since its inception.

Discussion and Recommendation

The Union's perceived need for change in this article seems more theoretical than actual. The Washington Township Fire Department has never had a layoff, not even in the recent years of the Great Recession. This being the case, it seems unlikely that the layoff and recall provision of the contract will be used anytime in the foreseeable future. Nevertheless, it is an important provision regarding the integrity of the Unit and it is understandable that the Union would seek to nail down its preeminence over part time employees. However, this being said, it is best that the parties continue to discuss the pros and cons of establishing an order of layoff and perhaps come to agreement on an approach that would both support the Employer's interests in maintaining flexibility and discretion, and the Union's interest in maintaining the integrity of the bargaining unit.

Recommendation

The fact finder recommends that the parties maintain current language.

3. Article 24: Sick Leave

Union Position

The current contract provides for the conversion of one sick leave day to personal leave if the employee uses no sick leave during the entire calendar year. This is a small sick leave incentive program. The Union seeks to increase the number of days converted to sick leave from one to three. Unrepresented employees in the Township, by policy, have a sick leave conversion incentive that provides for three converted days in a calendar year. For the Firefighters this is a matter of comparability, not only with other Township employees but with other firefighter units in the area. Both internal and external comparables use a more generous conversion formula.

Employer Position

The Employer seeks to maintain the benefit as it currently is with no increase. In a 24/7 operation, time off from work results in overtime. The Fire Department's overtime budget has surpassed $\frac{3}{4}$ of a million dollars. In 2015 total Fire Department overtime was \$731,900. This year as of September 30 overtime is already at \$750,635. This is a huge figure that continues to grow. Due to the amount of overtime that firefighters work, there are bargaining unit employees who receive significantly more, in gross pay, than the Department Chief is paid. Adding days off exacerbates this overtime problem. Furthermore, this Unit gets earned days off (EDOs), which are paid time off that other Township employees do not receive; and by contract they are already granted one personal leave day each year. Finally, the Township's AFSCME unit is the more appropriate internal comparable, and AFSCME contract has the exact same sick leave conversion program as the firefighters.

Discussion and Recommendation

I agree with the Employer's position. Converting sick leave, which is understood to have specific usage parameters, into a leave benefit that has no such qualifiers and can be taken for any reason, will most likely have the effect of increasing absences and adding to the demand for overtime. For the parties to agree through the course of negotiations to make a change such as the one proposed by the Union is one thing, it is quite another for a fact finder to simply grant the change without the benefit of fully understanding the operational effect the change would have.

Recommendation

The fact finder recommends current contract language.

4. Article 26: Vacation

Union Position

The Union has two proposals in the Vacation Article. First, the Union seeks to increase the number of vacation days at twenty years of service to twenty-six days, which would be an accrual rate of 2.17 days per month. This would create a fifth week tier in the vacation accrual steps. Currently there are only six employees who, under the life of this contract, would be eligible for the benefit. The cost of this benefit would only be \$7565.44 in each year of the contract. All of the comparable jurisdictions have a fifth week tier of vacation accrual; some of them have even more. Washington Township is significantly behind other firefighting units in the geographic area when it comes to vacation accrual. A fifth accrual tier is what the local labor market dictates for a vacation benefit. Second, the Union proposes to add language that would provide for up to three bargaining unit members off at any given time on vacation and EDOs. This would be an increase from the current practice which provides for two bargaining unit members off at the same time across the Department. Charted data show that the current cumulative number of days off (i.e., vacation, EDOs, Personal) for all Unit members, totals 578.5 days; whereas, the total number of possible slots for time off equals 730 (at the current minimum staffing practice of only two Unit members off per day). If staff is added, the time-off situation will quickly become one where there are not enough slots. The Union seeks to secure language that would ensure that Unit members are able to take the time off that they earn.

Employer Position

The Employer seeks to maintain the status quo. The most relevant comparable when it comes to time off would be the internal comparables, not what other jurisdictions are doing. All other Township employees have the same vacation benefit as the firefighters. There is no compelling reason to give the firefighters something different from the other Township employees. In fact, the overtime situation with this Unit is itself a compelling reason not to increase the time off. The critical overtime situation is also reason enough to reject the Union's proposal to increase the number of firefighters off on vacation, on any given day, to three. The Union's proposal

excludes from consideration in the daily staffing minimum any absences due to injury, sick leave, military leave and bereavement. Such contract language would exacerbate the Department's staffing challenges and lead to an increase in mandated overtime.

Discussion and Recommendation

Leave benefits are costly propositions for any Employer. In addition to the direct cost of the vacation leave, there is the additional cost of staffing in the absence of the employee who is on vacation leave. In this case, neither party fully explored the cost of an additional tier of vacation leave. The Union's simplistic calculation does not do the matter justice. All current (and future) employees will age into the benefit, creating significantly more costs than that mentioned during the hearing. Furthermore, Washington Township is dealing with a critical level of overtime in this Unit; more time off will undoubtedly create more overtime for the very employees who are struggling to accommodate mandated overtime under the existing leave structure. As mentioned several times in the course of the hearing, provisions of a labor contract are the product of the give-and-take of negotiations. Economic provisions are often hard won and bought with recognized tradeoffs. For this reason it is difficult to fairly compare leave provisions across jurisdictions. Internal comparables are the more compelling evidence as to what constitutes an equitable benefit; and in Washington Township all employees currently receive the same vacation benefit. The effect of increasing the firefighter vacation benefit would create an internal inequity that would ultimately become a point of contention and dissatisfaction across the Employer's workforce.

The same is true of the Union's proposal to increase the number of bargaining unit members allowed off on vacation at any one time. The current practice is to allow 2 employees off on vacation or EDO on any given day. Changing this staffing provision from the current practice would add staffing costs. The Employer needs some flexibility in this matter in order to manage staffing. The case presented by the Union shows that there are plenty of 'tour slots' available with the existing staffing configuration to provide for all bargaining unit members' allotted vacation days and EDOs. This being the case, there is no compelling reason to change current practice.

Without a full vetting of the costs of the Union's proposal and the quid pro quo of negotiations, the vacation leave benefit should remain as it is.

Recommendation

The fact finder recommends current contract language.

5. Article 36: Uniforms

Union Position

The Union seeks contract language that will provide for a Class A uniform for all bargaining unit members. Currently captains and lieutenants are issued a Class A uniform; however rank and file firefighters do not receive a dress uniform. The current practice for firefighters is that when they need to wear a Class A uniform, the Department provides it. However, the articles of clothing provided are out of an existing inventory which is very old and often without the current Departmental insignia and buttons. When a Class A uniform is hobbled together from old stock it does not always fit properly. Alterations and changes in insignia are often needed to make the articles of clothing presentable. Issuing individual Class A uniforms is a standard among comparable jurisdictions.

Employer Position

The Employer seeks to maintain current language. All department officers are provided with a Class A dress uniform. Rank and file firefighters are not required to wear a Class A dress uniform on any occasion, nevertheless the Department is often able to provide a Class A upon requested, from an off-the-rack supply. The Employer is satisfied to have Unit members represent the Township in their duty uniforms. The Union's proposals regarding Class A uniforms for all rank and file firefighters is a costly request and not directly related to any demonstrated need or problem.

Discussion and Recommendation

Although I understand the Union's interests in this matter and am sympathetic to their desire to be afforded the dignity and respect that comes with wearing a Class A uniform on ceremonial occasions, it is within the Employer's management rights to determine when such uniforms will be worn and which ranks are required to wear them. The fact that the Employer provides a suitable Class A uniform to all bargaining unit members required to wear them and maintains a 'lendable' supply of dress-ware for those firefighters who request to wear a Class A uniform from time to time, is all that the Employer is required to do. To change the current practice requires a compelling reason. It is the Union's burden to make such a compelling argument during negotiations, not for the fact finder to impose without evidence of a hardship.

Recommendation

The fact finder recommends current contract language, incorporating the modification in Section 2. Firefighting and EMS Gear, as agreed in the TA that was reached by the parties following the fact finding hearing.

6. Article 38: Hours of Work

Union Position

The Union seeks to memorialize, in the contract, current practice regarding the moving of EDOs. There was a time when the moving of EDOs became excessive and the response from the Employer was simply to discontinue the practice of allowing any movement of EDOs. As a result of discussions between the Union and the Employer an acceptable practice has been mutually reached. The Union simply seeks to include the practice in the contract. The Union's proposal is the current practice.

Employer Position

The Employer seeks to maintain current language. The purpose of EDOs is to reduce overtime. The current contract allows the Employer to schedule EDOs without restriction. The Employer must maintain its flexibility in order to effectively schedule EDOs to manage overtime costs.

Discussion and Recommendation

During the course of the hearing it was acknowledged by the Employer's representative that the Union's proposal does, in fact, represent the current practice which was reached by the parties after reining in a particularly out-of-hand practice of moving EDOs multiple times. There was no testimony that the current practice is not working effectively. Since the parties reached the current practice through discussions and mutual agreement, it seems reasonable to accommodate the Union's proposal and memorialize it in the contract.

Recommendation

The fact finder recommends the Union's proposal.

Relevant contract language shall read in part as follows:

Article 38

Hours of Work

Sections 1-5. Current contract language

Section 6. Platoon Shift Scheduling. Language modified in the first paragraph as agreed in the TA reached by the parties following the fact finding hearing.

Add a fifth paragraph that reads:

An EDO may be moved one time within the EDO Cycle.

7. Article 41: Safety and Health

Union Position

The Union rejects the Employer's proposal to adopt the Vandalia WFI Program. It is the Union's position that the Vandalia program, which is based on Washington Township's old WFI Program, does not incorporate the newest components of the profession's Wellness and Fitness Initiative. For the Union this is a health and safety issue. In a committee format, as proposed by the Union, the parties can discuss the fact that non-bargaining unit part time firefighters have not been required to participate in the fitness program. Although the Union does not bargain standards or requirements for those outside of the Unit, it is a matter of concern for the Unit and should be discussed by the proposed committee. The Unit's objective is to bargain over this important health and safety provision, and its proposal to move the discussion into a committee made up of trained health and fitness professionals, is consistent with that objective. Ultimately, whether the recommended program has adverse consequences built into the program for any firefighter who does not meet established fitness standards, is a matter that can be discussed by the proposed committee. Such dialogue would be taken up in the context of existing IAFF/IAFC guidelines and Ohio law. The bottom line is that the 1991 program is outdated and the Employer's proposal is to continue an outdated program and to patch it together with some limited updates.

Employer Position

For more than 20 years the firefighters have participated in a mandatory fitness program with requisite rewards and consequences for achievement or lack of achievement. The Employer's proposal is, in all material respects, identical to the current program. In the proposal, the Employer has updated the measurements of fitness consistent with the WFI so that the measurements are

manifestly job related. Otherwise, the program is the same as the existing program. Recently the City of Vandalia adopted the Washington Township program with updated metrics. This Vandalia WFI Program is the same exact program that the Employer has proposed to this Unit. The Employer's proposal is essentially to maintain the status quo with appropriate job-related updates. The problem with the Union's proposal is that the IAFF/IAFC approach has no standards and has no consequences. This 'no standards, no consequences' approach is the position the Union has taken, and is opposed by the Employer. The idea of putting this issue into the hands of a committee ignores the fact that there has been a program in effect for the past 20 years – a program that has actually worked until recently. The Township's proposal most closely replicates the status quo and for that reason should be the recommended option.

Discussion and Recommendation

Although it is often said, when it comes to contract language, that the 'status quo is the fact finder's best friend', the status quo is not always the most obvious, or best, answer to the problem faced by the parties. Any proposal to maintain the status quo must be considered in light of whether the context for the status quo has changed, and if so, to what degree. It is inconceivable that the medical and allied-medical fields of wellbeing, fitness, exercise, and sports physiology have not changed in the past 20 years. Surely, the expanding knowledge in these fields has something new to say about how we think about matters of occupational health and safety. For this reason alone opening up the Washington Township Firefighter Fitness Program for renegotiation seems perfectly appropriate. One would be hard pressed to find a section of a firefighter contract that is more central to the terms and conditions of employment than health and safety. Therefore, nothing requires greater scrutiny and consideration by both parties. Contrary to the Employer's fundamental argument that the parties' agreement to accept this program for 20 years, is adequate evidence that the program is worthy of continuation; I find the Union's proposal to reexamine the program after 20 years is adequate evidence of the suspension of mutual acceptance of the program's continuation.

I accept the Union's stated concern that a wellness and fitness program should not be punitive. I fully recognize that both the IAFF/IAFC and the Ohio Legislature concur and promote the belief that wellness and fitness programs should not be punitive. However, the mere mention of, or even inclusion of, some form of disincentive, does not, in and of itself, render a program punitive. When something is punitive its aim is to punish. The Webster Dictionary defines punitive as, "extremely or unfairly severe." I find no inconsistency between promoting a non-punitive

program and negotiating a program that includes a reasonable, fair disincentive. For example, it has long been held in the labor/management arena that workplace discipline only becomes punitive when it is meted out unfairly. It is well-established that negative consequences serve as an acceptable disincentive for workplace behavior that does not comport with stated accepted norms. Just as corrective action in the context of workplace discipline is not punitive, nor would corrective action in a fitness program necessarily be punitive.

Recommendation

After consideration of all arguments and information provide at hearing, and with attention to fact finding statutory criteria I recommend adoption of a modified version of the Union's proposal.

Relevant contract language shall read as follows:

Article 41

Safety and Health

Sections 1-4. Current contract language

Section 5. The Washington Township Fire Department and the Washington Township Professional Firefighters IAFF Local 3369 recognize the value of a healthy, well and fit workforce. The parties will develop and implement a wellness and fitness program consistent with the recommendations of the IAFF/IAFC Joint Labor/Management Wellness Fitness Initiative (WFI) and follow the standards of the Ohio Administrative Code 4123:1-21-07(F) (1, 2, 3). The Washington Township Fire Department will implement a wellness/fitness program for each firefighter to obtain a level of wellness/fitness consistent with the duties he or she may be called to perform. The wellness/fitness program shall be a positive program and not punitive in design; include incentives and disincentives for achievement or lack of achievement respectively; allow for age and position in the Department; allow for on-duty time participation utilizing facilities provided or arranged by the Township; provide for rehabilitation and remedial support for those in need, and be reasonable and equitable to all participants.

To achieve such a program a labor/management wellness fitness committee shall be formed within sixty days of the signing of this contract. The committee will consist of representatives of the Washington Township Fire Department, three peer fitness trainers representing the Washington Township Professional Firefighters IAFF Local 3369, the Fire Department designated physician

(non-voting) and an outside medical, physiological and wellness consultant(s) (non-voting) mutually chosen by the parties.

The labor/management wellness fitness committee shall complete its mission, to produce a mutually agreed wellness fitness program for all bargaining unit members, within six months of the initial meeting of the committee. Failure of the parties to reach a mutually agreed program will result in the Union's right to file a grievance on any and all disputed aspects of the program. In the event that a grievance to resolve the program is filed, the grievance shall proceed in accordance with Article 17 of the collective bargaining agreement between Washington Township and Washington Township Professional Firefighters, IAFF, Local 3369. By mutual agreement the parties can adjust the committee's work period if a longer or shorter period serves the purpose of the parties.

8. Article 42: Wages

Union Position

The Union is proposing a 3% increase for each year of a three year contract, the first raise retroactive to July 1, 2016. The Union also proposes a new provision that will provide for a 5% wage supplement for a unit member who is required to work out of classification in a higher position or rank. The fire districts selected by the Union for comparison purposes are townships in the immediate area that have demographic characteristics similar to Washington Township (i.e., population, land size, number of stations and number of annual service calls). Among these jurisdictions negotiated raises for 2016, and in some cases the next year or two, are between 3% and 2%. Within the Township itself all employees have received a 2.5% raise for 2016. The SERB Wage Settlement Report also shows that average wage increases have been in the range of 2%-2.25% for the Dayton area, for townships, and for fire units. All of these benchmarks (external and internal comparables, and the SERB wage report) show that the Employer's proposed 1% wage increase is below typical raises. As for the Union's proposal regarding acting pay, it is standard practice in other comparable jurisdictions, and Washington Township currently has acting pay for lieutenants who fill in as captains. The Union's proposal would simply extend the Township's practice to include firefighters who are asked to fill in and perform the duties of a lieutenant. Currently, two of the fire stations within Washington Township are not staffed with lieutenants, and firefighters are assigned to pick up those responsibilities yet they are not being compensated for doing so. Firefighters are also assigned to fill in at the other three stations when the assigned lieutenant is absent. Currently the Township has a 5% supplement for lieutenants who fill in for a vacant captain or shift

commander position. The Union's proposal simply extends the practice to firefighters acting as lieutenants.

Employer Position

The Employer offers a 1% wage increase in each year of a three year contract. The Employer opposes a retroactive pay increase in 2016 because such terms should be reserved for Units that settle their contract negotiations promptly. The Employer's 1% pay raise is supported by the Employer's comparables which are all local suburban jurisdictions around Dayton. The Employer's comparables represent the jurisdictions that comprise the Washington Township labor market. Charted data for this group of comparables reveals that this Unit's salaries are near the top of each survey group, and well above average. Firefighters are approximately \$4000 above average, lieutenants are about \$6000 above average, and captains are about \$4000 above average. As for internal comparables, the AFSCME represented unit and the non-represented employees of the Township received a 2.5% increase in 2016, however those units did not receive any of the additional costly benefits that the Firefighters are seeking. Of additional significance is the fact that while other jurisdictions were freezing wages and giving 0% wage increases during the period of recession, Washington Township never failed to give a wage increase. As for the Union's proposal regarding the 5% acting pay, the language of the proposal is vague and much more expansive than the language in the current contract that applies specifically to a lieutenant filling in a vacant shift commander position.

Discussion and Recommendation

In this fact finding case neither party has taken an extreme position with respect to their wage increase proposal and neither party has introduced extensive financial information. Additionally, there is no dispute over the Township's ability to pay for a reasonable wage increase. The Union has focused its proposal on a modest cost of living adjustment and compares its proposal with wage settlements in nearby fire departments. The prospective settlements in the Union's exhibit range from a high of 3% to a low of 2%. The Union's 3% proposal is consistent with these comparables. The Employer has focused on the above average salaries that the Unit currently enjoys and offers a slight 1% cost of living adjustment that takes these comparatively high wages into account.

External comparables pertaining to salary data for those performing the same work is most relevant and effective when determining what an appropriate base salary is for a given job. In this

case, there is no debate as to whether the Unit is fairly compensated. Nor is there a dispute over what the Employer can afford to pay. This dispute is strictly related to what constitutes a fair cost of living adjustment. This Unit's relative position in the local labor market does not lessen the impact of general inflation. To resolve a dispute about an across-the-board cost of living increase internal comparables and aggregate economic data is particularly helpful. Therefore, the 2016 2.5% raise for other Township employees is a key benchmark as are the average wage settlement figures from SERB's most recent wage report, which range from 2.24% to 1.93% in the relevant markets. The SERB report also reveals that wage settlements have been rising over the past four years in a range from 0.25% to 0.5%.

An additional point of reference often used in fact finding is the CPI, which serves as a convenient surrogate for inflation and offers a perspective on the relative standard of living experienced by workers. In recent years the CPI-U has increased as follows: 3.2% in 2011, 2.1% in 2012, 1.5% in 2013, 1.6% in 2014, and 0.7% in 2015.¹ This is an average of 1.82% per year over the last five years. Over the past ten years the average annual CPI trend has been 2.3% and over the past 20 years the trend has been 2.5%.²

One of the Employer's considerations in offering the 1% cost of living raise for this Unit was expressed as the potential cost of the Union's other economic proposals. Given that this fact finding report contains no costly increases in leave benefits for the firefighters, I recommend that this Unit receive the same cost of living increase as other Township employees. Furthermore I recommend that the 2016 raise be retroactive to July 1, 2016. To deny several months of a pay raise because a Union exercised its right to follow a statutory dispute resolution process does not seem particularly fair. In keeping with the general trend of inflation and trend in rising wage settlements, I recommend additional 2.5% raises in the second and third year of the contract.

The Union has raised a concern over the Employer's practice of assigning the duties of a lieutenant to rank and file firefighters without providing acting pay to a firefighter so assigned. Certainly the Employer has the right to make such assignments and expect the assigned firefighter to take up the assigned duties and perform them effectively and efficiently. Furthermore, the Employer has the management right to determine which duties belong to the lieutenant classification and which to the firefighter classification. To this point, the Township has extensive, detailed job descriptions that outline the duties of each classification. It is also a management right to determine

¹ US Bureau of Labor Statistics, Consumer Price Index, 12-month percent change data tables

² Ibid

the number of staff to be employed in each classification and how staff are to be deployed. It is fairly well established in labor relations that even where detailed job descriptions exist, related classifications can share duties, and beyond that, an Employer can assign duties and expect an employee to work outside of his/her classification in small amounts or for short periods of time (i.e., at a 'de minimis' level). What is not generally supported in labor relations is to regularly and continually expect employees to perform duties of a higher classification without providing for a pay adjustment or the right to challenge the fairness of the assignment.

Upon review of the exhibits submitted, it is evident that there is, in fact, some limited overlap between the duties of a firefighter and a lieutenant. However, there are also distinct differences. The testimony at hearing made it evident that the practice of assigning firefighters to act in a lead capacity and be responsible for the efficient running of a fire station is an ongoing acknowledged practice. There is dispute as to whether firefighters are fully picking up the mantle of supervision, but there is little doubt that firefighters are daily filling the leadership gap and to a certain extent the managerial/administrative gap. Hearing exhibits also document that it is standard practice within the profession to provide for some form of acting pay when a bargaining unit member is required to take on the duties of a higher rank. Based on this analysis I agree with the Union's position and recommend that a 5% acting pay be incorporated into the contract.

Recommendation

The statutory criteria require that the fact finder consider the Employer's ability to pay and administer the recommended provisions. In light of this the fact finder recommends a 2.5% cost of living adjustment in each year of the contract and a 5% acting pay supplement for firefighters assigned the duties of a lieutenant.

Relevant contract language shall read in part as follows:

Article 42

Wages

Section 1. Effective July 1, 2016 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Effective July 1, 2017 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Effective July 1, 2018 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Sections 2-6. Current contract language

Section 7. When the shift commander position is vacant and the Chief or his designee has determined the position is to be filled by a lieutenant, the lieutenant will receive 5% out of class pay for time worked in that position.

When a lieutenant position is vacant or where no lieutenant position exists, and the Chief or his designee has determined the need for a firefighter to fill-in as an acting lieutenant, the firefighter will receive 5% out of class pay for time worked in that position.

Fire Alarm Operator Contract

1. Article 24: Sick Leave

Union Position

The Union seeks to amend the current contract provision for the conversion to personal leave, to provide for a personal leave day conversion every 90 calendar days when there has been no sick leave utilization. This proposal is consistent with the personal leave benefit found in comparable dispatcher contracts in the Greater Dayton region. All unionized units in Washington Township get only one personal day, whereas the non-represented employees in Washington Township get three personal days. This is a matter of fairness and equity in the personal leave benefits.

Employer Position

The Employer seeks to maintain the current contract language. The internal comparables are all in favor of the Employer's proposal. The firefighters, the AFSCME unit, and this unit of dispatchers all have the same leave benefit structure. These internal comparables are the most significant, not external comparables from other jurisdictions. The overall trend in dispatch services is to consolidate units into centralized cross-jurisdictional centers. This is the case in Montgomery County; there is a regional dispatch center and within the near future (January 2017), the Washington Township dispatchers will be relocating to the regional dispatch center. Although this Unit will remain under the employment of Washington Township, they will be working alongside dispatchers from other jurisdictions. This Washington Township Unit already has pay and benefits that exceed those of the people they will be working alongside.

Discussion and Recommendation

I agree with the Employer's position that internal comparables are the most relevant comparison. In this case, all of the represented units have the same sick leave conversion and personal day benefit. I will not disrupt the pattern of negotiating the same leave benefit structure across bargaining units. It is one thing for the parties to negotiate a change in the leave structure for a particular bargaining unit knowing the impact it will have on other units, but it is not for a fact finder to grant a departure for one Unit without the benefit of a demonstrated need or a compelling reason.

Recommendation

The fact finder recommends current contract language.

2. Article 25: Personal Day*Union Position*

The Union's proposal is simply to incorporate the same language as is proposed in the Sick Leave Article regarding conversion of days to personal leave. The Union would also amend the personal leave benefit to allow for the carry forward of two personal days into the next year, whereas currently there is no carry forward provision.

Employer Position

The Employer seeks current contract language and opposes the Union's proposal to increase leave days in any and all articles of the contract. The Employer's arguments against proposed leave increases are the same as those articulated regarding the firefighter proposals.

Discussion and Recommendation

Please refer to the analyses above with respect to the FAO sick leave benefit and the firefighter sick leave benefit.

Recommendation

The fact finder recommends current contract language.

3. Article 26: Vacation

Union Position

The Union seeks to increase the vacation leave benefit, in line with the firefighter proposal. In comparing this Unit's vacation leave benefit to that of other dispatch units in the Greater Dayton area, it is lower than the comparables. This being the case, the local labor market suggests that the vacation benefit should be increased to maintain comparability with what other dispatchers are receiving.

Employer Position

The Employer rejects the Union's proposal to increase vacation leave and seeks to maintain the current level of benefit. As with all leave benefit proposals in this and the firefighter contract the most appropriate comparison are the internal comparables and in this respect, all Washington Township employees have the same vacation benefit and there is no compelling reason to change the benefit.

Discussion and Recommendation

Please refer to the analyses above in the firefighter portion of this report regarding the proposed change to the vacation leave benefit.

Recommendation

The fact finder recommends current contract language.

4. Article 32: Call-in Pay

Union Position

The Union proposes to increase the call-in pay from the current minimum of 2 hours to a minimum of 4 hours. The proposed increase is driven by the anticipated change of work location to the Montgomery County Sheriff's regional dispatch center. The commute to the regional center is somewhat farther for members of this Unit. The extra compensation would address the increased travel demand.

Employer Position

The Employer seeks to maintain the current contract language. The call out provision in the Dispatcher contract is exactly the same as the call out provision in the AFSCME contract. This is the appropriate comparison, not other outside jurisdictions. The Employer rejects the notion that a five mile change in work location requires a doubling of the call out pay provision.

Discussion and Recommendation

I agree with the Employer's position. The burden is on the Union to make a case for change. No such case was made. A work relocation of a few miles does not rise to the level of a compelling reason to change this provision of the existing contract.

Recommendation

The fact finder recommends current contract language.

5. Article 39: Overtime*Union Position*

The Union proposes a modification to the current contract language in order to clarify that overtime is based on an active pay status when on holiday, sick leave, vacation, personal and bereavement. The dispatcher work schedule is a 36 hour week paired with a 48 hour week. This biweekly schedule results in 8 hours of work paid at the overtime rate in every pay period. When a dispatcher takes a full week of vacation in a week when the dispatcher is scheduled to work 48 hours, all of the vacation hours are paid at straight time rate. A week of vacation on the 48-hour week results in lower take-home pay. It should all be counted as hours in an active pay status and therefore eight hours of the vacation pay should be paid at 1½ times.

Employer Position

The Employer rejects the Union's proposal which is eight hours of overtime pay for a week in which the employee is on vacation. This is inconsistent with any definition of overtime pay and is unjustified.

Discussion and Recommendation

I agree with the Employer. Overtime is additional financial compensation for the worker's burden of working more than 40 hours in a work week. Some employers (mostly in the public sector) extend that benefit to circumstances that result in a worker being placed in an excess of 40 hours in a work week due to a combination of hours worked and some paid leave benefits. To extend the benefit of overtime to an entire week of vacation when there are no hours of work is beyond the scope and meaning of overtime pay.

Recommendation

The fact finder recommends current contract language.

6. Article 42: Wages*Union Position*

The Union seeks a 3% wage increase in each year of the new contract, with the first increase being retroactive to July 1, 2016. The arguments in support of this proposal are the same as those used for the firefighter contract.

Employer Position

The Employer offers a 1% wage increase in each year of the new contract and opposes a retroactive provision. The arguments in support of the Employer's position are the same as those used for the firefighter contract.

Discussion and Recommendation

Please refer to the analyses above in the firefighter portion of this report regarding pay increases.

Recommendation

The fact finder recommends a 2.5% pay increase in each year of the contract.

Relevant contract language shall read in part as follows:

Article 42

Wages

Section 1. Effective July 1, 2016 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Section 2. Effective July 1, 2017 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Effective July 1, 2018 (or next closest payroll date): a 2.5% increase will be added to the pay scale.

Sections 3-5. Current contract language

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G) (7) (a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 3rd day of November.



Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on November 3, 2016 to:

State Employment Relations Board
Mary E. Laurent
65 E. State Street
Columbus, Ohio 43215
med@serb.state.oh.us

Kevin Rader
ArnettRader Consulting, Inc.
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215
krader@arnetrader.com

Daniel Rosenthal
Denlinger, Rosenthal & Greenberg
425 Walnut Street, Suite 2300
Cincinnati, Ohio 45202
rosenthal@drgfirm.com



Felicia Bernardini