

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 DEC 22 A 11: 44

December 20, 2004

In the Matter of the Conciliation Between

THE CITY OF CAMPBELL

and

CAMPBELL FIREFIGHTERS ASSOCIATION
LOCAL #2998, IAFF

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Case No.: 03-MED-10-1299

APPEARANCES

For the City:

Howard Heffelfinger
Michael D. Esposito
Todd Allen
Nita Hendryx
John Leskovyansky

Attorney
Labor Relations Consultant
Labor Relations Consultant
Witness, State of Ohio Auditor's Office
Director of Finance

For the Union:

Dennis Haines
Greg Rosile
Frank Phillips,
Michael Taylor

Attorney
President, Local 2998
Vice-President, Local 2998
OAPFF, 3rd District Vice President

Conciliator:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the conciliation proceeding between the City of Campbell (the "City") and the Campbell Firefighters Association, Local 2998, IAFF (the "Union"). The bargaining unit consists of five (5) full-time Firefighters¹ and two (2) full-time Captains. The terms of the parties' expired collective bargaining agreement covered the period from December 1, 2000 through December 31, 2003.

The parties negotiated for ten (10) months, but reached an impasse. As a result, a fact-finding hearing was held on July 20, 2004 before Fact-finder Thomas L. Hewitt. Mr. Hewitt issued his recommendations on September 9, 2004. The Union accepted the Fact-finder's Report, but the City did not. The parties continued to negotiate, but were unable to reach a resolution of all issues.

Virginia Wallace-Curry was appointed conciliator in this matter on October 5, 2004, by the State Employment Relations Board. A conciliation hearing was held on November 16, 2004, at which time the parties, with the aid of the Conciliator, engaged in further negotiations. When they were unable to resolve the remaining issues at impasse, a hearing was held. The parties were given full opportunity to present their respective positions on the issues. The conciliation proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In deciding between the positions of the parties on the unresolved issues, consideration was given to criteria listed in Rule 4117-9-06 (H) of the State Employment Relations Board.

¹Currently, one of the full-time firefighters is on an extended leave of absence.

The following issues were submitted by the parties as being at impasse:

1. Article 11 - Safety and Health
2. Article 12 - Hours of Work/Shift Exchange
3. Article 13 - Overtime
4. Article 25 - Seniority/Reduction in Force
5. New Article - Bargaining Unit Application of Civil Service Law

BACKGROUND

On June 10, 2004, the State of Ohio declared the City of Campbell to be in fiscal emergency.

Ms. Nita Hendryx, from the State of Ohio Auditor's Office, testified as to the financial condition of the City. She testified that the City met one of the six conditions for placing a municipality in fiscal emergency, i.e. "substantial deficits in city funds." The City would have also met the condition of "default on a debt obligation" had the City not been able to defer payments on its obligations to the Ohio Works Commission to 2005 and 2006. Although the City did not qualify for fiscal emergency under the condition of "failure to make payment of all payroll," the City is two weeks behind in payroll and payments are not being made to the police and fire pensions.

Because of its financial condition, the City has made severe cuts and reduced expenditures wherever possible. The City argues that in the Fire Department's budget, overtime costs have been a costly expenditure due to a minimum manning requirement. The City's proposals are aimed at reducing this expenditure. The Union urges adoption of the Fact-finder's recommendations as written.

At the conciliation hearing, the City withdrew its objection to the Union's failure to file a pre-hearing statement with the State Employment Relations Board prior to the hearing.

ISSUES

1. ARTICLE 11 - SAFETY AND HEALTH

CITY'S PROPOSAL

DELETE ARTICLE 11, SECTION 3, MINIMUM MANNING

City's Rationale

The City is seeking a modification of this Article to regain its management right to determine the adequacy and size of the workforce. The minimum manning requirement currently in the contract has caused the City's overtime costs to soar. With restrictions on its ability to adjust work schedules and the requirement to always staff with two bargaining unit personnel, this provision guarantees that the City will have to call bargaining unit members in at an overtime rate to cover any type of time off.

The Fact-Finder recognized these problems and crafted a solution that he felt would provide the City with the necessary relief during this fiscal crisis. However, the waiver that he proposed will not give the City any savings nor the necessary flexibility that it needs to weather the fiscal emergency. Further, the language proposed by the Fact-Finder is contradictory, ambiguous, and does not account for the scheduling practices in the fire service. Without a clear award of language, this will only result in further disputes over implementation.

The number of calls, both in frequency and type, handled by the City of Campbell Fire Department does not support the need to continuously mandate two (2) firefighters on duty at all times. The number of employees on duty relates more to the level of service to the public that it does safety to other firefighters. By statute, the decision as to the level of service is not subject to bargaining. It is ultimately a policy/political decision driven by the budget conferred by the legislative body.

UNION'S PROPOSAL

CONTRACT MODIFICATION

In order to meet the manning requirements established in the current Collective Bargaining Agreement, the City has the right to utilize the Chief while working on his regularly scheduled shifts (that normally being daylight, Monday through Friday).

CAVEAT

The above Article 11 contract modification is only in effect as long as the State of Ohio determines that the City of Campbell is on a fiscal emergency and becomes moot when the status is lifted and reverts to current contract language below:

SECTION 3, REPLACED - BELOW IS THE REPLACED CURRENT CONTRACT

Minimum-Manning Language

Sufficient personnel shall be maintained on duty and available for response to alarms. A minimum of two (2) firefighters on shift shall be maintained at all times. If sufficient personnel are not available to meet the minimum-manning requirement, firefighters shall be recalled or retained on overtime status. At not [sic] time will anyone but a bargaining unit member replace a bargaining unit member. If an apparatus is called out of the city on a mutual-aid call, two (2) members of the bargaining unit will be called to duty on an overtime status. This status will be paid out on an hour per hour basis, unless the department calling for mutual-aid needs manpower and/or equipment, then all responding members will be paid overtime in accordance with Article 13; Section 1.

Union's Rationale

The Union proposes adopting the Fact-finder's Report as written above. It argues that there is no ambiguity in the language. The Report gives the City the right to use the fire Chief in place of a bargaining unit member when the Chief is working his regular shift. This ability would last until the City is no longer in fiscal emergency.

Minimum manning is not the cause of fiscal emergency. Poor management is more likely. The

Union has already made many concessions and accepted no wage increase for three years and agreed to a lower overtime rate of pay. The Fire Department expenditures are projected to be lower than the total operating budget allocated to the Department. More cuts in manning are not necessary for the department to come under budget. Minimum manning is essential to the health and safety of the firefighters as well as the community. The City's fiscal problems should not be placed on the shoulders of the firefighters. The police union has already settled its contract with the City and severe concessions were not extracted from them. The Fire Department has done its part to help out the City's and should not be asked to do more. ✓

CONCILIATOR'S AWARD

DELETE ARTICLE 11, SECTION 3, MINIMUM MANNING

Rationale

The Conciliator adopts the City's proposal to delete Section 3 of Article 11, which would give the City the right to determine the number of bargaining unit employees on each shift. This may appear to be a drastic measure, but the City is facing drastic times. The City needs to have the flexibility to meet its financial obligations, or the Campbell Fire Department could be eliminated altogether.

While the City will have the ability to determine the number of firefighters on each shift, it must also maintain its safety obligations to employees and the public. If problems arise because of reduced manpower on a shift, the City will have to respond accordingly. The City may find that two firefighters per shift is the minimum manpower necessary for health and safety of all involved. It can decide to increase the firefighters per shift and forego another expense.

Both the Union and the City argued that municipalities in the surrounding areas either do or do

not have minimum manning requirements. Neither side presented the contract language of other jurisdictions, and so neither side's evidence was conclusive or persuasive. But the subject of manning is not a mandatory subject of bargaining, it is a permissive subject. It is a management right that the Union was able to limit in the past. But under the dire financial times the area is experiencing, this right must return to management to maintain the viability of the City itself.

The Conciliator must agree that the language on this issue in the Fact-Finding Report is contradictory and ambiguous. That in itself makes it very difficult to recommend, because the Conciliator has no authority to modify or correct any ambiguities in the language. But even the intent of the language, to allow the City to use the Fire Chief in place of a bargaining unit member when the Chief is on duty, would not give the City enough of a cost savings. This would only alleviate the need to fill 40 hours of work a week, at most. The City needs more savings to climb out of the fiscal emergency. Hopefully, when the City is no longer in fiscal emergency, the City can increase the manpower per shift in the Department.

2. ARTICLE 12, HOURS OF WORK/SHIFT EXCHANGE

City's Proposal

ARTICLE 12 HOURS OF WORK/SHIFT

Section 1. Work Schedule.

Employees will be scheduled for two hundred twelve (212) hours over the course of a twenty-eight (28) day work cycle. Shifts will be scheduled in twelve (12) hour increments.

Section 2. Work Week.

The schedule described in Section 1 shall not restrict the employer in any way from adjusting an employee's work schedule, work week, or work cycle in order to meet operational needs of the department, requests for leave usage, or avoid overtime in the twenty-eight (28) day, two hundred twelve (212) hour cycle.

No more than one (1) fire fighter will be granted time off at any one time.

Section 3. Shift Exchange.

Bargaining unit employees shall be permitted to exchange hours of work upon approval of the Chief of the Department. When trades are made, overtime shall not apply.

Section 4. Shift Assignments.

Shift assignments shall be made at the sole discretion of the Chief.

Section 5. Manpower Adjustment.

When deemed necessary and at its sole discretion, the Employer may adjust a bargaining unit member's schedule. Such schedule adjustments are strictly construed as a management right.

City's Rationale

The cost of staffing the Department under the current scheduling article generates tremendous amounts of overtime, making it virtually impossible to generate any cost savings during a reduction in force. In its proposal, the Employer is seeking to establish a schedule consistent with the FLSA, calling for employees to be scheduled for two hundred twelve (212) hours in a twenty-eight (28) day cycle with individual shift increments being twelve (12) hours. This equates to the same annual hours of work and regular compensation as required by the current agreement, but gives the Employer the flexibility needed to schedule employees without incurring vast amounts of overtime. This will also allow the City

to provide almost complete coverage, with two (2) men on, and allow the department to remain viable during the fiscal emergency.

The Fact Finder acknowledged the increased overtime that the City must absorb with the current scheduling and stated that it was “unrealistic” to layoff another fireman because of this. However, he erred in his reasoning when he stated that the Employer’s proposed change in the scheduling article would reduce the number of hours that a firefighter would be asked to work annually. The Employer’s proposal requires the same number of hours worked annually and the same amount of regular compensation to be paid an employee as that required by the current contract.

Union’s Proposal

Keep current contract language for Article 12.

Union’s Rationale

The Union argues that the language of the City’s proposal is too broad. It gives the City too much power and eviscerates the employees’ rights. There is no time frame in the City’s proposed schedule changes. Therefore, the City is requesting that Union permanently give up all the rights it has gained over the years, not just temporarily make concessions to help out the City during its fiscal crisis.

This Union should not be made to pay such a price for the City’s past poor management. The Union has already agreed to using a reduced overtime rate of pay and made other concessions in order to contain overtime costs. It should not be asked to make even more cuts into its rights.

CONCILIATOR'S AWARD

ARTICLE 12

Keep current contract language.

Rationale

The Conciliator adopts the Union's proposal to keep the current contract language. While the efficacy of going to twelve hour shifts is apparent, the City's proposal is too broad and does not have a time frame which limits this schedule change to the fiscal emergency. The City did not prove the need to permanently change the scheduling practices of the Department.

The Union argued that, early in the negotiations, it had proposed a 12 hour shift schedule. However, the City dismissed its proposal. Perhaps the parties will have to renegotiate the twelve hour schedule option with a limited time frame to resolve the fiscal crisis caused by overtime costs. The City told the Union at the conciliation hearing that the other bargaining units, such as police, were being asked to make temporary adjustments and concessions to their collective bargaining agreements. The City may have to do the same with the firefighters.

The City has in its proposal package an addition to Article 25, Seniority/Reduction in Force, which would limit its proposed changes and modifications to Articles 11, 12 and 13 to the fiscal emergency. However, this provision also contains language which would allow "the City to utilize part-time personnel and/or volunteer auxiliaries to staff, provide shift coverage, respond to fires/emergences, and otherwise ensure the safety and well-being of the public." Presumably, this would allow the City to layoff (or perhaps terminate) all the full-time firefighters and call them back as part-time personnel. The language in the proposed addition to Article 25 is even more broad than the language proposed for

Article 12, and, therefore, cannot be recommended.

Adopting this proposal would also require the Conciliator to choose the Union's proposals for Articles 11, 12 and 13 and then negate them in the same report with the adoption of the Article 25 addition proposed by the City. This would make no sense at all and cause much confusion, because the Union's proposal for Article 11 has a caveat of being applicable only during a fiscal emergency. Consequently, the City's proposed addition to Article 25 cannot be recommended to limit the time frame for a change in scheduling to 12 hour shifts. The Conciliator must adopt the Union's proposal to keep the scheduling as is, which may force the parties back into negotiations for a limited time frame change to scheduling during the fiscal emergency.

3. ARTICLE 13, OVERTIME

City's Proposal

ARTICLE 13 OVERTIME

Section 1.

The City will pay all overtime on the basis of a twenty-eight (28) day, two hundred twelve (212) hour cycle, in accordance with the Fair Labor Standards Act (FLSA). For the purposes of determining overtime eligibility, only hours actually worked shall be included, in accordance with the FLSA.

A minimum of four (4) hours will only be paid on a call out to respond to a fire, but the employer may require the employee to work for the entire four (4) hour period. Should the called back employee not wish to remain and work, then he will receive pay for the actual time that was worked during the call back. Employees who are called in to man the station, while other bargaining unit members are on a call, are not considered to be responding to a fire.

Section 2. Distribution.

The Employer has complete discretion in all matters involving the scheduling of bargaining unit personnel. The Employer may adjust schedules within the twenty-eight (28) day cycle, call bargaining unit personnel in to cover requested time off, or otherwise schedule employees in order to meet the operational needs of the Department. The Employer will only be obligated to pay overtime in accordance with Section 1 of this article.

Section 3. Court Time.

Should a member of the Fire Department be called to testify before a court of law or other governmental body, commission, or board, the employee shall be paid straight time for hours spent in attendance at such hearings.

Section 4. Compensative Time

In lieu of cash payment for overtime, an employee may elect to receive compensative time off. Any compensatory time off shall not exceed four hundred eighty (480) hours as per the Fair Labor Standards Act (FLSA). Such time off must be used within one (1) calendar year from the time it is earned. Compensative time off shall be taken upon the employee's request provided that the granting of the request does not unduly disrupt the Employer's operations and adequate notice of at least three (3) days is given management. If an employee requests time off, the Employer may deny the use of compensatory time. Cash for all accrued "comp time" shall be paid upon separation from employment.

DELETE SECTION 5, EMERGENCY CLOSINGS; SECTION 6, FIFTY-THREE (53) HOUR WORK WEEK; AND SECTION 7, OVERTIME HOURS.

City's Rationale

The FLSA only requires that hours actually worked be used when calculating overtime entitlements. The City's financial situation demands that it seek language that promotes the efficient expenditure of public funds. The City can no longer afford to consider time that an employee is not actually working as the basis for overtime eligibility.

The Fact Finder actually attempted to offer some relief to the City by recommending that sick days and holidays shall not be used for the purposes of calculating overtime. However, this language fails to address multiple sections of the article requiring overtime payments; does not establish where it is to be placed in the article; and does not state whether it applies to an employee covering a call off due to sick leave.

Union's Proposal

ARTICLE 13 **OVERTIME**

Add to current contract language:

Sick days and holidays shall not be used for the purpose of calculating overtime. Caveat: This Article 13 contract Overtime modification is only in effect as long as the State of Ohio determines that the City of Campbell is on a fiscal emergency and becomes moot and the parties revert to the current contract application.

Delete Section 5, Emergency Closings.

Union's Rationale

The Union proposes adopting the Fact Finder's recommendation for this provision. The Fact Finder recognized the need to cut overtime costs and proposed limiting how overtime is calculated. The result is to reduce the overtime rate from \$26.00/hour to \$19.00/hour. This should significantly cut the overtime costs to the City. The Union realizes that it has an obligation to help out where it can and has agreed to this concession, as well as a three year wage freeze.

CONCILIATOR'S AWARD

ARTICLE 13 **OVERTIME**

Add to current contract language:

Sick days and holidays shall not be used for the purpose of calculating overtime. Caveat: This Article 13 contract Overtime modification is only in effect as long as the State of Ohio determines that the City of Campbell is on a fiscal emergency and becomes moot and the parties revert to the current contract application.

Delete Section 5, Emergency Closings.

Rationale

The Conciliator adopts the Union's proposal. The City's proposals for Article 12 and Article 13 are inextricably linked. Its proposal for Article 13 specifically addresses the 28 day, 212 hour work cycle. Because this proposal was not adopted for Article 12, the City's proposal for Article 13 must also be rejected.

The Union's proposal significantly cuts the costs of overtime to the Department by reducing the overtime rate by \$7.00/hour. The evidence submitted at the hearing in Employer's Exhibit 2 shows that the total 2005 budget of the Fire Department must not exceed \$544,440.00. The expenditures are estimated at \$532,196.76, which is less than the budget. The City argues that overtime is not included in the estimate of expenditures, however, the expenditures are overestimated by \$60,000, the cost of one employee who is on long term leave. Overtime was estimated at costing \$48,000/ year or \$4,000 a month. This does not take into consideration the reduced rate of overtime, which the Union proposes. Even with overtime costs at the 2004 rate, the Fire Department budget is estimated at

coming in \$24,000 under budget. It is difficult to see why such drastic changes are necessary, especially on a permanent basis.

As to the vagueness and ambiguity of the Fact Finders report on Article 13, the Conciliator recommends that the above language be added to Section 6 of Article 13, which discusses the overtime rate. The other ambiguities alleged by the City will have to be addressed if and when they arise.

4. ARTICLE 25 - SENIORITY/REDUCTION IN FORCE

City's Proposal

ARTICLE 25 **SENIORITY/REDUCTION IN FORCE**

Add to existing contract language:

Section 3. Fiscal Emergency Waiver.

In the event that the City enters a state of fiscal emergency, as declared by the State of Ohio Auditor's Office, and in order to preserve the health, safety, and welfare of the citizens of the City of Campbell, the city may utilize part-time personnel and/or volunteer auxiliaries on an as-needed basis to staff, provide shift coverage, respond to fires/emergencies, and otherwise ensure the safety and well-being of the public. Further, the City may operate under the alternative language for Articles 11, 12, and 13 contained in Appendix A. This section nullifies any other article, section, rule, ordinance, statute or provision mandating staffing level, bargaining unit preference, prohibiting the use of part-time and/or auxiliaries, or requiring the re-call/call-in of specific personnel.

In the event that this section must be applied, bargaining unit employees on layoff will be notified and provided the option of working on a part-time or as-needed basis. Bargaining unit employees providing coverage on a part-time or as-needed basis, will be considered part-time or auxiliary employees for the purposes of pay rates and benefit eligibility.

During the period of fiscal emergency the alternative articles in Appendix A

shall govern those contractual topics and the current contract articles will be suspended. Once the state of emergency is lifted and staffing is brought back to pre-layoff levels, the alternative language of Appendix A and this section will cease to have force and effect and the City will revert to the contract language contained in this Agreement.

APPENDIX A

ARTICLE 11 SAFETY AND HEALTH

Section 1. Standards.

The Employer agrees to provide the highest standards of safety and health in the Fire Department in order to eliminate as much as possible accidents, deaths, injuries, and illnesses in the Fire Service.

Section 2. Safety Committee.

A safety committee is hereby established and will consist of the following members: a representative of the city Administration, one (1) Union representative, and the Fire Chief. The Labor Management Committee may serve as the Safety Committee. The committee will conduct work safety inspection on a quarterly basis, note safety hazards, and make recommendations to the City Administration and City Council. These reports shall be given biannually. Should the recommendations by the Safety Committee fail to be acted upon, the Union may grieve same.

ARTICLE 12 HOURS OF WORK/SHIFT

Section 1. Work Schedule.

Employees will be scheduled for two hundred twelve (212) hours over the course of a twenty-eight (28) day work cycle. Shifts will be scheduled in twelve (12) hour increments.

Section 2. Work Week.

The schedule described in Section 1 shall not restrict the employer in any way

from adjusting an employee's work schedule, work week, or work cycle in order to meet operational needs of the department, requests for leave usage, or avoid overtime in the twenty-eight (28) day, two hundred twelve (212) hour cycle.

No more than one (1) fire fighter will be granted time off at any one time.

Section 3. Shift Exchange.

Bargaining unit employees shall be permitted to exchange hours of work upon approval of the Chief of the Department. When trades are made, overtime shall not apply.

Section 4. Shift Assignments.

Shift assignments shall be made at the sole discretion of the Chief.

Section 5. Manpower Adjustment.

When deemed necessary and at its sole discretion, the Employer may adjust a bargaining unit member's schedule. Such schedule adjustments are strictly construed as a management right.

**ARTICLE 13
OVERTIME**

Section 1.

The City will pay all overtime on the basis of a twenty-eight (28) day, two hundred twelve (212) hour cycle, in accordance with the Fair Labor Standards Act (FLSA). For the purposes of determining overtime eligibility, only hours actually worked shall be included, in accordance with the FLSA.

A minimum of four (4) hours will only be paid on a call out to respond to a fire, but the employer may require the employee to work for the entire four (4) hour period. Should the called back employee not wish to remain and work, then he will receive pay for the actual time that was worked during the call back. Employees who are called in to man the station, while other bargaining unit members are on a call, are not considered to be responding to a fire.

Section 2. Distribution.

The Employer has complete discretion in all matters involving the scheduling of bargaining unit personnel. The Employer may adjust schedules within the twenty-eight (28) day cycle, call bargaining unit personnel in to cover requested time off, or otherwise schedule employees in order to meet the operational needs of the Department. The Employer will only be obligated to pay overtime in accordance with Section 1 of this article.

Section 3. Court Time.

Should a member of the Fire Department be called to testify before a court of law or other governmental body, commission, or board, the employee shall be paid straight time for hours spent in attendance at such hearings.

Section 4. Compensative Time

In lieu of cash payment for overtime, an employee may elect to receive compensative time off. Any compensatory time off shall not exceed four hundred eighty (480) hours as per the Fair Labor Standards Act (FLSA). Such time off must be used within one (1) calendar year from the time it is earned. Compensative time off shall be taken upon the employee's request provided that the granting of the request does not unduly disrupt the Employer's operations and adequate notice of at least three (3) days is given management. If an employee requests time off, the Employer may deny the use of compensatory time. Cash for all accrued "comp time" shall be paid upon separation from employment.

City's Rationale

The waiver proposed by the City is temporary, allowing the City the operation flexibility it needs, without asking the bargaining unit to permanently sacrifice the benefits that they have achieved over the past decade. The waiver includes clearly written contract language under which it would be administered and responds to safety concerns for both the public and employees by lifting the prohibition on utilizing part-time and auxiliary workers to ensure the safety and well being of the public while a bargaining unit member is on layoff. This temporary waiver will allow the Employer to generate the necessary savings in this department so that it remains operationally viable during the course of the

fiscal emergency.

Union's Proposal

ARTICLE 25
SENIORITY/REDUCTION IN FORCE

Keep current contract language.

Union's Rationale

The Union proposes keeping the current contract language. The City's proposal should not become part of the Agreement. The waiver proposed by the City has no guarantee of no layoffs. Without it, the bargaining unit could be eliminated. The City has obtained concessions from other units who have already reached an agreement. This Union is willing to do the same, if they have a signed agreement which would otherwise be in place when the City is no longer in fiscal emergency.

CONCILIATOR'S AWARD

ARTICLE 25
SENIORITY/REDUCTION IN FORCE

Keep current contract language

Rationale

As stated in the discussion on Article 12, Scheduling, above, the Conciliator must reject the City's proposed addition to Article 25, Seniority/Reduction in Force. The provision would limit its proposed changes and modifications to Articles 11, 12 and 13 to the fiscal emergency, with which the Conciliator can agree. However, this provision also contains language which would allow "the City to utilize part-time personnel and/or volunteer auxiliaries to staff, provide shift coverage, respond to

fires/emergences, and otherwise ensure the safety and well-being of the public.” Presumably, this would allow the City to layoff (or perhaps terminate) all the full-time firefighters and call them back as part-time personnel. This would indeed save the City money, but would completely eviscerate the bargaining unit. The language of Article 25 gives the City too much power and the City has not justified this need.

5. NEW ARTICLE - BARGAINING UNIT APPLICATION OF CIVIL SERVICE LAW

City’s Proposal

NEW ARTICLE **BARGAINING UNIT APPLICATION** **OF CIVIL SERVICE LAW**

Section 1. The parties agree that no section of the civil service laws contained in the Ohio Revised Code Section 124.01 through 124.56, nor any local Rules and Regulations of the Civil Service Commission of the City of Campbell, pertaining to wages, hours, terms and other conditions of employment, shall apply to bargaining unit employees where such matter has been addressed by this agreement.

Section 2. Notwithstanding the above, Section 124.57 ORC shall continue to apply to bargaining unit employees.

City’s Rationale

For many years, some negotiators naively believed that the contract superseded conflicting laws, only to learn that it did not. In State, ex rel. OAPSE/AFSME Local 4, et al. V. Batavia Local School Dist. Bd of Edu. (2000) 89 Ohio St. 3d 191, the Ohio Supreme Court held that a contractual job abolishment procedure was worthless because the parties had not “written out” a conflicting state law with specificity. The City wishes to clarify that, where the parties have negotiated a contractual

provision, it will specify their rights and obligations. The City needs one standard to follow in order to avoid unnecessary contract administration disputes. Where the Union has negotiated a contractual provision, it should be required to honor that agreement.

Union's Proposal

Reject City's proposal for new article.

Union's Rationale

The Union rejects the proposal of the City. This language may be used to deny the bargaining unit members the benefits of provisions in the civil service law that the Agreement does not cover and were never discussed.

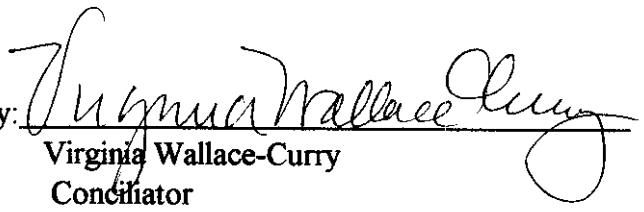
CONCILIATOR'S AWARD

No new provision to be added.

Rationale

The City's proposal to adopt new language in an attempt to make the parties' Agreement the last word on an issue and avoid a second bite at the apple. However, it is doubtful that even this language would preclude a union from arguing that some issue is not covered in the Agreement, but is addressed by the Civil Service rules and regulations. The words in the proposed addition "**where such matter has been addressed by this agreement**" contains enough ambiguity to argue that a matter has not been addressed properly, or sufficiently, or at all. Therefore, because even this provision would not be an airtight guarantee for the parties, it is not adopted here.

This Conciliation Report is

Submitted by: 
Virginia Wallace-Curry
Conciliator

December 20, 2004
Cuyahoga County, Ohio

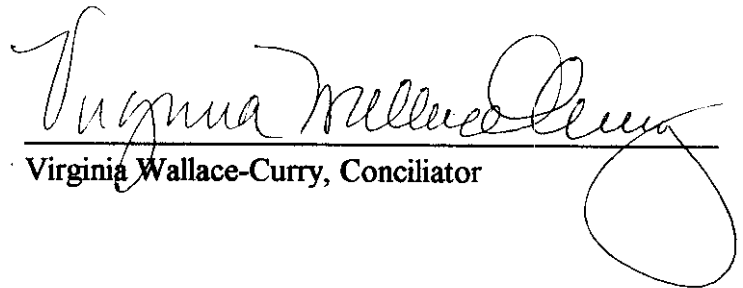
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Conciliation Award for the City of Campbell and the Campbell Firefighters Association, Local 2998, IAFF was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, December 20, 2004 The Conciliation Award was served upon:

Howard D. Heffelfinger, Esq.
Executive Vice President
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road Suite A
Akron, OH 44319-1907

Dennis Haines, Esq.
Green Haines Sgambati Co., L.P.A.
National City Bank Building Suite 400
Youngstown, OH 44501-0849

Mr. Dale A. Zimmer
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213


Virginia Wallace-Curry, Conciliator