

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2001 SEP -6 A 10: 56

In the Matter of Conciliation	*	
Between	*	
	*	AWARD
EAST CLEVELAND FIRE FIGHTERS,	*	
I.A.F.F LOCAL 500	*	Case No. 00-MED-10-1069
	*	
	*	Anna DuVal Smith
	*	Conciliator
and	*	
	*	
CITY OF EAST CLEVELAND	*	
	*	

Appearances

For the East Cleveland Fire Fighters, IAFF Local 500:

Kenneth R. Adams, Staff Representative
Northern Ohio Fire Fighters, IAFF Local 500
17703 Grovewood Avenue
Cleveland, Ohio 44119-3100

For the City of East Cleveland:

Craig M. Brown, Esq.
Duvin, Cahn and Hutton
Erievue Tower - 20th Floor
1301 East Ninth Street
Cleveland, Ohio 44114

I. BACKGROUND AND SUBMISSION

The East Cleveland Fire Fighters represent all full time uniformed members of the East Cleveland Fire Department engaged in fire suppression, fire prevention, arson investigation and ancillary activities. These employees number approximately 53. Their current collective bargaining agreement with the City expired on December 31, 2000, but they continued to work under an extension and retroactivity agreement as negotiations progressed. The undersigned was appointed fact-finder on December 1, 2000. The parties reached a tentative agreement on all issues in July of 2001, but City Council rejected this agreement because of its residency provision. In order to resolve the matter as expeditiously as possible, the parties waived fact-finding and agreed to proceed directly to conciliation with the undersigned as conciliator. Pre-hearing position statements on the sole issue of residency were timely filed on or before August 25. The matter came for hearing at 12:05 p.m. following additional negotiations with and without mediation on August 30, 2001, at City Hall in East Cleveland, Ohio. Present for the East Cleveland Fire Fighters were Local President Curtis E. Jackson, II, Local Treasurer Wallace Clark and Jerry Jones. Present for the City of East Cleveland was Ronda G. Curtis, Law Director. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions. The parties stipulated to their mutual agreement on all previously settled issues set forth in Joint Exhibit 2, and to additional agreements reached on August 30 related to the City's assumption of emergency medical services set forth in Joint Exhibit 3. These agreements are incorporated into this Award as if written at length. The oral hearing concluded at 12:45 p.m. on August 30, 2001, whereupon the record was closed.

In rendering this Award, the Conciliator has given full consideration to all reliable information relevant to the issue and to all criteria specified in R.C. §4117.14(G)(7) and Rule 4117-9-06 (H) O.A.C., to wit:

- (1) Past collectively bargained agreements 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 interest 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) 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 issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

II. IMPASSE ITEM: ARTICLE 42.03 - RESIDENCY

Position of the City

The City seeks to require all members of the bargaining unit to be residents of the City of East Cleveland. In taking this position, the City makes three arguments. First, it contends the requirement will be beneficial to the community. Being a resident develops familiarity with the neighborhoods, businesses and people of the city, and promotes identity with and loyalty and commitment to the community. It enables participation in community affairs and encourages sensitivity and courtesy towards the citizens. All of these advance general good will between city employees and citizens. In addition, there are economic benefits for all parties as tax dollars remain in the community. Patronage of local businesses by resident firefighters and their families would further enhance the local economy.

The City's second argument is that a residency requirement is not unconstitutional. The City of East Cleveland has the power of home rule under Section 7 of the Ohio Constitution. In

essence, its charter is a local constitution. The Charter of the City of East Cleveland includes the right to enforce residency requirements on municipal employees. This issue has been found not to violate constitutional rights or cause undue hardship by several Ohio courts. Since it affects terms and conditions of employment, residency is a mandatory subject of bargaining under R.C. 4117.08, but it is still legitimate for a city to adopt the position that residency be a condition of employment, as the City does here now. Turning to the U.S. Constitution, the City cites Memorial Hospital v. Maricopa County, 415 U.S. 250, 39 L. Ed. 2d 306, 94 S.Ct. 1076 (1974) in which the Court held that although residency requirements impinge on the right to travel, only those which are “penalties upon the exercise of the constitutional right of interstate travel” shall be declared unconstitutional.

Finally, the City says it is not singling out the firefighters. It does require other City employees to be residents, including collective-bargaining covered nonsafety forces, and it has rather faithfully adhered to it, the law director and court employees being excepted. However, it does concede that it has granted an exception to the paramedics during the transition period of assuming emergency medical services.

The City concludes that a residency requirement is both an appropriate and lawful condition of employment, and should be adopted.

Position of the Union

The Union resists any change in the present provision, which states, “No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.” It says the issue came up in 1995 and was mutually agreed to then after a fact-finder’s

recommendation, not imposed by a conciliator. Then the parties agreed to retain the provision for the 1998-2000 Agreement. This history supports retention for the new contract.

The Union submits that the firefighters are not the only ones in the city who are exempted from residency requirements. Of 376 employees, 180 (48 percent) are nonresidents, and half of these were hired after the 1996 Charter amendment made residency mandatory. Just recently Council granted an exception to all EMS employees coming on the payroll September 1. Placing such a stringent residency requirement on the firefighters would, however, make them unique among its neighbors of Euclid, Cleveland Heights, South Euclid, University Heights and Shaker Heights, all of which also have much higher starting pay than East Cleveland.

With respect to the interest of the public, the Union responds that many firefighters do not live in the city now, but the City has not shown this fact has had an adverse effect on their ability to perform their jobs and there is no lawsuit that can be attributed to residency outside the city. The city's relatively small size permits firefighters to become familiar with the community through inspections and other duties. The Union also challenges the City's claim that a residency requirement will increase city tax revenue or be a boon to the local economy. There are no large grocery stores, department stores or the like, so firefighters will have to shop outside the city as they do now. Any financial benefit will be small in relation to the hardship caused by the need for firefighters to relocate themselves and their families, especially with their low pay relative to other communities and this city's housing shortage.

The Union concludes saying that the City has failed to carry its burden to show adequate justification for the change. Therefore, the present provision should be continued.

Opinion of the Conciliator

The Union correctly points out that the burden is on the party advocating change, in this case the City. I therefore take up its case first.

While I accept the City's position on its lawful authority at the present time to make and enforce residency requirements on its employees, it is also within its power to grant exceptions as it recently did for its new paramedics and as it has done before and since the 1996 Charter amendment for its safety forces. Given the fact that the firefighters' exception was voluntarily agreed to for two consecutive collective bargaining agreements and that it survived even after the 1996 Charter amendment, I look for a change in the surrounding conditions indicative of a need for reinstating residency requirements or evidence of a problem that residency restrictions would address effectively. The City argues its proposal, if adopted, would promote positive community relations in various ways and provide economic benefits to the City. While I agree residency could have this effect, the City does not claim the firefighters now have poor relations with the citizens they are bound to serve, that they are unfamiliar with the city, or that their job performance suffers in any way because some firefighters live in other communities. In fact, imposition of the requirement without their agreement could damage morale, community relations, and job performance as firefighters are forced to pull up roots already put down elsewhere and move themselves and their families unwillingly away from friends, family, neighbors, schools and jobs. Even if the requirement is applied prospectively (exempting those hired previous to its imposition) as evidently has been the practice, morale and job performance problems could ensue from having a second class of firefighter lacking geographic mobility working along side others with the freedom to choose where to live. In other words, the good

will, community cohesion benefits argued by the City, while possible, are merely speculative and the City has failed to show problems in these areas which the residency requirement would solve.

As far as economic benefits are concerned, the City has not quantified the marginal contribution to tax revenues, increase in property values from the greater housing demand or the growth in spending at local businesses that it expects. Nor has it apparently considered economic costs such as those attendant on attracting and retaining qualified firefighters willing to accept residency as a condition of employment, for the agreement on wages was made in concert with maintaining the present residency freedom. Given East Cleveland's wage position relative to surrounding communities (which have less restrictive residency requirements than proposed here), staffing the department could become a problem affecting public service and requiring a greater investment in recruitment and wages. In short, like the intangible community cohesion benefit argument, the economic benefit argument fails from lack of evidence the provision would do what the City claims. As above, I agree there are potential economic benefits to the City, but their size and realization are merely speculative. In light of the City's apparently satisfactory experience with the existing, voluntarily agreed-to provision, the residential freedoms in neighboring fire departments (which are also better paid), the potential for adverse effects on staffing, morale and job performance, the hardship it would place on the firefighters if applied to those already hired, and the City's willing exclusion of other employees from the requirement, I must reject the City's proposal and award for the Union.

III. AWARD

42.03 Residency: No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Conciliator

Cuyahoga County, Ohio
September 4, 2001

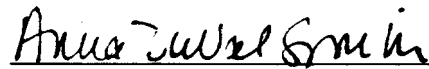
CERTIFICATE OF SERVICE

I certify that on the 4th day of September, I served the foregoing Award of Conciliator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Kenneth R. Adams, Staff Representative
Northern Ohio Fire Fighters, IAFF Local 500
17703 Grovewood Avenue
Cleveland, Ohio 44119-3100

Craig M. Brown, Esq.
Duvin, Cahn and Hutton
Erievue Tower - 20th Floor
1301 East Ninth Street
Cleveland, Ohio 44114

I further certify that on the 4th day of September, I submitted this Award of Conciliator by U.S. Mail to the State Employment Relations Board at 65 East State Street, Columbus, Ohio 43215-5213.



Anna DuVal Smith, Ph.D.
Conciliator