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**IN THE MATTER OF AN INTEREST DISPUTE CONCERNING THE TERMS AND
CONDITIONS OF THE COLLECTIVE BARGAINING CONTRACT BETWEEN:**

CITY OF MIAMISBURG, OHIO

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3115

SERB Case No.: 96-MED-10-0893

Hearing Date: December 11, 1996
Hearing Location: Carnegie Center, Miamisburg, Ohio

City Represented By:
John C. Lombard
Coolidge, Wall, Womsley & Lombard
Dayton, Ohio

Other City Representatives Present:
David Collingsworth, Assistant City Manager
Robert Bobbitt, Fire Chief

Union Represented By:
Kerry Autio, President
Randy J. Botis, Committee Member
Chris Amaler, Committee Member
Frederick V. Rachlow, Committee Member
Lawrence H. Schmitz, Committee Member

Fact-Finder: Ann C. Wendt, Ph.D., SPHR - Fairborn, Ohio

Date of Fact-Finding Report: December 16, 1996

CRITERIA

Pursuant to 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Fact-Finding Report are based on reliable information relevant to the issues before the Fact-Finder.

bargaining unit's wage ranking and level among comparable cities identified by Conciliator Donnelly (1988). The Union's proposal seeks to improve its ranking and level among comparative and non-comparable cities. Yet, the evidence presented does not support such enhancements during a period of uncertainty concerning the City's revenues. Furthermore, base wages cannot be accurately evaluated without including all wage incentives that are regularly provided to the bargaining unit members. Therefore, the recommended wage increase is three percent (3%) per year during each 1997 and 1998, and three and one-half percent (3.5%)

ISSUE: PARAMEDIC RECERTIFICATION INCENTIVE, Article XIII, Section 12

Positions

Union: Increase each step of the present incentive by \$150 which will increase the minimum to \$670 and the maximum to \$950.

City:

The City has no philosophical objection to the Union's proposal unless the total economic package is unreasonable.

Findings of Fact:

1. This incentive was negotiated in 1990 for the 1991 contract. It was established to provide an incentive for employees to obtain continuing education for paramedic certification. Paramedic certification requires the paramedic to currently complete 80 hours of continuing education (formerly 72 hours) with no less than 20 hours per year.
2. The incentive scale in the present contract was established based on the year of certification, one through five years which provides a maximum of \$800. The incentive has not increased since it was established. If the incentive had kept pace with annual pay increases, it would be \$969 at the top step, the proposal is a \$150 increase at each step.
3. The City indicated during negotiations it has no problem with the Union's proposal, but it is unwilling to ratify this proposal since it is not part of an economic package.
4. The City recognizes that the EMS volume increases annually since the hospital emergency room increasingly takes the place of the family doctor. The current issue of *Time* contains an article about private, for-profit ambulance services entering the market; not as sub-contractors for public services, but as competitors who race the public EMS services to the business so they can make money. This may create challenges for city departments in the future. The City stated that if the Fact Finder were to award the City's wage proposal, they would accept the Union's Recertification proposal since they see it as reflecting the kind of change that has occurred throughout the bargaining history.

Analysis and Recommendation:

The Fact-finder's recommendation that the City's wage proposal be accepted eliminates the

that end, During the next two years (1997 & 1998) of the Police contract, three percent (3%) increases are scheduled.

5. Conciliator Donnelly, in his 1988 Conciliation Award, (City Exhibit 1) identified the following area cities: Piqua, Fairborn, Huber Heights, Troy and Xenia, as comparison cities to Miamisburg. City Exhibit 3 shows that Miamisburg currently ranks third in wages among these six cities, \$40,826 (maximum base wages, including pension pick-up, longevity pay, paramedic incentive, educational incentive and physical fitness wage incentives) compared to an average among these six cities for base wages and all the six comparable cities at \$42,216 (maximum base wage with all wage incentives) compared to an average among these six cities of \$41,628. The proposed wage increase also will keep Miamisburg above the average. Finally, every other unit in the area, not only police officers, lieutenants, etc., are scheduled for three percent (3%) increases during the next two years through multi-year contracts negotiated last year.
6. Miamisburg's largest employer, the Mound, employed 2,400 people five years ago, many of them highly paid scientists. Today, it employs 930 and with the termination of the Department of Energy's (DOE) contract with EG&G Applied Technologies in April 1997, its future is highly uncertain. NCR, the City's fifth largest employer and Karrolton Envelope, eleventh largest employer, have closed their facilities, together they represent \$300,000 in lost revenue for the City. The sale of Monarch Marking and the recent affiliation of Kettering Medical Center and Grandview Hospital create additional uncertainty concerning the City's revenues. The former since Monarch is now struggling to stabilize and the latter since Grandview Hospital also owns Southview Hospital, located within five minutes of Sycamore Hospital (owned by Kettering Medical Center), another significant Miamisburg employer. While the City has not proposed economic freezes or reductions, its budget projections for 1997 are flat.
7. The Bureau of National Affairs, in its *Daily Labor Letter* (November 7, 1996) reported the national median year-to-date wage increase was three percent (3%). The "All Industries Negotiated Wage Increase" for the first 44 weeks of the year also was three percent (3%). Inflation is forecast to grow at a rate of two and nine-tenths percent (2.9%) during 1997 (BNA's *Daily Labor Letter*, November 26, 1996). This bargaining unit's wage history, 1988-1996 totals a total wage increase of four and seven tenths percent (4.7%). During that period, its cumulative wage increase was 37.5%, compared to a cumulative increase in the Consumer Price Index of 32.8% (City's Summary of Unresolved Issues, pp. 8-9). Finally, deferred wage increases for 1997 are projected at three percent (3%) (BNA's, *Daily Labor Letter*, December 4, 1996).

Analysis and Recommendation:

The presentations and documentary evidence submitted by both parties clearly support a conclusion that the economic base which generates the City's revenues is not increasing at this time. The City's wage proposal is based on flat revenue projections and maintains the

ISSUES BEFORE THE FACT-FINDER:

The following nine issues remained unresolved at the conclusion of the parties December 5, 1996 mediation session: Union Business, Wages, Paramedic Recertification, Extra Days Off, Holiday Pay, Sick Leave, Injury Leave, Health Insurance, and Substance Abuse.

ISSUE; UNION BUSINESS, Article IV, Section 9

The Union, in an attempt to get a settlement, withdrew this issue, stating they were satisfied with the language in the current contract.

ISSUE: WAGES, Article XIII

Positions

Union: Wage (base) increases during each of the three years as follows: 1997 = 4.5%, 1998 = 4.5%, and 1999 = 4.5%.

City: Wage (base) increases during each of the three years as follows: 1997 = 3%, 1998 = 3% and 1999 = 3.5%.

Findings of Fact:

1. The Union asserted that the highest paid fire fighter currently earns \$38,995 compared to \$40,972 for the highest paid police officer. Fire fighters currently earn \$18.75 per hour, compared to \$19.124 by police officers. Fire fighters work 56 hours per week while police officers work 40. (Union Exhibit 3) The Union asserted the proposed increase would put fire fighters near the annual earnings of Miamisburg police officers.
2. The Union's proposed increase would put the Miamisburg fire fighters in the mid-range of salary increases for other area departments (Deerfield, Dayton, Fairborn, Huber Heights, Kettering, Middletown, Moraine, Xenia, Piqua, Wilmington and Miamisburg) (Union Exhibit 4).
3. The City has for a long time had a first-class, highly trained and effective Fire Department. This is the eighth contract between the parties. The Fire Department has consistently provided fire\paramedic services to the community. In 1970 fire calls were 200 and paramedic calls were 800. In 1995, fire calls were 955 and paramedic calls were 1,841, a 280 percent increase in total call volume. Yet, the duties and responsibilities of the fire fighters\paramedics have been the same throughout this period. In 1990, the voters passed a three (3) mill fire levy to add ten (10) fire fighters\paramedics and commit to retaining a quality fire fighter\paramedic service.
4. While the Union believes its wage proposal is necessary to maintain parity with the Police Department, the City does not believe it has ever used that term. Rather, the City asserts that they have consistently attempted to "maintain established relationships". To

dispute concerning the Recertification Incentive. Therefore, the recommendation is that the Recertification Incentive be increased by \$150 at each step, to a minimum of \$670 and a maximum of \$950.

ISSUE: EXTRA DAYS OFF (EDOs)

Positions

Union: Grant six (6) EDOs per year, reducing the work week from 56 hours to 53 hours per week.

City: No provision for EDOs.

Findings of Fact:

1. The Fair Labor Standards Act (FLSA) requires overtime after 40 hours per week. The proposal would reduce the work week by three (3) overtime hours per week.
2. Union Research Report 7 reveals that among the five comparative cities to Miamisburg, EDOs are provided as follows: Fairborn = 7, Huber Heights = 8, and Troy = 13. Piqua has 0 EDOs and Xenia is on a California schedule so EDOs are not applicable.
3. The Union contacted the Department of Labor (DOL) concerning the City's calculation of overtime under the FLSA. The DOL and the City completed a year-long effort this year to assess the adequacy of the City's overtime calculation formula for fire fighters/paramedics. The DOL found some minor inadequacies in the City's application of FLSA Regulations. The DOL review concluded the City had liability. Yet, the extent was minimal overall considering the dollar amount it represented (about \$1,000 to each fire fighter=paramedic). Furthermore, DOL did not conclude it was a wilful violation which would have resulted in penalty assessments in addition to the reimbursements to the employees (Union Exhibit 2).
4. The issue of EDOs has been in dispute between the parties for several negotiations. Conciliator Donnelly (1988) denied the request for EDOs (City Exhibit 1, p.18). Fact-Finder McKinney (1991) recommended EDOs; but the parties agreed to a higher percentage increase in the base wage increase in lieu of EDOs. Finally, Fact finder Imundo (1993, City Exhibit 2) recommended against EDOs. From the City's perspective, its continued objection to EDOs is a quality of service issue, not a time issue. Reducing the work week from 56 to 53 hours per week would cost \$80,000, a five and one-half percent (5.5%) increase across-the-board.

Analysis and Recommendation:

The proposed three hours per week reduction in the work week represents a reduction of approximately five and one-half percent (5.5%), a minimal hours reduction for six (6) EDOs which the City believes would have a negative affect on the quality of service. The Record is

void of evidence that negates the City's concern about the affect of EDOs on service quality. Clearly, Management has the right and an obligation to direct the work in the manner it deems best for the City's residents. The City must pay for overtime hours at the current 56 hours per week schedule or for overtime hours to cover EDOs, the determination of which it will be is clearly a Management Right's decision. Therefore, the recommendation is that no EDOs be granted.

ISSUE: HOLIDAY PAY, Article XIV, Section 3

Positions

Union: Twenty-four (24) hours of straight-time pay for fire fighters\paramedics who work on a holiday.

City: No change.

Findings of Fact:

1. Currently Police Department employees who work on a holiday receive two and one-half (2-1/2) time their regular pay and road officers (essential employees) receive eight (8) hours for working a holiday. The Union believes its proposal is necessary to put fire fighters\paramedics on the same level as essential police officers. Union Exhibit 18 estimated that on average this would cost \$2,498.67 per employee working holidays and the average cost per employee, in a direct comparison with the Police Department, would be \$3,169. It takes three police officers to work one fire fighter\paramedic shift. Union Exhibit 18, p.2, shows an average comparison between the fire fighters\paramedics and police officers which reveals that fire fighters\paramedics, on average, work three holidays while police officers, on average, work four holidays.
2. The City asserted, assuming a \$20 hourly rate, the police officer would receive \$160 holiday pay. If the police officer works the holiday at time and one-half, holiday pay is \$240, for a total of \$400 for the holiday worked. A fire fighter\paramedic who works a holiday receives 16 hours pay at \$20, \$320, plus the 12 hour holiday premium for working, \$240, for a total of \$560 for working the holiday (City Exhibit, Summary of Issues, p. 11).
3. The City proposed, during negotiations, granting the 24 hour holiday premium pay provision to fire fighters\paramedics who work holidays, in exchange for no holiday pay for those who are on scheduled days off on holidays. The proposal was rejected.

Analysis and Recommendation:

Although the basic comparisons presented by the Union suggest their proposal has a minimal cost. The overtime requirement that accompanies the 24 hour shift of fire fighters\paramedics, compared to the generally eight (8) hour shift for police officers working on a holiday, has a dramatic affect on the total cost of the Union's proposal. Furthermore, the Record is void of comparisons of fire fighter\paramedic pay for holidays worked in either area departments or the

five comparable cities identified in the 1988 Conciliation Award. Therefore, the recommendation is no change in the current holiday pay provision.

ISSUE: SICK LEAVE, Article XXVII

Positions

Union: Remove the 1500 hour cap on hours that may be accumulated for employee sick leave usage during the course of their employment.

City: No change.

Findings of Fact:

1. Accumulation caps were established in 1990 for sick leave accrual. Employees hired after January 1, 1985 can receive payment for a maximum of 1000 hours sick leave upon retirement. A total accumulation cap for employees hired after January 1, 1991 of 1500 hours also was established. The maximum sick accumulation is equal to 62.5, 24 hour shifts, approximately six and one-quarter months. The Union proposal only applies to the total sick leave accumulation, not to the cash conversion maximum upon retirement.
2. The Union through Exhibit 20 reported that during 18 years of the Committee Member's employment, only three fire fighters made it to retirement and only one of them had over 1500 hours of accumulated sick leave. The Union asserted that the cap was established since during earlier years many supervisors accumulated high levels of sick leave that became an excessively burdensome liability for the City when they retired. Since the fire fighters are generally unable to accrue high amounts of sick leave, the 1500 hour cap negatively impacts them and puts them in the position of exhausting sick leave. Only one of the next three fire fighters scheduled to retire has more than 1500 hours of sick leave.
3. Xenia has a maximum accumulation of 2912 hours and Piqua's is unlimited.
4. The City asserted that to their knowledge, no bargaining unit member has exhausted their sick leave. Part of the agreement in 1990 concerning the hiring of ten additional fire fighters was the establishment of the cash-out cap and the total accumulation cap. These caps are a City-wide policy.
5. Bargaining unit employees through the Police and Fire Fighters Disability and Pension Fund have disability benefits for non-occupational illnesses and injuries upon vesting, five years in the plan. These benefits are available for temporary or permanent disabilities.

Analysis and Recommendation:

Accumulated sick leave has an escalating cost, since it is frequently paid at substantially higher rates than it was accumulated. Therefore, accumulation caps are common in public and private.

sector organizations. Furthermore, for a significant portion of the employees, an alternative source of benefit exists through the Police and Fire Fighters Disability and Pension Fund. Therefore, the recommendation is no change in the present contract.

ISSUE: INJURY LEAVE, Article XVII, Section 2 and 3

**Positions
City:**

Injury leave shall be granted to a member of the bargaining unit who receive a compensable injury in the course of his employment.

Section 2. The City shall pay the amount by which the workers' compensation allowance is less than the employee's regular pay for the first calendar 120 days following the condition. Infectious Hepatitis and/or AIDS incurred in the course of and arising out of employment will be reason for granting injury leave subject to the conditions of this section.

Section 3. Before an employee on injury leave will be permitted to return to duty, he shall submit to the Chief a physician's statement and any other required documentation concerning the injury, demonstrating his physical ability to perform satisfactorily the duties of his position.

Accordingly, the Chief may require the employee to submit to an examination by a physician selected by the City, at the City's expense, is there if any question about the employee's ability to perform the essential functions of the job. When the Chief determines that the employee is able to return, the employee will be permitted to resume his duties and will be eligible for any overtime opportunity that occurs between the Chief's determination and the employee's next regularly scheduled tour of duty.

Union: No change in the present 90 day injury leave and 90 day discretionary extension.

Findings of Fact:

1. The City has injury leave to mitigate the cost of workers's compensation. If short-term injuries are paid for, the higher cost of workers' compensation is eliminated. It is cost driven, rather than benefit driven. The Mediator pointed-out, if the injury leave stops and the employee goes on workers' compensation, the employee is essentially reimbursed for after-tax wages.
2. With the trend of steadily increasing charges of discrimination, the City has proposed elimination of the discretionary extension to prevent simply having to grant all requests for discretionary extensions. Finally, Section 3 contains the American's with Disabilities Act (ADA) language concerning returning to work following a disability.

3. The Union asked the City, how many times extensions were requested. The Assistant City Manager responded that he did not have information with him concerning this bargaining unit, but with respect to other bargaining units, two or three times a year. This is a change the City is attempting to make City-wide.
4. The Police contract signed last year contains this provision and also includes reoccurrences as part of the 120 day maximum. The Street Department contract, signed at the end of 1995, has the same provision as the Fire Fighters current contract with a lower first calendar day period and the discretionary extension.
5. The City confirmed that the current contract with the Street employees does not contain this provision. It was on the table, but because of other economic issues during those negotiations and a settlement substantially lower than what has been offered in the instant dispute, it was withdrawn by the City. Fact-Finding was not used in that dispute. The policy is currently in effect for non-bargaining unit City employees.

Analysis and Recommendation:

Although the Fact-Finder recognizes the change in Section 2 is a cost rather than a benefit issue, she also recognizes that for the bargaining unit it is a sensitive issue. Their having an opportunity to observe the impact of the proposed 120 injury leave with no discretionary extension on the police may reduce some of their immediate concerns. Therefore, the recommendation is that the Section 2 92 injury leave and 90 day discretionary extension continue in the new contract. With respect to the Section 3 ADA language, the recommendation is that the language presented in City Exhibit 5 be adopted effective 1997.

ISSUE: HEALTH INSURANCE, Article XVIII

Positions

City:

The current contract provides a cap on City premium contributions of \$130 for single coverage and \$360 for family coverage. The City proposes to change the sharing of premium costs above these caps to 75%/25%. It further proposes to change the language concerning the City's changing of carriers from "to provide equal coverage" to "provide comparable coverage".

Union:

Retain the present caps for the premiums share by the City for the first two years and in the third year, increase it to \$380 for family coverage and \$157 for single coverage. The Union has no problem with "comparable benefits" provided the Insurance Committee approves them.

Finding of Fact:

1. City Exhibit 6, a recent SERB Survey, reveals that the average public employee contribution to a family plan in Ohio is \$56 per month, compared to Miami's

2. The City is a member of a six city buying group which purchases health insurance at a more favorable rate. Yet, health insurance costs continue to increase.

Analysis and Recommendation:

Clearly the bargaining unit employees currently contribute substantially lower premiums to their health insurance than do other Ohio public employees. Yet, the City's original proposal was to retain the existing arrangement for health insurance for the first two year of the contract. The 1993 Fact-Finding produced an 80\20 split for premium increases above the present caps. Therefore, the recommendation is that the existing contribution language be retained for 1997 and 1998. Then, in 1999, the premium increases above the present caps be split 75\25. It is further recommended that the language concerning carrier changes be changed effective 1997 to "comparable coverage" with the approval of the Insurance Committee.

ISSUE: SUBSTANCE ABUSE, ALCOHOL

Positions

City: Implement the random drug testing policy that is currently the City policy for Commercial Motor Vehicle Operators.

Union: No change in the current contract.

Findings of Fact:

1. The current contract has a drug testing provision for reasonable suspicion which became effective in 1990. There have been no problems with this provision. During the past five years, there has been only one instance of an occurrence. At the time this employee was hired, the City knew he had a DUI conviction. Furthermore, the testing in this incident was done under the reasonable suspicion policy. This incident occurred during his probationary period and he was released from employment.
2. The IAFF's national policy opposes random drug testing. The Union believes random drug testing is unconstitutional and subverts bargaining unit members rights under the ~~Sound Agreement~~. Finally, the Union and the City, if it would consider a random drug testing policy if it were a City-wide policy. The current police contracts do not contain random drug testing.

Analysis and Recommendation

The Record is void of compelling evidence that the present reasonable suspicion drug testing policy is not working. Furthermore, the national and state IAFF policy opposes random drug testing. Currently, the only City employees subject to random drug testing are those subject to federal CDL provisions. Therefore, the recommendation is that the present reasonable suspicion language be retained in the new contract.

The foregoing findings analyses and recommendations are herewith submitted to the parties in settlement of the terms and conditions of their collective bargaining contract, this 16th day of December, 1996.


Ann C. Wendt, Ph.D., SPHR
Fact-Finder