

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

FEB 25 10 31 AM '98

In the Matter of Fact-Finding	*	
Between	*	<u>FINDINGS</u>
	*	<u>AND</u>
ASSOCIATION OF CLEVELAND	*	<u>RECOMMENDATIONS</u>
FIRE FIGHTERS, IAFF LOCAL 93	*	
	*	Case No. 96-MED-11-1115#
and	*	February 23, 1998
	*	
CITY OF CLEVELAND,	*	Anna DuVal Smith
OHIO	*	Fact-Finder

Appearances

For the Cleveland Fire Fighters:

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For the City of Cleveland:

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I. BACKGROUND AND SUBMISSION

The Association of Cleveland Fire Fighters, IAFF Local 93 ("Union") represents approximately thirteen (13) Safety Supervisors employed by the City of Cleveland, Ohio at Hopkins International Airport and Burke Lakefront Airport. The unit was certified in 1996, with the undersigned appointed Fact-Finder under §4117.14(C) O.R.C. and pursuant to 4119-9-05(E) of the Ohio Administrative Code on January 28, 1997. The parties mutually agreed to extend the statutory deadlines for fact-finding. Bargaining on an initial contract continued throughout 1997, with a tentative agreement reached during September of that year. This agreement included wage increases and health care benefits provided to the City's other unionized employees and incorporated provisions of two City contracts, those of the Airport Safetymen (AFSCME Local 100) and the firefighters (Cleveland Fire Fighters Local 93). It also provided a number of protections not previously granted to the Safety Supervisors, specifically a grievance procedure with binding arbitration, payment for required hospital observation, procedural protections on locker searches, flexibility in trading shifts, and limitations on temporary assignments into the unit. This tentative agreement was rejected by the bargaining unit and subsequent negotiations failed to resolve the dispute. The parties accordingly agreed to submit outstanding issues to the Fact-Finder for findings of fact and recommendations. On January 22, 1998, following a discussion with the Fact-Finder on the merits of mediating the dispute, the parties agreed to waive oral hearing and to submit the five outstanding issues by brief as permitted by 4119-9-05(H) O.A.C. Said briefs were timely filed on February 11, 1998. Following receipt of briefs, the Fact-Finder requested payroll records from the City with the consent of the Union. She also requested and receive clarification of the Union's position on seniority with the consent of the City. The record was closed on February 23, 1998.

II. CRITERIA

In rendering this Report and Recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the 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, 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) Stipulations of the parties;
- (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.

III. THE ISSUES, FINDINGS AND RECOMMENDATIONS

Wages and EMS Pay

The Positions of the Parties

The current pay band for Safety Supervisors is \$21,020 to \$39,754 (Union Ex. 3)¹ with earnings ranging from \$34,108-\$38,596, and averaging about \$36,000 in 1996 (City Br., p. 4). The current incentive for Paramedic/EMT-certified Safety Supervisors is the same as for Airport Safetymen represented by AFSCME:

Paramedic	\$500 one-time payment, then \$1/hour X 2080 hours
Adv. EMT-A	\$200 one-time payment, then \$.50/hour X 2080 hours
EMT-A	\$0 one-time payment, then \$.40/hour X 2080 hours.

Regarding base pay, the Union asks that Safety Supervisors be granted parity with Fire Lieutenants (\$45,332-\$45,832) or Police Sergeants, arguing that the job description of the an Airport

¹These figures include the three percent increase that was paid on April 1, 1997, consistent with what other unionized employees received.

Safety Supervisor (Union Ex. 1) is very similar to that of a Fire Lieutenant (Union Ex. 2). Moreover, Safety Supervisor pay is low relative to that of suburban fire lieutenants in the immediate area (Union Ex. 9) even though they are performing similar duties. In addition, it points out that since there are no pre-defined steps within the Safety Supervisor pay band, it is not unusual for a supervisor to remain stagnant within the band, receiving only percentage increases afforded all other represented and most nonrepresented City employees. A wage increase of this magnitude is further justified, argues the Union, because of the annual growth in the number of responses by the Airport Fire Department from 1107 in 1991 to 1421 in 1996 (Union Ex. 4-8) and the fact that the airport fire department would be the first responder to a major disaster at the airport.

With respect to EMS incentive, the Union points out that Safety Supervisors work 2496 hours per year, and so are being paid the incentive for only part of hours worked. This, and the relatively greater EMS incentives in other fire departments in the area (Union Ex. 9), justifies the Union's request for Paramedic pay of six (6) percent of annual base and EMT at three (3) percent of annual base, to be paid in 26 equal installments on biweekly pay dates.

The City offers a 3 percent wage increase effective April 1, 1997, and the current EMS incentive. It, too, seeks parity, but parity in terms of percentage increase, rather than annual pay. Three percent is the pattern established with the other 24 unions representing City employees and should be recommended by this factfinder because the 27 percent increase demanded by the Union, if granted, would seriously disrupt the bargaining that is about to commence with the other unions. The City submits that parity in annual increases has been maintained since 1980 (City Ex. 1), has been repeatedly endorsed by neutrals (City Ex. 2), and even by the unions representing 6000 of the City's 7400 represented employees (City Ex. 3) because they recognize parity on common issues such as wages and health care benefits leaves each union free to concentrate on issues unique to each

particular bargaining unit. The City further argues that the most relevant comparison is not to fire lieutenants, but to firefighters. The Safety Supervisors are trained and perform the same functions as Cleveland's firefighters. Although they do have some limited supervisory duties which are not performed by the firefighters, these additional duties are counterbalanced by the smaller number and variety of calls. Even so, the City's firefighters earn a top salary of \$35,831 compared to the Safety Supervisor's average salary of over \$38,000 (including applicable paramedic pay). Thus, contends the City, the Safety Supervisors are adequately compensated for their additional supervisory duties.

Findings and Recommendations of the Fact-Finder

While it is not surprising that a newly-certified unit would be eager to reap the benefits of collective bargaining, it must understand that collective bargaining agreements are not built in a single round of negotiations, but evolve over the years. The rejected tentative agreement, as a package, was a good one, far better than many first agreements are because it was grounded in the experience of reasonably comparable units within the City. On a couple of the outstanding issues, the Union makes some valid points that can and should be addressed. But on others, the Union is simply so ambitious as to be unreasonable. Wages and EMS pay are of the latter, as the Union's demand amounts to an increase of over 27 percent in wages alone.

The Safety Supervisors may wish wage increases of over \$9000 to achieve parity with their counterparts in the fire and police departments, but the record before me does not justify such a dramatic increase in compensation. While it is true that the job description of Safety Supervisors is not dissimilar to that of Fire Lieutenant, a more relevant comparison is to the Safetymen, whom this unit supervises and who face similar working conditions including frequency and type of calls, and in terms of rank differentials. The City's offer of three percent puts the 1997 Safety Supervisor's wages at \$21,020-\$39,754 (Union Ex. 3), or 14-22 percent greater than the Safetymen's

of \$23,984-\$32-448. The Union's demand would result in differentials of 41-89 percent, far in excess of what is usually found in rank differentials in safety forces and the 15-16 percent that does, in fact, prevail in the fire department. While it is true that annual responses by the Department have been growing, some of this has been absorbed by other City departments and wages in this unit have been growing, too. In light of the presence of a well-established pattern of parity in annual wage increases throughout the City, the Union would have to present a compelling case to justify the different treatment that would otherwise seriously disrupt future negotiations. No such case was made here. I accordingly recommend the City's offer of three percent effective April 1, 1997.

I also see no reason to disturb the present EMS incentives which, at a maximum of \$2080 for the paramedic certificate, are already generous, being exceeded only by Euclid, Independence, Lyndhurst, and Shaker Heights (Union Ex. 9). The recommendation for EMS pay is:

Paramedic	\$500 one-time payment, then \$1/hour X 2080 hours
Adv. EMT-A	\$200 one-time payment, then \$.50/hour X 2080 hours
EMT-A	\$0 one-time payment, then \$.40/hour X 2080 hours.

Promotions

The Positions of the Parties

In the Union's view, there is presently no clearly defined method by which Airport Safetymen are promoted to the rank of Safety Supervisors. It observes a past practice wherein Safetymen are temporarily promoted to the rank of Supervisor with a 5 percent increase in wages, but then serve in this temporary capacity for an indefinite amount of time. The Union views this practice as a way to prevent its members from being eligible for overtime pay, while Safetymen fill the positions of their peers (who have been temporarily promoted to Supervisor) on an overtime

basis. To prevent this transfer of overtime from one unit to another, it seeks limitations on the City's ability to promote Safetymen temporarily.

In response to the Union's concern, the City offers the following:

The City can temporarily assign Safetymen to serve as Safety Supervisors only under the following circumstances: 1) where an emergency situation exists; 2) where there is a need to assign a Safety Supervisor, but no Safety Supervisor is willing or available to work an overtime assignment; or 3) where a Safetyman is assigned as a Safety Supervisor in anticipation of a permanent promotion to the position of Safety Supervisor.

The Union is in substantial agreement with this proposal, but points out that this does little to address the present situation of four Safetymen who have been serving as temporary Safety Supervisors since June of 1997, a period in excess of eight months. It therefore seeks a limit of 45 days on temporary promotions made in anticipation of permanent ones, saying that this is a reasonable amount of time for the City to ascertain if the individual is capable of serving as a Supervisor. According to City of Cleveland Civil Service Rules, the individual would still serve a six month probationary period.

The City rejects the Union's proposal to add the 45-day limitation, saying it has already offered to place substantial restrictions on its unfettered right in this area. It claims the further restriction, would severely hamper its ability to prepare Safetymen for their eventual promotion as temporary assignments are the best possible training opportunities.

Findings and Recommendation of the Fact-Finder

The parties have come a long way towards resolving this issue with the City yielding previously unrestricted managerial authority in making temporary assignments. The tentative agreement was, in fact, what the City proposes here, but the Union now seeks what amounts to an arbitrary time limit on temporary assignments. Why 45 days and not 60 or 30? Without any

justification for the specific number proposed it is difficult for a neutral to fix a precise number of days that is reasonable for temporary assignments in anticipation of promotion. I therefore recommend the City's position. However, consistent with that position, the tentatively agreed to language does imply a reasonable period of time for the duration of assignments in anticipation of a permanent promotion. With that said, the assignment of the four Safetyman on a temporary basis for eight months may exceed what is a reasonable period of time. Therefore, I also recommend that the City either promote the four employees or return them to the classification of Safetyman by the expiration of this Agreement (March 31, 1998).

Staffing

The Positions of the Parties

The Union proposes that an Airport Safety Supervisor be on duty at all times at both airports. If and when the City promotes to the rank of Shift Commander, as created by Cleveland Civil Service on or about June 1997, there will be days in which a Shift Commander will not be scheduled to work. Therefore, it contends, it is imperative that there be a Supervisor scheduled to work at each location every day.

The City resists what it says is the Union's attempt to seize one of the linchpins of management's freedom to run its operations, namely the latitude to determine adequate staffing levels based on operational needs. It claims the Union's proposal is a selfish attempt to guarantee membership levels and increase overtime as it addresses no legitimate concern. Normally, the City staffs the two airports with at least one Safety Supervisor or one Safety Supervisor serving as shift commander. The Union suggests that once Safety Supervisors who are now temporarily assigned to shift commander are permanently promoted to that position, somehow the airports will no longer be staffed with either a Safety Supervisor or a Shift Commander. This, says the City, is

incomprehensible since the number of supervisors will remain the same. The City has no incentive to compromise the safety of the airports, not only because of the dangers inherent in air travel, but also because of public scrutiny. In light of this, the City is in the best position to determine the staffing complement and composition.

Findings and Recommendation of the Fact-Finder

The City is well aware of its duty to the public to provide adequate safety supervision at the airports and there is no reason to believe it will reduce supervision solely because of a permanent promotion to Shift Commander. The Union's proposal effectively provides for redundant supervision on days when a Shift Commander, whether permanent or temporary, is on duty, and thus amounts to featherbedding. The Union's proposal therefore serves no legitimate purpose and is rejected. I recommend the City's position which is to maintain the status quo of staffing at the City's discretion.

Seniority

The Positions of the Parties

The City proposes that "Job classification seniority shall govern selection of shifts (days off), holidays and vacations." The Union would add, "Any ties in seniority shall be broken by date of hire into the Division of Port Control," arguing that this situation will rarely arise because of the small number of employees, but that if seniority is used as a factor in promoting from Safetyman to Safety Supervisor, the tie-breaker should be hire date in the Division. The City feels that an employee's hire date with the City should govern because an employee should not be penalized for having started his/her employment in another division of the City.

Findings and Recommendations of the Fact-Finder

The Union's argument is persuasive. Length of service in the Division is a relevant factor in promotions and it is prudent to have provision for breaking ties even if, for all practical purposes, the need will rarely arise. I therefore recommend the following:

Job classification seniority shall govern selection of shifts (days off), holidays and vacations. Any ties in seniority shall be broken by date of hire into the Division of Port Control.

IV. SUMMARY

<u>Issue</u>	<u>Recommendation</u>
Wages	3% effective April 1, 1997
EMS Pay	Existing benefit
Promotions	Tentative agreement with proviso on 4 existing temporary assignments.
Staffing	Status quo
Seniority	Ties broken by hire date in Division of Port Control

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact-Finder

Cuyahoga County, Ohio
February 23, 1998