

IN THE MATTER OF IMPASSE	X	
	X	
BETWEEN	X	
	X	
CITY OF WARRENSVILLE HEIGHTS, OHIO	X	<u>FINAL OFFER</u>
	X	<u>SETTLEMENT</u>
AND	X	<u>AWARD</u>
	X	
WARRENSVILLE HEIGHTS	X	
FIREFIGHTERS	X	
IAFF LOCAL 1591	X	

SERB FILE NO.: 2017-MED-09-1164

HEARING: September 28, 2018; Warrensville Heights, Ohio

CONCILIATOR: William C. Heekin

APPEARANCES

For the City

Jon M. Dileno, Attorney

For the Union

Ryan J. Lemmerbrock, Attorney

ADMINISTRATION

By way of a letter from the State Employment Relations Board (SERB) dated August 5, 2018, the undersigned was notified of his appointment to serve as conciliator regarding a successor labor contract, bargaining impasse. This impasse involves the City of Warrensville Heights, Ohio (“the City”) and a bargaining unit made up of 26 full-time employees of the City’s Fire Department that includes 20 Firefighters and 6 Fire Lieutenants who are represented by IAFF Local 1591 (“the Union”). Here, bargaining began on October 30, 2017, and with a number of issues having not been resolved the matter proceeded to fact-finding in accordance with the dispute resolution process provided for under O.R.C. 4117. Thus, the SERB appointed Fact-finder, John (Jack) F. Buettner, conducted a fact-finding hearing on June 26, 2018, and issued a “Fact-Finder’s Report” dated July 16, 2018. Accordingly, the report and the recommendations contained therein were not accepted by City council, while the Union took no action in response. Subsequently, the matter then proceeded to conciliation, where, after the filing of pre-hearing submissions, a conciliation hearing took place on September 28, 2018. At its conclusion, the record was closed and is now ready for final resolution.

BACKGROUND

Initially and as to the background of this matter, the following passage was included in the “Fact-Finder’s Report”:

* * *

The City of Warrensville Heights is a suburb of Cleveland located 9 miles southeast of Cleveland in Cuyahoga County. The City is approximately four-square miles in area with a population of 13,251 residents and a little over 6000 households. The average household income is \$47, 181.

Warrensville Heights is primarily residential with a below-average median home value. The City has a strong commercial base that includes Sherwin-Williams Research and Development Center, Heinen’s Incorporated, Henkel Corporation, Marcus Thomas Advertising, and South Pointe Hospital. There are also numerous retail businesses and restaurants. The City has recently seen growth in both residential and commercial construction projects.

Income tax revenue is the biggest source of funding, accounting for 80% of the General Fund resources. In the last five (5) years this stream of revenue has increased by 20%. The City has a favorable credit rating of A-1 as assigned by Moody's Investment Service. The General Fund unreserved cash balance is 27% of the total revenues which exceeds the Governmental Financial Officers Association's recommended minimum of 15%. Warrensville Heights ended its year in a "strong financial position" according to its Annual State of the City Report.

Warrensville Heights provides municipal services that includes Police, Fire/Ems, planning, zoning, street maintenance and repair, trash collection, and other general administrative and community services. The City is party to seven (7) labor agreements – four with its Police Department employees (Lieutenants, Sergeants, Patrol Officers, and Dispatchers and Corrections Officers); one with its Service Department employees (Teamsters); one with its Clerks and City Hall employees (Teamsters), and one with the Firefighters. The labor agreements all expired December 31, 2017 and, to date, none have been resolved.

* * *

Accordingly, the City and the Union differ as to what is most significant regarding the current state of the City's finances and economic circumstances. Here, the following is an excerpt from page 3 of the Union's pre-hearing brief:

* * *

While Warrensville Heights is primarily residential with a below-average median home value, the City is home to a "thriving commercial sector" that "maintains a solid tax base" for the City. The City is home to the Sherwin-Williams Research and Development Center; Heinens Incorporated (retail food chain, headquarters and warehouse facility); Henkel Corporation (manufacturer of adhesives, sealants, coatings); Marcus Thomas (advertising firm headquarters); South Pointe Hospital (a Cleveland Clinic affiliate), and numerous retail businesses and high-end restaurants in Harvard Park. The City's top ten employers have over 4,200 employees working in the City. Each day approximately 13, 500 people come to work in Warrensville Heights, making up 78.3% of the City's revenue through income tax withholdings. The City's taxable workforce has grown by over 3,000 since 2012, when the City reported the number at 10,442 employees in Warrensville Heights subject to income tax withholdings. Indeed, on a cash basis, the City's income tax revenue grew 19.32% from 2012 to 2016, with the City's income collection accounting for over 84.58% of the General Fund revenues.

* * *

The City on page 2 of its pre-hearing brief summarizes the current financial and economic situation as follows:

* * *

The City can be categorized as a municipality of average to below average means. It is an inner-ring city whose residents maintain below-average incomes both individually and per household. The City's school system struggles mightily, with its most recent grade from the Ohio Department of Education being a "D." Through the aid of a municipal income-tax increase, some business development and significant cost-cutting measures, the City government itself is in a stable condition – but one that requires vigilance and prudence to avert its financial crisis of only nine years ago.

* * *

In light of these differing assessments, the undersigned finds that the City's financial and economic circumstances today are best summarized in terms of what Mitchell Goldberg stated almost six years ago on page 4 of his "Fact-finding Report" dated December 20, 2012, regarding a previous successor labor contract, bargaining impasse involving the City and the Union (Union Exhibit – 15):

* * *

The present financial condition can be described as "cautiously optimistic." The City is able to pay the wages and benefits proposed by the Union; it does not claim otherwise. However, it believes that its efforts should continue to be directed toward future long term growth and economic development, in addition to providing needed maintenance of existing equipment, and the replacement of old structures and equipment. It would like to continue to closely manage its personnel cost, and maintain sufficient funds to address additional problems that it will face over the next few years. Those include rising and unmanageable health care costs, further State revenue reductions, and other costs and expenses that as yet are uncertain, but will nevertheless occur. It would like to maintain its ending fund balances at a reasonable or acceptable level given these uncertain economic times.

* * *

FINAL OFFER SETTLEMENT AWARD

The undersigned submits this final offer settlement award, as to the remaining issues regarding the Parties' successor labor contract, 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.

Wages – Article 11

City’s Final Offer Settlement Position:

- 1st year – 2.0% wage increase retroactive to January 1, 2018
- 2nd year – 2.0% wage increase effective January 1, 2019
- 3rd year – 2.5% wage increase effective January 1, 2020

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

It is directed that the Union’s Final Offer Settlement Position, the recommendation of the Fact-finder, be adopted: 1st year – 2.0% wage increase retroactive to January 1, 2018; 2nd year – 2.5% wage increase effective January 1, 2019; 3rd year – 3% wage increase effective January 1, 2020.

Accordingly, in having to choose between the final offer settlement positions taken by each party, the undersigned finds that the position of the Union – accepting the recommendation of the Fact-finder – better reflects a reasonable application of the aforementioned O.R.C. 4117.14 considerations as he set out in his “Rationale”:

* * *

Several factors come into play when examining wage comparables for Warrensville Heights. The Cuyahoga County Fire Wage Increase Comparables, Union Exhibit 19, shows those cities closest in proximity to Warrensville Heights. Past history of wages from 2012 to 2017 shows an average increase of 10.04%. Warrensville Heights's average was 9.0% for those six (6) years, a bit below the average due to 00% increases in 2012, 2013, and 2015. For those comparable cities who have settled recent contracts, the average wage increase for 2018-2020 was 6.68%. The Union's proposal of a total of 9.0% increase is higher in comparison to surrounding cities but the Employer's counter of 4.0% total over three years is much lower. According to SERB's annual wage settlement report, the percent of increase for the last ten (10) years has, in general, ranged from .73% to 2.92% with an average of 1.77%. For Fire over the last ten (10) years, the wage increases have varied from 1.2% to 3.3% with an average of 2%. This Fact-Finder recommends a compromise that puts Warrensville Heights in line with surrounding fire departments and maintains a competitive wage in light of increases in the cost of living. Also, consideration was given to recommended changes in health insurance and the elimination of one holiday.

* * *

2.

Insurance – Article 18

City's Final Offer Settlement Position:

Effective January 1, 2019, increase employees' monthly premium contribution from thirteen percent (13%) to fifteen percent (15%) of the City's premium costs for medical, prescription drug, vision and dental coverage, and eliminate monthly caps on premium contributions.

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

* * *

18.01 Effective January 1, 2018, employees shall pay, on a monthly basis, thirteen percent (13%) of the City's costs for insurance coverage (hospitalization, prescription drug, dental, and vision (except that employees' monthly contributions shall not exceed \$100 per month for single coverage or \$240 per month for family coverage. The office copay shall be \$20 for primary care physicians and \$40 for specialists. The prescription drug copay shall be \$10 for generic drugs, \$25 for formulary drugs, and \$40 for non-formulary drugs. All other aspects of the plan shall remain as in 2017.

18.02 Effective January 1, 2019, employees shall pay, on a monthly basis, thirteen percent (13%) of the City's cost for insurance coverage (hospitalization, prescription drug, dental, and vision) with no monthly cap on the premiums. All other aspects of the plan shall remain as in 2018.

* * *

It is directed that the City's Final Offer Settlement Position be adopted. Accordingly, in choosing between the final offer settlement position of each party, it is found that the City in having altered its stance since fact-finding – thereby accepting that there will be no change during the first year of the instant successor labor contract – has the better position. This follows based upon considerations that include the financial circumstances of the City, the “past collectively bargained agreements between the parties”, and the relevant “comparable(s)”, where there is no indication that the Fact-finder fully took into account two factors concerning which the undersigned concurs with the City are significant: The relative high quality of the City's health insurance plan, where an employee's family plan annual out-of-pocket medical expense maximum is \$1,500 (\$750 – single) and the City's wellness incentive program, which if utilized would result in an employee monthly premium cost reduction of approximately \$60.

3.

Holidays – Article 14

City's Final Offer Settlement Position:

- Reduce annual holiday time from eleven (11) tours to ten (10) tours annually for current employees as recommended by the Fact-finder.
- Reduce annual holiday time from eleven (11) tours to eight (8) tours annually for employees hired on or after October 1, 2018.

Union's Final Offer Settlement Position: That the recommendation of the Fact-finder, which

includes the following contract language, be adopted:

14.01 For contract years 2018 and 2019, each member shall be entitled to eleven (11) paid holidays. Effective January 1, 2020, each member shall be entitled to ten (10) paid holidays.

14.03 For contract years 2018 and 2019, the paid holidays are as follows:

New Year's Day	Labor Day	Thanksgiving Day
Good Friday	Christmas Eve	Easter Sunday
Christmas Day	Memorial Day	Martin Luther King, Jr. Day
Fourth of July	President's Day	

Effective January 1, 2020, the paid holidays are as follows:

New Year's Day	Labor Day	Thanksgiving Day
Good Friday	Christmas Eve	Easter Sunday
Christmas Day	Memorial Day	Martin Luther King, Jr. Day
Fourth of July		

* * *

It is directed that the Union's Final Offer settlement position, the recommendation of the Fact-finder, be adopted. Accordingly, the undersigned essentially concurs with the Fact-finder's "Rationale":

* * *

The Union rightly argues that the language concerning holidays has been in place since 1985, dating back to the Union's first CBA. While a long-standing concept, this Fact-Finder must look at current conditions and benefits. The Firefighters receive holiday time-off for eleven (11) holidays at 24 hours for each tour. This amounts to 264 holiday hours a year. If Firefighters work the holiday, they receive an overtime rate which provides far more paid time-off and premium pay than other City employees. Additionally, in 2017, the City expended \$233,000 in overtime for its firefighters. In Cuyahoga County, Warrensville Heights is the third highest in number of holiday hours of the 33 cities, receiving over 90 hours more in holiday time annually than the average firefighter in Cuyahoga County.

In Mitch Goldberg's fact-finding report dated January 2013, he argued that "a day was a day" in support of the 24-hour credit firefighters receive for their holidays. One must then examine the comparables for the number of paid holidays. Currently, Warrensville Heights has eleven (11) paid holidays. They rank third out of 34 Cuyahoga County Fire departments. Even with the loss of one holiday, President's Day, they would still rank 4th out of the 34 fire departments with the county average being 6.8 holidays.

Internal comparables also weigh in the decision. When looking at vacation, IAFF has time equal to 6.5 weeks. OPBA has 6 weeks, and GCC has 5 weeks. Sick Leave for IAFF is 3 weeks, OPBA is 3 weeks, and GCC is three weeks. The numbers are very much in line. Paid holidays are not as equal. IAFF paid holidays equate to 4.8 weeks,

OPBA to 2.2 weeks, and GCC to 2.4 weeks. In days, IAFF has 11, OPBA has 11 and GCC has 12. While “a day is a day”, the potential in time and overtime pay is much greater for the firefighters.

Mr. Goldberg also pointed out that there must have been a bargained-for exchange to obtain this benefit, that exchange we do not know. Additionally, in the Conciliation hearing dated March 26, 2013, the Union stated that the City had made no offer in return for this give-back. Hence, in exchange for giving up one holiday in 2020, this Fact-finder has proposed a higher wage increase in that year.

* * *

4.

Sick Leave – Article 20

City’s Final Offer Settlement Position:

- Reduce level of sick leave accrual for employees hired after October 1, 2018 from 168 hours to 144 hours per year.
- Modify language such that employees on injury leave are not eligible for the perfect attendance bonus.

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

It is directed that the Union’s Final Offer Settlement Position, the recommendation of the Fact-finder, be adopted:

20.01 Current Contract Language

20.04 Paragraph 5: An on-duty injury resulting in less than sixty (60) calendar days of leave shall not be counted against the Sick Leave Bonus Program.

Thus, the undersigned accepts the Fact-finder’s “Rationale” concerning the two “Sick Leave” items at issue:

* * *

In reference to 20.01, this Fact-Finder is recommending maintaining current contract language. Internal comparables show that IAFF, OPBA, and GCC all receive the equivalent of 3 weeks of sick leave. External comparisons from bordering fire departments show an average of 6.5 sick days per year. Warrensville Heights Firefighters have 7. Management has not shown sufficient cause to reduce new hires to

120 hours or the equivalent of 5 sick days. This would put the new hires 1.5 days below the average for all the surrounding departments.

The purpose of a sick leave incentive is to discourage employees from misusing sick leave. Currently, the contract allows for an on-duty injury to not be counted against the Sick Leave Bonus Program. While Management would like this clause deleted, the Union has made movement toward reining in what could be unlimited days of injury leave not being counted. While the injury may have occurred on duty, it seems unfair to possibly grant an employee who was out with an on-duty injury for 120 days \$660 if they return and use less than 1 sick day while an employee who never goes out on leave but uses four days is granted nothing. Further, employees injured in the line of duty receive up to 120 calendar days of full pay and benefits. This Fact-Finder's recommendation is to accept the Union's proposal but to modify the number of days to sixty (60).

* * *

5.

Clothing Maintenance Allowance – Article 22

City's Final Offer Settlement Position:

Delete Article 22, Section 22.02, which provides that any unused portion of the clothing allowance will be carried over into the next year.

Union's Final Offer Settlement Position: Maintain current contract language as recommended by the Fact-finder.

It is directed that the Union's Final Offer Settlement Position be adopted. Thus, the "Rationale" of the Fact-finder is accepted:

* * *

Management expressed the need for this change based on an effort to eliminate the "administrative burden" of tracking the carry-over amounts. The Union seeks to maintain this provision in order to allow Firefighters to "save" some of their allowance for the purchase of more expensive items in the following year. The Union was even open to working with the City to make the record keeping easier. Management did not, however, provide sufficient evidence of this record keeping burden to warrant the elimination of this provision.

* * *

6.

Prevailing Rights – Article 30

City’s Final Offer Settlement Position:

Delete the current contract language contained in Article 30, Section 30.01.

Union’s Final Offer Settlement Position: Maintain current contract language as recommended by the Fact-finder.

It is directed that the Union’s Final Offer Settlement Position be adopted. Accordingly, the “Rationale” of the Fact-finder is accepted:

* * *

The Fact Finder is recommending current contract language because Management has not been able to provide any substantial reasoning for its deletion. This clause has rarely been invoked since its inception in 1985, and no instances have been cited where this clause infringed on management rights or caused an operational problem or dispute.

* * *

7.

Station Maintenance & Safety – Article 28

City’s Final Offer Settlement Position: Maintain current contract language.

Union’s Final Offer Settlement Position: As recommended by the Fact-finder, modify the Labor Management Committee Article (Article 28) by adding new language to the “. . . purpose of the meeting shall be . . .” therein list of items:

* * *

G. To perform inspections of fire department facilities and apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire station conditions are properly functioning.

* * *

It is directed that the Union's Final Offer Settlement Position, the recommendation of the Fact-finder, be adopted:

* * *

The Union has stated that station maintenance and repairs have been an on-going issue, an issue that has been discussed during the previous contract negotiations. Attempts to include language into the contract were withdrawn by the Union when the City took action to make the repairs. Safety and station maintenance are certainly important issues but must be addressed from a broader perspective to consider priority of need, time, and cost. This Fact Finder recommends that the Labor-Management Committee, as outlined in Article 28, become the venue for future discussions. Language is already in the contract to discuss "health and safety matters related to Union members." The addition of another paragraph to section 28.02, "G". To perform inspections of fire department facilities and apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire stations conditions are properly functioning", is recommended. The intent is to allow the Labor-Management Committee to more specifically address the station maintenance and safety issues as they arise, to request inspections, and to jointly come up with resolutions.

* * *

8.

Promotions – Article 28

City's Final Offer Settlement Position: Maintain current contract language.

Union's Final Offer Settlement Position: As recommended by the Fact-finder, to allow for its concerns regarding job promotion to be brought to the Article 28 Labor Management Committee.

It is directed that the City's Final Offer Settlement Position be adopted. This follows where in contrast to the previous "Station Maintenance & Safety" issue, it is not clear that "Promotions", a subject which is addressed by the Civil Service Commission Rules and Regulations", is as well suited to the Article 28, Labor Management Committee process. Basically, with the frequency of "Promotions" as an issue not being clear, the undersigned finds that the better option is to maintain the status quo.

Finally, it is directed that all tentative agreements herein reached by the Parties during bargaining, as well as all unchanged provisions contained in the prior collective bargaining agreement, be adopted.



William C. Heekin
November 2, 2018
Cincinnati, Ohio