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**IN THE MATTER OF CONCILIATION  
BETWEEN**

<b>MADISON FIRE DISTRICT</b>	)	
	)	<b>CASE NO. 02-MED-12-1259</b>
	)	
<b>AND</b>	)	
	)	
	)	<b><u>OPINION AND AWARD</u></b>
<b>MADISON FIRE FIGHTERS</b>	)	
<b>IAFF LOCAL 3141</b>	)	

**JAMES M. MANCINI, CONCILIATOR**

**APPEARANCES:**

**EMPLOYER**

**Tom Grabarczyk**

**UNION**

**Jim Astorino**

## SUBMISSION

This matter concerns conciliation proceedings between the Madison Fire District (hereinafter referred to as the Employer) and the Madison Fire Fighters, IAFF Local 3141 (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. Conciliation proceedings were conducted on February 4 and March 15, 2004.

The conciliation proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as rules and regulations of SERB. During the conciliation proceedings, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report.

The bargaining unit consists of all fulltime employees of the Madison Fire District. There are currently twelve fulltime employees which includes three lieutenants and nine firefighters. The Madison Fire District which was created in 1971 serves the residents of Madison Village as well as Madison Township.

This conciliator in resolving the dispute between the parties by selection between each of the parties' final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Further, this conciliator has taken into consideration all reliable evidence presented relevant to the outstanding issues before him. Therefore, this conciliator after carefully reviewing all of the evidence and arguments presented by the parties hereby submits his opinion and award with respect to each of the outstanding issues presented herein.

**1. RATES OF PAY**

The Employer's proposal is to create a wage step schedule with pay grades of 3, 2, and 1 being created over the life of the Agreement. Establishment of Firefighter Grade 3 on January 1, 2004 would reflect a 4% increase from their currently established rate of pay. The Lieutenant Grade 3 rate of pay established on January 1, 2004 would reflect an 8.3% increase in pay. A new Grade 2 would be created effective March 5, 2004 with both the firefighter and lieutenant pay rates being increased by 4% to establish the new Grade 2 base rate. A new Grade 1 would be created effective March 5, 2005 with both the firefighter and lieutenant pay rates increased by 4% to establish the new Grade 1 base rate. Under the Fire District's proposal, all non-probationary employees employed upon execution of the new Agreement would be placed in Grade 3, retroactive to January 1, 2004 based upon their respective classification and advance annually to a higher Grade on the anniversary date of the Contract. The Employer is opposed to retroactivity into the prior calendar agreement and therefore proposes that employees employed upon the execution of the Agreement be granted a one time lump sum payment not to be incorporated into the base pay as follows:

Firefighter	\$1,100.00
Firefighter Paramedic	\$1,300.00
Lieutenant	\$2,400.00
Lieutenant Paramedic	\$2,600.00

In addition to the above, the Employer also proposes that effective upon the execution of the Agreement, paramedic pay is to be established at a fixed amount of \$.70 per hour added to the employee's base rate. The new paramedic pay would be retroactive for employees employed upon execution of the Agreement to January 1, 2004.

The Union proposes to provide an equity pay adjustment of \$1,700 effective January 1, 2004. In addition, the Union proposes to provide a cost of living increase to the base wages of non-probationary employees of \$1,750 effective January 1, 2004 with another cost of living increase of \$1,800 on January 1, 2005. The cost of living increase to be added to the base wage of probationary employees would be 5% effective January 1, 2004 and 5% on January 1, 2005.

The Union contends that fulltime employees of the Madison Fire District are considerably underpaid as compared to other similarly situated firefighters in the region. The Union submitted comparable wage data which it claims shows that Madison Fire Fighters are paid approximately \$1,800 less than the average paid to firefighters in neighboring jurisdictions. Currently, fulltime firefighters in Madison are paid \$34,643. The average pay for firefighters in cities such as Willoughby, Mentor, Wickliffe, Eastlake, Willoughby Hills and Mentor on the Lake is \$52,560. The Union maintains that its wage proposal which includes an equity pay increase seeks to remedy the current pay inequity which exists between the Madison Fire District's fulltime force and those in the area. The Union emphasizes that its members are currently being paid about 51.7% less than the average for firefighters in the region. The Union also points out that with

respect to lieutenant pay in the Madison Fire District, they too receive approximately 53% less than the average paid to lieutenants in the comparable districts.

The Union disputes the Employer's contention that it does not have the available resources to fund its wage proposal. The Union points out that according to a Lake County auditor's office report, property tax revenue is expected to increase for the current year for the Madison Fire District. At the same time, the percentage which the District plans to spend for manning requirements would decrease to a greater extent under the Employer's wage proposal for 2004. According to the Union, the funds which the Madison Fire District receives from its levies are more than sufficient to cover the cost of the Union's wage proposal.

The Employer maintains that its final wage proposal should be awarded because it actually goes beyond what the fact-finder recommended in the instant matter. The fact-finder in this case recommended the adoption of the Employer's original proposal which was based on 3.5% wage increases for firefighters and a 7.86% increase for lieutenants. The Employer's proposal now reflects a cash payment, in lieu of retroactivity, equivalent to 4% over a period of forty-three weeks. Wage increases for firefighters reflect a 12.41% increase over the three year term of the Agreement. For lieutenants, the wage proposal amounts to a 17.71% increase over three years. In addition, paramedic pay is increased by 16.66% to \$.70 per hour. It is evident that the wage proposal submitted by the Employer is more than fair for the bargaining unit.

The Employer further argues that wage and other compensation must be determined based upon resources available within the framework of the Madison Fire District. Unlike other governmental agencies, the Madison Fire District is funded strictly from limited levied resources. It is inappropriate to compare the Madison Fire District with other cities in the area who have additional resources available from their General Funds to finance salary increases. Unlike the other jurisdictions cited by the Union, the Fire District cannot levy income tax increases. The Employer cites the fact that 76% of its budget currently goes towards salaries and benefits for the fire department. Employee expenditures have increased significantly during the past four years. The Employer claims that with its limited available resources which it receives from levies, it would be unreasonable to require the Fire District to provide for the kind of significant wage increases proposed by the Union.

ANALYSIS – After review of the evidence and arguments presented by the parties, this conciliator awards the Employer’s final wage proposal. That is, there is to be a new wage step schedule adopted and implemented over the term of the Agreement as proposed by the Madison Fire District. In addition, it should be noted that employees employed upon the execution of the Agreement shall receive a one time lump sum payment in lieu of retroactive pay which would not be incorporated into the base wage. Also retroactive to January 1, 2004, bargaining unit employees employed upon the execution of the Agreement by the Madison Fire District would be paid in accordance with the newly adopted step schedule. Steps designated as Grades 3, 2 and 1 would be

created over the life of the Agreement. All non-probationary employees employed upon the execution of the new Agreement will be placed in Grade 3, retroactive to January 1, 2004 based upon their respective classification. Such employees would advance to Grade 2 on March 5, 2004, and to Grade 1 on March 5, 2005. The step schedule would also establish an entry rate for newly hired probationary employees of \$11 per hour which would remain in effect for the life of the Agreement. Finally under the wage proposal awarded herein, all employees who possess and maintain Paramedic Certification shall be paid an additional \$.70 per hour.

This conciliator finds that the Employer's final wage proposal provides bargaining unit members with significant pay increases over the term of the Agreement. The new wage step schedule which will be adopted over the life of the Agreement will increase wages for firefighters and lieutenants by a rather substantial amount during the next three years. First, the evidence shows that under the Employer's proposal awarded herein, fulltime bargaining unit members will receive the equivalent of a 4% increase in a lump sum payment in lieu of retroactive pay for the past year. In effect, base wages for firefighters would be increased by 12.41% over the next three years. With respect to lieutenants, they would receive a 17.71% increase over the three year period. In addition, paramedic pay would be increased by 16.66% to \$.70 per hour. It is apparent that the wage increases provided to bargaining unit members under the Employer's final offer which is being awarded in this case would provide fulltime employees in the Madison Fire District with significant pay increases over the term of the Agreement.

Moreover, this conciliator finds that the Employer's final wage offer is greater than that recommended by the fact-finder in this case. Under SERB's guidelines, this conciliator is obligated to give weight to the fact-finder's recommendation in the instant matter. The fact-finder recommended the City's proposal presented at fact-finding which included a 3.5% base rate increase for firefighters and a 7.86% wage increase for lieutenants. It is apparent that the Employer's final wage offer presented at conciliation represents an improvement upon its wage proposal submitted at fact-finding. It should be noted that the fact-finder rejected the Union's wage proposal which has remained essentially the same for this conciliation proceeding. Therefore, this conciliator finds support for his conclusion that the Employer's final wage offer should be awarded herein in the fact that it reflects an improvement in the wage increases recommended by the fact-finder in this matter.

This conciliator also finds that given the Madison Fire District's limited funding resources, it would be inappropriate to rely entirely on the wage comparables submitted by the Union. The Union claimed that the wages paid to fulltime firefighters here is considerably less than that provided to similarly situated firefighters in neighboring cities. However as the evidence showed, the Madison Fire District must operate entirely from funds received from its levies. In contrast, area city fire departments operate from a number of revenue sources including income tax and General Fund resources. As the Employer noted, virtually all cities supplement fire department budgets and payroll through General Fund resources. The Madison Fire District does not have the ability to



do so. The distinction between the financial resources available to cities and townships as well as villages accounts for the fact that in general cities pay more to their employees than townships and villages. Likewise in the instant case due to its limited financial resources, this conciliator finds that the rather significant equity pay adjustments sought by the Union based upon wage comparables with city fire fighters in the area simply cannot be the sole basis relied upon to justify wage increases beyond that which are being awarded herein. Once again, it must be reiterated that the final wage offer presented by the Employer at conciliation which is being awarded by this conciliator represents significant pay increases for fulltime bargaining unit members.

### **A W A R D**

With respect to rates of pay, this conciliator selects the Employer's final wage proposal as more fully set forth on Attachment A.

ATTACHMENT A

ARTICLE 15

RATES OF PAY

15.01 - Employees employed upon execution of this agreement shall receive a one (1) time lump sum payment not incorporated into base pay, and shall be made within thirty (30) days of the execution of this agreement based on the employee's designated classification as follows:

Firefighter	\$1,100.00
Firefighter Paramedic	\$1,300.00
Lieutenant	\$2,400.00
Lieutenant Paramedic	\$2,600.00

15.02 - Retroactive to January 1, 2004, Bargaining Unit employees employed upon execution of this Agreement by the Madison Fire District shall be paid in accordance with the following schedule:

<u>Firefighter</u>	
Probationary	11.00 per hour
Grade 3	13.07 per hour
<u>Lieutenant</u>	
Grade 3	14.32 per hour

15.03 - Effective March 5, 2004, employees shall be paid in accordance with the following schedule:

<u>Firefighter</u>	
Probationary	11.00 per hour
Grade 3	13.07 per hour
Grade 2	13.59 per hour
<u>Lieutenant</u>	
Grade 3	14.32 per hour
Grade 2	14.89 per hour

15.04 - Effective March 5, 2005, employees shall be paid in accordance with the following schedule:

<u>Firefighter</u>	
Probationary	11.00 per hour
Grade 3	13.07 per hour
Grade 2	13.59 per hour
Grade 1	14.13 per hour

<u>Lieutenant</u>	
Grade 3	14.32 per hour
Grade 2	14.89 per hour
Grade 1	15.49 per hour

15.05 - Effective upon execution of this agreement, all employees who possess, obtain, and maintain Paramedic certification shall be paid an additional seventy (70¢) cents per hour while so certified and on line. Employees employed upon execution of this agreement shall be entitled to the difference between the current Paramedic pay, formerly incorporated into the base rate sixty cents (60¢), and the supplement pay now established seventy cents (70¢), retro-active to January 1, 2004.

15.06 - Current non-probationary employees employed on January 1, 2004 shall be placed at Grade 3 of the respective scale of their rank and advance to a higher Grade on the anniversary date of the contract annually.

15.07 - Normally, new employees shall be placed at the probationary step of the wage schedule and advance annually on

.their anniversary date of hire as a full-time Firefighter.

Based on prior experience, education and/or training, the Employer may advance a newly hired employee to a Grade 3 level of the pay scale without waiving or reducing the overall probationary period. Advancement in steps will continue to be based on anniversary date of hire as a full-time Firefighter except as set out in Section 15.08.

15.08 - Employees promoted from Firefighter to Lieutenant shall be placed at Grade 3 of the Lieutenant wage scale and advance annually on the anniversary date of the promotion. Any Lieutenant reduced in rank shall be placed in the Firefighter's schedule at the same Grade number assigned at the time of the reclassification and advance, if steps are available, based on their original step date determined by anniversary date of promotion.

## **2. LONGEVITY PAY**

The Union proposes that effective January 1, 2004 a new provision for longevity pay be included in the parties' Agreement which would provide for a payment of fifty dollars per year after completion of five years of service. The Employer is opposed to a new Longevity Pay Provision.

The Union claims that longevity pay provisions are fairly common in firefighters' agreements in the region. It would also serve to provide additional compensation to the experienced firefighters in the department, many of whom are now in their fifth or sixth year of service with the Madison Fire District. The Union once again emphasizes that the current pay received by firefighters here falls substantially below that provided to firefighters in the region.

The Employer claims that any new Longevity Pay Provision would be too costly. Given the budgetary constraints placed on the Madison Fire District by the funds which it receives from levies, it simply would be inappropriate to add additional costs to the operation of the department. The Employer also notes that the fact-finder did not recommend a new Longevity Pay Provision.

ANALYSIS – This conciliator has determined from the evidence presented that a new Longevity Pay Provision should be established for the Madison Fire District. It was shown that such Longevity Pay Provisions are commonly provided to firefighters in the area. As the Union notes, longevity pay is meant to recognize the value added to the fire department by experienced firefighters. The Longevity Pay Provision which is being

awarded herein represents a modest longevity pay provision as compared to others in the area. As the evidence shows, other Longevity Pay Provisions found in firefighters' contracts in the region typically provide for a payment of \$500 after five years of service. However in the instant case, the Longevity Pay Provision would only provide \$250 for a five year employee.

This conciliator would also like to note that the fact-finder in this case failed to make any definitive ruling on the Union's proposed Longevity Pay Provision. As a result, the fact-finder's report is of little consequence with respect to the Longevity Pay issue. Rather, this conciliator has determined from the evidence presented herein that a new Longevity Pay Provision as proposed by the Union is justified. The proposal is reasonable, supported by comparable evidence and would serve to compensate the more experienced firefighters in the department.

### **AWARD**

With respect to longevity pay, this conciliator selects the Union's final proposal as more fully set forth below:

#### **LONGEVITY PAY (New) – Effective January 1, 2004**

All employees shall receive longevity payment for continuous fulltime employment at the rate of Fifty Dollars (\$50.00) per year of service, after completion of five (5) years to a maximum of Five Hundred Dollars (\$500). Such payment shall be paid on the first regular pay date in December. Retirees or employees terminating their employment shall be paid a prorated amount at time of retirement/termination.

**3. OFFICER IN CHARGE ADDITIONAL PAY**

The parties indicated at the time of the hearing that they were in agreement on the Officer in Charge Pay Provision. The parties agreed to accept the Employer's final proposal which was to increase OIC pay to \$.75 per hour. This conciliator therefore adopts the OIC pay proposal submitted by the Employer as his final award herein.

**AWARD**

Pursuant to the stipulation of the parties with respect to the Officer in Charge Pay Provision, this conciliator selects the Employer's final proposal as more fully set forth on Attachment B.

ATTACHMENT B

ARTICLE 17

OFFICER IN CHARGE ADDITIONAL PAY

17.01 A Firefighter designated by the Fire Chief as Officer in Charge, shall receive additional compensation over their regular base rate of pay for hours actually worked in the capacity as Officer in Charge as follows:

Effective upon execution of this Agreement - 75¢ per hour.



#### **4. UNIFORM ALLOWANCE**

The parties indicated at the conciliation hearing that there was no dispute regarding an increase in the uniform allowance as proposed by the Employer to \$600 per year. The Employer proposed to increase the allowance from \$500 to \$600 effective January 1, 2004. As such, this conciliator hereby adopts the agreed upon uniform allowance increase as proposed by the Employer.

#### **AWARD**

Pursuant to the stipulation of the parties with respect to Uniform Allowance, this conciliator awards the Employer's final proposal as more fully set forth in Attachment C.

ARTICLE 25

UNIFORMS AND UNIFORM ALLOWANCE

25.01 The Employer shall furnish to all newly hired full-time Firefighters an initial uniform issue which shall include four (4) duty shirts, three (3) duty trousers, one (1) belt and one (1) pair of duty shoes. Should the Employer change requirements for that initial uniform issue, so that a new uniform issue becomes necessary, then the Employer shall furnish the full-time Firefighters a newly required uniform issue.

25.02 During the month of December each year, the Employer shall pay by reimbursement to all non-probationary full-time Firefighters, a uniform allowance for the care, maintenance and purchase of uniforms a sum not to exceed Five Hundred Dollar (\$500.00).

**25.03 Effective January 1, 2004, during the month of December each year, the Employer shall pay by reimbursement to all non-probationary full-time Firefighters, a uniform allowance for the care, maintenance, and purchase of uniforms a sum not to exceed six hundred dollars (\$600.00).**

## **5. PENSION BENEFITS**

At the conciliation hearing, the parties agreed to adopt a Side Letter pertaining to instituting the deferral method of pension deductions. The plan will require a vote of all members of the bargaining unit and acceptance by both the Police and Fire Pension Board as well as the IRS adoption of a plan including bargaining unit employees and excluding non-bargaining unit employees. The fact-finder also recommended the adoption of the Side Letter to address the deferral method of pension payments. Therefore pursuant to the agreement reached by the parties, this conciliator awards the Side Letter presented by the Employer with respect to the Pension Benefit issue.

## **A W A R D**

As agreed to by the parties, this conciliator adopts the Employer's final Side Letter proposal as more fully set forth in Attachment D.

SIDE LETTER TO AGREEMENT

PENSION DEFERRAL METHOD PICKUP

Upon ratification, where a majority of all eligible Bargaining Unit employees vote for the tax deferred method of Pension deductions, as a part of the Agreement, the Fire District will:

Send a copy of the plan description (ordinance or resolution) and a cover letter stating the date upon which the Employer intends to commence picking-up contributions to PFDPF. (Deferral method) ↑ IN

The plan must state whether all employees or only certain classes are included. The plan also must meet the requirements of IRS Revenue Rulings 81-35 and 81-36. The IRS requires the following language from these two Revenue Rulings to be incorporated into the plan:

9/26/03  
out

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- ~~The Employer must specify that the contributions, although designated as employees' contributions, are being paid by the Employer in lieu of contributions by the employees.~~
- ~~the employee must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the pension plan.~~

If, after this review, PFDPF determines the plan does not meet the specifications as required above, the Employer will request a Private Letter Ruling from the IRS confirming the plan meets the specifications of IRC Section 414 (h) (2) and Revenue Rulings 81-35 and 81-36.

Agrees to deferral method

**6. HOLIDAY LEAVE**

The parties agreed to adopt a Holiday Leave Provision which was proposed by the fact-finder herein. As such, this conciliator also awards the Holiday Leave Provision which is attached hereto.

**AWARD**

Per agreement of the parties, this conciliator adopts the Holiday Leave Provision as more fully set forth in Attachment E.

ARTICLE 21

HOLIDAY LEAVE

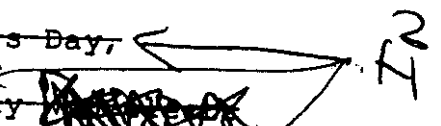
Section 21.01

Employees ~~regularly assigned to a forty (40) hour work week~~ shall be entitled to the following paid holidays:

- |                               |                  |
|-------------------------------|------------------|
| New Year's Day                | Labor Day        |
| Martin Luther King's Birthday | Columbus Day     |
| President's Day               | Veteran's Day    |
| Memorial Day                  | Thanksgiving Day |
| Independence Day              | Christmas Day    |

Section 21.02

Employees who regularly work an average work week of fifty-three (53) hours shall receive five (5) twenty-four (24) hours tours of duty off with pay in lieu of the ten (10) specified holidays. Employees shall have the option of electing to take either the time off with pay or to be paid for the holidays at their straight time rate of pay and shall notify the Fire Chief of their election.

~~An employee who works New Year's Day, Independence Day, Thanksgiving Day, or Christmas Day~~ 

~~shall be entitled to an additional twelve (12) hours off. To be credited to the Employee Holiday Account~~

Should an employee elect to take the time off instead of pay for the holidays, the employee shall designate the days he wishes to take off, which shall be subject to the advance approval of the

Fire Chief as to when and how they may be taken provided that the election to take the time off will not create an overtime situation. Selection of days taken off in lieu of holidays shall be on a seniority basis.

#### Section 21.03

Employees who do not elect to take any of the five (5) tours of duty, ~~or the additional twelve (12) hours,~~ <sup>no charge stay the same.</sup> off by December 1<sup>st</sup> of each year, shall have the unused holiday time paid at the employee's straight time rate of pay in the employee's first pay check in December of each year.

#### Section 21.04

**An employee will be entitled to time and one-half for hours worked Christmas Day, Thanksgiving Day, and Independence Day.**

**Time will be earned commencing at the beginning of the tour of the specific day and ending at the end of tour the following day. The employee is required to work the full tour on that day to be eligible. Any employee working a shift exchange on the specified day will be eligible for compensation under this article.**

**There will be no additional pyramiding of time or rates for additional time worked on the designated holidays.**

## **7. SICK LEAVE**

The parties indicated that they would agree to the new Section 23.09 under the Sick Leave Provision recommended by the fact-finder herein. The new provision basically provides that any fulltime employee who has accumulated ten years of fulltime continuous service and transfers from fulltime to part-time and who has accumulated unused sick time at the time of transfer shall have such unused sick time carried on the books of the Employer. In that the parties have agreed to the new Section 23 language, this conciliator awards the provision which is attached hereto.

## **A W A R D**

With respect to the new Sick Leave Provision, this conciliator adopts the fact-finder's recommendation as more fully set forth in Attachment F.



ARTICLE 23

SICK LEAVE

Section 23.01 through 23.08 - NO CHANGE

NEW - Section 23.09

Any full-time employee who has accumulated ten (10) years of full-time continuous service and who transfers from a full-time employee to a part-time employee, and who has accumulated unused sick time at the time of transfer shall have such unused sick time carried on the records of the Employer. At such time that said employee returns to full-time employment, the employee's unused sick leave time shall be reinstated.

In the event said employee does not return to full-time status and employment with the Employer in good standing, the employee shall be paid in full for any unused sick time carried on the records of the Employer to a maximum of two hundred forty (240) hours. / <sup>UPON TERMINATION.</sup> Said payment shall be made based upon the employee's rate of compensation at the time employee transferred from full-time to part-time with ten (10) or more years of continuous full-time service.

## **8. HEALTH INSURANCE**

The Union as its final offer regarding health insurance adopts the fact-finder's recommendation made herein which provided for a reduction in employee co-pay for family coverage. Specifically, the fact-finder recommended that the current 20% employee co-pay contribution be reduced to 10% of the monthly premium for family coverage. Currently, the Employer pays 100% for single plan coverage. The fact-finder also recommended additional language which provided that the Employer would agree to investigate and implement, if possible, IRS Section 125, pre-tax employee premium co-pay provisions.

The Employer proposes that the conciliator adopt its proposals addressing eligibility for health insurance as well as the fact-finder's recommendation concerning employee participation. Specifically, the Employer proposes certain modifications to the eligibility provision to the effect that all fulltime eligible employees "receiving wages on active pay status" would be entitled to healthcare insurance benefits. The Employer's proposal also includes a provision whereby employees on leave in an unpaid status covered by the Family and Medical Leave Act be required to pre-pay monthly premium co-pays. Employees on leave in an unpaid status other than qualifying for FMLA shall be required to pre-pay the total monthly premium. Under the Employer's final offer, employee premium co-pays would be changed in accordance with the fact-finder's recommendation effective beginning in the month following the execution of the Agreement.

The Union takes the position that the fact-finder's recommendation to reduce premium co-pays for family coverage was reasonable. The Union contends that the 20% contribution currently required for family coverage is too high and greater than that which is commonly found in other firefighters' contracts. The Union also objects to the Employer's final proposal which seeks to modify other provisions under the Health Insurance Provision. The Union indicates that it was under the impression that both parties had essentially agreed to reduce the employee's contribution for the cost of family coverage.

The Employer maintains that it is very reluctant to reduce its employee premium co-pay without having the ability to control costs through plan modifications. The Employer notes that the trend in the public sector is to require higher employee co-pays and to allow for plan modifications to maintain cost. The Employer points out that the fact-finder's recommendation to reduce employee co-pay for family coverage to 10% would in effect provide the applicable employees with annual savings of approximately \$857 which is equivalent to a 2.5% increase based upon a firefighter's salary.

ANALYSIS – This conciliator has determined from the evidence presented that the Union's final offer with respect to health insurance should be adopted. Essentially, this would represent exactly what the fact-finder recommended in this case. That is, employee premium co-pay for family coverage shall be reduced from 20% to 10% effective upon the execution of this Agreement. It would also be provided under the

Insurance Provision that the Employer would agree to investigate and implement, if possible, IRS Section 125, pre-tax employee premium co-pay provisions.

As previously indicated, this conciliator unlike the fact-finder is required by SERB's guidelines to select from the final offers proposed by the parties herein. It is apparent to this conciliator that the Union's final offer regarding changes to the Health Insurance Provision represents a reasonable modification to that provision. On the other hand, the Employer's final offer with respect to health insurance contains several new elements pertaining to employee eligibility which were not previously presented at fact-finding. This conciliator finds that there was insufficient basis established for the inclusion of the new eligibility provisions proposed by the Fire District.

For several reasons, this conciliator finds that the Union's final offer to reduce the employee co-pay for family coverage from 20% to 10% is reasonable. First, this reduction in employee co-pay was recommended by the fact-finder herein. Again, this conciliator under SERB's guidelines must give weight to the fact-finder's recommendation. Moreover, the current 20% co-pay required under the Agreement for family coverage appears to be out of line with employee contributions for health insurance found in other firefighters' contracts in the region. In most other cases, firefighter co-pays towards healthcare costs typically do not exceed 10% of the family plan. The 20% contribution currently required of bargaining unit members here which amounts to an employee co-pay of \$142 per month appears to be especially excessive considering the relatively lower pay of fulltime firefighters in the Madison Fire District.

Therefore, this conciliator would agree with the fact-finder's recommendation that the two changes which he recommended in this case pertaining to modification of the Health Insurance Provision should be awarded in this matter.

### **A W A R D**

With respect to Health Insurance, this conciliator selects the Union's final proposal to amend the Health Insurance Benefit Provision as more fully set forth below:

#### **ARTICLE 18 – HEALTH INSURANCE BENEFITS**

**Section 18.02** Effective beginning the first of the month following the execution of this Agreement, the cost of the comprehensive health insurance coverage benefits provided herein shall be shared on the following basis: The Employer shall pay one hundred percent (100%) of the individual employee's single plan and ninety percent (90%) of the family plan and the employee shall pay ten percent (10%) of the family plan, or employee and spouse, or employee and dependent child plan, if applicable. A dental plan option shall be available at the employee's sole costs.

**Section 18.04** (new) The Employer will agree to investigate and implement, if possible, IRS Section 125, pre-tax employee premium co-pay provisions.

**9. ACCIDENTAL DEATH INSURANCE BENEFITS**

The Employer agreed to provide \$20,000 of life insurance along with the current accidental death benefit of \$100,000 in coverage. The Union agreed to the new Life Insurance Provision proposed by the Employer. As such, this conciliator adopts as his award herein the new \$20,000 Life Insurance Provision.

**A W A R D**

With respect to life insurance, this conciliator adopts the agreed upon provision to provide for a Twenty Thousand Dollar (\$20,000) life insurance policy as more fully set forth below:

**ACCIDENTAL DEATH INSURANCE BENEFITS**

19.01 The Employer agrees to provide a Twenty Thousand Dollar (\$20,000) life insurance policy with an accidental death benefit of One Hundred Thousand Dollars (\$100,000) at no cost to the employee.

## **10. HOURS OF WORK**

The Union seeks a reduction in the workweek from 53 hours to 51.7 hours effective January 1, 2005. The Madison Fire District opposes any reduction in the workweek for the firefighters.

The Union cites workweek comparables for firefighters in the region. According to the Union, the average workweek is 50.5 hours per week. The Union maintains that there has been a growing trend in the fire service to reduce the number of hours a firefighter is required to work. Since the Madison Firefighters will be into their eighth year as a fulltime fire department, the Union believes that it is time to start reducing the workweek.

The Union also submits that the reduction in the workweek will serve to address the low compensation which the Madison Firefighters currently receive. The only way to accomplish a more fair compensation package for the firefighters is a combination of equity pay increases and a workweek reduction.

The Employer argues that any reduction in the hours of work for the fulltime firefighters would be totally inappropriate. Given the size and nature of the Madison Fire District, the current 53 hour workweek is comparable to similar departments. The Employer cites fire districts found in various parts of the state which for the most part provide for 53 hour workweeks for their fulltime firefighters. The Employer also proposed language which would permit two fulltime firefighters to be off at the same

time for vacations or holidays. The Union did not oppose the modification proposed in this regard.

The Employer further maintains that a reduction in the workweek for fulltime firefighters will have to be covered by additional staffing by part-time firefighters in the District. The Employer calculates that the additional cost to the Fire District for a reduction in the workweek would be approximately \$18,657. Moreover, the Employer contends that the Union's proposal not only requires greater funding, but fails to modify other time off benefits established based upon the current workweek.

ANALYSIS – After careful review of the evidence and arguments presented by the parties, this conciliator selects the Employer's final proposal regarding hours of work. That is, the current 53 hour workweek for fulltime firefighters is to be retained for the duration of the Agreement. The fact-finder in this matter recommended that there be no change in the hours of work for the fulltime firefighters. This conciliator must give weight to the fact-finder's recommendation made in this case.

Moreover, the evidence presented failed to clearly demonstrate that a reduction in hours as proposed by the Union is warranted at the present time. First, it should be noted that the current Agreement was the first between the parties with respect to fulltime firefighters. In other words, this conciliation report addresses provisions to be set forth in the parties' first successor Agreement. If a reduction in the workweek as proposed by the Union is undertaken by the Fire District, it will mean that there will have to be a greater dependence on part-time firefighters which would have cost implications. Considering



that this is the parties' first successor Agreement, it does not appear to be appropriate at least at this time to require the Madison Fire District to rely to a greater extent on part-time firefighters for manning its stations.

The evidence also shows that there are other fire districts in the state which provide for 53 hour workweeks for their firefighters. The Union is correct in noting that there has been a general trend to reduce the workweek for firefighters in city fire departments. However as discussed previously, those departments operate under a different set of revenue sources which are not available to the Madison Fire District. Again, the Employer here relies entirely for its revenue on levies in the District. In addition, it should be pointed out that in neighboring Perry Township, the firefighters agreed to return to a 53 hour workweek. While the Union's request to reduce the workweek here to 51.7 hours may be appropriate at some point in the future, this conciliator for the reasons cited has determined that no such change should take place during the term of the parties' first successor Agreement.

It should be noted that as part of the Employer's offer there was a change to Section 3 of the Hours of Work Provision which in effect would allow two fulltime employees to be off for vacations or holidays at a time. Currently, one fulltime firefighter is permitted off at a time. The change essentially provides that two fulltime employees can be off at one time provided the second employee's shift is covered by a part-time employee arranged by the employee scheduling off. The fact-finder also recommended the inclusion of this part of the Employer's final offer.

## **A W A R D**

With respect to Hours of Work, this conciliator selects the Employer's final proposal to maintain the current Hours of Work as more fully set forth below:

### **ARTICLE 14 – HOURS OF WORK**

**Section 14.01** – Current language, no change. Fifty-three hours per week.

**Section 14.02** – Current language, no change.

**Section 14.03** (new) – See Attachment G

ATTACHMENT G

ARTICLE 14

HOURS OF WORK

Section 3. - New.

*Effective upon execution of this agreement,*

Two full-time employees shall be permitted to be scheduled off for a vacation or a holiday at the same time, provided the second full-time employee has given his supervisor at least thirty (30) days written notice of the date and time he desires to take off, and further provided that the position will be filled by another part-time employee and that such substitution does not adversely affect the safe operation of the Madison Fire District.

## **11. FITNESS FOR DUTY**

The Employer proposes a new Fitness for Duty article. The Union opposes such a provision.

The Employer proposes that an employee found unfit for duty or unable to return to service after an extended medical leave be removed from employment in a non-disciplinary manner. The Employer claims that the proposed language is found in other public sector contracts addressing an employee's ability to perform the material duties of their position.

The Union argues that the fitness for duty language proposed by the Employer is too vague and could work to the detriment of employees who are fit for duty. Moreover, the Union maintains that there have been no problems here with respect to employees being able to return to service after an extended medical leave.

ANALYSIS – This conciliator has determined from the evidence presented that there should be no new Fitness for Duty Provision as proposed by the Employer. First, the fact-finder herein discussed this issue and rejected the Employer's proposal. Moreover, there was no showing made that there is a need for a Fitness for Duty Provision at this time. There were no instances cited where an employee has been found to be unfit for duty or unable to return to service after an extended medical leave. There simply was insufficient justification established for the inclusion of a new Fitness for Duty Provision proposed by the Employer. Although similar Fitness for Duty Provisions

are found in some other firefighters' contracts in the area, this kind of provision is by no means a standard one found in other firefighters' agreements. For the reasons indicated, this conciliator finds that there should be no new Fitness for Duty Provision as proposed by the Employer.

### **A W A R D**

With respect to Fitness for Duty, this conciliator has determined that there should be no new Fitness for Duty Provision as proposed by the Employer.

**FITNESS FOR DUTY** – No new provision.

## **12. VACATION LEAVE**

The Employer proposes to incorporate language addressing accrual of vacation while an employee is in an unpaid status. The Union opposes the Employer's attempt to insert language about an "unpaid status." The parties did agree to modify Section 22.04 of the Vacation Leave Provision whereby employees would be allowed to carryover forty-eight hours of vacation from year to year.

The Employer contends that it is only reasonable to reduce the amount of vacation accrual by one-twelfth for every 230 hours which an employee is off in the previous year in an unpaid status. The Employer cites other contracts which contain the same type of language which it proposes here. The Employer takes the position that if an employee is on unpaid status, they do not earn vacation. The Employer also notes that the fact-finder recommended its vacation leave proposal.

The Union takes the position that the Employer has failed to demonstrate any need to change the Vacation Leave Provision. There has been no indication of any abuse or overpayment by any member of the bargaining unit with respect to vacation leave accrual. The Union is especially concerned about the vagueness of the term "unpaid status" set forth in the Employer's proposal. As a result, the new language will only serve to create future disputes for the parties.

ANALYSIS – This conciliator has determined from the arguments and evidence presented that the Vacation Leave Provision should be changed as proposed by the Employer. First, this conciliator must give weight to the fact-finder's recommendation

which was to incorporate the language addressing accrual of vacation for employees on unpaid status as proposed by the Employer. As the Employer notes, it is widely acknowledged that an employee who is off on unpaid status does not earn or accrue vacation. It would be reasonable therefore to provide as the Employer's proposal does in this instance that the amount of vacation an employee has accrued at the beginning of each year be reduced by one-twelfth for every 230 hours in the previous year in an unpaid status. Contrary to the Union's contention, the proposed language reducing vacation accrual for those on unpaid status appears to be reasonable.

Moreover as the Employer points out, similar provisions are found in other firefighters' agreements in the area. Several such contracts which include nearly identical language for vacation accrual were cited in the instant matter.

It should also be noted that the parties are basically in agreement with respect to the other change set forth under Section 22.04 whereby employees would be allowed to carryover forty-eight hours of vacation from year to year. Once again, this modification was recommended by the fact-finder herein.

### **AWARD**

With respect to Vacation Leave, this conciliator awards the Employer's proposal as more fully set forth in Attachment H.

ATTACHMENT H

ARTICLE 22

VACATION LEAVE

Section 22.01.

Add after yrs./hrs. schedule.

*Upon Execution of this agreement,*

The amount of vacation an employee has accrued at the beginning of each year shall be reduced by one-twelfth (1/12) for every 230 hours in the previous year in an unpaid status.

Section 22.02 - No change.

Section 22.03 - No change.

Section 22.04.

Vacation shall normally be used within one year of an employee's anniversary date of full-time hire.

Any vacation leave, accumulated and not used within one year of an employee's anniversary date of full time hire, may be carried over to the following year, not to exceed a maximum of forty-eight (48) Hours which may be carried over from one year to the following year. An employee's accrued vacation bank shall not exceed a total of forty-eight (48) hours above an employee's annual entitlement.

Section 22.05.

For purposes of vacation leave accrual only, each three (3) years of continuous part-time service shall be converted to one (1) year of full-time service. There shall be no service credit for any other political subdivision.



### **13. WORK RELATED INJURY**

The Employer proposes a new Work Related Injury Provision. The parties at the conciliation proceeding appeared to be in agreement on a new Work Related Injury Provision. They indicated that they could accept the language as recommended by the fact-finder with the additional contractual language which is to become part of the provision in question. This conciliator hereby adopts as his award herein the Work Related Injury Provision set forth in the Employer's final offer along with the additional sections which the parties indicated were acceptable at the time of hearing.

### **A W A R D**

With respect to a new Work Related Injury Provision, this conciliator adopts the Employer's proposal with the additional language agreed upon by the parties at hearing as more fully set forth in Attachment I.

ATTACHMENT I

ARTICLE \_\_\_\_\_

WORK RELATED INJURY

Section 1.

In the event of a service related injury by an employee resulting in loss of work by the employee, the Employer shall continue to pay the employee full compensation for the time lost at work for a period not to exceed six (6) weeks or a total of (15) fifteen duty shifts. Compensation shall begin on the third (3<sup>rd</sup>) consecutive scheduled shift of absence as certified by a physician. If the resulting absence is greater than two (2) weeks or five (5) consecutive scheduled shifts, such time will be credited back to the employee's sick leave account (if used) or paid.

Section 2.

Injury leave shall be offered on a one (1) time basis per incident to be used within a one (1) year period from the date of the injury.

An employee initially, using a portion of said leave, shall be entitled to use the remaining period of time available, within one (1) year, if additional absences as certified by a physician require the employee to be off for a period of one (1) week or two (2) consecutive shifts for the same injury.

Section 3.

Employees may be required to file a loss of time claim with

the Ohio Bureau of Worker's Compensation and periodically thereafter provide satisfactory proof of continuing disability.

The employee agrees to turn over to the Employer any weekly compensation check which represents wages paid him by the Bureau of Worker's Compensation until the employee returns to work or the period of compensation represents the aforementioned six (6) weeks, whichever event occurs sooner.

Any payment received by the employee for Permanent Partial Disability related to the injury shall remain the property of the employee.

#### Section 4.

The Employer may require an employee to submit to an examination/evaluation by a physician or health care organization to determine eligibility or continued disability. Such examination will be at the Employer's expense.

with 1-A from For Funder Report.

Sec 5 Upon adoption of Injury leave article  
\_\_\_\_\_ the Employer will not be  
required to continue to provide loss  
of time benefits under any supplemental  
insurance policy.

Sec. 6. Any Employer funded program for loss of  
time benefit received through  
supplemental insurance while receiving  
injury leave under article \_\_\_\_\_  
shall be turned over or paid  
to the Employer.

Sec 7. The Employer agrees that a payroll  
deduction may be implemented, uniform  
in amount at the employees expense,  
for a loss of time supplemental insurance  
benefit.

#### **14. LAYOFF**

The Employer proposes to modify the current Layoff Provision to provide that whenever a reduction in the work force is necessary, the Fire District shall first layoff fulltime firefighters in the reverse order of seniority. The Union opposes any change in the current provision which states that part-time firefighters are to be laid off first prior to any fulltime firefighters whenever a reduction in force becomes necessary.

The Employer maintains that should levies fail, or resources become inadequate to support current staffing levels, it may be necessary to reduce the workforce. In such a case, the Madison Fire District should not be required to first layoff all part-time staff prior to reducing fulltime firefighters to part-time status. The current provision would require the elimination of part-time firefighters prior to the layoff of fulltime firefighters. Based upon the interest of the public, the Contract should not prohibit the Fire District from being able to provide adequate staffing of the department. The Employer notes that the fact-finder recommended the change in the layoff procedure set forth in its proposal.

The Union argues that any modification to the existing Layoff Provision is unwarranted. The Madison Fire District is supported by continuing levies based on the representation to the community that the levies would support a fulltime staff. It would be totally unreasonable to change the Layoff Provision as proposed by the Employer so as to allow the Fire District to layoff all fulltime employees prior to part-time staff.

**ANALYSIS** – Based on the evidence and arguments presented, this conciliator has determined that there should be no modification to the current Layoff Provision as

proposed by the Employer. Although the fact-finder recommended the change which the Employer now seeks, the evidence presented at conciliation persuasively and convincingly demonstrates that the current Layoff Provision is reasonable and should be retained. The evidence simply failed to support the Employer's contention that the Layoff Provision should be modified to allow the Fire District to layoff fulltime firefighters without first laying-off part-time staff.

The evidence clearly shows in this case that the current Layoff Provision which requires the layoff of part-time firefighters prior to fulltime firefighters is fairly standard language set forth in similarly situated firefighters' agreements. In five of the neighboring jurisdictions including Geneva, Mentor on the Lake, Painesville Township, and Willoughby Hills, part-time firefighters are to be laid off prior to fulltime firefighters whenever there is a need to reduce staff. There was no showing made that the kind of Layoff Provision proposed by the Employer herein is commonly recognized in other firefighters' agreements in the region. Therefore, comparable evidence tends to support the Union's position on this issue.

Moreover contrary to the Employer's claim, it would appear to be reasonable given the nature of the Madison Fire District to first layoff part-time firefighters prior to fulltime employees when a reduction in force is needed. The Madison Fire District is responsible for covering approximately fifty square miles. Because of the response time in such a large area, it would appear that the interests of the community would be best served by fulltime firefighters if a reduction in force becomes necessary. As the Union

noted, the Fire District is supported by continuing levies based on the representation to the community that a fulltime firefighting staff would be available to serve them. Given these circumstances as well as evidence showing that it is highly unlikely that any reduction in staff would be necessary during the term of the new Agreement, this conciliator can only conclude that there is a lack of support for the change proposed by the Employer in the Layoff Provision. It should be noted that the fact-finder failed to put forth any rationale for the modification to the Layoff Provision which he recommended. In summary, this conciliator has concluded that there was no basis established for modifying the Layoff Provision as suggested by the Employer.

### **AWARD**

With respect to the Layoff Provision, this conciliator selects the Union's final offer which is to retain current language.

#### **ARTICLE 30 – LAYOFF AND RECALL PROCEDURE**

No change, current language.

## **15. DURATION**

The Union proposes that the Agreement terminate on December 31, 2005. The Employer proposes that there be a three year Agreement as there has been in the past expiring on March 4, 2006.

The Union maintains that it has become necessary to change the ending date on the Contract due to the fact that it has been unable to negotiate a pay increase for 2003. In that regard, the Union points out that this conciliator cannot grant retroactive pay increases for 2003. However if the Contract expires on December 31<sup>st</sup>, the Union would be able to proceed to arbitration in a timely manner.

The Employer contends that no change should be made in the expiration date of the new Agreement. As has been the case in the past, the Contract should expire on March 4, 2006. The Employer points out that it has in effect provided for a retroactive pay increase for bargaining unit members for 2003.

ANALYSIS – This conciliator must accept the Employer’s final offer with respect to Contract duration. That is, the Contract shall expire on March 4, 2006. There simply was insufficient basis established for having the Contract expire on December 31, 2005 as the Union proposes. Contrary to the Union’s claim, bargaining unit members have not been harmed by the lack of any retroactive pay increase. As previously discussed under the wage issue, the proposal awarded therein by this conciliator in effect provides for a lump sum payment to the bargaining unit members in lieu of a retroactive pay increase. Moreover, all non-probationary employees employed upon execution, are



to be placed on Grade 3 retroactive to January 1, 2004. They will also advance to Grade 2 on March 5, 2004, and Grade 1 on March 5, 2005. Therefore, it is reasonable to once again provide that the ending date on the new Contract shall be March 4, 2006.

It should also be noted that this conciliator has awarded several changes in language or wages which are to become effective upon the execution of the Agreement. In one such case involving the change in insurance premium co-pays, the change is to take effect in the month following the execution of the Agreement.

### **AWARD**

With respect to Duration, this conciliator awards the Employer's final proposal to provide that the new Agreement have an expiration date of March 4, 2006.

**DURATION** – Except as otherwise provided herein, this Agreement shall become effective on the 5<sup>th</sup> day of March, 2003 and shall end at midnight on the 4<sup>th</sup> of March, 2006.

## CONCLUSION

In conclusion, this conciliator hereby submits the above referred to awards on each of the outstanding issues presented to him for his consideration. Further, this conciliator incorporates herein all tentative agreements previously reached by the parties which are to be included in the parties' new Collective Bargaining Agreement.

APRIL 26, 2004

  
A handwritten signature in cursive script, appearing to read "J. M. Mancini", is written over a solid horizontal line. Below the line, the name and title are printed in a bold, sans-serif font.

**JAMES M. MANCINI, CONCILIATOR**