

JAN 13 9 59 AM '97

Conciliation Decision and Award

In the Matter of Final Offer Conciliation Between:

International Association of Firefighters Local 334

and

The City of Lima

SERB Case No. 96-MED-04-0409

MARCUS HART SANDVER
Conciliator

Hearing Date: December 13, 1996

Decision Issued: January 8, 1997

Representing the IAFF:

Mr. Kevin Rader
President IAFF Local 334
Lima, Ohio

Representing the City:

Mr. Donald Binkley
Account Manager
Clemans, Nelson, and Associates
Lima, Ohio

I. Background

This case arises out of a dispute involving the negotiation of a successor agreement between IAFF Local 334 (the Union) and the City of Lima (the Employer). The parties met on April 25, 1996, May 8, 1996, May 9, 1996, May 22, 1996, May 23, 1996 and June 5, 1996. Several unresolved issues remained after these negotiations. A factfinding hearing was conducted by factfinder Martin Fitts on July 12, 1996. A report was issued on August 13, 1996. The factfinding report was accepted by the City and rejected by the Union. Through mutual agreement of the parties, Marcus Hart Sandver was chosen as the conciliator to the dispute and was duly appointed by the State Employment Relations Board. Through mutual agreement of the parties, December 13, 1996 was chosen as the date for conciliation.

II. The Hearing

The hearing was convened by the conciliator at 9:00 AM in the conference room of the Lima Municipal Building. In attendance at the hearing were the following.

For the IAFF:

- | | | |
|----|------------------|---|
| 1. | Lawrence Petrick | Director of Safety and Health Ohio Assn. of Professional Firefighters |
| 2. | Ed Hower | IAFF Member |
| 3. | Doug Corwin | IAFF Member |
| 4. | Scott Sweeney | IAFF Member |
| 5. | Ronald Hesseling | IAFF Member |
| 6. | Mike Ulrich | Local 334 Vice President |
| 7. | Don Endicott | IAFF Member |
| 8. | Kevin Rader | Local 334 President and Chief Spokesperson |

In attendance for the City of Lima were:

- | | | |
|----|----------------|---------------------------------------|
| 1. | Donald Binkley | Consultant CNA and Chief Spokesperson |
| 2. | Pete Lowe | Consultant CNA |
| 3. | John Brookman | Fire Chief |

- | | | |
|----|---------------|-----------------------------|
| 4. | Peggy Snyder | Director of Human Resources |
| 5. | Daniel Hefner | Tax Supervisor |
| 6. | David Webb | Assistant Fire Chief |

The following exhibits were marked as joint exhibits:

Joint exhibit #1 - Agreement between the City of Lima, Ohio and Local 334 IAFF. Effective July 1, 1993 - June 30, 1996.

The following were marked as employer exhibits:

Employer exhibit #1 - Prehearing statement dated December 5, 1996.

Employer exhibit #2 - Loose leaf notebook. Multiple sections.

Employer exhibit #3 - Comparison of sick leave accrual systems.

Employer exhibit #4 (abcd) - Analysis of Proposals for Section 9.05.

Employer exhibit #5 (ab) - Analysis of Proposals for Section 12.02 Bonus vacations.

Employer exhibit #6 - Analysis of Employers Proposal for Section 12.01.

Employer exhibit #7 - Statement of the Tax Supervisor

The following were marked as union exhibits:

Union exhibit #1 - Prehearing statement. Received December 6, 1996.

Union exhibit #2 - Loose leaf notebook. Multiple sections.

Union exhibit #3 - Fire Run Comparisons.

Union exhibit #4 - Contacts for comparables.

Union exhibit #5 - Withdrawn.

Union exhibit #6 - AFSCME Local 1002 Contract. Table of Contents.

Union exhibit #7 - LFD Budget 1990-1996.

Union exhibit #8 - Health Insurance Monthly Premium Costs.

Union exhibit #9 - Pay period calendar. 1997-1999.

Union exhibit #10 - FOP - City of Lima Factfinding Report dated November 29, 1996.

Union exhibit #11 - Memo to Donald Binkley from John Gillivan dated July 10, 1996.

Union exhibit #12 - City of Lima Firefighters rates of pay and step movement. Effective January 1, 1997 and January 1, 1998.

Following the marking of the exhibits the Conciliator notified the parties that the hearing would be conducted in conformity with the rules for conciliation found in Ohio Revised Code 4117 and associated administrative rules promulgated by the State Employment Relations Board. In addition, the Conciliator informed the parties that the conciliation decision would be developed in conformity with the criteria for conciliation found in ORC 4117.14 (G)(7)(a-f). By mutual agreement of the parties it was determined that the unresolved issues would be discussed in the following order:

1. Hours of work and overtime
2. Sickleave - 4 separate issues
 - (a) Sick leave Accrual
 - (b) Minimum Usage
 - (c) Sick leave sell back at retirement
 - (d) Bonus Vacation Days
3. Vacation Accrual Rate
4. Uniform Allowance
5. Salary Schedule - 2 separate issues
 - (a) Wage increase

(b) Exclusion from Steps F, G, H, I.

III. The Issues

A. Issue one - Hours of work and overtime - Article 8

(1) Union Position

The union position on this issue is that the present work week of 53 hours (using the Garcia day system) be reduced to 51.7 hours (using the Kelly day system). In support of its position the union representative directed the conciliator's attention to Tab 6 of union exhibit #2. In Tab 6 the "Fire Department Comparison Table" shows comparability data for 8 cities and townships that the union feels are comparable to Lima. These 8 cities and townships are:

Defiance	Marion	Findlay	Marion Township
Delphos	St. Mary's	Mansfield	Van Wert

In looking over the comparison table it can be seen that Firefighters in Defiance, Lima, St. Mary's and Van Wert work a 53 hour week. Firefighters in Findlay work a 51.7 hour week. Firefighters in Mansfield, Marion and Marion Township work a 48 hour week.

In further support of the union position the IAFF representative directed the Conciliator's attention to the "hours of work SERB Region 7" exhibit in Tab 8 of union exhibit #2. This exhibit shows that for the 16 cities in SERB Region 7, 9 cities have firefighters that work less hours per week than those in Lima (i.e., Toledo, Fremont, Maumee, Oregon, Perrysburg, Findlay, Bowling Green, Fostoria and Tiffin). In 3 cities in Region 7 the firefighters work the same number of hours per week as they do in Lima (i.e., Bellevue, Delphos and Napoleon). In 3 cities in Region 7 the firefighters work more hours per week than do the firefighters in Lima (i.e., Defiance, Kenton and Van Wert).

The computation by the union in Tab 8, exhibit #2 shows that the reduction in weekly hours down to 51.7 from 53 would have resulted in 1416 additional overtime hours in 1996 (excluding December) had the Kelly day system been in place. These additional hours were estimated by the union to cost the City about \$38,000 above current overtime payments (\$33,000 for Jan.-Nov. and \$5,000 more for December). Some of the overtime is caused by the minimum manning agreement the City has with the union. Some of the overtime is caused by requirements for schooling, or as a result of multiple alarm fires. The total overtime budget for the LFD was estimated to be about \$225,000 for 1996. The IAFF estimates that about \$70,000 of this overtime was not due to minimum manning requirements.

In support of their position on the reduction of the hours of the work week the union called Mr. Larry Petrick from the Ohio Association of Professional Firefighters to testify. Mr. Petrick testified that firefighters experience significant amounts of stress in connection with their jobs. Mr. Petrick testified that the reduction in the work week will have long term benefits to the City through the reduction in stress and stress related illness for the firefighters in Lima.

(2) Employer Position

The employer position on this issue is that the cost of the union proposal would exceed the City's ability to pay for additional overtime. By the City's calculation, the addition of 3, 24 hour Kelly days off per year per firefighter would require the hiring of 4 additional firefighters. By the City's calculations the cost of increased overtime due to the reduction in the work week to 51.7 hours would be \$167,936 (Tab 7C employer exhibit #2). The employer's estimate is that 4752 additional hours would be needed to staff the department

under the Kelly day system.

In support of their position, the City directed the Conciliator's attention to Tab 7E in the City's exhibit #2. By the City's measure of comparable cities (those within a 30 mile radius of Lima) only firefighters in Findlay work less than a 53 hour week. Firefighters in Bellefontaine, Celina, Delphos, Kenton, St. Mary's, Sidney, Van Wert and Wapakoneta all work between 53-56 hours per week. The average work week for firefighters in this group of cities is 54.5 hours. When the radius is extended to 50 miles surrounding Lima, 4 cities have firefighters who work less than 53 hours per week (i.e., Bowling Green, Fostoria, Marion and Troy). Firefighters in the other 7 cities in this comparison group work between 53 and 56 hours (i.e., Defiance, Greenville, Marysville, Napoleon, Piqua, Upper Sandusky and Urbana).

(3) Discussion

The data show that for both comparison groups, the union's and the City's, that some fire departments work a shorter work week than the LFD and some work more. There is no clear and compelling evidence from the comparables that the 51.7 hour work week is the industry standard or that it is the most common work schedule for firefighters.

The cost data clearly show that this will be a costly item for the City to grant. Whether the cost is \$167,000 as the City estimates or \$38,000 as the union estimates, there will be a cost of increased overtime associated with the proposal. The current collective agreement calls for a 53 hour week. I see nothing in the evidence that would compel me to change the provisions of the current agreement.

(4) Award

The City position is awarded. No change in Article 8 of the current collective

bargaining agreement hours of work and overtime.

(B) Issue 2 - Sick leave

(1) Accrual - Article 9.02

The parties agreed in the hearing to adopt the unions language on this issue.

(2) Sick leave - Usage - Article 9.03

The parties agreed at the hearing to compromise on this issue. Sick leave will be taken in 1 hour increments unless a replacement is called; then it will be taken for a minimum of three hours.

(3) Sick leave - Sell back at retirement - Articles 9.05 and 9.06

The parties agreed to adopt the City's language on this proposal.

(4) Sick leave - Bonus vacation days

(a) Union position

The union position on this issue is to leave the present provisions of Article 12.02 (d)(e)(f) the same but to convert the 90 days of sick leave in the current agreement (6 years of sick leave at 15 days per year) to reflect the new accrual rate of 158.7 hours per year (about 6.6 days per year). This would mean that the maximum "bank" of sick leave would be 950 hours (about 6 years worth of sick leave). Under the union proposal once you have the 950 hours you can convert unused sick leave accumulated during the year into vacation days or pay at a ratio of 3 unused sick leave days for 1 additional day of vacation or pay. The rest of the language reflects the wording of the current agreement and has a "conversion table" which shows how many days of unused sick leave can be converted into how many days of pay or vacation.

(b) Employer position

The employer position on this issue differs from the union's in several respects. The employer proposal adds the word "previous" to the word year so the conversion refers to unused sick leave accumulated during the previous year. The employer provision substitutes the word "current" for the word "normal" in describing the rate of pay to be paid. Finally, the employer proposal would prohibit any shift employee from converting sick leave into vacation who had taken more than 127 hours of sick leave the previous year.

(c) Discussion

The big issue I see here which divides the parties is the 127 hour "cap" that the employer wants to place on the sick leave/bonus days conversion system. In looking over employer exhibit #2 Tab 7J I notice that neither the FOP agreement nor the AFSCME agreement has such a cap. I can see that the language of the new sick leave-vacation days conversion needs to be changed to reflect the realities of the new accrual system (.0507 X hours worked) but I can't see the justification for the 127 hour cap. Some substantiation is necessary (either based on comparability or ability to pay) to justify the change the City is making in this benefit. Based on the fact that it is closer to the language in the present agreement, and given the fact that the City has done little to substantiate its proposal for a change, I will recommend the union position on this issue.

(d) Award

Article 12.02 of the current agreement shall be changed to reflect the union proposal on this issue.

(C) Issue three: Vacation Accrual Rate. Article 12.01

The parties agreed at the hearing to maintain current contract language on this issue.

(D) Issue Four: Uniform Allowance. Article 15.

(1) Union Position

The union position on this issue is that the uniform allowance should be raised from the present level of \$43 per month (\$510 per year) to a new level of \$48 per month (\$576 per year). To substantiate their position, the union points to past collective bargaining agreements between the union and the City which have contained raises of \$8 per month in 1991, \$5 per month in 1993 and \$5 per month in 1996 (union exhibit #2 Tab 12). The union also provides comparability data which shows that Mansfield pays their firefighters \$1,000 per year in uniform allowance. The data for Van Wert show the uniform allowance moving from \$450 to \$500 to \$550 per year over the life of a 3 year agreement. The data for Defiance shows that after an initial purchase of \$800 the allowance goes to \$400 per year. The data for Delphos shows that after an initial purchase of \$825-850, the annual allowance drops to \$475-500 per year. In Findlay, Marion, Marion Township and St. Mary's the employer provides for the uniform on an as needed basis. The union estimates that their proposal would cost the city about \$4,200 per year more than is currently budgeted for uniforms.

(2) Employer Position

The City position is to maintain the current \$43 per month uniform allowance for the life of the new agreement. In support of its position, the City representative directed the Conciliator's attention to employer exhibit #2 Tab 7 (n)(o)(p)(q). Tab N shows that the FOP contract currently provides for a \$375 per year allowance for police officers. The employer's

comparability data in Tab O shows that only Bellefontaine pays more than Lima for uniform allowance in the 30 mile radius geographic area. In the 50 mile radius Urbana at \$600, Troy at \$575 and Marysville at \$650 per year provide a higher uniform allowance than does Lima.

(3) Discussion

The data don't do much to support the union position on the need for an increase in the uniform allowance for the new agreement. I am aware that the past contract provided for a \$5 a month increase, but that must have been justified by data exchanged between the parties in negotiations. The comparables show some cities above Lima and most below on the annual uniform allowance. The current account budget shows that only 3 people have spent their entire allowance. The average carryover budget appears to be in the neighborhood of \$300 or so. The union estimate of \$4,200 per year means that this allowance increase could potentially cost the City \$8,400 over the next 2 years; not a fortune, but not a pittance either. I see nothing in the union proposal to justify the \$5 per month increase in the uniform allowance.

(4) Award

The uniform allowance shall remain at \$43 per month (\$516 annually) during the life of the contract. Employer proposal awarded.

(E) Issue Five: Salary Schedule

(1) Annual Increases

(a) Union Position

The union position on this issue is to ask for a 3.5 percent increase effective January 1, 1997 and a 3.5 percent increase effective January 1, 1998.

In support of its position, the union representative directed the Conciliator's attention

to union exhibit #2 Tab 13, "Fire Department Comparison Table." In this table the union shows that the top step firefighter in Findlay, Mansfield, Marion make more in annual salary than the top step firefighter in Lima. In terms of wage increases, the firefighters in Defiance, Delphos, Findlay, St. Mary's and Van Wert are all scheduled to receive a 3.5 percent or higher rate of pay increase in 1997 and 1998. For the SERB Region 7 rankings listed in union Exhibit #2 Tab 13, Lima ranks either 7th or 10th out of the 16 cities (Defiance excluded by mutual agreement) depending on the date of hire of the firefighter. In the region Lima ranks second to Toledo in population.

To further support their position the union representatives directed the Conciliator's attention to Tab 13 "Detailed Trial Balance." By the union's calculations, the City will end 1996 with a \$1.763 million carry over surplus. By the union's calculations the City's carry over surplus is more than adequate to meet its financial obligations in 1997 and beyond.

(b) Employer Position

The City position on this issue is to offer the union a 2.8 percent increase in 1997 and a 2.8 percent increase in 1998. In support of its position the City representative directed the Conciliator's attention to Employer exhibit #2 Tab 7YZ. This data shows that the City expects an excess of expenses over revenues for 1996 and thus a decline in the general fund carry over budget for 1996. This is much the same as the decline in the general fund carry over in 1995.

The City Tax Director, Dan Hefner cautioned the Conciliator against interpreting the City's financial picture too optimistically. Specifically, the Tax Director pointed out to the Conciliator that the budget for 1996 contained estate tax collections and a settlement from Allen County that may tend to overstate the true financial health of the City of Lima. Further,

the Tax Director asked the Conciliator to note that 1997 will be a year with 27 pay periods which will cost the City \$400,000 in extra payroll costs in 1997. Finally, the Tax Director asked the Conciliator to note that \$6M of the \$10M in total City investments are invested in derivatives which currently have a book value of only \$2.4M.

(c) Discussion

The comparability data seem to show to me that for its size, Lima underpays its firefighters. The City exhibit at Tab 7(S) shows that Bellefontaine pays about the same as Lima, but Findlay and Sidney pay substantially more (even though both are smaller in population). For the 50 mile radius data, Bowling Green, Marion, Piqua, Troy and Urbana all pay top step firefighters more than does Lima - even when we subtract out the employee payment for health insurance in Troy, Marion and Bowling Green. The comparability data clearly favor the union position on this issue.

The ability to pay data are much more difficult to interpret. No one knows for sure what the coming year will hold for the City financially. Maybe it will be another good year for tax collections, maybe not. The carry over is designed to guarantee the City's financial viability even in years when revenues are down. In the grand scheme of things, the difference between the total costs of the City's 2.8 percent final offer and the union's 3.5 percent final offer are not great. By the City's calculations, the total increased cost of the City's 2.8 percent offer is \$161,172 over two years. By my calculation, the total cost of the union's 3.5 percent final offer is \$201,425 or about \$40,253 more than the City's offer over the course of 2 years. For a department with a \$2.1M annual budget, \$20,000 per year more or less doesn't represent a great deal of money (especially when the overtime budget is in excess of \$225,000 per year).

The changes in the sick leave accumulation formula, by the way, should help the City achieve some cost savings in the overtime budget, as the Factfinder noted in his report.

Based on my assessment of the City's financial picture for 1997, and based on my analysis of the comparability data, I believe the union's proposal of 3.5 percent per year for two years is justified. The City of Lima needs to take this opportunity to bring the wages of its firefighters more in line with what other cities of its size in its geographic area are paying their firefighters.

(d) Award

The union final offer of 3.5 percent increase effective January 1, 1997 and a 3.5 percent increase effective January 1, 1998 is awarded.

(2) Longevity Pay

(a) Union Position

The union position on this issue is that the last sentence of Article 23.01(e) should be stricken from the agreement. This sentence reads "Employees hired January 1, 1991 and after shall not be eligible for longevity steps (F) through (I) under this agreement."

In support of the union position on this issue, the union representative directed the Conciliator's attention to union exhibit #2 Tab 14. The data in this tab show that firefighters in Defiance, Delphos, Findlay, Mansfield, Marion, Marion Township, St. Mary's and Van Wert all have some type of longevity pay that pays bonuses for longevity up to 25 years. The union representative stated his view during the hearing that the absence of longevity steps for those hired after 1991 will artificially hold down the wage rates of firefighters in Lima compared to those in other cities.

(b) Employer Position

The City position on this issue is that the longevity pay was eliminated in 1993 for those hired after 1991 in exchange for a salary step type of wage schedule. The employer representative emphasized strongly that the longevity pay system was eliminated in the 1993 negotiations in an attempt to make the pay system more "progressive" so that junior employees achieved the higher levels of the salary schedule in a shorter period of time.

(c) Discussion

By my reading of the staffing manifest, (Employer exhibit #2 Tab 7R) there will be 8 firefighters who were hired in 1989 who will go to step F in the salary schedule in the coming year. There are 11 other firefighters hired after 1991 who will never "cross over" from step E to step F should this provision of the contract be left intact. Fortunately, none of these 11 will be frozen out of the steps F, G, H, I during the up coming contract term. In other words, no one will be adversely affected by this clause in the contract until 1999. Thus, I find no compelling reason to recommend a change in this section of the agreement. The parties will have ample time in 1998 to negotiate a change in the longevity pay/step system should they desire to do so.

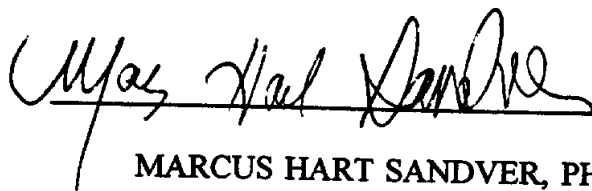
(d) Award

The employer position is awarded. No change is recommended to Article 23.

IV. Certification

This Conciliation Decision and Award has been developed in conformity with the rules for Conciliation found in ORC 4117 and is based upon evidence and testimony presented to me at a conciliation hearing held in Lima, Ohio on December 13, 1996. It is the intent of this

Award that all matters negotiated between the parties prior to the hearing and during the hearing shall also be incorporated in this Decision.



MARCUS HART SANDVER, PH.D.

Upper Arlington, Ohio

January 8, 1997