

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD
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In the Matter of Fact-Finding	*	
Between	*	<u>FINDINGS</u>
	*	<u>AND</u>
BROOK PARK FIREFIGHTERS	*	<u>RECOMMENDATIONS</u>
I.A.F.F., LOCAL 1141	*	
	*	Case No. 98-MED-01-0067
and	*	June 8, 1998
	*	
CITY OF BROOK PARK,	*	Anna DuVal Smith
OHIO	*	Fact-Finder

Appearances

For the Brook Park Firefighters:

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I. BACKGROUND AND SUBMISSION

The Brook Park Fire Fighters Association, IAFF Local 1141 ("Association") represents approximately 33 Firefighters, Firefighter/Paramedics and Lieutenants employed by the City of Brook Park, Ohio ("City"). Pursuant to Chapter 4117 O.R.C., the parties negotiated a collective bargaining agreement ("Agreement") for the period January 1, 1996 through December 31, 1998.

This Agreement contains a "me-too" letter of understanding dated June 20, 1994 stating,

In the event any other union receives a higher wage settlement, the City of Brook Park agrees to reopen negotiations for the purpose of adjusting wages to that higher amount. (*Agreement*, p. 39).

Following settlement of the 1996-98 Agreement, the City and its police union reached agreements which included a new category of Patrolmen/Certificate of Proficiency and provided a greater percentage wage increase for police patrolmen and sergeants than for firefighters and fire lieutenants respectively. The Brook Park Fire Fighters then sought a wage adjustment for its members commensurate with what was negotiated for police. After the City refused, the dispute went to arbitration on the issue of "whether, in its 1996-1998 Agreement, the Brook Park police received a 'higher wage settlement' than the Fire Fighters, thereby invoking application of the Me-Too provision" (*Lurie Award*, p. 2). On December 9, 1997, the arbitrator found in the affirmative and directed the City "to reopen negotiations for the purpose of adjusting wages to the higher amount awarded the Police Union" (*Lurie Award*, p. 8).

The parties accordingly exchanged proposals, but were unable to reach an agreement. Negotiations continued following appointment of the undersigned as Fact-Finder under §4117.14(C) O.R.C. and pursuant to 4119-9-05(E) of the Ohio Administrative Code on February 27, 1998, but were also unsuccessful, as were mediation efforts by the Fact Finder at a joint meeting on April 24

from 10:00 a.m. until 12:30 p.m. in Brook Park City Hall. A final effort to mediate the dispute at 10:00 a.m. on May 1, again at City Hall, was also unsuccessful. An oral hearing for the purpose of finding facts and making recommendations on the sole issue of wages (Articles XIV and XX) was therefore convened at 11:00 a.m. Present for the Association in addition to its advocate and counsel were Lt./Paramedic Edward Dargay, Firefighter/EMT Linbell Lewis, Jr. and Terry Rinas, Firefighter/EMT. Present for the City in addition to counsel were Commissioner of Human Resources Eileen McNamara and Assistant Director of Finance William Horvath. Pre-hearing statements were timely filed. The parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions. The oral hearing concluded at 12 noon on May 1, whereupon the record was closed.

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 POSITIONS OF THE PARTIES

The Position of the Association

The Association seeks the same percentage increase as was negotiated for the police units, effective January 1, 1996 and retroactive to that date.¹ It argues this is consistent with the meaning of "higher wage settlement" given by Arbitrator Lurie, which was percentage rather than absolute dollars. Further, it contends the firefighter wage adjustment should match that of the Patrolmen/Certificate of Proficiency for a number of reasons. One, as found by Arbitrator Lurie, Patrol/Certificate was a bogus classification created in an attempt to deliver parity to the police. Since all police hold the certificate, the proper comparison should be between Patrol/Certificate and Firefighter/EMT, not to Firefighter/Paramedic. The responsibilities, training and education are vastly different between paramedics and patrolmen with proficiency certificates. Firefighters are not certified as EMTs or paramedics when they complete basic training as patrolmen with proficiency certificates are. They obtain these qualifications later. Second, the "me-too" agreement has served the parties well and should not be undermined. After "Parity in Pay" was removed in 1987, negotiations in the City were troubled by an unwillingness of the various bargaining units to settle. To address this problem, the "me- too" letter was negotiated in 1992 and affirmed by the factfinder and conciliator in 1996 as protecting the lead organization (the firefighters) sufficiently to allow settlement before the other units.

The Association offers the police contract and its own calculations to show that its proposal of an additional 3.3-4.56 percent will restore the wage relationships between the police and fire units that existed in 1995. In absolute terms, the difference in annual pay will return to less than \$400 in

¹The resultant wage schedule proposed by the Association is provided in Appendix A.

favor of the Firefighter/EMTs compared to the \$900 in favor of Patrol/Certificate that exists under current language. It puts lieutenants (who do not qualify for education bonuses like police do) again ahead of sergeants, to whom they have traditionally been compared. It puts the paramedic salaries back ahead of patrol officers' with degrees and EMT salaries between Patrol/Certificate and patrolmen who have completed 40 credit hours in law enforcement. These, it maintains, are the relationships the "me- too" agreement intended to preserve. While the proposal does move Brook Park's fire salaries from the bottom among the surrounding communities, it does not put them out of the ball park since it places Brook Park in third of eight.

The Position of the City

The City asserts the issue before the Fact Finder is, "To what extent, if any, has the City breached the "me-too" agreement between the parties?" It claims the arbitration award is irrelevant and flawed. "Me-too" provisions are negotiated to prevent one union from receiving any more than another but do not mandate that all employees in a given bargaining unit get additional dollars when those in another unit do. What happened in 1996 was that the police demanded a new category to match the moribund Firefighter/Certificate category in recognition of other communities' proficiency compensation. This category is one *only* police can achieve, no different from the Association's Firefighter/Paramedic category, and its compensation impacts no other union. Moreover, the compensation received by this category is less than that received by the entry category of firefighters, i.e., Firefighter/Paramedic. If any one is harmed, which the City contests, it can only be those paid less than paramedics. The City therefore offers to adjust the compensation of these twelve firefighters, but not the remaining 21. It presents figures to show its offer has a cost of \$83,696 over the three years of the Agreement. The Association's demand, on the other hand, has a cost of \$210,885, which will most likely necessitate layoffs. While it does not blame the Association for

wanting to move its wage position off the bottom relative to the surrounding communities, it argues this should be accomplished through future negotiations. The City asks the Fact-Finder to use a comparison between the two hire-in categories, Firefighter/Paramedic and Patrolmen/Certificate, and make a recommendation that does least economic damage to the City and to future negotiations.

IV. FINDINGS AND RECOMMENDATION

The City claims no one was prejudiced by creation of the Patrol/Certificate category. I disagree. In fact, the City created a category for which the entire patrolman bargaining unit qualified, then set its base, off which other police wages are calculated, such that all police earn over 3 percent more than they would have had they been afforded the same wage increase as the firefighters. This altered the entire wage structure of the City's safety forces, a structure that has evidently existed for some time. Not only are post-probationary police patrolmen now paid more than Firefighter/EMTs, but fire lieutenants and paramedics earn respectively less than police sergeants and degreed patrolmen, where formerly they earned more. Adjusting the salaries of only one category, the Firefighter/EMT, will not restore the previous inter-unit structure. In addition, such a solution will disturb negotiated rank and qualification differentials within the fire department to the detriment of those who worked to achieve and maintain their higher status and who negotiated their contract with the expectation that the compensation advantage was protected by a "me-too" provision preventing erosion of that advantage without their consent.

The fact that some communities are paying proficiency bonuses is of poor comfort to the City. By the City's own evidence, few are doing so presently and all are eastern suburbs. Moreover, all but Brook Park's are fixed dollar allowances, not percentages rolled into base pay. Furthermore, Brook Park police themselves have rejected folding education allowances into base pay. Thus, while

I have no reason to revisit Arbitrator Lurie's finding that the Patrol/Certificate category was a bogus category designed to address the police issue of pay equity, I cannot help but comment that if the additional police compensation was supposed to be merely a proficiency allowance, it does not look like it.

Finally, while the City points out that its offer is less costly than the Association's, it does not offer evidence of the impact of the Association's demand on City finances and services, or even argue that it cannot now meet it. The City says layoffs may be required, but there is no projection of how many or when. Furthermore, a new round of bargaining commences this year, providing for negotiation of alternatives should that be necessary.

In conclusion, after considering the arguments of the parties and all reliable evidence brought in support of their contention, and evaluating these by the statutory criteria, I find that the entire firefighter unit was prejudiced by the police contracts and recommend the wage adjustments as proposed by the Association and set forth in Appendix A, effective on and retroactive to January 1, 1996.

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact-Finder

Cuyahoga County, Ohio
June 8, 1998

APPENDIX A
ARTICLE XIV
COMPENSATION

The annual salary paid to Firefighters shall be as follows:

FIREFIGHTER/PARAMEDIC CERTIFIED

	<u>Effective</u> <u>1/1/96</u>	<u>Effective</u> <u>1/1/97</u>	<u>Effective</u> <u>1/1/98</u>
Start	36,640.53	37,739.75	38,871.94
After 6 months	38,068.94	39,211.01	40,387.34
After 12 months	40,781.01	42,004.44	43,264.58
After 18 months	42,255.80	43,523.47	44,829.17
After 24 months	43,730.62	45,042.54	46,393.81
After 5 years	44,116.38	45,439.87	46,803.07
After 10 years	44,605.94	45,944.12	47,322.44
After 15 years	45,097.51	46,450.43	47,843.94
After 20 years	45,586.86	46,954.46	48,363.10
After 25 years	46,078.12	47,460.47	48,884.28

FIREFIGHTER/CERTIFICATE OF PROFICIENCY (NON-PARAMEDIC)

	<u>Effective</u> <u>1/1/96</u>	<u>Effective</u> <u>1/1/97</u>	<u>Effective</u> <u>1/1/98</u>
After 5 years	42,515.34	43,790.80	45,104.52
After 10 years	43,000.59	44,290.60	45,619.32
After 15 years	43,487.83	44,792.46	46,136.24
After 20 years	43,970.01	45,292.20	46,650.96
After 25 years	44,460.11	45,793.91	47,167.73

FIREFIGHTER/ASSOCIATE, BACHELOR OR MASTERS DEGREE (NON-PARAMEDIC)

	<u>Effective</u> <u>1/1/96</u>	<u>Effective</u> <u>1/1/97</u>	<u>Effective</u> <u>1/1/98</u>
After 5 years	43,377.45	44,678.77	46,019.13
After 10 years	43,865.01	45,180.96	46,536.39
After 15 years	44,354.58	45,685.22	47,055.77
After 20 years	44,842.00	46,187.26	47,572.87
After 25 years	45,331.35	46,691.29	48,092.02

FIREFIGHTER/EMT QUALIFIED (NON-PARAMEDIC)

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
Start	34,255.82	35,283.50	36,342.00
After 6 months	35,684.23	36,754.76	37,857.40
After 12 months	38,318.80	39,468.36	40,652.41
After 18 months	39,793.57	40,987.37	42,217.00
After 24 months	41,268.40	42,506.45	43,781.64
After 5 years	41,653.24	42,902.84	44,189.93
After 10 years	42,136.16	43,400.25	44,702.25
After 15 years	42,621.08	43,899.71	45,216.70
After 20 years	43,104.00	44,397.12	45,729.04
After 25 years	43,588.86	44,896.52	46,243.42

Section 2. Differential. The City will maintain an 11% differential between the top Firefighter's salary and the Lieutenant salary. The pay schedule for Lieutenant shall be:

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	48,540.98	49,997.21	51,497.13
After 5 years	48,969.19	50,438.27	51,951.42
After 10 years	49,512.60	50,997.98	52,527.91
After 15 years	50,058.24	51,559.99	53,106.78
After 20 years	50,601.41	52,119.45	53,683.03
After 25 years	51,146.72	52,681.12	54,261.51

Section 3. AS IS

Section 4. AS IS

Section 5. AS IS

Section 6. AS IS

ARTICLE XX

FIRE PREVENTION BUREAU

Section 1. AS IS

Section 2. AS IS

Section 3. AS IS

Section 4. AS IS

Section 5. AS IS

Section 6. AS IS

Section 7. During the term of this Agreement, the annual salaries shall be:

<u>FIRE INSPECTOR</u>	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	48,540.98	49,997.21	51,497.13
After 5 years	48,969.19	50,438.27	51,951.42
After 10 years	49,512.60	50,997.98	52,527.91
After 15 years	50,058.24	51,559.99	53,106.78
After 20 years	50,601.41	52,119.45	53,683.03
After 25 years	51,146.72	52,681.12	54,261.51

<u>ASSISTANT FIRE PREVENTION OFFICER</u>	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	45,917.15	47,294.67	48,713.51
After 5 years	46,322.20	47,711.86	49,143.22
After 10 years	46,836.24	48,241.33	49,688.57
After 15 years	47,352.38	48,772.95	50,236.14
After 20 years	47,866.20	49,302.19	50,781.25
After 25 years	48,382.03	49,833.49	51,328.49

Section 8. AS IS