

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2004 MAR 23 A 10: 06

**In the Matter of
Conciliation Between:**

CITY OF NORTON, OHIO

-and-

**NORTON PROFESSIONAL FIRE
FIGHTERS, IAFF LOCAL 4219**

Case No. 03-MED-06-0682

**Jonathan I. Klein,
Conciliator**

FINAL OFFER SETTLEMENT AWARD

Appearances

For the Union:

Susannah Muskovitz, Esq.
Carl Housley - Local Union President
David J. Davis - Local Union Secretary/Treasurer
Andy Drwal - 2nd District Vice-President, OAPFF

For the Employer:

Nicholas Codrea, Jr. - Consultant
Claude Collins - Administrative Officer
Roger Ramsthaller - Fire Chief
Jeannie Zerga - Finance Director

Date of Issuance: March 20, 2004

I. PROCEDURAL BACKGROUND

This matter came on for hearing on February 20, 2004, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board (“SERB”), pursuant to Ohio Rev. Code Section 4117.14(D)(1). The hearing was conducted between the City of Norton (hereinafter “Employer” or “City”), and the Norton Professional Fire Fighters, IAFF Local 4219 (hereinafter “Union”), at the City’s Administration Building, Norton, Ohio. The bargaining unit involved in this conciliation consists of three (3) full-time firefighters.

A fact-finding hearing took place on October 20 and November 10, 2003, concerning numerous disputed issues between the parties. The fact-finder’s recommendations were accepted by the Union and rejected by the Employer. As of the commencement of the conciliation hearing, the parties remained at impasse on nine (9) issues: Article 15 - Duty Hours; Article 16 - Overtime Pay and Court Time; Article 17 - Holidays; Article 18 - Vacations; Article 19 - Sick Leave; Article 29 - Uniform Allowance; Article 30 - Insurance; Article 33 - Miscellaneous; and Article 34 - Layoffs.

Following the issuance of the fact-finding report and prior to or during the conciliation hearing, the parties resolved those open issues concerning Longevity and the Duration of Agreement to be contained in Articles 25 and 37 of the collective bargaining agreement, respectively. The conciliator incorporates herein all tentative agreements entered into by the parties prior or subsequent to the conciliation hearing, which are not inconsistent with this Award.

II. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, from between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) Any stipulations of the parties;
- (6) Such other 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, fact-finding or other impasse resolution procedures in the public service or in private employment.

III. FINDINGS OF FACT AND OPINION

Introduction

The City is located in Summit County and had approximately 11,500 residents according to the 2000 U.S. Census. As previously noted, there are three (3) full-time fire fighters employed by the City and this proceeding will end with the initial collective bargaining agreement between the parties.

Upon review of the evidence submitted by both parties, the conciliator determines that the following jurisdictions will be utilized for comparability purposes: Fairlawn, Tallmadge, Copley, Stow, Macedonia, Akron, Barberton, Cuyahoga Falls, Green, Franklin, Coventry, Wadsworth and Springfield. Additionally, other internal bargaining units will also be referenced for comparability purposes throughout this Final Offer Settlement Award.

Issue 1: Article 15 - Duty Hours

The parties tentatively agreed upon Sections 1, 2 and 3 contained in Article 15 of the collective bargaining agreement. The Union proposes the following additional provisions:

- Section 4. Overtime call-ins will be instituted when the on-duty complement of this bargaining unit employee falls below a minimum of one (1).

- Section 5. The maximum ratio of personnel scheduled per shift shall not exceed 2 part-time to 1 of this bargaining unit. The senior full-time member shall be the shift supervisor.

In support of its position, the Union points out that the City's contract with the police officers provides, in part, that "[o]vertime call-ins will be instituted when the on-duty complement of bargaining unit employees falls below a minimum of two (2)" The Union is only requesting that a minimum of one bargaining unit employee be assigned to any given shift. The Union further asserts that its proposed Section 5 language reflects the status quo as it concerns the ratio of part-time to full-time fire fighters scheduled to work each shift. Furthermore, the Union's proposal prevents the City from "turning the fire department into a part-time department." The Union points out that the bargaining unit is "vulnerable" because it is comprised of only three, full-time employees.

The Union also maintains that the part-time fire fighters are not as qualified as the full-time fire fighters. Furthermore, the part-time fire fighters are not as familiar with the department's daily operations and policies. As such, the Union proposes that the senior full-time fire fighter should be the shift supervisor because he is "able to supervise with certifications." At the hearing, the parties stipulated that "on EMS calls, the senior medic is in charge and the responding officers become part of the squad crew." Carl Housley, the local Union president, testified that full-time fire fighters are the most experienced and the level of certification is important at fire and medical scenes.

According to Housley, eight-five percent of all calls are EMS related. He also stated that patient care may suffer if decisions at the scene are overruled by captains or lieutenants who are not certified paramedics. Housley asserted that he was reprimanded in the past when he went directly to the City regarding the issue of supervisory duties. The Union asserts that the shift

supervisor issue is relevant because the department is not functioning according to its own rules and regulations, and full-time fire fighters are not being treated fairly by the City.

The City rejects the Union's proposal as being an improper infringement upon its management rights. Furthermore, the Union's proposal would serve to unduly disrupt the City's operation of the fire department. The City notes that it currently employs thirty-five part-time and three full-time fire fighters. However, there are seventeen full-time and five part-time police officers employed by the City. Therefore, it would be "totally impractical to apply the police officer language regarding ratios."

The City also asserts that the Union's proposed language "does not allow for the fact that no full-time fire fighters are scheduled to work on the weekends." Additionally, the City would be forced to hire more full-time fire fighters if the Union's proposed ratio of full-time to part-time fire fighters was selected. According to the City, Section 3 of Article 15 should adequately protect the integrity of the bargaining unit.

The City further maintains that it has the right to determine who manages the work force. It points out that just because the rules and regulations provide that the senior medic at a site is in charge of the situation does not mean that he or she must also be the shift supervisor. According to the City, its ability to operate the fire department will be severely hindered if the Union's proposed contract language is adopted. Claude Collins, an administrative officer for the City, testified that there have been no direct complaints concerning command decisions at fire or emergency scenes. However, he has heard that full-time fire fighters "do not like being told what to do [by part-time employees]."

Last Best Offer

Based upon the statutory criteria and supporting evidence presented at hearing, the conciliator finds that the City's proposal represents the last best offer. As such, the Union's proposed contract language is rejected and shall not be incorporated into the parties' collective bargaining agreement. This conclusion is reached for the following reasons. First, the conciliator finds the Union's proposal constitutes an excessive infringement upon the City's managerial right to operate the fire department in the most efficient and economical manner within the parameters of the collective bargaining agreement. Second, the Union's proposal regarding the maximum ratio of part-time to full-time fire fighters assigned to a particular shift is unreasonable on its face and may, indeed, be impractical given the small size of the bargaining unit as compared to the number of part-time fire fighters employed by the City.

Third, the parties' current practice provides that the senior medic is in charge of the scene on EMS calls. Thus, it appears that the Union's proposed contract language is unnecessary in order for the department to operate in a safe and efficient manner. At the hearing, the Union presented no probative evidence which would indicate that patient care was inadequate under the department's current operational practices. Finally, the conciliator notes that the fact-finder also rejected the Union's proposed contract provisions for many of the same reasons discussed above.

Article 15 of the parties' collective bargaining agreement shall provide as follows:

Section 1. Work Week: The normal "work week" for all employees shall be defined as consisting of forty (40) hours in a five (5) consecutive day period starting with the employees normal scheduled work shift.

Tour of Duty of Shift: A “tour of duty” or “shift” for all members of the Bargaining Unit shall be defined as the normal eight (8) hour period of time which said member is normally scheduled to work.

Day: A “day” as utilized in this Agreement shall be defined as that time span beginning with the employee’s regularly scheduled tour of duty and ending twenty-four (24) hours later.

Open Shift: An “open shift” shall consist of a shift where there is no one scheduled to work or by reason of vacation, sick leave, compensatory days or any other reason there is an opening on a regularly scheduled shift.

Section 2. The shift bidding process may be renewed every six (6) months commencing January 15, 2004.

Section 3. The Employer agrees to maintain shifts that yield a minimum of scheduled on-duty complement of at least one member of this bargaining unit per scheduled shift.

Issue 2: Article 16 - Overtime and Court Time

The parties have tentatively agreed upon Sections 1, 2 , and 4 through 7 contained in Article 16 of the collective bargaining agreement. The Union has proposed the following additional contract language:

Section 3. Employees called in by the Fire Chief, Shift Commander or Predetermined alarm, shall receive a minimum of one (1) hour overtime pay for call-in pay. (Predetermined alarms shall be second alarms; second alarm calls for additional personnel; or reported structure fires.) Effective January 1, 2005, the call-in pay shall be increased to three (3) hours.

The Union seeks an increase in call-in pay in order to be consistent with the OPBA and AFSCME collective bargaining agreements with the City. The Union notes that there is no dispute regarding the language which defines when call-in pay applies. It also acknowledges that the fact-finder recommended two hours for call-in pay. The Union confirmed that the part-time fire fighters settled on one hour of call-in pay. However, the Union pointed out that the part-time fire fighters employed by the City have other full-time jobs.

The City has proposed the following provision in Article 16 of the contract:

Section 3. Employees called in by the Fire Chief, Shift Commander or by predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1 ½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, or reported structure fires).

The City notes that bargaining unit employees currently receive a minimum of one hour of pay for each call-in. According to the City, the Union merely seeks to increase the total compensation for the full-time fire fighters via Section 3 of Article 16. However, in the words of the City's advocate, "the Union does not wish to agree to any *quid pro quo* on any other cost and/or compensation item." The City points out that it has reached a tentative agreement with the part-time fire fighters unit which includes a one hour call-in pay provision.

The City admitted that it has "no idea how many call-ins last less than one hour." The City pointed out that full-time fire fighters received approximately \$20,500 in 2003 due to overtime work, and it would cost the City an additional \$74.48 at a minimum if the call-in pay is

increased to three hours as proposed by the Union. The City asserts that the total compensation package afforded the bargaining unit members is “above average” as compared to other fire fighters employed in the relevant labor market. (City Ex. 2). Furthermore, the average minimum for call-in pay afforded fire fighters employed by comparable jurisdictions is 1.71 hours. (City Ex. 3).

Jeannie Zerga, the City’s Finance Director, testified at hearing that the fire department is funded through a levy, and the City “goes to the General Fund for fire department funding only if the levy money is insufficient.” She acknowledged that there is no deficit this year in the fire and EMS levies. Zerga then discussed the City’s cash balances and financial condition. (City Ex. 5). She confirmed that the City is self-insured and it costs approximately \$900 per month to provide health insurance to each covered City employee. Zerga acknowledged that the residents of the City currently receive a 100 % tax credit for tax paid on income earned outside the City. The City’s anticipated net income tax revenue for this year is approximately \$2.5 million. Currently, the City’s general fund is not utilized to subsidize the fire and EMS departments, and the City generates approximately \$200,000 each year through its ambulance service.

Last Best Offer

The conciliator selects the City’s position as the last best offer on the issue of Overtime and Court Time. At the hearing, the Union presented insufficient evidence to warrant an increase in the minimum call-in pay from one to three hours. The conciliator notes that the full-time fire fighters employed by the City receive a total compensation package which is greater than that

received by most of their counterparts at comparable jurisdictions. Additionally, the minimum three hour call-in pay provision proposed by the Union is nearly double the average minimum call-in pay afforded similarly situated fire fighters employed by surrounding jurisdictions. Furthermore, the minimum call-in pay received by part-time fire fighters employed by the City is only one hour. The Union has failed to demonstrate a sufficient need for treating full-time and part-time fire fighters differently in regard to the issue of call-in pay, or that its proposal is warranted by the comparable jurisdictions.

Article 16 of the parties' collective bargaining agreement shall provide, as follows:

Sections 1, 2, and 4 through 7 shall be in accordance with the parties' tentative agreements.

Section 3. Employees called in by the Fire Chief, Shift Commander or predetermined alarm list shall receive a minimum of one (1) hour overtime at one and one-half (1½) times the employee's regular hourly rate for call-in pay. (Predetermined alarms shall be second alarms, second alarm calls for additional personnel, or reported structure fires).

Issue 3: Article 17 - Holidays

The parties tentatively agreed upon Sections 1 through 3 contained in Article 17 of the collective bargaining agreement. The Union has proposed the following language for Article 17,

Section 4 of the contract:

Section 4. Each employee is granted an equal number of hours that said employee worked on the Holidays established in Section 1 as compensatory time up to

eight (8) days, and said compensatory time shall be taken within one (1) year of the date earned. Effective January 1, 2005, this number shall be increased to all eleven (11) holidays.

In support of its position, the Union points out that its proposal is consistent with the holiday contract provision afforded police officers employed by the City. The Union's proposal is also warranted due to the fact that the full-time fire fighters are regularly required by the City to work on holidays.

The City opposes the Union's position and it has proposed the following contract language:

Section 4. Each employee is granted an equal number of hours that said employee worked on the Holidays established in Section 1 as compensatory time up to eight (8) days, and said compensatory time shall be taken within one (1) year of the date earned.

According to the City, the Union seeks to "free ride" on another bargaining unit. The City acknowledges that it agreed to increase the number of holiday compensatory days for its police officers from eight to eleven days. However, the OPBA also agreed to overtime and coverage scheduling concessions which saved the City overtime costs. The Union simply seeks to capitalize on the OPBA's bargain minus any *quid pro quo*.

Last Best Offer

For the following reasons, the conciliator concludes that the Union's position represents the last best offer. The record establishes that the police officers employed by the City are currently afforded compensatory time for working on eleven specified holidays. At the hearing, the City presented insufficient evidence in support of its position that the full-time fire fighters should not be afforded the same number of holiday compensatory days as the City's police officers. As stated by the fact-finder, "internal parity with the police supports this recommendation." Additionally, the fact that the full-time fire fighters are required to work most holidays is further support for the conciliator's finding that they should receive compensatory time for the hours worked on each of those holidays.

Article 17 of the collective bargaining agreement shall provide as follows:

Sections 1 through 3 shall be in accordance with the parties' tentative agreement.

Section 4. Each employee is granted an equal number of hours that said employee worked on the Holidays established in Section 1 as compensatory time up to eight (8) days, and said compensatory time shall be taken within one (1) year of the date earned. Effective January 1, 2005, this number shall be increased to all eleven (11) holidays.

Issue 4: Article 18 - Vacations

The parties tentatively agreed upon Sections 2 through 7 to be contained in Article 18 of the collective bargaining agreement. The Union has proposed the following for the contested Section 1 of Article 18:

Section 1. Each employee shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service:</u>	<u>Hours:</u>
After One Year (1)	80 hours
After Five Years (5)	120 hours
After Ten Years (10)	160 hours
After Fifteen Years (15)	200 hours
After Twenty Years (20)	240 hours

The City has proposed the following contract language:

Section 1. Each employee shall earn and be entitled to paid vacation in accordance with the following schedule:

<u>Length of Service:</u>	<u>Hours:</u>
After One Year (1)	80 hours
After Five Years (5)	120 hours
After Ten Years (10)	160 hours
After Fifteen Years (15)	200 hours
After Twenty Years (20)	240 hours

The following second vacation tier schedule shall apply to the employees hired after November 22, 2000.

<u>Length of Service:</u>	<u>Hours:</u>
After One (1) Year	80 hours
After Eight (8) Years	120 hours
After Fifteen (15) Years	160 hours

The Union opposes the two-tier vacation buy-out provision proposed by the City, and it points out that the second tier would not have applied to either of the two bargaining unit members employed by the City at the time the fact-finder issued his's report. Such is not the case now because another, full-time fire fighter was recently hired by the City. In further support of its position, the Union points out that the current practice between the parties does not involve a two-tier system. Furthermore, the City's proposal would be unlawful if it maintains its position

that there should be a second tier for employees hired at any time before January 1, 2005. Thus, the City's proposal should be rejected on that basis alone. The Union also rejects the City's proposal on the merits in the event that the City modifies its position so that the second tier only applies to those employees hired on or after January 1, 2005.

The City points out that all of its employees represented by other bargaining units, including the police officers represented by the OPBA and the clerical and service employees represented by AFSCME, have collective bargaining agreements which contain the same provision which is proposed for the collective bargaining agreement between the fire fighters and the City. The City also notes that such provisions have been contained in the OPBA and AFSCME collective bargaining agreements with the City since 1993. Furthermore, the fact-finder recommended the City's proposal regarding this issue.

Last Best Offer

Based upon the evidence of record, the conciliator determines that the Union's position represents the last best offer. The evidence is clear that the City and other internal bargaining units have utilized a two-tiered vacation schedule for over ten years. However, the Union presented sound reasoning in support of its position that the full-time fire fighters should be treated differently than employees in other internal bargaining units in regard to their vacation schedules based upon the fact that the City's proposal, as written, would retroactively and adversely impact one-third of the bargaining unit members. The conciliator determines that any

two-tiered vacation schedule should treat *all* of the current bargaining unit members *in the same manner*. Such is not the case under the City's proposal.

The conciliator agrees that there should be internal parity among the City's bargaining units with respect to this issue. Had the City's proposed language employed a prospective, rather than retroactive application, the conciliator would have considered the City's position to be the last best offer. However, the conciliator is not empowered to modify a party's proposal, and therefore, the Union's proposal is selected as the last best offer. In this way all of the current bargaining unit members will be afforded similar treatment in regard to their vacation schedules.

Article 18 of the parties' initial collective bargaining agreement shall provide as follows:

Section 1.	Each employee shall earn and be entitled to paid vacation in accordance with the following schedule:												
	<table><thead><tr><th><u>Length of Service:</u></th><th><u>Hours:</u></th></tr></thead><tbody><tr><td>After One Year (1)</td><td>80 hours</td></tr><tr><td>After Five Years (5)</td><td>120 hours</td></tr><tr><td>After Ten Years (10)</td><td>160 hours</td></tr><tr><td>After Fifteen Years (15)</td><td>200 hours</td></tr><tr><td>After Twenty Years (20)</td><td>240 hours</td></tr></tbody></table>	<u>Length of Service:</u>	<u>Hours:</u>	After One Year (1)	80 hours	After Five Years (5)	120 hours	After Ten Years (10)	160 hours	After Fifteen Years (15)	200 hours	After Twenty Years (20)	240 hours
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The language for Sections 2 through 7 of Article 18 shall be in accordance with the parties' tentative agreement.

Issue 5: Article 19 - Sick Leave

The parties tentatively agreed upon Sections 1 through 10 contained in Article 19 of the collective bargaining agreement. The City has proposed that the following provision should be included in Article 19 of the contract:

Section 11. Employees hired after January 1, 2003, shall be entitled to a cash payment equal to fifty percent (50%) of all unused sick leave up to a maximum of 120 days at retirement under their appropriate State Retirement System, after ten years of continuous service, or at death by payment to the Employee's beneficiary.

The City contends that “[a]ll City of Norton Bargaining Unit Employees including the Ohio PBA, Police and Dispatcher Units and A.F.S.C.M.E. Clerical and Service Units have a two-tiered sick leave cash out schedule. These provisions have been contained in the Ohio PBA and A.F.S.C.M.E. Collective Bargaining Agreements effective 2003.” In regard to the issue of sick leave, the City simply “wants what every other employee gets.” The City points out that its proposal regarding this issue was part of the “package” which included increases in the wage rate and longevity bonus.

The Union's position regarding the issue of sick leave is substantially identical to its position concerning vacation schedules discussed above. The Union reiterated that the City's proposed language would have applied to only two bargaining unit members at the time of the fact-finding report. However, a new full-time fire fighter was recently hired by the City. As such, the newly hired employee would be subject to terms of employment which are different than those which he agreed to when he was hired if the City's proposal is adopted by the conciliator.

Last Best Offer

For the following reasons, the conciliator concludes that the Union's proposal represents the last best offer. While the conciliator finds that a reduced sick leave cash out provision applicable to prospective bargaining unit employees would be reasonable based upon the facts presented, the City's proposal unfairly and adversely affects one-third of the current bargaining unit.

For the same reasons discussed above regarding the proposed, two-tiered vacation schedule, including the limitations upon the conciliator's ability to amend proposed contract language, the conciliator finds that the Union's proposal represents the last best offer.

Article 19 of the parties' collective bargaining agreement shall contain only the language set forth in Sections 1 through 10 of the parties' tentative agreement concerning this article.

Issue 6: Article 29 - Uniform Allowance

The parties tentatively agreed upon Sections 1 and 3 contained in the collective bargaining agreement. The Union has proposed the following provision for Section 2 of Article 29 of the contract:

Section 2. All non-probationary Firefighters and Fire-Medics shall receive an annual uniform allowance payable prior to February 10 of each year. Said allowance shall be paid according to the following scale:

Effective Date:	01/01/2003	01/01/2004	01/01/2005
Firefighters/Fire Medics	\$800	\$800	\$962

The Union acknowledges that the current uniform allowance is \$800 per year. During fact-finding, the Union sought increases in the uniform allowance in 2003, 2004 and 2005 in order to conform to the uniform allowance afforded police officers represented by the OPBA. The Union maintains that its proposal is both reasonable and warranted under the circumstances. It points out that part-time fire fighters employed by the City receive a uniform allowance of \$500 per year and they work only approximately five hundred hours each year, while a full-time fire fighter works approximately four times as many hours. The Union also points out that it costs approximately \$1,000 to \$1,200 to purchase and install emergency lights on the full-time fire fighters' automobiles. According to the Union, the emergency lights are a critical safety issue.

The City proposes that the full-time fire fighters should receive a uniform allowance in the amount of \$800.00 per year for the duration of the contract. It maintains that an annual uniform allowance of \$800.00 is more than sufficient to meet the uniform needs of the bargaining unit employees. The City also asserts that the Union's comparison of fire fighters and police officers in regard to the issue of uniforms is improper. The City points out that in contrast to police officers, fire fighters and fire medics do not need to purchase "leather" or firearms related items. It also notes that the purchase of emergency lights is a one time expense.

Last Best Offer

For the following reasons, the conciliator finds that the City's proposal represents the last best offer and there shall be no increase in the annual uniform allowance afforded full-time fire

fighters. At the hearing, the Union presented insufficient evidence to justify an increased uniform allowance. Based upon the evidence presented, the conciliator determines that the current uniform allowance of \$800.00 per year is adequate to cover the uniform needs of the bargaining unit members. The conciliator notes that fire fighters are not required to purchase the same items as police officers, and therefore, the Union's comparison of fire fighters and police officers in regard to the issue of uniform allowance is misplaced. The conciliator also notes that the fact-finder recommended the City's proposal regarding uniform allowance.

Article 29 of the parties' collective bargaining agreement shall provide as follows:

Section 1. A new employee shall be entitled to receive a pro-rated amount of clothing allowance during his first calendar year of service with the City beginning with his starting date month if hired on or before the 15th of a month or the month following his hiring, if hired after the 15th of the month. Any amount not expended during the first calendar year shall be credited to the employee's next calendar year's allowance.

Section 2. All non-probationary Firefighters and Fire-Medics shall receive an annual uniform allowance payable prior to February 10 of each year. Said allowances shall be paid according to the following scale:

Effective Date:	01/01/2003	01/01/2004	01/01/2005
Firefighters/Fire-Medics	\$800	\$800	\$800

Section 3. Any taxes incurred in regard to the Uniform Allowance shall be the Employee's responsibility.

Issue 7: Article 30 - Insurance

The parties tentatively agreed upon Sections 1 through 6, and 8 contained in Article 30 of the collective bargaining agreement. The City has proposed the following language for Sections 7 and 8 of Article 30 of the contract.¹

Section 7. Effective January 1, 2004, employees shall contribute \$24.00 per pay [i.e. twenty-six (26) payments per year] for family coverage and \$12.00 per pay [i.e. twenty-six (26) payments per year] for single coverage. The Employer agrees to participate in an IRS Section 125 program that will allow pre-tax contributions by Bargaining Unit members toward Health Care.

Section 8. Bargaining Unit members shall make the contributions in Section 7 above when, and only when, any other group of City of Norton Employees begin to contribute an equal contribution toward their health care benefit. "Any other group of City of Norton Employees" shall include one of the following:

- 1) Ohio PBA Police and Dispatched Employees
- 2) AFSCME Clerical Employees
- 3) AFSCME Service Employees
- 4) Non-Bargaining Employees

The City, like all employers, is faced with skyrocketing healthcare costs and simply seeks minor relief from the bargaining unit employees. It has repeatedly offered the fire fighters an increase in call-in pay from one to two hours as a "quid pro quo." The City acknowledged that it negotiated contracts with both the OPBA and AFSCME in 2003 which did not contain health

1. Under the City's proposal, Article 30, Section 8 as identified in the tentative agreement, is renumbered Article 30, Section 9.

insurance premium co-pays for employees represented by those unions. According to the City, “things have changed in health care” since it agreed to the terms of the collective bargaining agreement with the OPBA fifteen months ago. At the hearing, the parties stipulated that there was an average increase in health care costs of 4.78 % in 2002, 2003 and 2004. However, there was a 30 % increase in health care costs between 2000 and 2001.

The City points out that its proposed health insurance premium co-pay provision “only affects the fire fighters if it affects ten other City employees.” According to the City, most employees pay approximately 27 % of their health insurance premium costs, and they are paying an increasingly greater percentage of such costs. The City points out that it is requesting that bargaining unit employees pay only approximately five percent of their health insurance premium costs. The City acknowledged that “COBRA figures stayed the same” in 2002 and 2003. The City maintains that there was an average growth rate in health insurance premiums of 10.39 % from 2000 - 2004.

For the following reasons, the Union is opposed to the City’s proposed language regarding a health insurance premium co-pay for the bargaining unit employees. The Union points out that a health insurance premium co-pay is inapplicable to any member of the OPBA or AFSCME bargaining units who are employed by the City. Additionally, a health insurance premium co-pay does not apply to any of the non-union or management level employees working for the City. The Union asserts that “nothing has changed in the last six months” regarding health insurance. Furthermore, the data presented by the City does not justify its proposed co-

pays for the fire fighters. The Union points out that a health insurance premium co-pay “could be put on the shoulders of City administrators unilaterally.”

The Union also asserts that the health insurance costs for the full-time fire fighters are less than the health care costs for other City employees. It further notes that the level of health insurance coverage has been significantly reduced, and therefore, it is “relevant to whether the bargaining unit employees should now have to pay approximately \$600 [per year] for co-pays.” Finally, the Union points out that the fact-finder rejected the City’s position and recommended that there be no health insurance co-pays for bargaining unit employees.

Last Best Offer

Based upon the evidence of record, the conciliator determines for the following reasons that the Union’s position represents the last best offer. The record is clear that no other bargaining unit employees in the City contribute towards the cost of their health insurance premiums. Furthermore, the evidence establishes that non-bargaining unit employees also do not contribute towards their health insurance premiums. As such, internal parity supports the Union’s position that the full-time fire fighters should not be required to contribute a co-pay amount towards their health insurance premiums.

Furthermore, the conciliator finds that the City has presented insufficient evidence that the health insurance costs for bargaining unit members are excessively high due to an abuse of the current health care insurance plan such that an employee contribution towards the premium is necessary. In fact, the conciliator notes that it costs the City less per month to provide health

insurance to the full-time fire fighters than it does to provide such coverage to other groups of employees working for the City. Accordingly, Article 30 of the collective bargaining agreement shall not include the City's additional contract language (the City's proposed language for "Sections 7 and 8") regarding a health insurance premium co-pay amount.

Issue 8: Article 33 - Miscellaneous

The parties tentatively agreed upon Sections 1 through 3 contained in Article 33 of the collective bargaining agreement. The Union proposes the following additional provisions in Article 33 of the contract:

- Section 4. The number of part-time Fire/Medics shall not exceed the number of full-time Fire/Medics.
- Section 5. In the event an open shift as defined in Article 15, Section 1 of this Agreement is created because a full-time Fire/Medic is unavailable to work his/her regularly scheduled shift, a full-time Fire/Medic shall be offered the shift on overtime according to the overtime call in rules in Article 16, Section 4.
- Section 6. If no full-time Fire/Medic accepts the shift, then a part-time Fire/Medic may be utilized without violating Article 15, Sections 3 and 5.
- Section 7. In the event the City utilized part-time Fire/Medic(s) in violation of the above stated agreement, the City shall schedule the affected full-time Fire/Medic(s) for an overtime assignment, in the same amount of hours improperly assigned, within the next two pay periods.
- Section 8. No member of the bargaining unit shall be under the supervision of any part-time employee unless said

part-time employee was elected to that supervisory position by a vote of the residents (i.e. the Mayor).

Section 9. All training opportunities offered to part-time personnel shall also be offered to all members of this bargaining unit.

The Union maintains that the abovementioned provisions should be included in the collective bargaining agreement in order to protect the bargaining unit members' "interest in their jobs." According to the Union, the City is currently permitted to utilize part-time fire fighters in an indiscriminate manner. There are currently five part-time fire/medics and three full-time fire/medics. The Union asserts that full-time employees should not be supervised by part-time employees, and full-time employees should not be excluded from training opportunities. The Union contends that difficulties and safety issues arise when less qualified personnel are utilized by the City.

The City opposes the inclusion of the Union's proposed language in Article 33 of the collective bargaining agreement on the basis that such language infringes upon its management rights. The City also argues that the Union's proposals do not belong under "Article 33 - Miscellaneous" of the contract. According to the City, the contract language proposed by the Union in Sections 5, 6 and 7 of Article 33 is "resolved by Article 15, Section 3 of the collective bargaining agreement." Additionally, the Union's proposed Section 9 language is "covered by the training language contained in the contract." Furthermore, it is within the City's power to train and assign the labor force, and the Union's proposals would unduly disrupt the operation of the fire department. Finally, the City contends that it would cost approximately \$130,00 per year

to hire additional full-time fire/medics in order to comply with the Union's proposed contract language in Article 33.

Last Best Offer

Based upon the evidence of record presented, the conciliator determines that the City's position represents the last best offer. The conciliator finds that the Union has presented insufficient evidence to establish that its proposed contract language is necessary for the safe and efficient operation of the fire department. Moreover, the Union's proposal appears to unreasonably interfere with the City's managerial right to operate the department and direct its workforce. Furthermore, the conciliator concludes that it would be impossible for the City to comply with the Union's proposed language in Article 33, Section 4 without hiring two additional full-time firefighters/medics.

Under the facts and circumstances presented, the Union has failed to demonstrate a need for the City to hire additional full-time bargaining unit employees. Finally, the conciliator notes that the fact-finder also rejected the Union's proposals.

Issue 9: Article 34 - Layoffs

The Union proposes the following provision in Article 34 of the collective bargaining agreement:

Section 5. All part-time employees of the Fire Department will be laid off before any full-time members.

In support of its position, the Union notes that identical language is contained in both the OPBA and AFSCME collective bargaining agreements with the City. The Union asserts that the City “could destroy the bargaining unit” without the abovementioned provision, and its proposal is “more critical” due to the size of the bargaining unit. Furthermore, the proposed contract language was recommended by the fact-finder. At the hearing, the Union maintained that the City’s proposal is unclear in regard to the determination of whether and when a full-time employee is replaced by a part-time employee. In contrast to the City’s proposed contract language, the Union maintains that its proposed provisions are clear and unambiguous.

The City has proposed the following contract language in Article 34 of the collective bargaining agreement:

Section 1. Members of the Bargaining Unit may be laid off only for lack of work or lack of funds. Full-Time firefighters will not be laid off and replaced by Part-Time Firefighters.

According to the City, it modified its proposal following the issuance of the fact-finding report in order to provide the Union with “added security.” The City asserts that the abovementioned provision should adequately serve to protect the integrity of the bargaining unit.

Last Best Offer

For the following reasons, the conciliator determines that the Union’s proposal represents the last best offer. First, the arbitrator notes that similar contract language is contained in both the OPBA and AFSCME collective bargaining agreements with the City. At hearing, the City

presented no justification for affording its full-time fire fighters a lesser degree of job security than that which is afforded other, full-time bargaining unit employees. The conciliator concludes that internal consistency concerning the issue of layoffs is both reasonable and appropriate under the facts and circumstances presented.

Second, the full-time fire fighters employed by the City comprise a very small bargaining unit. The conciliator finds that the Union's proposed contract language affords the bargaining unit members adequate and necessary job protection, and such language, together with other contract provisions, will prevent the City from turning the fire department into a department staffed solely by part-time employees upon destruction of the bargaining unit. The conciliator finds that the City's proposed contract language is unclear and ambiguous, and it does not adequately protect the full-time fire fighters from being laid off prior to part-time employees. The conciliator believes that those bargaining unit members who dedicate their service to the City on a full-time basis should be afforded greater job security and protection than those employees who work only part-time for the City and may hold other jobs as their primary source of income. Finally, the arbitrator notes that the fact-finder also recommended the Union's proposed contract language.

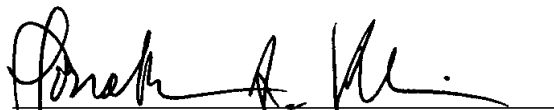
Article 34 of the parties' collective bargaining agreement shall provide, as follows:

- Section 1. Members of the Bargaining Unit may be laid off only for lack of work or lack of funds.
- Section 2. In the event of a layoff situation, members of the Bargaining Unit will be laid off in accordance with their departmental seniority (last hired, first laid off).

- Section 3. A member of the Bargaining Unit who is laid off shall be subject to recall from layoff for a period of three (3) years.
- Section 4. A recall from layoff will be based upon departmental seniority (last laid off, first recalled).
- Section 5. All part-time employees of the Fire Department will be laid off before any full-time members.

FINAL AWARD

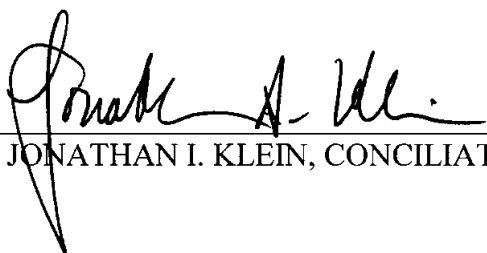
Each of the selected last best offers noted above shall be incorporated into the parties initial collective bargaining agreement, together with any tentative agreements not modified or otherwise affected by the terms of this Award.


JONATHAN I. KLEIN, CONCILIATOR

Dated: March 20, 2004.

CERTIFICATE OF SERVICE

Originals of this Final Offer Settlement Award were served upon Nicholas Codrea, Jr., at The Law Firm of Robert J. Tscholl, Esq., The Carnegie Building, 236 Third Street, SW, Canton, Ohio 44702, and upon Susannah Muskovitz, Esq., at Faulkner, Muskovitz & Phillips, LLP, 820 West Superior Avenue, Ninth Floor, Cleveland, Ohio 44113-1800, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by priority, United States mail, sufficient postage prepaid, this 20th day of March, 2004.



JONATHAN I. KLEIN, CONCILIATOR