

IN THE MATTER OF THE FACTFINDING BETWEEN

**BRATTLEBORO PROFESSIONAL FIREFIGHTERS
LOCAL 4439**

AND

THE TOWN OF BRATTLEBORO

FACTFINDER'S REPORT AND RECOMMENDATIONS

INTRODUCTION

The Brattleboro Professional Firefighters, Local 4439, ("Union") and the Town of Brattleboro ("Town") are parties to a collective bargaining agreement that expired June 30, 2015. After negotiating for a period of time, the parties declared impasse and retained a mediator to assist the parties in reaching an agreement. No agreement was reached during mediation. The parties jointly appointed the undersigned as factfinder, pursuant to Vermont Statutes (21 V.S.A. §1732). A hearing was conducted on November 28, 2017, at which time the parties were given a full and fair opportunity to submit written and oral documentation regarding their prospective positions. Briefs were received on or about January 26, 2018, at which time the hearing was considered closed.

The Town was represented by Robert M. Fisher, Esq., Fisher & Fisher Law Offices, P.C., Brattleboro, VT. The Union was represented by Leah Marie Barrault, Esq., Pyle Rome Ehrenberg, PC, Boston, MA.

Factfinding is a statutorily mandated proceeding that should be considered an extension of the collective bargaining process. When the parties fail to reach agreement, factfinding is a

recognized process whereby a mutually agreed upon neutral delivers a written report recommending a reasonable basis for the settlement of the outstanding issues. The law covering municipal employees (21 V.S.A. §1732) specifies that factfinders should base recommendations on the following factors: (1) the lawful authority of the municipal employer; (2) stipulations of the parties; (3) the interest and welfare of the public and the financial ability of the municipal employer to pay for increased costs of public services including the cost of labor; (4) comparisons of the wages, hours and conditions of employment of the employees involved in the dispute with the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities or in private employment in comparable communities; (5) the average consumer prices for goods and services commonly known as the cost of living; and (6) the overall compensation presently received by employees including direct wages, fringe benefits, and continuity conditions and stability of employment, and all other benefits received.

The only outstanding issue before the factfinder is wages. Previously agreed upon items should be part of the final package. In addition, the Town made a final proposal containing a number of economic and language benefits that have not been formally agreed to. These address an increase in holiday pay to 112 hours; an increase in the reimbursement for boots/specialty equipment to \$250, paid as an annual stipend; opportunity for retirees to participate in a family medical plan; and several other language items. Some of these changes reflect updates in the firefighters' contract; some mirror language contained in other Town contracts. These items should be made part of any overall settlement. This Report and Recommendations is an effort to suggest a reasonable method to resolve wages, the only outstanding issue.

BACKGROUND

The Town of Brattleboro is located in southeastern Vermont, covers 32 square miles and has a population of just over 12,000 residents. Within the Town, there are over 1,000 multi-family units in addition to numerous assisted living facilities. There are several large companies. All of these can pose unique challenges for firefighters in all aspects of their work functions. Since 2013, call volume for medical assistance has increased each year.

The Brattleboro Fire Department (“Department”) is made up of two stations with varying equipment at each station. The Department has twenty-five (25) career personnel including the Fire Chief, the Assistant Chief, the Alarm Superintendent, and an administrative assistant. There are twenty-one (21) firefighters in the bargaining unit, with seven assigned to each shift. There is a minimum staffing requirement of six firefighters on each shift. The firefighters work a 24-hour shift with a 56 hour per week schedule.

OUTSTANDING ISSUE - WAGES

As noted above, there is only one outstanding issue – the percentage wage increase to be granted each year. Previously agreed articles and the items contained in the Town’s final offer should also be included in any final settlement.

Summary Position of the Union. The Union proposed a 2% increase for FY2017, 4% for FY2018, and 4% for FY2019.

Summary Position of the Town. The Town proposed a wage increase of 0% in FY2017, 2% for FY2018, and 2% for FY2019.

Discussion. The Union justified its proposal on the basis of internal comparisons with the Brattleboro police, other settlements in the Town, comparisons with wages in other firefighter

departments in the State, and the Town's ability to pay. The Town argued that its proposal is consistent with other settlements in the Town, including the Brattleboro police. It pointed out the low turnover in personnel in the Department, raising the question of why it needed salaries consistent with other communities in the State. Given the location of Brattleboro, the Town claimed it did not compete with others in the State for the attraction and retention of employees.

This case involves making a recommendation concerning the appropriate salary increase, taking into account the various criteria set forth in the statute. Making a recommendation on salary is not an exact science. Any conclusions may depend on how the factfinder considers the evidence submitted by the parties. A factfinder can get different results if he looks at top salary versus entry salary, career earnings versus salary at a certain level of experience, annual pay versus hourly pay (due to the different type of schedule worked by a firefighter), etc. Depending on the benchmarks selected, recommendations can legitimately differ.

Additionally, the priorities of each bargaining unit may differ. One group may seek to have money placed in a stipend as opposed to an overall wage increase. Another group may try to emphasize starting salaries as opposed to salaries of senior employees. If one group receives a benefit that had already been granted to other employees in the Town, one could argue that this is simply "fairness" as opposed to a "part of the package."

A factfinder must distill all this information when developing a recommendation for an appropriate wage increase. Based on many years of experience as a neutral, it is not unusual for reasonable people to differ on the analysis of this information. To make the instant matter more complex, the parties have differences regarding the cost of the settlement in the other units.

In developing any recommendation concerning the appropriate salary increase, the

various criteria identified in the statute must be evaluated.

Ability to Pay and Lawful Authority of the Municipal Employer

The Union suggested there was no issue regarding the ability to pay. The Town never suggested it did not have the ability to pay, even at the levels suggested by the Union. Based on the record, it appears the Town is financially sound and could afford any reasonable wage increase. Accordingly, based on the evidence and briefs submitted by both sides, there is no need to discuss the ability to pay. The question is whether the increases recommended by both sides are appropriate, based on other criteria set forth in the statute.

Shortly before this factfinding proceeding, the Town modified its proposal to withhold any increase in FY2017, claiming the books were closed for the fiscal year and there would be no ability to roll the FY2017 funds over to FY2018. Throughout my 40 year career as a mediator in Vermont, I have seen this argument made on a number of occasions. When final settlement was reached, the argument evaporated and the settlement included a wage increase for the expired fiscal year. The parties were able to find ways to get around the argument, even assuming there was any legitimacy to the argument. Based on this experience, there is no justification in denying a wage increase for FY2017.

In the same vein, a factfinder cannot consider whether or not both sides will accept the report. His/her analysis must be limited to what is viewed as a settlement consistent with the criteria set forth in the statute.

Cost of Living

Cost of living was not addressed by either side. Both concentrated on internal and

external comparisons. However, cost of living is one of the criteria identified in the statute. Accordingly, this is an element that should be addressed.

For the year ending in December, 2017, the consumer price index rose an annual rate of 2.1%, the same increase as the year before. These were the highest CPI increases in the last several years. While the wage increases offered by the Town are consistent with the cost of living, it is not unusual for wage increases to be slightly above the CPI. My own extensive experience with teacher settlements during the current round of negotiations indicate that the average settlement is in the 3% per year range.

Wage Comparisons with Brattleboro Police

The Town argues that its current proposal would mean a police officer earn \$9,297.90 more than a firefighter over the course of a twenty year career. If the comparison used the Town's previous offer of 2% each year over three years, a firefighter would earn \$14,674.30 more than a police officer over the same period. If the Union offer of 2%-4%-4% was accepted, the firefighter would earn \$60,264.02 more over a 20 year career.

In contrast, while acknowledging wage increases of 1% wage on January 1, 2016, 1% on January 1, 2017, 1% on January 1, 2018, and 0.5% on January 1, 2019, the Union stressed that the police received a major step change effective January 1, 2016 that increased pay by an average of 4.24%, or a total increase over term of between 7.5% and 8%. (The Town claims this longevity change is valued at 0.5%)

A review of the salary grids for both units shows that, in prior contracts, firefighters have negotiated better salaries during the initial years of a career while the police have stressed salaries for mid-career and longer terms employees. It appears that changes in the police salary

schedule in the current round of negotiations put more emphasis on early career salaries.

The estimated cost of these changes, as stated by the parties, is dramatically different. Any analysis of Calendar Year ("CY") 15 rates versus the CY16 rates indicate a cost of significantly more than a 1% wage increase. The new schedule established an academy rate at the entry level and new steps for year 13 and 14 to benefit senior officers. The PO1 rate went from \$18.47 per hour in CY15 to \$20.25 in CY16, a change of almost 10%. At the PO12 rate, the hourly rate is only one (1) cent apart; however, the establishment of steps for a PO13 and PO14 provided increases of 3% and 2% over the previous year, benefiting senior officers. While it is clear the salaries in each step for CY17, CY18 and CY19 went up by 1%, 1% and 0.5%, respectively, the changes in the schedule from CY15 to CY16 make it clear it involved significant increases to the grid. The actual cost of these changes depends in large part on the demographics of the personnel in the police unit.

The Union's analysis focused on a comparison between a 15 year firefighter and a 15 year policemen, with various levels of education. This may be too narrow a comparison; it should include the total income for both police and firefighters, starting at entry level and continuing 15 or 20 years. Such a comparison can be difficult and somewhat arbitrary. If one group decides to emphasize certain benefits, such as an EMT stipend or a shift differential in lieu of wages, the accuracy of any comparison can be challenged. Even if these other benefits are not changed, a comparison must assume that both the firefighters and police officers will get the same percentage increases throughout the 15 or 20 year comparison.

Additionally, benefits such as shift differential, training/special assignment stipends, education stipend, and the stipend for boots/shoes also can be considered part of total

compensation. However, each group emphasized different stipends, making comparisons difficult. Further, some of these items are appropriately different. For example, regarding shift differential, police work eight (8) hour days and, by the nature of the job, a certain percentage of the workforce is permanently assigned to work an evening or graveyard shift. Firefighters work 24 hour shifts; a shift differential would not be appropriate. Both schedules have advantages and disadvantages and work well for the group assigned, but to consider the shift differential as compensation is not appropriate. A similar argument can be made for the EMT stipend now required for all firefighters, raising the question of whether it should be paid in a separate stipend or included as part of wages. Analogous arguments can be made for other differentials.

The reality is that any comparison between police and fire wages/benefits can be somewhat arbitrary and open to numerous interpretations and evaluations that could bring vastly different conclusions. All of these various components must be considered, along with other internal and external comparisons raised by both sides.

Other Internal Comparisons within the Town

Two other bargaining units in the Town recently settled contracts covering the same period in dispute with the firefighters. Local 944, United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union, representing employees in the Department of Public Works, received a 2% increase for FY2017, a 2% increase for FY2018, and a 3% increase for FY2019. There were several other minor non-economic items agreed to, the value of these benefits is not clear. Some of these may have been considered an effort to move to an equalization of benefits throughout the Town.

Clerical employees, represented by the International Union of Operating Engineers,

received wage increases of 1.5% for FY17, 1.5% for FY18, and 2% for FY19. There were also increases in longevity payments, with stipends beginning in year 1 instead of year 10. In addition, the payments for 10, 15, and 20 years of service increased substantially. There was no information provided regarding the cost of these longevity payments.

Based on the above, it is impossible to accurately determine, based on the information provided, the total cost of these settlements. Furthermore, even if accurate information was provided, such information will be only one of the factors to be considered. It is not determinative.

Wages for Firefighters in Comparable Communities

The statute requires the factfinder to consider wages and settlements in surrounding communities. The Union argues that salaries in the Town lag behind the hourly wages in other communities by as much as \$3.31 per hour, or almost 18.6%. The Town maintains that these communities are in other parts of the State and are in different employment pools; further it has no problem recruiting and retaining employees.

The arguments made by both sides are compelling. Both must be analyzed when making any recommendation concerning the appropriate wage increase. The Town is geographically isolated from other communities in the State with full time firefighters; the Town has a different job market for its employees. One of the major factors that must be considered in determining appropriate wages is the ability to recruit and retain. At the same time, one does not want firefighters in Brattleboro to be paid significantly less than their peers in other communities. Salaries in other communities must be considered; neither is determinative.

Conclusions and Recommendations

As one should be able to ascertain from the above analysis, developing a recommendation for a salary increase is not an exact science. Depending on what is evaluated and what is emphasized, a different factfinders could reach dramatically different legitimate conclusions. Having written numerous factfinding reports and interest arbitrations in Vermont and other states, the most compelling comparisons are usually various internal comparisons within the jurisdiction involved.

The percentage wage increases for various bargaining units within a jurisdiction are usually consistent. All bargaining units in a school district, city or town will usually receive get the same percentage increases. In some cases, one of the units may receive a small economic benefit to address a particular problem or situation. Increases in a clothing allowance or shift differential are excellent examples of economic items that may be addressed outside the pattern wage settlement.

In the instant matter, despite the assertions by the Town, it is impossible to identify any pattern in the settlements achieved in the Town. The police department received a 1% increase for each of the first three years and 0.5% increase for the first part of year 4. In addition, police officers and the Town agreed to a restructuring of the pay scale. There is a significant difference in the parties' assessment of the cost/value of this change. As noted above, a simple evaluation indicates significant increases in salary in the junior steps with more modest adjustments in the more senior steps. There is no ability to determine a precise overall cost. It may have been an effort to increase the salaries of police in the early stages of their careers, consistent with the firefighters approach to wages over a career. Regardless, it is clear the

settlement cost significantly more than 2% per year.

DPW has a settlement of 2%-2%-3% in addition to an increase in employee health insurance premiums. The Clerical Unit received a 1.5% for FY2017, 1.5% for FY2018 and 2% for FY2019, in addition to an increase in the longevity benefit. It was not clear what this benefit was worth, but, on its face, it appears to be significant.

Based on these internal comparisons, it is clear the settlement in other Town units was more than 2% per year, inclusive of the FY2017 year.¹ Accordingly, any recommendation must be more than the 2% per year offered by the Town. However, it is also clear that the settlements in the other Town units are less than the 2%-4%-4% demanded by the Union. In reaching my recommendation, an assessment had to be made regarding an evaluation of the likely increases in salary, including changing in the schedule (such as changes in the step structure and/or change in the longevity payments) in each of the three units. The previous pages have indicated this is not an exact science; however, based on 40 years of experience as a labor mediator and 15 years of experience as a factfinder, I have become well versed in accurately predicting the cost of settlements. Based on my evaluation of the internal comparable settlements, the overall total increase in the three units has averaged approximately 7.5% over the three years. Accordingly, the wage package for the firefighters should be a 2% wage increase in FY2017, 2.5% in FY2018 and 3% in FY2019. This should keep the firefighters in the same relative position they were in with employees in the other units in the Town, including the police.

¹ As noted earlier, there is no justification for the Town's refusal to pay a wage increase in FY2017.

Recommendation. The following increases should be agreed to:

1. Effective July 1, 2016 (FY2017) a wage increase of 2%
2. Effective July 1, 2017 (FY2018) a wage increase of 2.5%
3. Effective July 1, 2018 (FY2019) a wage increase of 3%

CONCLUSION

Throughout this Report, I have attempted to balance the interest of the employees, the Town, and the citizens of the community. The Report has been an effort to balance the arbitrary nature of assessing “comparable” settlements with the Factfinder’s judgment as cost of the other settlements in the Town. It is my hope that this Report will form the basis of a settlement for the parties in this contractual dispute.

Dated this the 10th day of February, 2018



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