

**IN THE MATTER OF FACTFINDING  
BETWEEN**

UNIFIED GOVERNMENT OF WYANDOTTE )  
COUNTY/KANSAS CITY, KANSAS, )  
 )  
Public Employer, )  
 )  
And )  
 )  
INTERNATIONAL ASSOCIATION OF )  
FIRE FIGHTERS, LOCAL 64, )  
 )  
Public Employee Organization. )

**FACTFINDING SUBMISION OF INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS, LOCAL 64**

The matter is properly before the Fact Finder pursuant to KSA 75-4332 for findings and recommendations. The parties agreed that the matter is properly before the Fact Finder.

**BACKGROUND**

The Unified Government of Wyandotte County/Kansas City, Kansas (herein the “Unified Government”) and the International Association of Fire Fighters, Local 64 (herein “Local 64”) have been parties to successive Memorandums of Understanding for many years. The most recent Memorandum expired December 31, 2013. The parties have continued to work under the terms of the expired contract.

Local 64 represents sworn fire fighters, ambulance personnel and several other classifications from the rank of Captain and below. There are approximately 415 employees in the bargaining unit.

The Unified Government identified and declared impasse on total of thirteen (13) issues:

1. Term of the Agreement (Article 36 – Duration

2. Section 8.6 – Sick Leave
3. Article 12 – Medical Plan
4. Article 15 – Discipline
5. Article 16 – Grievance Procedure
6. Article 18 – Vacations
7. Article 21 – Overtime
8. Article 26 – Shift Exchange, Trading Time
9. Article 27 – Promotions
10. Article 28 – Compensation
11. Article 34 – Contract Reopener and Fire Study Implementation
12. Article 35/36 – Minimum Manning
13. Dispatcher Addendum

As discussed more fully below, it is the Union's position that, with respect to the vast majority of the issues raised by the Unified Government, the parties are either actually in agreement, or the Fact Finder should recommend leaving the language as is, as there is no basis or need to change the existing language. Each of the issues are addressed herein.

#### **STATUTORY CRITERIA/LEGAL STANDARD IN FACTFINDING**

The Kansas Public Employer-Employee Relations Act, KSA Section 75-4321, *et seq.*, does not include criteria by which the Factfinder is to evaluate the reasonableness of a party's proposals. In spite of the lack of statutory criteria, interest arbitrators and factfinders generally agree that analysis of proposals should be viewed in the context of: (1) the bargaining history of the parties, including past agreements and the bargaining history leading to the current fact-finding; (2) wage,

benefit and working condition comparisons of comparable employees of the public employer; and (3) the ability of the public employer to meet financial commitments.

Additionally, while there is no formal standard of proof in fact-finding, interest arbitrators and factfinders generally require, in order to provide a recommendation or award a change to existing contract language, that the moving party show: (1) the existence of (a) definitive problem(s) with existing language; (2) the non-moving party has refused to recognize the existence of such problems during the process of negotiations; and (3) adoption of the proposed changes is necessary in order to remedy the otherwise unaddressed problems.

### **Duration of the Agreement**

Article 36 of the current agreement addresses the duration of the agreement. During negotiations, the Unified Government proposed an agreement lasting through December 31, 2018; however, the Employer also proposed reopener language, allowing either party to request, beginning in January 2018, to reopen the contract and discuss any issue the respective party sees fit to discuss. In response to this proposal, the Union agreed to a contract term through December 31, 2018. (*Compare* Union Exs. 1 and 2). With respect to the reopener provision, the Union proposed limiting the discussion to compensation only.

As the recent bargaining history has shown, the parties are clearly having difficulty coming to agreement on some issues, most of which do not touch on compensation. Should the Factfinder recommend the Employer's proposal, the parties will be back at the negotiating table within months, and potentially the entire contract will once again be open to negotiations. The Union posits that such an outcome would not be helpful to the relationship of the parties, and would quite likely lead to another fact-finding in the near future. Given the difficulty of the recent negotiations,

the Union strongly urges the Factfinder to issue a recommendation that the duration of the agreement last through December 31, 2018, with a January 2018 reopener limited only to compensation.

Alternatively, the Union is agreeable to no reopener at all in 2018. In lieu of reopener language to address compensation only, the Union would support a recommendation by the Factfinder that includes addressing 2018 compensation, as discussed more fully below in the section of this brief covering compensation. The Union believes it would be in the best interest of the parties and their relationship to have significant time before another round of contract negotiations begins.

#### **Sick Leave – Article 8, Section 8.6**

The Employer is proposing significant changes to the parties' previously agreed upon language governing sick leave and vacation accruals. All of the Unified Government's proposals on this subject would reduce sick leave and vacation accrual, to the detriment of the bargaining unit employees. In response to the Employer's proposals, the Union rejected any changes, and proposed leaving the current language intact.

As noted above, although there is no formal burden of proof in fact-finding, interest arbitrators and factfinders require the moving party to identify a problem with current contract language before a recommendation to change the language will be made. Here, the Unified Government has wholly failed to identify a problem with the current sick and vacation leave provisions.

The Unified Government urges the Factfinder to recommend its proposal because (1) other unions within the Unified Government have accepted some changes to sick leave and vacation

accrual, and (2) the Unified Government believes it has better benefits than other public employers in the area. Naturally, the Employer failed to provide any evidence of what public employers it was comparing itself to. Instead, the Employer cites (without providing any data in support) to its own internal research, and a study conducted by a contractor commissioned by the Employer. The Union posits that, based on the Unified Government's own arguments, it is clear that the Employer cannot identify an actual problem with the existing language. Instead, the Unified Government is seeking to dilute and diminish contract benefits received by bargaining unit employees, simply because it desires to do so, and not to fix a problem that would otherwise go unaddressed.

Moreover, as Union Exhibits 1 and 2 demonstrate, the Unified Government abandoned its attempt to force these change upon the members of Local 64 during negotiations. The fact that the Employer was willing, in May 2016, to drop its proposal to change the sick leave and vacation benefits, is overwhelming evidence that no actual problem with the current language exists. Because no such problem exists, the Union requests the Factfinder recommend no changes to the current language.

#### **Medical Plan – Article 12**

Article 12 of the parties' 2010 MOU deals with medical benefits. At the outset, the Union notes that its members are not covered by Worker's Compensation. If injured on the job, members of the bargaining unit rely heavily on the bargained-for medical benefits to cover such injuries. No other bargaining unit within the Unified Government is exempt from worker's compensation.

Additionally, the Unified Government proposed changing the medical benefits by requiring each employee to contribute \$30.00 per month for their respective health care

coverage. As shown by Union Exhibits 1 and 2, the Union accepted the Employer's proposal that each bargaining unit member contribute \$30.00 per month for medical coverage. At hearing, it appeared there was confusion among the parties over where that money would be allocated. However, it is clear that the Union is in agreement to have the monies contributed by the bargaining unit employees into the Health Fund. Thus, the parties are in agreement that each bargaining unit member will pay \$30.00 per month into the Employer's Health Fund.

The sole remaining issue is the benefit levels received by the employees. The Employer's proposal includes a weakening of the level of health benefits provided to employees. The Union has always maintained that it wants the benefits that were provided under the MOU that expired on December 31, 2013, nothing more and nothing less. In exchange for retaining such benefits, the Union agreed to the \$30.00 per member per month contribution. The Union respectfully requests the Factfinder recommend that bargaining unit members pay \$30.00 per month into the Health Fund, while retaining the benefit levels included in the MOU that expired on December 31, 2013.

#### **Discipline – Article 15**

During negotiations, the Employer proposed changing language in Article 15, governing discipline, to allow management to increase the length of suspensions that an employee must serve prior to the exhaustion of his/her rights under the grievance procedure. In response, the Union proposed leaving the language as is.

Here, the Employer failed to even attempt to show that a problem exists with the current language. Additionally, Union Exhibits 1 and 2 show that the Unified Government abandoned its proposal in May 2016. This is strong evidence that no problem with the existing language exists.

Accordingly, the Union requests that the Factfinder recommend that the current language remain unchanged.

#### **Grievance Procedure – Article 16**

The Unified Government has proposed what it characterizes as a clarification of the current language. The Union has proposed to leave the existing language in place.

As with the subject of Discipline, the Employer has failed to even attempt to show that a problem exists with the current language. And, Union Exhibits 1 and 2 show that the Employer abandoned its proposal to change the Grievance language in May 2016. Accordingly, the Union respectfully requests that the Factfinder recommend that the current language remain unchanged.

#### **Overtime – Article 21**

Two issues exist with respect to overtime: (1) the Call-in procedure; and (2) Compensatory Time Accrual. With respect to the Call-in procedure, the parties have agreed in principle to change the procedure. At hearing, Local 64 Business Manager Wing and Chief Jones, together with the Factfinder, had a helpful discussion on the issue. In particular, the Union acknowledged the Employer's need to fill shift openings, and that requiring an employee to work overtime, where no volunteers are available, is a necessary aspect of filling shifts and assigning overtime. Because the parties are basically in agreement on the issue, the Union respectfully requests the Factfinder recommend that the parties receive additional time to work this matter out between the parties.

With respect to the accrual of compensatory time, the Employer has proposed reducing the time that employees may accrue from 480 hours to 240 hours. Per the Employer's proposal,

this would only apply to employees hired after January 1, 2016. In response, the Union proposed to retain the current language.

The Unified Government failed to point to any definitive problem with the current language. Instead, the Employer appears to argue that employees of the Fire Department receive a better benefit than other Unified Government employees, and that resulting payouts for retiring members of the Fire Department exceed payouts for compensatory time for police officers, and the Employer wants more uniformity between the departments.

The Union notes that the Employer's proposal applies only to employees hired after January 1, 2016. No cost savings will be realized for decades (if at all). Moreover, as Local 64 Business Manager Wing noted at hearing, the Union previously agreed (in past negotiations) to forgo wage increases in order to retain the compensatory time benefit. Finally, there is no problem that will be solved by adopting the Employer's proposal. Again, any potential cost savings will not be realized for decades. And, unlike police officers, members of the Fire Department work 24 hour shifts. The difference between an 8 hour and 24 hour shift is plain on its face, and compensatory time as a benefit is arguably more valuable to a member of the Fire Department than it is a member of the Police Department.

In sum, there is no problem with the current compensatory time accrual language, and the Unified Government has failed to show the existence of such a problem. Accordingly, the Union urges the Factfinder to recommend leaving the current MOU language unchanged.

#### **Shift Exchange, Trading Time – Article 26**

During negotiations, the Employer proposed making two significant changes to the language of Article 26, which governs trading time for bargaining unit employees. Specifically,



the Employer proposed putting a cap on trade imbalances to plus or minus six. Additionally, the Employer proposed a prohibition on employees paying other employees to work their shift. In response, the Union, seeing no problem with the current approach, proposed leaving the language unchanged.

The Union notes that trading time is a regular practice for fire departments across the country, and is not unique to this bargaining unit. Indeed, as Union Exhibit 3 shows, Fire Chief Jones is a very strong supporter of trading time. Chief Jones, in his response to the Employer's Internal Auditor's Report, noted that the practice of trading time is "very common" across the country, and has been in place in the Department for over three decades. (Union Ex. 3 at p. 23). Additionally, Chief Jones stated that he believes "the practice of trading time has worked well" for the Department, and that it "serves a vital role in giving flexibility that provides a benefit to the employer as well as the employee and is considered a best practice." (Union Ex. 3 at p. 23).

Moreover, as Union Exhibits 1 and 2 demonstrate, the Employer had dropped its proposal on time trading by May 2016. Again, this is evidence that no problem in need of a solution exists with respect to time trading.

Finally, a close look at the Employer's Internal Audit clearly shows there is no problem with the current language on trading time. As shown in the chart on page 18 of the report, in 2015, only one employee in the Department had more than the allowable 24-time trade limit (which is in the current language) for time traded off. (Union Ex. 3). And that employee was over the limit by one occasion. (Union Ex. 3, at p. 18). Additionally, there was only one employee who exceeded the 24-time trade limit for working traded time. (Union Ex. 3, at p. 18).

Simply stated, there is no problem in need of a remedy. And, of course, the Employer had no explanation for where it came up with the proposed limit of 6.

Because there exists no problem with the current time trading program, the Union respectfully requests that the Factfinder recommend retaining the current language.

#### **Promotions – Article 27**

The Employer has proposed various changes to the procedures utilized for promotion of employees, and the Union has agreed that changes need to be made to the procedures. Union Business Manager Wing noted at hearing that the parties are very close to fully resolving this issue. The Union believes that the Employer is in agreement with Mr. Wing's appraisal of where the parties are with respect to reaching an agreement. Accordingly, the Union respectfully requests that the Factfinder recommend giving the Union and Employer time to work through the issue and reach agreement.

#### **Compensation – Article 28**

On May 3, 2016, the Unified Government proposed the following wage increases: Effective January 1, 2016, an across the board wage increase of one percent (1%); effective July 1, 2016, an across the board wage increase of two percent (2%); and, effective January 1, 2017, an across the board wage increase of two percent (2%). (Union Ex. 1). On June 16, 2016, Local 64 agreed to these wage proposals. (Union Ex. 2). Additionally, on the subjects of pay for Bilingual employees and Special Duty Pay, the parties are in agreement. (Union Exs. 1 and 2).

As discussed above, the Union has proposed having reopener language, to address the subject of compensation only, beginning in January 2018. However, as an alternative to any reopener language, the Union respectfully requests that the Factfinder make the following

recommendation: On January 1, 2018, and across the board raise of two percent (2%), followed by an across the board raise of two percent (2%) on July 1, 2018. Such a recommendation would allow the parties to avoid contract negotiations for another year, and would not be a significant financial burden on the Unified Government.

With respect to Longevity pay, the Employer has proposed retaining the current language, while Local 64 has proposed increasing the Longevity pay to achieve parity with the Fraternal Order of Police (“FOP”). The Unified Government rejected the Union’s proposal.

With respect to Education pay, the Employer proposed holding the issue, while the Union proposed parity with the FOP. The Unified Government rejected the Union’s proposal.

The Employer has cited poor finances in support of its position with respect to compensation. It is of course not unusual for an employer to cite lack of funds as a basis for rejecting a union proposal. Here, however, the Employer’s claim of lacking the resources to meet the Union’s compensation proposals is belied by the actions of the Unified Government. Just weeks before the fact-finding hearing, the Unified Government voted to issue some \$80 million in STAR Bonds to help pay for the relocation of the American Royal to western Wyandotte County. That the Unified Government felt confident enough in its finances to issue the bonds, in order to subsidize a rodeo, clearly shows that the Unified Government has the financial resources to accept, and pay for, the Union’s proposals.

Additionally, with respect to Education and Longevity pay, the Union is simply seeking parity with the FOP. From the Union’s perspective, the Unified Government’s stance on these relatively minor subjects is puzzling, given that the Employer typically claims that it desires parity between the FOP and Local 64 (and other unions representing Unified Government

employees, as seen in the Employer's proposals with respect to Medical benefits, for example). It seems as though the Unified Government only wants parity where it is beneficial to the Employer, and not the employees.

In conclusion, the parties are in agreement on the major issues regarding compensation. With respect to the disputed issues of Longevity and Education pay, the Union urges the Factfinder to recommend that the parties adopt the Union's proposal, and raise the amounts to equal that of the Longevity and Education pay in the agreement between the FOP and the Employer.

### **Contract Re-opener and Fire Study Implementation**

At hearing, it was clear that the Employer and the Union are in agreement in principle to reopen the contract to address issues raised by FACETS, a third-party consultant engaged to assist the parties in making operational changes. At hearing, the Employer indicated that its proposal on to reopen the agreement in this respect, would be limited to issues raised by the work of FACETS, and the Union is agreeable to this approach.

### **Minimum Manning – Article 35**

Article 35 of the 2010 agreement deals with minimum manning. This Article states that the Employer will not operate a fire suppression shift with less than 73 bargaining unit personnel except in cases of emergency. The provision also requires that the Department will not operate with less than 22 companies. The Employer proposes to remove all of these requirements from the Memorandum of Agreement. The Union proposes to retain the current language.

The Union notes that this precise issue was addressed in a 2010 Fact-Finding by Factfinder Ronald Hoh. (Union Ex. 4). At that time, the Unified Government made the exact same arguments that it is making in this Fact-Finding.

The Employer's first argument is that minimum manning is not a mandatory subject of bargaining and thus is not appropriate for fact finding. However, the UG agreed that it was proper for the Fact Finder to make recommendations. The Union does not believe that it is necessary for a long argument in this regard. The Union notes that minimum manning language has been in the contract for decades. Indeed, the initial proposal was made by the Unified Government itself. (Union Exs. 4 and 5). And, again, the Union notes that Factfinder Hoh considered the identical argument by the Employer in 2010, rejected it, and issued recommendations on minimum manning. Factfinder Hoh also noted that either party was free to pursue this matter before the Public Employee Relations Board.

The Union submits that minimum manning is clearly a safety issue, not only for the fire fighters, but for the general public. Union Exhibit 6 is a copy of the National Fire Protection Association Standards for manning on fire suppression apparatus. Both sides acknowledge that the NFPA is the leading industry group in fire suppression matters. The NFPA standard calls for a minimum of 4 on duty personnel on each apparatus. The Union is not seeking to meet that standard. Instead, the Union is simply seeking to retain the current contractual language.

The Union also notes that, under the current language, the parties are to meet as a Labor-Management committee, to discuss and develop a new master plan for providing fire suppression service within the jurisdiction of the Unified Government. As Local 64 Business Manager Wing stated at hearing, this is currently an ongoing process, and the parties are meeting to develop the

master plan. With respect to minimum manning, the Union posits that it is reasonable to allow the joint Labor-Management committee to complete its work, and make recommendations for the new master plan. In order to do so, the Union respectfully requests that the Factfinder recommend making no changes to the current language.

Finally, the Union notes that no representative of fire department administration spoke in favor of changes in the minimum manning. The Fire Chief and his command staff are professional fire fighters and they know the importance of proper staffing. They know that this issue has been negotiated by the parties for many years. The Employer has presented no evidence to justify such a draconian proposal.

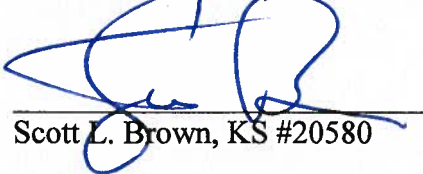
Accordingly, the Union respectfully requests that the Fact Finder recommend that the Unified Government's proposal for minimum manning be rejected. The Union further requests that the Fact Finder recommend that the language remain unchanged.

### **Fire Dispatcher Addendum**

The final issue addressed during the Fact-Finding hearing was the Fire Dispatcher Addendum. As noted by the parties at hearing, they are in essence in agreement on this issue. The Union believes that the best course of action would be to allow the parties time to work through the language changes. Accordingly, the Union respectfully requests that the Factfinder recommend giving the Union and Employer time to work through the issue and reach agreement.

Respectfully submitted,

BLAKE & UHLIG, P.A.



Scott L. Brown, KS #20580

475 New Brotherhood Building  
753 State Avenue  
Kansas City, KS 66101  
(913) 321-8884  
(913) 321-2396 – Fax  
[slb@blake-uhlig.com](mailto:slb@blake-uhlig.com)

Attorneys for IAFF Local 64