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March 14, 2016

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STATE EMPLOYMENT
RELATIONS BOARD
2016 MAR 17 P 1:56

RE: SERB: Case No(s) 2015-MED-10-1147: Forest Park Professional Firefighters,
IAFF L3024 – City of Forest Park; impasse/conciliation

Gentlemen:

Enclosed, please find two copies of the Opinion and Award regarding the above captioned matter. Also enclosed is a copy of the INVOICE.

For purposes of possible publication, unless contacted within two (2) weeks, I will assume that you have no objection in this regard. It has been a privilege to have served as arbitrator.

Cordially yours,



William C. Heekin

WCH:bwh
enclosure

cc: Mary E. Laurent ✓

STATE EMPLOYMENT
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2016 MAR 17 P 1:56

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IN THE MATTER OF IMPASSE

X

BETWEEN

X

CITY OF FOREST PARK, OHIO

X

FINAL OFFER
SETTLEMENT
AWARD

X

X

AND

X

X

FOREST PARK

X

PROFESSIONAL FIREFIGHTERS

X

IAFF LOCAL 3024

X

X

SERB FILE NO.: 2015-MED-10-1147

HEARING: February 2, 2016; Forest Park, Ohio

CONCILIATOR: William C. Heekin

APPEARANCES

For the City

For the Union

Edward S. Dorsey, Attorney

Scott Brown, President

BACKGROUND

By way of a letter from the State Employment Relations Board (SERB) dated January 5, 2016, the undersigned was appointed to serve as a conciliator regarding a successor labor contract, negotiations impasse. This impasse involves the City of Forest Park, Ohio (“the City”) and a bargaining unit made up of its 20 full – time firefighters/paramedics who are represented in collective bargaining by IAFF Local 3024 (“the Union”). Here, the Parties began negotiations on October 27, 2015, where with a number of issues having not been resolved the matter proceeded to fact-finding. Thus, Fact-finder Matthew M. Franckiewicz conducted a fact-finding hearing on December 8, 2015, and issued a “Fact-Finder’s Report and Recommendation” dated December 14, 2015. With the “Report and Recommendations” having been accepted by the City, but not accepted by the Union, the impasse continued. Accordingly, it then proceeded to conciliation where after the filing of pre-hearing submissions, a conciliation hearing took place on February 2, 2016. Subsequently, the record was closed and the matter is now ready for final resolution

FINAL OFFER SETTLEMENT AWARD

As did Mr. Franckiewicz in issuing his “Fact-finder’s Report and Recommendation”, the undersigned submits this final offer settlement award as to the issues which still remain open and in accordance with the criteria set forth in O.R.C. 4117.14:

* * *

- Past collectively bargained agreements between the parties;
- 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;

- 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,
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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 in private employment.

* * *

1.

Article 11 – Management Rights

Union’s Final Offer Settlement Position: “. . . that the City re-hire 3 of the vacant 6 career firefighters in 2017 . . .”.

City’s Final Offer Settlement Position: That the recommendation of the Fact-finder be adopted.

In accepting the City’s Final Offer Settlement Position, it is directed that the recommendation of the fact-finder be adopted:

* * *

A few firefighters work 40 hour weeks, but the vast majority work a 24 hour shift, followed by 48 hours off. This means that they do not work the same schedule each week, but instead a schedule that repeats every three weeks. They receive additional days off (Kelly days) on a scheduled basis, about which I shall have more to say below.

Currently, there are 20 full time firefighters, two of whom work 20 hour work weeks, and the other 18 of whom work rotating turns. The 40 hour positions are a Training Captain, a Fire Marshall and a Risk Reduction Officer, but the last position is currently vacant. This means that there are normally six full time firefighters per shift: a Captain, a Lieutenant, and four full time firefighters. The normal complement on a shift is ten, including the Captain and Lieutenant, so that there are typically four part time firefighters per shift. The minimum complement is nine. If one or more of the full time firefighters is off on a Kelly day, a

vacation day, or on sick leave or injury leave, additional part time firefighters may be needed to fill the vacancy, so that a majority of the rank and file firefighters on a given shift may be part time employees. Part time employees are not included in the bargaining unit.

In 2011 the City had a complement of 30 full time firefighters, with eight (a Captain, a Lieutenant and six full time rank and file firefighters) per shift. At that time the City also used a total of 32 part time firefighters.

By 2015, the number of full time firefighters had declined through attrition, to the current 20, with six full time firefighters (a Captain, a Lieutenant and four full time rank and file firefighters) per turn. Meanwhile the number of part time firefighters employed by the City has increased to 45.

The Union proposes a new article with the objective to increase the number of full time firefighters to 27, including the filling of the vacant 40 hour position. The Union seeks to have eight full time firefighters per shift, a Captain, A Lieutenant and six full time rank and file officers.

I doubt that anyone would challenge the assertion that, other things being equal, it is preferable to use full time rather than part time firefighters.

Even when a part time firefighter is as skillful and brave as his or her full time counterpart, a part time employee is not the equivalent of a full time employee. Every team is more efficient and effective when its members are accustomed to working with one another, and know each other's strengths, weaknesses, and tendencies.

The City's fire department would be a stronger one with more full time firefighters. I am sure the City itself would agree with this proposition.

The reason why the City has increased the utilization of part time firefighters can be stated in a single word: cost. A part time firefighter costs less than a full time firefighter.

Recently voters approved a 5.75 mill increase in the property tax levy for the five department. The increase is projected to increase revenue by \$1.7 million. But the increased revenue will not be seen until 2016, and for a number of reasons, the actual increase in revenue may fall short of the projection. A higher tax bill may mean a higher rate of non-payment of late payments. The higher rate may induce more property owners to challenge their assessments. It is unfortunately that this report is being written in 2015, before the actual amount of increased revenue from the levy can be known. What is known is that the City has two large pieces of equipment, a ladder truck and an engine, that will need to be replaced soon.

I believe that increased revenue will ultimately permit the City to increase the complement of full time firefighters. But I am most reluctant to lock the City into an obligation to do so, based on what at this date are only predicted, and not actual dollars. Therefore my recommendation is in the nature of a moral, rather than a strict legal obligation. The effect of my recommendation is that after the actual effect of the tax levy has been determined, the City shall attempt to increase the number of full time firefighters by one on each turn. This is short of the two sought by the Union, but of course nothing precludes the City from increasing the number of full time firefighters by two if its financial position permits. It is my belief and hope that the City will conclude that it is able to add full time firefighters during the term of the new agreement, so that by its end there are eight full time firefighters assigned to each shift. At the same time, I recognize that predicted dollars cannot pay actual salaries, and so my recommendation is in the nature of a goal rather than a requirement.

The distinction can be illustrated as a case of “should,” which signifies a higher level of obligation than “may,” but not as high as “must.”

My recommendation relies on the expectation that the City will act in good faith. My sense, based on my admittedly limited interaction with City officials, is that it will do so. My recommendation is subject to the criticism that I am asking the Union members to buy a pig in a poke. But in a sense, that is what the taxpayers did also, relying that the City would not waste the additional revenue.

In my experience some bargaining relationships are contentious, characterized by lack of trust and inability to see the other party’s viewpoint. My sense is that this is not at all the case in Forest Park, and that the Parties here recognize that they have differing interests but deal with each other in good faith.

So in some situations it would be futile to issue a recommendation that created less than a binding obligation, since both parties would regard it as meaningless. But I do not feel that this is the situation here.

My specific recommendation is that the following language be added to Article II (Management Rights), rather than creating a new article as proposed by the Union:

In 2017 the City shall attempt to increase the complement of full time firefighters so that there are normally on each shift a Captain, a Lieutenant, and 5 full time firefighters. Although this is not a binding obligation, the City will use its best efforts to bring about this increase in the full time staffing level.

* * *

Accordingly, in having to choose between the two final offer settlement positions, the undersigned finds that the City's position better reflects a reasonable balance as between greater certainty going forward into 2017 as to the City's financial ability to hire additional full-time firefighters/paramedics and achieving the Union's goal of increasing the number of full-timers. Additionally and in acknowledging the inexactness of the term "best efforts" as the Union greatly points out, it is to be emphasized that this now becomes an enforceable contract provision under the successor collective bargaining agreement.

11.

Article XXIII – Continuing Education

Union's Final Offer Settlement Position:

In relevant part, that the following the contract provision be adopted:

* * *

The annual appropriation for Tuition Reimbursement is to be the amount of one thousand and two hundred dollars (\$1,200) times the number of certified bargaining unit members in the Fire Department.

If the total amount requested for reimbursement exceeds the amount available that year, payment to all members will be reduced so that all members are paid an equal percentage of the tuition approved for reimbursement.

Members shall complete the Tuition Reimbursement paperwork and submit to the Fire Chief prior to beginning of the semester/quarter to qualify for reimbursement.

A one-time payment shall be made by December 15 for each eligible/qualifying member.

* * *

City's Final Offer Settlement Position: That the recommendation of the Fact-finder be adopted.

In accepting the City's final offer settlement position, it is directed that the recommendation of the fact-finder be adopted:

The Union proposes a modification to Article XXIII (Continuing education). The effect of the proposal would be to require the City to pay the education costs for an employee to acquire an Associate Degree, and to compensate the employee for class time.

An Associate Degree is not required as a condition of hire, nor to retain employment as a firefighter. Recently, an Associate Degree was added to the prerequisites for promotion to lieutenant or Captain. (Incumbents were "grandfathered.")

It is generally accepted that additional education provides benefits to both employee and employer. The Union's proposal would be a substantial benefit, probably worth more than \$10,000, to some employees, who aspire to promotion, but nothing at all to other employees who have no desire for promotion to Lieutenant or Captain. Furthermore, there is no guarantee that the City would enjoy any benefit from the additional expenditure, since nothing would prevent a firefighter from using his or her newly acquired degree to obtain employment elsewhere. In such a case, the City would be paying for an employee to get a raise elsewhere. Moreover, to the extent that the City has to spend money on tuition, less money is available for the salary increases that serve as an incentive for employees to seek promotions.

I therefore do not recommend including the union's proposal for full tuition reimbursement.

However, the City is currently providing tuition reimbursement to firefighters of up to \$950 per year, although this benefit is not mentioned in the collective bargaining agreement. I do recommend inclusion of the benefit in the bargaining agreement, with an increase in the annual maximum to \$1,200. This is in keeping with the collective bargaining agreement between the City and the Fraternal Order of Police (Lieutenants and Sergeants), which is available on the SERB website (Case 13-MED-09-0993), and my specific recommendation, which is copied from the agreement in that case, is that the following language be added to Article XXIII:

TUTITION REFUND PROGRAM

As a further aid to improve employee proficiency, the City may grant a tuition refund of up to \$1,200.00 per employee per year for completing courses or programs, provided that the following requirements are met:

A. An employee must have had at least two years of satisfactory service with the City and must have, in advance, the written approval of his department head and the City manager.

B. The course of instruction is related to the employer's current position. The city's share shall be limited to one half of tuition, up to \$1,000.00 per employee per year if the employee makes a grade of "B" or better on the course; if his grade is "C", he is eligible for refund of one third of the tuition cost – not to exceed \$500.00 per employee per year.

C. An employee seeking reimbursement under this provision must have approval of the Chief at least six months prior to starting the course or program.

I notice that there appears to be a typographical error in Paragraph B of that agreement, in that "\$1,000.00" was probably intended to read \$1,200.00. In addition "\$500.00" may have been intended to read \$600.00. It is my intent that the education benefit provided to the firefighters is to be identical to that provided to police officers, and that any corrections or side letters the Parties may have made in this respect to police officers are also to be made for firefighters.

* * *

Accordingly, this determination that the recommendation of the fact-finder be adopted is seen as reasonable, where it takes into account the fact that for the first time tuition reimbursement is incorporated into the firefighters contract and that it is in keeping with the principle of parity with the City's police officers contract. Also and while acknowledging the point made by the Union that the aforementioned Section C of the Article XXIII "Tuition Refund Program" may be problematic since it states that "An employee seeking reimbursement under this provision must have approval of the Chief at least six months prior to starting the course or program", in the end this is not found to be determinative.

3.

Article XIII –Hours of Work

Union’s Final Offer Settlement Position:

That the following Article XIII, “Hours of Work”, language be adopted:

* * *

48-hour Employees

The standard work day for 48 hour employees covered under this Agreement, to include Firefighters, Lieutenants, and Captains assigned to tour system, shall be twenty-four (24) hours. This shall be known as the employees “tour of duty.” The standard work period for employees covered under this Agreement shall consist of a forty-eight (48) hour average work week within a twenty-eight (28) day working period. The employees’ standard number of hours worked annually will be two thousand four hundred ninety-six (2,496). The employee’s annual salary will be averaged so that it is equal between the two pay periods in each 28-day cycle.

The tour of duty shall commence at 0600 hours and continue through to 0600 the following day, followed by forty-eight (48) hours off duty.

Forty-eight (48) hour employees covered under this Agreement shall be entitled to one (1) Hourly Reduction Day known as a “Kelly Day” every (3) weeks. A Kelly Day shall be one twenty-four (24) hour shift that falls on the same day of the week. The Kelly Day is one (1) tour of duty scheduled as off time without pay.

The normal 40 hour week shall be five (5) eight (8) hour work days and two (2) off days or four (4) ten (10) hour days and three (3) off days, except as provided for tour system 48 hour employees.

Employees may be assigned to a rotating workweek, in which the employee’s off days change according to a predetermined schedule.

OVERTIME

Employees shall be entitled to overtime pay for any hours above their regularly scheduled work hours in a fourteen day (14) period with the exception that sick time will not be considered as time worked when determining eligibility for overtime. Overtime will be awarded according to the overtime call back procedure.

Kelly Day Selection

Kelly Days shall be picked by order of seniority and at no more than two (2) employees per day.

Call-In Pay

Any time an employee is requested work, recall, hold-over, emergency detail past their working hours shall be paid a minimum of two (2) hours at their overtime rate.

City's Final Offer Settlement Position: That the recommendation of the Fact-finder be adopted.

In accepting the City's final offer settlement position, it is directed that the recommendation of the Fact-finder be adopted:

* * *

The Union proposes a number of changes to Article XIII (Hours of Work). For the most part these relate to the Union's goal to increase the number of Kelly days from one every 14 tours to one every 7 tours. If my arithmetic is correct, this would change the current average of a bit under nine Kelly days per year to over 17 Kelly days per year. There were counter proposals back and forth in response to the Union's initial proposal, but none had much appeal to the other Party and I will not address the counter proposals in detail in this report.

The Union also proposes to require a minimum of two hours pay in holdover situations, and to include a provision that the work day begins at 0600, which is the current practice. I shall discuss each of these proposals at the end of this section, but clearly the proposal for additional Kelly days is the big ticket item. Both Parties also contemplate 2.0 percent annual wage increases, which needs to be considered in conjunction with the proposal for additional Kelly days, since these are the main cost factors for the new collective bargaining agreement.

Despite the fact that each Party suggests annual wage increases of 2.0 percent, the notion of any consensus on wages is a mirage, since each Party ties its wage proposal to its Kelly day proposal. (The Employer would not increase the number of Kelly days, and its counter proposal would reduce the number of Kelly days in return for more money.) So, despite the obvious temptation to recommend 2.0 percent annual wage increases, I cannot separate the issue's or Kelly days and wages, since when they are considered together, the Parties can be seen as fairly far apart on the main cost items in the new agreement.

It makes sense at this point to ask "what does a Kelly day cost?" One could calculate the cost as the wages to be paid to a part time firefighter who would replace a full time firefighter on his or her additional Kelly day. But as the

discussion above about the complement of full time firefighters indicates, although a part time firefighter costs less, a full time firefighter is more valuable.

So it seems to me more realistic to estimate the cost of a Kelly day, as a percentage, and to consider the following question: if a firefighter receives one additional Kelly day in a year, what percentage would that be of the total number of days he or she works in a year? If the annual salary is the same, the resulting percentage would be, in my view, an estimate of what an additional Kelly day “costs” the City.

Unfortunately, the calculation cannot be performed with precision. First, because there are 365 days in a year, the number of Kelly days a firefighter currently receives per year does not work out to a round number.

If my arithmetic is correct, currently a firefighter receives 8.69 Kelly days in a 365 day year (and a little more in a leap year). So if a firefighter has 122 turns per year (usually the case, since $365 / 3 = 121.67$), he or she would actually work about 113 shifts, after Kelly days are accounted for. But there are other days that a full time firefighter does not work. As I compute it, Holidays (Article XVI) would account for 4 turns per year; Sick Leave, if all is used, would account for a little over 6 turns per year, and Vacation (Article XV) would account for anywhere from 4 to 0.5 turns per year depending on length of service. So the question of how much a Kelly day costs, in percentage terms, depends on which firefighter we are looking at. Further complicating the calculation is the possibility of Injury Leave (Article XVIII) and other types of leave such as bereavement leave and military leave (Article XIX) which will apply to some firefighters but not others. Taking all of the possible leaves into account, I would estimate that the average full time firefighter physically works approximately 90 shifts in a calendar year (not taking into account overtime, as to which I have no data).

On that basis, an additional Kelly day can be seen to cost the City a little more than 1.1 percent. In view of this calculation, it does not seem to me that the City could afford the additional eight or nine Kelly days per year sought by the Union. Indeed, the only way that I can justify any increase at all in the number of Kelly days is to phase them in over the course of the three year agreement, and in return for a three year wage freeze.

I recommend that each full time firefighter who works the 24 hour on, 48 hour off tour system is to receive an additional two Kelly days in each year of the collective bargaining agreement (2 more in 2016, 4 more in 2017, and 6 more in 2018). I think it best to leave to the parties how this is to be accomplished in terms of scheduling and determining the number of shifts per Kelly day. If the Parties are unable to agree on the details, I recommend that the additional Kelly days be treated in the same manner as holidays under Article XVI Section 2.

In keeping with this discussion, I recommend no change to Appendix I of the collective bargaining agreement for firefighter on the tour system.

Since 40 hour employees do not receive Kelly days, a three year wage-salary freeze would be unfair to them. As to them I shall recommend, rather than a wage increase, an annual bonus amounting to 2.2 percent in 2016, 4.4 percent in 2017, and 6.6 percent in 2018. This seems simpler to me a simpler system than calculating new rates for 40 hour employees, but of course the Parties may, by mutual agreement, revise my recommendation and craft a system for 40 hour employees that makes more sense to them.

As noted above, the Union also proposes a minimum of two hour pay in cases of holdover. This would be a cost item to the City, and to the extent that additional spending is at issue. I believe the money is better directed elsewhere, specifically to maximizing the likelihood that the City will be able to increase the complement of full time firefighters. I do not recommend adoption of this proposal.

The Union also proposes reducing to writing the current practice that the day begins at 0600. In view of my recommendation regarding policy changes, any change in starting time would be subject to advance notice and discussion, so that specifying the starting time in the collective bargaining agreement seems to me unnecessary. I do not recommend adoption of this proposal.

Specifically, I recommend that the following paragraph be added to Article XIII, Section 2:

In 2016, employees subject to the tour system shall receive 2 additional Kelly days per calendar year as compared to 2015. In 2017, employees subject to the tour system shall receive 4 additional Kelly days per calendar year as compared to 2015. In 2018, employees subject to the tour system shall receive 6 additional Kelly days per calendar year as compared to 2015. Unless the Parties agree to a different arrangement, these additional Kelly days shall be treated in the same manner as Holidays under Article XVI.

I recommend that Appendix I be amended to add the following paragraph, but that in all other respects Appendix I shall remain unchanged:

Full time 40 hour employees shall receive a bonus of 2.2 percent of their base salary on December 31, 2016. Full time 40 employees shall receive a bonus of 4.4 percent of their base salary on December 31, 2017. Full time 40 employees shall receive a bonus of 6.6 percent of their base salary on December 31, 2016.

* * *

In noting as unsurprising that the additional “Kelly days” issue dominated the conciliation hearing, since as was noted by Mr. Franckiewicz it is the “big ticket item”, the undersigned finds that his recommendation is the better available option in terms of both meeting the Union’s goal of increasing the number of Kelly days and being mindful of the budgetary constraints involved. Accordingly, the undersigned cannot accept the contention of the Union that Mr. Franckiewicz’s recommended Article XIII, Section 2, language that “Unless the Parties agree to a different arrangement, these additional Kelly days shall be treated in the same manner as the Holidays benefit under Article XVI” is unworkable. This follows where this wording is interpreted to mean that “Unless the Parties agree to a different arrangement” (which as occur at anytime), the *additional* “Kelly days” will contractually fall “under Article XVI”. In short, it is understood that Mr. Franckiewicz apparently felt that it would be unwise to insert these additional “Kelly days” into Article XIII by way of fact-finding and/or a directive in conciliation without the guidance of the Parties. In addition and as to the Fact-finder’s recommendation concerning the last sentence of Appendix I, as both sides have acknowledged “Fulltime 40 employees shall receive a bonus of 6.6 percent of their base salary on December 31, 2016” was a typo mistake. Obviously, he intended it to read “December 31, 2018”. Accordingly and to be clear, while accepting the recommendation of Mr. Franckiewicz regarding the addition of Kelly days “in return for a three year wage freeze” and the placement of a bonus on the base salary as to the 40 hour employees as just referred to; the undersigned also accepts his recommendation as to not adopting the Union’s proposal regarding “a minimum of two hours pay in cases of holdover” and that “the day begins at 0600.”

With respect to the contention of the Union that the City did not comply with the Ohio Administrative Code, 4117- “Final offer Settlement Procedure; conciliation”, as to the

submission of its pre-hearing position “statement”; the undersigned cannot agree. This follows where it is found that there was no lack of clarity as to the City’s final offer settlement position concerning any of the remaining issues, where clarity is the principle which underlies the portion of O.A.C. 4117 which the Union cites: OAC 4117-9-06(E)(4). While this procedural issue didn’t arise until almost the end of the conciliation hearing, where normally a procedural issue is addressed at the outset, it is to be emphasized that there was never any indication that the Union was not clear as to any of the City’s final offer settlement positions. Indeed clarity in this case was made easier by the fact that the overall position of the City in conciliation was simply the recommendation of the fact-finder as to all remaining issues. Thus, the undersigned finds that the City complied with O.A.C. 4117-9-06(E)(4), where the well written summary and analysis of the fact-finder was its final offer settlement position on each remaining issue. Finally, it is to be pointed out that Mr. Franckiewicz included contract language as to each of his recommendations on the remaining issues that involved an amendment to the previous contract. Therefore, this was part of the City’s final offer settlement position.



William C. Heekin
March 14, 2016
Cincinnati, Ohio