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Factfinding Report and Recommendations

in the Matter of Factfinding between

the City of Upper Arlington, Ohio

and

International Association of Firefighters Local 1521

SERB Case No. 98-MED-10-0936

MARCUS HART SANDVER
Factfinder

Representing the City:

Mr. David More
Assistant City Attorney
City of Upper Arlington
Upper Arlington, OH

Representing the Union:

Mr. Henry Arnett
Attorney at Law
Livorno and Arnett
Columbus, OH

Hearing Date: April 23, 1999
Hearing Closed: May 5, 1999
Report Issued: May 14, 1999

I. Background

The parties to this dispute are the City of Upper Arlington (the employer or the City) and the International Association of Firefighters Local 1521 (the Union). The dispute involves several unresolved issues emanating from collective bargaining negotiations conducted during 1998. The parties have had a long standing collective bargaining relationship extending over more than 20 years. In an attempt to resolve the unresolved issues the parties pursued the dispute resolution mechanism available to them under O.R.C. 4117. Through mutual agreement of the parties, Marcus Hart Sandver was chosen as the factfinder to the dispute from a roster of neutrals maintained by the State Employment Relations Board. Through mutual agreement of the parties, April 23, 1999 was chosen as the date for the factfinding hearing.

II. The Hearing

The hearing was convened by the factfinder at 9:30 a.m. in the City Council Conference Room at the Upper Arlington Municipal Center on April 23, 1999. In attendance at the hearing were:

For the City

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|----|-----------------|-------------------------------|
| 1. | Cathe Armstrong | Finance Director |
| 2. | Robert Depinet | Human Resource Administration |
| 3. | Bonnie Cross | Assistant City Manager |
| 4. | Mitch Ross | Fire Chief |
| 5. | Dan More | Assistant City Attorney |

For the IAFF

- | | | |
|----|----------------|--------------------------------|
| 1. | Henry Arnett | Attorney |
| 2. | Lyn Nofziger | President IAFF Local 1521 |
| 3. | Hector Ferrero | 2 Unit Trustee |
| 4. | Jim Mild | Vice President IAFF Local 1521 |

5. Mark Hollingshead Past President IAFF Local 1521

The parties were asked to introduce exhibits into the record. The following exhibits were produced:

For the City

- City Exhibit #1 City Factfinding Brief
- City Exhibit #2 Total Health Insurance Plans Annual Per Employee Cost – 1998
- City Exhibit #3 Health Insurance Annual Employee Cost – 1997
- City Exhibit #4 Comparability WageData (mailed – April 28, 1999)

For the Union

- IAFF Exhibit #1 Union Factfinding Brief
- IAFF Exhibit #2 Collective Bargaining Agreement between the City of Upper Arlington and IAFF Local 15521. 1989-1990 Section 8.4 (Records)
- IAFF Exhibit #3 “UA’s city budget takes a turn for the better.” Upper Arlington News, November 4, 1998, p4A
- IAFF Exhibit #4 “1997 Income Tax Returns by School District,” Tax Data Series, June 2, 1998
- IAFF Exhibit #5 Comparability Data – Grandview Heights
- IAFF Exhibit #6 Agreement between City of Grandview Heights and IAFF Local 1792, January 1, 1999 – December 31, 2001
- IAFF Exhibit #7 Comparability Data – Westerville
- IAFF Exhibit #8 Agreement between City of Westerville and IAFF Local 3480, July 1, 1997 – June 30, 2000
- IAFF Exhibit #9 Insurance Benefit Comparable
- IAFF Exhibit #10 Reply to City Exhibit #4 (mailed May 5, 1999)

After the exhibits were marked the parties were notified by the factfinder that the hearing would be conducted in accordance with the rules for factfinding as found in O.R.C. 4117 and associated administrative rules as promulgated by S.E.R.B. In addition, the parties were notified that the factfinder's recommendations would be developed in conformity with the criteria for factfinding found in O.R.C. 4117.14 (G)(7)(a-f). The parties were invited to make opening statements; both waived the invitation. The hearing then turned to a discussion of the issues.

III. The Issues

A. Section 8. Corrective Action and Records

(1) City Position

The City position on this issue is that Section 8.4 of the existing contract should be changed such that suspensions of less than 30 days and more than 30 days shall remain in the employee's permanent personnel file. Presently, suspensions of less than 30 days are taken out of the employee's file after 3 years.

The City also proposes to change the language in Section 8.4(c) which has to do with access to personnel records. The City proposes to add language to Section 8.4 (c) which would allow access to employee personnel records as authorized by Section 149.43 of the O.R.C. Presently, the language reads "as required by Section 149.43 of the O.R.C."

(2) Union Position

The union position on this issue is that current language be maintained. In support of its position the union directed the factfinder's attention to IAFF exhibit #2. In exhibit #2 the union pointed to contract language with the City in the 1989-90 agreement, the 1991-93 agreement and the 1994-98 agreement all of which contain current language relating to Section 8.4. In addition, the union directed the factfinder's attention to Section 7.4 of the agreement between the FOP and the City which allows for removal of suspensions from the personnel file

after 4 years. Finally, the union pointed out to the factfinder that Section 7.4 (c) of the F.O.P. agreement has the language “as required by Section 149.43 of the O.R.C...”

(3) Discussion

The dialogue on this issue was heated but brief. I find little in the evidence and testimony produced by the City to justify a change in this section. The parties have labored under and worked with the language in Section 8.4 since at least 1989. I see no reason to change the language now. If anything the recent decision by the Ohio Supreme Court seems to be moving more toward the direction of protecting the personnel records of public employees rather than opening them to increased public scrutiny (State ex. rel. Keller v. Cox (1999), 85 Ohio St. 3d. 279).

(4) Recommendation

No change be made to this section.

B. Section 14. Wages

(1) Union Position

The union position on this issue is to convert the 56 hour week now worked to a 53 hour week. The firefighters will continue, however, to work a 56 hour week. The effect of this will be to increase the hourly wage rate from \$13.77 per hour to \$14.55 per hour. The three extra hours in the week (the 54th, 55th, and 56th hours) will be compensated at \$21.83 per hour ($1\frac{1}{2} \times \14.55) resulting in a weekly salary of \$836.63 or an annual salary of \$43504.76 (my calculations). The current salary is \$41173.08 – the difference, \$2331.68 represents a 5.66 per cent annual increase (my calculations). The union is asking for a 4% increase in the second year of the contract and a 4 percent increase in the third year of the contract.

(2) City Position

The City Position is to take the current salary (\$41173.08 by my calculations) and to increase it by 3 percent (\$42408 by my calculations, \$42398 by the City's computation). The City would offer a 3 percent increase in the second and third years of the agreement. The employer proposal also reflects a willingness to go to the 53 hour standard week with a 3 hour overtime guarantee each week. This would mean a base rate of \$39,080 annually with \$3318 of overtime for a total of \$42,398 annually, by the City's calculations.

(3) Discussion

So far so good. The difficulty now arises in computing salaries for firefighters in comparable jurisdictions. The Union and the City differ on the cities to be included in the list of comparables and they differ in how to calculate the salaries of the firefighters in these cities.

On the issue of comparable cities. The City proposes the following list of comparables: Grandview, Westerville, Worthington, Norwich Township (Hilliard), Washington Township (Dublin). The IAFF list is the same except that it excludes Grandview. The IAFF argues that Grandview is not comparable to Upper Arlington because it is so much smaller in population than Upper Arlington and all the other cities. I agree with this position and will not include Grandview in the comparability analysis.

The next issue concerns computing the annual salaries of firefighters in the comparability cohort. This is a challenge because firefighters salaries are notoriously difficult to calculate even within a jurisdiction and very difficult to compare across jurisdictions. For example, the City calculations for the 4 comparison cities are as follows (taken from the City letter dated 4/28/99).

Firefighter salaries – 5 years of service credit

Upper Arlington (proposed) \$47,675

Westerville	46,034
Worthington	47,240
Norwich Twp. (Hilliard)	-----
Washington Twp. (Dublin)	48,390

According to my calculations for Upper Arlington and the union's calculations for the other 4 cities:

IAFF Proposal (Upper Arlington)	\$48,784 ¹
Westerville	50,452
Worthington	47,670
Norwich Twp. (Hilliard)	53,118
Washington Twp. (Dublin)	48,390

Why the differences? According to the union's memo of May 5, 1999 the City's figures for Westerville are understated because they first of all use the 1998 salary as a base rate (not 1999) and the calculation assumes the firefighter in Westerville works only a 54 hour week. Using the 1999 base salary and assuming a 56 hour week the firefighter in Westerville would make \$50,452 annually according to the IAFF. For Worthington, the IAFF memo notes that the Worthington firefighters work a 54 hour week; 53 hours at straight time and one hour at time and a half. Adding this overtime hour into the firefighters salary in Worthington would bring the earnings up to \$47,670 from the City's calculation of \$47,240. For Norwich Township (Hilliard) the union brief notes that firefighters and paramedics both receive \$53,118 annually in salary (ninety percent of the Norwich Township firefighters are paramedics). The parties agree on the salaries paid to the Washington Township (Dublin) firefighters.

¹ Note this is my calculation. It is equal to \$43,504 in salary and overtime, plus \$745 service credit, plus \$4350 pension pick-up, plus 43¢ per hour times 431 hours (\$185) EMS pay.

Looking at the data from the City perspective, Upper Arlington firefighters will be second only to Washington Township (Dublin) in salary with the City's proposed increase.

Looking at the data from the union perspective, even with the proposed union increase, Upper Arlington firefighters will still be significantly behind Norwich Township (Hilliard) and Westerville and only slightly ahead of Worthington where the work week is 2 hours shorter.

Looking at the data from a neutral point of view that I think all can agree on, under the City's proposal Upper Arlington firefighters will be paid approximately \$615 less than firefighters in Washington Township (Dublin). According to the union's proposal Upper Arlington firefighters will be paid approximately \$394 more than the Dublin firefighters in 1999. The Dublin firefighters salary is one thing that both parties agree on.

The parties also both agree to the 53 hour regular work week with 3 hours of overtime per week. The difference, however, comes in how to get to the final salary once the 53 hour week is implemented. The IAFF proposal uses the current base rate (\$40,089) adds in 3 hours of overtime per week at \$21.83 (the \$14.55 hourly rate x 1.5) for a proposed salary of \$43,504.76. The City proposal is to start with the \$42,398 annual salary (current salary of \$41,173 plus 3%) and then work backward such that the new base salary is \$39,080 and the FLSA is \$3318. Using these data and the data for only salary and overtime for the other cities provided by the City in its letter of April 28, 1999 we have the following result:

City Proposal	\$42,398
IAFF Proposal	43,504
Westerville	45,434
Worthington	42,195
Norwich Twp. (Hilliard)	52,744
Washington Twp. (Dublin)	46,086

Looking at these data it appears to me that the IAFF proposal is justified. Granted there are differences in service credit, pension pick-up, medic supplements, vacations, holidays, and so forth between the cities. But using the base salary and overtime calculations as the basis for the recommendation the IAFF proposal is justified for 1999. For subsequent years I feel the 3 percent figure is more reasonable than the 4 percent. The rate of inflation is currently below 2 percent and is not projected to be much more than this in the next few years.

(4) Recommendation

5.66% increase in year 1

3.0% increase in year 2

3.0% increase in year 3

C. Section 14.3. Paramedic Pay

Settled at the hearing. Retain current levels.

D. Section 14.7. Service Credit

Settled at the hearing. Retain current levels.

E. Section 16. Hours and Overtime

Settled at the hearing. Retain current levels.

F. Section 17. Holidays

Settled at the hearing. Retain current levels.

G. Section 18. Vacation

Settled at the hearing. Retain current levels.

H. Section 23. Health Insurance

(1) City Position

The City position on this issue is that the City wants firefighters to pay 7 percent of the family premium per month not to exceed \$40 per month. Presently, the family premium is \$422 per month. The seven percent premium share would be \$29.54 at present

premium level. At the current time a firefighter pays \$2.97 per dependent per month. For a firefighter with a spouse and two children, for example, this would be \$8.91 per month.

(2) Union Position

The union proposed that insurance benefits and coverages remain at current levels.

(3) Discussion

Aside from the statement made at the hearing that "City Council wants greater employee contributions" I did not hear or see much that convinced me that a change was necessary in the co-payment of premium for the health insurance. The moving party bears the burden to convince the factfinder that a change is necessary. Comparability data, cost data, or usage data would be relevant here to justify the City's position on this issue. No data of this type were presented at the hearing.

(4) Recommendation

Retain current level of health insurance coverage and premium contributions.

IV. Certification

This Factfinding Report and Recommendations is based upon evidence and testimony presented to me at the hearing conducted on April 23, 1999 and on post hearing evidence submitted by the parties. The forgoing recommendations are based upon the procedures for factfinding as found in O.R.C. 4117 and associated administrative rules promulgated by the State Employment Relations Board. All items tentatively agreed upon in negotiations are to be included in these recommendations.

MARCUS HART SANDVER, Ph.D.
Dublin, Ohio
May 14, 1999