

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE-EMPLOYMENT
RELATIONS BOARD

MAY 13 10 20 AM '96

TORONTO PROFESSIONAL FIRE FIGHTERS,
IAFF LOCAL 229

AND

CITY OF TORONTO, OHIO

)
) CASE NO. 95-MED-09-0824

)
) HEARING: 29 MARCH 1996
) TORONTO, OHIO

)
) DECISION OF CONCILIATOR
)

APPEARANCE

FOR IAFF:

FRANK E. MCEWIN

FIRE CAPTAIN & LOCAL PRESIDENT

FOR THE CITY:

WILLIAM HAYES

ATTORNEY

BACKGROUND

This matter comes on for conciliation under the State of Ohio's Public Employe Collective Bargaining Act following IAFF's rejection of Factfinder Norman R. Harlan's 6 February 1996 report, a report setting forth specific recommendations on all unresolved issues presented at fact finding. Since the afore report sets forth in some detail the nature of this community, the parties bargaining history and respective positions of the parties on

unresolved issues no purpose would be served to iterate those data herein. Suffice it to say, however, that those data along with any new evidence and argument advanced at hearing by the parties were considered by me. The most material additional data proffered at hearing was the City's negotiated settlement with its' largest Union, i.e., the FOP. Those data were simply not available to Mr. Harlan when he proffered his 6 February 1996 recommendations.

UNRESOLVED ISSUES

WAGES.. Article 5, Paragraph A

City Final Offer	0-2-2
IAAF Final Offer	3-4-5

Comparative wage/employment cost data, something apparently not presented in detail to Mr. Harlan, cogently shows that local IAAF personnel are paid as well, if not better than, firefighter personnel in similar "cities." Furthermore, identified future capital expenditures, some of which being critical to the overall welfare of this community, with still others being governmentally mandated, leave little in the way of discretionary funds for this already financially strapped community. This is not to suggest that all of the identified capital projects will need to (or should) be done in the next year or so if such are to be at the expense of future employee raises. There are, however, specific projects e.g., Water and Sewage Plants EPA upgrades, that just cannot be deferred. In fact, deferral would, in all likelihood, only cost the City additional monies in the way of fines, penalties, legal fees, etc..

Additionally, the City's settlement with its Police Officers, i.e., 0-2-2, a settlement with a "Me Too" tied to the IAAF wage settlement is quite relevant. First, the Code makes it quite clear that other unit settlements of a specific employer must be taken into consideration by Factfinders and Conciliators in arriving at their decisions. Second, acceptance of that sought by the IAAF and recommended by Mr. Harlan would have a greater impact upon the City's budget than envisioned by the latter.

As to the wisdom of recent council actions in splitting up functions of the previous Safety Service Director position and reinstating member's full monthly stipend, the evidence is mixed. As to the former it appears that even with the adding of additional part-time clerical personnel the net effect of these changes has not resulted in an increase in overall employment costs for the City. As for the reinstatement of the full monthly council stipend it does tend, notwithstanding its de minimis impact, to raise issues of sound judgment and credibility. In any event, the overall record, including the distinct possibility that a renewal levy this coming November will not pass mandates that I accept the City's final offer of 0-2-2 in this instance.

Holiday Pay - Article 6, Paragraph B

City Final Offer - Establish Non Duplication Provision between this Article 6, Paragraph B and Article 17, Paragraph B.

IAAF final Offer - Adopt Factfinder's recommendation that Holiday Pay be at the rate of "2 times the basic hourly rate of pay."

Typically, I am reluctant to respond to a request for a change

of contract language when the party requesting such is not able to cite actual problems arising under that language. The problem is, however, that this proviso, when read in conjunction with Article 17, Paragraph B, arguably calls for the equivalent payment of 3 1/2 times the basic hourly rate of pay for all holiday hours worked. This was not the intent of the parties and even though Mr. Harlan attempted to make an equitable adjustment under existing language he did not preclude the "pyramiding of overtime." He simply reduced it from 3 1/2 times the basic hourly rate to three. In any event, and given existing Wage & Hour regulations and statute of limitations, that proposed by the City, a proposal that leaves the rate at 2 1/2 times for all hours worked on a holiday, is hereby adopted. In doing so, the possibility that an employee might seek 3 1/2 times pay for a future worked holiday will be eliminated under the language proposed by the City.

Filing of Temporary Vacancies - Article 6, Paragraph C

City Final Offer - Eliminate mandating requirement to fill temporary vacancies "on...overtime basis"

IAAF Final Offer - No change

It was the effect of this provision in the form of overtime costs that the City placed such strong emphasis on in arguing for a lower wage adjustment. In other words, in contending that I had to consider total employment costs in comparing City firefighter wage rates with other cities it pointed specifically to this build-in overtime guarantee. Now, it seeks to eliminate that guarantee while insisting upon that which I adopted for wages above. It also discounts the Union's contention that valid safety issues are

present here. In any event, the City claims that its Management is not about to engage in practices that subject City residents, their property or its employees to unsafe conditions. In contrast, the IAAF proffers data it contends demonstrates the dangers associated with fire fighting and examples of Management attempts to schedule only one (1) employee on certain shifts.

Now, I realize that Mr. Harlan significantly modified this proviso but he did so with due consideration of what he was recommending with respect to other issues, including wages. In any event, I simply do not believe that the City has convincingly shown on this record that the requested change would be in the best interest of all concerned, including local residents. Whether existing language provides some relief as suggested by the IAAF, only time will tell. In any event, the final proposal of the IAFF for no change in existing language for this section is hereby adopted.

Hazardous Duty Pay - Article 7

City Final Offer - Increase To Flat \$600 a Year
IAAF Final Offer - Increase To Flat \$800 a Year

This obviously involves another cost item that will impact the City's overall budget, but that proposed by IAAF is not significant costwise vis a vis the City's proposal and the former is the same as that presently paid Police Officers under their agreement with the City of Toronto. While the dangers are not quite the same between these two (2) professions those confronted by firefighters are, nonetheless, in my opinion, sufficient to warrant parity in

this particular benefit. Accordingly, the IAFF's proposal for \$800.00 in hazardous duty pay is hereby adopted.

Holidays - Article 17, Paragraph D

See discussion above for Article 6, Paragraph B

Vacation - Article 18, Paragraph B

City Final Offer - Seeks to establish a longer period for vacation eligibility.

Union Final Offer - No change

While it is recognized that this City is currently facing serious economic problems there is simply nothing to be gained at this time by changing the present vacation schedule. Given this relatively young work force little or no cost benefit would be realized from that which the City proposes. I realize that there is some logic in doing this type of change at this time but such, on balance, just has not been justified. Accordingly, the final proposal of the IAFF for no change in existing language for this section is hereby adopted.

Schooling Credits - Article 19

City Final Offer:

A. All schooling credits must have prior approval of the Fire Chief and Safety Director to be included in the schooling steps.

B. Any Firefighter who enrolls, after having received written approval from the Safety Director, and then successfully completes ten hours of training courses in any one year in excess of the hours required by the State Board of Education Training Program for firefighters shall be entitled to a bonus of ten dollars (\$10.00). No credit shall be counted for any training course successfully completed more than five years prior to the

payment of any monthly bonus.

C. Wages previously earned for schooling credits by any member of the bargaining unit under the previous agreement shall be retained.

E. No such bonus in any one month of any calendar year shall exceed Sixty dollars (60.00).

IAAF Final Offer:

The Union proposes to accept the Cities original proposal of \$10.00 per ten (10) hours with a maximum of 30 hours per year.

Any member receiving benefits under the current contract shall continue to receive such pay without reduction in said pay.

The only real dispute here is the grandfather cap provision requested by the City. This request is arguably ill-advised given the potential chilling effect such would have on an employee's desire to achieve further education, education/training helpful to the City. In any event, given the five (5) year proviso accepted by the IAAF I hold that their final offer is more acceptable in this instance.

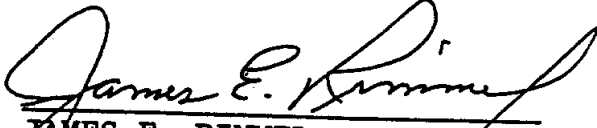
Safety & Health - Article 25

City Final Offer - No change

IAAF Final Offer - Addition of Section C. the Employer agrees to maintain a minimum staffing level equal to the current six (6) member paid department.

The Union's claim that this simply represents the reducing to writing of that which has been historically done just does not suffice to warrant the acceptance of that proposed. It also, as the City argues, flies squarely into the face of that expressly reserved to Management under the Ohio Revised Code. Thus, no

charge is necessary in this particular proviso.


JAMES E. RIMMEL
ARBITRATOR