

REQUESTED BY:
COLBERT

LAW DEPARTMENT
DRAFT NO. 3680

TITLE

A RESOLUTION FOR THE PURPOSE, ON BEHALF OF THE CITY OF WARREN, OF REJECTING THE RECOMMENDATIONS ISSUED BY THE FACT FINDER IN CASE NO. 2016-MED-10-1085 BEFORE THE STATE EMPLOYMENT RELATIONS BOARD, STATE OF OHIO (IN THE MATTER OF IAFF, LOCAL 204 AND THE CITY OF WARREN), AND DECLARING AN EMERGENCY..

RESOLUTION NO. 4616/17

WHEREAS, the City of Warren and the IAFF, LOCAL 204 previously reached an impasse in their efforts to consummate a new labor agreement; and

WHEREAS, Daniel G. Zeiser, office in Cleveland, Ohio was, as a result of said impasse, appointed to serve as Fact Finder; and

WHEREAS, said Fact Finder, after hearing, has issued his Recommendations relative to the unresolved issues presented to him for fact-finding; and

WHEREAS, a true and accurate copy of said Recommendations is attached to this Resolution as "EXHIBIT A"; and

WHEREAS, Rule 4117-9-05 (L), (M), (N) and (O) of the Permanent Rules of the Ohio State Employment Relations Board provide, in essence, that the aforementioned Recommendations of the aforementioned Fact Finder shall, if not rejected by the Union or the City within seven (7) days after said Recommendations are sent, be deemed to be agreed upon as the final resolution of the issues addressed therein; and

WHEREAS, the aforementioned Rule provides that any rejection by the City of Warren of the aforementioned Recommendations must come about by at least a three-fifths (3/5) vote of all members elected to Council, said vote being taken within seven (7) days after said Recommendations were sent; and

WHEREAS, this Council, on behalf of the City of Warren, desires to reject the aforementioned Recommendations in their entirety; NOW THEREFORE

BE IT RESOLVED by the Council of the City of Warren, State of Ohio:

Section 1: That the Recommendations issued by the Fact Finder in Case No. 2016-MED-10-1085 before the State Employment Relations Board, State of Ohio (In the Matter of IAFF, LOCAL 204, and the City of Warren), a true and accurate copy of which is attached hereto as "EXHIBIT A" and is hereby incorporated herein for all purposes as if fully rewritten herein, be, and the same hereby are, rejected in their entirety

Section 2: That the Director of Human Resources for the City be, and hereby is, authorized and directed to submit, within twenty-four hours after the vote count herein and to both the State Employment Relations Board, State of Ohio and to the appropriate representative of the IAFF, LOCAL 204, a certified copy of this Resolution along with certification of the result of the votes taken on this Resolution, which shall set forth the total number of members elected to this Council. Such verification shall contain proof of service upon the aforementioned union.

Section 3: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason that the issues outstanding between the parties may be resolved at the earliest possible time and without undue delay. WHEREFORE, this Resolution shall go into immediate effect.

Passed in Council this 24TH day of MAY, 2017.

SIGNED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK

FILED WITH THE MAYOR: _____

DATE APPROVED: _____

William D. [Signature]
MAYOR, CITY OF WARREN, OHIO

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:	:	2016-MED-10-1085
	:	
International Association of Fire	:	
Fighters, Local #204,	:	FACT FINDING REPORT
	:	FINDINGS AND RECOMMENDATIONS
and	:	
	:	
The City of Warren,	:	May 19, 2017

APPEARANCES

For the Union:

Dennis Haines, Attorney
John M. Jerina Jr., President
Tyler James, Vice President
Ken Horm, Secretary-Treasurer
Jarrod Perry, Executive Board
William Monrean, Negotiating Team
Jeremy Rodgers, Negotiating Team

For the Employer:

David D. Daugherty, Personnel Supervisor
Brian M. Massueri, Director of Human Resources
Vince Flask, Auditor
Ken Nussle, Fire Chief

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Fact Finder
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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on March 9, 2017 pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). The parties are the Warren Firefighters, International Association of Firefighters Local 204 (Union, Firefighters, or Local 204) and the City of Warren (Warren, Employer, or City). The City is the largest city in and county seat of Trumbull County in northeastern Ohio. Founded in 1798, Warren's population was 41,558 according to the 2010 U.S. Census, down from its peak of 63,474 in 1970. It operates its own Fire Department. The Union represents all sworn and uniformed employees of the Department except for the Chief. There are currently 59 members in the bargaining unit, including 3 Assistant Chiefs, 6 Captains, 12 Lieutenants, and 38 Firefighters. Warren is in the process of hiring an additional 15 Firefighters pursuant to a SAFER grant that will expire in 2019; 9 have already been hired and another 6 are in the process of being hired. The parties have had a collective bargaining relationship for many years.

II. THE HEARING

The hearing in this matter took place on May 4, 2017 in the City Municipal Building, 141 South Street SE, Warren, Ohio. The Fact Finder engaged in mediation, but it was not successful. Following mediation, the parties agreed there was no need for a formal hearing and the Fact Finder would decide the issues based on the information provided in the parties' pre-hearing statements and what was discussed during mediation.

The parties jointly introduced the following exhibit into evidence:

CONTRACT between The City of Warren and International Association of Firefighters Local #204 Effective January 1, 2014.

Additionally, the parties introduced the following exhibits at the hearing.

Union Exhibits

1. Current Agreement.
2. Pension Pickup language.
3. Article XIV - Holidays.
4. Article XV - Vacation.
5. Article XXVI - Health Care Benefits.
6. Letter from the Administrator re annual report of the Ohio Bureau of Worker's Compensation for fiscal year 2016.

City Exhibits

1. Current Contract.
2. Agreed Articles.
3. Comparison of Negotiations with Other Bargaining Units.
4. Calculation of Cost of Increased Pension Pickup.
5. Cost of Additional Holiday.
6. Costs of Personal Days.
7. Vacation Draw.
8. Health Care Savings.
9. Fire Department Proposed Additional Cost versus City's Proposed Contractual Change Savings.
10. Auditor's Financial Data.
11. Miscellaneous Sources.

Prior to the hearing, the parties engaged in collective bargaining, but were unable to reach agreement on all issues. Any tentative agreements reached by the parties during bargaining are hereby incorporated into this Report. Issues remaining at the hearing were:

1. Article XII, Pay Rates, Section 1, Wages, and Section 3, Pension Pickup.
2. Article XIV, Holidays, Section 1, Holidays, and Section 3, Personal Time.
3. Article XV, Vacations, Section 6, Vacation Draw.
4. Article XXVI, Health Care Benefits.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) 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;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) 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 mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

It is no secret that recent years have been difficult for many municipalities in Ohio. The Mahoning Valley has been particularly hit hard in the last 10 years or so. During most of the 20th century, steel production was a major industry in the Valley and the economy has worsened as the steel industry has had its woes. The City has seen a number of employers close or reduce jobs, including WCI, Peerless Electric, General Electric's Ohio Lamp plant, and Delphi (formerly Packard Electric), once a major manufacturer of wiring harnesses for automobiles. Recently, RG Steel closed with the loss of approximately 1200 jobs. The City introduced evidence that its revenues have fallen from approximately \$29.5 million in 2008 to \$24 million in 2015. This includes loss of income taxes as jobs have been lost, the elimination of the estate tax in Ohio, the reduction in local government funding from the State of Ohio, and property tax reductions resulting from the housing crisis. While revenues are down, expenses continue to rise and the City has been forced to deplete its reserves to pay its bills.

The City currently employs 367 full time employees. In addition to the Firefighters, there are four (4) other bargaining units representing approximately 260 employees, including the Police Officer unit with 41 members, the Police rank unit with 15 numbers, and two (2) AFSCME units representing 182 and 23, respectively, employees throughout the City. Each collective bargaining agreement expired at the end of 2016. The non-union employees are subject to an ordinance, commonly referred to as "Policies and Procedures," governing wages and benefits.

In 2016, City Council placed before the voters a .5% increase in the local income tax effective for five (5) years because of a projected budget shortfall between \$1.5 and \$1.7 million. The City worked with a citizens committee to go through the budget and determine how much money would realistically be needed. The committee supported the increase and the citizens narrowly passed it in November 2016. Given that the increase is guaranteed for five (5) years only, the City believes it must demonstrate fiscal responsibility to the electorate for the increase to be renewed.

Entering into negotiations with the various bargaining units in 2016, the City attempted to negotiate three (3) year wage freezes with minimal concessions in healthcare. Prior to the vote on the income tax increase, the City reached agreements with one (1) of the AFSCME and both Police units. City Council passed an ordinance granting the same package to the non-bargaining unit employees. Following the vote, the City negotiated the same three (3) year wage freeze and healthcare changes with the other AFSCME unit and reached a tentative agreement with the Firefighters. The Firefighters rejected the tentative agreement.

Local 204 takes the position that it has received no real wage or benefit increase in nine (9) years and, while it acknowledges the City is experiencing some financial difficulties, there is more money in the budget than the City claims. It believes the Firefighters are entitled to some modest increases and is particularly interested in achieving some parity in pension pickup. Currently, the City picks up the full 10% contribution for the Police units, while it pays only 6% for the Firefighters. It believes that, although the City might not be able to make up the entire 4% difference, it can afford some of the difference.

During the hearing in this fact-finding, the City repeatedly pointed to the agreements it reached with the other bargaining units as the model for an agreement with the Firefighters. As is the case with all negotiations, each side can point to benefits given to another unit that was not given to this unit or concessions made that another unit did not make. For example, the Firefighters point to the AFSCME supervisory unit receiving increases in pension pickup in a previous contract that they did not receive, while the City counters that the AFSCME unit received this in lieu of wage increases. Similarly, the City submits that the Firefighters receive personal time that no other unit receives, while the Firefighters respond that other units receive compensatory time that they do not. The City acknowledges that the Firefighters have historically not received the same pension pickup as the Police units.

Issue: Article XII, Pay Rates

Position of the Employer: Wages to remain the same for calendar year 2017. Effective January 1, 2018, a wage decrease of 2.75%. Effective January 1, 2019, a wage decrease of 2.75%

Position of the Union: Increase the pension pickup from 6% to 10%.

Findings: Warren argues that it offered wage freezes for each year of the contract along with health care with slight plan design changes to all of its bargaining units. Its desire was to show the electorate that Warren was acting with financial prudence in the hope the electorate would approve the .5% levy. This proposal has been accepted and approved by both Police units, both AFSCME units, and approved for non-bargaining unit employees. When the Firefighters returned to the bargaining table asking for a 4%

increase in pension picked up, Warren concluded that it would need to offset the cost elsewhere, since no other bargaining unit received a financial increase in its current contract. Therefore, Warren has offered 2.75% wage decreases for 2018 in 2019. Local 204 responds that it is merely seeking parity with other employees, particularly the Police units, as to pension pickup. Warren currently picks up 10% of Police employee pensions.

Warren was able to pass a .5% income tax increase in 2016 based in large part on negotiating the three (3) year wage freezes with the other bargaining units and its non-union employees. However, the levy expires in five (5) years and a portion of the revenue is earmarked to retain safety forces. Warren believes that the voters will not renew the levy if it does not demonstrate fiscal responsibility. It acknowledges that Local 204 has historically not received the same pension pickup as other units, particularly the Police, but, given its current financial situation, it does not believe it is in a position to offer any increased pickup. It has calculated the total cost of a 4% increase for 2018 and 2019 as approximately \$280,000.

The Firefighters argue they have historically received less pension pickup than other units. Following the concepts of pattern bargaining and using internal comparables, the Firefighters would be entitled to and certainly are deserving of some pension pickup increase. However, this is not the time to do so. There is no real question that the City's financial situation, while not dire, is serious. It is not in fiscal caution, watch, or emergency, but is certainly heading in that direction. The cost of the Firefighters' proposal, as calculated by the City at \$280,000, is simply too much at this

time. This is particularly so since the 2016 tax increase was passed with the expectation of three (3) year wage freezes and other employees have agreed to the freeze.

On the other hand, the City acknowledges the Firefighters have traditionally been shortchanged when it comes to pension pickup, and the changes to health care will cost employees more, so the City's proposal will result in an overall decrease in take home pay. To help offset these, the Fact Finder believes it appropriate to award some cash payment to the Firefighters in the form of a lump sum. Such payment will not go into the wage scale and will not be compounded from year-to-year, saving the City some money. Additionally, since 15 Firefighters have been or are about to be hired under a SAFER grant and the current contract provides for \$12.56 per hour for the first two (2) years of employment, which is higher than the first two (2) hourly rates under the current contract, the Fact Finder concludes there is no reason to provide a lump sum to them. The City's \$280,000 calculation included these new Firefighters and taking them out of the equation will save it additional money.

Recommendation: Firefighters are to receive a lump sum payment of \$500 on July 1, 2017, or the end of the pay period closest to July 1, 2017, and a second lump sum payment of \$500 on July 1, 2018, or the end of the pay period closest to July 1, 2017. Firefighters hired under the SAFER grant are excluded from these payments.

Issue: Article XIV, Holidays

Position of the Union: Add a Christmas Eve holiday. In exchange, eliminate paragraphs 1 and 2 under Section 3, Personal Time, removing the penalty for using sick leave when cashing out unused personal time.

Position of the Employer: Keep current language.

Findings: Prior to 2011, Firefighters received two (2) personal days on a “use it or lose it” basis. In the current contract, the parties agree to a third personal day with the ability to cash out at the end of the year if not used. The Firefighters are the only employees with the ability to cash out unused personal time. The Employer agreed to cashing out the third personal day in exchange for charging a Firefighter who had three (3) or more sick leave incidents in a year. It believes this helps control the use of sick leave and would rather retain the current language than eliminate it in exchange for another holiday. It calculates the cost of the additional holiday at approximately \$5000 per year, or \$10,000 for the remaining two (2) years of the contract.

There does not appear to be a compelling need for an additional holiday. The Union likes the third personal day, but is willing to give up the penalty in exchange for the holiday. The Employer would rather keep the penalty since it believes it helps control the use of sick leave.

Recommendation: Retain the current language.

Issue: Article XV, Vacation

Position of the Employer: Eliminate the Inspector as a separate slot and establish a sliding number of slots based on the current number of Firefighters as follows:

Section 6: ANNUAL VACATION DRAW:

- A. The annual vacation draw will be as follows:
 - 1. The Assistant Chief and “House” Captain shall draw days off in a separate AC/HC slack. The Assistant Chief and “House” Captain shall draw days as provided for in the same procedure as all other members.

2. All remaining members shall draw on days off within three (3) separate slots plus one (1) additional slot for each of the months of January, February, March and April. (The Officer's/Firefighter's (O/F) slots). If the total number of members is fifty (50) but does not exceed sixty-three (63) the number of vacation slots shall be four (4). If the total number of members exceeds sixty-three (63) the number of vacation slots shall be five (5).

Position of the Union: Maintain current language.

Findings: The City contends that, with dwindling numbers and minimum manning, the number of vacation slots creates staffing issues and additional overtime, particularly during the peak summer months. With the addition of the new Firefighters hired under the SAFER grant, its believes its proposal is inconsequential. While the City hopes to retain the new hires, the future is uncertain. The intent of this proposal it is to curb overtime in the event the number of Firefighters falls below the specified numbers. The proposal keeps the same number of vacation slots when the numbers are high, but allows for flexibility when the numbers drop. The Union counters that the additional hires will result in less overtime and should solve this problem without changing contract language.

Fifteen (15) new Firefighters have been hired or are in the process of being hired. This will increase the total number of Firefighters to at least 64 and will help reduce overtime. The SAFER grant expires in 2019, the same year the contract will expire. The Fact Finder concludes that it makes more sense to wait and see the effect the additional Firefighters will have on overtime and how many are retained before changing the contract language.

Recommendation: Maintain current language.

Issue: Article XXVI, Health Care Benefits

Position of the Employer: The City proposes one plan to all members with 15% premium contribution with no cap.

Position of the Union: Firefighters should receive the same health care benefits provided to all other City employees.

Findings: Warren's proposal is based on the Firefighters' demand for additional pension pickup and its desire to recoup the additional costs elsewhere. Its proposed reduction in wages covers only part of the increased cost of pension pickup, so it proposes increasing the monthly premium from 10% to 15% to offset the rest. The current contracts for other bargaining units provide that employees shall contribute 10% of the total monthly premium with caps of \$50 per month for single coverage and \$100 per month for family coverage. In the second and third year, caps shall not exceed \$75 per month for single coverage and \$150 per month for family coverage.

Since the Fact Finder does not recommend the increased pension pickup, there is no compelling need for changes in health care coverage. The Firefighters should be treated same as Warren's other employees and receive the same health care benefits.

Recommendation: The Firefighters are to receive the same health care benefits provided to other City employees. Contributions in the first year are to be 10% of the total monthly premium with caps of \$50 per month for single coverage and \$100 per month for family coverage. In the second and third year, caps shall not exceed \$75 per month for single coverage and \$150 per month for family coverage.

As noted above, any tentative agreements reached by the parties during bargaining are hereby incorporated into this Report.

Dated: May 19, 2017

A handwritten signature in black ink, appearing to read "Daniel G. Zeiser", written over a horizontal line.

Daniel G. Zeiser
Fact Finder