

STATE EMPLOYMENT
RELATIONS BOARD

2002 DEC 13 A 10: 37

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In the Matter of Conciliation * SERB Case Number:
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Between * 02-MED-04-0407
*
IAFF Local 283 * Before: Harry Graham
*
and *
*
The City of Salem, OH. *
*

APPEARANCES: For IAFF Local 283:

Dennis Haines
Green, Haines, Sgambati
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Youngstown, OH. 44501-0849

For the City of Salem:

William C. Pepple
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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Salem, OH. on December 4, 2002.

BACKGROUND: This dispute comes to Conciliation (interest arbitration) after the report of a Factfinder, Christopher Miles, was rejected. Following its rejection many of the

issues addressed by Factfinder Miles were agreed upon by the parties. At Conciliation there remained three unresolved issues. These are: wages, staffing level and bereavement leave.

ISSUE ONE, WAGES

POSITION OF THE UNION: The Union proposes there be made a three percent (3.0%), a three and one-half percent (3.5%) and a four percent (4.0%) wage increase over the life of the Agreement. The proposal of the Union also contemplates that the initial wage increase be retroactive to July 1, 2002. As is set forth below, the proposal of the Union is now only .5 greater than that of the City over the life of the Agreement. Its proposal represents the recommendation of the Factfinder and should be awarded for that reason alone in the Union's opinion.

The Union acknowledges that the carryover balance in the General Fund of the City has been dropping. It remains healthy. The Employer can well-afford the proposal of the Union it asserts.

Over the months prior to Conciliation the City had proposed a wage increase of zero, coupled with a lump-sum payment, one percent (1.0%) and two percent (2.0%) over the life of the Agreement, In the interim, it reached agreement with the Police and other City employees to provide wage

increases of three percent (3.0%), three and one-half percent (3.5%) and three and one-half percent (3.5%). The Union feels duped. Not to the morning of the Conciliation hearing did the City change its offer. That is inappropriate and should serve to justify an award on its behalf according to the Union.

POSITION OF THE EMPLOYER: As noted above, the City is proposing three wage increases over the life of the Agreement. These would be 3.0%, 3.5% and 3.5%. All other City employees have received such increases. There is a pattern in City service which should not be disturbed it contends. The carryover balance in the City accounts has declined over the past three years. No increase beyond what it has on the table should be awarded the City contends.

DISCUSSION AND AWARD: Factfinder Miles recommended wage increases of 3.0%, 3.5% and 4.0% over the life of the Agreement. (Miles, p. 5). The report of a Factfinder should not lightly be altered by a Conciliator absent compelling circumstances. In this situation the City has settled with all other groups of employees at 3.0%, 3.5% and 3.5%. An internal pattern of wage increases has been established. Were the Fire Fighters to receive a greater increase than other City employees it would be destructive of morale in City service. It would also make it very, very difficult for the City to bargain with other groups of employees in the future.

They will seek a "catch-up" raise in addition to a general wage increase. Such a situation is undesirable for the City and its employees alike. The existence of the internal wage pattern of 3.0%, 3.5% and 3.5% is compelling and controls the outcome of this issue. The proposal of the City is awarded. Payment of the initial 3.0% wage increase should be retroactive to July 1, 2002.

ISSUE 2, STAFFING LEVEL

POSITION OF THE UNION: Article XXI of the Agreement is concerned with "Safety Equipment." Section E provides:

Whenever the manpower drops to a level below four (4) men per shift, the officer in charge, with the prior approval of the Fire Chief, shall contact off-duty employees of the Fire Department according to established procedures in this contract under Article X, Fill-In Time, and Appendix A, to re-establish the shift strength to four (4) men, including the Chief, if on station.

The Union proposes that Section E remain in the Agreement unchanged.

The Union views Section E to constitute a safety issue. In its opinion, shared by expertise in the field, it is unsafe for Fire Fighters to respond with less than four people. The National Fire Protection Association, (NFPA) is an organization that sets standards for professional and volunteer Fire Departments in the United States. NFPA standards 5.2.2.1 and 5.2.2.2.1 provide that both engine companies and ladder companies are to be staffed "with a

minimum of four on-duty personnel." The NFPA standard represents good practice. It is now being met by the City. As set forth below, the City proposes to be able to reduce staffing. If permitted, that will fly in the face of the recognized standard in the field.

In 1981 when it was smaller both in area and population Salem had a 19 person Fire Department. A layoff occurred, generating the present 16 person department. (Including the Chief). Since the reduction in manpower the number of runs has increased substantially, to about 800 in 2002. (This includes medical runs). In 1981 the number of runs was about 300 per year.

For almost 40 years the Ohio Inspection Bureau has been concerned with staffing levels in Salem. As far back as 1963 it recommended six people per shift be on duty. This complement should then have been increased to nine people according to the Inspection Bureau. There are four people per shift and the City proposes to be able to reduce that number. In the face of the repeated recommendations of the Ohio Inspection Bureau for increases, rather than decreases in per-shift personnel, the Union insists its proposal of no-change in the current Agreement is more reasonable than that of the City.

Nearby communities have Fire Departments that are

considerably better staffed than Salem. For instance, East Liverpool has about 1,000 more people than Salem but 27 people in the Fire Department. Salem's Department is staffed with 16 people. Steubenville has a population of about 20,000 and a Fire Department of 40 people. (All figures include the Chief). Salem's population is about 13,000. In comparison to East Liverpool and Steubenville Salem is presently understaffed.

History bears on this issue as well according to the Union. Six years ago the Union was very concerned about staffing in the Department. A deal was reached. The Union accepted a substantial reduction in the Sick Leave Cash-Out formula then in effect. In return, it secured Article XXI, Section E. Now, the City wants to renege on its bargain. If that is permitted to occur the Union opinion is that the City will have its cake and be able to eat it too.

The City should not be permitted to reduce staffing further the Union insists. It is urging that no change occur in the present Agreement.

POSITION OF THE EMPLOYER: The City has proposed that Article XXI have a new paragraph, F, added to it. The proposed paragraph F would read:

In the event of a staff reduction the provisions of paragraph E shall be null and void until staffing levels are restored.

The proposal of the City was recommended by the Factfinder. It should be embraced by the Conciliator as well according to the City.

The City points out that the standards of the NFPA are those of a voluntary, non-governmental organization. They are recommendations, not requirements. In fact, much of the population of Columbiana County is protected by volunteer Fire Departments. Given the professional, career status of Fire Fighters in Salem the level of protection afforded City residents is greater than that afforded residents served by volunteer departments. This will continue to be the case if the proposed paragraph F is awarded.

In 1987 the City stopped protecting townships. The covered population dropped substantially. While today the number of people served by the Department has increased over 1987, it is up only about 1,000 people. There has not been a big increase in either population or covered area. That argument of the Union should be rejected in the City's view.

Salem is the same as all other communities in the nation. It is governed by elected officials. Those officials are responsible for the public purse and providing services to residents. In the final analysis it is they who should determine staffing levels in the Department. Consequently, its proposal on this issue should be awarded the City

asserts.

DISCUSSION: It is not usual that a Conciliator would modify the award of a Factfinder. The bias in the system is to uphold the Factfinder. This is to prevent continual forum-shopping and to bring finality to negotiations. Only if the Conciliator can say with certainty that the Factfinder erred or was misguided should the award of a Factfinder be modified.

In this instance the evidence on the record in the form of the NFPA recommendations is persuasive. To reiterate, those recommendations call for a minimum crew of four (4). Those recommendations must be given great weight by a neutral. It would be irresponsible to disregard them.

The history of negotiations also bears on this issue. It was not disputed by the City that a deal had been struck with respect to staffing levels. The Union accepted very substantial reduction in the sick leave cash-out in exchange for Article XXI, E. Were the proposal of the City to be awarded the Union would have nothing to show for its bargain.

History is also important in the findings of the Ohio Inspection Bureau. Almost 40 years ago the Bureau recommended manpower in the Salem Fire Department be increased. That was not a one-time recommendation. The Bureau has repeatedly called for staffing increases. In the judgement of fire

fighting professionals, the NFPA and the Ohio Inspection Bureau, the Department is at best minimally staffed. A neutral should not disregard the findings of experts in the field. This is particularly the case when the safety of Fire Fighters, citizens and property is in question.

The Fire Fighter/population ratio in Salem is lower than is the case in East Liverpool or Steubenville. The City proposes to be able to reduce it further in certain circumstances. The standard of comparability favors the proposal of the Union as does the history of negotiations and expert opinion. The proposal of the Union is awarded.

ISSUE 3, BEREAVEMENT LEAVE

POSITION OF THE UNION: The Union is seeking a new benefit: bereavement leave. This is not uncommon in the industry. For instance, such Ohio communities as Ashtabula, Conneaut, Girard, Howland, Liberty, and Niles all provide such a benefit. It was recommended by the Factfinder and should be awarded by this Conciliator as well the Union contends.

POSITION OF THE EMPLOYER: The City is opposed to the institution of bereavement leave. As is common in public employment in Ohio employees can use sick leave for bereavement purposes. While the Factfinder recommended institution of this new leave it is unjustified according to the City. Not only may employees use sick leave for instance

of bereavement, it would represent a new benefit. Adding a new benefit at a time of fiscal stringency is unwarranted according to the City.

DISCUSSION: The funeral leave clause recommended by the Factfinder (Miles, p. 14) is somewhat unusual. It provides a two-tier level of leave depending upon the relationship of the deceased to the employee. Standing alone, that is unusual but seen from time to time. The more unusual feature of the Union proposal and Factfinder's recommendation is its comprehensive nature for its initial appearance. If awarded, bargaining unit members will go from no bereavement leave to a very comprehensive system in one fell swoop. That should not be expected. Incremental change is the norm in collective bargaining. Further, as the City has noted, employees have bereavement leave in the form of sick leave in the existing Agreement. No hardship other than reduction of sick leave balances was shown by the Union. The use of sick leave for bereavement purposes in the current contract is not unusual. The proposal of the City is awarded.

SUMMARY OF AWARD


ISSUE ONE WAGES: The position of the City is awarded. Payment of the initial increase is to be retroactive to July 1, 2002.

ISSUE TWO, STAFFING LEVEL: The position of the Union is awarded.

ISSUE THREE, BEREAVEMENT LEAVE: The position of the City is

awarded.

Signed and dated this 11th day of December, 2002 at
Solon, OH.



Harry Graham
Conciliator