

SEP 24 10 41 AM '97

CINCINNATI FIREFIGHTERS ASSOCIATION
Local 48, IAFF

and

CITY OF CINCINNATI (Fire Division)

Re: SERB No. 97-MED-04-0416

REPORT OF THE CONCILIATOR

A conciliation hearing was held on Wednesday, September 10, 1997, at the Vernon Manor Hotel, Cincinnati, beginning at 9:30 a.m. and ending at 4:30 p.m. Representations:

For the City

Donald L. Crain, Esq. Chief
Spokesperson

Kent Ryan, Safety Director
Betty Baker, Personnel Director
Frank Hotze, Labor Relations
Manager
John Hanselman, Esq., City
Labor Counsel
Rodney Prince, Esq., Asst.
Safety Director
Michael Keck, Personnel Analyst
Lee Gill, Administrative Asst.,
Fire Division

For the Union

James W. Hengelbrok, Esq., Chief
Spokesperson
Mark A. Sanders, Local President
James A. Froelicher, Vice-Pres.
Thos M. Marzheuser, Treasurer
Jos. W. Diebold, Recording Secy
Kenneth Couch, IAFF-OAPFF Col-
lective Bargaining Director
Jos. R. Gunnewick,
Bargaining Team Member
John M. Zompero, BT Member
Hugh V. Hains, BT Member
Thos. C. Donovan, BT Member
Wm. M. Donovan, BT Member

BACKGROUND

The parties have a long history of successful bargaining, dating back at least into the 1950s. The current contract was agreed to in 1995. The contract was binding until June 13, 1998, except that the article on wages allowed for a reopening, on this subject alone, for the third year of the contract (contract, Appendix A).

The Union exercised its right to reopen by a timely notification to the City, and bargaining began on May 12 on the single issue of wages. However, the parties were not able to reach agreement even

with the help of a SERB mediator.

The issue then went to factfinding. After a hearing, the Factfinder recommended that the parties agree to an across the board increase of 2.75%. The City accepted his recommendation, but the Union rejected it. Conciliation is the only remaining step provided by the collective bargaining law (Chapter 4117, Ohio Revised Code).

THE ISSUE

Section 4117.14, O. R. C., requires that the Conciliator accept the final-offer position of either party on each unresolved issue (in this instance, the only issue, pay). It can be phrased as follows:

Shall the Conciliator accept the position of the City to increase the wage scale for the Firefighter bargaining unit by 2.75%, or should he accept the position of the Union for a 3.75% increase? In either case, the increase would be effective June 18, 1997, and last until the expiration of the contract June 13, 1998.

RELEVANT LAW ON CONCILIATION

Chapter 4117, O. R. C., denies to firefighters (among others) the right to strike. In its place it provides for conciliation if negotiation and factfinding do not produce settlement.

This conciliation process requires the parties to go through the factfinding process first. If either or both parties reject the factfinder's report, conciliation is mandated.

The parties are required to submit a final offer on each outstanding issue to the Conciliator at least five days in advance of the hearing date. The Conciliator, appointed by SERB, is required to conduct a hearing where each party may introduce facts and argument supporting their positions.

Following the hearing, the Conciliator is required to submit a written report in which he chooses, on an issue-by-issue basis, the position of one party or the other; he cannot introduce an independent idea of his own.

His report goes to both parties (and to SERB); whereupon the parties are mandated to implement the recommendation(s).

The law provides the Conciliator with some general guidelines, set forth in Section 4117.14(G)(7) which he must consider:

- a. Past collectively bargained agreements, if any, between the parties;
- b. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- c. The interests and welfare of the public, 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 services.
- d. The lawful authority of the public employer;
- e. The stipulations of the parties;
- f. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, factfinding, or other impasse resolution procedures in the public sector or in private employment (Section 4117.14(G)(7)).

In this instance, neither party introduced anything which would come under the heading of past collectively bargained agreements or anything wherein the lawful authority of the employer would be in question. There were no stipulations between the parties (4117.14(G)(7) (e)).

In the remainder of this section, I will set forth the positions of the parties, then my analysis of these positions and their supporting data. I will conclude with my summary of these positions and finally my award.

EMPLOYEE PRODUCTIVITY

Union position: The Union placed considerable emphasis on the productivity of the members of the bargaining unit, claiming that this high productivity justified its final-offer position. For example, it cited the increase in the number of emergency runs (from 15,000 in 1975 to 61,000 in 1996) and the large number of building inspections, including residential inspections and fire hydrant inspections and hydrant maintenance work (Exhibits 2 through 7). It pointed out that overall, its productivity exceeded that of other major cities in Ohio, and that inasmuch as the

increase in the number of runs coincided with a decrease in the personnel complement, the efficiency of the Division on a per-worker basis increased substantially.

The Union also cited the record of the Division personnel in sick leave usage compared with the remainder of the Cincinnati city service. Firefighters averaged a usage rate of 2.5 days per year, compared with over eight days a year for the remainder of the service.

City's Position. The City gladly acknowledged that the Fire Division is highly productive.

Conciliator's Analysis. The Conciliator agrees that the Division has for many years been highly productive, and that this is a factor to be considered in making a pay award. Not all the credit goes to the bargaining unit. For example, the building inspection program began in about 1912, long before unionization. Nevertheless, the Union deserves credit for its cooperation in helping to develop working conditions conducive to efficient operation.

To some extent, this factor should be considered when one compares the Cincinnati Fire Division with other comparable fire services. However, the ability to make such comparisons depends on the quality of the records kept in other cities, and their willingness to make them available. In some cities, record-keeping may not be a high priority; nothing will change regardless of what the records say. After all, part of the job is merely standing by, ready to roll when an emergency arises, so why care about how busy they are? You can't put a "productivity" number on waiting time, even though it is an important and necessary part of the job.

Further, we must note that in Cincinnati the Union Exhibit 2 shows an average figure, when in reality there is a wide range; some companies are well under the average. Do we want to put the employees on a piecework (per run) basis? I think not.

To illustrate the difficulty, I must point out the error the Union made in its computations -- errors likely to be repeated elsewhere. When the Union divided the number of runs by the number of sworn personnel (table 2), the resulting figure, 70, would be true only if only one firefighter answered each 911 call. This is obviously wrong; the true figure is somewhere close to 250-300.

My conclusion is that we don't have, and probably can't get, accurate enough information to justify the Union's first-place claim and use it as a claim for the highest pay.

THE CITY'S ABILITY TO PAY

Union position. The Union claimed that the City had the ability to pay the additional \$455,000 that would be required if their final-offer were granted. They pointed out that over the years, the City often underestimated revenues or overestimated expenditures, or both, leading to a substantial cash carryover. Furthermore, the Union noted that in its forecast for the years to 2002, the City forecast increases in annual expenditures but did not include any increase in revenue, even though the latter is likely to occur, and still forecast an \$8.8 million carryover (City Exhibit D, page 10).

The Union introduced an expert witness, James Kilgallon, a Washington-based economist, who estimated the City's carryover into 2002 in excess of \$20 million. Further, he stated that one of the contributing factors to the carryover has been the practice of the Fire Division of underspending in relation to the approved budget.

City's position. The City did not deny that it could finance the Union's final offer. However, it has two concerns if it were forced to do so. One is the obvious effect it would have on unions representing other employees. The City calculated that an additional 1% would cost it about \$3.6 million a year if extended across the board (City Exhibit 7). The other factor is the City's projection of a smaller income tax base as employers move from the city or close operations within the city, as is currently planned for Jewish Hospital. Further, the City anticipates an increase in expenditures as its physical plant ages, causing an increase in repair costs. The Fire Division is a major beneficiary of this accelerated program, which will ultimately result in improved working conditions for firefighters.

Conciliator's analysis of ability to pay. I conclude that the City has the financial strength to pay for the additional increase if it were otherwise justified. The City is properly concerned about its financial future, and is properly conservative in making projections. But its finances are in no worse shape than when they negotiated a higher increase for police officers. Furthermore, its emphasis on the effects of increased capital expenditures in the Fire Division sounds too much like expecting the firefighters to pay for fire house improvements by taking less pay.

Nobody knows what the City's financial condition will be five years from now -- not the City, not a Washington economics expert, and certainly not this Conciliator. But I find nothing in the data submitted which points to the inability of the City to finance the one issue we are concerned with in this matter.

PAY COMPARISONS -- EXTERNAL

The Union and the City each submitted data from other cities. The parties agreed that the key rate for comparison purposes is the maximum rate for Firefighter. The Union chose to confine its data to other large Ohio cities -- Cleveland, Columbus, Toledo, Akron and Dayton. (Union Exhibits 8 through 11) The City used these cities, and added two pairs of cities. One included two out-of-state cities, Indianapolis and Louisville. The other was a pair of smaller Ohio cities, Middletown and Hamilton, because of their proximity to Cincinnati.

Union position. The Union noted that from its data, Cincinnati was in the middle with regard to pay, while it felt that because of Cincinnati's greater productivity it should be above the others. Instead, the other cities negotiated larger increases over the past four years than did Cincinnati. (Union Exhibit 9) The Union pointed out in its Exhibit 11, that even with its proposal for a 3.75% increase Cincinnati would be behind Toledo and Columbus.

City's position. As previously indicated, the City wants to consider four additional cities, in addition to those cited by the Union. This would still place it behind Toledo and Columbus, but ahead of four more than on the Union list. The City's position has always been to consider other comparable cities, but not for the purpose of being No. 1.

Conciliator's analysis. It is always a problem to compare local rates with what is paid in other cities; conditions vary. Is there a pension pickup? Is extra pay provided for special assignments such as paramedic or engineer? Is longevity provided, and if so what is the schedule? Such factors determine the actual take-home pay provided each employee.

Union exhibits involving pay from other cities are inconsistent. While the rate for Cincinnati was the base rate for Firefighter, the rate used for Toledo included that city's longevity plan; what that city's pay ordinance defines as "full rate" is \$41,727. The rate shown for Columbus includes 8.5% pension pickup; the base rate is \$39,707. I got this information by phone calls to appropriate officials.

I think that at this stage we are limited to comparison of base rates only. Time does not permit the collection of information on all of their pay programs that affect how much a firefighter can actually take home. These would include longevity, pension pickup, uniform allowance, service requirement allowance, holiday

repay, life insurance, and the like, all of which apply to Cincinnati but do not necessarily apply elsewhere. Neither party offered any testimony or exhibits on these subjects.

My point is simple. Either include all of these benefits affecting pay, or include none of them. Considering the lack of information about benefits, we have no choice at this time but to exclude them. So, for the moment I am using base pay as follows:

Toledo	\$41,727	
Dayton	39,737	
Columbus	39,707	
Cleveland	39,510	
Middletown	38,991	
Hamilton	38,565	
Akron	38,476	
Indianapolis	37,351	
Louisville	27,869	
CINCINNATI	39,563	[\$40,650 under City's final offer]

One must also be careful about commenting on productivity and efficiency in other cities. These are difficult concepts to measure. Different departments put emphasis on different programs; they have differing goals. Results-based data such as the dollar value of fire losses are often meaningless because of varying ages of buildings, types of building construction, adequacy of water supply in different neighborhoods -- factors usually beyond the city's control. Departments often keep different statistics because of their differing goals. And some have given up worrying about such data.

Both the City and the Union have made a valiant effort to measure productivity and efficiency in Cincinnati, sufficient to support my conclusion that Cincinnati's is an efficient department. But I would not go so far as to conclude on the basis of the Union's data that Cincinnati's fire service is necessarily better than the others who are not measured (to our knowledge) on the same standards.

I conclude that data from other cities does not support the Union contention that Cincinnati should be the highest paid department in Ohio.

PAY COMPARISONS -- INTERNAL

Union position. The Union contends that its members are entitled to as much pay as police officers. They emphasize that the City and the FOP negotiated an agreement whereby for 1998 police will receive a 3% increase. Further, they point to data showing that firefighters are more efficient than police officers. (Union Exhibit 24)

City position. The City expressed the belief that firefighters have been treated fairly. Over the past ten years, increases to firefighters totalled 39.5%, the highest total increases of any city group. (City exhibit 6) The City rejected the Union's attempt to compare police and fire productivity.

Conciliator's analysis. No one can argue that police officers and firefighters do the same work. I am reminded of a conversation I had years ago with a now-deceased president of the CFA, who stated "The only thing we [firefighters] have in common with the police is that we both wear blue suits." Nevertheless, for the period from the late sixties until 1980, the City Charter required that both groups be paid the same.

With the passage of the state Collective Bargaining Act (Chapter 4117, ORC) separate bargaining units were created for the two departments. It was then inevitable that the results of bargaining would differ. For example, police got higher pay but agreed to pay 10% of the cost of medical insurance. Other differences arose over time.

Similarly, it is not possible to compare productivity in different kinds of work. The Union showed in Exhibit 24 that fire emergency responses exceeded those of police by some 18,000 in 1996. However, this is not a valid comparison. Many police actions result from what an officer sees while patrolling, particularly with regard to traffic citations and arrests. These do not result from 911 calls. Police officers patrol their beats; firefighters don't. This is not to demean the work of firefighters; it is cited to show the problem of trying to compare productivity.

None of the above analysis justifies the conclusion that either division deserves higher pay than the other. It simply shows they are different, and that collective bargaining has been mandated by the General Assembly as the way to resolve differences of opinion between bargaining representatives and employers.

SUMMARY AND CONCLUSIONS

Both parties submitted much more evidence than was referred to in this report. For the most part, I consider much of it irrelevant. For example, there was seemingly endless information from and about the City's General Fund budget. I consider this a waste of time, because the budget is a legislative document not subject to the collective bargaining process. It was easy to conclude that the City could afford the Union final offer if ordered to pay it simply from the City's own data on carryovers during the next five years. Similarly, the Union's various exhibits concerning public perceptions of fire service was interesting, but a poor basis for determining pay.

The Consumer Price Index is sometimes useful, but at the current time all city employees have been getting at least the amount of the CPI-W over a period of the last ten years, and especially over the last five years, so I saw no purpose in elaborating on it.

Thus I have concentrated on internal and external wage comparisons, and productivity and efficiency of the workers.

The position of the Union that Cincinnati deserves to be the highest paid fire force in the state is, in my opinion, not valid. Each city's local circumstances have to be considered. More important, neither party gathered data which would permit the computation of "total compensation," which would take into account all of the various pay programs which determine what a job is really worth. On the basis of base pay only, the City's offer would place the local Division close to the top among the other cities in the state, and above the out-of-state cities included by the City.

Internal comparisons are necessarily subjective because by definition other departments do different work. In view of that fact SERB has mandated separate bargaining units for the various departments. The City faces different bargaining teams with different aspirations. Different results are inevitable. Before bargaining was mandated, police and fire were paid the same. With bargaining, identical treatment is impossible. I do not feel that firefighters need a 3.75% increase just because police are getting a higher pay.


I say this in spite of the excellent figures on productivity. As earlier indicated, the data presented by the Union was incorrectly interpreted by the Union. The Fire Division is highly productive, but I think the FOP could make a similar case for the police.

My role in this case is not to decide if firefighters should get an increase, but whether that increase should be 1% higher than the

City's final offer. I do not believe the Union made its case.

AWARD

The parties shall implement the City's final offer of 2.75% effective June 15, 1997 and lasting until June 13, 1998. The City shall enact an ordinance to this effect, and shall pay the retroactive portion of this increase within thirty (30) days. The parties shall meet forthwith to amend the wording of Appendix A in accordance with the above.


W. Donald Heisel
Conciliator

September 23, 1997

Copies of this award mailed this date to:

James W. Hengelbrok, Esq., Union Chief Negotiator
Mark A. Sanders, President, Cincinnati Firefighters Assn.
Donald L. Crain, Esq., Chief Negotiator, City of Cincinnati
Frank Hotze, Labor Relations Manager, City of Cincinnati
G. Thomas Worley, Administrator, Bureau of Mediation, SERB