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BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

CASE NO. 97-MED-03-0246

CITY OF BROADVIEW HEIGHTS *
*
EMPLOYER *
AND * FACT FINDER'S REPORT
BROADVIEW HEIGHTS FIREMAN'S *
ASSOCIATION *
EMPLOYEE REPRESENTATIVE *

I. DATE AND PLACE OF HEARING

The hearing was held on June 24, 1997 in the
Broadview Heights City Hall in Broadview Heights, Ohio.

II. PARTIES

The employees, hereinafter referred to herein as the
"Union", are the part-time firefighters. The full-time
firefighters are represented by another Union and have a
separate agreement. The "Union" is independent and
unaffiliated with any international.

The Employer is the City of Broadview Heights, and is
hereinafter referred to as the "City".

III. APPEARANCES

The following persons appeared on behalf of the respective party as noted:

For the Union:

Richard Neiden, Representative

Michael O'Toole, Representative

Mark Klein, Representative

For the City:

Chris Lencewicz, Labor Relations Representative

Barry Libby, Councilman, Ward 3

Leo Bender, Mayor

IV. INTRODUCTION

This unit consists of 16 firefighters, all of whom are part-time employees (The eligibility of a part-time officer was raised by the City and is treated in Issue No. 1).

The Union was certified on February 7, 1997 by SERB. This is the first collective bargaining agreement between these parties.

The City is essentially residential in character, but has areas of both commercial and industrial properties. The City has a full-time fire department. The part-time firefighters sign-up for available duty times depending on a posted schedule.

Prior to this hearing, the parties engaged 5 bargaining sessions. Many issues were thought to have been resolved as a result of these sessions, but no issues were "signed-off". Consequently, every matter was at issue since there was agreement on nothing.

V. ISSUES PRESENTED

Thirteen issues were finally identified to be resolved by fact finding. Many issues were resolved during the hearing through mediation. [see next section of this report].

The 13 issues submitted for fact finding are: 1. Unit Membership; 2. Management rights; 3. Layoff and Recall 4. Probationary Period Credits; 5. Subpoena Rights; 6. Overtime; 7. Uniform allowance; 8. Wages and Compensation; 9. Paramedic and Advanced EMT Premium Pay; 10. Holiday pay; 11. Death & Disability Benefits; 12. Conformity to Law; and 13. "Zipper Clause".

VI. MEDIATION

Through mediation the parties were able to agree upon a number of contractual issues which were then "signed off". The issues resolved are: 1. Preamble (Article 1); 2. Union Recognition (Article 2); 3. Union Representation (Article 3); 4. No Strike / No Lockout (Article 4); 5. Pledge

Against Discrimination (Article 5); 6. Rules And Regulations (Article 8); 7. Probationary Period (Article 9); 8. Corrective Action, Discharge Or Suspension (Article 10); 9. Grievance Procedure (except last paragraph) (Article 11); 10. Duration Of Agreement (Article 18). Rather than reprinting the language which the parties have agreed to adopt, attached to this report are the "signed-off" sections of the collective bargaining agreement. The handwritten modifications to the "signed-off" portions of the agreement, including the renumbering of Articles, constitute amendments which the parties agreed upon and which constitute a part of their agreement.

VI. FACT FINDING

ISSUE NO. 1

ELIGIBILITY - ARTICLE 2

CITY PROPOSAL AND POSITION: The City challenged the eligibility of Richard Neiden, a lieutenant, to participate in the unit on the basis that the certification by SERB is limited to part-time firefighters. The City claimed that this is an issue of certification and only SERB can rule upon such matters and to do so would constitute an "Unfair Labor Practice".

UNION POSITION: the Union submitted that Mr. Neiden is a member of the unit, signed an acknowledgment of representation and voted in the election without challenge.

DISCUSSION: It appears that Mr. Neiden signed, along with 16 other part-time fireman, an acknowledgment that he wished to be represented by the Broadview Heights Fireman's Association. It also appears that Mr. Neiden voted in the election and was unchallenged. It is incumbent upon the party challenging Mr. Neiden to prove, by convincing evidence, that he does not belong in the unit. No such evidence was introduced.

The Fact Finder concludes that the challenge of Mr. Neiden's eligibility was not timely raised and is therefore considered waived.

The City attempted to place the burden of seeking a clarification upon the shoulders of the Union, but it also had the right to seek this clarification if it deemed necessary. It did not do so.

RECOMMENDATION: It is the recommendation that Mr. Neiden be included in this bargaining unit.

ISSUE NO. 2

MANAGEMENT RIGHTS - ARTICLE 6

CITY PROPOSAL AND POSITION: The bulk of Article 6 was agreed to with the exception of Subsection (a) in which the City included language acknowledging its right to "layoff,

recall, reprimand, suspend, " as being a part of its management rights.

UNION POSITION: The Union sought to qualify those powers by making them subject to specific Articles, i.e. Grievances [proposed Article 11 (renumbered from proposed Article 10)]. The Union argued that the language requested by the City in Section (a) of Article 6 did not sufficiently protect the members from unilateral action on the part of the City.

RECOMMENDATION: The Fact Finder is of the opinion that the procedures detailed in the "layoff & recall" and in the "grievance procedure" articles would supersede the general and generic terminology of the management rights clause.

However, the addition of qualifying language in the management rights provisions subjecting such rights to the specific procedures of the "layoff & recall" and "grievance procedure" articles does not lessen management rights and may avoid a future misunderstanding.

RECOMMENDATION: It is recommended that qualifying language be contained in the proposed Article 6, Section 1[a] as follows:

to manage and direct its employees, including the right to select, hire, promote, transfer, assign, evaluate, layoff, recall,, suspend, discharge or discipline for just cause, and to maintain order among employees, provided, however, that any such management rights are subject to the

specific provisions contained in this agreement, including but not limited to those contained in Article 7 and Article 11.

The balance of Article 6 shall remain as contained in the proposed draft.

ISSUE NO.3

LAYOFF AND RECALL - ARTICLE 7

UNION PROPOSAL AND POSITION: The Union desired to insert an article dealing with layoff and recall procedures.

CITY POSITION: The City was not adverse to including such an article.

DISCUSSION: Though both parties recognized the possible benefits of including such an article into the agreement, they could not agree on the language. Layoff and recall procedures were not contained in any draft of a proposed contract prepared by either side.

RECOMMENDATION: It is the recommendation of the Fact Finder that the following clause relating to layoff and recall be included in the collective bargaining agreement.

7.01: Seniority shall be determined as of the date of appointment to the Broadview Heights Fire Department.

7.02: In the event it becomes necessary to lay off a part-time firefighter to a lack of funds, lack of work or other just cause, the employee with the least seniority in terms of service shall be the first to be laid off.

7.03: In the event of a re-hire following a layoff, the last firefighter laid-off shall be the first rehired.

7.04: The City shall maintain a layoff list which shall contain the name, address, telephone number, date of hire and date of layoff for each employee so laid off and shall notify the laid off firefighter of his/her eligibility for recall by certified mail. If the employee fails to report within 5 days of notification, the City shall offer the position to the next most senior employee on the lay off list.

7.05 Seniority shall be the sole consideration in determining eligibility for purposes of rehire.

ISSUE NO. 4

PROBATIONARY PERIOD - ARTICLE 9

UNION PROPOSAL AND POSITION: The Union seeks the addition of a new Section (2) to the City's proposal regarding probationary periods. The Union sought to extend credit against the probationary period if a part-time firefighter is appointed to a full-time position.

CITY POSITION: The City refused to extend credit against the 12 month probationary period in the event a part-time firefighter is appointed to a full-time position.

DISCUSSION: Apparently the Union is seeking credit against a probationary period for full-time firefighters for any probationary time served while in a part-time position. This agreement is between part-time firefighters and the City. The City and its full-time firefighters operate under a separate collective bargaining agreement.

RECOMMENDATION: The Fact Finder recommends against the inclusion of the Union's proposal in the new agreement.

ISSUE NO.5

GRIEVANCE PROCEDURE-STEP 3

UNION PROPOSAL AND POSITION: The Union sought to modify the language suggested by the City regarding the requirement that a city employee appear without subpoena at an arbitration hearing. The Union requested the same power.

CITY POSITION: the City maintained that as long as it was agreeing to reimburse any employee which it requested to appear at an arbitration hearing, that it alone should have the power to request attendance of a witness without subpoena.

DISCUSSION: Usually the rules of the particular agency under whose aegis the arbitration hearing is conducted, controls the procedure for the issuance of subpoenas. Each side has the right to petition the arbitrator to issue a subpoena. The issuance of subpoenas is within the discretion of the arbitrator. The proposal by the City appears to give it the right to require the attendance of witnesses without the issuance of a subpoena. The proposal is unclear as to its enforcement powers or the repercussions for failing to voluntarily attend a hearing. The Fact Finder is of the opinion that the attendance of witnesses at any arbitration hearing is best left to the particular agency under whose aegis the arbitration is conducted.

RECOMMENDATION: It is recommended that the last paragraph of the proposed Article 11, Grievance Procedure, not be contained in the new agreement between the parties.

ISSUE NO. 6

OVERTIME - ARTICLE 12

CITY PROPOSAL AND POSITION: The City desires to change the method by which overtime is calculated and paid.

UNION POSITION: The Union desires to retain the same standards as now in effect.

DISCUSSION: The present standard for the calculation of overtime appears to be based upon 144 hours in a 19 day period, but also incorporates the provisions of the Fair Labor Standards Act in all calculations. The City claimed that a change was needed in the definition of overtime to grant it the necessary flexibility in scheduling. However, the parties have used this definition in the past and there appears to be no reason for a change.

RECOMMENDATION: It is recommended that the current method of calculating and paying overtime be retained in the new agreement.

ISSUE NO. 7

UNIFORM ALLOWANCE - ARTICLE 13

UNION PROPOSAL AND POSITION: The Union is seeking an increase from \$475 per year to \$500. The Union also sought to carryover \$100 per year if the entire allowance is unused.

CITY POSITION: the City countered the Union proposal by offering \$350 per year.

RECOMMENDATION: it is the recommendation that the current practice of \$475 be retained. The Fact Finder recommends against carrying over any part of the allowance from the previous year.

ISSUE NO.8

COMPENSATION - ARTICLE 14

UNION PROPOSAL AND POSITION: the Union is seeking an 8% increase for the first year and an 8.5% increase for the remaining part of the term (7 months).

CITY POSITION AND COUNTER-OFFER: the City countered with an offer which would have eliminated the emergency / non-emergency system of compensation which was alleged to be antiquated. The City's last offer consisted of a freeze for the 7 month period ending December 31 and an increase to \$12.55 per hour commencing January 1, 1998.

RECOMMENDATION: Presently, part-time firefighters receive \$11 per hour for non-emergency service and \$15.55 per hour for emergency duties or runs. The City's offer combined the emergency and non-emergency rates into an hourly rate of \$11.62. This appears to amount to an increase of \$.62 per hour over the non-emergency rate, but amounts to a reduction of \$3.93 per hour for emergency work which accounts for about 15% of the wages paid herein.

No evidence was introduced to establish the need for a single hourly rate or the necessity for the abolishment of this present classification system. The City did not argue financial inability. The parties appear to have co-existed under this present system which was enacted through a municipal ordinance. Wages have remained steady since 1995.

On the other hand, the Union introduced little evidence in the way of comparable compensation schedules paid to other part-time firefighters in neighboring communities. Valley View pays a combined rate of \$12.93 per hour. Brecksville's compensation based is also based a system of emergency/non-emergency duties, and pays an hourly premium for a paramedic certification. It was not clear whether Brecksville part-time firefighters are required to perform more duties than those of the City. Neither side produced any evidence.

Neither side presented a wage analysis that the abolishment of the two classification system would mean to the Union.

It is the impression of the Fact Finder that the present two tier system is based upon past practices and that there is no evidence of financial inability on the part of the City to continue the present system and to pay a reasonable wage increase.

RECOMMENDATION: It is recommended that the present wage system be kept intact and that a wage increase of 3% for the period June 1, 1997 to December 31, 1997 and an additional 3% for the period of January 1, 1998 through December 31, 1998 be granted.

ISSUE NO. 9

PARAMEDIC & ADVANCED EMT PAY - ARTICLE 15

UNION PROPOSAL AND POSITION: The Union proposes an increase in the annual paramedic compensation from \$800 to \$1000 dollars and from \$280 to \$350 for those firefighters with advanced EMT training.

CITY POSITION: the City made no offer to increase paramedic pay, but offered to increase advanced EMT pay to \$300 per year.

DISCUSSION: In addition to the hourly rate of compensation, part-time firefighters receive an annual

premium of \$800 for a paramedic certification and \$280 for Advanced EMT training. Few examples of comparable payments introduced. Valley View pays an annual premium of \$900 and a single hourly rate of \$12.57. It was also submitted that Brecksville also pays such a premium, but neither the amounts nor any written evidence was submitted in support. Currently there are 6 paramedics and 2 with advanced EMT training among the part-time firefighters staff. Based on the average of 681 hours worked per year, the premium payment of \$800 amounts to an increase of \$1.17 per hour over and above the hourly rate mentioned in the preceding issue. Though financial ability or inability is not in issue, the Fact Finder finds no reason to recommend an increase over the offer of the City.

RECOMMENDATION: It is recommended that the premium day for paramedics remain at \$800 per year and premium pay for advanced EMT training be increased to \$300 per year.

ISSUE NO. 10

HOLIDAY PREMIUM PAY - ARTICLE 16

CITY PROPOSAL AND POSITION: the City has offered to pay holiday premiums for 5 paid holidays at time and a half if worked.

UNION POSITION: the Union seeks an increase from the current 7 holidays to 8.

DISCUSSION: The City is now paying premium pay for its part-time firefighters for 7 holidays. Though the City would reduce the holidays by two and the Union would increase the number by one, neither side presented any convincing evidence requiring a change in the present policy.

RECOMMENDATION: Accordingly, the Fact Finder recommends no change in the present policy of 7 paid holidays.

ISSUE NO.11

DEATH & DISABILITY INSURANCE - NEW ARTICLE

UNION PROPOSAL AND POSITION: Currently the City is providing its part-time firefighters with life and disability insurance coverage.

CITY POSITION: the City objected to the inclusion of this benefit into the new collective bargaining agreement which is to be agreed upon by the parties.

DISCUSSION: the Fact Finder believes that a death and disability benefit is a proper subject of collective bargaining. The Mayor admitted that the City was furnishing benefits to its part-time firefighters pursuant to "Benefit Proposal II" and would continue to furnish this benefit at no cost to the part-time firefighters. The Fact Finder was not presented with any evidence to justify omitting such a benefit package from this first agreement between the parties.

RECOMMENDATION: It is recommended that the new agreement contain a clause as to the entitlement of the part-time firefighters to life and disability insurance coverage pursuant to the "Benefit Proposal II" as is the current practice.

ISSUE NO. 12

CONFORMITY TO LAW - ARTICLE 17

CITY PROPOSAL AND POSITION: The City sought to make the agreement supersede any present and future federal state and local laws.

UNION POSITION: The Union opposed this language.

RECOMMENDATION: The Fact Finder can find no necessity for the inclusion of the proposed Article 17 into the agreement, particularly in view of the opposition of the Union to such language. It is immaterial that the Broadview Heights police union and full-time firefighters agreed to such language in their respective contracts. Such language may also be void as against public policy.

ISSUE NO.13

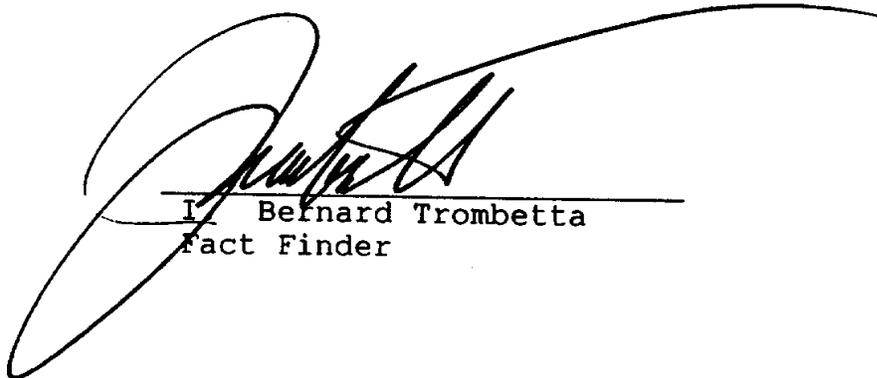
TOTAL AGREEMENT - ARTICLE 18

CITY PROPOSAL AND POSITION: The City appears to be proposing a modified "zipper clause" in this article.

UNION POSITION: The Union opposed the inclusion of a "zipper clause".

DISCUSSION: The City stressed the necessity for the inclusion of a "zipper clause" by claiming that such a clause was vital to its interest and offered to exchange life and disability insurance coverage in return for such a clause. On the other hand, the Union desires to take advantage of whatever future legislation would benefit its members and refused to bargain away future benefits in advance. The City relied on its agreements with the police and full-time fire departments to support the necessity for a "zipper clause". In view of the opposition of the Union to such a clause, the Fact Finder can find no compelling reason to include a "zipper clause" in this agreement. The fact that both the police and full-time fire departments agreed to include such a clause is not persuasive in this instance.

RECOMMENDATION: Accordingly, it is recommended that a "zipper clause" need not be included in the contract. Therefore proposed Article 18 is deleted.



Bernard Trombetta
Fact Finder

CERTIFICATE OF SERVICE

A copy of the foregoing report was served upon the City in care of Christopher Lencewicz, Labor Relations Representative, 45 East Washington, Ste.303, Chagrin Falls, Ohio 44022 and upon the Union, in care of Richard Neiden, Representative, 9917 Highland Dr., Brecksville, Ohio 44141 on the 8th day of July, 1997.

A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive, appearing to read "Richard Neiden".