

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

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STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF:

**MOUNT VERNON FIRE FIGHTERS
AND PARAMEDICS, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,
LOCAL 3712**

**Employee Organization,
and**

**CITY OF MOUNT VERNON
Employer.**

**REPORT AND RECOMMENDATIONS
OF THE FACT FINDER**

CASE NO. 99-MED-11-1097

DATE OF HEARING: April 10, 2000

PLACE OF HEARING: Mount Vernon, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

David Seitz, President
Rick Cantrell, Paramedic
Eric Rutter, Firefighter
Mike Massie, 5th District Vice President, OAPFF
R. Dennis Butler, Lieutenant

FOR THE EMPLOYER:

Michael Underwood, Attorney
David Favre, Attorney
Joel Daniels, Safety-Service Director
Terry Scott, City Auditor

PROCEDURAL BACKGROUND

By a letter dated December 3, 1999, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(C)(3). The fact-finding hearing was held on April 10, 1999, at the offices of the City of Mount Vernon. The report and recommendations of the fact finder are to be served upon the parties no later than May 11, 2000, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of a successor collective bargaining agreement between the City of Mount Vernon, Ohio ("City") and the Mount Vernon Firefighters and Paramedics, International Association of Firefighters, Local 3712 ("Union") for a bargaining unit consisting of those individuals serving in the positions of firefighter, paramedic, EMS coordinator, captain, and lieutenant in the City's Fire Department. At the present time, there are 28 employees in the unit. The previous collective bargaining agreement between the parties expired on December 31, 1999.

Prior to the fact-finding hearing, the parties engaged in 5 formal negotiation sessions and reached tentative agreements on many issues. The unresolved issues were presented to the fact finder for resolution.

MEDIATION

Prior to an evidentiary hearing, the parties engaged in mediation with the assistance of the fact finder. During the mediation session, tentative agreements were reached on some of the unresolved issues. All of the issues remaining unresolved are discussed in this report.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison 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;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

ARTICLE 11

CORRECTIVE ACTION

Position of the City

The City proposes an increase in the length of time that records of disciplinary suspensions can be retained in the personnel files of firefighters.¹ Currently, records of disciplinary suspensions are retained for 18 months, and cease to have any force or effect after that time, provided that there has been no other disciplinary action taken against the employee. The City proposes that records of disciplinary suspensions be retained in the employee's personnel file, and remain in full force and effect for 3 years after their effective date, provided there is no intervening discipline.

The City contends that a longer retention time is needed for disciplinary suspensions, which are only imposed for serious misconduct. The City contends that disciplinary records of employees who engage in serious misconduct should remain in effect for more than 18 months. The

¹The term "firefighters" will be used to refer to all employees in the bargaining unit, even though some of the members have other job titles.

City expressed its concern that the current retention period could make it difficult to defend itself in a sexual harassment lawsuit. The City is concerned that, if a victim of sexual harassment sued the City, the City would be unable to use a record of a disciplinary suspension as part of its defense.

Position of the Union

The Union opposes the City's proposal to increase the length of time that records of disciplinary suspensions are retained in personnel files. It states that, during the last 25 years, no firefighter has been given a disciplinary suspension. It asserts that there is no evidence to support the change proposed by the City.

Discussion and Recommendations

The City proposes a change in this article. The party which proposes a change in the status quo has the burden of producing evidence supporting the change. Here, the primary argument made by the City is that the current language might hinder its ability to defend itself in litigation, particularly if the City is sued for sexual harassment.

The Union made the unchallenged assertion that there have been no suspensions imposed for any reason during the past 25 years. Certainly, the absence of previous suspensions does not preclude the possibility that suspensions will be imposed in the future. The City has a legitimate concern about its ability to properly defend itself in litigation. However, without any evidence of disciplinary problems in the fire department, there is no compelling need to change this provision. The current provision was previously negotiated by the parties, and there is

insufficient evidence supporting the need for a change. The fact finder recommends that the current language be retained in Article 11.5.

ARTICLE 20
COMPENSATORY TIME

Position of the Union

The Union proposes a change in Section 20.2 which increases the time for confirmation of a request to use compensatory time. Currently, such requests are either confirmed or denied 48 hours in advance. The Union desires to increase the time for approval to 72 hours in advance. It asserts that firefighters should be able to confirm compensatory time off at the beginning of the workday prior to the workday during which the time off has been requested. Since firefighters work 24 hours and are then off duty for 48 hours, advance notice of 72 hours is needed to fulfil the objective of the Union.

The Union points out that, in the police bargaining unit, compensatory time scheduled 7 or more days in advance will not be denied solely because it will create overtime. The Union also notes that employees in the service bargaining unit have compensatory time confirmed 3 days in advance.

Position of the City

The City proposes that the current language be retained in Section 20.2. It states that confirmation of a request for compensatory time off should continue to be done 48 hours in advance. The City notes that, once a request has been confirmed, a later sick leave request could result in

inadequate manning and could require the City to call in an employee on overtime. The shorter confirmation period reduces the risk of either a manpower shortage or an overtime situation.

Discussion and Recommendations

Both of the parties have valid arguments concerning this issue. The firefighters have a legitimate interest in having the ability to use their compensation time without undue restrictions. The City has a strong interest in maintaining adequate staffing levels and in minimizing the use of overtime.

The firefighters accumulate compensatory time in lieu of holiday pay and in lieu of overtime. The current provision limits the benefit because a firefighter cannot be assured of having the time off until 48 hours in advance. The value of compensatory time is diminished because a firefighter cannot make definite plans more than 48 hours in advance. The firefighters and the City have bargained for the use of compensatory time as a component of the firefighters' remuneration. In order to effectively use this benefit, the approval process must not be overly burdensome.

A comparison of the confirmation periods for the City's bargaining units leads to the conclusion the confirmation period for the firefighters is less favorable. An increase in the confirmation period from 48 hours to 72 hours is a reasonable request. The City should be able to determine 72 hours in advance whether the request will cause manning problems. Therefore, the fact finder recommends that the Union's proposal for Section 20.2 be adopted. The current language will be retained in the other sections of Article 20.

ARTICLE 22

HOLIDAYS

Position of the Union

The Union proposes several changes to the collective bargaining agreement concerning holiday pay. At the fact-finding hearing, the Union submitted a proposal which differed from the proposal contained in the pre-hearing submission of the Union. At the hearing, the parties stipulated that the new proposal was to be accepted by the fact finder as the proposal of the Union.

The proposal states that, for each of 7 specified holidays,² each bargaining unit member will be credited with 24 hours of compensatory time³ during the pay period that the holiday falls in, regardless of whether the employee actually works on the holiday. The proposal also provides that bargaining unit members who work on any of these 7 holidays will be paid at one and one-half times their regular daily rate, in addition to the 24 hours of compensatory time. The proposal requires that double time be paid for overtime on any of the 11 holidays which are specified in the current agreement. An employee who works overtime on one of the 7 "major" holidays would receive the 24 hours of compensatory time in addition to the double time pay.

The Union argues that, under the existing agreement, the bargaining unit is inadequately compensated for working on a holiday. Employees in the other bargaining units only have to be away from their families for 8

²The 7 holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas.

³While the proposal uses the term "compensatory pay," a reading of the entire proposal reflects that the proposal is for compensatory time on the 7 holidays.

hours when working on a holiday, while firefighters who work on a holiday must be away from their families for the entire 24 hour holiday. The Union contends that the current holiday provision does not adequately compensate firefighters for working a 24 hour shift on a holiday.

Position of the City

The City opposes the proposal of the Union and advocates retention of the current holiday provisions. It asserts that it currently has difficulty scheduling time for firefighters to use their accumulated compensatory time. The additional compensatory time will worsen the situation. The City contends that the current provisions fairly compensate firefighters for holidays. While the other bargaining units receive 88 hours of holiday pay per year, the firefighters receive compensatory time of 158 hours per year.

The City argues that its costs would significantly increase because the proposal of the Union requires firefighters to be paid at time and one-half for work performed on any of the 7 designated holidays, whereas the current contract does not provide for holiday pay in addition to compensatory time.

Discussion and Recommendations

Although the proposal of the Union reduces the number of holidays for which the employees receive compensatory time, the end result is to increase the number of hours of annual compensatory time for holidays from 158 hours to 168 hours. This represents an increase of about six percent.

The firefighters work 48 hours per week, and their holiday entitlement is currently based on 9.6 hours per holiday. Their holiday compensation is based on 9.6 hours for each of 11 holidays, increased by a 50 percent overtime factor. As a result, the firefighters currently receive 158 hours of compensatory time per year.

The Union's proposal would require the City to pay time and one-half for all hours worked on a holiday. Under the current language, firefighters do not receive any additional compensation for working on a holiday unless the hours worked on a holiday are overtime hours. Since the City needs to fully staff the fire department every day of the year, including holidays, the proposal would obligate the City to pay a full complement of firefighters for an additional 12 hours on each of the 7 specified holidays.

Currently, all holiday compensation is in the form of compensatory time. The Union's proposal would both increase the number of hours of compensatory time and require the City to provide monetary compensation as well. Even though the proposal would only require that the monetary compensation be paid on 7 holidays, the cost to the City would be substantial. The Union has not presented any evidence to show that the current holiday compensation is substandard, when compared to firefighters in similar jurisdictions.

The unique nature of the firefighter's work schedule makes it difficult to completely reconcile benefits for firefighters with those of other employees. The current provision strikes a balance between the hours worked by firefighters, and the hours worked by the other bargaining units. The number of hours of holiday compensation for firefighters is proportional to the number of hours worked.

The evidence does not warrant a change in Article 22. Therefore, the fact finder recommends retention of the current language.

ARTICLE 31

INSURANCE

Position of the Union

The Union proposes that the amount of life insurance be increased to \$25,000 per bargaining unit member. Currently, the City provides coverage in the amount of \$15,000 to all City employees, including firefighters. The Union contends that firefighters should have additional life insurance because of the hazardous nature of their jobs.

Position of the City

The City proposes retention of the current language, which provides \$15,000 of life insurance to bargaining unit members.

Discussion and Recommendations

It appears to the fact finder that there was minimal discussion about this issue during negotiations, perhaps because negotiations about health insurance overshadowed any discussion about the life insurance benefit. Due to the lack of information presented to the fact finder about life insurance during the hearing, the fact finder requested that the City provide cost information to him. On April 19, 2000, the fact finder received the information from the City. The City represented that the Union was also provided with the information.

The City reported that the cost of providing the coverage proposed by the Union would be \$2,772 per year, compared with a cost of \$1,562.40

for the current coverage. This is an additional cost of \$1209.60. However, the City asserts that the insurance carrier would require the City to increase the life insurance coverage of all City employees to \$25,000. The total increase in cost to provide the greater amount of coverage to all employees would be \$6,134.40.

Increasing life insurance coverage is a justifiable objective, as firefighters have a more hazardous job than most other City employees. However, the evidence shows that the cost to the City would be substantial as the insurance carrier would require that coverage be increased to the same level for all employees. If the parties had negotiated more fully on this issue, the cost of providing this benefit through other insurance carriers could have been explored. Based on the high cost, and the lack of any data from comparable jurisdictions, the fact finder will recommend that the current language be retained in Article 31.5.

ARTICLE 33

WAGES

Position of the Union

The Union proposes that wages be increased as follows:

5.0%	Effective January 1, 2000 ⁴
5.0%	Effective January 1, 2001
4.5%	Effective January 1, 2002

The Union contends that these increases are equivalent to the wage package provided to the police department. It asserts that employees in

⁴The parties have agreed that any wage increase for the year 2000 will be made retroactive to January 1, 2000.

the service department received wage increases ranging from four percent to six percent.

The Union points out that Mount Vernon has the only paid firefighters in Knox county. All other fire departments are volunteer units. The Union states that fire departments staffed with volunteers are unable to provide the same level of support as paid professional firefighters. This results in an increased workload in comparison with other jurisdictions which have paid fire departments nearby to provide assistance when needed.

Position of the City

The City has proposed wage increases as follows:

4.0%	Effective January 1, 2000
3.5%	Effective January 1, 2001
4.0%	Effective January 1, 2002

The City contends the wage increases it proposes will keep firefighter wages in Mount Vernon competitive with comparable cities in Ohio. The wage increases are identical to the increases offered to the other two bargaining units in the City. The City points out that these wage increases are higher than those provided in the previous collective bargaining agreement. They are also greater than the 1999 average statewide wage increase of 3.66 percent.

The City asserts that the cost of the Union's proposal over the three years of the contract will be about \$45,000 more than the City's proposal, when considering both wages and the resultant increase in pension contributions.

Discussion and Recommendations

A review of the evidence shows that wage increases for comparable cities in Ohio were in the 3 to 4 percent range for 1999, 2000, and 2001.⁵ A review of the top hourly wage rate for firefighters in comparable cities shows that Mount Vernon's top wage rate (without longevity) is 7th out of 17 cities, when pension pickup in some of the other cities is considered.⁶

One of the contentions of the Union is that the police unit received a larger wage increase than that offered by the City. Although the negotiated wage increases for the police unit were identical to the City's proposal to the firefighters, the Union's contention is based on the police "wage package," which contained some increases in benefits not reflected in the general wage increases. The City does not dispute the contention that the police unit received some gains in benefits in addition to the wage increase. Additionally, the City does not contest the Union's assertion that some employees in the service bargaining unit received wage increases in excess of the general wage increase.

The fact finder notes that the statewide trends in wage increases have been steadily increasing since 1994.⁷ If this trend continues, the average wage increase for the year 2000 will exceed the 1999 average of 3.66 percent, and will increase in the succeeding two years. A wage increase which reflects this trend will enable the Mount Vernon firefighters to keep pace with firefighters in similar jurisdictions. However,

⁵Of 16 cities surveyed, 13 had percentage increases of between 3 and 4 percent, inclusive. One city had an increase of less than 3 percent, and 2 cities had increases in excess of 4 percent for the period. See City Exhibit "Wage Comparison."

⁶See City Exhibit "Wage Comparison."

⁷See City Exhibit "SERB Wage Settlement Breakdown (1991-1999)."

the wage comparison data does not justify an increase which exceeds the upper end of the range of increases in comparable fire departments.

The fact finder will recommend that the bargaining unit receive the following increases in wages:

4.0%	Effective January 1, 2000
4.0%	Effective January 1, 2001
4.0%	Effective January 1, 2002

ARTICLE 34

LONGEVITY

Position of the Union

The Union proposes an increase in the longevity payment schedule. It proposes that, after 5 years of employment, each employee will receive longevity pay in an amount equal to 2 cents per hour for each year of service, to a maximum of 60 cents per hour after 30 years of service.

The Union contends that the proposal would reward the more experienced employees, who give the benefit of their experience to the City. It states that the more experienced employees often must make important decisions in the absence of an officer. Further, the City pays some department heads \$3000 per year for longevity. In contrast, the proposal would require an annual payment of only about \$1250 for a firefighter with 25 years of service.

Position of the City

The City opposes any increase in the longevity pay. It asserts that the firefighters first obtained longevity pay in the last contract, resulting in an

increase in costs to the City. The City argues that there is no justification for an increase in longevity pay at this time.

Discussion and Recommendations

Currently, longevity begins after 5 years of service with a wage supplement of 5 cents per hour. After 10 years of service, the payment increases to 10 cents per hour. Longevity of 15 cents per hour is paid after 15 years, and 20 cents per hour is paid after 20 years of service.

The Union proposes to base longevity on a payment of 2 cents per hour, for each year of service. The proposal would essentially double the amount of longevity pay, and would provide a pay increment each year, rather than every 5 years. In addition, the amount of longevity pay would continue to increase until an employee has 30 years of service.

The Union has not submitted sufficient evidence to justify an increase in longevity pay. The current pay schedule was adopted during the last round of negotiations. There is no evidence to suggest that there has been a material change in conditions since that time. Therefore, the fact finder will recommend that the current language be retained in Article 34.

Respectfully Submitted,



Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 11th day of May 2000, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Michael Underwood, Porter, Wright, Morris and Arthur, 41 South High Street, Columbus, Ohio 43215; and upon David Seitz, 10560 Sapp Road, Gambier, Ohio 43022; each by Federal Express overnight delivery; and upon George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles W. Kohler", written over a horizontal line.

Charles W. Kohler, Fact Finder