

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO
NOV 15 4 41 PM '99

IN THE MATTER OF:

CASE NO. 99-MED-04-0325

UNIVERSITY HEIGHTS FIREFIGHTERS
ASSOCIATION, LOCAL 974, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,

"Employee Organization"

and

CITY OF UNIVERSITY HEIGHTS, OHIO

"Employer"

FACT-FINDER:

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**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

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I. INTRODUCTION

This matter comes before the Fact-Finder as a result of a referral on May 28, 1999 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the University Heights Firefighters Association, Local 974 of the International Association of Firefighters (hereinafter referred to as "Association") and the City of University Heights (hereinafter referred to as "City"). A fact-finding hearing for the taking of evidence, submission of issues and presentation of the parties' respective positions was held, by mutual agreement, on November 18, 1999, with the hearing being conducted at the University Heights City Hall. No post-hearing briefs were submitted and the hearing was considered closed as of November 18, 1999.

The Fact-Finder received and has taken into consideration numerous exhibits and extensive material presented by both parties, including the parties' respective Pre-Hearing Position Statements.

Included in the material presented and received by the Fact-Finder was the parties' current Collective Bargaining Agreement covering the period from July 1, 1996 through June 30, 1999. In addition, the Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §4117.14(G)(7)(a) through (f), and SERB Regulations, Administrative Code 4117-9-05(J) and (K)(1) through (6).

Appearing on behalf of the parties, in addition to the respective legal representatives designated on the face sheet of this Report, were the following:

On Behalf of the Association

Daniel Leffler, President, Local 974
Bruce Cormack, Vice-President, Local 974

On Behalf of the City

Anthony L. Ianiro, Director of Finance
Richard Kosmerl, Fire Chief

II. BACKGROUND

The City of University Heights is a suburban area located in the eastern part of Cuyahoga County, and in essence, can be described as a "bedroom community" in that the City is approximately 82 % residential, 13 % commercial and 5 % public utility and related functions. The City of University Heights does not have any significant industrial activity. Although the City has not asserted a general financial inability to satisfy economic aspects of a Collective Bargaining Agreement, it asserts, nevertheless, that its revenue picture is not as "rosy" as those of its neighboring suburbs. In part, the City has had a slight decline in population, from approximately 15,400 to 14,790, between the 1980 and 1990 censuses. The City's largest single source of revenue (approximately 50.9% of the general fund) comes from the City's municipal income tax. The City contends that for 1999, its general revenue funds are projected to decrease by approximately \$680,000.

The bargaining unit, presently consisting of 27 members, includes all full-time firefighters, lieutenants and captains in the City's Fire Department. (Art. II, Sec. 2)

In formulating the recommendation set forth herein, the Fact-Finder has taken into consideration the City's financial picture, the nature of the proposals by the Association, and the most recent Collective Bargaining Agreement, as well as various fact-finding reports made over

the years,¹ including the most recent one pertaining to the City and the Ohio Patrolmen's Benevolent Association made by the Fact-Finder on October 16, 1999 in the fact-finding conducted under the auspices of the American Arbitration Association, Case No. 53-300-00265-99.

III. RECOMMENDATIONS

Article IX - Salaries and Other Compensations, Section 1 (Annual Base Pay):

The Association contended that the firefighters' base pay compensation was below that of comparable communities and that a wage increase was justified. The Fact-Finder also notes that in the Fact-Finder's Report of October 16, 1999 pertaining to the City's police officers, the Fact-Finder recommended a 5%, 4% and 4% increase effective July 1, 1999. Although this Fact-Finder does not believe that every provision pertaining to police officers must be in equipoise with that provided to firefighters and visa-versa, in this instance, this Fact-Finder concurs with the view expressed by Fact-Finder Frank Keenan in his October 16, 1999 Report.

Recommendation:

It is the Fact-Finder's recommendation that Article IX, Section 1(A) provide for the following "base pay" increases: effective July 1, 1999, five percent (5%); effective July 1, 2000, four percent (4%); effective July 1, 2001, four percent (4%).

The parties have also raised the question as to the retroactivity of any wage recommendation and that issue will be discussed in a later portion of this Report at Page 10.

¹See City of University Heights and IAFF, Local 974, SERB Case No. 90-MED-02-0131, dated July 5, 1990 and IAFF, Local 974 and City of University Heights, SERB Case No. 93-MED-05-0525 dated December 1, 1993.

Article IX - Salaries and Other Compensations, Section 9 (Paramedics):

Under the provisions of Article IX, Section 9, each firefighter who is also a qualified paramedic receives an annual payment of \$1,500 with the paramedic coordinator receiving an annual payment of \$3,000. It should be noted that under Article XIX, Section 7, of the Collective Bargaining Agreement, all firefighters hired after July 1, 1990 are required to be certified paramedics or shall agree to become a certified paramedic upon hiring by the City. That Section further provides that "Failure of any such employee to become a paramedic will result in termination of employment." Although there are some firefighters who are "grandfathered," most of the firefighters in the City are paramedics. Thus, for any firefighter hired after July 1, 1990, maintaining paramedic certification is a condition precedent to continued employment with the City.

The Union has proposed that instead of an annual stipend, the paramedic compensation be restructured to a percentage of the paramedic's annual base pay, i.e., paramedic pay of 4-1/2%. The City's position is to retain current contract language. Interestingly, the police officers, in their argument before Fact-Finder Keenan in October 1999, argued for an increase in firearm proficiency allowance, contending a certain "commonality" between proficiency pay for a police officer and paramedic allowance for the firefighters. Fact-Finder Keenan recommended a \$1,000 firearm proficiency allowance for police officers for the first year of their contract, \$1,000 for the second year and \$1,500 for the third year, with the further recommendation that the firearm proficiency allowance not be rolled into base pay.

It is not this Fact-Finder's intention to evaluate or re-evaluate the situation involving the police officers, although, of some necessity, it does have some interrelationship with

the scope of the recommendation set forth by this Fact-Finder as to the firefighters. Under Revised Code §109.801, a police officer is required, on an annual basis, to maintain firearm re-qualification, and under §109.801(A)(2), if a police officer is not re-qualified, he is not permitted to carry a firearm during the course of his official duties. Although this is not necessarily the exact equivalent of the firefighters' condition of paramedic status or termination of employment, in that a police officer could still carry on police assignments even if excluded from those involving the carrying of a firearm. For practical purposes, however, the two qualifications do bear a certain commonality. The Fact-Finder notes that the \$1,500 allowance has been in effect for each of the three years of the current contract. The Fact-Finder further notes that in the Fact-Finding Report of July 5, 1990 (City Exhibit 17) (SERB Case No. 90-MED-02-0131), the Fact-Finder had recommended an annual stipend of \$1,200, with the paramedic coordinator receiving \$2,400, and Fact-Finder Clarence Rogers, in his Report of December 1, 1993 (City Exhibit 18) (SERB Case No. 93-MED-05-0525), had recommended an annual paramedic stipend of \$1,400, with the paramedic coordinator receiving \$2,800.

Considering the history of this provision and other dispositions, the Fact-Finder recommends that Section 9 be amended to read as follows:

"(A) Each active and qualified paramedic shall receive an annual assignment pay of \$1,600 for the life of this Agreement.

(B) The paramedic coordinator shall receive an annual assignment pay of \$3,200 for the life of this Agreement.

This pay shall be made in the same manner as regular pay, effective July 1, 1999, and for each subsequent year of this Agreement, this pay shall be divided by twenty-six (26) and paid with the regular wages for the corresponding bi-weekly pay period. This paramedic pay is not included in base pay."

Article X - Holidays:

Under the current Article X, each firefighter working on a platoon basis is credited with certain holidays. As stated by the Union, prior to 1990, members had worked a 53 hour workweek, and were allotted six (6) holidays the first year of the contract, five (5) holidays the second, and six (6) holidays the third. Members then received a special day off every 57 days. In the 1990 negotiations, pursuant to the provisions of the Federal Fair Labor Standards Act, the workweek was reduced to 52 hours per week. At that point, the parties agreed to change the "special day" cycle so that an employee would receive a special day off every 28 days. The Union goes on to contend that it agreed to convert 4-1/3 of its holidays per year into special days and to place the remaining holiday time, either 40 hours in the years when a member had 6 holidays or 16 hours in the years when the members had 5 holidays, into a bank which the member could then use as desired. The Union further contends that this accommodation was made with the understanding that the staffing would always be above the minimum per shift and that the Fire Chief had made representations that staffing would actually be at 10 personnel per shift.

The current contract, Article X, Section 2, does permit "banking" not to exceed 24 hours by the end of any calendar year. The Union now proposes to eliminate the "banking" provision and to increase the holidays to 6 days per year. The City proposes to maintain current contract language.

The Fact-Finder is sympathetic to the position of both sides, however, he is of the view that to eliminate the bank time provision would constitute a drastic departure from current contract administration, without an overriding and compelling reason to change the present administrative format. Accordingly, the Fact-Finder recommends that current contract language

be maintained with the appropriate date modifications, to wit, 6 platoon basic working days effective July 1, 1999; 5 platoon basic working days effective July 1, 2000; and 6 platoon basic working days effective July 1, 2001.

Article XI - Vacations:

Under current contract provisions, the firefighters are entitled to an annual vacation on a graduated basis. For example, after one full year of employment, during the second to the eighth year, a firefighter is entitled to two weeks of vacation (120 hours), which graduates to five weeks of vacation (264 hours) after 25 years of service. The hours stated in the Contract are not identical to the language used in the Contract of "weeks of vacation" in that one week of vacation is equal to 52 hours. Thus, an employee entitled to three weeks of vacation would arguably be eligible for 156 hours of vacation pay ($52 \times 3 = 156$), however, the Contract makes an adjustment, and although referring to three weeks, the City, in fact, pays 168 hours, or, in other words, 12 hours additional.

The Union proposes to increase the vacations from the current levels using a formula of platoon days off and also using a graduated system depending on the employee's length of service, up to a maximum entitlement, with 20 years of service, having vacation increased from 9 platoon days off to 11 platoon days off. The Union presents the statistics of its neighboring suburbs which reflect slightly higher vacation time allowance as, for example, a University Heights firefighter with 20 years of service receives 9 platoon days, whereas Beachwood receives 11, Cleveland Heights receives 13, Shaker Heights receives 12 and South Euclid receives 9.

The City has offered to reduce the time period of continuous service from 25 years to 20 years in order for a firefighter to be entitled to the maximum of five weeks of vacation. The

City further argues that the vacation time proposed is consistent with the vacation time granted to other City employees.

Recommendation:

The Fact-Finder recommends that current contract language be retained except for the following proposed change to be made in Section 1(E) to read as follows: "In any calendar year thereafter in which the employee will have completed twenty (20) years or more of continuous service on or prior to June 30, and in each year thereafter, the employee shall be entitled to five (5) weeks of vacation (264 hours)."

Article XII - Hospitalization:

The City has proposed that it be allowed to change its insurance carrier, provided that the benefit level remains substantially the same. Included within that proposal is a \$10.00 co-pay per office visit and a \$10.00/\$20.00 prescription drug benefit (\$10.00 for generic prescriptions; \$20.00 for brand name prescriptions). The Union does not significantly oppose these changes to the hospitalization coverage within the scope of Article XII of the Contract, however, the Association proposes a lump sum "reimbursement" payment for the health care premium deductions that were made from their wages from August 1999 until the date of ratification of a new contract. The issue thus raised is more appropriately addressed to the question of retroactive adjustment rather than a *per se* objection to the proposal submitted by the City. The issue of retroactive deduction from the firefighters' wages for the hospitalization coverage will be addressed in the separate issue at Page 10. For purposes of Article XII, however, the Fact-Finder concurs with the view of the parties and recommends that Article XII be modified to provide that the City shall have the right to change hospitalization carriers provided

that the benefit levels presently set forth in Article XII be the same or substantially similar to the benefit levels presently provided to the firefighters; provided, however, that said insurance program may provide a \$10.00 co-pay per office visit charge and an adjustment to prescription coverage of \$10.00/\$20.00.

Article XIII - Leaves of Absence; (G) High Risk Injuries:

Article XIII, Subsection (G) provides a protocol for "high risk" sick leave up to 90 calendar days when the injury or illness arises when the firefighter is responding to, performing or returning from an emergency and the injury or illness is caused by any one of a number of factors set forth in the Collective Bargaining Agreement, such as falling objects, smoke or gas inhalation and falls as a result of weakened structures in a building. The Association proposes to amend Subsection (G)(I)(iii)(1) by having the Contract read that a "high risk" injury is defined as "The injury or illness is the direct result of a working fire or the direct result of responding to, performing at, or returning from an emergency" and deleting the various specific type incidents referred to under Subparts (a) through (f) of Section (G)(I)(iii)(1).

The City has essentially proposed to maintain current language but to redefine Subparagraph (1) to read that "The injury or illness is the direct result of a working fire or the direct result of responding to, performing at or returning from an emergency or as a result of high risk training or participating in specialized rescue situations and the injury or illness is caused by:" (suggested new language underlined).

Recommendation:

The Fact-Finder is of the view that eliminating the various subsections dealing with instances when an injury or illness could be classified as "high risk" and adopting the

Association's proposal would invite grievance arbitration, although the parties admitted that the high risk injury provision has not been utilized with one exception² which was not particularly germane to an actual high risk injury. As an aside, the Fact-Finder must confess that he was somewhat sympathetic to the high risk injury language appearing in the City of South Euclid Fire Fighters' Contract in that the instances set forth therein were to serve as a guide and general criteria.³ However, the South Euclid Contract limited firefighters to 28 sick leave days, whereas the instant contract with the City of University Heights grants sick leave to 90 days. On balance, the Fact-Finder therefore recommends that current contract language be retained except that Subsection (G)(I)(iii)(1) be amended to read as follows: "The injury or illness is the direct result of a working fire or the direct result of responding to, performing at, or returning from an emergency or as a result of high risk training or participating in specialized rescue situations and the injury or illness is caused by:"

Article XXI - Duration (Retroactivity):

As previously mentioned in this Report, the issue of retroactivity as to wages and as to withholding of hospitalization premium payments has been raised by the parties, the Union essentially taking the position that any provisions reached between the parties should be retroactive to July 1, 1999, whereas the City's position is that no retroactivity should be applied.

²See City of University Heights and University Heights Fire Fighters Assn., IAFF Local 974, American Arbitration Association Case No. 53 390 0000492 decided December 27, 1993 (City Exhibit 22).

³Article XV, Section 15.3 of the City of South Euclid agreement provided in part: "For the purpose of this section, the City will use criteria such as, but not limited to, the following to determine 'high risk'".

In part, the City relies on Revised Code §4117.14(D)(11) which states in pertinent part: "Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a fiscal year had commenced since the issuance of the Board order to submit to final offer settlement procedure, the awarded increases will be retroactive to the commencement of the new fiscal year" The City thus contends that such language precludes any retroactivity.

The Fact-Finder does not concur with the City's contentions for several reasons. First, §4117.14(D)(11) refers to an award imposed by a conciliator and not a recommendation submitted by a fact-finder. In fact, this Fact-Finder is unaware of any statutory provision which automatically precludes a retroactive recommendation. Secondly, notwithstanding the language of §4117.14(D)(11), the parties, even during conciliation, could mutually agree to apply a conciliator's decision retroactively and such mutual agreement is not void as against public policy or statutory provisions.

Additionally, the Fact-Finder notes that the City was willing to grant a 5% base wage increase during the first year of the Contract. The present Contract expired on June 30, 1999 and, most likely, any new Contract would commence as of July 1, 1999. To reject any retroactive application of wages at this point in time would, in effect, for the first year of the Contract, be a wage award of approximately 2-1/2% which does not appear to be consistent with the parties' intent.

Accordingly, the Fact-Finder recommends that a three year Contract be set forth covering the time period from July 1, 1999 to June 30, 2002, and that the first year wage adjustment of 5% be applied retroactively to July 1, 1999.

As to the issue of retroactivity of the health care premiums, the Fact-Finder is of a different view, primarily because the present contract language provides for a partial employee contribution, and the Fact-Finder does not find an overwhelming, compelling reason to negate current contract language regarding employee contribution. Further, to provide retroactivity for this employee group might create a morale problem as affecting other employee groups in the City. Accordingly, the Fact-Finder does not recommend that there be any retroactive adjustment or reimbursement of hospitalization premiums paid by the firefighters and withheld by the City for the period July 1, 1999 to November 30, 1999.

Respectfully submitted,



DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded to George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Morris Hawk, Esq. at Goldstein & Roloff, 1440 The Leader Building, Cleveland, Ohio 44114; and Marc J. Bloch, Esq. and Timothy Anderson, Esq. at Duvin, Cahn & Hutton, Erieview Tower (20th Floor), 1301 East Ninth Street, Cleveland, Ohio 44114, via FedEx, this 30th day of November, 1999.


DONALD N. JAFFE
Fact-Finder