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STATE EMPLOYMENT  
RELATIONS BOARD

STATUTORY DISPUTE RESOLUTION PROCEEDINGS  
STATE EMPLOYMENT RELATIONS BOARD  
ADMINISTRATOR FACT FINDING REPORT

DEC 16 10 29 AM '98

In the Matter Between,

IAFF	)	
Local 686	)	SERB Case No.
The Union	)	98-MED-08-0706
	)	
-and-	)	Fact Finder
	)	Daniel L. Merritt
City of Delphos	)	
The Employer	)	Report Filed
	)	14 December 1998

REPRESENTATION

Representing the Union

Mr. Kevin Radar	First District Vice President OAPFF
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Representing the Employer

Mr. Clayton P. Osting	Law Director City of Delphos
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BACKGROUND

The International Association of Fire Fighters Local 686 is the collective bargaining representative of six members of the City of Delphos Fire Department. The Chief of the Fire Department is excluded from the bargaining unit. The Delphos Fire Department provides fire protection and service for a multi-county area including The City of Delphos which has a population of approximately 7,600 people.

The current collective bargaining agreement expires on 31 December 1998. The parties met to negotiate a successor contract during November 1998. Twenty-four issues

remained unresolved when they met with the Fact Finder on 11 December 1998. Mediation was refused by one of the parties, however in preliminary discussion; four issues were removed from consideration. These included: ARTICLE 17 - SICK LEAVE; ARTICLE 26 - PARAMEDIC AND EMT PAY; ARTICLE 33L -SCHOOLING AND EDUCATIONAL INCENTIVE; ARTICLE 34L – SPECIALIZED CERTIFICATES. In addition, ARTICLE 28 – UNIFORMS, was essentially agreed to by the Union. The parties also agreed to a DURATION of three (3) years for the new contract.

Twenty issues remained unresolved and a fact-finding hearing was conducted on 11 December 1998 in the Municipal Building in Delphos, Ohio. The parties were aware that the Fact Finder would rely upon criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board.

#### UNRESOLVED ISSUES AND POSITIONS

The parties were unable to reach agreement on twenty issues. These included: ARTICLE 2 – MANAGEMENT RIGHTS, ARTICLE 5 – UNION ACTIVITY, ARTICLE 7 – GRIEVANCE PROCEDURE, ARTICLE 11 – DISCIPLINARY, ARTICLE 13 – HOURS OF WORK/OVERTIME, ARTICLE 16 – RESIDENCE REQUIREMENT, ARTICLE 18 – INJURY LEAVE, ARTICLE 20 – BEREAVEMENT LEAVE, ARTICLE 21 – JURY DUTY, ARTICLE 22 – MILITARY LEAVE, ARTICLE 23 – VACATION AND PERSONAL LEAVE, ARTICLE 24 – HOLIDAYS, ARTICLE 25 – SALARY SCHEDULE, ARTICLE 27 – LONGEVITY, ARTICLE 28 – UNIFORMS, ARTICLE 29 – HEALTH INSURANCE, ARTICLE 33M –

MISCELLANEOUS PROVISIONS, ARTICLE 34M – PHYSICAL FITNESS PROGRAM, ARTICLE 35M – MEDICAL EXAMINATIONS, and ARTICLE 36M – DRUG/ALCOHOL TESTING.

## POSITIONS ON ISSUES

### ARTICLE 2 MANAGEMENT RIGHTS

The Union proposed that this ARTICLE remain the same. They stated that they encountered no problems related to this ARTICLE. They view the management proposal as an attempt to expand management rights and creates more direct and specific control over the work life of Union members. In addition, the Union said the wording was confusing.

The Employer stated that this is an elaboration of already existing management rights. It is designed to take the seemingly abstract or general rights and make them more job relevant.

The Fact Finder agrees that the proposed new management rights section contains some words and phrases that might conflict with other sections of the contract. While the Fact Finder agrees that it is desirable to elaborate and clarify this portion of the contract, the proposed version does not provide the desired clarity and **cannot be recommended.**

### ARTICLE 5 UNION ACTIVITY

The Union proposed that the wording be changed to allow one employee from each classification be released to attend union conferences without loss of pay. They stated that no additional cost would result from the change. They also stated that it was difficult, if not impossible, for two members to attend a conference together. In addition, they maintained that the current police contract has such a provision.

The Employer wants to retain current contract language. No problem has been encountered and sees no need to change the provision. In addition, with such a small unit, the manpower needs would be seriously affected by the expansion of members who could be absent to attend union conferences.

The Fact Finder is persuaded by the relation between the small size of the unit and how manpower requirements might be compromised by expanding the potential of absent conference-bound unit members. This Fact Finder will recommend that current contract language be **retained**.

#### ARTICLE 7 GRIEVANCE PROCEDURE

The Union wants to retain current contract language. No problems have been encountered with this provision according to the Union. Therefore, no change is necessary.

The Employer wants to eliminate the last sentence of Section 7.2 of ARTICLE 7 to eliminate grievances regarding the imposition of new work rules.

The Fact Finder believes that effect of work rule changes upon wages, hours, and conditions of employment are presently grievable as stated by the Union. Other work rule grievances can be rejected and management rights asserted. The present grievance provision can accommodate the positions of both parties. Therefore, the Fact Finder will recommend that current contract language be **retained**.

#### ARTICLE 11 DISCIPLINARY

The Union wants to retain current contract language. They stated that the changes sought by the Employer are contradictory and confusing and punitive for new union members.

The Employer seeks to change Section 11.3 by adding to the first sentence the phrase “just cause is not required for disciplinary action for probationary employees under ARTICLE 8.” The City does not want to have to meet the just cause threshold to discipline the new probationary members. This would give the City more control over the training of the new probationary member.

The Fact Finder is not persuaded that a real need for such a dramatic action exists. The Employer has the power to terminate the probationary employee and that is a powerful sanction to hold. The just cause standard should not be viewed as an impediment to exercising discipline. Just cause is a necessary standard of fairness that is integral to any system of discipline. Without it, the use of discipline has the possibility of becoming an oppressive system based on whim, caprice, or worse. The Fact Finder will recommend that current contract language be retained.

#### ARTICLE 13 HOURS OF WORK/OVERTIME

The Union wants to retain current contract language. The Union stated that the proposed changes are incompatible with language contained with the ARTICLE. They further stated that negotiation called for in the ARTICLE is in opposition to the absolute discretion called for in the Employer’s proposal.

The Employer maintains that the original intent of this ARTICLE was simply to establish a base from which overtime would be computed. To that end, the Employer would add the phrase “Pursuant to the Management Rights clauses the Employer, at its absolute discretion may go to any other schedule of work.”

The Fact Finder agrees that the Chief needs to exercise control over overtime hours but the proposed changes go way beyond this goal. The present language provides

a starting place and the authority to make the desired changes are already within that ARTICLE. The Fact Finder believes that the exercise of functions reserved by the Management Rights in conjunction with this ARTICLE can result in the desired goals sought by the Employer. The Fact Finder will recommend that current contract language be **retained**.

#### ARTICLE 16 RESIDENCE REQUIREMENT

The Union proposed that the current School District Boundary line that is used to determine a residence requirement for fire fighters be replaced. Specifically, the Union stated that the requirement of full time City workers and the City of Delphos Police (the other major safety force) is a seven-mile limit measured from City of Delphos intersection of First Street and Main Street. Employees who live beyond this point would be considered grandfathered.

The Employer stated that they wish current residence requirements to be retained.

The Fact Finder was presented with no response-time problems encountered by the safety forces including the fire fighters. City Policy and the City of Delphos Police Contract contain the same residence requirement. Absent any compelling evidence to the contrary, the Fact Finder will recommend that the residence requirement for safety forces be uniform and that the Union proposal for residence requirement changes be **adopted**.

#### ARTICLE 18 INJURY LEAVE

The Union wants to retain current contract language. They stated that the proposed changes would deplete vacation time for the unit members. The union further stated that injury should be related to sick leave for it is related to the health of the unit member not his or her vacation.

The Employer wants to change the language so that vacation time is used first. This process is, according to the Employer, more cost effective for the City.

The Fact Finder is persuaded that injury leave is indeed related to the unit members' health and that sick leave days are logically to be used. The Fact Finder will recommend that current contract language be **retained**.

#### ARTICLE 20 BEREAVEMENT LEAVE

The Union proposed that nieces and nephews be added to Section 20.3 wherein the immediate family is defined. Other provisions of this ARTICLE should be retained.

The Employer proposed that bereavement leave should be charged against sick leave and opposed the extension of bereavement leave to nieces and nephews.

The Fact Finder is persuaded that the definition of immediate family is comprehensive and sufficient. The Fact Finder is also persuaded that as with many of the contracts, Bereavement Leave should be changed to sick leave. The Fact Finder will recommend that Section 20.1 be **changed** to charge such leave to sick days.

#### ARTICLE 21 JURY DUTY

The Union proposed no change in current contract language. They stated that no problem was encountered and there is no need to change the language.

The Employer proposal stated that "Employees called for jury duty shall receive payment as required by law."

The Fact Finder is persuaded that the present language of the contract provides more guidance and instruction than the proposed change. In the interest of clarity and direction, the Fact Finder will recommend that the current contract language be **retained**.

The Fact Finder also believes that given present conditions, this will also be more cost effective for the City.

## ARTICLE 22 MILITARY LEAVE

The Union proposed that current contract language be retained. No problems have been encountered with this ARTICLE. Therefore, no change is warranted or needed.

The Employer proposed that Section 22.2 be changed so that employees be paid in accordance with existing law.

Currently, no members of the unit would be covered by this ARTICLE; however, benefits for potential members who join the unit during the life of the contract would be implicated. No report of problems with this section has been reported. The Fact Finder will recommend that current contract language be **retained**.

## ARTICLE 23 VACATION AND PERSONAL LEAVE

The Union proposed an increase in vacation and personal leave for each category in the present contract. They also proposed that those unit members with 20 or more years of service receive five-week (fifteen tours) of personal and vacation leave. Comparables by the Union showed that the fire department is presently consistent with police and non-uniformed.

The Employer is opposed to an extension of vacation and personal leave. The present two-week, three-week, and four-week vacation is adequate according to the Employer. An adjustment by the City in descriptive tours would result in a reduction of available time for vacation and personal leave.

However, the Fact Finder is persuaded that the present allowances are fair and comparable. The Fact Finder will recommend that current contract language be **retained**.

#### ARTICLE 24 HOLIDAYS

The Union proposed that the number of holidays be increased from nine (9) to eleven (11) holidays. Comparables were used to support their contention that other City employees receive more holidays than fire fighters.

The Employer proposed that current contract language be retained. Members get one and one half their pay for time worked. The cost of overtime has increased for police and fire fighters and holiday pay has increased dramatically for all units.

The Fact Finder is persuaded that the number of holidays is not out of line with other contracts so as to make this provision deficient. The Fact Finder will recommend that current contract language be **retained** except that Section 24.3, first sentence, be **changed**.

#### ARTICLE 25 SALARY

The Union proposed that a six percent (6%) increase be given for each of three years of the contract. Comparables within the City of Delphos and Statewide data were presented.

The Employer proposed that no increase be given in 1999 and that increases based upon a cost of living using the Consumer Price Index be given for the years 2000 and 2001. Employer also provided data regarding the City of Delphos salaries and comparable data based upon selected state sites.

Based upon the testimony and the data presented in document form, the Fact Finder is persuaded that a four percent (4%) increase for each of three years is a fair and equitable resolution to the position differences. The Fact Finder will recommend a four percent (4%) increase for each year of the contract. This will put the fire fighters in line with City Employees and City Police salaries.

ARTICLE 27  
LONGEVITY

The Union proposed that current contract language be retained. Comparable data were introduced to support the retention of this provision.

The Employer proposed the elimination of the provision as a cost-cutting measure.

Based upon the testimony and the comparable data presented, the Fact Finder is persuaded that the provision should be **retained**. Current Contract language will be recommended by the Fact Finder.

ARTICLE 28  
UNIFORMS

The Union proposed that a new Section 28.9 be added to require the purchase of new safety equipment to be phased in over the life of the contract.

The Employer maintained that adequate alternate equipment was available and opposed the addition of a new Section 28.9.

The Fact Finder is persuaded that the City currently has adequate safety equipment for its fire fighters. It is in the interest of both parties to maintain adequate safety equipment for not only employees but for the safety of its citizens. The Employer asserted that the Fire Chief stated that adequate safety equipment is currently available.

The Fact Finder agrees and will recommend **against any change** beyond that already by the parties.

#### ARTICLE 29 HEALTH INSURANCE

The Union proposed that current contract language be retained. The Employer has the power to set the level of health insurance benefits to be provided as one means of cost containment and the deductibles are currently provided for single and family coverage.

The Employer proposed that employees pay \$50.00 per month for family coverage and \$25.00 per month per single coverage.

The Fact Finder, based upon the testimony and data provided, is persuaded to recommend that current contract language be **retained**. The salary and benefit package of the fire fighters does not deviate from other City of Delphos employees. Indeed, they are lower in some areas.

#### ARTICLE 33M MISCELLANEOUS PROVISIONS

The Union proposed that this ARTICLE be rejected.

The Employer proposed this new ARTICLE to clarify appeal procedures under civil service and contract provisions.

Based upon the testimony and data provided, the Fact Finder is persuaded that the ARTICLE proposed adds nothing to the contract, and may cause problems in contract interpretation.

ARTICLE 34M  
PHYSICAL FITNESS PROGRAM

The Union proposed that the new ARTICLE 34M be rejected. The Union objected to members being required to participate in a mandatory program during their off duty time. This was seen as an invasion of their personal privacy time. It is also tied to discipline and is punitive.

The Employer proposed this ARTICLE as part of a wellness program designed to provide a physically fit fire fighter force. The cost of the program would be borne by the Employer.

The Fact Finder is persuaded by the arguments of the Union. Although the general goal is noteworthy, the procedures and linkages to progressive discipline are negative. The Fact Finder will recommend that the proposed ARTICLE 34M be **rejected**.

ARTICLE 35M  
MEDICAL EXAMINATIONS

The Union proposed that the new ARTICLE 35M be rejected. The entire ARTICLE as written was viewed as extremely negative, punitive and potentially costly to the employee. It was viewed as NOT being a wellness oriented provision.

The Employer proposed the new ARTICLE as a program of medical examinations. Currently, a medical examination may be conducted under insurance provisions.

The Fact Finder is, based upon testimony, persuaded that the ARTICLE 35M while having some positive features for both parties is overall punitive for the employee. The Fact Finder will recommend that the proposed ARTICLE be **rejected**.

ARTICLE 36M  
DRUG/ALCOHOL TESTING

The Union proposed that the new ARTICLE 36M be rejected. The Union stated that the provision was out-dated, incomplete, and missing essential safeguards.

The Employer proposed the ARTICLE to implement a program of testing.

Based upon the testimony, the Fact Finder agrees that such a provision is necessary, BUT that the proposed provision is not sufficient to meet today's standards or safeguards. The Fact Finder will recommend that the proposed ARTICLE 36M be **rejected**.

RECOMMENDATIONS

1. ARTICLE 2 – MANAGEMENT RIGHTS

Retain current contract language.

2. ARTICLE 5 – GRIEVANCE PROCEDURE

Retain current contract language.

3. ARTICLE 7 – GRIEVANCE PROCEDURE

Retain current contract language.

4. ARTICLE 11 – DISCIPLINARY

Retain current contract language.

5. ARTICLE 13 – HOURS OF WORK/OVERTIME

Retain current contract language.

6. ARTICLE 16 – RESIDENCE REQUIREMENT

**Section 16.1** All full time employees must be residents of the State of Ohio. All full time employees must reside within a seven (7) mile radius of the City of Delphos. For clarification the point of beginning shall be the intersection of First

Street and Main Street (St. Rt. 66). Any full time employee who at the enactment of this amendment lives further than the seven (7) mile limitation shall be considered grandfather.

**Section 16.2** If at the time of being hired, the full time employee does not live within the boundaries set forth in **Section 16**, the employee shall move within the seven (7) mile radius within ninety (90) days after the completion of probationary period or because of extenuating circumstances, with the written permission from the Safety Service Director, become a resident within one hundred-eighty (180) days of being employed. Failure to comply after the specified amount of time will be reason for dismissal. Any further extension of time period of non-residency must be approved by City Council.

#### 7. ARTICLE 18 – INJURY LEAVE

Retain current contract language.

#### 8. ARTICLE 20 – BEREAVEMENT LEAVE

**Section 20.1** A regular full time employee of the bargaining unit shall be granted a leave of absence with pay to attend the funeral of a member of the employee's immediate family. Shift employees shall be granted one (1) twenty-four (24) hour shift off duty. This shall be charged against the employee's sick leave.

**Section 20.2** The employee must notify the employee's supervisor of the purpose of the employee's absence not later than one (1) hour prior to the employee's scheduled starting time on the employee's first day of such absence from scheduled duty.

**Section 20.3** Immediate family shall be defined as the employee's grandparents, spouse's grandparents, brother, sister, aunt, uncle, brother-in-law, sister-in-law, daughter-in-law, son-in-law, father, father-in-law, mother, mother-in-law, spouse, child, step-child, grandchild, or legal guardian or other person who stands in place of a parent (in loco parentis).

9. ARTICLE 21 – JURY DUTY

Retain current contract language.

10. ARTICLE 22 – MILITARY LEAVE

Retain current contract language.

11. ARTICLE 23 – VACATION AND PERSONAL LEAVE

Retain current contract language.

12. ARTICLE 24 – HOLIDAYS

**Section 24.1** If an employee is required to work on any of the recognized holidays listed below, they shall receive one and one half (1½) times their hourly rate of pay for all hours worked.

**Section 24.2** All shift employees shall receive January 1<sup>st</sup> of each year 120 hours of holiday time to be taken during the year. Employees shall use their holiday time each year. If an employee is unable to use their holiday time, the holiday time remaining may be sold back to the Employer at the rate of straight time.

**Section 24.3** The premium pay for a total of nine (9) holidays will be considered for premium pay for hours worked. Bargaining unit members assigned to work on the below listed days will receive the additional pay from midnight to midnight when the holiday is celebrated.

**Section 24.4** The following are the holidays to be observed:

New Year's Day

Labor Day

President's Day

Thanksgiving Day

Good Friday

Day after Thanksgiving

Memorial Day

Christmas Day

Independence Day

### 13. ARTICLE 25 – SALARY SCHEDULE

The fire fighters shall receive a four percent (4%) increase during each year of the contract 1999, 2000 and 2000l.

## APPENDIX A

Effective beginning 1 January 1999.

	FIRE FIGHTER	PLATOON CHIEF
BASE		
53 hour rate	9.20	9.86
40 hour rate	12.20	13.06
Bi weekly	1058.46	1130.80
EMT – AEID/BASIC		
53 hour rate	9.41	10.07
40 hour rate	12.47	13.34
Bi weekly	1082.38	1157.73
EMT – ADVANCED		
53 hour rate	9.45	10.11
40 hour rate	12.52	13.40
Bi weekly	1087.16	1162.51
PARAMEDIC		
53 hour rate	9.65	10.31
40 hour rate	12.79	13.66
By weekly	1109.89	1185.24

## APPENDIX B

Effective beginning 1 January 2000

	FIRE FIGHTER	PLATOON CHIEF
BASE		
53 hour rate	9.57	10.25
40 hour rate	12.69	13.58
Bi weekly	1100.80	1179.15
EMT-AEID BASIC		
53 hour rate	9.79	10.47
40 hour rate	12.97	13.87
Bi weekly	1125.68	1204.04
EMT ADVANCED		
53 hour rate	9.83	10.51
40 hour rate	13.02	13.94
Bi weekly	1130.65	1209.01
PARAMEDIC		
53 hour rate	10.04	10.72
40 hour rate	13.30	14.21
Bi weekly	1154.29	1232.65

## APPENDIX C

Effective beginning 1 January 2001

	FIRE FIGHTERS	PLATOON CHIEF
BASE		
53 hour rate	9.95	10.66
40 hour rate	13.20	14.12
Bi weekly	1144.83	1226.32
EMT-AEID/BASIC		
53 hour rate	10.18	10.89
40 hour rate	13.49	14.42
Bi weekly	1170.71	1252.20
EMT ADVANCED		
53 hour rate	10.22	10.93
40 hour rate	13.54	14.50
Bi weekly	1175.88	1257.37
PARAMEDIC		
53 hour rate	10.44	11.15
40 hour rate	13.83	14.78
Bi weekly	1200.46	1281.96

14. ARTICLE 27 – LONGEVITY

Retain current contract language.

15. ARTICLE 28 – UNIFORMS

Reject proposed addition

16. ARTICLE 29 – HEALTH INSURANCE

Retain current contract language

17. ARTICLE 33M – MISCELLANEOUS PROVISIONS

Reject proposed ARTICLE.

18. ARTICLE 34M – PHYSICAL FITNESS PROGRAM

Reject proposed ARTICLE.

19. ARTICLE 35M – MEDICAL EXAMINATIONS

Reject proposed ARTICLE.

20. ARTICLE 36M – DRUG/ALCOHOL TESTING

Reject proposed ARTICLE.

FACT FINDING CONCLUSION

In the Fact Finder's opinion, the foregoing recommendations provide for fair and equitable resolution of the impasse. In the event that any of the recommendations fail to meet the tentative agreement established between the parties, it is noted that Ohio Revised Code 4117.14 (C) (b) permits corrections and modifications by mutual agreement of the parties.

CERTIFICATION OF SERVICE

This is to certify that the foregoing Fact Finder Report Case Number 98-MED-08-0706 was sent by U.S. Postal Service Express Mail for overnight delivery to: Mr.

Clayton P. Osting, Law Director, City of Delphos, 427 S. Adams St., Delphos, Ohio 45833-2180 (Employer); Mr. Donald Moreo, President Local 686 IAFF, 505 West Clime St., Delphos, Ohio 45833 (Union) and by regular first class mail to G. Thomas Worley, Director Bureau of Mediation; SERB 65 East State St., Columbus, Ohio 43215 on the 14<sup>th</sup> day of December, 1998.



Dr. Daniel L. Merritt  
088-32-6963  
Fact Finder - SERB