

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

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RELATIONS BOARD

2005 JUL -6 A 11: 37

In the matter of conciliation between:)
THE CITY OF ST. BERNARD, OHIO)
and)
ST. BERNARD FIREFIGHTERS,)
IAFF LOCAL 450)
)
)

No, 04-MED-10-1197

CONCILIATION AWARD

Date of Hearing:
May 16, 2005

Date of Award:
July 1, 2005

APPEARANCES:

Mitchell B. Goldberg, Appointed Conciliator

For the City:

Paul R. Berninger, Esq., Attorney
Joe Kempe, Service Director
Walter St. Clair, Auditor

For the Union:

Joe Barnes, Committee Member
Bob Schrenk, Committee Member
Kerry Meyer, Committee Member
Butch Baur, President

I. Introduction and Background.

SERB appointed the undersigned on February 1, 2005 as the conciliator of this public employment labor dispute in accordance with Section 4117.14 (D)(1) of the Ohio Revised Code. A hearing was held on May 16, 2005 at the Employer's offices in St. Bernard, Ohio pursuant to an extension agreement executed between the parties. The parties further agreed that the Conciliation Award should be issued on July 1, 2005.

The parties submitted position statements in advance of the hearing in accordance with Ohio Administrative Code Rule 4117-9-06 (E). The Fact Finder's Report issued on January 3, 2005, and amended on January 5, 2005, was submitted into the record of this proceeding in accordance with Section 4117.14 (G)(6) of the Revised Code.

The parties and the undersigned engaged in mediation efforts during the hearing to resolve the disputed issues. The mediation sessions resulted in the parties adjusting their final settlement offers for purposes of this conciliation proceeding. The parties presented evidence in the form of testimony and documentary exhibits. The following award selects one or the other's final settlement offer on an issue-by-issue basis taking into consideration the factors outlined in Section 4117.14 (G)(7) of the Revised Code.

II. Facts.

There is little dispute about the economic problems now facing the City; the only matters in dispute relate to the methods for obtaining the solutions to the problems. The Union has, like the other organized and unorganized employees, been willing to make

economic concessions to stabilize the City's budget. Its proposals attempt to prevent another layoff within the unit. It is willing to continue with a wage freeze for the first two years of the contract in exchange for a City commitment to accept a minimum manning proposal and a new schedule that provides for reduced work time.

The Employer is adamant in its rejection of any change in the work schedule that provides for more paid time off. It views this proposal as a disguised pay increase; the same pay for working less hours. It is willing to offer the Union pay increases for each contract year so long as other concessions are obtained. It is not willing to limit its management right to determine the size and needs of the workforce, or to guarantee that there will be no more layoffs.

All City departments were ordered by City Council to reduce the operating costs in each department by at least 10%. This was achieved in most departments through staff reductions, concession bargaining, service costs, and attrition. Layoffs have occurred. By 2006, three service workers will be laid off and three police officer positions will be eliminated. Four firefighters were laid off in March 2005. The Service department will be reduced from 25 to 18 by 2006 because of layoffs and attrition. Sixteen part time employees were terminated. The reasons for the economic problems were summarized in the Fact Finder's Report. It is unnecessary to restate the history in this Award.

II. Unresolved Issues.

A. City Proposals

1. Overtime Rate. The City proposes to change the overtime rate from the current language that provides payment at time and one-half the hourly rate computed on the basis of forty hours per week to the hourly rate computed on the basis of the actual weekly hours worked (53 regular hours per week or 2,756 hours per year). The City's calculation will substantially reduce overtime compensation. The Union wants to keep its present overtime rate. The Fact-Finder agreed with the Union. In light of other economic concessions made by the Union and the pay increases ordered herein, I find that the existing overtime rate should remain.

Decision. The Union's position – current language.

2. Holiday Pay. The City wants to reduce this premium rate of pay from time and one-half the member's hourly rate at the forty-hour workweek rate to time and one-half the regular 53-hour workweek rate. The Fact Finder retained the present rate. I find that the current rate should remain unchanged for the same reasons as retaining the above overtime rate.

Decision. The Union's position – current language.

3. Vacation. The City proposes to reduce the vacation hours for firefighters from 120 hours to 96 hours, limit additional vacation to a maximum of five hours for a total of 216 hours, and reduce the pay rate from the hourly rate

based upon forty hours to a rate based upon the 53-hour regular rate. The Fact Finder retained the present benefit in terms of vacation time and pay. I agree with the Fact-Finder's decision in light of the other economic decisions affecting the bargaining unit members.

Decision. The Union's position – current language.

4. Sick Leave. The City proposes reducing the members' paid sick leave hours from 192 per year to 144. The City wants to reduce the amount of paid time off and reduce the number of accumulated non-used sick leave days that must be purchased back at the time an employee retires. Other city employees receive only 120 hours per year. Under the present language members can accrue 5,760 hours of sick leave over a thirty-year career. A member can cash in up to 2,520 hours at retirement. This means that a member can use 108 hours of sick leave each year and still have enough unused hours left to be paid almost a full year's pay upon retirement. The City is proposing to reduce this unfunded liability by changing the conversion rate paid at retirement from one hour of pay for every one hour of unused sick leave to one hour of pay for every two hours of sick leave.

The Union opposes any change. Their members work more hours per month than other city employees. Their jobs, as firefighters and emergency health providers, expose them to more health risks and illnesses. They do not have provisions for working light duty assignments like other employees. The Union

disagrees with the City's argument that, because of the schedule, the firefighters are less likely to become ill on a scheduled workday. Moreover, contrary to the City's argument that illnesses for other workers are likely to last longer than one day, most illnesses are of a short duration. Therefore, for a short illness, firefighters are required to use 24 hours of sick leave when other employees only use eight hours. Other city employees earn sick leave at the rate of 6% of their annual hours worked. Firefighters would only earn at the rate of 5.2% if the City's proposals were accepted.

The Fact-Finder recommended the City's proposal of reducing sick leave hours to 144 per year. The Union was prepared to accept this reduction because the Fact-Finder reduced the hours of work in accordance with the Union's proposal. I have rejected the Union's proposal on a reduced workweek for the reasons set forth below. Accordingly, I find no justification for reducing the firefighters sick leave benefits as proposed by the City.

Decision. The Union's position – current language.

5. C-9 Trust Fund. The current contract requires the City to maintain a trust fund to provide health care benefits to retired bargaining unit members. The issues over the City's obligations are the subjects of pending litigation. The City wants to eliminate its obligations in a contractual manner. The Fact-Finder declined to issue a recommendation because the matter will be decided in litigation. I agree.

Decision. The Union's position – current language.

6. Wages. The City, after continued negotiations and mediation, altered its proposal made in fact-finding that wages be frozen in 2005, and that re-openers be applied in 2006 and 2007. This position was against the Union's proposal of 4% each year together with a reduced workweek. The Fact-Finder recommended a freeze in 2005, 4% in 2006, and a re-opener in 2007. He also recommended the reduced workweek proposed by the Union that maintains the existing wages for less work hours, another form of a pay increase.

The Union, in consideration for altering its proposal in fact-finding on wages wants to maintain the reduced workweek recommended by the Fact-Finder. The Union is now willing to accept 0% in 2005, 0% in 2006, and 3% in 2007. The City, in its attempt to prevent the reduced workweek recommended by the Fact-Finder, has now proposed a payment of 1.5% effective on July 1, 2005, 3% in 2006, and 2% in 2007. I find that a reduced workweek in the final analysis is not a prudent option for the reasons set forth below. Accordingly, I believe a modest pay increase should be ordered to compensate the members for not receiving the reduced work schedule recommended by the Fact-Finder.

Decision. I award the City's position of across the board wage increases of 1.5% effective on July 1, 2005, 3% in 2006, and 2% in 2007.

B. Union Issues.

I. Hours of Work. The Fact-Finder recommended the Union's proposal to increase the number of Kelly days, or paid days off, from one every 16th tour to one every 7th tour. This reduces the workweek from 52.4 hours to 48 hours. The only fire districts with this reduced schedule are Cincinnati and Norwood. Most districts have schedules comparable to the members' present schedule. Any reduction in the schedule is equivalent to adding to paid vacation time. This would involve considerable costs for the City if the City were required to maintain the same level of services to the community. Additional manpower would have to be furnished at enhanced overtime rates. Presently, four firefighters are on layoff. It is not logical or reasonable to grant existing employees more paid time off when others are on layoff status. Finally, the City contends that the existing work demands of the firefighters are light, and that more paid time off is not needed. The current schedule is not burdensome.

The Union contends that reducing the work schedule will not produce overtime. If this is the case, the City could save money with the pay freeze that is proposed. The members would simply work less time while the City retains the money it would otherwise pay in wages. The Union disagrees with the statement that its workload is light. The City is not taking into consideration the training that is involved with fire and EMS work. The members are on call when they are on duty and not responding to fire or medical runs. Their hourly rate is actually lower than the rate paid to other organized city workers.

I believe that the financial burden to the City in the long term will be less if the present work schedule is maintained, even with the payment of wage increases in all three years of the contract instead of a freeze.

Decision. The City's position – current language.

2. Deferred Time-Off. The Fact-Finder recommended that the Department's deferred time off policy contained in the City's standard operating procedures be incorporated into the CBA in accordance with the Union's proposal. The City amended the policy after the Fact-Finder's report to address new minimum manning levels caused by the layoff of four firefighters. The Union proposes that the new amendment be incorporated into the CBA in accordance with the Fact-Finder's recommendation.

Notwithstanding the stated policy that permits firefighters to work on their Kelly days, the City objects to any mandatory contract language that permits firefighters to work at their option and receive compensatory time off at straight time or enhanced rates. It is not in the City's interest to provide the firefighters with more paid time off.

The Fact-Finder recommended the Union's position to incorporate the existing policy into the CBA. I have no objection to having the policy implemented if it serves the interests of both parties. I do object, however, to contract language that permits an employee to work or not work at his or her

option on a scheduled off day even if the Employer does not want the employee to work, or otherwise has no need for the services. This is equivalent to “featherbedding” – a term used in railroad labor to describe excess labor being forced upon an employer when there is not a need for the services. The City needs to manage its workforce more carefully to accommodate the budgetary problems it now faces. It makes no sense to permit an employee to work on a scheduled day off for the purpose of gaining more paid time off if the City does not want or need the services. I would be willing to order contract language in accordance with the policy so long as the decision whether the employee works is left to the Chief or management, but this is not the position proposed by the Union. Accordingly, I must accept the City’s position on this issue.

Decision. The City’s position – current language.

3. Minimum Manning. The Union proposes contract language that requires a minimum staffing level per shift of six full time firefighters. Forty-hour per week personnel, including the Chief, shall not be considered a part of the minimum manpower requirement. If fire employees are required to work minimum manpower hours, they are to be compensated for such work at the rate of one and one-half times the employee’s forty-hour rate of pay. The Union’s proposal is motivated by safety concerns for its members and the needs of the community for sufficient personnel to handle any necessary emergency fire or medical event.

The City opposes any such requirement as an impingement upon its management rights. It argues that the subject is a permissive, but not a mandatory subject of bargaining. The Fact-Finder found that it was a mandatory subject of bargaining, but recommended the City's position that staffing levels are a management right. I agree that staffing levels, the needs of the community, and safety decisions are within management's domain.

Decision. The City's position – current language.

4. Certification Pay. The Union proposes additional pay for all members who hold a State of Ohio EMT-A or EMT-P certificate. The additional pay increase would equal 2% above the base salary of the rank of Firefighter VII (7). The increased pay is in addition to paramedic pay provided in Article XIX (19).

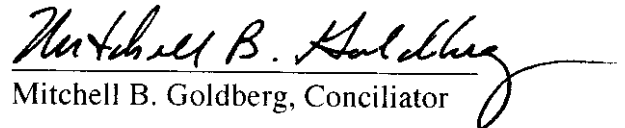
The City objects to this wage increase because the firefighters, like those in other communities, should also be paramedics. Most in the force in St. Bernard, however, are not paramedics. The City pays those who are paramedics an extra \$3,500 per year. The City believes that obtaining an EMT certificate should be considered a basic requirement of the job. The vast majority of the runs and services provided by the department are for medical emergencies and not fires.

The Fact-Finder did not recommend this pay increase because he saw no justification for a new cost item at this time. Considering the financial pressures now faced by the City, I must agree with the Fact-Finder.

Decision. The City's position – current language.

The parties addressed an issue at the hearing relative to the City's desire to change the existing cancer insurance policy provision in the CBA, Article XXII, Section 5. The Fact-Finder did not address this issue, nor did the City in its pre-hearing statement raise it. Accordingly, I have no jurisdiction to consider this issue.

Date of Award: July 1, 2005


Mitchell B. Goldberg, Conciliator