

ALAN M. WOLK

IMPARTIAL ARBITRATOR

APR 23 10 09 AM '98

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

International Association)
 Fire Fighters # 165)
)
)
 Union)
)
 and)
)
 CITY OF ASHTABULA)
)
 Employer)

NO. 97-MED-01-0011

FACT FINDER'S
RECOMMENDATIONS

APPEARANCES:

FOR THE UNION:

Patrick Riley, Esq. of Riley, Resar and Guzman, P.L.L.; Charles P. Brockway, Local #165; Shawn E. Gruber, Local #165; Andy Drwal [OAPFF];

FOR THE EMPLOYER:

John N. Barkan, Jr. Labor Relations Consultant; Hugh L. Thomas, City Manager

The undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral Fact Finder to hear and decide issues presented pursuant to Ohio law.

By agreement of the parties, hearings were held 3/16/98 (mediation) and 3/25/98 (Fact Finding) at the City Fire Department in the City of Ashtabula (ASHTABULA County) Ohio. at which time the parties were afforded a full opportunity to present opening statements; to submit, object to, and cross-examine evidence; as well as to offer exhibits and documents, and to argue the respective merits of their respective positions orally and/or by briefs. A court reporter was not present. Briefs were not submitted. After the hearing, the City submitted raw data upon which it based its position on comparables.

All evidence such as stipulations, exhibits, affidavits, testimony, and all arguments, citations and briefs (if any) have been duly received and given such weight as deemed appropriate by the Fact Finder.

The Award may be published by SERB.

SUBMISSION

Forty-eight (48) hours in advance of the Fact Finding hearing, the Ohio Administrative Regulations [4117-9-05] mandate that the parties exchange pre-hearing statements and provide a copy to the Fact Finder (r be precluded from presenting evidence):

PRE-HEARING STATEMENT

1. Parties:

Employer

City of Ashtabula, Ohio c/o John N. Barkan, Jr. Labor Relations Consultant, PO BOX 1417 Mentor, Ohio 44061-1417 Phone: 1-440/257-2125

Bargaining Unit

Ashtabula IAFF Local #165 c/o Charles Brockway and/or Andy Drwal, OAPFF 205 Louisiana Avenue, Lorain, OH 44052 Phone: 1-440/288-3060.

Counsel for the Union is Patrick D. Riley, Attorney at Law, 520 Broadway Avenue, Suite 200, Lorain, Ohio 44052 Phone: 1-440/244-5214.

2. The bargaining unit consists of all full-time fire personnel (except the Fire Chief) in the ranks of Captains, Lieutenants, Engineers, Fire Fighters, and Fire Prevention's Bureau personnel. There are approximately 24 individuals in the bargaining unit.

3. The bargaining unit was in existence prior to the adoption of O.R.C. 4117, and was thereupon certified and has represented the members for all collective bargaining agreements.

4. The current collective bargaining agreement expired on 4/30/97, and the parties have agreed to maintain the terms and conditions of the collective bargaining agreement until the execution of a successor agreement. The parties have filed extension agreements and have stipulated to retroactively of the agreement upon completion of the process under O.R.C. 4117. A copy thereof is in evidence.

5. The City of Ashtabula, Ohio is a chartered City and provides all the required and needed municipal services including, but not limited to, Fire Suppression and Fire Prevention and related Law Enforcement, Administrative functions, and service related functions and/or programs.

Fire Fighters Local #165 represents members of the Fire Department eligible for Union membership.

6. The parties have met on numerous dates since notice to negotiate was filed by the Union. On two occasions the parties met with a FMCS mediator, Thomas Connelly, however, several issues remain at impasse.

CRITERIA

Pursuant to O.R.C. 4117, the FACT FINDER, in making recommendations, after hearing, shall resolve the dispute taking into consideration all reliable information relevant to the issues, on an issue-by-issue basis, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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, and 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) Any stipulations of the parties; and
- (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 a dispute settlement procedures in the public service or in private employment.

MUTUALLY RESOLVED ISSUES

- Article VIII (Page 27) Section 11. YMCA Membership
[withdrawn by City at the hearing*]
- Article VI (Page 9) Section 3. Call-In Rate
[withdrawn by City at the hearing*]
- Article VII (Page 16) Section 18. Service Connected Injury
[withdrawn by City at the hearing*]
- Article VII (Page 21) Section 36. Residency
[withdrawn by City at the hearing*]
- Article VII (Page 19) Section 26. Educational Benefits
[withdrawn by City at the hearing*]
- Article VI (Page 11) Section 11 Compensatory Time
The City agreed to delete the Addendum on Compensatory time dated 2/27/95 in its entirety and maintain current contract language.

Line Personnel Issue

[withdrawn by Union at the hearing*]

The parties agree to maintain existing language and there is no need for the proposal referred to as "Line Personnel."

REMAINING ISSUES

Article VII (Page 18) Section 24. **Vacation**

Article VII (Page 20) Section 26(e) **Haz Mat**

Article VIII (Page 24) Section 2(a) **Wages and Benefits**

Background

Ashtabula is located on the southern shore of Lake Erie in Ashtabula County in the northeast corner of the State of Ohio 55 miles east of the City of Cleveland. The city contains 7.61 square miles and a population of 21,633. Ashtabula County is geographically the largest county in the state with over 700 square miles with a population of about 100,000 and the facilities of 10 fortune 500 companies with 275 manufacturing and industrial firms located in the city and the county. One of the largest in the City, Reliance Electric, is shutting down with a resultant reduction in city tax revenues.

Comparables

In support of their respective positions, some of the arguments here are based on practices and/or collective bargaining agreements in "comparable" cities, however, the parties agreed that sufficient true "comparables" were not available.

The City based its comparables on *statewide* information [CX-1 (vacations); CX-2, page 1 (average wage increases); CX-2, page, 2 (rank differentials)]. Its comparables were requested to reflect vacation allowances, average wage increases over the most recent past three years, and rank differentials in cities statewide, that have the following elements: (1) populations of 12,000-21,000; (2) full time fire departments; (3) similar financial and economic strength (Ashtabula has about \$18 million in all funds); (4) similar funding structures; and (5) consider whether comparable special services that are included or excluded e.g. hazmat. The City also took into account what it considers minimum manning and staffing requirements.

The Union selected, as comparables, cities located west of Ashtabula in northern Ohio off Interstate 90 close to Lake Erie, i.e. Painesville and Willoughby (Lake County); Avon Lake and North Ridgeville (Lorain County); and Rocky River and Shaker Heights, (Cuyahoga County). The Union took into account fire departments with compliments averaging 33 (Ashtabula has 25), with annual fire calls averaging 588 (Ashtabula has 636 excluding medical runs).

There was no direct testimony that Ashtabula cannot financially afford to accommodate the Union's position. However, the City suggested such an argument when it offered Exhibit #3, depicting median income of Ashtabula residents as low on this exhibit which contains rankings for an unrelated purpose.

I have excluded this exhibit, which, standing alone, is not sufficiently reliable or comprehensive enough to be relevant to the ability of the City of Ashtabula to pay. How the data were obtained was not established. Nor are there median household income comparisons tied to most of the cities

in the comparable lists submitted by the City on CX-1 and CX-2, or the Union Comparables. Inability to pay is a proper factor to consider when substantial receipts and disbursements information over several recent years reflect a serious financial burden on a city. It is not enough to assert that a city has a responsibility to protect the taxpayers.

Statewide averages are less comparable than a more focused area such as northern and eastern Ohio. The population range of 12,000-to 21,000 selected by the City is less comparable than a range of 17,000 to 25,000 when compared to Ashtabula's 21,478. There is a perception that southern and western Ohio communities have significantly different real estate and income tax bases compared to residents northern and eastern Ohio where land may on average cost more and where incomes and costs of living on average are also higher. Nor are bedroom communities the same as communities such as Ashtabula with significant manufacturing, industry and commerce.

Nor can Interstate 90 and Lake Erie be the primary basis. Cities such as Rocky River and Shaker Heights in Cuyahoga County have little or no industry and the residents are typically engaged in business or professions. Avon Lake has about 1/3rd of the fire calls attended to in Ashtabula and has only two ranks in pay therefore the 16% differential and is therefore not sufficiently comparable

Moreover, in some communities, the type and quality of service needed or expected from a fire department and the ability and willingness to pay for those services may vary significantly. The weight of the evidence was not very helpful in determining which Ohio cities are sufficiently comparable to Ashtabula.

Thus, I found neither group of comparables adequate. Excluding Rocky River, Shaker Heights and Avon Lake, the remaining cities, N. Ridgeville, Painesville, and Willoughby, have been considered with Bedford, Bedford Heights, Conneaut, East Liverpool and Ravenna, and Solon all of which have some significant commerce and/or industry.

Article VII (Page 18) Section 24. Vacation

Current contract		City Proposal		Union Proposal	
Years	Weeks	Years	Weeks	Years	Weeks
1-6	2	1-8	2	1-5	2
7-10	3	9-15	3	6-9	3
11-18	4	16-25	4	10-17	4
19-24	5	26 and up	5	18-22	5
25 and up	6			23 and up	6

Contentions and Proposals - Union

Change anniversary date to 1/1 each year after the first year of contract.

The current vacation schedule has been in place since 5/1/89 and is the same as the Municipal Union and the schedule for non-Union employees. It is argued that levels achieved

through negotiation should not be reduced. It is pointed out that the Police Union has the same schedule but earn them earlier in each bracket.

Contentions and Proposals - Management

Leave the anniversary date as 5/1 each year.

In order to reduce its liability for vacations, the Employer proposes effective 5/1/98 to limit vacations effective 5/1/98 to a maximum of five (5) weeks a year. 1998 Vacations more than five (5) weeks will be grandfathered in for 1998, however, from and after 5/1/98 the current contract language would establish a maximum of five (5) weeks.

Discussion and Recommendation

Willoughby, Bedford and East Liverpool allow six weeks vacation for long term members of the fire department. The others in the grouping I selected allow a maximum of five (5).

According to the evidence six (6) employees who each have at least 25 years of service, would be affected. The Police and other City employees already receive a maximum of six (6) weeks vacation, however, I am not persuaded at this time that the timing for fire fighters must be the same as for police.

I do not recommend any change in the anniversary date for calculating vacation accruals. I do not recommend the shortening or lengthening or any change in the current vacation schedule. The vacation language should remain as it is currently.

Article VII (Page 20) Section 26(e) Haz Mat

A Haz Mat Technician ["Tech"] receives incentive pay after receiving haz mat education. Only Techs can work in the *hot zones*. The training requires 64 hours and certification must be maintained. Without haz mat training the firemen cannot work in the hot zones which are the most dangerous. The *cold zone* is the "awareness" level or "hazop" which all firefighters must receive as they also receive EMT training.

Sec. 26(e) limits the number of Haz Mat Techs to thirteen (13). If there are more firemen interested it is up to the Chief to determine who shall be trained to become a Tech. The department has 24 firemen including the Chief. There are 19 who have qualified to be Haz Mat Techs. Five (5) have not. The Techs deal with such areas as railroad tracks, chemical plants, certain manufacturing plants and seaport docks. Training is at two levels.

Contentions and Proposals - Union

The Union proposes to delete the limit of thirteen (13). The most who could additionally qualify is five (5) and there is not a large cost i.e. \$800 per year. It is argued that the benefits outweigh the costs. This is prospective only i.e. only over the remaining term of the contract.

Contentions and Proposals - Management

Management testimony asserts that four (4) per shift is enough and that surrounding communities also have Haz Mat Techs. The annual potential cost of \$4,000 (5 x \$800) is not warranted.

Discussion and Recommendation

The argument revolved around why nineteen (19) are being paid Haz Mat incentive pay rather than the contractual limit of thirteen (13). There was evidence that five qualified after a grievance on the issue was settled by the City Manager based on the Chief's mistaken authorization of the training. The 19th was hired having previously qualified while employed by another city.

There was insufficient evidence to require the city to eliminate the standing limit of thirteen (13). The current contract language should remain the same.

Article VIII (Page 24) Section 2a. Wages and Benefits

Contentions and Proposals - Union

The Union proposes:

- Beginning 5/1/97- 5% increase and 6% differential between ranks
- Beginning 5/1/98- 5% increase and 7% differential between ranks
- Beginning 5/1/99- 5% increase and 8% differential between ranks

The current pay schedule was agreed to in 1991 in response to a suggestion by a consultant for the City that the Union combines all incentive pays into a pay schedule. According to the Union, the City wants to abolish the current pay schedule causing cuts in pay for some members. Furthermore, the FSLA requires that overtime be based on total wages including incentive pay.

Contentions and Proposals - Management

As to all wage schedules in the agreement, the Employer proposes a wage increase of 2 1/2% effective 5/1/97; a 3% increase effective 5/1/98; and a 4% increase effective 5/1/99

The Employer proposes to maintain the current rank differential of 5 1/2% with no increases during the term of the agreement.

Discussion and Recommendation

Rank differential

Ashtabula has a rank differential of 5.5% compared to Painesville, Willoughby and North Ridgeville each of which has a rank differential of 10%. Bedford Heights (\$44,039 - \$47,398 [7.4%]- \$50,757 [7.1%]); Solon (\$42,770 - \$46,191 [8%] - 49,887[8%]) [CX-2, pg 2].

Wages

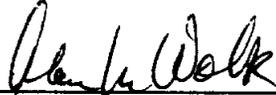
The Union evidence indicates that N. Ridgeville, Painesville and Willoughby have maximum firefighter wages with all incentives of \$44,211 compared to Ashtabula at \$38,085. The difference is \$6,126 or 16 %. In my view this gap should shrink

CX-2 reveals the following wages increase three year averages: Bedford (4.4 %); Bedford Heights (3.125%); East Liverpool (3.250 %); Conneaut (3.750%); Ravenna (3.000 %); and Solon (3.500%). Although the state average is 3.296%, the cities in northeast Ohio typically are between 3.750 % and 4.000%.

It is my recommendation based on the foregoing that wages be increased and the rank differential should be adjusted in stages as follows:

Beginning 5/1/97- 3.500 % increase and 6 % differential between ranks
Beginning 5/1/98- 3.500 % increase and 6.5% differential between ranks
Beginning 5/1/99- 4.000 % increase and 6.5% differential between ranks

These differentials will be smaller after three years and may be subject to re-evaluation at that time.


ALAN M. WOLK, Fact Finder
File # 271-97

Made effective in
ASHTABULA County, Ohio
this 22 day of APRIL, 1998.