

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
FINAL OFFER SETTLEMENT AWARD
BETWEEN:

2004 DEC 17 A 11:36
STATE EMPLOYMENT
RELATIONS BOARD

City of Willowick)
)
and) Case No: 03-MED-10-1302
)
Willowick Firefighters Association) Conciliator: Colman R. Lalka

HEARING

Date of Hearing: December 2, 2004
Location of Hearing: Willowick, Ohio

ATTENDANCE AT HEARING

For the Employer:

Tom Grabarczyk, Consultant
Joseph P. Busher, Fire Chief
Cheryl Killen, Finance Director

For the Union:

Joseph M. Hegedus, Esq.
Bob Posipanka, Local President
Bryan Rudersdorf, Local Representative

BACKGROUND

The City of Willowick has recognized the Willowick Firefighters Association as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board, and had a Labor Agreement in effect that expired on December 31, 2003. Formal bargaining between the Parties for a successor Agreement has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report rejected. Said Fact-Finding Report, issued September 17, 2004, is incorporated herein by reference. Each Party timely submitted a written report to the conciliator as mandated by law

and SERB Rules and Regulations, and requested the Conciliator convene a hearing and that matters at impasse be determined pursuant to a final offer settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB.

The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award on all disputes between the Parties on an issue-by-issue basis. Provisions were made allowing for a written record of the proceedings.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Conciliator in resolving the disputed issues were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H) through (H)(6) of the State Employment Relations Board, to wit:

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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. The stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUES AT IMPASSE AND AWARD

CITY'S LAST SETTLEMENT OFFER

Levy of Fines

The City proposes to add the levy of fines, pursuant to ORC 124.34, to the steps of the Parties' Article 12 progressive disciplinary procedure. The City's proposed change to Article 12 reads:

Section 2.

Disciplinary actions or measures may include, in order of severity, but are not limited to, any of the following:

- A. Oral Warning
- B. Written Reprimand
- C. Suspension / Levy of Fines
- D. Demotion
- E. Discharge

A levy of fines will not exceed twelve (12) hours pay representing the equivalent of a one (1) day suspension. An employee's base hourly rate shall be reduced to equal the fine of twelve (12) hours over the duration of a designated pay period resulting in the net affect of the fine.

The City also proposes modifications to Articles 13 and 15 to reflect its proposed change by adding the words "or fines" or "fines," as appropriate, after the word suspension(s).

The standard disciplinary suspension has always been for twelve hours, and the last paragraph was added subsequent to the Fact-Finder's Report to address Union contentions the FLSA would be violated by the levy of fines. The reduction in salary commensurate with a fine for twelve hours of pay, the City believes, would result in no violation of the FLSA.

The impetus behind the City's proposal is it's need to staff shifts with a full complement of Firefighters. A full compliment consists of five Firefighters and an Officer or Watch Commander, i.e., a Firefighter filling in for an Officer. All Firefighters, with the exception of the Chief, are part-time, and work forty-eight hours per month in six or twelve hour shifts. That is, shift hours are 6:00 a.m. to 12:00 p.m., 12:00 p.m. to 6:00 p.m., and 6:00 p.m. to 6:00 a.m.

When a Firefighter is suspended, the City contends, it has difficulty filling a shift with a full compliment. Moreover, the City continues, the suspended Firefighter simply picks an additional shift pursuant to Article 22 governing scheduling procedure and makes up for the lost hours, or, if a shift is understaffed and is "paged out," the suspended Firefighter simply answers the page and reports for work. Thus, the City concludes, suspensions are an ineffective method of discipline.

The Union proposes a continuation of the current Contract language.

Evidence of record established that in the last one and one-half years only one Firefighter was suspended, and, by the City's own admission, Firefighters do a commendable job of maintaining required staffing levels. Moreover, the City is currently permitted sixty Firefighters while only employing fifty, and is attempting to hire additionally Firefighters to bring its entire compliment up to the sixty permitted.

The levy of fines, notwithstanding being permitted by the ORC, is, in the current climate of Labor/Management Relations, extremely rare if it exists at all. This Conciliator is unaware of any Collective Bargaining Agreements, whether in either the public or private sector, that provides for the levy of fines as a method discipline, and the City was unable to reference any. In the opinion of this Conciliator, such a drastic deviation from generally accepted standards of discipline under the current, and, it should be added, long standing and continuous practice of resorting to other time-tested methods of corrective discipline, requires a strong showing of necessity.

Under the evidence of record, suspension and a lack of manpower have not been shown to be problematic, and the steps of progressive discipline in the current Collective Bargaining Agreement have corrected any manpower problems that occurred in the past. The City's proposed modification to Article 12, Section 2, is rejected, and Union's last offer the language in the current Collective Bargaining Agreement be carried forward is accepted. It is ordered Article 12, Section 2, remain as written in the Collective Bargaining Agreement effective January 1, 2001 to December 31, 2003.

UNION'S LAST SETTLEMENT OFFERS

The Union proposes two additions to Article 17, Wages and Other Compensation, the first for Longevity and the second for Summer Weekend Compensation. The City objects to both proposals. The Union's proposals read:

Section 3.

Effective January 1, 2004, employees shall be granted additional compensation based on years of service as defined in Article 11 – Seniority. Such compensation shall be added to the employee's base hourly rate, according to the following schedule:

After completion of five (5) years of service \$0.15 per hour

After completion of ten (10) years of service \$0.20 per hour

After completion of fifteen (15) years of service \$0.25 per hour

After completion of twenty (20) years of service \$0.30 per hour

Such rates are total and not cumulative.

Section 4. (previous Section 3.)

For purposes of this Article, the regular rate of pay specified for each classification of Bargaining Unit Employees shall be defined as the base rates set forth in Article 17, Section 1, together with the additional one dollar and twenty-five cents (\$1.25) provided for qualified employees under Section 2, along with any longevity payment for qualified employees as set forth in Section 3.

New Section 10.

Beginning May 1 of each calendar year and continuing through September 30 annually, each Bargaining Unit Employee who schedules himself or is assigned a weekend day shift, based on Article 22, will be eligible for additional weekend

compensation. A weekend day shift is defined as either 6:00 a.m. to Noon or Noon to 6:00 p.m. shift on a Saturday or Sunday.

An additional four dollars (\$4.00) per hour will be paid for each hour of scheduled station duty worked between the hours of 6:00 a.m. and 6:00 p.m. on a Saturday or Sunday.

Members responding from home on a call-out basis will receive the same compensation for the hours worked but not less than two hours based on Article 17, Section 4.

The Fact-Finder discussed at length the City's fiscal condition and determined there is a question of the City's ability to finance proposed increases in economic benefits. The Fact-Finder also noted the City did not contend it could not afford any economic increases, but could only afford small increases over the life of the successor Agreement.

At the Conciliation Hearing, both Parties presented extensive evidence regarding the City's ability to finance the Union's proposed additions to the Collective Bargaining Agreement. The evidence presented fully supports the Fact-Finder's analysis and conclusion regarding the City's fiscal strength and ability to pay.

Longevity

The Fact-Finder rejected the Union's request for Longevity. Willowick Police Officers receive the highest Longevity pay of all Willowick employees, and the Union had requested Longevity pay in the same amount received by the Police Department. For Conciliation, however, the Union lowered the amount of Longevity sought to the amounts all other City employees receive.

Evidence of record established, in addition to the City's fiscal condition, that during Contract negotiations three years ago, the Parties discussed and agreed upon the granting of Incentive pay to Firefighters in lieu of Longevity. The Union points out that under the current Incentive program a firefighter does not receive Incentive pay until the Firefighter works 575 hours. A Firefighter who works the required forty-eight hours per month, the Union continues, only works 576 hours in a year, thereby receiving only one hour of incentive pay.

The City counters by arguing the purpose of Incentive pay is to fill the Fire Station by giving Firefighters incentive to work more hours. Under the current Incentive program, the City continues, a first year Firefighter who works more than the minimum number of hours is paid Incentive. Under the Union's Longevity proposal, the City emphasizes, the first year Firefighter receives nothing.

Moreover, no part-time employees in the city, with the exception of one part-time clerk, receive Longevity. Regarding other Lake County communities, those providing Longevity to Firefighters have lower pay scales. Thus, the total economic packages as they now exist are comparable between Willowick and those other communities.

Based upon the evidence of record, the Conciliator rejects the Union's Longevity proposal, and accepts the City's last offer that Longevity not be included in the successor Collective Bargaining Agreement. It is ordered the Union's proposed Article 17, Section 3 language quoted above not be placed in the successor Collective Bargaining Agreement.

Summer Weekend Compensation

The Union proposes to memorialize the City's practice over the last two years of a four dollar per hour pay increase to Firefighters working Saturdays and Sundays on the 6:00 a.m. to Noon and Noon to 6:00 p.m. shifts over the summer. In 2003 the summer pay increase was implemented for such weekend work between May 24th and September 28th. Summer pay increases, the Union argues, assist in alleviating summer staffing problems that would otherwise exist.

The City objects to the proposal, noting the summer pay increases were and are temporary fixes to a scheduling problem. The summer weekend pay increases were only one of many steps taken to assist with scheduling, including an increase in scheduling from thirty-six hours per month to forty-eight, and hiring new Firefighters. Accepting the proposal, the City concludes, will convert a temporary solution into a permanent pay increase.

Given the City's current fiscal condition, and the potential alleviation of summer scheduling problems under the current procedure of issuing summer pay increases as needed, no adequate justification was presented to grant the Union's proposed Summer Pay Increase, and same is rejected. The Conciliator accepts the City's last offer that Summer Pay Increases not be included in the successor Collective Bargaining Agreement. It is ordered the Union's proposed Article 17, Section 10 language quoted above not be placed in the successor Collective Bargaining Agreement.

MEDIATION AND AGREEMENT

Prior to the commencement of, and during the hearing as issues were presented, mediation was conducted with the Conciliator acting as mediator. Settlement was reached on the

following issues, and at the request of the Parties and with permission of the Conciliator, said settlement agreements are included herein as the award of the Conciliator:

**ARTICLE 17
WAGES AND OTHER COMPENSATION**

Section 1.

Effective retro-active for employees employed (excluding death) upon award to January 1, 2004, hourly wage rates shall be established and paid for hours worked as set out in the schedule below:

| | |
|------------------|----------------|
| 3/C Fire Fighter | 10.22 Per Hour |
| 2/C Fire Fighter | 11.33 Per Hour |
| 1/C Fire Fighter | 12.75 Per Hour |
| Lieutenant | 15.83 Per Hour |
| Captain | 17.79 Per Hour |

Effective retro-active for employees employed upon award to January 1, 2005, hourly wage rates established above, shall be increased by two percent (2%) and set out in the schedule below:

| | |
|------------------|----------------|
| 3/C Fire Fighter | 10.42 Per Hour |
| 2/C Fire Fighter | 11.56 Per Hour |
| 1/C Fire Fighter | 13.01 Per Hour |
| Lieutenant | 16.15 Per Hour |
| Captain | 18.15 Per Hour |

Effective January 1, 2006, hourly wage rates established above, shall be increased by two percent (2%) and set out in the schedule below:

| | |
|------------------|----------------|
| 3/C Fire Fighter | 10.63 Per Hour |
| 2/C Fire Fighter | 11.79 Per Hour |
| 1/C Fire Fighter | 13.27 Per Hour |
| Lieutenant | 16.47 Per Hour |
| Captain | 18.51 Per Hour |

Section 5.

Annually, with the first pay in December, each Bargaining Unit employee who has completed one (1) year of service and has been paid a minimum of five hundred eighty (580) hours on the payroll as of October 31st from November 1st of the prior year, shall receive a lump sum uniform maintenance clothing payment of five hundred dollars (\$500.00).

Employees with less than one (1) year shall receive a lump sum uniform maintenance clothing payment equal to forty-two dollars (\$42.00) for each month of service in which a minimum of forty-eight (48) hours worked have been paid.

Employees will be permitted to submit receipts for purchases, maintenance and cleaning by the first Friday in November of each year. Employees may also submit a signed statement claiming up to ten dollars (\$10.00) or allowable IRS deduction per week for home-cleaning of uniforms up to the date of submission. All receipts must be dated between January 1st and the first Friday in November of the year of reimbursement. Employees shall be provided one (1) check for the amount considered reimbursement and one (1) check for the remainder.

Payment for the retroactive allowance for 2004 shall be paid to employees who remain employed, excluding death, thirty (30) days from issuance of the conciliator's award. This retroactive payment shall be processed as part of the normal payroll.

ARTICLE 26¹
FITNESS FOR DUTY

Section 1.

An employee found unfit for duty as referenced in Section 2 below, or unable to return to service after exhausting the leave of absence authorized by Article 25 of this agreement, shall be removed from employment in a non-disciplinary manner.

Section 2.

Initial determination of medical condition may be based on the employee's physician's medical statement or, at the Employer's expense, an employee may be required to submit to a medical examination to determine fitness for duty pursuant to OAC 123:1-33-01.

Section 3.

A pre-separation hearing will be offered in the case of an involuntary disability separation, pursuant to OAC 123:1-33-02. Voluntary disability separations shall be processed pursuant to OAC 123:1-33-03.

Section 4.

An employee who has been separated from service due to a disability separation shall have reinstatement rights as set out in OAC 123:1-33-04, except that the employee's right of appeal shall be subject to the grievance and arbitration article of this agreement, which shall be the sole and exclusive remedy.

Colman R. Lalka, Conciliator

Dated: December 15, 2004
Madison, Lake County, Ohio

¹ The current Article 26 is to be renumbered Article 27.