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**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

**MOUNT VERNON FIRE FIGHTERS
AND PARAMEDICS, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,
LOCAL 3712**

**Employee Organization,
and**

**CITY OF MOUNT VERNON
Employer.**

REPORT OF FACT FINDER

CASE NO. 97-MED-03-0239

DATE OF HEARING: May 2, 1997

PLACE OF HEARING: Mount Vernon, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

David Briscoe, Firefighter
Rick Cantrell, Paramedic
Eric Rutter, Firefighter/EMT
Mike Massie, Fifth Vice President, OAPFF

FOR THE EMPLOYER:

Michael Underwood, Attorney
Melissa A. Romig, Attorney
Joel Daniels, Safety-Service Director
Terry Scott, City Auditor

PROCEDURAL BACKGROUND

On April 11, 1997, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(C)(3). The fact-finding hearing was held on May 2, 1997, at the offices of the City of Mount Vernon. The report and recommendations of the fact finder are to be served upon the parties no later than May 21, 1997, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of the initial collective bargaining agreement between the City of Mount Vernon, Ohio ("Mount Vernon" or "City") and the Mount Vernon Firefighters and Paramedics, International Association of Firefighters, Local 3712 ("Union") for a bargaining unit consisting of those individuals serving as firefighters, paramedics, captains and lieutenants in the City's Fire Department. At the present time, there are 28 employees in the unit. Prior to 1997, the bargaining unit was represented by the Fraternal Order of Police, Ohio Labor Counsel, Inc. ("FOP"), which had a collective bargaining agreement with the City which expired on December 31, 1996. On or about February 11, 1997, the SERB certified the Union as the exclusive representative of the employees in the bargaining unit.

Prior to the fact-finding hearing, the parties engaged in a number of formal negotiation sessions and engaged in mediation with the assistance of a mediator from the SERB. During this process, the parties were unable to reach a complete agreement, but did reach a tentative agreement on most issues.

The fact finder offered to mediate the unresolved issues during the fact-finding hearing, but the parties agreed that further mediation would not be productive. However, some of the unresolved issues contained in the prehearing written statements of one or both of the parties were resolved prior to the submission of issues to the fact finder. These issues included: Article 1 - Statement of Purpose; Article 11 - Corrective Action; Article 12 - Grievance Procedure; Article 24 - Personal Leave; and Article 25 - Birthday. The only remaining outstanding unresolved issues are those discussed in this report. The parties have reached a tentative agreement on all other issues. The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, 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. Any 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

ARTICLE 23

VACATION

Position of the Union

The Union proposes to shorten the amount of time it takes to become entitled to five weeks of vacation. Currently, an employee must have 23 years of service in order to have five weeks of vacation. The Union proposes to reduce the service requirement to 20 years. In addition, the Union proposes to add another category to the vacation schedule which will allow employees with 25 years of service to have six weeks of vacation. Currently, the maximum amount of vacation is five weeks.

The Union states that its proposal will provide fire department employees with the same amount of vacation as the police department. Due to the City's inability to employ enough fire personnel, the employees in the fire department have been unable to take time off with other types of leave, such as compensatory time and birthdays. In many cases the employees must take pay in lieu of time off. Vacation time is more likely to be used because it can be scheduled in advance.

Position of the City

The City asserts that the employees already have a sufficient amount of time off work. In addition to paid holidays, personal days, and vacation, they also have 17 days off work for Kelly Days. The Kelly Day provides one 24 hour day off every three weeks. The fire personnel already have more time off per year than other employees of the City. Scheduling sufficient personnel is difficult under the current vacation schedule, and would be made more difficult if the employees became entitled to more vacation time.

Discussion and Findings

The nature of the schedule for firefighters¹ causes difficulties in making a fair comparison with other departments. Firefighters work a shift of 24 hours followed by 48 hours of time off. The Kelly Day allows a firefighter to have 5 consecutive days off every three weeks. Due to the nature of the schedule, firefighters work an average of 48 hours per week. Thus, they need 48 hours of leave time to receive a week of vacation.

While other types of leave may benefit the firefighters, having time off that can be scheduled in advance is important. If the vacation time of the firefighters is not adjusted, they will have less favorable vacation benefits than other unionized City employees. Service employees and police employees become entitled to five weeks of vacation after 20 years of service, compared with a 23 year requirement for firefighters. Police employees also receive six weeks of vacation after 25 years. The proposal of the Union on this issue would give fire department employees the same vacation benefit that the City agreed to provide to police employees.

The City contends that the firefighters should not receive more vacation because of scheduling difficulties. While adequate manning of the department is crucial, the employees should not suffer because of the staffing decisions made by the City. The City has been able to give police officers increased vacation while continuing to provide adequate police protection. The same benefit should be provided to the firefighters. The additional vacation requested by the Union will only affect the small number of employees who have at least 20 years of service. According to data available to the fact finder, six employees in the fire department will receive additional vacation during the term of this agreement.²

¹For readability purposes, employees in the bargaining unit will be referred to as "firefighters," but it should be recognized that department personnel also render emergency medical services.

²Data from City Exhibit 7, as revised on May 5, 1997. The "IAFF Proposed Wage Cost Analysis" shows that in 1997, 1998, and 1999 there will be two captains, one lieutenant, and three firefighters/medics with at least twenty years of service.

Recommendation

Article 23 of the collective bargaining agreement shall provide as follows:

23.1 Each full-time, forty -eight (48) hour employee of the Fire Department shall earn vacation leave upon the completion of years of employment and annually thereafter as follows:

One (1) Year.....	96 Hours Vacation
Six (6) Years.....	144 Hours Vacation
Thirteen (13) Years.....	192 Hours Vacation
Twenty (20) Years.....	240 Hours Vacation
Twenty-Five (25) Years.....	288 Hours Vacation

23.2 through 23.8 - Current language to be retained.

ARTICLE 32

HOSPITALIZATION AND MEDICAL INSURANCE

Position of the Union

The Union proposes the maintenance of the current insurance coverage with United Health Care. The Union proposes that the City pay 100 percent of the premium for single coverage and up to \$496.00 per month for family coverage, with the employee paying for any amount above \$496.00 up to a maximum employee contribution of 12 percent of the premium. In April 1995, the City permitted the firefighters to change from Anthem/Community Mutual to United Health Care, even though the other City employees continued to covered by Anthem/Community Mutual. The City is trying to force the firefighters to again change insurance providers. It wishes to change the insurance plan to the City's self-insured plan, administered by Medical Benefits Administrators, Inc. ("Medical Benefits Plan")

It is inconsistent for the City to now argue that the firefighters must be included in the same plan as other City employees. During the negotiations for the prior collective bargaining agreement, the City argued that it would be an administrative burden to have more than one insurance plan. Later, however, the City changed

positions and encouraged the firefighters to accept a different plan than the one used by the other employees.

The Medical Benefits Plan was designed by employees other than firefighters. In contrast, the United Health Care plan was originally selected by the firefighters because it provides the most favorable coverage for them. For example, the Medical Benefits Plan provides costly coverage for prescriptions and chiropractic care, items which are not a priority for the firefighters.

The City's share of the premium for family coverage under the Anthem policy in 1996 was \$496.00 per month. The Union feels that the City should be required to pay any premium up to this amount. The Union is willing to have the employees pay any amount over \$496.00, up to a maximum of 12 percent of the premium. In 1995 and 1996, the monthly premium for family coverage with the United Health Care Plan was \$474.00.

Position of the City

The City proposes that the firefighters be provided with the Medical Benefits Plan, which has already been accepted by the other two bargaining units. The City will pay the entire monthly premium for single or family coverage during 1997 and 1998. In 1999, employees would be only be responsible for the premium cost above \$496.00, up to a maximum of 12 percent of the premium. Employees would not have to make a contribution for the single plan in 1999 unless the family premium exceeds \$496.00. In that case, the employee contribution for the single plan would be the amount in excess of \$187.00, up to a maximum of 12 percent of the single premium.

The insurance premium for all City employees would be reduced if the firefighters are included in the Medical Benefits Plan. The 1997 premium to the City would be \$441.10 if the firefighters were included or \$454.75 if the firefighters are not covered by the Medical Benefits Plan. If the firefighters are included, the premium would have to increase by \$55.00 per month before employees would be required to make a contribution in 1999.

In 1995, the City agreed to allow the firefighters to obtain coverage from United

Health Plan only because the premium was less than the amount the City paid to Anthem/Community Mutual. The situation has changed significantly since that time. The 1997 premium for United Health Plan is \$502.00 per month for family coverage, compared with the \$441.10 for the Medical Benefits Plan.

The benefits provided by both Medical Benefits Plan and United Health Plan are comparable. Even though the Medical Benefits Plan has an annual deductible of \$100 per person and \$200.00 per family, employee premium contributions over the life of the collective bargaining agreement would exceed the amount of deductible paid by the average firefighter.

Even if the firefighters are covered by the United Health Care plan, the City should not be required to pay more than the cost of the coverage for other employees. The City contribution should be limited to the current Medical Benefits Plan premium.

Discussion and Findings

While the Medical Benefits Plan and the United Health Care plan do not provide identical coverage, both plans provide very comprehensive coverage with a minimal cost to the employee. The plans differ somewhat in annual deductibles and coinsurance. The United Health Care plan has no deductible, but requires the employee to pay 20 percent of covered expenses up to \$500.00 (single) and \$1,000.00 (family). The Medical Benefits Plan has an annual deductible of \$100 per person or \$200.00 per family, and requires the employee to pay 10 percent of covered expenses up to \$400.00 (single) and \$800.00 (family). Both plans cover visits to a physician's office, including visits for annual physicals and well baby care, with the employee being required to pay only \$10.00 per visit. Neither plan is fundamentally superior to the other. The expense to the employee will primarily be determined by the type of medical services required, rather than by the insurance plan used.

There is a significant difference in the premium expense. For family coverage, the 1997 monthly premium for the United Health Care Plan is \$502.00, compared with \$441.00 for Medical Benefits, a difference of \$61.00, or 13.8 percent. The proposal of

the Union is that the City pay up to \$496.00 per month.³ Thus, the City would pay \$55.00 additional per month under the Union proposal. In addition, if the firefighters are not included in the Medical Benefits Plan, the monthly premium for family coverage in 1997 will be increased by \$13.00 to \$454.00. The City will not only have to pay more for the firefighters coverage, it will also have pay more for insurance for most of its other employees.

The fact finder will recommend that the employees in the bargaining unit be covered by the same Medical Benefits Plan as other City employees. The difference in the plans is negligible, and the City can realize significant cost savings by providing the firefighters the same insurance plan as other City employees.

Recommendation

Article 32 of the collective bargaining agreement will provide as follows:

32.1 Major medical insurance, dental insurance, and a prescription drug card will be provided through the City's self-insured plan, currently administered by Medical Benefits Administrators, Inc. Members will be enrolled in this plan as soon as practicable following the approval of this Agreement.

32.2 The City will pay the full cost of single or family coverage during 1997 and 1998. In 1999, members will not have to contribute toward the cost of family coverage unless the monthly premium exceeds \$496.00. If that happens, the members will begin paying a portion of the monthly premium equal to the amount in excess of \$496.00, or will pay 12% of the total premium, whichever is less. Members with single coverage will not have to pay a portion of the premium in 1999 unless the cost of family coverage exceeds \$496.00. In that event, members with single coverage will pay the amount of the single coverage premium that exceeds \$187.00 or will pay 12% of the premium, whichever is less.

³This is based upon the Anthem/Community Mutual premium which the City was paying for insurance for other employees during 1996.

32.3 The City will provide the Union President with a copy of the plan documents for the plan specified in Section 32.1. The City will maintain the benefits described in the documents unless the benefits are unilaterally eliminated from coverage by the stop-loss insurance carrier. If the stop-loss insurance carrier refuses to cover some benefits, the City will bargain with the Union in an attempt to make adjustments in the lost benefits.

32.4 Only one family medical plan shall be provided to employees whose spouses also work for the City.

32.5 After an employee works one hundred eighty (180) days, the employee will receive a fully paid \$15,000 group life insurance policy.

32.6 All employees shall be covered by liability insurance in amounts determined by the City. The City shall pay the liability insurance premiums.

33.7 The Union has the right to provide input into the selection of the insurance carrier. The City makes the final selection of the insurance carrier.

ARTICLE 34

WAGES

Position of the Union

The Union proposes a wage increase of 4 percent for 1997, 3.5 percent for 1998, and 3.5 percent for 1999. It also proposes a longevity payment of five cents per hour after five years of service; ten cents per hour after ten years of service; fifteen cents per hour after fifteen years of service; and twenty cents per hour after twenty years of service.

The increases are justified for many reasons. The number of runs increased from 2603 in 1993, to 2995 in 1996, an increase of 14.8 percent. The City has recently experienced an increase in population. Many new subdivisions have been developed and more are planned. The increase in population and housing will increase the

workload of the fire department. The City's revenues increased by 12 percent in 1994, 6 percent in 1995, and 4.6 percent in 1996.

The minimum manning requirements were reduced from eight to seven in 1987. In 1983, the dual role of firefighter/emergency medical technician was undertaken by firefighters without any additional compensation.

Wages are below the average of eight Ohio cities in the same population range of 13,550 to 15,550. Top step annual wages in these cities averages \$37,742, which is \$6,541 more than the top step in Mount Vernon. Seven of these eight cities have longevity pay, which Mount Vernon does not have. Of 45 cities in Ohio with populations from 10,000 to 20,000, the average top step wage is \$3,127 more than Mount Vernon. Only 9 of these 45 cities do not provide longevity.

The proposed longevity payments will provide a modest amount of additional compensation to employees who have worked for the City for five years or more. Currently, employees in the fire department do not receive any step increase after five years. More experienced personnel are often required to accept additional responsibility. As a more experienced employee is more valuable to the City, the employee should receive some recognition in the form of additional compensation. The Union notes that department heads receive lump sum longevity payments.

The cost of living is not necessarily lower in Mount Vernon than in a larger city. Gasoline and appliance prices are higher and real estate taxes have increased considerably along with increased property values.

The wage increases proposed are reasonable. The statewide average wage increase recommended in fact finding decisions since January 1996 has been 3.7 percent, and an average increase of 3.65 percent has been awarded in conciliation decisions.

Position of the City

The City proposes to provide the firefighters with a wage increase of 3.5 percent, effective June 1, 1997, and an increase of 3 percent in both 1998 and 1999. The wage proposal is consistent with the increases agreed to by the other two bargaining units in

the City, and with the wage increase given to non-union and management employees. The average increase is higher than the 1996 average statewide negotiated wage increase of 3.29 percent.

Mount Vernon firefighters are well paid, as show by data from comparable Ohio cities. In order to made a fair comparison, suburban cities located in large metropolitan areas must be excluded. Of 18 cities in Ohio with populations from 12,000 to 18,000, Mount Vernon would rank sixth in top step firefighter wages for 1997, if the City's wage proposal was adopted. Of the five cities with higher wages, four are located in large metropolitan areas. Most of the 18 cities require that the employee contribute to the cost of health insurance, which has the effect of reducing take home pay.

The City has recognized in the past that firefighters were underpaid compared to some other cities, and made adjustments to bring wages up. The firefighters received wage increases of 4 percent in 1991, 1992, and 1993. In 1994, they received 6 percent and, in both 1995 and 1996, the increase was 5 percent. The police department received the same wage increases in these years and has accepted the same wage increase the City has offered to the firefighters for 1996, 1997 and 1998.

If the wage proposal of the Union was implemented, 1997 wage costs, including increases in pension benefits, would increase by \$67,774.71, compared with an increase of \$35,494.44 under the proposal of the City. Over three years, the Union's proposal would increase wage costs by \$155,106.80 while the City's proposal would increase costs by \$115,412.23.

Discussion and Findings

In reviewing the data submitted for wage comparison, it is important to look for political subdivisions with similar characteristics. The City correctly asserts that a comparison between a city in a large metropolitan area cannot be properly compared to one in a less populated area. The Union correctly asserts that a comparison should not be made between a city in a growing area with a healthy economy, and a city in an economically depressed area. Precise comparisons are somewhat difficult as some fire departments require a much longer time to reach the top step. Some firefighters

have a lower hourly rate but have a higher annual wage, due to the number of hours worked. Some cities pay part of the employee's share of the pension contribution. However, a review of the data shows that the wages of the firefighters in Mount Vernon are neither extremely high or extremely low when compared with similar cities. In fact, wages in Mount Vernon are close to the average of the wages in comparable cities.

Contrary to the situation at the time the last agreement was negotiated, firefighters do not require a large wage increase to catch up with other fire departments.⁴ However, they should receive a wage increase which will allow them to at least maintain their current position. The fact finder notes that the firefighters have received the same wage increase as the police for the last six years. While this pattern does necessarily have to continue, it does constitute some evidence of the negotiating history of the parties. The service employees also received a similar raise, except for a few employees in some classifications who were given a larger raise to keep up with wages in other jurisdictions.

The 1997 wage increase of 3.5 percent proposed by the City is above the average 1996 statewide negotiated wage increase of 3.29 percent and is only slightly below the average percentage wage increase of 3.7 specified by fact finders and 3.65 awarded by conciliators since January 1996. It is also above the 1996 statewide average negotiated increase for fire departments of 3.41 percent. (See City Exhibit 1.) The 3 percent increase proposed for 1998 and 1999 is the most common wage increase received by firefighters in other cities of similar size for 1998 and 1999. (See City Exhibit 2.) The fact finder will recommend that the firefighters receive wage increases of 3.5 percent in 1997, 3 percent in 1998, and 3 percent in 1999. The evidence does not support the need for a larger across-the-board increase at this time.

The fact finder will also recommend that the longevity proposal of the Union be implemented. The evidence shows that most comparable cities provide some longevity payment. Of the fifteen cities surveyed by the City, eleven provide longevity payments.

⁴The Mount Vernon firefighters received percentage increases in 1994, 1995 and 1996 of 6.5 and 5. The statewide average percentage wage increase for negotiated agreements during these years was 3.19, 3.26, and 3.29. See City Exhibits 1 and 6.

(See City Exhibit 4.) The firefighters do not currently receive any step increase after five years of service. The payments proposed by the Union are modest. An employee with five years of experience will receive \$124.80 annually, and an employee with twenty years of service will receive \$499.20 annually. The City currently provides longevity payments to management personnel in the fire and police department. (See Union Exhibit 3.)

Recommendation

Wage rates shall be increased by 3.5 percent in 1997, an additional 3 percent in 1998, and an additional 3 percent in 1999.

Employees will receive longevity pay upon the completion of years of service as follows:

Five (5) Years	\$.05 per hour
Ten (10) Years	\$.10 per hour
Fifteen (15) Years	\$.15 per hour
Twenty (20) Years	\$.20 per hour

ARTICLE 44

DURATION

Position of the Union

The Union proposes that the collective bargaining agreement be made effective as of January 1, 1997. It is unfair to penalize the employees by delaying the effective date of wage increases to June 1, 1997. The Union has been negotiating in good faith. Some of the delay in negotiations was due to the City's change in insurance plans. During negotiations, the City never suggested that the wage increase would not be retroactive to January 1, 1997. In a letter to city council members, dated February 18, 1997, the City's chief negotiator stated that all three units (fire, police and service) were bargaining in good faith. (See Union Exhibit 4.)

Position of the City

The City contends that making the wage increase retroactive to January 1, 1997, cannot be justified. A delay in negotiations occurred because the members of the bargaining unit desired to change union affiliation. The SERB did not certify the Union as the exclusive representative until February 11, 1997. This caused a delay in the implementation of the statutory impasse procedures. Even though the City presented its final offer on January 16, 1997, mediation and fact finding could not take place until after the SERB certification. The City actually filed the Notice to Negotiate with the SERB in order to start the impasse procedures.

Discussion and Findings

The resolution of this issue will determine whether the wage increases and longevity pay will be retroactive to January 1, 1997. The change in union affiliation undoubtedly caused some delay in the negotiations. However, the firefighter's bargaining team began to negotiate with the City in October 1996. There is no evidence of bad faith on the part of either party. The firefighters were prohibited by statute from changing union affiliation prior to January 1, 1997, because the previous contract did not expire until December 31, 1996. The new affiliation could not be approved until the statutory procedures were followed and the change was certified by the SERB.

If the wage increases are not made retroactive to January 1, 1997, the effective wage increase for the firefighters will be less than that received by other employees of the City. Therefore, the fact finder will recommend that the agreement be effective as of January 1, 1997. Obviously, the change in insurance plans cannot be made retroactive. This change will be made as soon as practicable after the approval of this Agreement, as recommended in this report.

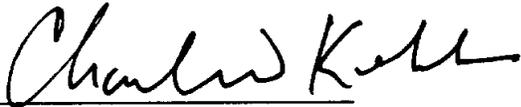
Recommendation

Article 44 of the collective bargaining agreement will provide as follows:

44.1 This Agreement shall be effective as of January 1, 1997, and shall continue in full force and effect through midnight, December 31, 1999. Notice for negotiations of a successor agreement shall be pursuant to the procedures outlined in this Agreement and Chapter 4117 of the Ohio Revised Code.

44.2 through 44.5 - Current language to be retained.

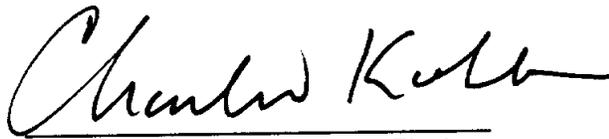
Respectfully Submitted,

A handwritten signature in cursive script that reads "Charles W. Kohler". The signature is written in black ink and is positioned above a horizontal line.

Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of May 1997, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Michael Underwood, Porter, Wright, Morris and Arthur, 41 South High Street, Columbus, Ohio 43215-6194; and upon Mike Massie, Ohio Association of Professional Fire Fighters, 1380 Dublin Road, Suite 104, Columbus, Ohio 43215-1025; each by overnight delivery; and upon G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles W. Kohler". The signature is written in a cursive style with a horizontal line underneath the name.

Charles W. Kohler, Fact Finder