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IN THE MATTER OF CONCILIATION

BETWEEN

IAFF, LOCAL 1662

AND

CITY OF STOW

BEFORE: Robert G. Stein

SERB CASE NO. 02-MED-01-0073

PRINCIPAL ADVOCATE FOR THE UNION:

Susannah Muskovitz, Esq.  
FAULKNER, MUSKOVITZ & PHILLIPS, LLP  
820 West Superior Avenue, Ninth Floor  
Cleveland OH 44113-1800

and

PRINCIPAL ADVOCATE FOR THE CITY:

Gary C. Johnson, Esq.  
JOHNSON & ANGELO  
1700 North Point Tower  
1001 Lakeside Avenue  
Cleveland OH 44114

## INTRODUCTION

The bargaining unit is comprised of approximately 40 full-time employees holding the classification of Firefighter, Captain, and District Chief. Both Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. At the request of the parties the Conciliator held a one-day mediation session on November 4, 2002, in an attempt to reduce the number of issues. The mediation session helped clarify the parties' positions; however, no agreements were reached on the open issues. In order to expedite the issuance of this report, the Conciliator shall not restate the actual text of each parties' proposals on each issue but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS. The Conciliator will render his Award on an issue by issue/ last best offer basis in accordance with O.R.C. 4117.

Conciliation is intended to narrow the differences between the parties and not expand upon them. Above all, conciliation is part of a pragmatic impasse process that should continually encourage the non-right to strike entities to resolve their differences. Therefore, the recommendations of the Fact-finder in helping to narrow the content of the parties' dispute should be carefully considered in matters of conciliation, provided they are based upon the same set of facts, follow statutory guidelines, are free of error, and represent sound reasoning in a collective bargaining context. This approach to conciliation has consistently been taken by many of the most respected neutrals in Ohio. Fact-finder Byrne's report was carefully considered in the analysis of the following issues.

## **CRITERIA**

### **OHIO REVISED CODE**

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests 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. The stipulations of the parties;
6. Such factors not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following award is made:

**ISSUE 1      Article II      RECOGNITION CLAUSE**

**Union's position**

SEE UPS

**Employer's position**

SEE EPS

**Discussion**

Upon review of Joint Exhibit 2, it appears that the parties have agreed that the new classification of Lieutenant is to be included in the bargaining unit; however, the issue of whether Division Chiefs are to be excluded from the bargaining unit is still in contention. Units are either deemed certified or are Board certified by SERB and neutrals have no authority to unilaterally modify bargaining units. Adding or subtracting positions from the bargaining unit is exclusively the jurisdiction of the State Employment Relations Board, or may be negotiated by the parties. What the Employer is proposing is not within the jurisdiction of the Conciliator. The Conciliator does not have the authority to remove the classification of Division Chief from the bargaining unit. I find the Fact-finder rendered a recommendation that was beyond his authority to address.

**AWARD**

The Union's position is awarded.

**ISSUE 2      Article XIV   RANK DIFFERENTIAL**

**Union's position**

See UPS

**Employer's position**

See EPS

**Discussion**

The Union provided comparable statistics that demonstrate the bargaining unit's current rank differential is slightly below the average of 13% for seven surrounding jurisdictions. Among these comparable cities, I find Twinsburg to be similar to Stow in terms of being a developed suburban city. Green is at the beginning of its growth spurt and is likely to approach the size of Stow for several years. The Employer effectively argues that the bargaining unit has yet to hire its first Lieutenant. It is reasonable to conclude that anyone who goes into one of these new positions will have learned a new position. The important distinction between the instant matter and the comparables used by the Union is that the position of Lieutenant is brand new.

It is reasonable to conclude it will take a substantial period of time for the position to become established in the bureaucracy of the Department. In essence, the positions of Lieutenant and those Firefighters who first get promoted to them will need to develop over time. In comparable jurisdictions where the position of Lieutenant has existed for years, the parameters of a Lieutenant's duties and responsibilities are well established.

Moreover, subordinates to the position of Lieutenant in these jurisdiction have had the opportunity to observe many of the responsibilities of the position and have had role models to emulate. This is not the case in Stow.

The job of Lieutenant will take shape around the managerial culture of Stow and the Chief. Once the Lieutenant positions are established there will be a “shake down” period of time when responsibilities and duties get reassigned and power gets shared. This award does not, for reasons explained above, remove District Chiefs from the bargaining unit. If that occurs, the responsibilities of Lieutenants may take longer to sort out. Until the position of Lieutenant has been established for a couple of years, it will be difficult to assess its relative worth in relationship to a Fire Fighter in Stow. For the life of this Agreement, I find that the recommendation of the Fact-finder is a reasonable and a proper first step in establishing an appropriate differential.

### **AWARD**

The City’s position is awarded.

### **ISSUE 3      Article XIII   HOURS OR WORK**

#### **Union’s positions**

See UPS

### **Employer's position**

See EPS.

### **Discussion**

The Union argues for a reduction in the workweek from the present fifty-two (52) hours to forty-eight (48) hours. The Union's proposal evolved following fact-finding. The City proposes a modest reduction in the workweek from 52 hours to 51.7 hours. The City argues its slight reduction will lead to greater efficiency, and it will result in employees working approximately 2/3rds of a tour (16 hours) less during the course of one year. The Union points out that a 51.7-hour workweek affects potential premium pay that employees may receive for FLSA violations. The potential premium time is up to 81 hours per year (Ux 6). There appears to be no dispute that seniority will play a similar role in either one of these proposed hourly schemes. The Fact-finder had a different choice before him. The Union proposed to maintain the current fifty-two (52) hour workweek and the City proposed the same reduction it is seeking in conciliation.

There appears to be little justification to support reducing the workweek of Firefighters to forty-eight (48) hours at this time. The Employer's proposal was adopted by the Fact-finder based upon the reasonableness of coming into compliance with FLSA. I find this reasoning to be sound. Why should the City have to subject itself to a "built-in" \$9 premium pay penalty simply because of the scheduling of a 52-hour workweek? Furthermore, there is no year-to-year guarantee of a number of overtime hours a bargaining unit employee would annually receive in FLSLA premium pay. The Union conceded that its figure of 81 hours is the maximum an employee would receive, depending upon the number of additional premium paid hours. Under the City's proposal the reduction of

2/3rds of a shift is guaranteed for all eligible bargaining unit employees. The reduction of 16 hours of work is likely to be less than what an employee would receive in FLSA premium time in a given year. However, the interest and welfare of the public is better served by a schedule that is in conformance with FLSA standards and does not expose the City to continuing violations of the law.

**AWARD**

The City's position is awarded

**ISSUE 4      ARTICLE XIII      OVERTIME RATE OF PAY**

**Employer's position**

See EPS

**Union's position**

SEE UPS.

**Discussion**

I find the City's proposal to change the formula for the payment of overtime to be unsupported by the data and by the Fact-finder's recommendation. The City also wants to eliminate double time for bargaining unit employees who are required to work weekends. I do not find that the Fact-finder made a recommendation on the double time issue. The Union argues that it should be based upon 2080 hours, or the same as the hourly calculation used for the Police Department. Employers are wise to minimize overtime for purposes of cost efficiency; however, in most safety service operations some overtime is



necessary to maintain needed services. I also concur with the Fact-finder that it is the responsibility of the City to manage overtime. It is also noted from the Fact-finder's report that Captains are responsible for a "...large percentage of the total overtime." There was no evidence or testimony to demonstrate that overtime is being caused by excessive sick leave usage or by any other employee actions. Furthermore, by slightly reducing the work week to 51.7 hours the City will eliminate its FLSA scheduling violation that resulted in overtime pay. The City's proposal would result in a loss in income to a Firefighter of close to \$2,000 per year (based upon the average of the last three years, Ux 6, p. 3). In summary, the City was unable to provide sufficient justification to reduce the formula used to pay overtime. In addition, the hiring of several new Lieutenants to the bargaining unit should alleviate the amount of overtime paid to Captains.

### **AWARD**

The Union's position is awarded.

### **ISSUE 5      ARTICLE XV      HOLIDAYS**

#### **Employer's position**

See EPS.

#### **Union's position**

See UPS.

## **Discussion**

Currently Firefighters are the only City employees who receive straight time pay for working holidays. Getting paid overtime for working holidays is common. In Fact-finding the Union proposed that holidays worked should be paid time and one-half (1 1/2), as a matter of equity with all other city employees. In comparison, the Police Unit receives eight (8) hours of pay for holidays. The City argues that Firefighters work approximately 30% more hours than do Police Officers, but receive 200% more time off. The origin of this disparity in time off is unclear. Each safety unit receives twelve (12) holidays off per year. Even though they have the same number of days off, Firefighter holidays time off represents a much larger percentage of time than does that of Police Officers. The total holiday time for Police Officers is 96 (12 x 8) hours. The total holiday time off for Firefighters is 288 (12 x 24) hours. On a percentage basis holiday time for Police Officers and all other City employees working 2080 hours represents 4.6% of their total hours (96/2080). For Firefighters, holiday time represents 10.6% of total hours (288/2704). The reduction of the workweek to 51.7 hours increases this percentage to 10.7% (288/2688).

The Union argued that it should be paid time and one-half for all other City workers. This position is supported by overwhelming comparable data and by the commonly negotiated concept of the payment of overtime for holidays, a benefit that has been around for decades. However, by gaining equity in the payment of overtime for holidays, as recommended by the Fact-finder, the inequity of the holiday benefit for Firefighters and Police Officers would be further distorted. The Fact-finder recommended that all worked holidays be paid at time and one-half (1 1/2), but reduced the rate of pay for

holidays taken from twenty-four (24) hours to twelve (12) hours. I find this to be a reasonable exchange based upon the current imbalance of aggregate holiday time off between safety force bargaining units.

The Union wants to maintain parity in terms of overtime calculations (see Issue 4 above), and in Fact-finding it deservedly achieved parity with the Police Department in terms of getting premium pay for holidays worked. However, there is a fundamental principle of fairness that needs to be addressed in attempting to treat all City employees, but particularly safety forces, as equitably as possible. Parity between safety forces in terms of pay and benefits is always in play in matters of fact-finding and conciliation.

A reduction of holiday pay from 24 hours to 12 hours, while substantial, still results in the bargaining unit having a greater holiday to annual time ratio (5.3%, 144/2688) than the Police bargaining unit (4.6%, 96/2080). This comparison does not include the one personal day for Firefighters that remained paid at twenty-four (24) hours after Fact-finding. The personal day for Police Officers is eight (8) hours of pay. Inclusion of the personal day in terms of internal equity between safety force units gives the Firefighters a 6.25% (168/2688) holiday/personal time to paid hours benefit versus a 5.0% (104/2080) benefit for Police Officers.

The Fact-finder reasoned that when compared to the average amount of holiday pay for comparable jurisdictions (Cuyahoga Falls, Green, Barberton, Akron, Kent, Twinsburg, Fairlawn, and Tallmadge of 164 hours), the bargaining unit has “...*almost double the average hours for holidays...*” (Jx 3, p. 20, Fact-finder’s Report). The Fact-finder also concluded that Stow Firefighters are not underpaid when compared to other like jurisdictions. Secondly, the Fact-finder reasoned that the change in pay for holidays

worked (between 3 and 4 holidays per year) to time and one-half (1½) will result in an added \$1000.00, an approximate 2 to 3% added to the base rate of pay for a Firefighter's base wage (Jx 3, p. 21). For all of the above reasons, I find that the Fact-finder's conclusions, while difficult to make, created equity between safety forces in providing overtime pay for holidays, and brought the two safety units much closer together in terms of holiday time off as a percentage of paid hours.

### **AWARD**

The City's position is awarded.

## **ISSUE 6      ARTICLE XV      VACATION ACCURAL**

### **Union's position**

See UPS

### **Employer's position**

See EPS

### **Discussion**

The discrepancy of vacation time between the Firefighter bargaining unit and the Police bargaining unit does not reach the significant disparity that currently exists in the holiday benefit. Unlike the huge disparity in holiday time off between safety bargaining units, the Fact-finder concluded that the "*...data do not support a conclusion that the*

*members of the Stow Fire Department earn vacation time at a rate that is so far out of line that the Fact finder should recommend a change in the current practice” (Jx 3, p. 28).*

The bargaining unit currently works a 52 hour week that will be further reduced to a 51.7- hour week. Bargaining unit members earn vacation time based upon a previously established fifty-six (56) hour workweek. Although the earning rate exceeds the workweek rate by 4.3 hours per week, the Union argued that the old accumulation rate was negotiated in exchange for other items that favored the City. The external comparables presented do not indicate that the bargaining unit is out of line with other like jurisdictions. And unlike holiday time, there was no evidence presented to suggest that the bargaining units’ vacation benefit is out of line with what the Police Unit has bargained. The principle of compensation and benefits parity between safety units is maintained. The bargaining units’ vacation benefit is also no greater than the average of several external comparable jurisdictions (Ux12).

### **AWARD**

The Union’s position is awarded.

**ISSUE 7      Article New      DRUG TESTING**

### **Employer’s position**

SEE EPS.

## **Union's**

SEE UPS.

## **Discussion**

The Union points out that the City's proposal is incomplete. It argues that it does not define reasonable suspicion. The City disagrees with this characterization and contends that its proposal represents well-accepted language that is currently in place in the City's service department. The City also contends it could have simply put its drug policy in place as a work rule and bargained over its effects. It also contends that it is not trying to foist on the bargaining unit something that is unreasonable. The City points out that a drug-testing program will have a favorable impact upon workers' compensation rates. The Union vigorously disagrees with the City's contention of being able to implement such a policy mid-contract. The Union also contends that there is no evidence to suggest that there is a drug problem in the bargaining unit. The Union also pointed out that random drug testing is not "on the table" for the Police bargaining unit or the Dispatcher bargaining unit. This contention was not disputed by the City.

The parties do not disagree on having a drug program. They disagree on the details of such a program and whether it should include random or probable cause testing. Internal equity is key to acceptance of a program that demands that employees occasionally have their privacy invaded in exchange for the public assurances of a reliable and responsible public workforce. As stated above, the parity between safety forces has a long tradition in the public sector in Ohio and elsewhere. Arguably, Firefighters should not be held to a higher standard of drug enforcement than Police Officers, without proof of drug

problem in the Department. The City conceded there is no drug problem in the Fire Department.

Although the City argued for random testing, there was no evidence to demonstrate that the bargaining unit has had any notable problems with illegal drug use. Reason would dictate that a measure as strong as random testing would only be applied based upon a recognized need or by federal mandate (which is the case with those employees who must maintain Commercial Driver's Licenses (CDL)). Although Firefighters are required to drive large vehicles, they are not included in the CDL regulations. I also concur with the Union's argument that its proposal is more comprehensive and detailed in its approach. The Union pointed out that during the history of bargaining the language it is proposing in this matter is the same language discussed in prior negotiations and was at one time agreed upon in principle by the parties.

The Fact-finder in his recommendation did not endorse the position of either party. He simply referred the parties back to drug testing language that was discussed during negotiations.

### **AWARD**

The Union's position is awarded.

**ISSUE 8      Article XIV      WAGES**

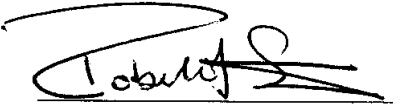
### **AWARD**

Prior to the hearing the parties reached tentative agreement on wage increases.

### **TENTATIVE AGREEMENTS**

During negotiations, mediation, fact-finding, and conciliation the parties reached tentative agreement on several issues and on “clean-up” language that corrected grammar and typographical errors. These tentative agreements are part of this award.

The Fact-finder respectfully submits the above recommendations to the parties this 27<sup>th</sup> day of January 2003 in Portage County, Ohio.

  
Robert G. Stein, Fact-finder