

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of

The City of Fostoria, Ohio

-and-

International Association of Fire Fighters, Local 325

SERB Case No. 2013-MED-03-0238

**Mollie H. Bowers
Factfinder**

Representing the City:

David M. Smigelski, Esq., Attorney
Eric J. Keckler, Mayor
Steven J. Garner, Auditor
Keith Loreno Fire Chief
Allyson Murray, Safety Service Director

Representing the Union:

Michelle T. Sullivan, Esq., Attorney
Jason Root, President, Local 325
Greg Keiser
Jason Distel

INTRODUCTION

This Fact-Finding was convened and the Fact-Finder appointed under the auspices of the Ohio Revised Code, Section 41117.14. The parties to this dispute are the City of Fostoria, Ohio (the City) and the International Association of Fire Fighters, Local 325 (the Union). The Union's bargaining unit encompasses all full-time Fire Fighters, Fire Lieutenants, and Fire Captains. The Fact-Finder initiated communication with counsel for both parties to schedule the Hearing and the filing of their pre-Hearing briefs. These briefs were filed electronically on October 25, 2013. In compliance with the Ohio Public

Employee Bargaining Statute Rule 4117-9-05, the parties and their representatives met with the Fact-Finder for a Hearing held on October 29, 2013, at the City of Fostoria Fire Department, 233 West South Street, Fostoria, Ohio 44830.

BACKGROUND

The City of Fostoria encompasses an area of 7.85 square miles located in Seneca, Wood, and Hancock counties. The current population is approximately 13,282; a number that has been declining fairly steadily over the last several years. Much of this decline can be attributed to hits that the City has taken because of the economic recession, outsourcing to Mexico, or both. For examples include:

- 2007 - Autolite began to move work from Fostoria to Mexicali, Mexico - 350 jobs were lost at that time;
- 2007 - Fostoria Industries closed and moved its work to Tennessee - 80 jobs were lost;
- 2009 - Ameri-Kart closed its Fostoria plant and moved the work to Bristol, Indiana and Cassopolis, Michigan - 50 jobs were lost;
- 2011 - Honeywell announced that it was selling the Autolite plant. There were only about 109 employees left there at that time; and
- 2011 - InterMetro closed its doors in Fostoria and moved to Mexico - 102 jobs were lost.

There is a positive event on the horizon. On January 1, 2014, the merger of the Tiffin and Fostoria municipal courts will take effect -- a cost saving measure long recommended. It is estimated that the City will lost \$280,00 in costs, fees, and fines, it is also estimated that there will be a decrease of \$443,143 "annually in municipal court-generated expenses".¹

¹ Ohio Legislative Service Commission, "Fiscal Note & Local Impact Statement", citation not provided.

Other than the vagaries of economic uncertainty, there are clearly circumstances in Fostoria that are contributing to its financial troubles that are within the control of the City administration and Council, but are only beginning to be addressed, if at all.² For example, persons who reside in Fostoria, work elsewhere, are required to pay income taxes in that location, are reimbursed by the City for the difference between its income tax rate and that paid in other jurisdictions. This is a very attractive benefit for resident commuters, but it is also definitely a factor that makes it difficult for the City to manage its resources especially in difficult economic times.

A number of other significant concerns were set forth in the "City of Fostoria, Hancock, Seneca, and Wood Counties, Performance Audit", performed in November of 2012, by Auditor of State Dave Yost. His overall conclusion was that:

... the City could save approximately \$200,900 annually by improved management of benefits, changing its administrative span of control and limiting overtime. (Opening page)

More specifically, the Audit recommended reductions of varying days in the number of holidays afforded to City employees in all categories vis-a-vis their counterparts in other jurisdictions. Fostoria also showed a more beneficial situation for its employees, vis-a-vis others in the region and the state where monthly contributions for health insurance premiums, which in Fostoria, includes medical, prescription and drug, dental and vision coverage. Overtime payments afforded by the City to Police and other employees because the Fair Labor Standards Act (FLSA) does not require either pyramided overtime, the payment of double time for hours worked in excess of 16 per day, and/or "any minimum call-out for time not involving actual work". (p. 16)

² Note should be made, and was by the Fact-Finder, that there has been a relatively recent change in City administration, including that Mayor Keckler has replaced the previous Mayor, John Davoli, and Fire Chief Loreno has replaced the previous Fire Chief, name not provided.

Two other financial factors are pertinent to this case. First, in 2011, the Fire Department sought, and received, a Staffing for Adequate Fire and Emergency Response (SAFER) Grant from the Federal Emergency Management Agency (FEMA) in an amount of over \$1.2 million. This was used to rehire 8 Fire Fighters who had been laid off in 2010. At the time of this Hearing, the Grant had expired but not quite all of the remaining monies have yet been paid out. The Department has applied for another SAFER Grant. The disposition of this application remains unknown at the time of this Hearing.

Second, revenue from the Emergency Medical Service (EMS) has provided a substantial portion of the Department's revenue at least since 2010. In 2012, that revenue peaked at \$461,682, but is projected to be about \$263,174. in 2013. That revenue constitutes approximately one-third of the Departments budget. No evidence was provided that any other City department produces that much self-generated income.

Other facts pertinent to this proceeding are the duration and the wage terms negotiated with other unions. The City has already resolved its collective bargaining agreement with the American Federation of State County and Municipal Employees (AFSCME). This union has accepted a 3 year contract with 0% pay increases each year. Next in the negotiations cycle are the Fire Fighters who are the subject of this proceeding. They are followed by bargaining units in the Police Department.

TENTATIVE AGREEMENTS

The parties agreed that, as a result of their negotiations prior to Fact-Finding, the following articles have been agreed to tentatively:

- Article 9: Hours of Duty/Work Week/Overtime

- Article 13: Insurance
- Article 14: Holidays
- Article 19: Longevity
- Article 32: Layoff and Recall
- Article 38: Schooling and Training

These tentative agreements are hereby incorporated, by reference, into this Fact-Finder's Report as recommendations.

FACT-FINDER CRITERIA IN FASHIONING RECOMMENDATIONS

The following criteria are set forth in the Ohio Administrative Code, Rule 4117 9-05 as the basis for recommendations made by a Fact-Finder:

- Past collectively bargained agreements, if any;
- 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 particular 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, and the effect of the adjustments on the normal standards of public service;
- The lawful authority of the public employer ;
- Any stipulations of the parties; and
- Such other factors, not confined to those listed 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 private employment.

ISSUES IN DISPUTE

I. Article 7 WAGES

In the Fact-Finding Hearing, there was no dispute between the parties that the step increases contained in the current collective bargaining agreement shall remain in effect when a new agreement is reached through whatever means. The Fact-Finder therefore incorporates this agreement into her Report as a recommendations.

However, the parties have such differences on what, if any, wage increase should be afforded to members of the bargaining unit that it has caused them to seek assistance from a Fact-Finder and to reject, even at this stage, efforts to resolve their differences over this issue.

City Position:

The City's position is succinct and straight forward, arguing that the financial straights that it finds itself in make it impossible to offer any wage increase to employees in the bargaining unit represented by the Union. It contends that this position is consistent with what AFSCME already has agreed to and with wage rates prevailing in comparable communities of the same size and experiencing similar financial circumstances. The City's list of comparable cities contains: Bellefontaine; Bucyrus; Celina; Circleville; Fremont; Galion; Huron; Kenton; Napoleon; Norwalk; Shelby; Upper Sandusky; and Van Wert.

According to the City, it has not experienced the 'recovery' from the economic recession that began in 2008, like some of its more fortunate counterparts. Significant declines have occurred in revenues realized from both employers and residents, as well in both state and Federal funding. The City maintains that, since 2007, its collections from

these sources has decreased by about 50%.. It is also not sure that the exit of employers from the City yet has been staunch.

Furthermore, looking at all the comparables from the cities it has suggested, the City maintains that for hours worked, inclusion of 'Kelly Days', holidays afforded, insurance benefits provided, and much more, that the Fire Fighters in Fostoria are already well compensated for their work and often much better than those in other jurisdictions. Therefore, the City asks that the Fact-Finder affirm its proposal that the Union receive a 0% increase in base wages for the duration of whatever contract results from this, or any other proceeding.

Union Position:

The Union rejects the City's proposal of a 0% increase, regardless of the duration of the contract, for a variety of reasons that it considers to be significant. In general, the Union maintains that, for years, it has "bore (sic) the brunt of the cuts that have been made in the City Budget" (Brief, p. 4), that it always has stepped up to the plate to assist the City when economic times have been hard, and that has been a tale of two different cities where it comes to the treatment of Fire Fighter and Police pay since 2008.

To support this claim, the Union points to 2004, when there was a total of 26 FTE Fire Fighters in the City, but budget cuts resulted in a reduction to 22 FTE's; a number which included the Fire Chief in 2006. In 2009, although a 3% wage increase was offered, the Union declined this increase in an effort to prevent the layoff of additional Fire Fighters. Even so, 8 Fire Fighters were laid off and 3 additional positions were left unfilled as a result of attrition. When the Department received the SAFER Grant, a total of 8 laid off Fire Fighters were brought back to work. Again, in 2011 and 2012, the

Union accepted pay freezes to assist the City with its budgetary concerns. The Union did this, it stresses, even though a Fact-Finder recommended that Fire Fighters receive a 1.5% increase in each of those years. Simultaneously, the Department's budget was cut more heavily than any other so that there were only 3 Fire Fighters on duty most of the time, when 4 Fire Fighters per shift is the minimum deemed appropriate for both public safety and the safety of Fire personnel.³ Although all of these cost-saving measures were undertaken, the City abolished the Assistant Chief's position, thus shifting even more of the Department's workload to bargaining unit members. While all these negative impacts were being absorbed, the Union stresses that run volume was increasing, *per se*, as well as the demand for EMS. In fact, the Union contends that approximately one third of the Department's budget is covered by revenues from EMS runs; an accomplishment that has no comparable in any other City department.

According to the Union, the foregoing factors are significant in shaping its position that Fire Fighters in the bargaining unit should receive a 4% increase, retroactive to June 1, 2013, and on June 1 of each year when the duration of the contract is determined. Another driving force for this position is that the Fire Fighters have continuously, over the last 5 years, made concessions and been subjected to reductions while the Police have suffered no such hardships; or even offered to. A synopsis of events, beginning in 2008, would look like this:

- 2008 - 0% pay increase for Fire Fighters, 3% increase for Police. Fire Budget - \$2,271,685.00. Police budget \$2,823,726.10.
- 2009 - 0% pay increase for Fire Fighters, 3% increase for Police. 10% reduction in Fire budget to \$2,055,338.36. 8% reduction in Police budget to \$2,823,726.10.

³ It should be noted that when the City administration changed recently with Mayor Keckler's election, the 4 person minimum has started to be observed again.

- 2010 - 0% pay increase for Fire Fighters, 3% increase for Police. 6 Fire personnel laid off, 1 resignation position not filled, 1 Captain retires, position not filled permanently, Assistant Chief's position abolished. Union agrees to accept increased healthcare costs in exchange for 52 hour workweek. Fire budget reduced by 3% to \$2,048,746.03. Police wage increase suspended temporarily in June to allow 2 Officers to be recalled, wage increase reinstated on December 9, 2010. Police budget reduced 8% to \$2,601,184.80
- 2011 - 0% pay increase for Fire Fighters. 0% wage increase for Police. Fire Department receives 1.2 million dollar SAFER Grant - 4 employees recalled plus 2 new hires. 19% reduction in Fire budget to \$1,668,717.28. 12% reduction in Police budget to \$2,155,869.43.
- 2012 - 0% wage increase for Fire Fighters. 1.5% wage increase for Police (result of conciliation). Police agree to same increases in health care premiums that the Fire Fighters did in 2010. 4% reduction in Fire budget to \$1,604,153.22. 5% reduction in Police budget to \$2,276,081.51
- 2013 - Wage increase, if any, for Fire Fighters not know at this time. 1.5% wage increase for Police. 12% increase in Fire budget to \$1,815,985.40. 1% increase in Police budget to \$2,401,549.21⁴ (Union brief, Tab 2)

The Union asks the Fact-Finder also to consider implications stemming from the fact that the Police negotiations are the last in the cycle of public sector contracts. It is especially important to employees in the Fire bargaining unit not to have the City's position forced upon them only to be sacrificed, once again, while the Police receive sustainable increases.

Finally, the Union asserts that the income of employees in the bargaining unit has been eroded continuously since 2008. The absence of **any** pay increases between then and now is a major factor. In addition, the Fire Fighters accepted increases in healthcare

⁴ The Union also asks that note be made that revenue generated by Police activities does not match that generated by the EMS, nor have the Police/Department been active in seeking grants to help defray impacts of budgetary constraints.

premiums 2 years before their counterparts in the Police Department, plus inflation and mid-contract concessions have all taken their toll. Wage increases are necessary to enable Fire Fighters and their families to cope with rising costs of living. These increases are also justified, the Union maintains, by data from comparable jurisdictions which it claims to be the following: Bucyrus; Defiance; Findlay; Fremont; Norwalk; Sandusky; and Tiffin.

Fact-Finder's Recommendation:

Based on the totality of the record created at the Hearing, the Fact-Finder has concluded that the City has failed to prevail in its position that Fire Fighters should, again, be relegated to a 0% increase per year, regardless of the duration of any collective bargaining agreement or how it is achieved. The AFSCME may have agreed to a 0% increase, but no showing was made that employees in that bargaining unit have gone without any increase for as long as the Fire Fighters, made other concessions, raised money through grants and other services supplied, etc. Of course, to use a now popular phrase, "the elephant in the room" is the impending negotiations with the Police. Based upon past collective bargaining results, the Police have done relatively well under the circumstances, whether those results were achieved at the negotiations table or through conciliation. Despite the financial exigencies that the City indicates that it is experiencing, there is no reason to expect, *per se*, that the City Council will deviate from its history of finding funds for wage increases for the Police whether or not they are required to do so as a consequence of conciliation. Furthermore, position in the bargaining cycle should not become the determinant of what, if any, wage increase employees in different bargaining units will receive.

It is clear that the "interest and welfare of the public" has been served by the pay concessions made by the Fire Fighters over the last 5 years. It is equally clear that the Fire Fighters did not slack off despite these concessions, but rather, even with reduced manning, not only served the public, but also forged ahead to find ways to increase revenues through EMS runs, by seeking a SAFER Grant (which it is now in the process of attempting to have renewed), and by performing maintenance on fire apparatus as well as on Departmental facilities.

The City is adamant that it does not have the ability to pay any increase to Fire Fighters, regardless of the duration of any collective bargaining agreement reached. This stance is likely to force the Union to initiate conciliation in an effort to achieve some increase in wages for bargaining unit employees. While the Fact-Finder supports the conciliation process, she is at a loss to understand why the City would want such a result which requires the expenditure of significant resources in terms of both time and money, when it claims that its finances are already strapped? Furthermore, it is obvious from the State Auditor's 2012 Report that there are significant economies that the City could achieve if the City Council and management in various departments were willing to take the necessary steps. There is no reason why Fire Fighters should continue to be penalized if City Council and management in all of the City's departments fail to act on credible recommendations. While a modest increase in employee paid healthcare premiums has occurred, the City has many other options that it has not yet fully explored to contain expenses and to better utilize the revenues that it has. Suffice to say, the City has the ability to pay an increase to Fire Fighters, *albeit* not the 4% per year that it is requesting.

Comparability data is always tricky because there is so much that is not explained in these data, especially when they are not comprehensive. In the instant case, the City concentrated on comparing financial data across 13 cities, while the Union used 7 cities and compared them based on population, per capita/median household income, income tax rate, general fund revenues, and general fund expenditures. Neither of these sets of comparables is dispositive **even if** the Fact-Finder only considered the 3 jurisdictions in common, Bucyrus, Fremont, and Norwalk, between the City's and the Union's lists.

Nevertheless, one thing is clear from all the evidence, testimony, and data presented at Fact-Finding by the parties. That is, the Union's request for a 4% increase for each year of any contract is not supportable. Equally clear is that given what the Fire Fighters have given up over a 5 year period, and the significant efforts made to increase revenues for the Department, the Fact-Finder rejects the City's position that the bargaining unit should continue to receive a 0% increase for whatever the duration of the contract becomes. Her recommendation regarding percentage pay increase for the Fire Fighters will be incorporated into that which follows on the duration of the collective bargaining agreement.

II. Article 33 DURATION OF AGREEMENT

City Position:

The City seeks a two-year agreement, with a 0% increase in both years, claiming that this is the best it can offer given the economy and its financial circumstances.

Union Position:

The Union asks for a three-year agreement, partly because the parties are now 5 months into what would otherwise be a new contract year. It seeks to prevent 'wall-to-

will' bargaining and. thus, to provide some stability to the relationship for a reasonable period of time. It noted that the City agreed to a three-year agreement with the AFSCME.

Fact-Finder's Recommendation:

The Fact-Finder found that the City's offer of a two-year contract, even at a 0% increase for both years, was disingenuous. It has already agreed to a three-year contract with the AFSCME under those circumstances so the Fact-Finder is at a loss to understand why, if 0% was accepted, the Fire Fighters' contract should be only for 2 years?

Especially since the Fire Fighters are already over 5 months into what should be a new contract year, the Fact-Finder agrees with the Union that a three-year contract is preferable for the reasons it has given. Additionally, a three-year contract now will provide predictability, not only in terms of wages, but also on all of the other tentative agreements that these parties have reached prior to submitting this dispute to Fact-Finding.

Based upon all of the facts and circumstances of this case, the Fact-Finder therefore recommends that a three-year contract be adopted with wage increases as follows:

- Retroactive to June 1, 2013, a 3% increase.
- On June 1, 2014, a 1.5% increase.
- On June 1, 2015, a 1.5% increase

This Fact-Finder's Report is respectfully submitted and issued on November 12,
2013.


Mollie H. Bowers, Fact-Finder