

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

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In the matter of

Case No. 96-MED-04-0409

Fact-finding between:

IAFF Local 334

Fact-finder:
Martin R. Fitts

and

City of Lima

August 13, 1996

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

Appearances

For the IAFF Local 334:

- Kevin Rader, President, IAFF Local 334
- Ron Hesseling, IAFF Local 334
- Jim Foust, IAFF Local 334
- Michael Ulrich, IAFF Local 334
- Dan Endicott, IAFF Local 334
- Ed Hower, IAFF Local 334
- Doug Corwin, IAFF Local 334

For the City of Lima:

- Donald J. Binkley, Clemans, Nelson & Assoc.
- Pete B. Lowe, Clemans, Nelson & Assoc.
- Jim Bowers, Clemans, Nelson & Assoc.
- John C. Brookman, Fire Chief, City of Lima
- Peggy L. Snyder, Dir. of Human Resources, City of Lima
- John Gillivan, Finance Director, City of Lima

PRELIMINARY COMMENTS

The Collective Bargaining Agreement consists of all full time, non-probationary firefighters, excluding the Fire Chief and Assistant Fire Chiefs. There are approximately 70 employees in the bargaining unit

The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on May 31, 1996. The parties met on the following dates for the purpose of collective bargaining: April 25, 1996, May 8, 1996, May 22, 1996, May 23, 1996, and June 5, 1996.

The fact-finding hearing was held on July 12, 1996 in the offices of the City of Lima. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were ten issues at impasse: Reduction of Workweek; Sick Leave; Funeral Leave; Holidays; Vacations; Uniform Allowance; Union Business; Schooling and Education; Salary Schedule; and Effective Date/Duration. The parties declined mediation at this time, noting that they had utilized Interest-Based Bargaining to achieve a number of tentative agreements.

In rendering the recommendations in this Fact-finding Report the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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;
3. The interest and welfare of the public, and 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;

4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented at the July 12, 1996 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Reduction of Workweek

Positions of the Parties

The Union is proposing a reduction in the work week to a 50 hour average, down from the existing 53 hour average. At the hearing the Union also presented a counter proposal calling for a 51.7 hour average work week. The union stated that going to the shorter average work week would result in each firefighter getting about three and a half days more off per year, and would get them closer to what other communities work. It cited as comparables Findlay (51.7), Mansfield (48) and Marion (48).

The City counters that to go to a 50 hour week would cost the City the equivalent of 12% of the current wage cost, or \$363,860, before any wage increases, since the lost time would have to be made up with overtime. Figured on a pay per hour basis, a reduction in the workweek from 53 to 50 hours would be the equivalent of each employee receiving a 6% wage increase. The City stated that it

simply cannot afford to give the firefighters any more time off.

Findings and Recommendation

The City's arguments for retention of the work week center on the high cost of reducing it. While the comparables for Mansfield and Findlay show that they work a shorter work week, the Union presents no other compelling reason to shorten the existing 53 hours. The flexibility inherent in the firefighters' schedule effectively defeats the argument that the current work week makes it difficult for firefighters to attend little league games, etc. The Fact-finder agrees with the City's proposal that the work week remain at an average of 53 hours, and recommends that the language in Section 8.01 Article 8, Hours of Work and Overtime, in the current agreement be retained.

Issue: Sick Leave

Positions of the Parties

The Union proposes retaining the language in the current agreement, and noted that the reductions the City has proposed would more than pay for the wage increases the Union is proposing.

The City proposes changing the rate that sick leave is accumulated to .0575 hours of sick leave for each hour worked, with no sick leave earned as a consequence of overtime, and no sick leave earned while an employee is on sick leave, unpaid leave of absence, laid off, suspended, or absent without leave. The City is also proposing that the maximum sick leave accrual per calendar year be 158.47 hours.

Findings and Recommendation

The present agreement provides for fifteen sick days (24-hour tours of duty) per year, or a total of 360 hours of sick time. While the City's proposal to reduce the sick days would be a considerable reduction in the sick leave as presently provided for in the Agreement, it is a rational and sound proposal. The work schedule of the firefighter contains considerable time off in between tours of duty, which in effect minimizes the need for a large number of sick days. The City's proposal provides adequate sick leave for the members of the bargaining unit, and is in line with what is provided for other City of Lima employees.

The Fact-finder recommends the Employer's proposal for Section 9.02, which reads:

9.02 Unused sick leave may be accumulated at the rate of .0575 hours of sick leave for each hour worked. No sick leave shall be earned as a consequence of overtime hours worked. No sick leave credit will be earned while an employee is on injury leave, unpaid leave of absence, laid off, suspended or absent without leave. The maximum sick leave accrual per calendar year will be 158.47 hours

The Fact-finder also recommends the employer proposal for Section 9.05, which adds the following sentence to the language in the current agreement:

9.05 Current Agreement plus add: "When an employee passes away while in active employment, the surviving spouse or estate of the deceased will be eligible to receive sick leave payment for which the deceased would otherwise have qualified."

Issue: Funeral Leave

Positions of the Parties

The Union proposes keeping the funeral leave language as it is in the current agreement.

The City proposes to make the definition of "family" and the use of funeral leave for funerals more consistent with that of other City employees. The City's proposal is that "funeral leave" be utilized for the death of a father, mother, brother, sister, spouse, child, or step-child and that sick leave be utilized in the event of the death of a grandparent, grandchild, spouse's parents, spouse's grandparents, brother-in-law or sister-in-law. The City's proposal eliminates "any relative living in the same household on a continuous basis."

Findings and Recommendation

In the realities of today's families, it is extremely difficult to adequately define "family" for the purposes of funeral leave. The City's proposal, which is in keeping with the language in agreements with the City bargaining units except for the FOP, seems fair and adequate. Given the flexibility inherent in the firefighter's work schedule, it does not appear that any firefighter would suffer hardship with the changes proposed by the City. The Fact-finder recommends in its entirety the language for Article 10, Funeral Leave, which reads:

10.01. Each employee not on the platoon system, shall be entitled to a funeral leave not to exceed three (3) work days, to make household adjustments, arrange for funeral services, and to attend the funeral services in the event of the death of a father, mother, brother, sister, spouse, child or stepchild. The three (3) work days shall be taken within one (1) week of the funeral.

10.02. Each employee not on the platoon system, may use sick leave, not to exceed three (3) days in the event of the death of grandparent, grandchild, spouse's parents, spouse's grandparents, brother-in-law, or sister-in-law. The three (3) workdays shall be taken within one (1) week of the funeral.

10.03. Each employee on the platoon system, shall be entitled to a funeral leave of one (1) tour of duty (24 hours) for the purposes listed in paragraph 10.01 above, except that if an employee is working, or scheduled to work on the day of death, he shall be released from duty, upon request, for the balance of that tour. This exception shall not effect the entitlement of the funeral leave.

10.04. Each employee on the platoon system, shall be entitled to use sick leave, not to exceed one (1) tour of duty (24 hours) for the purposes listed in paragraph 10.02 above.

Issue: Holidays

Positions of the Parties

There are actually two issues to be dealt with. The Union is proposing that personnel assigned to a forty-hour work week be able to take three "priority" holidays above the normal holidays, which it demonstrated would put them equal to the other City bargaining units.

The City is proposing that, for scheduling purposes, to change from "two other employees" to "one other employee" eligible to take the same tour off for a priority day.

The City suggests that these issues could be "traded", while the Union objects, noting that the Union's proposal would affect only four of the employees in the bargaining unit, while the City's proposal would affect the remaining 66 members of the bargaining unit.

Findings and Recommendation

Regarding the Union's proposal, it demonstrated that providing the forty-hour workweek employees with a third "priority holiday" would provide them a benefit all the other City employees already receive. This seems fair, and no testimony from the employer gave a compelling reason why this proposal should be denied.

Regarding the City's proposal, the Union testified that only nine times in the past year had the City been forced to cover a priority holiday with overtime. The City did not dispute this number. While the Union presented this testimony with the intent to show that its proposal would have a negligible effect on the City's budget, it also demonstrates that only nine times would the City have been likely to deny a request for a "priority holiday" for a firefighter. Assuming that all 66 firefighters took all of their "priority holidays," it appears that out of the 264 requests for the "priority holiday," only nine, or less than 3.5% of them would have been denied due to a replacement having to be paid overtime. The Union failed to demonstrate significant harm from the City's proposal, and the City will incur a savings that can be utilized to offset increased costs elsewhere.

Thus the Fact-finder recommends Section 11.02 of Article 11, Holidays, shall read as follows:

11.02. Employees receiving ten (10) tours of duty off with pay in lieu of set holidays, shall be able to utilize up to four (4) such tours as "priority holidays", such

"priority holidays" may be taken upon the request of the employee providing that the request is made at least twenty-four (24) hours in advance of the beginning of the tour to be taken off and that no more than one (1) other employee is taking the same tour off by exercising their right to a "priority holiday." Personnel assigned to a forty (40) hour work week shall receive three (3) "priority holidays" above the normal holidays.

Issue: Vacations

Positions of the Parties

The Union is asking that the language in the current agreement remain the same.

The City proposes a change in the vacation accrual to be more consistent with other City units. The City proposal is to roll back the 9 tours after 8 years to 8 tours; the 12 tours after 15 years to 10 tours; and the 15 tours after 22 years to 12 tours. It argues that it doesn't have the financial ability to pay for the old agreement's cost. The City noted that the firefighters would still have more time off than other City units.

Findings and Recommendation

The present vacation accrual system was agreed upon in 1990. At that time the parties agreed that the City was in dire financial straits, and the settlement at that time increased the vacation days in lieu of a wage increase in the first year. It should be noted that the second and third years of that agreement included total wage increases of 10.5%. While the City argues that the firefighters should be brought into line with the other City units, it did not present evidence that it has

recently negotiated reductions in vacations from the other bargaining units, so the Fact-finder must assume that the provisions are basically the same as they were in 1990. Thus the City was willing in 1990 to agree to more vacation time for the firefighters, knowing that it would result in more vacation time than the other City units received. Further, the justification for the additional time in 1990 was that the City was in financial difficulties, yet now it states that financial difficulties dictate that it reduce the vacation time. It is not reasonable for the City to attempt to justify opposite goals with the same argument, even understanding that six years have passed, and that administrations and council members change. The City did not present convincing evidence that the vacation accrual as presently implemented causes it serious harm. The Fact-finder agrees with the Union's proposal, and recommends that the vacation language remain the same as in the current agreement.

Issue: Uniform Allowance

Positions of the Parties

The Union stated that historically they have had a \$5/month increase in the uniform allowance in the last year of the contract with the City. Currently a \$43/month allowance is granted (\$513/year), and any unused balance may be carried over in the following year. The Union proposes that it be increased to \$48/month (\$576/year) effective January 1, 1999, or December 31, 1998 if the duration of the agreement is two years. The Union position is that they ruin a lot of uniforms, given the nature of their job. It cited as comparables Mansfield (\$1,000/year), and Marion and Findlay, where the employer pays for the uniforms.

The City countered with comparables within a thirty-mile radius and a fifty-mile radius, which showed an average cash allotment of \$420, but also included

several departments which provided uniforms as needed. The City believes that the current uniform allowance is adequate for the two-year duration it is asking for this agreement.

Findings and Recommendation

The comparables show that there is a wide variance in the manner in which communities handle uniform allowances, running from fully provided to considerably less than the current allowance for the Lima firefighters. Past bargaining practices of the parties show that they have historically provided a \$5/month increase in the last year of the agreement. With the savings in overtime cost the City will receive from the recommended change in how "priority holidays" are to be taken, the City can more than afford to cover the additional cost of the Union's proposal. The Fact-finder recommends that Section 15.02 of Article 15, Uniform Allowance, shall read as follows:

15.02. Upon satisfactory completion of his twelve (12) month probationary period, the employee shall be allowed to receive additional clothing and apparel upon a basis of forty-three (\$43) per month for each month of the calendar year yet remaining in the year in which they obtain permanent appointment. Thereafter, the employee, together with all other employees, during the time they are required to wear an official fire uniform, shall be entitled to receive in cost the sum of five hundred sixteen dollars (\$516) per person per calendar year, except as hereafter otherwise provided. Such sums of five hundred sixteen dollars (\$516) per calendar year shall be cumulative such that if the entire maximum allocated to such employee is not used during one (1) calendar year, the unused difference shall be placed in credit of such employee for a subsequent calendar year and thereupon shall be added to his allowance for such later year. Effective January 1, 1998 the uniform allowance will be increased to forty-eight dollars (\$48) per month.

Issue: Union Business

Positions of the Parties

The Union proposes an increase in the number of days off due to union business be increased to 25 days from the current 20 days. The Union noted that this is not a "per person" request, but rather the total number of days that could be utilized by the entire bargaining unit.

The City noted that the current 20 days allowed under the present agreement are not being utilized, and noted that it had agreed in prior negotiations to a carry-over provision to the next calendar year if days were not utilized.

Findings and Recommendation

The Union did not present any evidence that the current 20 days were not adequate, and did not present any need to have the additional 5 days. It did present evidence that the City's agreement with the FOP (representing police officers) allows for 36 days (or 288 hours) off for union business. This is a difficult comparison, since the IAFF's 20 days represent 24 hours off per day (480 total hours) versus only 288 hours total for the FOP. Regardless, the Union did not dispute the City's contention that the days are not currently being utilized fully, and the Union did not present any compelling reason for the additional five days. Further, the current agreement allows for the 20 days to be used in quarter-day increments.

In light of this, the Fact-finder recommends the Employer's proposal, which is to retain the language in the current agreement for Article 20, Union Business, with the addition of the tentative agreement on additional language which has been reached by the parties.

Issue: Schooling and Education

Positions of the Parties

The Union is proposing to add to the current agreement a provision that provides step increases for employees who achieve the level of Fire Inspector III, or Certified Fire Investigator; and for Platoon Chiefs who successfully complete "incident command system", "basic incident command system", "intermediate incident command system", and "advanced incident command system" courses at the Ohio Fire Academy. The Union noted that it is not asking that the City pay for these courses, nor to have the employees on paid time when they take the classes, but only asking that the employees be given additional compensation upon completion.

The City countered that this issue is not about education, but rather about money, that is, having people moved into higher pay levels. It believes that establishing job classifications is a management right of the City, and noted that City Council has not yet determined the training cited by the Union as necessary at this point.

Findings and Recommendation

The question of whether the training cited by the union is necessary or not is not before this Fact-finder. What is before the Fact-finder is whether an employee should receive compensation at a higher level upon completion of this education. The Union did not provide any comparable information to demonstrate that this additional compensation is common practice in other fire departments. With a lack of compelling reasons to embrace the union's proposal, the Fact-finder recommends the Employer's proposal that Article 22 of the current agreement remain unchanged.

except for the change provided for in the tentative agreement on Section 22.01 reached between the parties.

Issue: Salary Schedule

Positions of the Parties

The Union is proposing a 3.5% increase to be effective January 1, 1997; a 3.5% increase effective January 1, 1998; and a 3.5% increase effective January 1, 1999. This is consistent with the Union's proposal for a three year duration for the agreement.

The City is proposing a 2% increase effective January 1, 1997, and a 2% increase effective January 1, 1998, consistent with its proposed duration of two years for the new agreement. The City claims it does not have the ability to pay for the Union's proposed increase.

Findings and Recommendation

The City's income tax revenues have remained steady, despite an acknowledged loss of manufacturing jobs in the community. The Fact-finder recognizes that the ability to forecast the future revenue is difficult for the City due to these losses, and deals with that issue in the recommendation for the two year duration later in this report. However, the City consistently stated throughout the hearing and in its exhibits that it wished to reduce the time off granted to firefighters, which would reduce the overtime needed in the department. In the earlier sections of this report the Fact-finder has agreed with many of the City's proposals to do just that. At this point, however, a matter of fairness must be addressed. If the firefighters are to reduce time off, and if the firefighters are to

accept a two year agreement, then they do deserve something for accepting those changes. The Union's proposal for an annual increase of 3.5% is not out of line with what comparables showed others receiving, and does in fact reward the bargaining unit for taking some otherwise difficult changes in time off. And in reality the changes recommended by the Fact-finder will result in reduced costs for the City during this agreement. Thus, the Fact-finder recommends that there be a 3.5% increase in wage rates effective January 1, 1997, and a 3.5% increase in wage rates effective January 1, 1998.

Issue: Effective Date/Duration

Positions of the Parties

The Union's proposal for a three year duration for the agreement, as the current agreement also called for. It stated at the hearing that it is happy with the three year duration, and that it provides stability for the department, and helps keep politics out.

The City is proposing to change the duration to two years. It stated that there are only two and a half years left in the AFSCME agreement, and that the City is also proposing a two year agreement to the FOP in their current negotiations. Its representative said that the City doesn't feel it can commit to two years. However, in its final proposal presented at the hearing, the City states that it "will not present exhibits and evidence which demonstrates that it is not in a financial position to forecast an increase in pay for its employees for more than two (2) years (inability to pay)." The City did present an overview of during the hearing of changes that are occurring in the Lima economy due to the closing of several large employers and the relocation of others outside of the City limits.

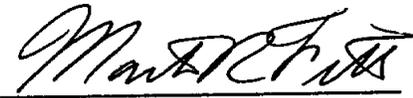
Findings and Recommendation

While there may only be three years left in the AFSCME agreement, the fact is that it was very recently negotiated at three years. Further, the City's proposal to the FOP for a two year agreement is just that - a proposal. However, the bargaining history of the City with this unit, as well as with other units, is mixed, with some two-year and some three-year agreements, as well as a one-year agreement within the last ten years. The Fact-finder is satisfied that the bargaining history provides precedent for the parties to be sensitive to changes in the local economy over the last decade, and agrees with the City that there may be considerable change in the coming two years. The City's proposal for a two-year duration is recommended, so that Section 30.01 of Article 30, Duration should read:

30.01. This Agreement shall become effective on July 1, 1996, and shall remain in full force and effect until the 30th day of June, 1998. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least ninety (90) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin not later than seventy-five (75) days prior to the anniversary date. This Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party. The parties hereby also agree that the salary schedule as determined by Article 23 of this Agreement shall remain in effect through December 31, 1998. Negotiations under this Article shall be for changes in salary to be effective January 1, 1999 and thereafter.

Other Tentative Agreements reached by the Parties

At the request of the parties, the Fact-finder has reviewed the other tentative agreements reached by the parties during the course of their negotiations. The Fact-finder recommends all the tentative agreements as agreed upon by the Parties.



Martin R. Fitts 8/13/96
Fact-Finder