

OHIO STATE EMPLOYMENT RELATIONS BOARD

JAN 13 9 51 AM '97

IN THE MATTER OF THE FACT FINDING) BEFORE FACT FINDER:
BETWEEN) JAMES E. RIMMEL
WARREN CITY PROFESSIONAL FIRE) CASE NO. 96-MED-10-0923
FIGHTERS, IAFF LOCAL 204) HEARD: 26 DECEMBER 1996
AND) WARREN, OHIO
THE CITY OF WARREN, OHIO) REPORT ISSUED:
9 JANUARY 1997

APPEARANCES

ON BEHALF OF THE FIRE FIGHTERS:

Gary McBride
IAFF, Local 204

ON BEHALF OF THE CITY:

Gary C. Cicero
Director of Human Resources

BACKGROUND

This matter comes on for fact finding under the Public Employee Collective Bargaining Act of 1983 following impasse in negotiations between the parties on a successor collective bargaining agreement covering 75 bargaining unit employees assigned to the positions of Fire Fighter, Lieutenant, Captain and Assistant Chief. The record indicates that the parties negotiated over several months, negotiations that led to resolution of a number of issues. Unfortunately, many issues remained at impasse, resulting in the appointment of a Fact Finder under the procedures set out in

Section 4117.14 of the Ohio Revised Code. As Fact Finder, I initially set out to mediate the parties' differences, mediation that proved successful in a number of instances, mediation that was accommodated by the parties by means of two (2) extensions of the time frames provided by Administrative Rule. It need be noted that these extensions were not meant to establish, and did not establish, a mutually agreed-upon dispute (MAD) settlement procedure under Ohio Administrative Code Rule 4117-9-03(G); said extensions being solely agreed-to to allow the parties the greatest latitude in bargaining. In any event, in the final analysis, the parties brought forward the following listed unresolved issues at the afore-referenced date for fact finding:

- Article II - Recognition - New Section 4
- Article IX - Standards of Work - Section 5 - Shift Differential
- Article XI - Standards of Work - Section 7 Roll Call Time
- Article IX - Standards of Work -Section 9 (New) - Time Coming Hours
- Article XI - Standards of Work (New) - Section 10 - Minimum Manning
- Article XII - Pay Rates - Section 1
- Article XII - Pay Rates - Section 2
- Article XIII - Allowances - Section 7 - Longevity
- Article XIII - Allowances - Section 8 - Hazardous Duty Pay
- Article XIII - Allowances (New) - Section 9 - Mean Allowance
- Article XIV - Holidays/Personal Days - Sections 1 and 3
- Article XIV - Vacation - Section 3
- Article XXVI - Health Care Benefits
- Article XXIX - Drug and Alcohol Testing
- Article XXX - Pay Days

At hearing, both parties were provided the opportunity to offer testimony and evidence with respect to the afore issues with both availing themselves to those opportunities. As to the positions of the parties, that received in the way of pre-hearing position statements are respectively appended hereto as IAFF Exhibit 1 and City Exhibit 1. The Union's main thrust throughout has centered on what it describes as inequities between the Warren Fire Department and like situated fire departments within the State of Ohio and/or sister bargaining units within the City of Warren. Simply put, the

Union believes that its members have not been accorded even average status with like situated departments or sister units within Warren. As for its non-economic issues, the IAFF argues that its' positions are reasonable and do not place an undue burden upon the City. In addition, the IAFF argues that there is no evidence of record establishing that the City cannot afford the requested economic adjustments.

In turn, the City argues, in addition to its pre-hearing position statement, that it has proffered fair and reasonable wage increases on this occasion, as well as in recent history, for these employees. It argues further that its offer must be viewed in light of the substantial premiums paid for first dollar medical and hospitalization coverages for these bargaining unit employees. As such, it contends that when the overall employment costs of this unit are considered vis a vis other fire departments within the State of Ohio and sister units within Warren, they must be viewed as being compensated in a reasonable and equitable fashion.

It was after receipt of the afore-described testimony and supporting documentation that was proffered by the parties in accord with the factors set out at Section 4117-9-05(K)(1)-(6) along with the parties pre-hearing statements and arguments that I declared the hearing and record closed on 26 December 1996. It is this record that I have considered, along with the statutory mandates, in proffering the following recommendations¹

ARTICLE II - RECOGNITION, NEW SECTION 4

RECOMMENDATION:

That sought by the IAFF is not to be incorporated as an additional section under Article II.

RATIONALE:

This record is devoid of any cogent reason to change the current status quo in the parties relationship as to the enforceability of binding past practices.

ARTICLE IX - STANDARDS OF WORK - SECTION 5 - SHIFT DIFFERENTIAL

RECOMMENDATION:

The present provision providing for a \$360.00 per member per year total in the form of shift differential shall be continued during the term of the parties' successor agreement.

RATIONALE:

The record indicates that there is no other fire department within the State of Ohio servicing cities with populations between 40,000 and 62,000 that provide any shift differential for their fire fighters. Furthermore, the nature of the turns worked by fire fighters vis a vis City of Warren Police and ASCME personnel are sufficiently different as to make comparisons of the respective shift differentials inappropriate.

ARTICLE XI - STANDARDS OF WORK - SECTION 7 - ROLL CALL TIME

RECOMMENDATION:

This rate is to be increased by 25% of the increased provided for fire fighters under the pay rate section in each year of the parties' new collective bargaining agreement.

RATIONALE:

The record before me indicates that bargaining unit members are required to be at scheduled roll call and an employee failure to do so would subject him to possible discipline. There has been no showing that any of the comparative departments proffered by the City have a like requirement for their bargaining unit employees. Thus, it is appropriate to assume that their failure to provide this benefit in large part, if not totally, is a product of their not requiring roll call attendance.

ARTICLE XI - STANDARDS OF WORK - SECTION 9 (NEW) - TIME COMING HOURS:

RECOMMENDATION:

Add a new section 9 under Article XI to read as follows: Employees who are assigned duties by the Fire Chief outside the normal scope of their work and separate from regular work hours shall be allowed to designate such as time coming hours. These hours shall be accumulated at a rate of one and one-half times for each hour worked in this manner. Employees can accrue a maximum balance of four hundred and eighty (480) hours of time coming hours under applicable FLSA regulations, said regulations to govern the administration of this benefit..

An employee may request, in writing, to divert full or partial time coming hours to cash. A written request must be filed with the Auditor no later than two weeks prior to the pay in which a cash payment is to be made.

RATIONALE:

The only comparative proffered at hearing was that set out under the City of Warren's Police Contract, a provision that raises certain questions under the Fair Labor Standards Act (FLSA). This does provide a benefit to the police officers, however, which can be easily corrected, a benefit that this unit should also enjoy..

ARTICLE XI - STANDARDS OF WORK (NEW) - SECTION 10 - MINIMUM MANNING

RECOMMENDATION:

No additions or modifications.

RATIONALE:

Evidence of record is simply not sufficient to warrant consideration of this request, especially in light of that set out under 4117.08© of the Act.

ARTICLE XII - PAY RATES - SECTION 1:

RECOMMENDATION:

Effective 1 January 1997, increase all existing rates for bargaining employees by 4%.

Effective 1 January 1998, increase all existing rates for bargaining employees by an additional 4%.

Effective 1 January 1999, increase all existing rates for bargaining employees by an additional 4%.

As for the differentials between ranks, they shall be as follows:

	Eff. 1/1/97	Eff. 1/1/98	Eff. 1/1/99
Lieutenant	14	14 ½	15
Captain	12	13 ½	15
Assistant Chief	12	13 ½	15

The four (4) step progression as presently exists from starting to standard rate fire fighter shall be continued.

RATIONALE:

The proffered data in support of the respective positions clearly establishes that an adjustment, an adjustment more than is being offered by the City, is warranted in this instance. Likewise, it is well recognized in wage and salary administration that a 15% differential is appropriate between classifications so as to avoid rate of compression.

ARTICLE XII - PAY RATES - SECTION 2:

RECOMMENDATION:

Effective 1 January 1999, provide that all who drive ladder and/or pumper apparatus be paid the 50% stipend presently provided for under this Section 2.

RATIONALE:

Evidence of record indicates that the rationale for establishing this add-on rate will be soon applicable to locations other than the main fire station. Likewise, I believe that it is relevant that this added duty is typically limited to specific individuals who must demonstrate an added proficiency in order to be assigned this task, the task of driving.

ARTICLE XIII - ALLOWANCES - SECTION 7 - LONGEVITY:

RECOMMENDATION:

In each year of the forthcoming three year Agreement, increase the present longevity factor of \$4.50 per month for each full year of service by \$.50 per year.

RATIONALE:

The fact that City exempt personnel are provided a higher factor amount of \$6.00 per year is simply not persuasive, in and of itself, that that requested by the fire fighters, is reasonable. It does, however, in addition to the cited comparables, suggest that some form of adjustment is appropriate, especially when the average of those comparables is in excess of \$228.00 more than that paid Warren fire fighters.

ARTICLE XIII - ALLOWANCES - SECTION 8 - HAZARDOUS DUTY PAY

RECOMMENDATION:

No additions or modifications.

RATIONALE:

Simply stated, there has been no showing that any of the added duties are of a nature as to increase the hazards of these four positions beyond that normally inherent in their jobs. The facts are that cited comparables indicate that this department is the only one to receive this benefit, and quite frankly, I am not sure what it is for in the first place given the nature of these jobs.

ARTICLE XIII - ALLOWANCES (NEW) - SECTION 9 - MEAL ALLOWANCE:

RECOMMENDATION:

No additions or modifications.

RATIONALE:

Given the nature of the scheduling for this unit, vis a vis the Warren police and ASCME units, this benefit simply is not appropriate as requested by the IAFF.

ARTICLE XIV - HOLIDAYS/PERSONAL DAYS - SECTIONS 1 AND 3:

RECOMMENDATIONS:

No additions or modifications.

RATIONALE:

Given that done elsewhere in these recommendations and the fact that local firefighters holiday and personal days, under cited comparables, is very near the average, a further liberazation does not appear to be warranted.

ARTICLE XIV - VACATION - SECTION 3:

RECOMMENDATIONS:

No additions or modifications.

RATIONALE:

There has been no cogent case made for the incorporation of this additional purchase credit benefit.

ARTICLE XXVI - HEALTH CARE BENEFITS

RECOMMENDATIONS:

No deletions, additions or modifications.

RATIONALE:

The cost of eye care in addition to that which the City is already providing in the form of insurance coverages, which are in excess of \$1,900.00 per year more than the average of comparable units, just does not allow for the addition of this benefit. As for the City's proposal relative to a PPO co-pay program, that simply cannot be justified in lieu of that offered in the way of a wage increases or even that recommended in light of the wage differentials that exist with the comparable units.

ARTICLE XXIX - DRUG AND ALCOHOL TESTING:

RECOMMENDATION:

Upon the parties consummation of a new collective bargaining agreement via negotiations, fact finding or conciliation, a committee of three members each will be established for the sole purpose of negotiating a drug and alcohol testing program. If, following 60 days of negotiations, the parties are unable to arrive at a mutually acceptable program, this issue is to be taken to arbitration in the form of final offer arbitration with the arbitrator only having authority to adopt that proffered in the form of a final offer from either the City or IAFF.

RATIONALE:

The parties have in actuality not really considered the ramifications/necessity for this

type of Article. The fact is the LAFF proffered its proposal while this issue was being debated at the fact finding hearing. While I am inclined to opt for that proffered by the City relative to random testing, this record just does not allow for me to do so.

ARTICLE XXX - PAY DAYS

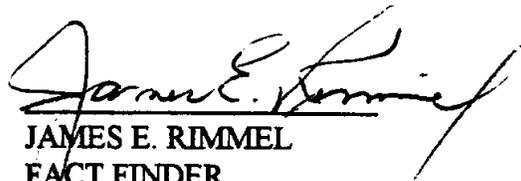
RECOMMENDATION:

Effective 1 January 1997, implement biweekly pays under procedure set out in City's proposal on this issue.

RATIONALE:

This is the only group of employees within the City who are presently paid on other than a biweekly basis.

Respectfully submitted,


JAMES E. RIMMEL
FACT FINDER

ENDNOTE

1. While there are several issues identified as unresolved in the parties pre-hearing submittals, a number of those issues were either resolved or withdrawn at hearing and thus there is no need for specific recommendations concerning those matters.