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Before Louis V. Imundo Jr., Fact-Finder

STATE EMPLOYMENT
RELATIONS BOARD

In the matter of Fact-Finding between the

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CITY OF WORTHINGTON

and the

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AND ITS LOCAL NO.
3498

SERB Case No. 96-MED-09-0767

This matter was heard before Louis V. Imundo, Jr., Fact-Finder, in Worthington, Ohio, on January 30, 1997, and February 6, 1997.

1.0 INTRODUCTION

1.1 Appearing For Management

- Ronald G. Linville, Attorney at Law
- Paul Feldman, Assistant City Manager & Director of Personnel
- Steve Gandee, Director of Finance
- Bruce Moore, Fire Chief
- Scott Highley, Division Chief
- Pam Dedent, Attorney at Law
- Rebecca Hockenberry, Paralegal

1.2 Appearing For The Union

- Russell Carnahan, Attorney at Law
- Patrick Mulligan, President, Local 3498
- James R. Papenbrock, Vice President
- Ronald Slane, Secretary-Treasurer
- James Meige, Assistant Secretary-Treasurer

2.0 NATURE OF THE CASE

At the request of the Parties, I served as a mediator for the entire day on January 30, 1997. The Parties worked diligently to come to an agreement, and nearly succeeded. However, late in the day it became evident that the outstanding issues could not be resolved, and it was determined that a fact-finding hearing be scheduled.

The following issues were unresolved when the Fact-Finder met with the Parties on February 6, 1997.

- Article 7 - Grievance Procedure, Section 7.4, Paragraph E
- Article 10 - Substance Abuse And Testing, all sections
- Article 19 - Wages, Section 19.1
- Article 19 - Wages, Section 19.6
- Article 20 - Regular Work Periods And Overtime, Section 20.1
- Article 20 - Regular Work Periods And Overtime, Section 20.2
- Article 21 - Leaves, Section 21.1
- Article 21 - Leaves, Section 21.3
- Article 21 - Leaves, Section 21.4
- Article 21 - Leaves, Section 21.5, Paragraph C
- Article 24 - Employee Readiness, Section 24.1
- Article 24 - Employee Readiness, Section 24.3
- Article 25 - Insurance, Section 25.3

During the course of the Hearing, the Parties agreed to settle the following unresolved issues: Article 19, Section 19.6, transition adjustment language only, Article 21, Section 21.5, Paragraph C, Article 24, Section 24.1, and Article 24, Section 24.3.

The Issues for the Fact-Finder to study, and make recommendations on are the following:

- Article 7 - Grievance Procedure, Section 7.4, Paragraph E
- Article 10 - Substance Abuse And Testing, all sections
- Article 19 - Wages, Section 19.1
- Article 19 - Wages, Section 19.6 (in part)
- Article 20 - Regular Work Periods And Overtime, Section 20.1
- Article 20 - Regular Work periods And Overtime, Section 20.2
- Article 21 - Leaves, Section 21.1
- Article 21 - Leaves, Section 21.3
- Article 21 - Leaves, Section 21.4
- Article 25 - Insurance, Section 25.3

3.0 POSITIONS OF THE PARTIES ON THE UNRESOLVED ISSUES, AND THE FACT-FINDER'S RECOMMENDATIONS

Article 7 - Grievance Procedure, Section 7.4, Paragraph E

Union's Position

The expired agreement provides for advisory arbitration, and for the Union to pay for all costs directly related to the services of the arbitrator. The Union seeks to have binding arbitration. The Union argued that there is a need for an impartial third party to settle grievances that reach the arbitration step of the negotiated grievance procedure. The Union further argued that binding arbitration is far less costly than litigation, and that binding arbitration will significantly reduce the likelihood of litigation. The Union contended that the arbitration process serves to benefit both the Parties, and it is unfair to require that the Union pay all costs for the services of an arbitrator. The Union contended that the costs for the services of an arbitrator should be equally shared by the Parties.

Management's Position

Management opposed the Union's proposal. It was Management's position that the current grievance procedure has served the Parties well, and there is no compelling reason to change it. It was Management's position that no outside third party understands the operational climate, or the relationship between the Parties as well as the Parties themselves, and any decision by an arbitrator could have far reaching, unintended consequences that could be detrimental to the interests of both the Parties. It was Management's position that the best course of action is to let the Parties settle their differences between themselves.

Fact-Finder's Recommendation

The Fact-Finder understands, and appreciates Management's concern about outsiders making decisions that could have far reaching effects on the City's operations, and Management's relationship with employees. However, in our society, no organization, and in particular public sector organizations like cities are run without some input and direct involvement by people who could be labeled as outsiders. The Fact-Finder well recognizes that managers at all organizational levels, and in particular at the highest levels, are not particularly receptive to the idea that outsiders may overturn their decisions. In the Fact-Finder's view, providing for third party intervention by use of binding arbitration would not be precedential. Such is already provided for in the negotiated agreement between the City and the FOP. This is not to imply that because the police have binding arbitration, the fire fighters must also have it. The Fact-Finder notes that the State of Ohio's collective bargaining law, and many federal statutes provide for third party intervention in employee relations matters.

It is common knowledge that we live in a very litigious society. In the Fact-Finder's opinion, the benefits of binding arbitration far outweigh the financial, and non-financial costs. Among the many benefits of binding arbitration is the fact that binding arbitration often serves as an efficient and effective alternative to litigation. In the Fact-Finder's opinion, the Parties should adopt the Union's proposal for binding arbitration. The Fact-Finder further believes that because both the Parties can benefit from binding arbitration, the costs of an impartial arbitrator should be equally shared. In the Fact-Finder's opinion, requiring the Union to pay such costs is patently unfair, and clearly meant to deter the use of arbitration. In the Fact-Finder's view, requiring the losing Party to pay for the arbitrator is also unfair because it is tantamount to a double cost. The losing Party incurs a cost when they receive an unfavorable decision and award. Requiring the losing Party to pay the entire cost, while acting as a deterrent to frivolous claims, amounts to pouring salt on an open wound.

Article 10 - Substance Abuse And Testing, all sections.

Management's Position

It was Management's position that although, at present, there are no substance abuse problems in the Fire Department, a more comprehensive policy is needed. In addition, Management argued that it is necessary to include the fire fighters under the proposed policy that is designed to establish uniformity for all City employees.

Union's Position

The Union is opposed to the proposed policy because the current policy is effective. The Union further opposed the proposed policy because they were not directly involved in its creation.

Fact-Finder's Recommendation

The Fact-Finder is well informed about the problems, and costs associated with substance abuse in the workplace. The Fact-Finder understands the reasons why Management wants to have a uniform policy for all City employees. Given the uniqueness of fire fighters, and police officers' working conditions, and job duties when compared to the job duties and working conditions of all other City employees, the Fact-Finder questions the wisdom of having all employees under the same policy. The Fact-Finder reviewed the proposed policy, and while it is well reasoned, he is concerned about its scope and depth. In the Fact-Finder's opinion, more words generally leads to a more misunderstanding and confusion, which often results in more suspicion and distrust. In the Fact-Finder's opinion, the Parties would be wise to keep the policy in the expired agreement in effect, and with one minor change, carry it over into the successor agreement. The one

minor change is substituting the words "Reasonable Suspicion For Testing" for the current words "Probable Cause for Testing".

Article 19 - Wages, Section 19.1

Management's Position

It was Management's position that bargaining unit members are well paid, and that their total compensation is better than many comparable fire departments in central Ohio. Management conceded that there is too much compression between the lieutenants and the captains, and they proposed higher raises for the captains over the life of the successor agreement to reduce the compression. Management proposed that bargaining unit members, with the exception of captains, receive a 3.0 percent increase for each of the three years of the successor agreement, and that the captains receive 4.0 per cent for the first two years of the successor agreement, and 3.0 per cent in the third year.

It was Management's position that the proposed wage rate increases exceed the current, and projected rate of inflation. It was also Management's position that bargaining unit employees have excellent working conditions, modern equipment and facilities, and strong community support. Management pointed out that fire fighters in a number of communities in central Ohio are paid less than the City's fire fighters, and do not have working conditions, or facilities that come anywhere close to what exists in Worthington.

Union's Position

It was the Union's position that the transition of bargaining unit members from Sharon Township to the City of Worthington resulted in their losing money, and that their wage increase proposal is designed to compensate them for what they lost. It was the Union's position that no other City employees, including non union employees have received less than a 4.0 per cent increase, and that bargaining unit employees would be unfairly penalized if they received less. It was the Union's position that because of the City's mutual aid agreement with the City of Columbus, they can be called upon to fight difficult fires. In addition, General Electric, and Anheiser Busch have large plants in Worthington.

Fact-Finder's Recommendation

The Fact-Finder has thoroughly reviewed the positions of the Parties, and the supporting documentation that was submitted into the record. Recent studies have established that the rate of inflation, as calculated by the Department of Labor, overstates the rate of inflation by at least one percent. The Fact-Finder agrees with these findings. In the Fact-Finder's opinion, the bargaining unit's members are competitively paid. However, as stated by the Parties, there is evidence of wage compression between the lieutenants and the captains.

Independent research has led the Fact-Finder to conclude that wages are rising at the average annual rate of 3.8 per cent. This rate of increase far exceeds the rate of inflation. In the Fact-Finder's opinion, there is no justification to support the Union's proposed wage increases for bargaining unit employees. While the Fact-Finder does not support the notion of "me too" collective bargaining, he does believe that Management's proposed wage increases are inadequate.

The Fact-Finder recommends that all bargaining unit job classifications with the exception of captains receive a 4.0 per cent wage increase for each of the three years of the successor agreement. The Fact-Finder recommends that Captains receive a 4.6 per cent wage rate increase for each of the three years of the successor agreement. The wage increases for all bargaining unit employees should be retroactive to January 1, 1997.

The Fact-Finder recommends that the current basis for wage calculations as set forth in Article 20 of the predecessor agreement be retained, and carried over into the successor agreement.

Article 19 - Wages, Section 19.6

The issue regarding the \$1,375.00 transition adjustment for bargaining unit members with 20, or more years of service at the time the predecessor agreement went into effect was settled at the February 6, 1997, Hearing.

Management proposed a \$50.00 per year increase in the annual service credit payment for each of the three years of the successor agreement. The proposed increase is the same as what the Union sought in their proposal.

Fact-Finder's Recommendation

The \$50.00 per year increase in the annual service credit payment for each of the three years of the successor agreement should be adopted.

Article 20 - Regular Work Periods And Overtime, Section 20.1

Union's Position

The Union sought to reduce the work week from the current 55 hours to 52 hours. The Union contended that the normal workweek for fire fighters in central Ohio is between 53 and 56 hours. The Union argued that the City's fire fighters average more runs per day than fire fighters in comparable cities in central Ohio, and they need additional time off to cope with job stress. The Union claimed that a reduction in the work week would not adversely affect fire fighting service requirements, and would reduce the City's cash payout by eliminating overtime hours incurred by FLSA hours.

Management's Position

It was Management's position that there be no reduction in the hours of work for fire fighters, lieutenants, and captains from the current 55 hours week. Management argued that any reduction in hours would reduce the City's ability to meet minimum staffing requirements without significant overtime costs being incurred. Management took issue with the Union's contention that the normal work week for fire fighters in central Ohio is between 53 and 56 hours a week.

It was Management's position that because of their 24 hours on, 48 hours off schedule, bargaining unit members have more time off than other City employees. Management further argued that bargaining unit employees already have large balances of leave time, and reducing the work week would only add to this time, time they do not need, nor can they possibly use.

Fact-Finder's Recommendation

Of all the unresolved issues, the Parties were furthest apart on this one. The Union was adamant in their desire to reduce the work week, and Management was just as adamant in their desire to keep it the same. Based on information submitted into the record, including the City of Columbus whose fire fighters work a 48 hour week, the average for all surrounding communities including Columbus is 55 hours per week. The Fact-Finder notes that many bargaining unit employees do not use their earned vacation time off, and have accumulated so much that Management is concerned about the future financial liability. In fact, one of the unsettled issues was Management's proposal to cap accrued vacation time off.

After giving full consideration to the Union's arguments, the Fact-Finder has come to the conclusion that any reduction at this time would be too costly to the City. In addition, the Union failed to convincingly demonstrate that any reduction in the work week is warranted. The Fact-Finder recommends that the language in the expired agreement can be carried over intact into the successor agreement.

Article 20 - Regular Work Periods And Overtime, Section 20.2

In view of the Fact-Finder's recommendation with respect to Section 20.1, the language in Section 20.2 should not be changed, and should be carried over intact into the successor agreement.

Article 21 - Leaves, Section 21.1

Management's Position

Management proposed that the special holiday language be eliminated.

Union's Position

The Union rejected Management's proposal, and argued that there was no compelling reason to give it up.

Fact-Finder's Recommendation

In the Fact-Finder's opinion, Management's rationale for eliminating the language at issue was not persuasive. The Fact-Finder recommends that the language in question be carried over intact into the successor agreement.

Article 21 - Leaves, Section 21.3

Management's Position

It was Management's position that when the transfer from Sharon Township to the City of Worthington occurred, bargaining unit employees carried over a huge amount of earned, but unused vacation. It was Management's position that the present allowed carry over is too high, and should be reduced.

Union's Position

It was the Union's position that vacation carry over is a benefit, and the language in the expired agreement should be carried over intact into the successor agreement.

Fact-Finder's Recommendation

In the Fact-Finder's opinion, vacation time off is intended to provide employees with opportunities to get away from the stress and strain of work, and to pursue other life's activities. The Fact-Finder believes that no matter how much people may enjoy their work, they need time away from work. The Fact-Finder further believes that over time it is counterproductive and unhealthy to not take vacation time off from work. The Union argued that because of the stress and strain that is inherent to bargaining unit members' job duties they need a shorter work week. However, as established by the record, many bargaining employees do not use their earned vacation time. The Fact-Finder believes there is an inconsistency between the Union's argument for more time off, i.e., a shorter work week, and their argument of not wanting to place limits on carried over vacation time. In the Fact-Finder's opinion, capping carried over vacation time would compel bargaining unit members to take more time off, and this would result in less total hours on the job per year.

The Fact-Finder recommends that carried over vacation time be capped at 240 hours for the two 40 hours a week bargaining unit members, and at 336 hours for

all the 55 hours a week bargaining unit members. The caps should be incrementally phased in over the life of the agreement.

Article 21 - Leaves, Section 21.4

This language ties in with Article 20's language, and given the Fact-Finder's recommendation that Article 20's language not be changed, Article 21, Section 21.4's language should also not be changed. The Fact-Finder recommends that Article 21, Section 21.4's language be carried over intact into the successor agreement.

Article 25 - Insurance, Section 25.3

Management's Position

Management proposed to offer family vision care insurance as an addition to the existing insurance benefits. Management proposed to maintain for the life of the new agreement the current \$30.00 monthly contribution for family coverage for those employees who are enrolled in the managed care, or preferred provider program. Management further proposed that employees who prefer to use traditional care pay a \$50.00 monthly contribution for the life of the new agreement. Management argued that the proposed increase better reflects the cost to the City for providing such coverage.

Union's Position

The Union agreed with the addition of family vision insurance, and opposed the increase in premium for traditional care insurance.

Fact-Finder's Recommendation

The Fact-Finder recommends the adoption of family vision care insurance, and the maintenance of the \$30.00 per month employee contribution for family coverage under the managed care program. The Fact-Finder believes that the proposed \$50.00 monthly contribution for traditional care coverage is excessive and unwarranted. The Fact-Finder recommends that the monthly contribution for such coverage be \$40.00 for the life of the successor agreement.

February 12, 1997
Date

Louis V. Imundo, Jr.
Louis V. Imundo, Jr.
Fact-Finder