

**MINUTES
CIVIL SERVICE COMMISSION MEETING
WEDNESDAY, MAY 7, 2008
5:30 P.M.**

The Civil Service Commission met at 5:30 p.m. in the Municipal Government Complex Commission Chambers, located on the second floor at 201 W. Water Street.

Those present were Bruce Hogston, Dave Vollette, Mike Gutmann, Clayton Brown, and Alissa Blankenship. Members Absent: None Also present were Elaine Barton, Human Resources Director, Gary Connell, Fire Chief, and Wayne Willcox, Police Chief.

Introductions of the Board were made.

Selection of Chairman – Clayton Brown
Selection of Secretary – Alissa Blankenship

Meeting called to order by Clayton Brown.

REGULAR CIVIL SERVICE MEETING

Minutes of December 20, 2007

Bruce Hogston moved to accept the minutes and Clayton Brown seconded. All members were in favor and motion carried unanimously.

Language for School Board Rules

Tim Reed, Piqua City School Business Coordinator, requested the board to change the language in Section C of the Piqua City School's Rules. He requested the title of Administrative Assistant by changed to Business Coordinator.

Mr. Reed also asked that in Section D the position of Secretary be corrected to Payroll Clerk.

Section I – The Food Service Director would be responsible for hiring his/her own staff. The Business Coordinator would no longer handle this.

Bruce Hogston made a motion to accept these changes and Mike Gutmann seconded.

SCHOOL BOARD RULES CLARIFICATION

Alissa Blankenship stated that Sec 1A Rule 2 states the civil service board consists of 3 members and it needed updated to five.

Mike Gutmann asked if the school board's rules are separate from the City of Piqua.

Tim Reed stated that they do have separate rules from the City of Piqua. The school board is required by the Ohio Revised Code to use the Civil Service Board because they operate without a labor union.

Bruce Hogston questioned if this Civil Service Board should be receiving a copy of the Civil Service test results given by the schools. Tim Reed stated that he thought that they were being sent, and he will make sure that they are sent in the future.

RULE CHANGE REQUEST FOR MILITARY CREDIT

Gary Felver spoke on behalf of the American Legion. He requested that the criteria for receiving extra credit be lowered from serving eighteen (18) to twelve (12) months in the military.

Prior to the meeting the Law Director reviewed this request and gave an opinion that since the time limit was stated in the City of Piqua Charter, the request would have to be made to the City Commissioners for approval to be put on the ballot for the citizens of Piqua to vote on.

Gary Felver asked why he has to go before the City Commission. He stated that he will run out of time if he doesn't start getting the signatures required to put it on the ballot in November. Mike Gutmann asked if the City Commission had to approve the amendment before it is put on the ballot. Elaine Barton said that she would check with the Law Director.

Wayne Willcox, Chief of Police, said he believed if the request was reworded to request it as a supplement to the Rules, than maybe the Civil Service Commission could act on changing the rules.

Gary Felver asked the Commissioners if the request was reworded, if they would be favorable to adding a supplement the Civil Service Rules. Bruce Hogston was still unsure if just lowering the length of time served from 18 months to 12 months covers everything they want. Mr. Hogston will check on the wording to see if using Title 10 or Title 22 would be a better way to state it.

Mike Gutmann stated that the next step would be to have the language redrawn and considered by the Law Director.

Clayton Brown said that he feels like the existing twelve (12) months listed in the City Charter is adequate.

OTHER BUSINESS

Bill Hogston distributed a copy of the ruling of the fact finder to each of the Commission members (attached).

Bruce Hogston made a motion to adjourn and Clayton Brown seconded. The meeting was adjourned at 6:15 p.m.

APPROVED: 7-10-08
Date

PIQUA CIVIL SERVICE COMMISSION

Clayton Brown
Clayton Brown, Chairperson

Alissa Blankenship
Alissa Blankenship, Secretary

Bruce Hogston
Bruce Hogston, Member

Michael Guttman
Michael Guttman, Member

David Vollette
David Vollette, Member

Contract language between the City of Piqua and Piqua Firefighters Local #252

ARTICLE 23. PROMOTIONS AND APPOINTMENTS.

Section 1. Appointments. All vacancies and promotions shall be filled in accordance with Civil Service Rules and Regulations for the City of Piqua.

Section 2. Promotions and Disqualification. Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position. No Firefighter classed employee shall be eligible to take a promotional examination unless he/she has served a total of sixty (60) months in a lower non-officer classification from the most recent date of hire to the Piqua Fire Department. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

A. Testing, scoring from the position of Firefighter to the next promoted rank shall be as follows:

1. Written test - 50%
2. Assessment Center - 50%
3. Seniority points per O.R.C. 124.45

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g., if the written score is 80% and the assessment center score is 90%, the final score will be 85%. A firefighter must score at least 70% on the written test to go on to the assessment center. There will be no minimum passing score on the assessment center.

B. The City Manager shall make promotional appointments in order of their rank on the certified list with the highest score being first and so on.

C. Testing and scoring for assistant fire chief shall be governed by the City's Civil Service Rules.

Section 3. Paramedic. Appointment to Paramedic shall be based upon certification.

**Contract language between the City of Piqua and Piqua Firefighters Local #252
(Fire Officers)**

ARTICLE 23. PROMOTIONS AND APPOINTMENTS

Section 1. Promotions and Disqualification. Appointment to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position. A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

A. Testing. Scoring from the position of Captain to Assistant Chief shall be as follows:

1. Written Test – 50%
2. Assessment Center – 50%
3. Seniority points per ORC 124.45

The written test and assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g. if the written score is 80% and the assessment center score is 90% the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

B. The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 30, 2007**

In the Matter of:

The City of Piqua, Ohio

07-MED-06-0692

and

Piqua Firefighters Local #252 (Fire Officers)

**CORRECTED REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Stacy M. Wall, Law Director
Cynthia Holtzapple, Finance Director
Elaine Barton, Human Resources Director
Gary Connell, Fire Chief

For the Union:

William Hogston, President
Michael A. Peltier, Assistant Fire Chief

out, those employees' movements in pay grade are tied to obtaining an Associates Degree or its equivalent. There is no such linkage in the fire command officers' Agreement, making the situation here distinguishable. There was no evidence presented at hearing as to the numbers of the members of the bargaining unit who desired to take advantage of such an educational benefit, and thus, even under the Employer's withdrawn proposal, there is no clear estimate as to the cost of the proposal during the term of this Agreement. In light of the Employer's more recent budget information, the new benefit should not be added to the Agreement.

Recommendation: Current Language

ARTICLE 23 - PROMOTIONS AND APPOINTMENTS

Union Position: The Union proposes that the current language from the Civil Service Commission Rules regarding promotions be incorporated into the Collective Bargaining Agreement. In the past year, the Employer has attempted to make several changes to the civil service promotion rules which have been opposed by the Union. The Employer has proposed elimination of anonymity rules, the addition of an interview process, and a change which would allow the City Manager to select employees to be promoted from the list without regard to the ranking of scores. Each of these proposals was vehemently opposed by the Union. In addition, the Union filed a grievance regarding the conduct of the most recent promotional examination. Although none of the proposed changes have been implemented, and the grievance was withdrawn, the attempts to change the current Civil Service promotional rules remain an issue between these parties. Changes to the Civil Service Commission rules have in actuality been negotiated with the Union in the past. The Union's proposal would insure that the current rules could not be altered during the term of the Agreement without the agreement of the Union.

Employer Position: The Employer argues that the language proposed by the Union would unnecessarily inhibit the ability of the Civil Service Commission to make changes to its rules. This is contrary to the concept of civil service as set forth in the City Charter. The impetus for

this proposal was the implementation of an interview process for police promotions. The Employer did not implement the process for fire fighters and fire officers based upon the Union's objections. The process, however, has proved to be valuable, and both the Fire Chief, who was initially opposed to the change, and the Civil Service Commission believe that it adds a useful tool to the promotion process. The Civil Service Commission should not be prevented from implementing this or any other change in the process which it deems appropriate. This is part of the duty with which it is charged by the City Charter, and it should not be restricted. The Employer further argues that the contractual language should not supersede statutory rights based upon a prior recommendation of this Fact-Finder in Case No.2001-MED-10-1010.

Discussion: The provision proposed by the Union is the major bone of contention between the parties in this case. The Union desires to incorporate current Civil Service Commission rules regarding the procedures for promotions into the Agreement in order to insure that the procedures will not be altered at the behest of the Employer. The current contractual language provides only that "...vacancies and promotions shall be filled in accordance with the Civil Service Rules and Regulations...". Although to date, the Civil Service Commission has not made proposed changes without the agreement of both the Employer and the effected bargaining units, without contractual language, it is clear that such changes could be made without meaningful input or agreement by the Union. The Employer has proposed at least three significant changes to the Civil Service Rules within the past year. The evidence demonstrated that the Union was permitted to have input before the Civil Service Commission, and the Commission did not make changes based upon the lack of agreement of the Union. Although none of the Employer's proposed changes was adopted based upon the Union's opposition, a Commission with different members might well reach a very different result. This has justifiably raised concerns on the Union's part that the promotional procedures or requirements could be changed without its agreement absent the protection of contractual language.

There is no doubt but that even though the Civil Service Commission is not the

Employer, it has in effect negotiated changes in its promotional rules with the Unions effected in the past. On each occasion that the Employer has proposed changes, the Commission has listened to all parties, and refused to implement changes with which the Union did not agree. The evidence further demonstrated, that changes, such as the addition of the Assessment Center, were made after full participation and agreement by both the Union and the Employer. Since the parties have a history of negotiating on this issue, the continuation of negotiation should be protected against changes in the make up of the Civil Service Commission.

The Union's proposal, however, goes beyond its permissible purposes in this case. The Union's proposal seeks to include not only requirements for promotion from Captain to Assistant Chief, but also promotional rules for promotion to Senior Assistant Chief and Fire Chief. These two positions are not included within the bargaining unit. It is therefore beyond the scope of the collective bargaining process to attempt to control the manner in which these promotions will be accomplished. To that extent the Union's proposal must be rejected.

The Employer contends that the Union's proposal would effectively emasculate the Civil Service Commission by preventing it from exercising one of its crucial duties granted by the City Charter. While the proposal would indeed inhibit the Commission's ability to amend its rules relating to fire promotions during the term of the Collective Bargaining Agreement, the removal of authority which was once the exclusive province of civil service commissions through collective bargaining is a common occurrence. As collective bargaining has expanded the role and influence of civil service commissions has contracted. In fact, these parties have agreed that discipline, which was reviewed solely by civil service commissions pursuant to Ohio Revised Code Chapter 124 prior to the advent of collective bargaining in the public sector, shall be reviewed through the grievance procedure culminating in final and binding arbitration. The removal of the ability of the Civil Service Commission to amend its rules on this issue is therefore insufficient reason to reject the Union's proposal.

The Employer contends that this Fact-Finder's decision in the Greenville Patrol Officers

Association & City of Greenville, Case #2001-MED-10-1010 is on point and should be controlling here. The Employer's argument, however, misreads that decision. In the Greenville case, the Employer made a broad proposal which would have provided that contractual language controlled over all statutory provisions which might relate to matters covered in the Agreement. The purpose of this proposal was to react to a decision by the Ohio Supreme Court which held that where a contract is silent, statutory provisions prevail. The language was deemed to be unnecessary and potentially ineffective for the purpose for which it was proposed. The Fact-Finder did not determine, however, that contractual language may not and should not prevail over statutory language as a matter of course. Such a conclusion would be contrary to the concept of collective bargaining.

In light of the history of effectively negotiating changes in the Civil Service Commission's rules through the Civil Service Commission which as an entity is not the Employer, and is therefore not technically obligated to bargain with the Union, it is reasonable to incorporate those rules into the Agreement in order to protect them against un-negotiated change. The Employer's repeated attempts to alter the rules in the past year indicate that in the event of changes in the membership of the Civil Service Commission, the rules could well be changed without Union agreement.¹

Recommendation: Change Section 2 as follows:

Section 2. Promotions and Disqualification. Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position.

A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has

¹ While there was a significant amount of testimony presented by both sides concerning the necessity for, efficacy of, and procedures for a new interview component of the promotional test, it must be stressed that that issue is not before the Fact-Finder. The new interview requirement for police, which the Employer would also like to adopt for fire, while a driving force behind the disagreement between the parties on the proposed contractual language, was not the subject of negotiation or of a specific proposal. The Fact-Finder does not, therefore make any recommendation as to whether or not such an interview component should be added to the promotional process.

been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

A . Testing. Scoring from the position of Captain to Assistant Chief shall be as follows:

1. Written Test - 50%
2. Assessment Center - 50%
3. Seniority Points per O.R. C. 124.45

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g., if the written score is 80% and the assessment center score is 90%, the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

B. The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.

ARTICLE 33 - TERM OF AGREEMENT

Union Position: The Union proposes a change in the language of Section 2 of this Article, which requires the Union to submit its proposals for a successor Agreement to the Employer 120 days prior to the expiration of the Agreement. The Union proposes that both parties submit their proposals 90 days prior to the expiration of the Agreement. The Union argues that the requirement that it submit its proposals 120 days prior to the Agreement's expiration while the Employer need submit nothing until actual negotiations creates an undue burden on the Union.

Employer Position: The Employer argues that the language should remain the same. The Employer can not submit its proposals 90 days in advance of the expiration of the Agreement due to the uncertainties of the budget process at that time.

Discussion: As the Union points out, the current language requires it to present its proposals four months in advance of the expiration of the Collective Bargaining Agreement, while requiring nothing of the Employer. The Employer does not argue that this period should not be shortened for submission of the Union's proposal. Instead, it argues solely that it cannot

IN THE MATTER
OF
INTEREST ARBITRATION
CONCILIATION
OPINION & AWARD

BETWEEN
The
Piqua Firefighters/252
and the
City of Piqua, Ohio

CASE NO. SERB 07-MED-06-0692
CONCILIATOR:JOHNS.WEISHEIT
ISSUE:Interest
Arbitration/Conciliation
DATE OF HEARING: January 10,2008
DATE OF AWARD: January 31,
2008

REPRESENTATION
by

Employer Representatives
Stacy Wall, Esq. Law Director
Cynthia Holtzapple, Finance Dir.
Elaine Barton, H. R. Dir.

Union Representatives
William B. Hogston, Pres. Local 252
Michael A. Peltier, Ass't Chief
William E. Quinn. VP OAPFF

AUTHORITY

This matter was brought before Conciliator John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC 4117 and rules and regulations of the Ohio State Employment Relations Board. The matters before the Conciliator are for consideration and determination, based on merit and fact according to terms of the labor agreement and provisions of ORC 4117.

Issue #2 - Article 23, Promotions and Appointments

Union Final Position

~~Section 2. Disqualification.~~

Section 2. Promotions and Disqualification. Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position. A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

A. Testing. Scoring from the position Captain to Assistant Chief shall be as follows:

- 1. Written Test - 50%**
- 2. Assessment Center - 50%**
- 3. Seniority Points per ORC §123.4**

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g. if the written score is 80% and the assessment center score is 90% the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

B. The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.

Summary of the Union Argument:

The Union contends the proposed language is necessary to protect the integrity of the promotional system. It also asserts that the language is consistent with past and current practice.

Employer Final Position: Retain current Contract language.

Summary of Employer Argument:

The City argues that the Union's proposed language will deny the City's Civil Service

Commission the authority to govern promotions. The City holds that the Commission should be permitted to govern promotions as well as its other City Charter responsibilities. It contends that acquiescence to the Union's proposed language would be in direct conflict to the City Charter and, in essence, negate the need for the Commission. The City notes that a Charter amendment adopted by the electorate supersedes the Collective Bargaining Agreement. It further cites that the Commission adopted an ordinance on December 17, 2007, adding two additional members increasing the size of the Commission from three to five members. The City argues that the new five member Commission should have the ability to exercise its authority which had been granted to it by the City Charter at the time of its passage by the electorate.

CONCILIATOR FINDING AND DETERMINATION

ISSUE NO.2 - ARTICLE 23 Sec. 2 Promotions and Appointments

A review of the parties' actions in this matter reflects strong and diverse positions regarding the remaining issue put before this Conciliator for final and binding determination. The record put forward indicates the parties engaged in good faith bargaining throughout the negotiations process. This included their mediation efforts at Fact Finding as well as Conciliation. There are two unresolved issues before the Conciliator to be the final ingredients to the successor Collective Bargaining Agreement (CBA). In the course of reaching a final determination and establish a totality to the CBA as provided under ORC 4117, most issues addressed in negotiations were resolved by the parties.

While the Union accepted the Fact Finder's Report, the City did not. The City related its objections to the Fact Finder's Report. The Fact Finder's Report included terms that closely related the Union's last proposal. The Union incorporated the Fact Finder's recommendation into its final offer before the Conciliator. The parties reflect a strong commitment to its final position.

The Conciliator is without authority to modify the final position ultimately put before him on an issue by issue basis. Considering the evidence presented, it is determined that the most appropriate position on each issue that is to be included in the Contract is set forth in the following section of this Opinion and Award.

This issue was reviewed in significant detail by Fact Finder Braverman. The premise and facts used in support of her determination and recommendation are found to be based on a legitimate and logical conclusion and rationale.

The Employer's strong objection to the Union's proposal reflects a position to protect the power of a separate entity to that of the City governance and management. This is not found to be a strong or effective argument in matters of collective bargaining. While accepting the argument that the Civil Service Commission is a separate entity, a review of the City Charter clearly reflects Commission function can be described at least as that of management.

ORC §4117.12 states in its premise that "**ORC 4117 is to be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between public employers and their employees.**"

The opinions reflected in this Opinion and Award are guided by this directive.

Commission powers and authority may be from time to time altered by external conditions.

As noted, Civil Service Commissions at a local and State level were significantly altered with the advent of the Ohio Collective Bargaining Law. This is most apparent with the inclusion of final and binding grievance arbitration provisions in the resulting public sector labor agreements.

The expiring agreement between the parties specifically addresses the Civil Service rules regarding Union employee promotions and vacancies. While said language is brief and general, it is a specific term of the Agreement. The Union has offered a bona fide basis to support its concern in obtaining a change to a more specific provision regarding promotions and appointments.

Determination

It is reiterated that the Conciliator is restricted to a "last best offer" and is without authority to modify such offer unless mutually agreed to by the parties. The Union language is based on the language in the Firefighters Agreement. It is language as offered by the Fact Finder.

Based on the information, actions, and facts put before this Conciliator, it is determined that the Union's proposal is to be included in the Contract. To retain the status quo is not determined in the best interest of promoting an orderly and constructive relationship between the public employer and the employees.

It is hereby determined that the Union's last position is to be included in the Contract.

FINDING AND ORDER

The Conciliator has determined that the following last offers be entered into the Contract between the Parties:

Issue #1

The proposal offered by the City reflecting that the wage increase is to be effective January 1, 2008.

Issue #2

The proposal offered by the Union as follows:

Issue #2 - Article 23, Promotions and Appointments

Union Final Position

Section 2. Disqualification.

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C. Testing. Scoring from the position Captain to Assistant Chief shall be as follows:

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D. The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.