NOTICE

FROM THE STATE EMPLOYMENT RELATIONS BOARD

PUBLICATION DATE: June 21, 2022

CASE NO(S). 2021-MED-09-1245

In the Matter of

International Association of Fire Fighters, Local 1638

AND

City of Troy

The attached report of the fact-finding panel has been acted on as follows:

International Association of Fire Fighters, Local 1638 - ACCEPTED

City of Troy - REJECTED

Pursuant to Chapter 4117.14 of the Ohio Revised Code, this notice and attachment serves as publication of the findings of fact and recommendations of the fact-finding panel. On the publication date, the original notice of rejection of the fact-finding report was sent to a daily newspaper which serves the vicinity where the governmental entity is located. A copy of the notice has been posted in the Clerk's Office of the State Employment Relations Board.

Individuals may contact the above named parties to determine if copies of the report are available or contact the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215.

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 2021-MED-09-1245
Between:	:	
City of Troy, OH	:	
Employer	:	Date of Hearing: May 4, 2022 Date of Report: June 15, 2022
And:	:	
IAFF, Local 1638 Union	:	Felicia Bernardini, Fact Finder

Fact Finder Report and Recommendation

Appearances:

For City of Troy, Employer

Emily J. Gelhaus, Esq., Jackson Lewis P. C., Fact Finding Spokesperson

Matthew D. Simmons, Fire Chief

Sue Knight, Administrative Assistant, Clerk of Council

Mark Wendling, Assistant City Director/HR Director

For International Association of Fire Fighters, Local 1638, Union

Colleen Arnett, Esq., Livorno & Arnett Co., LPA, Fact Finding Spokesperson

Kevin Rader, Consultant, ArnettRader

Ryan Havenar, President Local 1638

Brandon Knisley, VP Local 1638

Jeffrey Krey, Bargaining Committee, Local 1638

Raymon Kinard, Bargaining Committee, Local 1638

Introduction

Case Background

The parties selected Felicia Bernardini to serve as fact finder in the above referenced case. She was duly appointed by the State Employment Relations Board (SERB) on December 20, 2021 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the City of Troy, Ohio (hereafter referred to as the "Employer" or the "City") and the IAFF Local 1638 (hereafter referred to as the "Union" or "Unit").

Prior to the hearing, the parties engaged in contract negotiations on multiple dates prior to their contract expiration date of December 31, 2021. The parties were unable to come to agreement on several provisions of a successor agreement and the parties entered into the fact finding process. At fact finding, eleven (11) issues remained unresolved. The fact finding hearing was scheduled for May 4, 2022. Both parties timely filed the required pre-hearing statements and proceeded to hearing.

Emily J. Gelhaus, Esq., represented the Employer.

Colleen Arnett, Esq. represented the Union.

Issues

The remaining open issues addressed by both parties at the hearing are as follows:

Article 14: Position Descriptions

Article 21: Hours of Work/Overtime

Article 26: Vacation

Article 32: Discipline

Article 34: Medical and Life Insurance Coverage

Article 35: Uniform Allowance

Article 36: Wages

Article 40: Education Incentive

Article 42: Duration

Appendix C: Hazards, Pandemics, State of Emergency

MOU: Staffing

General Background Information

Troy, Ohio is the largest city in Miami County, Ohio and serves as the County Seat. Troy is situated on the Great Miami River, approximately nineteen miles north of Dayton, Ohio. As of 2019 Troy's population was estimated to be 26,281. In 2019 the median annual household income was $55,412, up from $39,531 in 2000.[1] The International Association of Fire Fighters Local 1638 represents the bargaining unit, which consists of all full-time uniformed employees below the rank of Assistant Chief. The Department operates on a 24/48 schedule with three shifts each working every third day (24 hours on and 48 hours off).[2]

Positions, Discussion and Recommendations

At the hearing, the parties agreed to present their respective arguments on the primary economic provisions first (i.e., wages and healthcare) followed by the other open articles in numeric order. The format of this report follows this same order. Below on an article-by-article basis, the position of each party is summarized, position summaries are followed by a brief analysis and discussion, which is followed by the fact finder's recommendation.

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

(a). Past collective bargaining agreements, if any between the parties;

(b). 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;

(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 service;

(d). The lawful authority of the public employer;

(e). Any stipulations of the parties;

(f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to

[1] City-data.com/city/Troy-Ohio

[2] Troyohio.gov/151/Fire

mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 36: Wages and Article 42: Duration

Employer Position

The Employer proposes 3% raises in each year of a three-year contract. This wage proposal is the same percent increase proposed and accepted by the City's three police units and its AFSCME unit, and provided to unrepresented employees. To deviate from the Employer's proposal on wages would disrupt the pattern bargaining the City relies on to achieve parity and equity across bargaining units. The City's proposed wage increase is further supported by external comparable data. For as many as 10 years, the City has compared itself to similarly sized municipalities within a 35-mile radius with a comparable population and a unionized fire department. There are twelve municipalities that fit these parameters. Of these twelve municipalities the average minimum and maximum annual salaries for fire fighters are $53,255 and $69,419 respectively. The minimum annual wage rate for this Unit is $55,532 and the maximum annual wage rate is $76,867. Not only is the City's current wage structure higher than the average for comparable jurisdictions in the area, but it is also the highest of all twelve comparable jurisdictions. As the wage leader in the area there is no reasonable argument to be made for inflated wage increases.

In addition to the City's position as a wage leader in the area, its proposed 3% wage increases are in keeping with wage settlements in the area. Among the twelve municipalities the Employer uses as comparables for compensation and benefit purposes, wage settlements for the next three years have averaged around 2.45% annually. Data compiled by SERB found in the most recent 2021 Wage Settlement Report establishes that statewide average wage increases are similar to those documented by the City's survey of neighboring municipalities. SERB's data show that wage settlements in the Dayton Region average 2.33% in 2022 and 2.27% in 2023. Wage settlements for fire units statewide average 2.48% in 2022 and 2.41% in 2023. The average wage settlements for all Ohio municipalities reporting to SERB are 2.5% in 2022 and 2.37 in 2023.

The Employer maintains that in light of this data its proposal of a 3% wage increase in each year of the contact is fair and should be adopted. The Employer rejects the Union's proposed 7% increase in each year as uncalled for given the Unit's current above average wages; and is inconsistent with current trends in wage settlements both in the near labor market and statewide.

Finally, with regard to the Employer's wage proposal, the City is seeking to include language in the Duration article that would provide for a 2022 wage increase payable upon signing and execution of the agreement, rather than retroactive to January 1, 2022. This aspect of the City's proposal is consistent with its interest in incentivizing timely contract settlements and introducing disincentives for units that unduly delay bargaining settlement.

Union Position

The Union is seeking 7% wage increases in each year of a proposed 3-year contract. The Union's proposal is a reflection of the current overall increase in the cost of living. Inflation is at a 40-year high. The Consumer Price Index, which serves as a surrogate for inflation, increased 8.5% in the year ending March 2022. Food and energy price increases are driving much of the inflation with food increases up 8.8% and gas prices up 48% from a year ago. Regardless of the Unit's current annual salaries being above the area average, bargaining unit members are losing significant purchasing power. The purpose of annual across-the-board wage increases is to allow salaries to keep pace with inflation. Given the current economic landscape, 3% wage increases simply do not achieve this goal.

The Union's proposal for 7% increases is also based on the increased workload of the bargaining unit. Not only does the Fire Department provide fire protection and emergency medical services to the citizens of the City of Troy, by contract it also provides these services to Concord, Staunton and Lost Creek Townships. Through these contracts, the Fire Department generates revenue for the City. Its status as a revenue generator distinguishes this Unit from the City's other bargaining units, most especially the City's other safety force units, which are often identified as close comparator units. Data from the Troy Fire Department 2021 Annual Report documents the upward trend in annual fire and EMS responses. In 2020 total Fire Department responses (fire and EMS) were 6,405; whereas in 2021 total response were 7,156 – a 10.5% increase. Over the past decade, overall Fire Department responses are up approximately 30%.

The Union opposes the Employer's proposal to memorialize in the contract a provision that penalizes the Unit by not allowing for retroactive wages. The circumstances that have resulted in an extended period after the current contract expired are not necessarily circumstances under the control of the Unit. Much of the delay has simply been the result of scheduling conflicts.

Discussion and Recommendation

The Employer has not set forth an inability to pay argument. Thus, there is no financial presentation by the Employer and no revenue and expenditure data entered into the record. The Union has not made an issue of wages in comparison to other similarly situated bargaining units. Therefore, there is no competing comparable data from the Union. On the record, the Union did not contest the Employer's local labor market salary survey data; acknowledging that the list of jurisdictions and wage data was of the surrounding area and not in dispute. This being the case, there is no basis for, nor need, to discuss the cost, affordability or market relevance of the wage proposals. In the case at hand, the fact finder is simply asked to assess the reasonableness of the wage proposals and make a recommendation based on that assessment.

The Employer's proposal of 3% raises in each of the next three years is in keeping with the wage increases negotiated with its other bargaining units and given to unrepresented employees of the City. Internal comparables and a history of pattern bargaining are particularly persuasive factors for fact finders. Most especially when there are no compelling labor market factors that cry out for adjustment. The Employer's proposal is also in keeping with the range of salary increases fire units in the surrounding area have settled on, and consistent with (and in fact somewhat above average) when compared to statewide wage settlement data available from SERB.

The Union's proposal for 7% increases in each of the next three years is based on recent inflation as reported by the Bureau of Labor Statistics CPI-U 2022 calculations: January – 7.5%, February – 7.9%, March – 8.5% and April – 8.3%. In the face of this recent trend in inflation the Federal Reserve has raised short-term interest rates and has announced that it will continue to make interest rate adjustments in response to ongoing inflationary pressures. Federal Reserve economic growth forecasts anticipate that inflation will remain high through 2022 and then moderate to a ten-year average of 2.8-3.0%.[3] The Union further argues that there is a disconnect between bargaining unit wages and the Unit's increased workload. The Union opines that its wage proposal takes into account the Unit's increased workload and in some unspecified way rebalances the scales between worker productivity and actual wage growth for the Unit. This is an interesting argument, but far beyond the evidentiary record and scope of this fact finding. For the purpose of this fact finding recommendation, it must be assumed that the City's position as an area-wide wage leader for Fire

[3] FEDERALRESERVE.GOV/MONETARY POLICY

Fighter/EMS professionals (as evidenced in Employer Exhibit C) is in part a recognition of the demands and expectations particular to this Fire Department.

Considering inflation volatility, it would be unfair to bind the Employer to annual cost-of-living increases over the next three years that assume inflation will remain at record-breaking highs through 2024 and the next round of bargaining. It is more reasonable, and consistent with long-term trends in inflation, to assume that inflation will moderate in response to monetary policy interventions. It is more likely that the Employer's proposal of 3% wage increases will keep pace with average inflation over the next three years.

As for the matter of wage retroactivity, the Union's position is more reasonable. Several factors underly this conclusion. First and foremost is the matter of scheduling. Collective bargaining is notoriously time consuming. Many organizations start their bargaining process 6-9mths prior to the expiration of their contract to provide adequate time. The fact finding record indicates that, in the case at hand, the parties may have initially been delayed in the bargaining process due to scheduling conflicts related to the schedules of outside counsels. Furthermore, upon my appointment as fact finder in this case in late December 2021, my schedule was such that the hearing could not be scheduled until May 2022. None of these delays have anything to do with the sincerity or willingness of the parties in reaching settlement. Second, the Employer's proposal carries significant adverse economic consequences for bargaining unit members. A proposal like this, so heavily weighted in favor of, or against, one party in the bargaining relationship it is not a proposal that should be unilaterally imposed by a fact finder. This kind of proposals must be allowed to play out in the bargaining process so that its resolution is based on a negotiated quid pro quo. Who knows what calculus underlies the deal struck by the City and its other bargaining units during other negotiations that resulted in the adoption of a similar no-retroactivity provisions in their contracts? Whatever the bargained deal was for those other units, this bargaining unit must be given the same ability to strike a deal, or choose not to, when it comes to including a no-retroactivity provision in its contract.

Recommendation

The statutory criteria require that the fact finder consider the comparability of recommendations with respect to employees performing similar work and giving consideration to factors peculiar to the area and classification involved. In light of the statutory criteria the fact finder recommends the Employer's wage settlement, making it retroactive to January 1, 2022. The Employer's proposal for Article 42 Duration is rejected.

- Effective January 1, 2022 all rates of pay shall increase 3%.
- Effective January 1, 2023 all rates of pay shall increase 3%.
- Effective January 1, 2024 all rates of pay shall increase 3%

Relevant contract language shall read in part as follows:

ARTICLE 36: WAGES

<u>Section 36.1.</u> Wages will be increased **3%** effective January 1, **2022**; **3%** effective January 1, **2023**; and **3%** effective January 1, **2024** as shown on Appendix A.

(Fact Finding note: The Employer will calculate, and the Union review and approve, the new wage rates to be included in Appendix A.)

ARTICLE 42: DURATION

<u>Section 42.1</u>. This Agreement shall be in full force and effect from **January 1, 2022 through December 31, 2024.**

<u>Section 42.2.</u> *(current contract language)*

<u>Section 42.3.</u> *(current contract language)*

<u>Section 42.4.</u> *(current contract language)*

<u>2. Article 34: Medical and Life Insurance Coverage</u>

Employer Position

The Employer anticipates maintaining the current heath care plans. With regard to the cost of the plans to the bargaining unit members, the Employer proposes to increase the premium share paid by the employee enrolled in the Standard Plan over the three years of the contract from the current 12% to 15%. Specifically, the Employer's proposal is to increase the employee premium share to 13% effective September 1, 2022; 14% effective September 1, 2023; and 15% effective September 1, 2024. To offset this increase cost for employees, the Employer proposes an additional $500 payment to the HSA for single enrollees and an additional $1000 payment to the HSA for family enrollees. The Employer calculates that a 1% increase using the 2021 plan costs would be approximately $200. Over three years the increase cost to an enrolled family would be $200 in the first year, $400 in the second year and $600 in the third year. The Employer's proposed HSA contribution of $1000 would go a long way to offset this premium increase. A similar calculation can be done for the single enrollee, and the $500 HSA increase is an equally reasonable offset for the single enrollee. The Employer proposes to leave the existing High Deductible Plan in place and maintain the current 25% contribution to the HSA for employees enrolled in the plan. The proposed increase in premium share costs for enrollees in the Standard Plan is the direct result of increased health care costs for the Employer. The same cost sharing increases found in this proposal are what the City's other bargaining units agreed to in their contract negotiations. Furthermore, an increase from 12% to 15% in the employee premium share for the Standard Plan is in keeping with the employee premium share found in comparable fire units in the geographic area. Employer Exhibit I shows that of the twelve neighboring comparable municipalities six currently have employee contributions at or above 15%.

Union Position

The Union proposes that the Employer increase its additional contribution to HSAs for bargaining unit members enrolled in the Standard Plan from $500 to $1000 for single enrollees and from $1000 to $2000 for family enrollees. As for the High Deductible Plan, the Union proposes that the Employer raise its minimum contribution to HSAs for enrolled bargaining unit members from 25% to 75% of the deductible. The Union's proposal is based on the overall increased cost of health care for bargaining unit members, making it increasingly difficult for members and their families to afford quality medical services.

Discussion and Recommendation

There is little data available in the hearing record regarding the proposal of either party. The Union offered no exhibits to support its proposal to double HSA contributions for enrollees in the Standard Plan and to triple HSA contributions for enrollees in the High Deductible Plan. The Employer's proposal has already been accepted by the City's other bargaining units establishing a pattern it seeks to continue with this Unit. The Employer's proposed increase in premium costs for the Standard Plan enrollees, from 12% to 15% at a rate of 1% each year of the 3-year contract, is in keeping with the cost sharing percentages found in comparable public jurisdictions in Ohio. The Employer's survey of comparable jurisdictions in the surrounding area (Employer Exhibit I) shows that the proposed increase is not outside of the norm for the area. A review of the SERB 2021 Health Insurance Report reveals that the Employer's proposed employee premium share increase to

15% is within the range of average employee share costs. SERB data show that in the Dayton Region Employee Cost Sharing Percentages for PPO plans average 18.3% for single enrollees and 19.6% for family enrollees. For High Deductible Plans in the Dayton Region the employee percentage share of premiums average 14% for single enrollees and 14.3% for family enrollees. The Employer's proposal for an additional HSA cash infusion of $500 for single enrollees and $1000 for family enrollees is a fair offset for the percent increase in premium payments. To ensure bargaining unit members enrolled in the Standard Plan receive the full benefit of the HSA payments the timing of the additional cash to the HSAs should be at the start of the new plan year September 1, 2022, coinciding with the first 1% premium increase.

Recommendation

The statutory criteria require the fact finder to consider the bargaining history of the parties and comparability with similarly situated units. In light of the statutory criteria the fact finder recommends adoption of the Employer's proposal with an edit to the effective date of the HSA cash benefit.

Relevant contract language shall read in part as follows:

ARTICLE 34: MEDICAL AND LIFE INSURANCE COVERAGE

Section 34.1. The current insurance plan and employee contribution rates will continue unchanged through **August 31, 2022** except the City will make an additional contribution of $500 single and $1000 family to the Health Savings Account of employees on the Standard Plan during the Plan year beginning **September 1, 2022**.

Effective **September 1, 2022,** the City will make available to bargaining unit employees the same health insurance options as the City makes available to the director of Public Service and Safety and to other non-represented employees, provided that, for employees participating in a High Deductible Health Plan, the City will contribute a minimum of 25% of the deductible to the Health Savings Account of employees for the plan years beginning **September 1, 2022, September 1, 2023 and September 1, 2024.**

(Third paragraph current contract language)

Section 34.2. Employees will pay **13% for the plan year beginning September 1, 2022, 14% for plan year beginning September 1, 2023 and 15% for the plan year beginning September 1, 2024** of the health insurance premium for the standard plan provided pursuant to

Section 34.1 ("the Standard Plan"). Employee contributions shall be made through payroll deduction as a condition of coverage. The City will pay the balance of the premium.

(Second paragraph current contract language)

(Sections 34.3 thru 34.8 current contract language)

3. Article 14: Position Descriptions

Union Position

The Union proposes the addition of a new section that provides appropriate compensation to any bargaining unit member required to work out of classification as an officer in charge (OIC) or as an acting Platoon Commander. The current OIC language in Section 21.6 only addresses the circumstances of an OIC who is temporarily assigned to fill in in the absence of the Platoon Commander who works out of Station 11 and does not address OIC designations at Station 13. The Union proposes to increase the extra rate of pay for filling in for the Platoon Commander from the current $2.00/hr. to the Platoon Commander rate of pay. The Union also proposes to expand the OIC language to provide for compensation at the Lieutenant rate for a bargaining unit member designated as OIC assigned to Station 13.

Employer Position

The Employer opposes the Union's proposal for a new section in Article 14 and seeks to maintain the current staffing practice that provides the Chief discretion to assign an OIC to temporarily fill in when the Platoon Commander is absent. When the Chief assigns an OIC to fill in for the Platoon Commander, the existing language of Section 21.6 provides additional compensation of $2.00/hr. for all hours worked in the higher classification. There are no Lieutenant positions in the current shift structure, therefore no current OIC is acting as a Lieutenant at either Station 12 or 13. The Union's proposal does not address an existing staffing problem as it proports to do.

Discussion and Recommendation

There is a significant disconnect between the Employer's and the Union's perspectives on how the OIC designation is currently used. For the Employer, the OIC designation is a voluntary designation for bargaining unit members (who have tested and expressed an interest in promotional opportunities) to be assigned temporarily to fill in in the absence of the Platoon Commander. This designation provides opportunities for those so inclined to gain on-the-job experience in a higherranking position. However, beyond the assignment to actually fill in for an absent Platoon Commander, a bargaining unit members designated as OIC, does not work outside of his classification on a day-to-day basis. They are not taking on the duties of a higher position and therefore not rightfully eligible for additional compensation. For the Union, when a bargaining unit member takes on the OIC designation the member de facto steps into the role of providing day-to-day operational oversight at his assigned Station. From the perspective of the Union, the extra duties and responsibilities that accompany the OIC designation are not being fairly compensated.

The hearing record is sufficiently murky on the critical matter of whether bargaining unit members, with the OIC designation, are taking on duties of a higher classification on a daily basis. The Union's proposal to add a new Section 14.3 addressing OIC designations and compensation without eliminating the existing language of Section 21.6 would result in contradictory and confusing provisions.

Recommendation

The fact finder recommends current contract language.

4. Article 21: Hours of Work/Overtime

Union Position

The Union proposes to introduce new language identified as Section 21.7 that would provide for an employee election of up to 120 hours of compensatory time in lieu of pay for overtime. The Union's proposal would further provide for an annual year-end cash payout of all unused comp time at the pay rate in effect at the end of the year. The proposal would make the approval of the use of comp time a discretionary matter for the Chief. The Union points out that all of the other City bargaining unit contracts (i.e., FOP and AFSCME) have comp time provisions. Just as the Employer seeks to duplicate and standardize provisions across labor agreements, the Union similarly seeks to include in its labor agreement the comp time benefit that employees in all other City departments enjoy.

The Union also proposes a new Section 21.8 which provides that any bargaining unit member attending training outside of his/her regular schedule shall be compensated at the overtime rate. This proposal would ensure that members of this Unit are treated just as other employees of the City who are compensated for their time when they attend training programs that benefit the Employer's operations.

Employer Position

The Employer opposes the Union's proposals for Article 21. The introduction of comp time to this Unit's paid time off would unduly burden the Employer financially. The Union's proposal would allow bargaining unit members to earn overtime at the current hourly rate, bank it as comp time, and in some instances cash out the comp time at the end of the year at a higher. This is costly for the Employer. Furthermore, given the Department's staffing levels and minimum staffing level requirements adding one more form of paid time off simply exacerbates an already challenging schedule. Unlike other City employees, this bargaining unit receives 'scheduled days off' (SDO) and a number of years ago the parties negotiated the removal of comp time in exchange for more SDO time off.

As for the Union's proposal on overtime pay for training outside of the regular schedule, the Union is incorrect in its assertion that the Employer does not pay overtime for training. The Department works very closely with the Auditor's Office to ensure that bargaining unit members are properly compensated within the 27-day work period for all hours worked and to ensure that the Employer does not violate the FLSA requirements. As a result, bargaining unit members do regularly receive overtime compensation for attending training when such is necessary under the FLSA regulations. When training is required by the Employer and it causes the bargaining unit member to go into extra hours beyond the regular schedule, employees are paid at the overtime rate for attending the training.

Discussion and Recommendation

The Employer is currently paying overtime, as necessary, when it requires bargaining unit members to attend training that extends outside of the member's regular schedule. The Union's proposal would extend the benefit of overtime pay in training situations that are not required, but that the bargaining unit member voluntarily attends. This would create an undue financial burden on the Employer and would likely result in the Employer having to restrict bargaining unit members from voluntarily attending training to ensure that unintended financial liabilities do not accrue to the Employer. The Employer varies the scheduling of important skills training to ensure that bargaining unit members will have the opportunity to attend such training on their regular schedule and thus be paid for the training (including overtime if it is called for). Basic EMTs who attend required classes to become a paramedic are paid when the class falls on a regular workday. When the class falls on a non-workday, the Basic EMT is not in a paid status to attend the class. Even though the class is a requirement to become a fully-fledged paramedic, the Employer is not obligated to compensate these employees for their time in class. This is a high cost proposal for the Employer and to take on such a costly contract provision, the Employer should have the opportunity to bargain over it and make a deal that makes it worthwhile. This is not the kind of proposal that a fact finder should impose on the Employer with the stroke of a pen.

As for the Union's comp time proposal. A similar rationale applies. Given that the parties removed comp time from the contact in exchange for SDO time off, putting comp time back into the contract should result from bargaining, not the fact finder's pen.

Recommendation

The fact finder recommends current contract language.

5. Article 26: Vacation

Union Position

The Union proposes a change to Section 26.5 that would eliminate the automatic forfeiture of vacation time in excess of the three-year maximum accrual and insert new language that would allow an employee to elect whether or not to have vacation leave accruals paid out. The Union also proposes a new section 26.12 that would require the Employer to make available one 24-hour vacation slot on each shift irrespective of absences that are the result of military leave, duty injury, resignation, layoff, and voluntary or involuntary separations. The Union's proposal requires that the Employer pay overtime as necessary to ensure that minimum staffing is maintained, and vacation requests are granted. This proposal is in response to the regular denial of vacation requests due to there already being absences (some of a long-term nature) that block vacation from being used. The problem faced by bargaining unit members is that they often must miss important family and life events that come up over the course of a year because the minimum staffing requirement in conjunction with the variety of absences that occur block out the option for vacation days.

Employer Position

The Employer opposes this proposal. Bargaining unit members can put in requests for vacation time at the beginning of each year. The City has never cancelled a pre-approved vacation to accommodate other absences that must be worked into the schedule. This is the case even when overtime is necessary to ensure minimum staffing requirements are met. In 2021 the Employer paid 1,611.75 hours of overtime to ensure coverage on days when there was approved vacation. The parties bargained about scheduling issues in the last round of negotiations and as a result the City purchased a new scheduling system which has made it easier for bargaining unit members to schedule time off. Contract language that would require the Employer to reserve a time off slot every day solely for vacation requests would be a serious erosion of management rights and be very costly. Despite the claim that bargaining unit members cannot take off vacation time, the Union's own exhibit on this proposal shows that on many days vacation is being taken by bargaining unit employees. As for the Union's proposed change to Section 26.5, the Employer opposes elimination of the forfeiture language. To introduce this change would set this bargaining unit apart from all other City employees. The change is simply not warranted. A review of records shows that there have been no significant forfeitures of vacation time in the recent past. Members of this bargaining unit use their vacation leave benefit as it is expected they will.

Discussion and Recommendation

The Employer staffs each shift with twelve bargaining unit members. The minimum staffing requirement is nine members per shift. This allows for three absences per day. Hearing testimony established that one of those absences is always filled by an SDO, leaving two slots per day to accommodate all types of earned paid time off including sick leave, vacation, and personal leave; as well as the various administrative actions that can fill an absence slot such as training, injury leave, military leave, paternity/maternity leave, resignation, and retirement. Union Exhibit 5 is the daily schedule for September 1-25. If there are two slots per day to accommodate absences Union Exhibit 5 could, at a maximum, represent fifty opportunities for a bargaining unit member to use paid time off. Exhibit five shows sixteen absence slots devoted to vacation, fifteen devoted to sick leave, four slots devoted to training, one slot devoted to funeral leave, one slot devoted to personal leave, three slots devoted to paid administrative leave, and six slots identified as trade time. In addition, evidence in the record also shows that bargaining unit members are not forfeiting high numbers of vacation hours. Over the last three years, one bargaining unit member forfeited 8.3 hours of vacation and another forfeited 1.86 hours in 2019; in 2020 a member forfeited 4.36 hours of vacation leave and another forfeited 3.78 hours; and in 2021 7.58 hours were forfeited by a member. The Employer testified at hearing that disciplinary suspensions have not been imposed in a manner that has limited vacation slots on the work schedule.

Scheduling in a 24/7 operation is always challenging and never more so than in a fire department. There is evidence in the record via bargaining unit testimony that addresses the heart of the scheduling problem. It is clear that the concern is over the spontaneous, short-notice situations when vacation is requested on a first come, first serve basis. Annual vacations are managed via bids and seniority. The fact that bargaining unit members cannot always get approved for a vacation day off when it is requested on short notice is certainly frustrating for unit members. I acknowledge that for any employee, vacation time off is the most valuable when it can be scheduled at the employee's discretion, not when the Employer points to a few options on the calendar and says, *"You can use your vacation on anyone of these three or four days."* However, in the firefighting profession this is to be expect, which is why fire departments provide for shift trading among bargaining unit members. When it comes to short-notice vacation requests, the parties must do their best to work with each other to accommodate as many such requests as possible within the current constraints. There is insufficient evidence in this hearing record to warrant the imposition of a burdensome and costly change to the current vacation scheduling protocols.

Recommendation

The fact finder recommends current contract language.

6. Article 32: Discipline

Employer Position

The Employer proposes to eliminate Section 32.4 which imposes a 60-day timeframe on the Employer when taking disciplinary action. Specifically, the contract states that the Employer, "shall impose discipline no later than 60 days from the date the Chief has knowledge of the incident." The Employer has always been prompt in taking disciplinary action; however, this provision places an artificial and unnecessary time constraint on the Employer's administrative processes. Although not a frequent occurrence, when a disciplinary matter is serious enough to rise to the level of a suspension or discharge, a 60-day time limit to thoroughly investigate and provide appropriate due process is not always possible. In the case of one past disciplinary matter an investigation underway surfaced the basis for a separate disciplinary matter. In this case, although the discipline was promptly issued, it was outside of the contractual time limit and was therefore overturned by an arbitrator. To avoid this type of situation from occurring again, the Employer proposes to eliminate the 60-day time limit. This language is unique among the City's labor agreements.

Union Position

The Union seeks to maintain current contract language. The case of prior discipline driving this proposal from the Employer happened approximately 10 years in the past, under different departmental leadership. At that time, the time limit in the contract was 30 days, not 60. In the last round of bargaining between the parties, this same issue was raised, and the parties settled on increasing the contractual time limit for imposing discipline to the 60-day provision the parties now have. Since the time limit was addressed in the last contract, the Union is unaware of any situations in which this time limit has come into play and created an administrative burden on the Employer. The Union notes that the language the Employer seeks to eliminate completely, also provides that the 60-day time limit can be extended by mutual consent.

Discussion and Recommendation

The Employer has not demonstrated that the time limit for imposing discipline has created a hardship on the Employer since it was increased to the current 60-days from the former 30-days in the last round of negotiations.

Recommendation

The fact finder recommends current contract language.

<u>7. Article 35: Uniform Allowance</u>

Union Position

The Union proposes to raise the clothing maintenance allowance by $100 from $750 to $850 annually.

Employer Position

The Employer opposes the increase and seeks to maintain current contract language.

Discussion and Recommendation

The Union's proposal to increase this benefit was not supplemented by evidence or argument other than to make reference to the increasing cost of living which could be marginally offset by increasing this benefit. While this may in fact be true, this is not a strong enough argument on which to change existing contract language.

Recommendation

The fact finder recommends current contract language.

8. Article 40: Education Incentive

Union Position

The Union proposes to increase the annual education incentives offered by the Employer by the following amounts: Associates Degree from $715 to $850, Bachelor's Degree from $1,100 to $1,300, and Master's Degree from $1,815 to $2,200.

Employer Position

The Employer opposes the Union's proposal and seeks to maintain current contract language.

Discussion and Recommendation

As with the Uniform Allowance, the Union's proposal to increase the education incentives was not accompanied with evidence or argument other than a reference to the general increase in the cost of living. Without a supporting rationale beyond that offered, there is insufficient evidence on which to base adoption of the Union's proposal

Recommendation

The fact finder recommends current contract language.

9. Appendix C: Hazards, Pandemics, State of Emergency

Union Position

The Union proposes new contract language that would institute "hero pay" during a state of emergency due to a pandemic or other "force majeure." The proposed hero pay would be equal to a

3% increase over the base rate for all hours worked during the state of emergency. In addition, the Union proposes new language that would prohibit the Employer from mandating any medical procedure that would conflict with a religious or medical exemption, prohibit forcing bargaining unit members from taking any substance that is under emergency use authorization, or taking any drug that is not FDA approved for at least five years.

Employer Position

The Employer opposes the Union's proposal as it is an unwarranted erosion of management rights.

Discussion and Recommendation

The proposed emergency pay supplement at 3% above base pay for all hours worked during a state of emergency is a costly benefit and one that is not supported by data from either internal or external comparable public jurisdictions. The proposed language that would prohibit the Employer from mandating vaccinations, other such medications/pharmaceuticals, or medical procedures is far reaching and could unduly impede the Employer's requirement under OSHA to prove a safe workplace. The hearing record establishes that the City did not mandate COVID vaccinations for bargaining unit employees and is not planning to do so with respect to the COVID vaccinations.

Recommendation

The fact finder does not recommend adoption of the Union's proposal.

10. Memorandum of Understanding: Staffing

Union Position

The Union proposes to change the existing MOU in several significant ways. First, the Union would change the starting pay for recruits designated as "Basic Firefighters" by reducing it to 80% of the 3rd Class Firefighter2/Paramedic step 1, and then allow for step increases as they are earned at six-month intervals pursuant to the current salary schedule. This change would be the cost equivalent of the current arrangement, which starts the Basic Firefighter at a higher salary but does not provide for step increases. The Unit proposes to increase the period of time to complete paramedic training and become fully certified from 12 months to 36 months. The proposal also contains new language specifying that at the time that the Basic Firefighter becomes a certified paramedic that member's pay would increase by 20%, bringing the member up to 100% of the FF2/P pay. With the Union's proposed language the change in classification and pay from EMT to Paramedic would not be considered a promotion. Therefore, the member would not be required to serve a probationary period. The Union also proposes that the City increase the minimum staffing level from nine to ten, increase the shift staffing level from twelve personnel to thirteen personnel, and create three shift Lieutenant positions (1 per shift).

Employer Position

The Employer seeks to retain the current language of the MOU. As it is the MOU has been beneficial to the staffing of the Department. The addition of three shift Lieutenants as proposed by the Union would cost the City over $357K in the first year of implementation and would increase annually from that starting point. The proposal to increase the number of staff per shift by one and the minimum staffing level by one are also a highly costly proposals and a serious erosion of management rights. The Employer strongly opposes adoption of any of the Union's proposed changes to the MOU and seeks to have the MOU continue with current language.

Discussion and Recommendation

During discussion of the Union's proposal at the hearing, the Union verbally revised its proposal in two respects. First, the Union eliminate its proposed language change extending the time limit for obtaining paramedic certification from 12 months to 36 months found in roman numeral I, subsection 1. Second, the Union eliminated the new language it had proposed as roman numeral II.

The MOU seems to have been beneficial to both parties and has served its purpose to open a new avenue of recruitment and provide a means by which firefighters with EMT credentials can work for the Department while pursuing their paramedic certification. Testimony in the record establishes that five out of six bargaining unit members recruited to the Department under this MOU have successfully made the transfer from Basic Firefighter/EMT to Firefighter 2/Paramedic.

Although the MOU seems to be working well with its current provisions; I concur with the Union's changes that would allow Basic Firefighters to earn step increases as other bargaining units do based on the standard 6-month intervals; and that successful completion of paramedic certification need not be considered a promotion that triggers a probationary period. Basic Firefighters serve an initial probationary period for a full year during which time they are taking classes to become a paramedic (in addition to working their regular work schedules as a

Firefighter/EMT). Once the rigors of the course work are successfully completed by these bargaining unit members, and these members furthermore successfully pass the State certification test they have demonstrated proficiency in the requisite knowledge, skills and abilities to be assigned as Firefighter 2/Paramedics. These bargaining unit members have spent their first year of employment (albeit as a 'Basic Firefighter/EMT) in an initial probationary period giving the Employer ample time to assess their professional skills, work habits and in general their suitability for employment. To immediately put the member into a following year of probation (a promotional probationary period) seems unnecessary. To be sure, the newly certified paramedic who has moved to the classification of FF2/P will be performing new tasks that may have been prohibited as an EMT, but should the member fail to perform those tasks successfully he/she can be treated like any FF2/P with performance deficiencies – coaching, improvement plans and ultimately discipline if improvement is not manifest in future performance. As the Union points out, typically when a bargaining unit member takes a voluntary promotion, failed performance during the promotional probationary period will result in a soft landing back in the previously held classification. The current structure of the classification change from Basic Firefighter to FF2/P carries with it no fallback rights because the Basic Firefighter designation is not a bargaining unit position that a member can stay in indefinitely. The FF2/P classification can be viewed as a "tiered" classification allowing the Basic to move up to FF2/P without entering a promotional probationary period.

The Union's proposals to add Lieutenant positions to each shift and to increase shift staffing and minimum staffing requirements are costly proposals that are not supported by hearing record.

Recommendation

The fact finder recommends continuation of the MOU on staffing with the Union's proposed change in the opening paragraph and in roman numeral I, subsection 2.

Relevant contract language shall read in part as follows:

Memorandum of Understanding Between IAFF Local 1638 and the City of Troy, Ohio
Regarding Fire Department Staffing

To address vacancies and shift coverage, the parties agree to jointly recommend to Troy City Council the creation of a 'Basic Firefighter' (FF2/EMT) salary schedule that **shall start at 80%** of the salary of a 3rd Class Firefighter, Step 1 (FF2/P). This position retains all rights as they relate to current employees outlined in the agreement with Local 1638 (e.g., longevity, vacation, sick leave, **step raises for time in grade**, and yearly contractual percentage wage increases).

Finally, the parties agree that the following procedures regarding hiring/recruitment shall be followed:

I) In the absence of a qualified list of FF2/Ps, the eligibility list shall open to allow applicants to fill said vacancy with the following conditions:
   1) *Retain current MOU language*
   2) At the time the FF2/EMT earns FF2/P certification and presents evidence of the same to the City, s/he shall **be designated as an FF2/P, will not be required to serve a promotional probationary period (as established in Section 9.2), and will continue to receive step increases for time in grade based off of the member's initial hire date.**
   3) *Retain current MOU language*
   II) *Retain current MOU language*

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 15th day of June, 2022.

Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on June 15, 2022 to:

State Employment Relations Board
Mary E. Laurent
65 E. State Street
Columbus, Ohio 43215
med@serb.state.oh.us

Colleen Arnett, Esq.
Livorno & Arnett Co., LPA
On behalf of IAFF Local 1638
1335 Dublin Road, Suite 108-B
Columbus, OH 43215
carnett@livornoandarnett.com

Emily J. Gelhaus, Esq.
Jackson Lewis P.C.
On behalf of City of Troy
201 East Fifth Street, 26th Floor
Cincinnati, OH 45202
emily.gelhaus@jacksonlewis.com

Felicia Bernardini