

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING)	CASE NO. 95-MED-09-0814
BETWEEN:)	
)	
CITY OF LANCASTER (OHIO),)	
A Public Employer)	EDWARD A. PERELES,
)	FACT FINDER
- and -)	
)	
INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL No. 291,)	
An Employee Organization)	

BACKGROUND, JURISDICTION AND POSITIONS OF THE PARTIES

On December 1, 1995, the undersigned was appointed the Fact Finder by the Bureau of Mediation, SERB, in the above captioned matter. Each Party provided the Fact Finder with a comprehensive Pre-Hearing Position Statement.

The Parties have been engaged in negotiations for a successor Agreement to the one that expires December 31, 1995. Prior to the Fact Finding Hearing, the Parties held two (2) formal bargaining sessions and occasional informal contacts and were able to resolve numerous issues, principally relating to language and other non-economic matters. As of the morning of the Fact Finding Hearing, the issues set forth below (at 4) remained in dispute. All other issues having been either resolved or withdrawn.

The Fact Finding hearing was held on December 14, 1995, in the City of Lancaster (Fairfield County), Ohio, at which time

each Party had a full and fair opportunity to present evidence (all of which was subject to cross-examination) and to offer argument on the remaining Issues in Dispute. During the Hearing, the Parties presented Briefs and Exhibits, all of which were useful in preparing the Findings and Recommendations of the Fact Finder. Additionally because of the time constraints, the Parties also provided Pre-Hearing Statements and Briefs (with Exhibits) on diskette.

Because of the nature of the bargaining unit (fire Department), the Findings of Fact and Recommendations were due no later than December 15, 1995, fourteen (14) days after appointment or selection. The Parties mutually agreed to extend the time when the Fact Finder's Report was due until December 21, 1995.

O.R.C. § 4117.14(C)(4)(e) requires that the Fact Finder, in making his recommendations, take into consideration the following factors:

- (a) past collectively bargained agreements, if any, between the parties;
- (b) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private 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) the stipulations of the parties; and
- (f) such other factors not confined to those listed under O.R.C. § 4117.14(G)(7), which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through volun-

tary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Lancaster, Ohio, is a moderately-sized statutory city (population, 35,342 (1992)) located approximately 30 miles east, southeast of Columbus, Ohio, in Fairfield County (population, 114,738 (1994)). Fairfield County is surrounded by the Counties of Franklin (the City of Columbus), Licking, Pickaway, Hocking and Perry, and is one of twelve (12) counties which make up the Central Region (SERB designation, which excludes Hocking). Within Fairfield County are thirteen (13) townships.

The Lancaster corporate boundaries include approximately 17 square miles.

As of December 1995, the four major occupational groups of Fairfield County are: (1) wholesale and retail trade (27.3%); (2) manufacturing (21.4%); (3) services (19.6%); and (4) government (19.9%) *Ohio Bureau of Employment Services*. Generally, the area has 28 firms, ranging from Anchor Hocking with approximately 1,100 employees, to Frick-Gallagher Manufacturing, with approximately 95 employees. This compares to 368 firms in Columbus, Ohio, such as AT&T with 5,000 employees and 599 firms in Cincinnati, Ohio, such as General Electric with 15,000 employees. *Ohio Industries Directory* (Harris Publishing Company, 1986).

Median family income in Lancaster is \$27,456; per capita income is \$11,307. *U.S. Bureau of the Census, 1989. . . . (City's Brief at 2-3).*

There are approximately 430 full-time employees total in Lancaster. Fire employees break down as follows: 1 chief; 2 assistant chiefs; 3 captains; 13 lieutenants; and 64 firefighters, including 30 firefighter paramedics and 3 fire inspectors. The average firefighter is approximately 38 years old with approximately 11 years of service. Significantly, during the term of the new contract, 50 firefighters will have five or more years of service and be subject to the longevity scale.

Other unionized bargaining units in the City include the Lancaster Police F.O.P. Patrol Officers, the Lancaster Police F.O.P. Communication Officers, the Lancaster Police F.O.P. Parking Enforcement Officers, the Lancaster Police Supervisors' Association, and AFSCME, Ohio Council 8, which represents the workers in the various city departments.

All of the safety forces' collective bargaining agreements expired in 1995. All of the contracts remain unsettled. The firefighters are the only bargaining unit that has actually proceeded to fact-finding. The City's last offer on all unresolved issues mirrors its last offer on related issues with the other safety forces' bargaining units (City's Brief at 3-4).

The fire fighter bargaining unit consists of full-time fire fighters, pump engineers, paramedic trainees, paramedics, fire inspectors, lieutenants, and captains within the Fire Department and contains approximately eighty (80) employees.

THE ISSUES

1. Pay Rates
2. Days for Union Business
3. Pump Engineer, Promotion to
4. Working Hours Per Week/Number of Weeks in Work Period
5. Longevity Payment
6. Compensatory Time
7. Uniform Allowance
8. Contribution for Hospital and Medical Plan
9. Payment for Holidays
10. Sick Leave Annual Cash Out
11. Discipline and Discharge, Clarification for Probationary Employees
12. Successors
13. Prevailing Rights
14. Manning of Apparatus by Lieutenants
15. Pay for Standby Time (When Carrying the Beeper)

In performing his Fact Finding duties, the undersigned carefully considered the factors specified by O.R.C. §4117.14(C)(4)(e) and the Parties presentations. The Fact Finder believes that, had he been given an opportunity to assist the Parties, the Parties could have resolved all the open issues by themselves.

FINDINGS OF FACT AND FACT FINDER'S RECOMMENDATIONS

1. PAY RATES (Article 20):

The Union's Position -- six percent (6%) each year, based on comparables, prior times when the City argued that it did not have sufficient funds available and the City's ability to pay.

The City's Position -- three percent (3%) each year, based on comparables and the City's sense of its priority to pay including the determination to refurbish City Hall and continue to have the City Parks be a great attraction for its residents.

Both Parties apply the percentage increases to each step and each column on the existing matrix.

The Parties were unable to agree on comparables, the City seeing itself as more like other cities, principally on a shoulder surrounding Columbus and other public sector entities, while the Union sees the City as more like the suburbs surrounding Columbus and the nearby townships, principally in nearby Franklin County.

The City is going through a period in which it has seen the nature and the number of businesses and home building within its boundaries increase. It is expected the City's income and real property taxes will continue to provide increased revenues at current rates. Real property will be reassessed in 1995 and will provide an increased level of income during the next several years. The expenses appear to be under control.

Because of the Lancaster's proximity to the City of Columbus, the City's more or less countrified ways are inexorably being modified, especially along Route 33 (and perhaps Route 22 and I-70, as well).

The Fact Finder concludes that the comparables of neither Party fit this awakening City. Based on the economic data supplied by the Parties, it would appear that the City's offer is "not enough" and the Union's proposal is "much too much," even when considering the current rate of inflation.

Recommendation: Increase the matrix three and three-quarters percent (3.75%) for 1996; four percent (4%) for 1997; and, four and one-half percent (4 1/2%) for 1998.

2. DAYS FOR UNION BUSINESS (Article 10):

The Union's Position -- increase current amount by fifteen (15) days per year.

The City's Position -- current contract.

The Union argues that with the increased bargaining unit size it needs more paid days for the officers and other designated persons to service the needs of the bargaining unit. Recently the Chief failed to authorize requested days in excess of negotiated

fifteen (15) thus denying the bargaining unit effective representation. The City argues that fifteen (15) days should be sufficient since the members of the bargaining unit work less than one hundred (100) days per year. The number has been sufficient since this provision was negotiated and the Chief has recently approved additional days. One situation should not call for change.

The Fact Finder concludes that because of the increased number of bargaining unit employees (from sixty (60) to eighty (80)), the number of Union Business days should increase more or less proportionally and in that manner the membership of the bargaining unit is not disadvantaged by its increased size.

Recommendation: Increase the number of Union Business days to twenty (20) per year.

3. **PUMP ENGINEER, PROMOTION TO (Article 13):**

The Union's Position -- once trained and certified, seniority would be the sole factor for promotion to Pump Engineer.

The City's Position -- current contract.

The Union proposed language which would make seniority the sole factor for promotion to Pump Engineer once a member of the bargaining unit (in pay ranges 2, 3 or 4) had been trained and certified (with the sole exception being if the candidate had a poor disciplinary record). The City argues that it agreed to train and certify members of the bargaining unit for future vacancies but reserved the right to select applicants for Pump Engineers from those trained and certified. The recent promotion of a person who was not the senior applicant was occasioned by the need to have balance in the number of Paramedic/Pump Engineers. That situation has since been remedied. Further, the testimony indicated that Chief normally considers seniority as the existing language provides.

The Fact Finder concludes that the existing language should not be modified. The current language provides a sufficiency of protection for the members of the bargaining unit and a modicum of flexibility for the Chief.

Recommendation: Retain current language.

4. **WORKING HOURS PER WEEK/NUMBER OF WEEKS IN WORK PERIOD (Article 18):**

The Union's Position -- decrease to twenty (21) day work period (thereby decrease working hours to forty-eight (48) and thereby increasing Kelly days to seventeen (17)).

The City's Position -- current contract.

The Union argues that with the existing personnel and without increasing scheduled overtime, working hours should be decreased and its proposed schedule can be accomplished. It cites comparables (and alleges that a 48 hour work week is the standard for fire fighters throughout the Country). The City argues that the existing schedule has served the City well and that the proposed schedule would increase overtime because the number of personnel scheduled off would increase.

The Fact Finder concludes that while the Union's proposal "looks good," it fails for it does not take into consideration sick or injury leave, training time, etc., and therefore would unnecessarily reduce the manning available at any time for fire fighting duties.

Recommendation: Retain current language.

5. **LONGEVITY PAYMENT (Article 22):**

The Union's Position -- increase to four dollars and twenty-five cents (\$4.25).

The City's Position -- current contract.

The Union argues that longevity pay provides another and important part of compensation to retain existing personnel. The City argues that the existing payment without limitation is both sufficient and fair, even if the Fact Finder were to use the Union's comparables.

The Fact Finder agrees with the Union that longevity pay is a form of compensation, but that without a cap, the longevity payment provides substantial compensation for the most senior fire fighters.

Recommendation: Retain current language.

6. **COMPENSATORY TIME (Article 25):**

The Union's Position -- current contract.

The City's Position -- eliminate compensatory time (and therefore pay cash for all overtime).

The City argues that this provision unduly burdens the City by creating additional overtime, scheduling and manning problems as well as having to keep another set of records. Furthermore, by delaying cashing out of comp time, the fire fighter can receive a higher rate of pay. The Union argues that the existing language protects the City and provides a flexible and useful way for an employee to be rewarded for his/her efforts on behalf of the City (and it may be less expensive for the City, too) since the Chief determines when and if comp time is taken.

The Fact Finder was not persuaded by the City that this provision should be eliminated. The Chief has the right to require payment in lieu of comp time under the existing language and the fire fighters would unnecessarily lose a benefit (even though inconsistent with its underlying theory that most of its Demands are about money). As to the record keeping, while record keeping is on-going, the request by the employee must be made so as comp time is used no later than 180 days after it is earned, with the Chief approval as to when. The 180 day provision also minimizes the effect on the City should an employee take comp time after the employee has received an increase in wages.

Recommendation: Retain current language.

7. **UNIFORM ALLOWANCE (Article 25):**

The Union's Position -- an increase of two hundred dollars (\$200.00) per year.

The City's Position -- an increase of fifty dollars (\$50.00) per year (and more, if receipts are provided).

The Union, while not wanting to rehash its Arbitration loss on the tax consequences of the Uniform Allowance, suggests that this payment would go a long way to ameliorating such loss of income. It notes that costs have gone up year to year. The City argues that while costs have gone up, everyone knows that this payment is in reality additional compensation since it is unlikely that each fire fighter each year spends anywhere near the fire fighters allowance.

The Fact Finder was not persuaded by the Union's argument that the Uniform Allowance should be expanded beyond the City's offer. If a particular fire fighter in a particular year has expenses greater than six-hundred fifty dollars (\$650), that fire fighter may present all his/her receipts and be fully reimbursed (and additionally, most likely have the entire amount not considered as income for tax purposes), otherwise this payment must be considered cash compensation.

Recommendation: Increase Uniform Allowance fifty dollars (\$50.00) per year with the opportunity for any fire fighter who spends more than six hundred fifty dollars (\$650.00) to present his/her receipts for that calendar year, and thus be reimbursed for his/her actual expenses in that calendar year.

8. **CONTRIBUTION FOR HOSPITAL AND MEDICAL PLAN (Article 27):**

The Union's Position -- no monthly co-insurance payments for individual or family coverage under the PPO plan.

The City's Position -- 1) monthly payments of:
For 1996 -- \$18.01 for single, \$50 per family;
For 1997 -- 15% of monthly premium (not to exceed \$25 for single, \$60 per family; and
For 1997 -- 15% of monthly premium (not to exceed \$30 for single, \$68 per family; and
2) a 70/30 non-network co-insurance.

The City argues that even with the PPO, its cost to provide health care is substantial. With the establishment of an Section 125 Plan (and the concomitant costs of operating such a Plan), it requires a co-insurance increase over what is in the negotiated Agreement. The City notes that employees' coverage will remain substantially the same with the new PPO and their out of pocket costs may decrease and certainly will be postponed until later in the year. The Union argues that obviously the City will be saving money in which the employee should share. Further employees will have greater out of pocket costs because of the hierarchy of co-payments.

The Fact Finder notes that health care costs continue to increase in ways neither the Employer or Union fully considered when such plans were initially negotiated. However, even with the proposed Section 125 Plan, a given employee's cost may increase. Neither Party convinced this Fact Finder that there was a need to substantially modify the existing co-insurance payments, although the Union presented the better case. However, the 70/30 co-insurance for out of network care will help reinforce the plan selected.

Recommendation: 1) monthly premiums for
1996 -- \$12.00 for single, \$40 per family;
1997 -- 15% of monthly premium (not to exceed \$20 for single, \$45 per family; and
1997 -- 15% of monthly premium (not to exceed \$28 for single, \$55 per family; and
2) a 70/30 non-network co-insurance on the first \$2000/\$4000 of medical expense for individual and family coverage, respectively (but no pyramiding, the co-insurance will be based on first in, first covered).

9. **PAYMENT FOR HOLIDAYS (Article 35):**

The Union's Position -- paid holiday bonus of eighty (80) hours per year.

The City's Position -- current contract

The Union, since at least 1986, has requested this benefit, with relatively the same arguments -- other bargaining units in the City get this benefit. And comparables have this benefit, too, more or less. The City, since at least 1986, has argued that City employees in other bargaining units get ten (10)

paid holidays and under normal circumstances are not required to work them. It is accurate to state that members of the fire fighter bargaining unit are scheduled to work three (3) to four (4) of the ten (10) named Holidays. Those with the desire not to work on a particular holiday on which they have been scheduled may work out ways with co-workers to be off, subject to management approval. There is no need for this benefit.

This Fact Finder was not persuaded by the Union's argument that the members of the bargaining unit are entitled to a Holiday Bonus. In drawing this conclusion, he notes that other Fact Finders and Conciliators have not been persuaded either.

Recommendation: No additional contract language.

10. **SICK LEAVE ANNUAL CASH OUT (Article 36):**

The Union's Position -- a five hundred dollar (\$500.00) increase per year to those that meet the existing standard.

The City's Position -- current contract.

The Union argues that other jurisdictions provide this benefit in varying amounts. It believes that such a benefit encourages judicious use of sick time and more than pays for itself. The increase requested is a part of cash compensation for those who have the requisite banked hours. The City argues that this is just one more unnecessary cost to the taxpayers and in reality just additional compensation.

The Fact Finder was not persuaded by the Union's argument that the Sick Leave Cash Out should be expanded.

Recommendation: Retain current language.

11. **DISCIPLINE AND DISCHARGE: CLARIFICATION FOR PROBATIONARY EMPLOYEES (Article 41):**

The Union's Position -- current contract.

The City's Position -- clarify existing language to avoid collateral appeals by probationary employees.

The City argues that while existing language provides that probationary employees serve at the pleasure of the Chief (and therefore no right to appeal any disciplinary matter to arbitration or to other dispute resolution procedures), it believes additional language is appropriate. The Union argues that the language is clear and unambiguous -- the just cause provision does not apply to probationary employees and the City has not had any problems with the existing language.

The Fact Finder was not persuaded by the City's argument that its suggested language was necessary as he discussed during the Hearing.

Recommendation: Retain current language.

12. **SUCCESSORS (Article 49):**

The Union's Position -- current contract.

The City's Position -- delete current language.

The City, from at least 1986, has argued that this language is vague and confusing and unnecessarily broad. The Union, from at least 1986, has argued that the language for its purpose is clear and unambiguous and provides it with protection should there be an event of the type described which substantially effects the bargaining unit.

This Fact Finder was not persuaded by the City's argument that the members of the bargaining unit should be shorn of this protection, whatever it may be. In drawing this conclusion, he notes that other Fact Finders and Conciliators have not been persuaded either.

Recommendation: Retain current language.

13. **PREVAILING RIGHTS (Article 52):**

The Union's Position -- current contract.

The City's Position -- delete current language.

The City, from at least 1986, has argued that wishes to have a fixed and known commodity, that is the plain language of the Agreement (not unknown past practices). The Union, from at least 1986, has argued that the existing language provides additional protection to the members of the bargaining unit (as well as providing protection from state law).

This Fact Finder was not persuaded by the City's argument that the members of the bargaining unit should be shorn of this protection, whatever it may be. In drawing this conclusion, he notes that other Fact Finders and Conciliators have not been persuaded either.

Recommendation: Retain current language.

14. **MANNING OF APPARATUS BY LIEUTENANTS:**

The Union's Position -- Lieutenant to ride on all in-service apparatus.

The City's Position -- current contract (unwritten manning practices as determined by the Chief).

The Parties agree that no apparatus leaves a firehouse without adequate, competent personnel aboard. The Union's argument however is with the fact that Engine House No. 1 does not always have a Lieutenant available to ride with the apparatus when in-service because when the Captain is absent, the Lieutenant performs the Captain's duties. In all other Fire Houses the City appoints an acting Lieutenant. The Union believes that this is a safety matter requiring on-site command. The City argues that Lieutenants riding with apparatus is not for safety or performance issues. The station involved does not respond by itself to significant fires.

This Fact Finder was persuaded by the Union's argument. Command and control are important for the suppression of fires and the protection of fire fighters and citizens alike. The lack of command in the early moments, even for insignificant fires, can make a difference in response time, the safety of fire personnel and in the fire's spread. On those few occasions when the Lieutenant is performing the Captain's duties and is not able to ride the apparatus as it goes in-service, fire fighters must be able to look to an officer for direction.

Recommendation: While the Union did not provide language, the City is directed to modify its existing practice to provide an acting Lieutenant at Fire House No. 1 under the circumstances described above.

15. PAY FOR STANDBY TIME (WHEN CARRYING THE BEEPER):

The Union's Position -- Forty (40) hour personnel when carrying the Beeper shall be paid twelve (12) hours' pay each week.

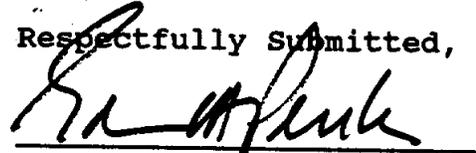
The City's Position -- current contract.

There is no question that the Fair Labor Standards Act does not require the payment under the circumstances described by the Parties. The Union argues that while Beeper duty is not onerous, once every four (4) or five (5) weeks and occasional call outs (for which the employee is paid a minimum of three (3) hours' pay), it does affect the employee's life style. The Union has no quarrel with the pay when called out (time and one-half for all hours worked with a guaranteed minimum of three (3) hours pay) but notes that other City bargaining units does pay its members twelve (12) hour's pay for standby duty. Furthermore, contrary to the City's claim that an employee is not disciplined for not showing up, the members of the bargaining unit who perform these duties have a great deal of pride and do take their assignments seriously. The City argues that by current practice the employee with the Beeper is not disciplined if the holder does not report (either Chief's Administrative Staff or other fire fighters are asked to do the work) and if the holder reports, the holder is paid at time and one-half for the work.

The Fact Finder was persuaded by the Union's argument. However, the Union's argument goes a bit too far. The Fact Finder notes that the issue is carrying the Beeper and not being called out that causes the problem.

Recommendation: Each forty (40) hour employee shall be paid a stipend of one hundred dollars (\$100.00) per week during the week that the employee has the Beeper. If the employee is not called out, the employee shall retain the stipend. If the employee is called out, the employee's earnings in any week the employee carries the Beeper shall be offset against the stipend up to the amount of the stipend. Any additional earnings shall be paid out to that employee. However, if the employee is called out and does not come in to work when called, the next week that the employee carries the Beeper, the employee shall not be entitled to the stipend. If called out during that week, the employee shall be paid only what the employee would otherwise be entitled under the existing practice.

Respectfully Submitted,



Edward A. Pereles
Fact Finder

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