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STATE EMPLOYMENT
RELATIONS BOARD
Dec 17 10 22 AM '99

FACT FINDING PROCEEDINGS
STATE EMPLOYMENT RELATIONS BOARD
CASE NO. 99-MED-10-1021

CITY OF WARREN, OHIO :
:
The Employer :
:
and :
:
THE INTERNATIONAL ASSOCIATION :
OF FIREFIGHTERS AND ITS LOCAL :
204 :
The Union :

OPINION AND AWARD

APPEARANCES

For the Employer:

Gary C. Cicero, Director of Human Resources
Brian M. Massucci, Personnel Supervisor

For the Union:

Dennis Haines, Attorney
Jeff Younkins, Local Union President
Marc Titus, Negotiating Committee
William Gadd, Trustee

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I. SUBMISSION

This matter came before this Fact Finder pursuant to the laws of the Sate of Ohio and pursuant to the understandings of the parties, the parties having been unable to resolve their contractual differences prior to this date. As a result, a hearing was scheduled and conducted for fact finding purposes in Warren, Ohio at the Community Center on December 13, 1999, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the Fact Finder, that any witnesses would be sworn and that post hearing briefs would not be filed.

It might be noted at the outset that the parties gave to the Fact Finder twenty fours in which to file a final report. As a result, much of the rationale is shortened by virtue of the time constraint. The shortening of the rationale is also shortened by the large number of issues presented in this particular matter. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

II. FACTS, DISCUSSION AND AWARD

The effective date of this agreement shall be January 1, 2000 and shall continue for a period of thirty six months thereafter. Parties just concluded a three year agreement and three years seems to be part of the understandings between the parties. I see no reason to change that practice between the parties. There were no reasons given at the hearing for a one year contract although the city indicated and stated that such was their desire. A three

year contract is hereby ordered.

It might be noted that some of the issues in this particular matter were settled, some issues were withdrawn and some issues were at impasse. I will attempt to cover those three categories as each issue is faced.

The parties signed off on a proposed amendment under Article IV, section 8, in which the parties agreed that during scheduled working hours the president, vice president, secretary and trustees of Local 204 shall be granted reasonable time off duty hours with pay for the purpose of fulfilling their Local Union related responsibilities to include monthly union meetings. It was further agreed that the provision would be limited to two union officials per shift. This settled argument shall remain as the order of this Fact Finder.

Article IX, section 2, of a proposed amendment by the union at paragraph three requested that there be a suspension without pay and the record of suspension will be maintained. The union further requested that at the option of the employee accrued vacation or holiday time may be forfeited equal to the length of suspension. That particular clause is being overruled by this Fact Finder on the basis that a suspension without pay but with a pay in the form of vacation or holiday benefits may not be an appropriate predicate for discipline. Simply put, the union's demand in that regard will be held for naught.

At Article IX, section 2, paragraph F, the union requested that if more than one working day suspension is warranted the hearing will be continued before the director. The current contract provides for a five working day suspension before a hearing will be continued before the director. The union request is overruled on the basis that there was insufficient evidence to substantiate any request in that regard.

Article X concerning a proposed amendment to Seniority was withdrawn by the union at open hearing.

As to Article XI, the union proposed a new method of scheduling in a leap year. The union indicated and stated that there had always been a change of scheduling in a leap year to prevent the duplication of scheduling of holidays for two years running. The employer stated, however, that the payroll had been changed from twice a month to every two weeks, thus, disallowing a computer change in the event of a leap year. Because of the great inconvenience the request of the union would make, the scheduling change proposed addition to Article XI, section 8, is hereby denied.

Article XII was a pay rate adjustment request. The firefighters sought an annual wage for two and a half percent for one year and the city offered zero. At the outset this Fact Finder stated that it was best for a three year contract and the Fact Finder makes the award that the bargaining unit shall receive zero percent increase the first year, four percent increase

the second year, and an additional four percent increase the third year. The city pleaded poverty and the union did not place any evidence into the record to the contrary. That being the case, the wages were adjusted on increase as indicated and is hereby the order of the Fact Finder that such shall be the case.

Article XII sought a proposed amendment of wage for an increase for a lieutenant by a half percent. The same is denied. The reason for denial is that there are insufficient funds in the treasury of the city to grant any increase for the year 2000 and a lieutenant should not be singled out to receiving the only increase for the requests that were made on their behalf for a further differential in rank.

Article XIII, entitled Allowances, under section 1 of that Article there was a request by the union that the clothing allowances be paid by separate check. This is without any cost to the employer. The request of the union is hereby granted as to Article XIII, section 1.

Article XIII under section 2 is a request for a change on the severance pay. The same is granted. This is a no cost item to the city under the terms of this contract and as such appears to be reasonable and should therefore be granted.

Article XIII, section 4, proposed amendment was withdrawn.

Article XIII, section 5, subparagraph A and B are hereby granted, the same having to do with prior sections that were granted and a granting of Article XIII, section 5 is in concert with the previous changes.

Article XIII, section 7, involves a proposed amendment concerning longevity. The same was withdrawn by the union in open hearing.

Article XIV, entitled Holidays, at section 1 and section 2, has to do with giving the day after Thanksgiving the status of a holiday. It appeared that the bargaining unit had ten holidays. The usual contract of collective bargaining deals with eleven holidays throughout the course of the year. The request of the union is hereby granted since the same is reasonable and since the city could present no cogent evidence upon which to predicate a denial of this request.

Article XIV, section 3, triggered a proposed amendment by the union to allow a three twenty four scheduled work days off during a calendar year. The same is denied. There is no cogent reason placed into the record by the union which would trigger such activity on the part of the bargaining unit. The granting of an additional day of as a holiday under the terms of the instant agreement is understandable but the granting of three twenty four hour scheduled work days off is not. As such, the same is denied.

Article XXI sought to establish a minimum manning. The issue was withdrawn by the union.

Article XXVI sought a one year termination of the agreement. The Fact Finder has ordered a three year contract and the one year request is denied.

Article XXVI which is a proposed addition for vision care was withdrawn by the union.

Article XXX dealt with a drug testing request by the union and the union placed into the record a drug policy without random testing or without the use of hair in testing. That policy is hereby adopted.

The bargaining unit sought an exemption from any residency requirement. It might be noted that this is an emergency work force. It is a safety force. It is a fire department that deals with emergencies. On occasion off duty firemen have to be called in and living too far from the fire department is a negative. As such, the nearness of an employee to his place of employment is absolutely essential. As a result an exemption from a residency requirement is denied for this bargaining unit.

Retroactivity was sought but since this contract is being ordered into effect on

December 15, 1999 by a Fact Finder which is a date before January 1, 2000, the agreement of retroactivity has no meaning.



MARVIN J. FELDMAN, Fact Finder

Made and entered
this 15th day of
December, 1999.