

Before
Rex H. Wiant
Fact Finder

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In the matter of fact finding between:)
Unified Government of Wyandotte)
County & Kansas City, Kansas)
Fire Department)
and)
International Association of)
Fire Fighters Local 64)

Kansas PERB #75-1-2017
MVP # 2467.00159

For the Employer:

Ryan Denk, Chief Spokesman and Attorney
Joe Connor, County Administration
Shakeva Christian, Human Resources
Jack Anderson, EMS Transport Chief
Doug Bach, County Administrator
John Paul Jones, Fire Chief
John P. Peterson, Associate Chief
John W. Zimbelmar, Associate Chief
David, A. Shost, Associate Chief

For the Union:

Scott Brown, Chief Spokesman and Attorney
Bob Wing, State President
Steve Long, IAFF Local 64
Pat Young, IAFF Local 64

Jurisdiction:

The parties selected Rex H. Wiant to serve as Fact Finder in the instant dispute from a list provided by the Kansas Public Employment Relations Board. The hearing was held under KSA 75-4332 on November 17, 2016 in City Hall. Both sides presented complete cases. Neither side presented evidence on Issue 6, Vacation. The Employer did not include it in their evidence book nor the Union in their brief. The Fact Finder included this in his decision because it was listed as an impasse issue, but no recommendation is made. All evidence was subject to cross examination. The Union requested an opportunity to write a brief. The brief was received on December 1 and the hearing was declared closed.

Background:

The Unified Government of Wyandotte County & Kansas City, Kansas (hereinafter the “Employer”) is a legislatively created merger between the county and city governments. It is located in eastern Kansas and is part of the Kansas City Standard Metropolitan Statistical Area.

The International Association of Fire Fighters Local 64 (hereinafter the “Union”) represents all firefighters of the rank of Captain and below. They also represent the ambulance crews. There are approximately 415 employees in the bargaining unit.

There is a long history of negotiations that occurred before the governmental merger and the creation of the Kansas Public Employment Relations Board. The last contract between the parties expired on the last day of 2013. The parties began negotiations on September 10, 2013 and held thirteen negotiations sessions. The parties jointly agreed they were at impasse on January 27, 2016 however neither submitted a Petition of Impasse. The parties met four times with FMCS Commissioner Pat Dunn to try to resolve the matter. On July 14, 2016 the Employer submitted an Impasse Petition with the Kansas PERB. The parties met with Commissioner Dunn one last time on September 20, 2016 to attempt a settlement without success. The Union has continued to work under the expired contract.

The issues listed in the Employer petition are as follow:

1. Term of the Agreement (Duration)
2. Sick Leave
3. Medical Plan
4. Discipline
5. Grievance Procedure
6. Vacation
7. Overtime
8. Shift exchange, Trading Time
9. Promotions
10. Compensation
11. Contract Reopener and Fire Study Implementation
12. Minimum Manning
13. Dispatcher Addendum

The Union did not respond to the Employer petition. All issues, except vacation, were argued by both sides at the hearing.

Kansas Law is peculiar in that the code calls for a fact finding hearing, but does not list any criteria upon which the Fact Finder must base his decision. The Fact Finder will base his decision on 1.) history of the parties bargaining, 2.) internal comparability and 3.) current financial condition of the Employer.

1. Term of the Agreement (Duration)

Employer Position: 4 year agreement

Union Position: 5 year agreement with a reopener for compensation for the last year.

Discussion: The Fact Finder recommends the Union Position with one change. The contract is for five years with no reopener. These parties have been negotiating for nearly four years without much getting done. To either settle this contract or have the Employer pull an end around and then return to more negotiations is pointless. Negotiations should begin and end.

They should not go on forever. This way the parties have one year off before they return to the table.

2. Sick Leave

Employer Position: Two-tiered system. No change for current employees. Reduced sick leave for new employees.

Union Position: No change. Bargaining positions show that the Employer is willing to abandon these changes in negotiation.

Discussion: The Fact Finder recommends the Union Position. The Fact Finder has been on record before that a two tiered system is a recipe for failure. The Employer argument that other groups have accepted this change does not alter the Fact Finder's opinion. Having employees work side by side with one receiving a lower level of sick leave will only cause problems that can best be avoided by never adopting such a system.

3. Medical Plan

Employer Position: All employees pay \$30.00 per month.

Union Position: All employees pay \$30.00 per month. Money to be used to reduce the health fund deficit.

Discussion: The Fact Finder recommends the Employer Position. Having the employees pay \$30 per month is a big change. It is time that the change is made. The Fact Finder rejects the Union requirement that the money go to pay the debt that has been created. Much more needs to be done to deal with that.

4. Discipline

Employer Position: Increase the number of suspension days that an employee must serve before grievance rights are exhausted from 2 shifts to 4 shifts for 24-hour shift employees and 4 shifts to 8 shifts for 8-hour shift employees.

Union Position: There is no evidence that a problem exists with the language.

Discussion: The Fact Finder recommends the Union Position. There is no evidence of a problem. If a problem does arise the parties have in their power to expedite an arbitration hearing. The Fact Finder has served as a grievance arbitrator where the time from the filing of the grievance, to the hearing, to the issuing of the decision is under a week. It can be done.

5. Grievance Procedure

Employer Position: Add phrase “the time that the events giving rise to...”

Union Position: No change.

Discussion: The Fact Finder recommends the Employer Position. Both sides agree that the language means that. This is simply a clerical correction.

6. Vacation—Not presented by either side. No recommendation issued.

Employer Position:

Union Position:

Discussion:

7. Overtime

Employer Position: Make two changes: 1. Add language to deal with the problem if the Employer cannot reach an employee by phone. 2. Reduce compensatory overtime from 480 hours to 240 hours.

Union Position: Negotiate the changes.

Discussion: The Fact Finder recommends adding the first change of the Employer and reject the second change. The problem of what to do if an employee cannot be reached is a very real problem. Management may not be put on hold. They must have the authority to fill the overtime.

Reducing compensatory time has the unwanted result of immediately increasing the overtime payout by the Employer. Compensatory time has proven to be a benefit that employees like.

8. Shift Exchange, Trading Time

Employer Position: Two changes: 1. An employee cannot have a trade imbalance of more than six (6) shifts. 2. An employee cannot pay another employee to work his/her traded shift.

Union Position: Trading time is common in Fire Departments in the Kansas City Area and across the country. There is no problem that needs to be changed.

Discussion: The Fact Finder recommends the Employer Position. Trading time will continue under the Employer Position in a limited form. One minor change the Fact Finder would recommend is that the Chief has the authority to approve trades that would take the imbalance to over six shifts. There is some unexpected circumstance that could arise.

An assumption in trading time is that it is a trade between two willing firemen. There should never be a payment.

9. Promotions

Employer Position: Four changes: 1. Reduce the percentage required to pass the promotional examination from 75% to 70%. 2. Eliminate the seniority credits for promotion to the ranks of Driver and Captain. 3. Establish eligibility pre-requirements to test for Captain. 4. Clarify that there shall be an active promotional list at all times and the Department is permitted to conduct promotional testing whenever necessary to establish an active promotional list.

Union Position: The parties have worked out the changes.

Discussion: The Fact Finder recommends the Employer Position. The Union agreed that the parties had worked out the changes. This simply implements them.

10. Compensation

Employer Position: Make the following wage increases:

May 1, 2015	1.5%
July 1, 2016	1.5%
January 1, 2017	2%

Union Position:

January 1, 2016	1%
July 1, 2016	2%
January 1, 2017	2%
January 1, 2018	Reopen compensation

Discussion: The Fact Finder recommends the Employer Position with one addition. The Fact Finder recommend an additional pay increase will occur on January 1, 2018 of 2%. This insures that the contract is buttoned up for the full term. The break down follows:

May 1, 2015	1.5%
July 1, 2016	1.5%
January 1, 2017	2%
January 1, 2018	2%

11. Contract Reopener and Fire Study Implementation

Employer Position: Reopen language when FACETS study is completed.

Union Position: Reopen language when FACETS study is completed.

Discussion: The Fact Finder rejects both positions. The contract is settled for five years. If the parties agree that the FACETS study has language that is appropriate then they may use a side letter of agreement to amend it to the contract.

12. Minimum Manning

Employer Position: Remove language that requires that the Employer maintain 22 different fire companies.

Union Position: This is an ongoing process that need to be addressed in the labor management committee.

Discussion: The Fact Finder recommends the Employer Position. This Fact Finder believes that the parties can get rid of minimum manning when they know when all fires and other emergencies will occur. The problem is fire and emergencies cannot be predicted. The teams have to be ready when they occur. The problem with the current language is that it contains extra language that requires the Employer to operate 22 fire companies. This is not minimum manning. The Fact Finder agrees with the Employer that the number and location of the companies is a management right. Kansas City, Kansas is growing and changing. It is crazy to think that the location of fire companies cannot be changed to reflect the growth and the changing world.

13. Dispatcher Addendum

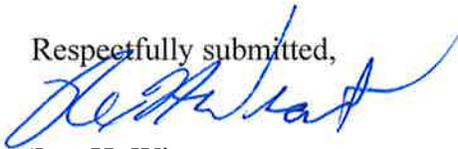
Employer Position: The Employer has gone through the addendum to the contract and cleaned up several outdated provisions.

Union Position: The parties should have time to work through these changes.

Discussion: The Fact Finder recommends the Employer Position. The changes requested are clean up and clerical changes. The parties have had and ample time to make these changes.

Fact finding is a peculiar way to solve disputes. It is neither art nor science. It requires a person of less experience in a dispute to make recommendation to professionals who have worked for years on the specifics of the issues presented. I have never seen a Fact Finder who did not want his recommendations to be adopted in total. I admit, I would like that. That is highly unlikely. I would like to see that the parties use my recommendations as fresh thoughts on old issues. I also would like to see the four individuals meet for one hour to attempt to work out a final settlement. Those four individuals are Ryan Denk and Doug Bach representing the Employer and Scott Brown and Bob Wing representing the Union.

Respectfully submitted,



Rex H. Wiant

Fact Finder

Dated on December 5, 2016 in Kansas City, Missouri.