

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING PROCEEDINGS
CASE NO. 99-MED-10-0970

STATE OF OHIO
FEB 21 10 15 AM '07

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IN THE MATTER OF:

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 698

AND

CITY OF XENIA, OHIO

APPEARANCES:

FOR THE UNION: James W. Skogstrom, Esq.
Springfield, Ohio

FOR THE CITY: William R. Groves, Esq.
Springfield, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

James E. Murphy
Fact Finder

BACKGROUND:

The City of Xenia is the county seat of Greene County, with a population of approximately 25,000. For some thirty years, encompassing ten or more contracts, the City has maintained a collective bargaining relationship with the Union. At present, the unit consists of three Fire Captains, three Fire Lieutenants and thirty six Firefighters/Paramedics, who staff two fire stations around the clock and operate two fire engines, two rescue units and one ladder truck.

The most recent contract between the parties was effective from February 9, 1997 through February 9, 2000. Prior to its expiration, the parties engaged in extensive negotiations and were able to reach agreement on many items. However, they remain at impasse on some seven principal issues, to wit: Article 5-Wage Rate; Article 7-Plus Rating; Article 9-Sick Leave; Article 10-Group Insurance; Article 11-Vacations; Article 16-Hours of Employment; and Article 18-Residency. Accordingly, this case came on for hearing in Xenia, Ohio on February 10, 2000.

Evidence and able argument in support of the parties' respective positions on the items listed above were presented at the hearing. What follows is a summary of that evidence; the parties' positions; the Fact Finder's Recommendations; and the rationale for same. In making his recommendations, the Fact Finder has considered and relied upon the following statutory criteria, whenever such factors were advanced by the parties: the factor of past collectively bargained contracts; comparisons 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; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted 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.

ARTICLE 5-WAGES:

Evidence and Positions:

The Union seeks a 4% increase in wages for each year of a three year contract; the City offers 2% per year over the same period. In addition, the Union seeks to reduce the number of steps necessary to reach the top range on the firefighters scale from the current four to three. Finally, the parties agreed during the hearing to incorporate language in Article 5, as proposed by the Union, to provide a three step pay scale for the new bargaining unit position of Fire Captain (albiet they continue to differ on the amounts), and to maintain the current language on lump sum payments (with new dates) to account for any raises received during the year 2000.

The Union contends that its proposed wage increases are warranted based upon external comparisons with other fire departments in the region and internal comparisons with the other safety department in Xenia, the police. In this connection the Union submitted a chart comparing the top pay of Xenia firefighters/paramedics with those of neighboring jurisdictions. The chart reflects that the Xenia firefighters are currently the lowest paid of the three departments in Greene County and, among the 14 total departments listed, fifth from the bottom. The Union also contends that at one time (unspecified) police and fire salaries in Xenia were comparable, that they are now some 5.5% apart (in favor of the police) and that its proposed wage increases will bring the two groups closer to parity. Finally, the Union contends that reducing the number of steps is warranted because the City now requires that new hires be licensed firefighters/paramedics whereas it once hired untrained or less trained personnel.

In response to the above the City first points to the fact that wage increases contained in recent contracts have outpaced the rate of inflation by 15% since 1990. Accordingly, the City believes that additional 4% per year increases cannot be justified in these times of low inflation. (the parties agreed that the Consumer Price Index rose 2.6% for the twelve month period ending September 30, 1999) The City also notes, with respect to the Union's comparables, that Xenia figures do not include regularly scheduled overtime which adds 2.5% to every yearly salary, that Fairborn (the highest paid department in Greene County) has no rank higher than Lieutenant, that Beavercreek (unlike Xenia) is not exclusively a career department, and that, excluding the higher and lower paid departments, Xenia is among a tightly grouped number of departments in the mid range of the Union's list. With respect to internal comparisons, the City notes that the Police are scheduled for 40 hour weeks, as opposed to the rotating shifts of Firefighters which average 56 hours but include sleep time, thus making real comparisons difficult. Finally, the City made an inability to pay argument based on the premise that there has been a decline in recent years in the amount of general operating funds available for transfer to its capital fund, with the result that the capital fund (used for improvements such as new fire equipment) has become depleted and needs to be rebuilt. It follows, the City contends, that calls on the general operating fund, such as employee wage increases, should be kept as low as possible.

Rationale:

During the hearing, the parties presented me with two recent Fact Finder reports covering area fire departments on the Union's list of comparables, Piqua and Urbana. In these reports it was recommended that the Piqua firefighters, among the very highest paid in the area, receive increases of 3% per year over a three year period, while the Urbana firefighters, among the lowest, were awarded increases of 3.75% per year over a similar time frame. Considering these reports together with the other information outlined above, I believe that increases of 3.25% in each year of the new contract would be equitable here. Initially, in these times of general prosperity, I am not persuaded that the City is unable to pay the amount I shall recommend, especially since it was not shown why the capital fund has become depleted, why its rebuilding at this time is necessary or why the only means to do so is to hold firefighter wage increases at 2%. Moreover,

should the rate of inflation remain stationary or, as some recent signs seem to indicate, rise, a wage increase of only 2% per year would mean a reduction in real wages for Xenia firefighters. However, in view of the fact that firefighter wages have well outpaced inflation over the past ten years, and of other changes recommended in this report, I also do not believe the 4% increases sought by the Union can be justified. With respect to internal comparability with the police (whose contract apparently comes up for renewal shortly), given the difficulties of comparison caused by the two department's differing work schedules and the lack of evidence as to how, why and when their wage rates came to differ, this Fact Finder believes he has no basis upon which to attempt a change in the current ratio between them, despite his realization of the importance of the issue as a morale factor.

As to the Union's proposal to reduce the wage progression from four steps to three, I shall recommend retention of the status quo. In this connection, I am unable to find any evidence as to when the City's increased qualifications for new hires took effect, but I do note that the number of steps in the wage progression was reduced from five to four in the last contract and believe an insufficient basis has been established for a further reduction here.

Recommendation:

It is recommended that Article 5, Section 1 of the new agreement read as follows:

Section 1. Firefighters (Range 315), Fire Lieutenants (Range 324 and Fire Captains (Range 327) will be paid in accordance with the following pay plan.

Basic Pay Schedule from February 10, 2000 to February 17, 2001

<u>Range No.</u>		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
315	28-Day Salary	2880.12	3025.41	3180.99	3341.84
	Annually	37441.49	39330.30	41352.83	43444.00
324	28-Day Salary	3516.82	3698.78	3884.37	
	Annually	45718.69	48084.03	50496.80	
327	28-Day Salary	4213.62	4351.49	4489.36	
	Annually	54777.06	56569.40	58361.74	

Basic Pay Schedule from February 18, 2001 to February 16, 2002

<u>Range No.</u>		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
315	28-Day Salary	2973.72	3123.74	3284.37	3450.45
	Annually	38658.34	40608.53	42696.80	44855.93
324	28-Day Salary	3631.12	3818.99	4010.61	
	Annually	47204.55	49646.76	52137.95	
327	28-Day Salary	4350.56	4492.91	4635.26	
	Annually	56557.31	58407.91	60258.50	

Basic Pay Schedule from February 17, 2002 to February, 15, 2003

<u>Range No.</u>		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
315	28-Day Salary	3070.37	3225.26	3391.11	3562.59
	Annually	39914.74	41928.38	44084.43	46313.57
324	28-Day Salary	3749.13	3943.11	4140.95	
	Annually	48738.69	51260.28	53832.35	
327	28-Day Salary	4491.95	4638.93	4785.91	
	Annually	58395.42	60306.17	62216.90	

It is further recommended that the parties incorporate into their new contract the agreements reached during the hearing with respect to lump sum payments.

ARTICLE 7-PLUS RATING.

Evidence and Parties' Positions:

The recently expired contract provides that bargaining unit members who are assigned to substantially perform the job duties of a higher rated classification (i.e. a firefighter temporarily assigned as a fire lieutenant) for periods in excess of two hours will be paid an additional \$1/hour for the time so assigned. The Union seeks to increase this amount, known as a plus rating, to \$1.40/hour, primarily in order to bring it in line with the plus

rating paid to the police, which the parties agree is currently \$1.38/hour. The City opposes any increase, pointing out that it has never had a problem obtaining voluntary substitutes for higher rated jobs and noting that such upgrades in the fire department could include sleep time, whereas similar moves in the police department do not.

In addition to the above, the parties agreed during the hearing to change the heading of Section 3 of this Article from "Acting Lieutenant" to "Acting Officer" in order to account for the recently created unit position of Fire Captain, to which, presumably, some temporary substitutions will be made.

Rationale and Recommendation:

The undersigned is constrained to essentially agree with the Union's position on this matter. As noted above, equity between policemen and firemen is always an important morale issue, and I see no good reason to deny it here. Accordingly it is recommended that the language of Section 4 of Article 7 be amended by substituting "\$1.38" for "\$1.00" therein. It is also recommended that the parties incorporate their agreement, outlined above, with respect to Section 3.

ARTICLE 9-SICK LEAVE

Evidence and Parties' Positions:

The Union seeks to incorporate a "Wellness Program" in the new contract under which employees not using any sick leave during a 112 day period would receive 24 hours of compensatory time to be used pursuant to current procedures. Presumably, this would be in addition to the present contractual provisions under which employees are compensated for unused sick leave at the conclusion of their employment with the City. In support of its proposal, the Union cites its belief that a Wellness Program may serve to reduce the use of sick leave, which last year exceeded 7,000 hours, together with the fact that police officers and some communications employees are currently rewarded for no, or almost no, use of sick leave.

The City fears that the proposed Wellness Program would merely increase the amount of overtime hours needed to meet minimum manning requirements without necessarily reducing the use of sick leave. It also points out that employees all ready are compensated for unused sick leave at the time of termination, retirement or death. Finally, it notes that most other city employees, union and non-union, do not have a wellness program.

Rationale and Recommendation:

The undersigned does not believe that the Union has provided an evidentiary basis sufficient to justify a recommendation creating a wellness program at this time. There is no showing that last year's significant use of sick leave was or is typical. Indeed, there is apparently undisputed evidence to the contrary. Moreover, there is little more than a

hope that the proposed program will actually reduce sick leave useage and, again, the available evidence would seem to argue otherwise. Finally, there is all ready in place a contractual system rewarding to some extent the non use of sick leave.

Based on the above, the Fact Finder recommends that the current language of Article 9 remain unchanged. I also recommend that the parties incorporate their agreement at the hearing to continue unchanged the language of Section 6 of the same article.

ARTICLE 10-GROUP INSURANCE BENEFITS

Evidence and Parties' Positions:

The recently expired contract contained a provision under which the City agreed to establish a committee with a view to implementing a citywide dental care insurance policy during the contract term. Pursuant thereto a dental plan was in fact established in which bargaining unit employees were eligible to participate. Premiums were 100% employee paid and participation by unit employees was apparently low. The Union now seeks a City contribution of 50% of dental premium costs; the City currently pays 85% of employee group health premiums and has agreed to continue to do so. The Union frames the issue of dental premium contribution almost entirely as one of internal equity, noting that 50% of the premiums of police officers participating in the same program are city paid. In response, the City notes that while all city employees are eligible to participate, only police officers receive a contribution toward their premiums. It estimates a cost of \$13,000 per year if all 42 eligible firefighters participate.

Rationale:

The undersigned believes that a 50% city contribution to firefighter dental premiums is justified here. As noted above, internal equity between police and fire compensation and benefits is recognized as an important morale factor, and I see no substantial basis for denying it in this area. Moreover, in this era of two wage earner families (or even two jobs per wage earner), it would seem unlikely that all firefighters will elect to participate in the program, thus reducing the extra financial burden on the City. Accordingly, the undersigned will recommend that the City pay 50% of all firefighter dental premiums, including those for lieutenant and captain. Although the city currently makes no contributions toward dental premiums for police sergeants or lieutenants (equivalent to fire lieutenants and captains), the reason for this apparent anomaly was never given and I can find no rational basis for for making such a distinction in the fire department.

Recommendation:

It is recommended that Section 3 of Article 10 of the new contract read as follows:

"The City will pay 85% of the cost of all monthly healthcare premiums. The participating bargaining unit employees will pay 15% of the monthly healthcare premiums by payroll deduction. The City will pay 50% of the cost of all monthly

premiums for dental insurance. The participating bargaining unit employees will pay 50% of the monthly premiums for dental insurance by payroll deduction."

It is also recommended that the parties incorporate the other language changes in this Article necessary to include the new dental program, as proposed by the Union and agreed to by the City during the hearing.

ARTICLE 11-VACATIONS

Evidence and Parties' Positions:

The recently expired contract provides a three step vacation accrual schedule, under which employees receive 6 shift days (equivalent to 3 weeks) vacation during each of their first ten years of employment, 9 shift days (4.5 weeks) for the next ten years, and 12 shift days (6 weeks) after 20 years. The Union here seeks to change the accrual schedule from three steps to five, with the new changes coming after five and fifteen years of work. In addition, the Union wants to increase the number of shift days off at the ten and twenty year anniversary dates. In sum, the proposed vacation accrual would be as follows: less than five years of service=6 shift days (3 weeks) off; 5 to 10 years of service=7 shift days (3.5 weeks) off; 10 to 15 years of service=10 shift days (5 weeks) off; 15-20 years of service=11 shift days (5.5 weeks) off; and over 20 years of service=13 shift days (6.5 weeks)off. In support of its position the Union presented a chart of area comparables which shows that almost all other departments have four or five step accrual schedules. Such schedules, the Union maintains, more regularly reward employees for their years of dedicated service to the City and its citizens.

In response, the City notes that all city employees currently operate under essentially the same three step vacation accrual schedule and that the Union has provided no substantial reason to begin what could be a chain reaction of costly change. It also notes that the comparables provided by the Union do not reflect the days off given at each anniversary, thus reducing their value as evidence. Finally, the City states that if all vacation changes sought by the Union are granted some individuals will receive, in effect, an unwarranted double bonus.

Rationale and Recommendations:

The undersigned finds that the Union has not provided sufficient evidence to warrant a change in the current citywide vacation accrual schedule. Although the comparables provided would, on the surface, appear to support some change, without knowing more about the entire vacation packages in these jurisdictions I am reluctant to recommend one at this time. Similarly, I do not believe the Union has justified an increase in the amount of vacation time currently provided under what appears to be a reasonably generous vacation program. Accordingly, I recommend that the provisions of Article 11 remain unchanged, except for the language change in Section 2 to which the parties agreed during the hearing.

ARTICLE 16-HOURS OF EMPLOYMENT

Evidence and Parties' Positions:

The Union seeks to add a new section to this article providing what it calls earned days off or EDO's as a means of reducing the number of hours worked per week from an average of 56 to an average of 53 over the term of the contract. Specifically, the Union's proposal calls for 3 EDO's the first year, 5 the second and 7 the third. The parties agree that 7 EDO's per year would reduce the work week to 53 hours per week and, under the FLSA rules applicable to firefighters, eliminate scheduled overtime presently costing the City approximately \$60,000 per year. For this reason, the Union calls its proposal a "win-win" situation. In further support of its position, the Union supplied a chart comparing the scheduled hours of work per week of Xenia firefighters with those of other departments in the county and area (the same departments used for its wage comparisons). This chart reflects that Xenia and five other departments have 56 hour schedules, three have 54, one 53, two 52, one 51 and one 40. (the last presumably does not work 24 hour shifts and is thus not really comparable) In addition, the Union provided a statewide document prepared by SERB which shows that a large majority of fire departments, particularly those of similar size to Xenia, work less than 56 hours per week but more than 50. In conclusion, the Union argues that a reduction in the number of hours worked per week could lead to less sick leave usage, improved employee morale and better retention of employees.

The City in response first notes that accepting the Union's proposal would result in lower productivity since it would be paying the same salary for less work, even if all other things were equal. But, the City forcefully argues, all other things will probably not be equal. Thus, although it agrees that acceptance of the Union's proposal would reduce scheduled overtime by about \$60,000 per year, it fears that unscheduled overtime would rise in order to meet minimum manning requirements. Since both parties agree that unscheduled overtime, because of FLSA requirements, costs more than scheduled overtime by a factor of almost four to one, the City argues that even a small increase in its use because of EDO's could soon more than erase any projected savings and end up costing money it can ill afford. Finally, the City notes that internal equity would be adversely affected since all employees now received essentially the same number of days off per year.

Rationale:

Both sides presented persuasive arguments on this issue. On balance, however, I believe that some use of EDO's is warranted here. The following facts are undisputed: (1) a slight majority of area fire departments work less than 56 hour weeks, (2) both other Greene County departments work less than 56 hour weeks, (3) by far most state departments work less than 56 hour weeks and (4) a reduction in the scheduled work week of Xenia firefighters (until 53 is reached) will automatically reduce scheduled overtime payments by the City. By contrast, the City's principle response, while clearly reasonable, is necessarily based on conjecture. Thus, there is and can be no assurance

that use of an EDO system will ipso facto increase the amount of unscheduled overtime sufficiently to offset projected savings, particularly if the system is wisely administered. Accordingly, I shall recommend adoption of an EDO system but with less days than sought by the Union. This should go some way toward allaying the City's not unreasonable worries while at the same time giving both parties an opportunity to see and monitor the system in actual operation and to decide if they wish to continue, reduce or expand its use in the future.

Recommendations:

The Fact Finder recommends that Article 16 of the recently expired contract be amended by adding a new Section 7 and 8 to read as follows:

"Section 7-Earned Days Off. Members will receive 2 EDO's in the first year of the contract and will schedule them upon ratification of the contract.

Members will receive 3 EDO's in the second year of the contract and will schedule them in accordance with Section 8 of this article.

Members will receive 4 EDO's in the third year of the contract and will schedule them in accordance with Section 8 of this article.

Section 8-EDO Selection. Members will schedule their EDO's during annual vacation selections. EDO's will be selected before vacation picks and will be done by seniority within the Fire Division. A member may only schedule 1 EDO during any 28-day pay period. (See addendum A)"

The Fact Finder also recommends that the parties adopt their agreement during the hearing with respect to a language change in Section 4 of this Article.

ARTICLE 18-RESIDENCY

Evidence and Parties' Positions:

At present all City of Xenia safety employees, including firefighters, are subject to a city ordinance requiring residence within an 8 mile radius of city center and within 15 minutes drive time of their work location(s). This or a similar restriction has been in effect for almost thirty years. The Union now seeks to add a provision which would exempt members of the unit from the ordinance, contending that such an exemption would boost morale, lower turnover rates, and enhance recruiting.

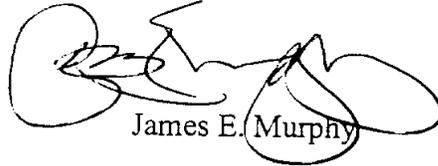
The City opposes any change in present residency requirements, alleging that they provide an adequate balance between the City's need to ensure the availability of safety forces in an emergency and its employees' need to find adequate housing opportunities.

Rationale and Recommendation:

While I realize that the freedom to live where one chooses is an important consideration, I am unable to recommend a change in residency requirements here. I note first that the restriction itself is not overly broad, the eight mile radius encompassing a good deal of territory beyond the city limits. Moreover, given the City's need to call in additional safety forces in emergencies, some limit on residency would seem justified, but the Union's proposal contains none. In these circumstances, it is difficult for a Fact Finder such as the undersigned, lacking the parties' familiarity with the area, to fashion an appropriate boundary. When these factors are considered together with the length of time the ordinance has been in effect, and in the absence of any particularized showing of hardship, I recommend that no changes in existing residency requirements be incorporated in the new contract.

This concludes the Fact Finder's Report and Recommendations. I wish to thank both parties for their helpful and cooperative approach throughout this proceeding.

February 21, 2000.



James E. Murphy