



NOTICE

FROM THE STATE EMPLOYMENT RELATIONS BOARD

PUBLICATION DATE: July 17, 2019

CASE NO(S). 2018-MED-10-1143

In the Matter of

International Association of Fire Fighters, Local 2882

AND

City of Strongsville

The attached report of the fact-finding panel has been acted on as follows:

International Association of Fire Fighters, Local 2882 - REJECTED

Pursuant to Chapter 4117.14 of the Ohio Revised Code, this notice and attachment serves as publication of the findings of fact and recommendations of the fact-finding panel. On the publication date, the original notice of rejection of the fact-finding report was sent to a daily newspaper which serves the vicinity where the governmental entity is located. A copy of the notice has been posted in the Clerk's Office of the State Employment Relations Board.

Individuals may contact the above named parties to determine if copies of the report are available or contact the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215.

FACT-FINIDNG REPORT

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

July 9, 2019

In the Matter of:

City of Strongsville

and

International Association of Fire Fighters,
Local 2882

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Case No. 2018-MED-10-1143

APPEARANCES

For the City:

Jon Dileo, Attorney
Charles Goss, Director of Public Safety
Steve Kilo, Human Resources Director
Jack Draves, Fire Chief

For the Union:

Tom Hanculak, Attorney
Matt Kasza, President
Matt Ditleson, Vice President
Tony Hunt, Negotiator
Andy Smeader, Negotiator

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Strongsville and the International Association of Fire Fighters, Local 2882. The city had a 2010 population of 44,750 and covers approximately 25 square miles. The union represents 57 members of the fire department excluding any managerial, confidential, Assistant or Chief Officers, part-time, temporary, and seasonal employees.

On February 8, 2019, the parties began negotiations for a successor agreement to the one expiring December 31, 2018. The city proposed an agreement based on its settlements with the Fraternal Order of Police and Teamster units, which had been negotiated without any outside involvement. The union, however, rejected the city's proposals. A second meeting was held on April 16, 2019, with the assistance of their attorneys. When no resolution was reached, impasse was declared .

The Factfinder was notified of his appointment on March 20, 2019. A mediation session was held on May 10, 2019. When an attempt to reach a mediated settlement was unsuccessful, a fact-finding hearing was conducted on June 7, 2019, and this report was prepared.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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 standard of public service;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted 13 issues to the Factfinder. For each issue, he will describe the current contract provision and summarize the parties' demands and their arguments in support of their positions. Finally, the Factfinder will present his analysis for each issue and his recommendation for its resolution, including suggested contract language.

1) Article 8 - Dues Deduction - The current contract establishes a fair share fee which non-members must pay as a condition of employment.

City Position - The city maintains that the present contract provision must be modified so that it is consistent with the U.S. Supreme Court's decision in Janus.

Union Position - The union does not oppose the city's proposal.

Analysis - The Factfinder recommends the city's proposal.

Recommendation - The Factfinder recommends the current contract language with the following modifications:

Delete Sections 8.03, 8.05, and 8.12.

2) Article 16 - Hours of Work/Overtime, Section 16.04 - Paid Lunch for Staff Employees - The current contract defines the tour of duty for staff employees as eight consecutive hours and does not provide for a one-hour lunch period.

Union Position - The union proposes a one-hour paid lunch for staff employees.

City Position - The city does not oppose the union's demand

Analysis - The Factfinder recommends adding the following contract language to Section 16.04.

Staff employees shall normally work eight (8) consecutive hours which shall include a one (1) hour paid lunch. The union recognizes that employees may be recalled to duty during such lunch periods if conditions require, and at the discretion of the Fire Chief or his designee.

3) Article 17 - Sick Leave, Section 17.04 - Uses of Sick Leave - The current contract limits the use of sick leave for the illness of a member of an employee's immediate family who requires the presence of the employee.

Union Position - The union seeks to eliminate the 60-hour cap on the use of sick leave for the illness or injury of an immediate family member.

Employer Position - The employer wishes to retain the cap.

Analysis - The Factfinder sees no reason to limit a Firefighter's use of sick leave for a serious injury or illness of a member of his or her immediate family when his or her presence is necessary.

Recommendation - The Factfinder recommends the following contract language:

Sick leave shall be granted to an employee upon approval of the employer for the following reasons:

Illness or injury to the employee; illness of an employee's immediate family requiring the presence of the employee. An immediate family member shall include brother, sister, spouse, child, step-child, mother, father, step-parent, in loco parentis, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandparents and/or grandchildren.

4) Article 19 - Injury Wage Continuation, Section 19.01 - Hazardous Duty - Section 19.01 provides 120 days of wage continuation for an employee who is unable to perform his regular job as a result of a hazardous duty injury. It defines hazardous duty "as injuries

resulting from any emergency response, such duty including but not limited to, the suppression or attempted suppression of a fire, the travel toward a place where a fire is in progress or is believed to be in progress or answering any other emergency alarm.” The contract under Section 19.02 also provides for fully paid leave for the performance of non-hazardous duties.

City Position - The city proposes the elimination of Section 19.02 and that 19.01 specify that the injury leave does not apply to “recurring injuries.”

Union Position - The union rejects the city’s proposal.

Analysis - The Factfinder agrees that Section 19.02 should be deleted as such fully-paid benefits should not extend to routine, non-hazardous injuries. However, in light of the elimination of Section 19.02 the current contract’s definition of hazardous duty should be modified. It should extend to hazardous Firefighter-type training.

Recommendation - The Factfinder recommends the following contract language:

Revise Section 19.01 as follows:

An employee who is unable to perform his regular duties as a result of hazardous duties, as defined below, with the scope of his employment as a full-time employee of the City, if such injury prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service related injury but for a period not to exceed one hundred-twenty (120) calendar days from the date such related injury occurred. After the expiration of the one hundred-twenty (120) calendar days, an employee may request an extension of an additional sixty (60) calendar days of injury leave. Such extension shall be discretionary upon the employer and denials of extensions shall not be grievable. During such injury leave, compensation shall be paid in accordance with this Section whether or not the regular employee has accumulated sick leave. Hazardous duty is defined as injury resulting from any emergency response, such duty including but not limited to, the suppression or attempted suppression of a fire, the travel toward a place where a fire is in progress or is believed to be in progress or answering of any other emergency alarm, or while engaged in training that entails firefighting, hazardous-materials, extrications, emergency medical services, technical rescue or any other hazardous-type training. Hazardous duties do not include the return from the scene of a fire or any other emergency alarm. It is not intended that hazardous duty leave shall be granted to employees who incur routine injuries in the performance of their duties in nonemergency situations.

Delete Section 19.02.

5) Article 23 - Holidays, Section 23.02 - Holiday Time for Staff Employees -

The current contract credits staff employees with one day off with pay for each full month on the payroll, to a maximum of 12 days off per calendar year. Employees must use four holidays per year and any remaining holidays at the end of year are paid to them in cash.

Union Position - The union proposes that staff employees be credited with 144 hours of holiday time at the beginning of the year. It states that the city agreed to its proposal at the first negotiating session but changed its position in its pre-hearing statement prior to the fact-finding hearing. The union indicates that police staff members, who work 40 hours per week, have received 144 hours of holidays for the last three years. It adds that the police staff employees are required to use four holidays per year with any remaining holiday time paid to the employees in cash.

City Position - The city opposes the union's demand. It states that staff Firefighters work eight hour shifts. The city indicates that this means that the union is asking for the equivalent of 18 paid holidays for staff Firefighters. The city charges that this aggressive proposal cannot be justified.

Analysis - The city's proposal is consistent with the holiday time for staff employees negotiated by the police in the last round of bargaining. .

Recommendation - The Factfinder recommends the following contract language:

Staff employees shall be credited with 144 hours of holiday time. Employees who wish to take holiday time off must receive advance approval of the Fire Chief or his designee. An employee must use eighty (80) hours per year. Any remaining holiday time above 80 hours shall be paid in cash by the employer in the first pay in January of the following year based on the employees pay rate of December 31st of the previous year.

6) Article 23 - Holidays, Section 23.03 - Incentive Pay for Shift Employees -

The current contract requires the city to pay the overtime rate of pay to shift employees for all hours worked on six holidays -- Easter Sunday, Memorial Day, July 4, Thanksgiving, Christmas Eve, and Christmas.

Union Position - The union demands that shift Firefighters be paid time and one half on all hours worked on the city's 12 recognized holidays. It claims that since other city employees are off work on the 12 city holidays, the shift Firefighters should be paid time and one-half for working on those days. The union notes that the cost of its proposal is minimal because the city is on minimum manning on most holidays so that its proposal will only affect 13 Firefighters or one-third of the department.

City Position -The city rejects the union's demand.

Analysis - The union was not able to offer sufficient evidence to justify its demand.

Recommendation - The Factfinder recommends the current contract language.

7) Article 23 - Holidays, Sections 23.04 & 23.05 - Proration of Holidays -

The current contract provides for the proration of holiday cash-outs upon resignation or retirement for employees hired after January 1, 2013, and the proration of holidays granted to employees hired after January 1, 2016.

Union Position - The union argues that the current contract language should not be changed. It points out that the proration of holidays for recently hired employees was agreed to in the last negotiations. The union notes that its position is consistent with the police contracts. (Union Tab 2, Article XXI, Section 21.1)

City Position - The city proposes deleting Sections 23.04 and 23.05. It states that the six shifts that the shift Firefighters receive in lieu of holidays has morphed into a front-loaded vesting of holidays. The city complains that this means that an employee can take all his holidays in January and February and then retire or even that an employee could retire on January 2 and cash out all of his holidays.

The city indicates that over the last two rounds of negotiations, it was able to eliminate this practice for new hires. It states that it now seeks the same application for all employees. The city indicates that its proposal would not reduce holiday time and would still allow for the front-loading of holiday time for the ease-of-use but if an employee separates from employment, the holiday time would be prorated based on the point in the year the employee separates.

The city emphasizes that the Firefighters are the only group of employees in the city that do not have holiday time prorated in the last year of employment.

Analysis - The Factfinder believes that the city's proposal to prorate holidays upon hire and separation makes sense. However, the Factfinder also believes that an employee should be permitted to carry over a specified number of holiday hours from year to year.

Recommendation - The Factfinder recommends the following:

Delete Sections to 23.04 and 23.05 and add the following:

For shift personnel, the six (6) tours of holiday time shall be advanced to the beginning of the year for use. However, the holidays will only be considered accrued at the rate of one tour per sixty (60) days of service. Usage and cashing out of holiday time will be based on this accrual rate, and employees utilizing more than the accrued amount of holiday time at the time of separation shall have the excess time deducted from their final paycheck(s) and/or other accrued separation pay. Shift personnel shall be permitted to carry over a maximum of forty-eight (48) hours from one calendar year to the next.

8) Article 24 - Wages, Section 24.02- Pay Scale on an Annual Basis - The current contract establishes wages for shift workers of \$31.86 for Firefighter medic first-class, \$36.25 for Lieutenant medics and \$41.24 for Captain medics, and for those in staff positions \$39.30 for Firefighter medic first-class, \$43.49 for Lieutenant medics, and \$49.48 for Captain medics.

City Position - The city offers wage increases of 0%, 5.5%, and 2.5%, in 2019, 2020, and 2021. It stresses that the union has an excellent health care plan and it has already agreed to extend the plan through the term of the agreement.

The city observes that its Firefighters are highly compensated. It points out that its total compensation for a top level Firefighter ranks eighth of the cities in Cuyahoga County and its top level salary ranks seventh.

The city maintains that its previous wage offer of increases of 3%, 2.5% and 2.5% was very generous. It notes that the State Employment Relations Board Annual Wage Settlement Report shows 2018 wage increases of 2.04% for the Cleveland Region, 2.30% for cities, and 2.50% for police units. The city indicates that the increases it has offered will keep compensation in the city near the top of the county.

Union Position - The union initially demanded a 9% wage increase over three years but indicates that it would accept the 8% offered to other bargaining units. The union claims that the 8% is fair but not exceptional as claimed by the city.

The union stresses that it deserves no less than the increases received by other city employees. It states that it has become a busier department and has responded to almost 1000 more calls than when the last Firefighters' contract was negotiated.

Analysis - The Factfinder sees no reason to grant a smaller wage increase to the Firefighters than other city employees.

Recommendation - The Factfinder's recommends the the following contract language;

The wage rates shown in the Annual Pay Scale shall be increased as follows:

Effective January 1, 2019 - a 3.0 % increase.

Effective January 1, 2020 - a 2.5% increase.

Effective January 1, 2021 - a 2.5% increase.

9) Article 24 - Wages, Section 24.05 - Paramedic Pay - The current contract calls for \$1500 (\$.60 per hour) to be added to the annual salary of any employee who holds an Ohio State Paramedic certification.

Union Position - The union is seeking a significant increase in Paramedic pay. It claims that it has not had an increase in Paramedic pay in "quite some time" while the volume of medical calls has continued to increase. The union states that the local feels an increase in Paramedic pay is "long overdue especially given the volume and variety of training that is required." (Union Tab 2)

The union seeks to increase Paramedic pay to \$1.00 per hour. It points out that the \$1500 stipend amounts to \$.60 per hour. The union notes that it initially proposed increasing Paramedic pay to 4% of base pay but reduced its demand to \$1.00 per hour to "get a deal done." It claims that it would still be getting less than police officers who get \$1600 for professional pay plus a \$750 payments as first responders, and a \$200 mobile field force stipend.

The union argues that its Paramedic pay is less than comparable departments. It offers Berea, Parma, Brunswick, and Beachwood as examples. (Ibid.)

City Position - The city opposes any increase in the Paramedic stipend. It states that it is total compensation that is important rather than one element of compensation. It indicates that

the top level salary for Firefighter/Paramedics in Cuyahoga County is \$77,643.03 compared to \$81,720.96 in Strongsville. The city indicates that the total compensation of a 15-year Firefighter/ Paramedic in 2018 was \$130,034 in Strongsville compared to \$128,260 for a 15-year police officer in the city. (City Tab 5)

The city characterizes the union's demand as "unabashed greed." It points out that their total compensation is eighth out of 35 cities in the county. The city notes that its insurance coverage is among the best in Cuyahoga County and beyond. (City Tab 11)

Analysis - The Firefighters are entitled to an increase in Paramedic pay. Police officers receive \$1600 in professional pay and \$750 as first responders. The mobile field force stipend, however, is paid to only a limited number of police officers and resulted from a grievance settlement. The Factfinder believes that the Firefighters are entitled to an additional \$850 in annual paramedic-pay compensation, to match the patrol officers' professional and first responder pay.

Recommendation - The Factfinder recommends the following contract language:

Any employee who holds an Ohio State Paramedic certification and who is operating under the medical control of Southwest General Health Center will have \$2350 added to his or her annual salary, which is included in the Annual Wage Scale set forth in Section 24.02.

10) Article 39 - Personal Leave, Sections 39.01 & 39.02 - Section 39.01

provides that staff employees shall earn personal leave at the rate of three hours for each calendar month of service completed, provided the employee has been engaged in active employment at all times except for absence on sick leave due to a death in the employee's immediate family or an absence due to the birth of a child. Section 39.02 states that all regular full-time shift

employees will be granted 36 hours of personal leave each year which must be used. There is no carryover of personal leave by shift employees.

City Position - The city wishes to combine Sections 39.01 and 39.02 so that staff and shift employees will be treated the same with respect to attendance and personal leave. It proposes that staff and shift employees receive three hours of personal leave for working every day they are scheduled to work in a calendar month except for leave for a death in the immediate family or the birth of a child. The city also seeks to require both staff and shift employees to use two-thirds of their personal leave each year. It agrees to allow both groups of employees to cash out up to 12 hours of personal leave each year but would bar the carryover of personal leave.

Union Position - The union wishes to increase personal leave from 36 to 48 hours. It points out that firefighting is stressful and takes its toll on personnel. The union feels that 12 additional hours of personal time would be beneficial. It adds that the increase in personal time is also a way to make up for the disparity in holiday hours with the police and the time and a half the police received in the last negotiations.

The union opposes the city's demand to eliminate 39.02 and require shift employees to earn their hours of personal time by not missing time. It claims that in 2004, it took a lower wage package in exchange for getting personal time. The union adds that Firefighters on shifts deal with sick people all the time so the likelihood of getting sick is increased and they should get 48 hours of personal leave without any restrictions.

The union contends that if the city wants to have parity with other departments, shift employees should earn more than staff and police earn because three hours per month equates to 30% of leave for staff employees but only 12.5% of a shift for shift employees. Furthermore, police and fire staff have much more flexibility in using their holiday and vacation time.

Analysis - The Factfinder believes that a reasonable compromise calls for granting the union's demand to increase the maximum possible personal leave for shift Firefighters to 48 hours per year but at the same time, subjects them to the same requirements as the staff Firefighters.

Recommendation - The Factfinder recommends that section 39.02 be deleted and 39.01 be modified as follows:

Between January 1 and December 31 each year, staff employees shall earn personal leave with pay at the rate of three hours for each calendar month of service completed and shift personnel shall earn it at four (4) hours for each calendar month of services completed, provided the employee has been engaged in active employment at all times during each regular workday and work week schedule for such employee, except for absence on sick leave due to death in the employee's immediate family or absence due to the birth of the child. Employees must use at least two-thirds (2/3) of their personal leave each year. The employer will convert to cash payment up to twelve (12) hours of accrued, unused personal leave each year. There shall be no carryover of personal leave by employees. Personal leave must be approved by the Fire Chief or his designee.

11) Article 40 - Compensatory Time, Section 40.01- Restriction on Use of

Overtime - The current contract allows employees to accrue time at one and one-half the overtime hours worked in lieu of cash up to a maximum of 120 hours, subject to a restriction that employees may schedule and use only 96 hours of comp time per year when it results in overtime.

Union Position - The union proposes that the limit on comp time that creates overtime be increased from ninety-six (96) hours to one hundred-twenty (120) hours. It claims that if Firefighters are allowed to bank 120 hours of comp time, they should be able to use those hours even if it creates overtime. The union adds that since police are allowed to use all 120 hours of comp time, it is looking for parity.

City Position - The city opposes the union's demand.

Analysis - The union did not present sufficient evidence to support its demand.

Recommendation - The Factfinder recommends the current contract language.

12) Memorandum of Understanding - Promotion - The current contract has an attached Memorandum of Understanding dealing with promotion. It is based on an arbitration decision by Arbitrator Dennis Byrne.

City Position - The city argues that the MOU should be deleted. It states that the MOU is based on an award issued a number of years ago by Arbitrator Byrne. The city complains that the union has used the MOU to challenge, albeit unsuccessfully, two promotions in arbitration.

The city reports that the collective bargaining agreement has a promotional examinations article which requires promotional exams to be governed by Civil Service Rules and Regulations. It claims that it is time for the promotion process to be governed by Civil Service Rules and Regulations

Union Position - The union contends that the MOU should be retained. It points out that the language has been relied upon by the parties. The union notes that its concern is that if the MOU is deleted, the city might change the promotional process without seeking its input.

Analysis - The Factfinder believes that the MOU should be retained. While there were two arbitrations challenging promotions, disagreements over promotions are inevitable. Perhaps more importantly, the parties have demonstrated their ability to work together to revise the MOU when necessary.

Recommendation - The Factfinder recommends the current contract language.

13) New Article - Education Bonus - The current contract does not include an education bonus.

Union Position - The union seeks an annual education bonus for members who receive a college degree in a course of study related to fire or emergency medical service. It proposes a bonus of \$500 for an associate's degree and \$1000 for a bachelor's degree

The union maintains that the education bonus will make it more likely that Firefighters will get degrees. It states that Firefighters will increase their knowledge which will benefit the members of the community. The union adds that its proposed education bonus "is comparable to other fire departments within Northeast Ohio that compensate employees for educating themselves in related fields." (Union Pre-Hearing Statement, page 4)

City Position - The city opposes the union's demand.

Analysis - The Factfinder does not recommend the union's demand. First, the current contract provides assistance to Firefighters interested in furthering their education. Article 24, section 24.06, provides employees with 47 hours of continuing education payable at time and one-half to be used at a Firefighter's discretion. Article 27.01, Section 27.01, calls for the reimbursement of tuition and fees for one-half of courses related to a Firefighter's position, provided he or she earns a grade of B or better. Article 27, Section 27.04, requires the city to reimburse Firefighters for 100% of the cost of required texts for successfully completed courses, with the stipulation that the texts will be placed in the department's library.

Second, the union's demand appears to be a new demand in the city. The other unions are likely to make similar demands.

Finally, the union did not offer the necessary evidence to recommend a provision new to the city.

Recommendation - The Factfinder recommends the rejection of the union's demand.

14) Tentative Agreements - During negotiations the parties reached tentative agreements on a number of issues.

Recommendation - The Factfinder recommends the adoption of the tentative agreements reached by the parties.

A handwritten signature in black ink, reading "Nels E. Nelson", written over a horizontal line.

Nels E. Nelson
Arbitrator

July 9, 2019
Russell Township
Geauga County, Ohio