

**State Employment Relations Board
State of Ohio
Fact-Finding Report**

In the matter of Fact-Finding between:

WARRENSVILLE HEIGHTS FIREFIGHTERS, IAFF LOCAL 1591

and

THE CITY OF WARRENSVILLE HEIGHTS, OHIO

CASE NO. 2017-MED-09-1164

Hearing: June 26, 2018

Date of Report: July 16, 2018

**Fact-Finder: John (Jack) F. Buettner
SERB Appointed Fact-Finder**

APPEARANCES:

For the City of Warrensville Hts.:

Jon M. Dileno - Attorney, Zashin,
& Rich Co., L.P. A

Leslie Holland - Personnel Director
Herb Waugh - Fire Chief
Karen Howse - Finance Director

For the IAFF:

Ryan J. Lemmerbrock - Attorney,
Muskovitz & Lemmerbrock, L.L.C

Michael Petti - Local 1591 President
Nick Sanviao - Local 1591 Vice-President
Frank Mansi - Local 1591 Treasurer

INTRODUCTION

The undersigned was duly appointed by the Ohio State Employment Relations Board (SERB) by letter dated February 28, 2018, to serve as Fact-Finder in the matter of the International Fire Fighters, Local 1591 (hereinafter referred to as “Union”) and the City of Warrensville Heights (hereinafter referred to as “Employer”) pursuant to OAC 4117-9-05(D). As a result of phone conversations and email exchanges, the parties agreed to a fact-finder hearing set for June 26, 2018. The Parties submitted timely pre-hearing statements setting forth their respective positions on the unresolved issues in accordance SERB rules. The hearing was conducted at the City Hall of Warrensville Heights offices as agreed. At the hearing, they provided oral evidence and submitted documentary exhibits in support of their positions.

The fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. The hearing began promptly at 10:00 a.m. on June 26, 2018.

Prior to the opening of the fact-finding hearing, this Fact-Finder attempted mediation of the issues at impasse. After both joint and separate meetings with the parties, it was agreed that a mediated settlement for the outstanding issues could not be reached.

The Union is the exclusive bargaining representative for all full-time employees of the Warrensville Heights Fire Department, excluding the Fire Chief and the Captain. There are currently 26 members of the bargaining unit—twenty (20) firefighters and six (6) Fire Lieutenants. The collective bargaining agreement at issue expired on December 31, 2017.

The City and the Union commenced negotiations on October 30, 2017, and after five meetings, the parties were able to resolve a several issues. Wages, holidays, insurance, sick leave, clothing maintenance allowance, prevailing wages, promotions, and station maintenance and safety, however, remained as open issues. The City has not resolved its successor-contract negotiations with any of its other unions to date. This fact-finding would be the first one to occur in this round of negotiations. The parties have a historical bargaining relationship that dates back many years.

The parties agreed to waive service of the Fact-Finder’s report via overnight delivery and agreed upon service via email.

The Ohio Revised Code, Section 4117.14 (C)(4)(e), establishes the criteria that is to be used by the Fact-Finder. The criteria are listed below and were given weight by the Fact-Finder in making his recommendation in this matter. The criteria are:

- Past collectively bargained agreements, if any, between the parties;
- 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;

- The interest and welfare of the public, the ability of the public employer to finance and administer the issue proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the public employer;
- Any stipulations of the parties;
- Such other factors not confined to those above, which are normally or traditionally taken into consideration in the determination of the public service or in private employment.

BACKGROUND

The City of Warrensville Heights is a suburb of Cleveland located 9 miles southeast of Cleveland in Cuyahoga County. The City is approximately four-square miles in area with a population of 13,251 residents and a little over 6000 households. The average household income is \$47,181.

Warrensville Heights is primarily residential with a below-average median home value. The City has a strong commercial base that includes Sherwin-Williams Research and Development Center, Heinen's Incorporated, Henkel Corporation, Marcus Thomas Advertising, and South Pointe Hospital. There are also numerous retail businesses and restaurants. The City has recently seen growth in both residential and commercial construction projects.

Income tax revenue is the biggest source of funding, accounting for 80% of the General Fund resources. In the last five (5) years this stream of revenue has increased by 20%. The City has a favorable credit rating of A-1 as assigned by Moody's Investment Service. The General Fund unreserved cash balance is 27% of the total revenues which exceeds the Governmental Financial Officers Association's recommended minimum of 15%. Warrensville Heights ended its year in a "strong financial position" according to its Annual State of the City Report.

Warrensville Heights provides municipal services that including Police, Fire/EMS, planning, zoning, street maintenance and repair, trash collection, and other general administrative and community services. The City is party to seven (7) labor agreements—four with its Police Department employees (Lieutenants, Sergeants, Patrol Officers, and Dispatchers and Corrections Officers); one with its Service Department employees (Teamsters); one with its Clerks and City Hall employees (Teamsters), and one with the Firefighters. The labor agreements all expired December 31, 2017 and, to date, none have been resolved.

UNRESOLVED ISSUES AT IMPASSE

Issue 1: Wages- Article 11.13

The Union is proposing a 3.0% wage increase effective 1/1/18, a 3.0% wage increase effective 1/1/19 and a 3.0% wage increase effective 1/1/20.

The Employer is proposing a wage freeze in the first year, a 2.0% general wage increase effective 1/1/19, and a 2.0% general wage increase effective 1/1/20.

Rationale:

Several factors come into play when examining wage comparables for Warrensville Heights. The Cuyahoga County Fire Wage Increase Comparables, Union Exhibit 19, shows those cities closest in proximity to Warrensville Heights. Past history of wages from 2012 to 2017 shows an average increase of 10.04%. Warrensville Heights's average was 9.0% for those six (6) years, a bit below the average due to 0.0% increases in 2012, 2013, and 2015. For those comparable cities who have settled recent contracts, the average wage increase for 2018-2020 was 6.68%. The Union's proposal of a total of 9.0 % increase is higher in comparison to surrounding cities but the Employer's counter of 4.0% total over three years is much lower. According to SERB's annual wage settlement report, the percent of increase for the last ten (10) years has, in general, ranged from 0.73 to 2.92% with an average of 1.77%. For Fire over the last ten (10) years, the wage increases have varied from 1.21% to 3.33% with an average of 2%. This Fact-Finder recommends a compromise that puts Warrensville Heights in line with surrounding fire departments and maintains a competitive wage in light of increases in the cost of living. Also, consideration was given to recommended changes in health insurance and the elimination of one holiday.

Recommendation:

11.13 Wages for the period of this contract will be as follows:

	Effective 1/1/2018 2.00%	Effective 1/1/2019 2.50%	Effective 1/1/20 3.0%
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Issue 2: Holidays- Article 14

The Union is proposing the following language change:

14.01 Each member shall be entitled to eleven (11) paid holidays. **Holiday time is earned during the year when the holiday arrives. However, for employees after one (1) year of service, the holiday time for the year will be advanced to January 1. Employees must have accrued time off in their bank (compensatory time, vacation, sick leave) exceeding the amount of holiday time taken, on the date taken.**

The Employer is proposing the following:

14.01 Delete and replace with the following: **Each member will be provided with seven (7) tours of holiday time annually.**

14.03 Modify to read:

The ~~paid-premium~~ holidays are as follows:

New Year's Day	Labor Day	Thanksgiving Day
Good Friday	Christmas Eve	Easter Sunday
Christmas Day	Memorial Day	Martin Luther King, Jr. Day
Fourth of July	President's Day	

Rationale:

The Union rightly argues that the language concerning holidays has been in place since 1985, dating back to the Union's first CBA. While a long-standing concept, this Fact-Finder must look at current conditions and benefits. The Firefighters receive holiday time-off for eleven (11) holidays at 24 hours for each tour. This amounts to 264 holiday hours a year. If Firefighters work the holiday, they receive an overtime rate which provides far more paid time-off and premium pay than other City employees. Additionally, in 2017, the City expended \$233,000 in overtime for its firefighters. In Cuyahoga County, Warrensville Heights is the third highest in number of holiday hours of the 33 cities, receiving over 90 hours more in holiday time annually than the average firefighter in Cuyahoga County.

In Mitch Goldberg's fact-finding report dated January 2013, he argued that "a day was a day" in support of the 24-hour credit firefighters receive for their holidays. One must then examine the comparables for the number of paid holidays. Currently, Warrensville Heights has eleven (11) paid holidays. They rank third out of 34 Cuyahoga County Fire departments. Even with the loss of one holiday, President's Day, they would still rank 4th out of the 34 fire departments with the county average being 6.8 holidays.

Internal comparables also weigh in the decision. When looking at vacation, IAFF has time equal to 6.5 weeks, OPBA has 6 weeks, and GCC has 5 weeks. Sick Leave for IAFF is 3 weeks, OPBA is 3 weeks, and GCC is three weeks. The numbers are very

much in line. Paid holidays are not as equal. IAFF paid holidays equate to 4.8 weeks, OPBA to 2.2 weeks, and GCC to 2.4 weeks. In days, IAFF has 11, OPBA has 11 and GCC has 12. While “a day is a day”, the potential in time and overtime pay is must greater for the firefighters.

Mr. Goldberg also pointed out that there must have been a bargained-for exchange to obtain this benefit; that exchange we do not know. Additionally, in the Conciliation hearing dated of March 26, 2013, the Union stated that the City had made no offer in return for this give-back. Hence, in exchange for giving up one holiday in 2020, this Fact- Finder has proposed a higher wage increase in that year.

Recommendation:

14.01 For contract years 2018 and 2019, each member shall be entitled to eleven (11) paid holidays. Effective January 1, 2020, each member shall be entitled to ten (10) paid holidays.

14.03 For contract years 2018 and 2019, the paid holidays are as follows:

New Year’s Day	Labor Day	Thanksgiving Day
Good Friday	Christmas Eve	Easter Sunday
Christmas Day	Memorial Day	Martin Luther King, Jr. Day
Fourth of July	President’s Day	

Effective January 1, 2020, the paid holidays are as follows:

New Year’s Day	Labor Day	Thanksgiving Day
Good Friday	Christmas Eve	Easter Sunday
Christmas Day	Memorial Day	Martin Luther King, Jr. Day
Fourth of July		

Issue 3: Insurance-Article 18

The Union is proposing the following language:

18.01 Effective January 1, 2018~~6~~, employees shall pay, on a monthly basis, **thirteen percent (13%)** ~~eleven and one-half percent (11 ½%)~~ of the City’s costs for insurance coverage (hospitalization, prescription drug, dental, and vision) except that employees’ monthly contributions shall not exceed \$100 per month for single coverage or \$240 per month for family coverage. The office copay shall be \$20 for primary care physicians and \$40 for specialists. The prescription drug copay shall be \$10 for generic drugs, \$25 for formulary drugs, and \$40 for non-formulary drugs. All other aspects of the plan shall remain as in 2017~~5~~.

18.02 Effective January 1, 2020~~17~~, employees shall pay, on a monthly basis, thirteen percent (13%) of the City's cost for insurance coverage (hospitalization, prescription drug, dental, and vision) ~~except that employees' monthly contributions shall not exceed \$100 per month for single coverage or \$240 per month for family coverage.~~ All other aspects of the plan shall remain as in 2018~~6~~.

Management is proposing the following:

18.01 Current premium contribution rates shall remain in effect through September 30, 2018. Effective October 1, 2018 employees will be required to contribute to the monthly premium at a rate of fifteen percent (15%) of the City's premium cost for medical, prescription drug, vision and dental coverage.

18.02 Effective October 1, 2018, spouses of employees are required to utilize their own insurance for their own coverage if available from their employer. Otherwise, the employee is required to pay a \$200/month surcharge if the alternate insurance is not utilized.

Rationale:

The Warrensville Heights Firefighters currently pay 13% per month towards the cost of insurance coverage with caps of \$240 for family coverage and \$100 for single coverage. Management is proposing an increase to 15% which is not in line with internal or external comparables. The average percentage for surrounding fire departments ranges from one city with a 15% contribution (Beachwood) all the way down to a 4% contribution (Solon). The average contribution is 11%, below what the Union has proposed. SERB data shows statewide employees contributing an average of 13.4% for family and 12.3% for single. In the Cleveland area, employees were contributing an average of 10.4% for family and 10.3% for single. Externally, the only place showing a 15% contribution is the outlier of Beachwood. Internally, a 15% contribution was established with the non-union employees. The comparables do not support an increase to 15% with no cap as proposed by Management.

The union, in its proposal, kept the percent of contribution at 13% but proposed lifting all caps effective January 1, 2020. This Fact-Finder has recommended that the percentage remain at 13% for the duration of the contract but that the caps be removed effective January 1, 2019. A 2.50 % salary increase in that year was recommended to offset possible insurance increases.

Management recommended the addition of spousal carve outs with a \$200 a month surcharge. In looking at comparables from six (6) surrounding areas, only one city, Bedford, has a spousal carve out. The surcharge for said carve out is \$150 per month. While spousal restrictions are becoming more prevalent, they are not the norm. Statewide, only 43.4 % of employees have some sort of spousal restriction. For Fire Districts, the percent is 41.2%. Of those requiring some type of spousal restriction, 55.9% have no restrictions and only 3.6% having a penalty charged. This Fact-Finder finds that Management's proposal is not in keeping with the trends of the state and surrounding cities.

Recommendation:

- 18.01 Effective January 1, 2018, employees shall pay, on a monthly basis, thirteen percent (13 %) of the City's costs for insurance coverage (hospitalization, prescription drug, dental, and vision) except that employees' monthly contributions shall not exceed \$100 per month for single coverage or \$240 per month for family coverage. The office copay shall be \$20 for primary care physicians and \$40 for specialists. The prescription drug copay shall be \$10 for generic drugs, \$25 for formulary drugs, and \$40 for non-formulary drugs. All other aspects of the plan shall remain as in 2017.
- 18.02 Effective January 1, 2019, employees shall pay, on a monthly basis, thirteen percent (13%) of the City's cost for insurance coverage (hospitalization, prescription drug, dental, and vision) with no monthly cap on the premiums. All other aspects of the plan shall remain as in 2018.

Issue 4: Sick Leave- Article 20

The Union is proposing current contract language for Section 20.01.

The Union is proposing the following change:

20.04 Paragraph 5. An on-duty injury **resulting in less than ninety (90) calendar days of leave shall**~~is not be~~ counted against the Sick Leave Bonus Program.

Management is proposing the following:

20.01 All full-time members shall earn sick leave at a rate of 120 hours per year for employees hired on or after July 1, 2018.

Management is proposing to delete paragraph 5 of Section 20.04.

Rationale:

In reference to 20.01, this Fact-Finder is recommending maintaining current contract language. Internal comparables show that IAFF, OPBA, and GCC all receive the equivalent of 3 weeks of sick leave. External comparisons from bordering fire departments show an average of 6.5 sick days per year. Warrensville Heights Firefighters have 7. Management has not shown sufficient cause to reduce new hires to 120 hours or the equivalent of 5 sick days. This would put the new hires 1.5 days below the average for all the surrounding departments.

The purpose of a sick leave incentive is to discourage employees from misusing sick leave. Currently, the contract allows for an on-duty injury to not be counted against the Sick Leave Bonus Program. While Management would like this clause deleted, the

Union has made movement toward reining in what could be unlimited days of injury leave not being counted. While the injury may have occurred on duty, it seems unfair to possibly grant an employee who was out with an on-duty injury for 120 days \$660 if they return and use less than 1 sick day while an employee who never goes out on leave but uses four days is granted nothing. Further, employees injured in the line of duty receive up to 120 calendar days of full pay and benefits. This Fact-Finder's recommendation is to accept the Union's proposal but to modify the number of days to sixty (60).

Recommendation:

20.01 Current Contract Language

20.04 Paragraph 5: An on-duty injury resulting in less than sixty (60) calendar days of leave shall not be counted against the Sick Leave Bonus Program.

Issue 5: Clothing Maintenance Allowance-Article 22

The Union is proposing current contract language for Section 22.02.

Management is proposing the deletion of Section 22.02 which allows employees to carry over unused allowance to the next year.

~~22.02 Any clothing allowance not fully utilized during any one (1) year, may be carried over as a credit for the Fire Fighter to the immediate next succeeding year, during which it must be used or forfeited.~~

Rationale:

Management expressed the need for this change based on an effort to eliminate the "administrative burden" of tracking the carry-over amounts. The Union seeks to maintain this provision in order to allow Firefighters to "save" some of their allowance for the purchase of more expensive items in the following year. The Union was even open to working with the City to make the record keeper easier. Management did not, however, provide sufficient evidence of this record keeping burden to warrant the elimination of this provision.

Recommendation:

22.02 Current Contract Language

Issue 6: Prevailing Rights- Article 30

The Union is proposing current contract language for Section 30.01.

Management is proposing the deletion of Section 30.01.

~~30.01 The City and Union shall continue to cooperate to the fullest to assure, where possible, a continuation of those activities, rights, duties, and obligations not inconsistent with, or altered, amended, or rescinded, by the Agreement.~~

Rationale:

This Fact Finder is recommending current contract language because Management has not been able to provide any substantial reasoning for its deletion. This clause has rarely been invoked since its inception in 1985, and no instances have been cited where this clause infringed on management rights or caused an operational problem or dispute.

Recommendation:

30.01 Current Contract Language

Issue 7: Promotions- New Article

The Union proposes the following new article:

31.01 When a Lieutenant vacancy exists and an eligibility list is in place, the vacancy shall be filled by promotion within thirty (30) calendar days from the vacancy. If an eligibility list is not in place, the vacancy shall be filled by promotion within one hundred twenty (120) calendar days from the vacancy.

31.02 The Employer shall post notice of a promotional examination and provide a minimum of sixty (60) calendar days' notice of the examination. The posting shall include a listing of the required reading materials for study purposes. The posting shall also include a listing of the current employees eligible to sit for the exam and the bonus points each member would be entitled to if they sat for the exam.

31.03 In order to sit for a promotional exam for the rank of Lieutenant, an employee must have Firefighter II certification and have completed a minimum of three (3) years of service as 1st Class Firefighter for the City of Warrensville Heights.

31.04 Any employee that sits for a promotional exam shall have the right, within five (5) business days after the exam, to review the exam questions and answer key. During this period, the employee shall have the right to challenge a question by submitting the challenge in writing to the Civil Service Commission.

Rationale:

Though the Union may be frustrated by the current Civil Service promotion process, this Fact-Finder has not found any significant external data related to the specific issues proposed by the Union. The internal data presented by Management shows that none of the six (6) unions have any language concerning promotions. The Civil Service Commission, however, already covers many of these issues.

In reference to proposed 31.01, Rules and Regulations, Civil Service Commission of the City of Warrensville Heights, already addresses this issue. Rule 11: Promotions in the Police or Fire Department, 11.05, Certification of Eligible List, states that, "The appointing authority shall fill such position by appointment of one of three (3) persons certified to him [Commission] within thirty (30) days after such certification."

In reference to proposed 31.03, the Civil Service Commission also addresses this in 11.02, Promotions in Class. It states, "Each applicant for a promotional examination ...from fireman to lieutenant in the Fire department shall have served at least three (3) years as fireman as of the date of the examination." It does not specify serving three (3) years as a Warrensville Heights fireman but it does specify three (3) years of service.

In reference to proposed 31.04, the Civil Service Commission Rules and Regulations, 7.06, Challenges to Examination Question, does not allow any applicant to "inspect or review the test or keys of any examination." It does, however, in 7.05, Examination Papers, allow applicants to inspect their own papers within sixty (60) days of the exam.

The bulk of the proposed article is already referenced in the Civil Service Rules and Regulations for Warrensville Heights. This document covers both Police and Fire. This Fact-Finder would defer to the Civil Service Commission's rules in order to maintain continuity between the city forces.

In reference to proposed 31.02, this Fact-Finder would recommend that the topic go to the Labor-Management Committee to develop a standard procedure for posting pertinent examination information that would be feasible to implement while still providing potential applicants with timely information.

Recommendation:

Not to include the new article on promotions in the contract.

Issue 8: Station Maintenance & Safety- New Article

The Union proposes the following new article:

32.01 The Employer agrees to supply and make available materials and/or equipment required in the day-to-day maintenance and upkeep of the fire stations, and to supply materials and/or equipment necessary to maintain safe and sanitary conditions of the fire stations and all quarters within the fire stations.

32.02 There shall be a joint maintenance and safety committee composed of two (2) Employer representatives and two (2) Union representatives, with each party selecting their respective representatives. The joint committee shall:

- 1.) Meet at the request of either party (within 10 calendar days of the request) to perform inspections of fire department facilities and apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire station conditions are properly functioning, in order, and are not in any way hazardous or posing a health risk to fire station personnel.
- 2.) Make written recommendations for the correction of any unsafe, unsanitary and/or not properly functioning equipment, devices and/or other conditions, including a recommended date of implementation to correct any unsafe, unsanitary and/or not properly functioning equipment, devices and/or other conditions, for submission to the Mayor.

32.03 Disputes or disagreements concerning maintaining functional, safe and/or sanitary conditions and/or equipment in the fire stations and fire station quarters shall first be referred to the joint committee for recommendations. Should the Mayor reject the joint committee's recommendations regarding the correction of station maintenance and safety issues, the Union reserves the right to file a grievance directly to Step 2 of this Agreement's grievance-arbitration procedure. An arbitrator hearing a grievance filed under this Article is without authority to order the Employer to make repairs or improvements that exceed \$5,000.

Rationale: The Union has stated that station maintenance and repairs have been an on-going issue, an issue that has been discussed during the previous contract negotiations. Attempts to include language into the contract were withdrawn by the Union when the City took action to make the repairs. Safety and station maintenance are certainly important issues but must be addressed from a broader perspective to consider priority of need, time, and cost. This Fact Finder recommends that the Labor-Management Committee, as outlined in Article 28, become the venue for future discussions. Language is already in the contract to discuss "health and safety matters related to Union members." The addition of another paragraph to section 28.02, "G. To perform inspections of fire department facilities and apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire stations conditions are properly functioning", is recommended. The intent is to

allow the Labor-Management Committee to more specifically address the station maintenance and safety issues as they arise, to request inspections, and to jointly come up with resolutions.

Recommendation:

28.02 The party requesting such a meeting shall furnish the agenda to the other party at least five (5) calendar days in advance of scheduled meetings. The agenda, if provided by the Union, shall include the names of the Union representatives who will be attending. The purpose of the meeting shall be to:

- A. Discuss the administration of this Agreement;
- B. Notify the Union of changes made by the Fire Chief which affect the Union;
- C. Discuss grievances which have not been processed beyond the final step of the grievance procedure when such discussions are mutually agreed to by the parties;
- D. Disseminate general information of interest to the pates;
- E. Discuss ways to increase productivity and improvement of efficiency;
- F. To consider and discuss health and safety matters relating to Union members;
- G. To perform inspections of fire department facilities and apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire station conditions are properly functioning.**

In conclusion, the following recommendations incorporate all unchanged provisions of the expired CBA and all tentative agreements reached between the parties during negotiations, through mediation, and any agreements made at the hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one (1) copy each of the Fact-Finder's report was delivered via email on the 16th day of July, 2018,

to Mr. Ryan J. Lemmerbrock, Attorney for International

Association of Firefighters, Local1591,

Mr. Jon M. Dileno, Attorney for

the City of Warrenville Heights and

the State Employment Relations Board.

Jack Buettner

Jack Buettner