

c  
STATE EMPLOYMENT  
RELATIONS BOARD

JAN 15 8 28 AM '97

BEFORE THE  
STATE EMPLOYMENT RELATIONS BOARD  
CASE NO. 96-MED-10-1040

FAIRVIEW PARK FIRE FIGHTERS, \*  
LOCAL 1057 \*  
EMPLOYEES \*  
AND \* FACT FINDER'S REPORT  
CITY OF FAIRVIEW PARK \*  
EMPLOYER \*

I. DATE AND PLACE OF HEARING

This fact finding hearing was held on January 8, 1997  
in Fairview Park, Ohio.

II. PARTIES

The employees, hereinafter referred to herein as the  
"Union", are the fire fighters of the City of Fairview Park  
and are represented by the Fairview Park Fire Fighters,  
Local 1057. The employer is the City of Fairview Park,  
referred to hereafter as the "City".

### III. APPEARANCES

The following persons entered an appearance on behalf of the respective party as noted:

For the Union:

James Astorino, Staff Representative, Northern Ohio Fire  
Fighters

Jack McGervey, President, Local 1057

Bud Williams, Treasurer, Local 1057

Paul Arundel, Member, Negotiating Committee, Local 1057

Matt Shaughnessy, Member, Negotiating Committee, Local 1057

For the City:

Patrick Roche, Law Director, City of Fairview Park

Thomas Malone, Finance Director, City of Fairview Park

### IV. INTRODUCTION

This unit consists of 24 fire fighters occupying the position of fireman, lieutenant and captain. It does not include either the chief or assistant chief. It also excludes all part-time, seasonal, and temporary employees, if any, of the Fairview Park Fire Department.

Fairview Park is essentially a residential community of approximately 18,000 persons. For the most part the City has single family residences. It does, however, contain multi family dwellings, commercial buildings and limited light industrial buildings. It was incorporated in 1910 and is a charter municipality.

The current three year contract expired on December 31st, 1996. The parties agreed to make the new agreement retroactive to the date of expiration.

Prior to this hearing, the parties engaged in at least five bargaining sessions. Many issues [15] have been agreed upon between the parties. The following 3 issues were not the subject of agreement and were submitted to fact finding pursuant to law:

1. Longevity;
2. Promotions;
3. Dispatch Duties

#### V. FACT FINDING

##### ISSUE NO.1

##### PROMOTIONS

The pivotal point in this issue is the intended administration of an oral examination as a part of a promotional examinations. The basic disagreement concerns the Union's concern that an oral examination is too subjective. Apparently this issue arose when the Civil Service Commission of the City, on May 16, 1995, passed a resolution amending its rules and mandated that promotional examinations for both the fire and police departments thereafter include both written and oral components. Prior to the passage of that amendment, oral tests were not included in promotional examinations. The amendment prescribed that the promotional test, for promotion to the rank of sergeant, be comprised of 60 percent written and 40

percent oral, and for promotion to the rank of lieutenant, 40 percent written and 60 percent oral. Seniority points would continue to be granted in accordance with Ohio Revised Code § 124.31. It is noted the fire department does not have the rank of sergeant and the amendment did not address the fire department's rank of captain. It is also noted that a grievance was not filed following enactment of the amendment, and, on the other hand, a promotional test was not given to the department since the change.

The Union sought to include a new article into the contract which defined both the mechanics of promotional examinations and the weight given to each component. The Union submitted that a promotional test be comprised of a combination of written test scores and seniority points [1 point for each of the first 4 years and 6/10 of a point for the next 10 years]. Psychological evaluations, though provided for, were to have no impact on the score (test) total.

The City, on the other hand, argued that it possessed the authority to determine the basis for selection, retention, and promotion of employees under the authority of the Management Rights Clause and was authorized to institute promotional testing which included an oral component.

Apparently, there is a growing trend among public employers to couple written and oral components into

promotional examinations. This trend, however, does not negate the fact that such examinations are of keen interest to employees. The past practices between the parties did not include promotional tests containing oral parts.

It is the opinion of this Fact Finder that the makeup of promotional tests, but not the administration thereof, is the proper subject of collective bargaining and, indeed, the parties recognized the negotiability of the issue by bargaining over it during their attempts to resolve the new contract.

It is the recommendation of the Fact Finder that promotional tests be allocated between written, oral, and seniority components as follows:

Written-100 points or 74% of the total grade;

Oral-25 points or 17.5% of the total grade;

Seniority-up to 10 points or 7.5% of the total grade;

Additionally, it is the recommendation that all promotional tests be administered by an independent professional testing service.

ISSUE NO. 2

LONGEVITY

ARTICLE 46

The Union seeks the deletion of Section 44.03 of the current contract which removed employees hired after

January 1, 1994 from participation in the longevity payment schedule contained in Section 44.01. In its place, such employees were to be eligible to participate in a merit raise system which the parties were to adopt by December 31, 1994. This particular provision was recommended by a previous Fact Finder [see report of Fact Finder Margaret Nancy Johnson in Case No. 93-MED-09-0939. The recommendation was approved by both parties and included into the recently expired collective bargaining agreement.

Unfortunately, for whatever reason, the deadline passed and the merit schedule was never adopted. The failure of the parties to reach agreement on such a schedule does not negate the importance of the previous recommendation. Nor does the failure obviate the fact that both parties approved of the recommendation and made it a part of the expired agreement.

In her report Ms. Johnson states that the evidence presented established that both the service and police departments of the City established some form of a merit raise system and that the trend is in favor of a merit system in contrast to straight longevity increases.

Accordingly, it is the recommendation of this Fact Finder that the parties use their best efforts to agree upon a merit increase system and that the previous contract

language be included in the new agreement with the following changes:

44.03 Employees hired on or after January 1, 1997 shall not participate in or be eligible to receive longevity payments. In the stead of longevity payments employees hired after January 1, 1997 shall be eligible to participate in a merit raise system which shall be administered by the Fire Chief. The parties shall adopt a merit raise schedule not later than December 31, 1999, but the failure to do so shall in no way affect the participation of eligible employees in the current longevity system or in any other provision of the collective bargaining agreement. Until the merit system is adopted, all employees, including those hired after January 1, 1997 shall be eligible to receive longevity increases in accordance with the provisions of Section 44.01..

### ISSUE NO.3

#### DISPATCH DUTIES

The Union seeks the adoption of a new article which, in short, removes the dispatcher from the bargaining unit, unless a member of the unit volunteers for such an assignment. The recently expired collective bargaining agreement addresses neither the issue of the identity of the dispatcher or the duties of the dispatcher.

The City desires that the fire department dispatcher remain, as in the past, a fireman and a member of the unit. The City refuses to reassign the dispatcher's duties to an outside source.

During contract negotiations, the Union requested that in return for maintaining the current system, that the dispatcher be permitted "cot watch time" which would permit

the "dispatcher" to place a cot next to the dispatcher's area and sleep during normal sleeping hours. Under the Union's proposal, the dispatcher would remain on duty to receive emergency or 911 calls, but would be permitted to sleep on a cot placed next to the dispatcher's desk.

The City opposed such a change.

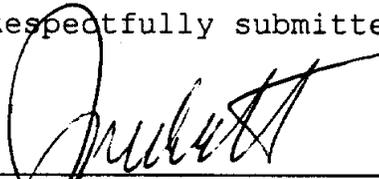
Apparently the dispatcher duties have been shared by members of the bargaining unit, including shift officers, on a rotating basis. This procedure was recently changed by a directive from the Fire Chief which prohibited shift officers from either being assigned to a watch schedule or a work assignment associated with a watch schedule. No grievances were filed against either implementation of the change. Moreover, no evidence was submitted that the change were either beneficial or necessary.

The Fact Finder is of the opinion that this issue is a legitimate matter of collective bargaining between the parties due to past practice between the parties. However, the Fact Finder is also cognizant administration of the department lies within the province of the fire chief.

Nevertheless, it is the recommendation of the Fact Finder that though the watch commander or shift officer may not be assigned to either a watch schedule or a work assignment associated with a watch schedule, a watch commander is neither prohibited nor precluded from

voluntarily working a watch schedule or a portion of a watch schedule and that appropriate language permitting such conduct be drafted by the parties and included in the collective bargaining agreement.

Respectfully submitted,



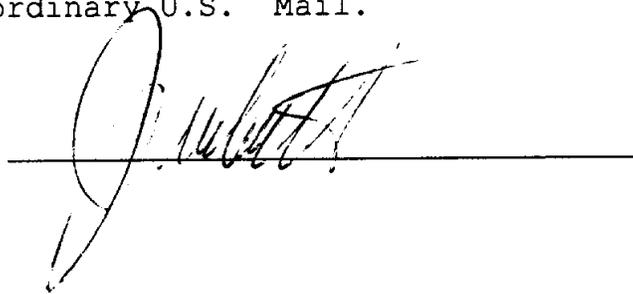
---

I. Bernard Trombetta  
Fact Finder

January 10, 1997

CERTIFICATE OF SERVICE

A copy of the foregoing report was served upon the City of Fairview Park, c/o Patrick Roche, Director of Law, 20777 Lorain Road, Fairview Park, Ohio 44116 and the Northern Ohio Fire Fighters, c/o James Astorino, Staff Representative, 17703 Grovewood Avenue, Cleveland, Ohio 44119 on this 10th day of January, 1997 by ordinary U.S. Mail.

A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to be "J. [unclear]".