

STATE-EMPLOYMENT
RELATIONS BOARD
DEC 18 10 32 AM '95

STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT

IAFF Local 912 and City of Sidney, Ohio
SERB Case No. 95-MED-08-0699

Donald R. Burkholder, Ph.D.,
Fact-Finder

Faxed to the parties and mailed to the
parties and to SERB on Friday,
December 15, 1995

HEARING

A fact-finding hearing pursuant to SERB rules 4117-0-05 (H), (I), (J) and (K) was conducted beginning at approximately 1 p.m. on Tuesday, December 12, 1995 at the Sidney City Hall. Present for IAFF Local 912 were Jerry O. Pitts, Attorney; Larry Logan, Dennis Herbert, and Keith McClain, Firefighters. Present for the Employer were Mike Smith, Law Director; Mike Puckett, Finance Officer; and Stan Crosley, Fire Chief.

Following introductions and the establishment of ground rules, the Fact-Finder offered to mediate on any unresolved issues where there was a realistic possibility of settlement prior to the hearing. It was decided that mediation would not be useful, and the parties proceeded to hearing.

It was agreed that the issues at hand were as follows, and did not differ from the issues as mailed to the Fact-Finder prior to the hearing:

1. Accrual of compensatory time for negotiations.
2. Step increases contingent upon satisfactory performance reviews
3. Vacation
4. Holidays
5. Job-related injury leave
6. Promotion and advancement
7. Longevity pay
8. Wages
9. Duration

Testimony was presented and exhibits presented generally in the order listed above, with the initiating party usually presenting first, with sufficient time for cross-questioning. The Fact-Finder attempted to set an informal but businesslike tone for the proceedings, and to a large extent believes he succeeded in doing so. The Fact-Finder emphasized that he would interrupt testimony from time to time when he believed a point was unclear or clarification was needed.

DISCUSSION OF ISSUES & SUBSEQUENT FINDINGS

1. Accrual of Compensatory Time for Negotiations

The Union sought 25 hours of compensatory time for each of three persons on their negotiating team, for a total of 75 hours. The City proposed 45 hours for the entire team. The existing contract provides 40 hours. Testimony by Employer witnesses indicated that there was no need for additional compensatory time, that only a fraction of the available comp time hours had been claimed by the IAFF unit, that other City units were in the 40 hour range (Employer Exhibit 1) and that the City offer of an additional five hours should be more than sufficient. Union testimony indicated that although not all hours had been submitted or claimed recently, the reason was fairness, the currency/recency of negotiations, and an attempt to balance out the hours among the team members.

There was no substantive, convincing evidence that additional hours in the magnitude of 75 are justifiable. The Employer's proffered 45 hours is deemed reasonable.

Fact-Finder Recommendation:

Article XIII-Miscellaneous, Paragraph 6. Third Sentence.

The City will accommodate a total of 45 hours of compensatory time for the entire IAFF Negotiation Team.

2. Step Increases Contingent Upon Satisfactory Performance Review

The Employer sought to establish a system whereby step or annual increases would be denied should a firefighter receive a Below Satisfactory Rating in a rating or evaluation system which is already in place, according to testimony. The rationale for the Employer's request is the City Council's preference to install such a system for all City employees; such a system is presently in place for the non-union employees of the City (Employer Exhibit 2). The firefighter's expressed concern about what they perceive as a lack of consistency in the

current evaluation system, and the possibility that an employee could be evaluated by a "new" supervisor immediately after being transferred. As stated by the City's Law Director, there has been no alleged case of inconsistency in current evaluation system, and all ratings for 1993 and 1994 were satisfactory or above.

Article XXVII, Discipline and Personnel Files in the current contract provides that the Employer has the right to discipline and discharge employees for just cause, which includes but is not limited to those reasons set forth in the Civil Service Laws of the State of Ohio. The Fact-Finder believes that this provision along with the Probationary Period provide sufficient opportunity for the Employer to remove an unsatisfactory employee. Further, the potential for grievances and desultory personality clashes is inherent in any such rating system when the system could conceivably be used improperly; human nature is such that when a system could conceivably be used as a threat, it is likely to be so used, at least eventually. (See No. 7 below for commentary and justification of this concern, citing the Code). There has been no strong indication of the need for such a system except for the local legislative body's desire to do so. It was clear that the Union generally had no problem with evaluations in general, although some concern about the potential methods of implementation were expressed. The Union did have a problem with use of the evaluation to potentially deny step increases.

Fact-Finder Recommendation:

The Employer proposal providing that a firefighter not rated as "Below Satisfactory" on his/her annual performance appraisal receive a one-step salary increase (and thereby denying it to an employee rated "Below Satisfactory") is denied.

3. Vacation

The Union proposes amending Article XIX dealing with vacations by allowing 15 duty days of vacation (5 weeks a year for the Fire Prevention Officer) after 20 years instead of the present 25 years. The Employer emphasized that all other Sidney bargaining groups are required to have 25 years of service in order to be eligible for five weeks of vacation (Employer Exhibit 3). Evidence was introduced that the same standard is applied by the State of Ohio for both State and County employees. No convincing evidence for a change in the current arrangement was offered.

Fact-Finder Recommendation:

Retain existing contract language.

4. Holidays

The Union proposes to amend Article XX, Holidays, by adding an eleventh holiday, Martin Luther King Day (MLK Day). The Union testified that all other City employees have at least part of MLK off, and that it is a State holiday (Union Exhibit 1). The Employer recognizes the desirability of MLK Day as a holiday, but notes that an eleventh holiday would cost the City additional money in holiday pay, and increase the potential cost to the City in the event firefighters are called in on a holiday and receive two-and-one-half times their regular pay; there was evidence the other bargaining units in Sidney as well as non-represented Sidney employees, along with State and County employees in Ohio, have a ten-day holiday standard (Employer Exhibit 4). The City offered to substitute either Good Friday or Christmas Day for MLK Day, but opposed any additional time off.

The Fact-Finder finds no persuasive evidence that an eleventh holiday should be granted; however, this matter is a proper subject for bargaining, and it is hoped the parties will do so.

Fact-Finder Recommendation: No change in existing

5. Job-Related Injury & Related Leave

The Union proposes to increase the amount of time an employee will receive their usual salary without using sick leave after experiencing job-related injuries from seven days to 30 days. The Employer wishes to retain the existing language because the seven days are designed to allow an employee enough time after a job-related injury occurs so as not to have to use any sick leave, and, according to the Employer, Workmen's Compensation becomes effective after seven days.

The Union proposal is reasonable and justified given the potential for economic hardship while awaiting determination of a Workmen's Compensation claim, per some of the Union testimony. Further the Union sought a modification in the time requirement for reinstatement from the current one year to four years. Limited discussion was presented on this item, but there appeared to be a consensus that four years was appropriate, and the Fact-Finder is so persuaded.

Fact-Finder Recommendation:

The Union proposal is accepted, with language as follows:

- Article XXIV, Workers Compensation, Paragraphs 8, 6, 7/**
- 8. Job-Related Injuries. Any Firefighter, Lieutenant and/or Fire Prevention Officer who has lost work due to job-related injury/illness will receive his/her usual salary and compensation without interruption and without using current accumulated sick time for the first calendar thirty (30) days of each month, or until it is determined that the disability is considered permanent and the employee cannot return to work.**
 - 6. Request for reinstatement. x x x not later than four years following x x x (NOT "ONE YEAR FOLLOWING"),**
 - 7. Medical examination. (Technical correction): In second line, correct the spelling of "medical".**

6. Promotion and Advancement

The City proposed the inclusion of an assessment center process as part of the evaluation of promotional candidates, or candidates for managerial positions; the written examination does not always produce the best candidate, but rather the best test-taker, according to the City's pre-hearing letter to the Fact-Finder and testimony at the hearing by the Fire Chief. The Union officially opposed the establishment of an assessment center; however, there was some Union testimony about the desirability of an improved testing procedure.

A primary Union concern, according to testimony, was knowing ahead of time what percentages would be assigned to the assessment process as compared with the written exam. There was also strong concern about the privacy of personnel files, and testimony alleging at least one instance of their abuse or misuse in the past. The Fire Chief testified in response that "When an exam is posted, all that information is included, that is, percentages and weights would be posted." He testified further that nobody can get access to an employee's personnel file without that employee's written release. The Fire Chief also testified, in response to a Union query, that a consulting firm would be monitoring the assessment center process on an ongoing basis in order to ensure its viability and integrity, and that there is a significant expense to such a process.

Fact-Finder Recommendation:

The Employer proposal, with some modification, is adopted, as follows:

Article XXV- Other Benefits, Section 9, Second Paragraph

Promotional examinations to Fire Lieutenant, Fire Prevention Officer, and Assistant Chief shall include both a written examination and an assessment center process. The City will contract with an established and competent consulting firm to monitor the assessment center process on a

regular, ongoing basis in order to ensure the integrity of the process. The privacy of a personnel file shall be honored; i.e., a file shall not be made available for review without the employee's written permission.

7. Longevity Pay

The Employer proposed to eliminate longevity pay for new hires after January 1, 1996, and to make the receiving of longevity pay contingent upon receiving a satisfactory performance evaluation. The Employer rationale for this proposal is primarily the fact that the issue was initiated by City Council. The City introduced Employer Exhibit 5, indicating that non-union employees hired after May 1, 1994 would not be eligible for a longevity bonus. The Union opposed the elimination of longevity pay for new hires because of the close working circumstances and general morale problems which would likely be generated. No evidence of comparables which have eliminated longevity pay for new hires was offered.

There is a strong concern about morale and productivity factors among newer or junior and senior employees when such drastic action is taken. Among the factors to be considered in 4117-9-05(K)(3)--(4)--and --(6) are the interests and welfare of the public, x x x and the effects of the adjustments on the normal standard of service; the lawful authority of the employer; and such other factors (not confined to the above) which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed upon settlement procedures in the public service or in private employment. The impact of a decision on the working relationships between skilled firefighting employees must be considered, and, in this instance, is the major factor.

Fact-Finder Recommendation:

Article XVI, Section (paragraph) 1, should not be altered.

8. Wages

The Union sought a 6.5% annual increase for each year of a three year contract, along with a reduction from eight to five steps. The City offered a 3.0% annual increase for each year of the contract with the eight step system unchanged. Union Exhibit 3 was the focus of considerable discussion and testimony regarding relative salaries of firefighters, police, public works personnel, the assistant fire chief, and the fire chief. Union Exhibit 4 dealt with relative points assigned to firefighters, police, etc, by the Hay Committee Evaluation, with the argument presented that firefighters were not rated sufficiently high in the Hay Committee Evaluation point system. City Exhibits 6 (Consumer Price Index for Cincinnati-Hamilton, Ohio, Kentucky, Indiana-Second Half 1994 and 1994 Annual Average); 7 (CPI for the North Central Region; 8 (SERB Benchmark Report for Fire Lieutenant); and 9 (SERB Benchmark Report for Firefighter) provided substantive guidance.

The CPI reports indicated a 3.3% change from 1993 to 1994 for the Cincinnati-Hamilton, Ohio area and a 3.0 change to October 1995 from October 1994. The SERB Benchmark for Fire Lieutenant indicated a top level of \$36,798.52, with the parallel figure for a Sidney Fire Lieutenant at \$39,016, as indicated by the City. The SERB data for "firefighter" showed an average of \$35,759.57, and the parallel figure for a Sidney firefighter was indicated as \$35,115. Both SERB Benchmark Reports were dated December 7, 1995.

Testimony by Sidney officials indicated concern about an upcoming income tax renewal vote of one-half of one percent, which is in addition to the one percent which can and is being levied without a vote. There also was concern about internal comparables and equity.

Fact-Finder Recommendation:

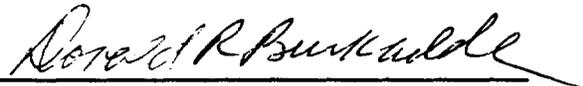
The Employer wage proposal of three percent over eight steps is adopted. It is attached as Appendix A; it was "Exhibit B" in the Employer's pre-hearing material as mailed to the Fact-Finder.

9. Duration

The parties stipulated to a three year duration at the Fact-Finding hearing, and that stipulation is adopted here, with language as follows:

This Agreement shall be effective as of January 1, 1996 and shall be in effect through December 31, 1998.

The professionalism, civility, and cooperative attitude exhibited by the parties is appreciated. It is hoped that the positive labor relations environment, which seems apparent to the outside observer, will be strengthened in this process.



Donald R. Burkholder,
Fact-Finder

December 15, 1995

Attached: Appendix A

This certifies that this Fact-Finding Report including Appendix A, the wage scale adopted, was faxed to the parties and express mailed to the parties and to the State Employment Relations Board this date, Friday, December 15, 1995.

Donald R. Burkholder



APPENDIX A
EXHIBIT "B"

Effective 12/24/95

STEP	A	B	C	D	E	F	G	H
Firefighter	\$27,476	\$28,712	\$30,004	\$31,268	\$32,638	\$33,969	\$35,478	\$36,168
Fire Lieutenant/FPO	\$32,847	\$34,356	\$35,900	\$37,444	\$39,234	\$40,186		