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STATE EMPLOYMENT
RELATIONS BOARD

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**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
APRIL 18, 2000**

In the Matter of:)	
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The City of Twinsburg)	
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)	
And)	99-MED-12-1155
)	
)	
International Association of Fire Fighters, Local 3630)	

APPEARANCES

For the Union:

**Kenneth R. Adams, Staff Representative
Northern Ohio Fire Fighters
Tim Morgan, Union Rep.
Mark Miller, Union President
John Knaus, Union V. President**

For the City of Twinsburg:

**Robert W. Windle, Labor Relations Consultant
Richard M. Racine, Fire Chief
James E. Hartung, Asst. Fire Chief
Kolette Woloszynek, H. R. Director**

Fact-Finder: Marc A. Winters

BACKGROUND

The Fact-Finding involves the City of Twinsburg and all full-time Employees employed in the Fire Department occupying the positions of fire fighter and lieutenant. The above named employees are represented by the Northern Ohio Fire Fighters. The City of Twinsburg and the Bargaining Unit Employees of its Fire Department Local 3630 have reached a tentative agreement on all outstanding issues with the exception of Article 42, Holidays. An attempt to mediate the open issues was accepted by both parties. However, such an attempt proved fruitless. Thereby having five issues surrounding Holidays remain for Fact-Finding.

The Fact-Finding Hearing was conducted Friday, April 7, 2000, in the Twinsburg City Hall. The mediation attempt began at 10:00 A. M. and the actual Fact-Finding Hearing began around 11:30 A. M. The Hearing was adjourned approximately 4:00 P. M.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance the Ohio Public Employee Bargaining Statue as set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

INTRODUCTION

All outstanding issues revolves around Article 42, Holidays. At the onset five issues remained open for fact-finding. During the course of the Hearing the parties mutually agreed to settle one of the issues. That being; A proposal from the City regarding the use of holidays. The agreed upon language is as follows:

“In order to receive pay for the holiday, an employee must actually work his last scheduled shift immediately prior to the holiday and the first scheduled shift after the holiday, unless such absence is approved by the Chief of Fire.”

This language was taken from the City’s Police Department Collective Bargaining Agreement and now is incorporated into the Fire Fighter’s Contract.

The Finding of Fact on the remaining four issues involving Holidays are as follows:

Issue: Holidays Article 42

There are four separate issues that follow under the Holiday Article. Each will be discussed individually.

Issue: Holidays Article 42.01

Union Position: The Union demands that the number of tours of duty off with pay be increased from five to seven.

City Position: The City rejects the Union’s demand.

Discussion: The City provides twelve (12) paid holidays for its employees. The fire fighters have negotiated in the past to have in lieu of City Holidays five (5) tours of duty off with pay. A tour of duty is twenty-four (24) hours. The Union asserts internal parity with the Police who are covered by a Collective Bargaining Agreement and other City employees who receive the twelve (12) days. The Union also argues comparability of other area fire departments, several having from seven (7) to ten (10) paid holidays.

The City contend that the Fire Fighters already have ample time off and such additional time off is not warranted. Overall the Fire Fighters receive more paid time off than not only all other City employees but all other comparable cities as well. The reason for this is a provision of paid time off referred to as Kelly Days. Fire Fighters receive seventeen (17) Kelly Days, one every three weeks. The City, at this time, offered a new proposal in regard to this additional holiday demand of the union and another paid time off proposal, personal days, also requested by the Union. The City’s offer was to change the workweek from forty-eight (48) hours to fifty-six (56) hours, give the fire fighters seven (7) holidays and thee (3) hours of guaranteed overtime every week and

there would be no Kelly Days. The Union immediately rejected this offer.

It is true that looking at the number of paid holidays that fire fighters are off compared to other City employees, the fire fighters come up short. This is also true with respect to the other comparable Cities which were provided by both parties. However, the City is correct when taking in account the additional paid Kelly Days. The Twinsburg Fire Fighters are above all the rest in terms of paid time off. The Kelly Days are a tremendous benefit in the area of paid time off. To increase these benefits by recommending two more paid tours of duty off is not warranted at this time.

Finding of Fact: The Union did not prove that Twinsburg is substandard in the providing of paid time off for Fire Fighters.

Suggested Language: Current Language.

Issue: Holidays Article 42.01

Union Position: The Union proposes, in regards to a City proposal, that the second sentence of 42.01 be revised to read: "A minimum of three (3) tours of duty, eight (8) calendar days, notice shall be given to take Holiday time off."

City Position: The City seeks to clarify the language of the second sentence by revising the language to read: "All holidays shall be taken in accordance with the Departmental standards in existence at the time the holiday is requested."

Discussion: The actual interpretation of the words Departmental standards in the second sentence of 42.01 has changed on three separate occasions without objections from the Union. On November 25, 1998, the City once again changed the standard. This time the Union objected by filing a grievance that still is being processed

At issue is a notice requirement in terms of the amount of time given to request a holiday to be taken off. In 1993, the requirement a three (3) day notice. In 1995, the requirement change to a three (3) work shift notice. On November 3, 1998, the requirement became three (3) work shift notice eight (8) calendar days. The change that occurred o November 25, 1998, the requirement is now a thirty (30) day notice. The thirty day notice requirement triggered the filing of the grievance. The Union argues that the language proposed by the Union reflects what the standards are and should remain. To permit the City language would allow carte blanche unilateral changes by the City.

The City, on the other hand, claims it needs the flexibility of their language. That the Fire Department's growth over the past ten years from an almost volunteer department to a department of predominately full-time career Fire Fighters has caused the City to require such flexibility.

At issue by both parties is the interpretation of the language. It is the Fact-Finders opinion that both parties seek to revise the language as a defense to their respective positions on the grievance.

Finding of Fact: The Fact-Finder believes this issue will not be settled by negotiations, mediation, fact-finding nor conciliation but only by the outcome of the grievance procedure.

Suggested Language: Current Language.

Issue: Holidays Article 42.02

Union Position: The Union demands that all members scheduled to work a City Holiday will be paid at a rate equal to 150% of their regular hourly rate for that tour of duty.

City Position: The City rejects the Union's demand.

Discussion: The Union argues that the City pays holiday pay rates for employees of several other City Departments including paying the Police time and one-half for five (5) holidays under their collective bargaining agreement. The Union further argues that the City has chosen to pay the part-time fire fighters the holiday pay as an extra incentive to work holidays. The Union also contends that all Cities used as comparisons pay time and one-half to their fire fighters for working holidays. The Union continues to argue that such payments is a norm in both the private and public sectors. And that the City of Twinsburg can afford such payments.

The City opposes the Union's proposal for several reasons. First, the City has already agreed to a substantial increase in employee compensation during these negotiations and believes no additional compensation is justified. The Union's proposal would add another 2.5% on top of the already 5.8%. (average for a ten year employee) The City further contends that the City Finance Committee has requested that the Mayor address the excessive amount of overtime paid in 1999 to fire fighters. And finally, the status quo is consistent with other fire departments in the area. The reason the part-timers receive the time and one-half, it is an incentive for them to work the holiday so full-time fire fighters may have the day off. The part-timers do not receive the pay for the day being a holiday just the time and one-half for working a holiday.

Standing alone, not one argument of the union proves their position. However, the totality of the Union's argument is very convincing. Time and one-half pay for working on a holiday has become the normal standard in both the private and public sectors. Scheduled work on a holiday deprives an employee of time with their families on these special days. Even the Twinsburg Police's Collective Bargaining Agreement recognizes five of these days to be special enough to pay those employees time and one-half for all hours actually worked on the holiday. The part-time fire fighters receive 150% of their hourly rate as an incentive for leaving their families on such special days and working any of ten (10) holidays. As to the comparable cities, almost all pay time and one-half for working some holidays. They may or may not pay for the day being a holiday but do pay the premium for working the holiday. The City never once stated that they could not afford

this type of payment only that they did not want to afford it.

The Twinsburg Fire Fighters are requesting the premium pay for all twelve (12) City recognized holidays. That is a little unrealistic at this point based on the discussion thus far. Even ten (10) days is not there. However, this Fact-Finder believes that the Fire Fighters should receive the compensation for the same special days (the five holidays) that the Police receive compensation for.

Finding of Fact: Payment of time and one-half for hours worked on a holiday is a normal practice in both the private and public sectors and in the City of Twinsburg.

Suggested Language: Section 42.02, Effective January 1, 2000, All members scheduled to work the following Holidays, New Years Day, Thanksgiving, Day after Thanksgiving, Christmas Eve, Christmas Day, shall be paid at a rate equal to 150% of their regular hourly rate for that tour of duty.

Issue: Personal Days New Article

Union Position: The Union is demanding two paid personal days.

City Position: The City rejects the Union's demand.

Discussion: The discussion on adding two paid personal days mirrors that of the previous discussion concerning the addition of two tours of duty for Holidays in Article 42.01 with respect to the 17 Kelly Days. Therefore there will be no discussion in this section. The Union raises another argument with respect to personal days. The Union believes that they are entitled to the two paid personal days by virtue of the City's Handbook. Since the Collective Bargaining Agreement is silent on personal days the Fire Fighter feel the handbook is controlling and no negotiations is necessary.

If the Fire Fighters believe that the handbook gives them two paid personal days without having to negotiate for that benefit then fact-finding is not the appropriate avenue to pursue that belief. The Fact-Finder would like to point out that the Twinsburg Police have negotiated such a benefit into their Collective Bargaining Agreement.

Finding of Fact: The Union did not prove that the City of Twinsburg is substandard in the provision of paid time off for Fire Fighters.

Suggested Language: None:



Marc A. Winters, Fact-Finder