

HAND DELIVERED

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF CONCILIATION : 2005 NOV -2 A 10:00
: SERB Case Number: 04-MED-08-0757
Between the :
: CITY OF ATHENS, OHIO, :
: Employer : Date of Conciliation Hearing:
: October 20, 2005
and the :
: AMERICAN FEDERATION OF STATE, : Howard D. Silver
COUNTY AND MUNICIPAL EMPLOYEES, : Conciliator
OHIO COUNCIL 8, AND LOCAL 3351, :
: Union :
:

FINAL OFFER SETTLEMENT AWARD OF CONCILIATOR

APPEARANCES

For: City of Athens, Ohio, Employer

Garry E. Hunter, Esquire
Director of Law
City of Athens
Law Administration Building, Suite 301
Athens, Ohio 45701-2411

For: American Federation of State, County and Municipal
Employees, Ohio Council Number 8, and Local 3351, Union

Gary W. Arnold
Staff Representative
AFSCME, Ohio Council 8
36 South Plains Road
The Plains, Ohio 45780-1348

This matter came on for conciliation hearing pursuant to Ohio Revised Code section 4117.14(G) at 1:50 p.m. on October 20, 2005, at the Athens Community Center, 701 East State Street, Athens, Ohio.

Prior to the initiation of the conciliation hearing held on October 20, 2005, the parties, who had identified fourteen unresolved Articles in their respective written position statements submitted to the conciliator at least five days prior to the conciliation hearing, were able to reach agreement as to thirteen of these fourteen unresolved Articles. The issue that remains unresolved and was the sole subject of the conciliation hearing on October 20, 2005 is longevity, Article 19.

It is the intention of the conciliator to set out within this final offer settlement award those thirteen Articles about which the parties reached agreement on October 20, 2005. The language adopted by the conciliator among these thirteen Articles is based upon the consensus reached by the parties as to all thirteen Articles, as an integrated package. The conciliator has strived to adopt the precise language agreed, but nonetheless draws the attention of the parties to Ohio Revised Code section 4117.14(G)(11), a statute that authorizes the parties, at any time, to amend or modify a conciliator's award by mutual agreement. In the event the conciliator misstates an agreement reached by the parties, the conciliator assumes the error will be rectified under the aforementioned statutory language and by agreement of the parties.

After presenting in this Award the Articles agreed by the parties prior to the conciliation hearing, the conciliator will present a discussion and analysis of the single issue that

continues to separate the parties from a successor collective bargaining agreement, longevity, Article 19.

The conciliation hearing that addressed the only issue remaining at impasse, longevity, Article 19, concluded at 2:30 p.m., October 20, 2005.

FINDINGS OF FACT

1. The parties to this conciliation process are the city of Athens, Ohio, a public employer, and American Federation of State, County and Municipal Employees, Ohio Council 8, and Local 3351, the exclusive representative of the city of Athens's firefighters' bargaining unit.
2. The city of Athens, Ohio, and AFSCME Ohio Council 8 and Local 3351, were parties to a collective bargaining agreement in effect from November 18, 2001 through November 14, 2004.
3. On November 12, 2004, the parties signed a contract extension agreement extending the (then) current collective bargaining agreement and agreeing that the successor agreement reached between the parties shall be retroactive to November 14, 2004.
4. The city of Athens, Ohio firefighters' bargaining unit is comprised of twenty members, including firefighters and fire lieutenants.
5. The city of Athens, Ohio firefighters' bargaining unit is limited to uniformed employees in the classification of firefighter or fire lieutenant.

6. At least five days prior to October 20, 2005, each party submitted to the conciliator a written presentation of each party's final offers among fourteen Articles that remained unresolved between the parties.
7. Prior to the conciliation hearing that convened at 1:50 p.m. on October 20, 2005, the parties reached agreement as to thirteen of the fourteen Articles that had been unresolved.
8. The thirteen Articles agreed by the parties prior to the initiation of the conciliation hearing on October 20, 2005, are Article 6, Dues Deduction; Article 9, Discipline and Self-Incrimination; Article 10, Hours of Work; Article 11, Overtime; Article 13, Wages, including Addendum #1; Article 14, Vacations; Article 16, Grievance Procedures; Article 20, Holidays; Article 21, Insurance; Article 24, Command Pay; Article 32, Probationary Period; Article 33, Health and Safety; and Article 35, Duration of Agreement.
9. The articles tentatively agreed by the parties prior to October 20, 2005 for inclusion in the parties' successor collective bargaining agreement are: Article 1, Headings; Article 2, Purpose; Article 3, Management Rights; Article 4, Cooperation; Article 5, Recognition of the Union; Article 7, Nondiscrimination; Article 8, Union Business; Article 12, Rotation of Overtime Opportunities (non-emergency); Article 17, Labor-Management Committee; Article 18, Bulletin Boards; Article 22, Uniform Allowance; Article 23, Education Incentive; Article 25, Medical Leave; Article 26, Family and Medical Leave (FMLA); Article 27, Military Leave; Article 28, Jury and Witness Duty; Article 29, Savings Clause; Article 30, Training; Article 31, Seniority; Article 34, Residency; and Addendum #2.

10. The only issue not resolved by the parties by the start of the conciliation hearing on October 20, 2005 was Article 19, Longevity.
11. Article 19, Longevity is included within the parties' predecessor collective bargaining agreement in effect from November 18, 2001 through November 14, 2004.
12. Longevity payments under Article 19 as expressed within the parties' predecessor collective bargaining agreement pay an additional one percent after five years of city firefighter service; two percent after seven years of such service; three percent after nine years of such service; four percent after eleven years of such service; five percent after thirteen years of such service; and for fifteen years of service and thereafter a longevity bonus of six percent is paid.
13. Article 19 as expressed within the parties' predecessor collective bargaining agreement limits years of service to uniformed employment within the city of Athens Fire Division.
14. The Union's final offer on longevity is to retain the language expressed within the parties' predecessor collective bargaining agreement within Article 19.
15. The Employer's final offer as to longevity is to eliminate it for all future employees of the firefighters' bargaining unit but retain longevity benefits for those firefighters presently employed within the firefighters' bargaining unit.
16. It is the Employer's intention, over a span of years, to eliminate longevity as a benefit for all city employees - exempt, police, service workers, and firefighters.

17. The city of Athens expends \$223,000 per year on annual longevity payments, a significant sum in comparison to what is expended annually by the city of Athens, Ohio to operate.
18. Non-organized employees of the city of Athens had their longevity benefits eliminated in 2001.
19. In 2003 the city of Athens's service workers' bargaining unit agreed to eliminate longevity benefits in the future.
20. Longevity is a bonus paid to employees who remain employed over a number of years within the city of Athens's Fire Department.
21. The payment of a longevity benefit provides a financial incentive to remain employed over the long-term with the city of Athens's Fire Department.
22. The city of Athens's service workers' bargaining unit is a bargaining unit separate and distinct from the city of Athens's firefighters' bargaining unit.
23. Each bargaining unit employed by the city of Athens is entitled to make determinations about what is in the best interest of that bargaining unit.
24. The city of Athens's firefighters' bargaining unit has not employed a new hire in the past five years.
25. Among the present members of the city of Athens's firefighters' bargaining unit, the bargaining unit member who becomes eligible for retirement first will reach such eligibility in six years.
26. Under the Employer's final offer as to longevity, if no new bargaining unit member were to be hired until after the retirement of the most senior bargaining unit member, and with longevity payments not beginning until five years after hire, the cost savings projected by the

Employer under its final offer would not occur before 2016, nine years after the conclusion of the parties' successor collective bargaining agreement in effect from November, 2004 through November, 2007.

27. The Employer's final offer as to longevity, if accepted by the conciliator, would create two classes of bargaining unit members within the firefighters' bargaining unit, those with longevity benefits and those without longevity benefits.
28. The firefighters' bargaining unit opposes the creation of a second class of bargaining unit members who would receive, under the Employer's final offer, no longevity benefits.
29. The views of the firefighters' bargaining unit as to the nature of the firefighters' bargaining unit are entitled to substantial deference in determining the composition of the firefighters' bargaining unit.
30. The conciliator defers to the Union's judgment as to what is in the best interest of the bargaining unit as a bargaining unit, and therefore declines the Employer's final offer as to longevity and adopts the Union's final offer as to longevity, the retention of current contract language.

ISSUES RESOLVED BY THE PARTIES PRIOR TO HEARING

The following thirteen Articles were resolved by the parties prior to the conciliation hearing that was conducted on October 20, 2005. The parties' agreement as to these thirteen Articles was based on how these thirteen issues, as a whole, were to be resolved. The fact that agreement was reached as to a particular

Article does not mean that both parties were equally satisfied with that Article's resolution. It was the specific mix of how these thirteen Articles are to be resolved, as an integrated package, that allowed sufficient unanimity to reach a consensus. Both parties exhibited a flexibility and willingness to compromise that was evident to the conciliator and both parties are commended for this approach.

The conciliator sets out the language agreed by the parties as to each of the thirteen Articles agreed on October 20, 2005, with new language appearing in bold.

ARTICLE 6, DUES DEDUCTION

SECTION 1. AUTHORIZATION

- A. Management will deduct from the wages and turn over to the Controller of AFSCME, Ohio Council 8, the regular monthly dues of such members who shall individually and voluntarily certify in writing that they authorize such deduction. The authorization herein above mentioned shall specifically require the Union and the employee to hold the city harmless for any payments made by Management during the term of the voluntary assignment. Once authorized by the employee union dues deduction shall be irrevocable for the term of this Agreement.
- B. Any amount deducted from an employee's paycheck as voluntarily authorized above, shall be turned over to the Union no later than thirty (30) days following such deduction.

SECTION 2. FAIR SHARE FEE

All bargaining unit employees who do not become members in good standing of the Union are required to pay a Fair Share Fee to the Union as a condition of employment. This condition is effective sixty-one (61) days from the employee's date of hire, or the date this Agreement is signed by the parties, whichever is later.

The Fair Share Fee amount will be certified to the Employer by the Union. The deduction of the Fair Share Fee from any earning of the employee is automatic and does not require a written authorization for payroll deduction. The deduction of Fair Share Fees will not be made until the Employer receives written notice to begin deduction from the Controller of Ohio Council 8.

Payment to the Union of Fair Share Fees deducted will be made according to the same provisions of the Agreement that govern the payment to the Union of the regular dues deductions. The payment will be accompanied by an alphabetical list of the name, Social Security number, and current address of those employees for whom a deduction was made and the amount of the deduction. This list must be separate from the list of employees who had Union dues deducted.

ARTICLE 9 - DISCIPLINE AND SELF-INCRIMINATION

SECTION 1. PROCEDURE

- A. When an employee is to be suspended, be given a written reprimand or dismissed, such employee may be conditionally suspended from work with pay, pending hearing as required in paragraph B below. Such employee and the Union shall thereafter be given or mailed notice of such suspension, reprimand or dismissal. Such notice shall be in writing and state the reasons thereafter and set the time and place for a hearing before the appropriate Management representative or his designee. Oral reprimands do not require a disciplinary hearing however a copy will be forwarded to the union

representative. If an employee desires, he/she may have union representation.

- B. At any time a supervisor conducts the disciplinary hearing granted under this Section with an employee wherein disciplinary action of record (written reprimand, dismissal or suspension) is likely to result, the supervisor shall give twenty-four (24) hours notice to the employee of the employee's rights to have a representative present.
- C. All discipline shall be for just cause and subject to the grievance procedure.

SECTION 2. PERSONNEL FILES. Every employee shall be allowed to review and copy the contents of his/her personnel file at all reasonable times upon written request. Memoranda clarifying and explaining alleged inaccuracies of any document in his/her file may be added to the file by the respective employee. The official employment files shall be maintained by the Personnel Officer and shall be the only file used in consideration of personnel actions. Additionally, the personnel files are subject to review by a steward if prior written approval is submitted by the employee to the Personnel Officer and for matters pertaining to filed grievances.

SECTION 3. REMOVAL OF REPRIMANDS. After eighteen (18) months from date of issuance, any and all written reprimands shall be considered to be ineffective, providing there is not intervening written notice of disciplinary actions during the eighteen (18) month period.

After twenty-four (24) months from date of issuance, any and all suspensions shall be removed from the employee's personnel file and shall not be considered in subsequent determination of disciplinary actions provided there is no intervening written notice of disciplinary action, during the twenty-four (24) month period.

ARTICLE 10 - HOURS OF WORK

SECTION 1. HOURS OF WORK. A platoon system of forty-eight (48) hours shall constitute a full, regular, average work week computed on the basis of the average over the declared work cycle, except for those employees assigned to a forty (40) hour work week schedule. The forty-eight (48) hour work week shall consist of a fifty-six (56) hour duty week schedule of twenty-four (24) hours on and forty-eight (48) hours off with appropriate Kelly Days to reduce the annualized hours to a forty-eight (48) hour work schedule.

SECTION 2. LEAP YEAR SHIFT CHANGE. Leap Year Day (February 29th) shall not be a scheduled shift work day and shall be excepted from the normal work schedule. The additional hours of Leap Year Day will be covered by splitting the day into three (3) eight (8) hour shifts with each shift supplying enough personnel for shift coverage. The shift going off duty (A shift) at 0700 hours on February 29th, shall hold over until 1500 hours; the C shift shall provide coverage from 1500 hours until 2300 hours; the B shift shall provide coverage from 2300 hours until 0700 hours on March 1st. Normal shift schedules will resume on March 1st until the next leap year.

SECTION 3. TRADING TIME. The practice of trading time between the Athens Fire Department employees shall be done in compliance with the Fair Labor Standards Act. All hours "worked" or "traded off" due to trading time shall be documented on TT request forms provided for the purpose and must be the result of voluntary agreements between the parties. All time traded must be paid back within one year by the benefitting employee(s). Trading time may occur between bargaining unit and non-bargaining unit employees within the Department.

Hours traded through this practice shall in no manner become the liability of the City and no payment for said accrued TT will be made under any circumstance if reciprocal payment for hours traded does not occur as agreed between the employees.

ARTICLE 11 - OVERTIME

SECTION 1. VOLUNTARY OVERTIME (NON-EMERGENCY). Overtime shall be voluntary and shall not be required except in situations which are deemed necessary by the Chief or his designee.

SECTION 2. EMERGENCY OVERTIME. Call-in procedure is solely at discretion of the Chief or his designee.

SECTION 3. OVERTIME PAY. Any employee working in excess of his normal work schedule shall be paid for all hours worked in excess of such schedule at the rate as set forth in Addendum #1, attached hereto and made a part hereof. All overtime, other than call-in overtime shall be in multiples of one (1) hour for each hour, or part thereof, worked.

SECTION 4. PYRAMIDING. There shall be no pyramiding of premium pay for the same hours worked.

SECTION 5. CALL-IN PAY.

- A. Call-in pay is defined as payment for work assigned by the Chief or his designee and performed by an employee at a time disconnected from his/her normal prescheduled hours of work.
- B. Work done in this manner shall be compensated as rate of one and one-half (1-1/2) times the rate listed in Addendum #1, (three hours at a rate of time and one-half being the minimum) and shall be paid only during the time the employee is physically performing his/her duty.

ARTICLE 13 - WAGES

SECTION 1. RATES. Wage rates covered for employees herein shall be as set forth in Addendum #1, attached hereto and made a part hereof.

SECTION 2. STEP INCREASES. Employees shall receive step increases in accordance with the provisions contained in Addendum #1. There shall be no step increases beyond the maximum limit shown in Addendum #1.

SECTION 3. POLICE AND FIREMEN'S DISABILITY AND PENSION FUND (PFDPF) PICKUP. Effective with the first pay of 1996, the City's method of payment of annual wages to bargaining unit employees who are participants in the Police and Firemen's Disability and Pension Fund (PFDPF) is hereby modified as follows, in order to provide for an annual wage reduction "pick-up" of employee contributions to PFDPF:

The total annual wage for each employee shall be the annual wage payable under the items of the labor Agreement. Such total annual wage of each employee shall be payable by the City in two parts: (a) deferred wages and (b) cash wages. An employee's deferred wages shall be equal to that percentage of that employee's total annual wage which is required from time to time by PFDPF to be paid as an employee contribution by that employee, and shall be paid by the City to PFDPF on behalf of that employee as a "pick up" and in lieu of the PFDPF employee contribution otherwise payable by that employee. An employee's cash salary shall be equal to that employee's total salary less the amount of the "pick up" for that employee, and shall be payable, subject to applicable payroll deductions, to that employee. The City shall compute and remit its Employer contributions to PFDPF based upon an employee's total annual wage. The total combined expenditures of the City for such employee's

total annual wage payable under the terms of the labor Agreement and the "pick up" provisions shall not be greater than the amounts it would have paid for those items had the "pick up" provision not been in effect.

ADDENDUM #1

FIREFIGHTERS

Effective Date: November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$30,732.00	\$14.78
Step 2	\$32,700.00	\$15.72
Step 3	\$34,735.00	\$16.70
Step 4	\$38,072.00	\$18.30
Step 5	\$38,555.00	\$18.53
Step 6	\$40,467.00	\$19.45
Step 7	\$42,593.00	\$20.48

Effective Date: 1st day of 1st pay period twelve months after
November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$31,654.00	\$15.22
Step 2	\$33,681.00	\$16.19
Step 3	\$35,777.00	\$17.20
Step 4	\$39,214.00	\$18.85
Step 5	\$39,712.00	\$19.09
Step 6	\$41,681.00	\$20.03
Step 7	\$43,871.00	\$21.09

Effective Date: 1st day of 1st pay period twenty-four months
after November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$32,604.00	\$15.68
Step 2	\$34,691.00	\$16.68
Step 3	\$36,850.00	\$17.72
Step 4	\$40,390.00	\$19.42
Step 5	\$40,903.00	\$19.66
Step 6	\$42,931.00	\$20.63
Step 7	\$45,187.00	\$21.72

ADDENDUM #1

FIRE LIEUTENANTS

Effective Date: November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$41,074.00	\$19.75
Step 2	\$42,409.00	\$20.38
Step 3	\$44,318.00	\$21.31
Step 4	\$46,532.00	\$22.37

Effective Date: 1st day of 1st pay period twelve months after
November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$42,512.00	\$20.44
Step 2	\$43,893.00	\$21.10
Step 3	\$45,869.00	\$22.05
Step 4	\$48,161.00	\$23.15

Effective Date: 1st day of 1st pay period twenty-four months
after November 14, 2004

	Annual Salary	Overtime Rate
Starting	\$44,001.00	\$21.16
Step 2	\$45,430.00	\$21.84
Step 3	\$47,475.00	\$22.82
Step 4	\$49,847.00	\$23.97

Payable in equal installments over the pay period throughout the calendar year. The length of time up to be served in each step shall be one (1) year. All current employees will advance on the contract anniversary date. New employees hired after the date of November 22, 1986 will advance on the anniversary date of hire.

OVERTIME RATES

Overtime shall be paid on the basis of time and one-half (1-1/2) of the overtime rates listed above.

ARTICLE 14 - VACATIONS

SECTION 1. VACATION SCHEDULES. Employees will be granted time off for vacations during each vacation year based upon the following schedules:

<u>Length of Service</u>	<u>Vacation Credit</u>
After 1 year	2 weeks - 4 duty days
After 8 years	3 weeks - 6 duty days
After 15 years	4 weeks - 8 duty days
After 25 years	5 weeks - 10 duty days

SECTION 2. VACATION USAGE. The vacation year for the purpose of accreditation shall be from January 1 to December 31. Each employee entitled to vacation will schedule and take at least one week of vacation on consecutive days. The balance may be taken in units of not less than one-half (1/2) day, providing the employee may take the one-half (1/2) day during any continuous portion of the day. Employees may also use vacation time in increments of 3-hours or more up to a maximum of 30 hours per calendar year. An employee shall have the right to take vacations according to his seniority subject to the scheduling requirements of Management and in accordance with the selection procedure of the division.

SECTION 3. NON-PRESCHEDULED VACATIONS. An employee requesting non-prescheduled vacation must submit his request to Management at least three (3) calendar days prior to commencement of such leave. This provision may be waived at the sole discretion of the Chief or his designee.

SECTION 4. VACATION SELECTION. The order of picking a vacation shall be by shift seniority and no more than one (1) employee on each respective shift shall be permitted vacation leave at any one time unless authorized by the Chief or his designee.

ARTICLE 16- GRIEVANCE PROCEDURE

SECTION 1. GENERAL. There shall be an earnest, honest effort to settle disputes and controversies promptly. The procedures of this Article shall serve as a means of settlement of all grievances.

SECTION 2. GRIEVANCE DEFINED. A grievance is a complaint that Management has violated the terms of this Agreement, including disciplinary action.

SECTION 3. PROCEDURE. The aggrieved employee shall first discuss his complaint with his Captain, with or without a representative present and attempt to resolve the dispute.

STEP 1. In the event the dispute is not resolved in accordance with the above paragraph, the aggrieved employee shall deliver his grievance, signed and in writing, to the Captain outside the bargaining unit within seven (7) calendar days after the employee has knowledge of, or should have had knowledge of, the incident upon which the alleged grievance is based. In no case, however, shall a grievance be filed more than thirty (30) calendar days after the occurrence complained of. The Captain shall respond to the Union within ten (10) calendar days from the date of receipt of the alleged grievance. If the Union is not satisfied with the written answer of the Captain, the Union may refer the grievance to the second step of the grievance procedure. If the grievance is not referred to step 2 of this procedure within five (5) calendar days after the receipt of the decision rendered in this Step, it shall be considered to be satisfactorily resolved.

STEP 2. The grievance, in the event it is appealed from Step 1, shall be submitted to the Chief, along with all correspondence. The Chief or his representative shall investigate the grievance and schedule a grievance meeting within seven (7) work days following the receipt of said grievance. The Chief shall reply to the Union and the grievant within ten (10) calendar days after completion of the grievance meeting. If the answer of the Chief is not

satisfactory to the Union, the grievance may be appealed to Step 3 of this procedure within five (5) calendar days after the receipt of the Chief's answer. If the grievance is not referred to Step 3 of this procedure within five (5) calendar days after the receipt of the decision rendered in this Step, it shall be considered to be satisfactorily resolved.

STEP 3. In the event that the grievance is appealed from Step 2, the grievance, along with all correspondence, shall be submitted to the Service-Safety Director. He/she shall investigate the grievance and, if necessary, schedule a grievance meeting within fourteen (14) calendar days after the receipt of the grievance by the Service-Safety Director. The Service-Safety Director shall reply to the Union and the grievant in writing within ten (10) calendar days after the completion of the grievance meeting or receipt of the grievance, whichever is later. If the answer of the Service-Safety Director is not satisfactory to the Union, the grievance may be appealed to Step 4. If the written notice of intent to invoke the fourth step of the grievance procedure is not received by the Service-Safety Director within ten (10) calendar days after receipt of the Step 3 answer, it shall be considered to be satisfactorily resolved.

STEP 4. In the event the grievance is appealed from Step 3, within ten (10) calendar days following the receipt of the Union's intent to invoke the arbitration procedure, a joint letter requesting Federal Mediation and Conciliation service to submit the names of five (5) arbitrators will be signed and mailed. Upon receipt of such names and ten (10) calendar days thereafter, the Union and the Management shall alternately cross off one name at a time until one name remains, that person being the person being selected as the arbitrator.

All decisions of the arbitrator shall be final and binding upon the parties participating. He shall have no power to add to, subtract from, change, modify, or amend any provisions of this Agreement. Both Management and the Union shall share equally the expenses and

fees of the arbitrator and other neutral expenses incident to the arbitration hearing.

SECTION 4. GRIEVANCE MEDIATION. After a grievance has been submitted to arbitration, either party may request mediation of the grievance (or grievances) by contacting the Federal Mediation and Conciliation Service and requesting that a mediator be assigned to assist the parties in the settlement of the dispute. A grievance mediation meeting shall be held between the parties and the mediator prior to the date of the arbitration hearing at a time and place mutually agreed to by the parties. Representatives of the Union, the grievant(s), and representatives of the City shall attend the meeting. Union representatives who are employees of the City and the grievant(s) shall be permitted to attend the meeting without a loss of pay.

Any settlements reached between the parties during the mediation process shall be reduced to writing and signed by the parties. In the event the parties are unable to reach a settlement, the mediator shall be requested to render an opinion, either orally or in writing, on the issue(s) raised by the grievance(s). The mediator's opinion may not be submitted to the arbitrator by either party. The purpose of the mediator's opinion is to allow each party to assess its position prior to the arbitration hearing.

Any neutral expenses of the mediation meeting shall be shared equally by the parties.

SECTION 5. MISCELLANEOUS. The time limits or steps imposed by this Article may be extended or waived by mutual written consent of the parties.

SECTION 6. WITHDRAWAL. If a grievance is withdrawn by the Union or the grievant in writing and the Union or the grievant makes a request in writing to Management, Management shall return to the Union, or grievant as appropriate, all original correspondence within two (2) weeks after the date of receipt of such request.

Provided Management shall have the right to retain a copy of all correspondence.

SECTION 7. All grievances involving discipline shall be initiated at the 3rd Step of the grievance procedure.

ARTICLE 20 - HOLIDAYS

SECTION 1. DESIGNATED HOLIDAYS. The following are designated as paid holidays:

New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
Presidents' Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans' Day	November 11th
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25th
Employee's Birthday	

The enumerated statutory holidays shall fall on the calendar days as declared by the appropriate governmental body or in the absence of such declaration, as declared by the Mayor.

SECTION 2. PAY FOR HOLIDAYS. For the purpose of Holiday payment, the year for Holidays shall be from January 1 through December 31. Employees who work on any of the above named holidays or have completed their normal tour of duty for the week in which one of the said holidays falls, shall receive an additional amount of pay for such week equaling one-fifth (1/5) of the weekly pay of the classification pay grade and step in which he is serving, as follows: Payable no later than the first pay period in December for the Holidays in Section 1 occurring in the calendar year of payment. Provided that the birthday holiday rate shall be at the current contract hourly rate for all employees.

SECTION 3. HOLIDAY MEALS. Employees who are on duty on Christmas and Thanksgiving shall be released with pay for two hours on each holiday in order to be with their families. It is understood that such employees are subject to immediate recall in the event of an emergency.

ARTICLE 21 - INSURANCE

SECTION 1. COVERAGE.

- A. The City shall provide and pay the premiums on Group Life Insurance in the Amount of \$25,000 and Accidental Death and Dismemberment Insurance in the amount of \$25,000. Coverage will be effective from the date of full-time employment and terminate on the last day of full-time employment.
- B. The City will provide a prescription drug plan in which the employee pays the first \$3.00 for generic drugs, the first \$15.00 for brand name drugs which have no generic equivalent, and the first \$25.00 for brand name drugs which have a generic equivalent for covered prescriptions and refills dispensed for not more than a 34 day supply or 100 unit does, whichever is greater. For the City's mail or on-line prescription drug plan, the employee pays the first \$6.00 for generic drugs, the first \$30.00 for brand name drugs which have no generic equivalent, and the first \$50.00 for brand name drugs which have a generic equivalent, for covered prescriptions and refills dispensed for a 90 day supply. If a prescribing physician determines that a brand name drug is medically necessary when there is a generic equivalent, the physician must submit a letter of medical necessity to the Personnel Director for consideration. If the exception is approved,

the prescription will be dispensed at the same co-pay as brand name drugs which have no generic equivalent.

- C. The Group Health Benefit Plan in effect on November 18, 2004 will continue in effect through July 31, 2005. Effective August 1, 2005, employees will select health benefits under the Flexible Benefits Plan during July of each year. Employees who were not enrolled in the Group Health Benefit Plan on November 18, 2004 are subject to the qualifying event rule of the plan and not eligible to enroll under the annual enrollment, unless meeting the criteria for a qualifying event.

1. Plan A - Traditional Plan

Benefits under this plan will be the same as those in effect on November 18, 2004, except air ambulance will be a covered expense under the major medical provisions of the plan. Employees who select Plan A will pay a monthly contribution of \$17.00 for single coverage. Employees who have family coverage will pay a monthly contribution of \$34.00. The contributions will be prorated and deducted over 24 pay periods per year. Employees in an unpaid status will remit the contributions to the Personnel Director not less than once per month. When a change in status causes a change in the contribution rate, the adjustment will occur on the earliest possible pay date thereafter. Major medical deductibles will be \$175.00 for a single employee; \$325.00 for an employee with one covered dependent; and \$400.00 for an employee with more than one covered dependent.

2. Plan B - Alternate Plan

Benefits under this plan will be the same as those in effect on November 18, 2004, except air ambulance will be a covered benefit under the major medical provisions of the plan. Employees who select Plan B will not pay a monthly contribution but will be subject to an annual deductible on all benefits, which must be met before any benefits are paid. The deductible for single coverage will be \$250.00; for an employee with one covered dependent, \$500.00; and for an employee with more than one covered dependent, \$750.00. After the base deductible has been met, benefits will be paid in the normal manner, including those benefits provided under major medical.

D. Benefit Waiver

Employees who provide satisfactory evidence of family coverage for health care benefits to the Personnel Director, other than provided by the City of Athens, may waive coverage by the City and receive a \$1,000 annual bonus, prorated each pay period. The change from family coverage to single coverage does not qualify the employees for the bonus. Single employees may not waive coverage and are not eligible for the annual bonus. Married couples working for the City are not eligible for the annual bonus. No employee shall continue to receive this bonus while on unpaid leave. Employees hired or rehired on or after the effective date of this agreement shall not be eligible to receive this bonus until successful completion of the probation period.

E. Eligibility

Employees hired or rehired on or after the effective date of this agreement shall be eligible to enroll in the Group Health and Prescription Drug Benefit Plans the first day of the second calendar month following date of hire. Coverage will

terminate on the last day of the month in which employment terminates. Should an employee die in the performance of their duties; the City shall continue coverage for the covered dependents for a period of three months following date of death.

- F. The requirement for a professional liability policy is deleted until such time as the City reinstates emergency squad service.
- G. The parties agree that in an effort to contain health plan benefit costs; the precertification of all non-emergency inpatient admissions is mandatory.
- H. Employees are afforded the opportunity to enroll in the Flexible Benefits Plan under the provisions of Code Section 125 during open enrollment, in accordance with the plan conditions.

SECTION 2. COORDINATION OF BENEFITS. Hospital and surgical benefits herein described shall be subject to coordination of benefits in accordance with the provisions of the master agreement between the insurance carrier and the City.

SECTION 3. SUBROGATION. If an employee or member covered by the provisions of this Article incurs medical expenses in connection with the treatment of an illness or injury caused by the negligence or wrongful act of a third party, the insurance carrier or its assignees shall be subrogated to all the covered member's rights of recovery against said third party to the extent of any and all payments made hereunder with respect to such illness or injury, and said member or his appropriate agent shall execute all papers and take all action necessary and proper to secure to the insurance carrier or its assignee such rights of subrogation.

SECTION 4. NO ADDITIONAL BENEFIT. An employee will not receive remuneration over and above the coverage provided in this Article if he does not avail himself of the coverage provided herein.

SECTION 5. CHANGE OF INSURANCE CARRIER. If the City deems it necessary to change insurance carriers, any policy covered by the contract purchased shall, if available, be equal to or better than the current levels of benefits with the exception of deductibles paid by the City.

ARTICLE 24 - COMMAND PAY

1. The senior on-duty firefighter who is required to function as the shift supervisor in the absence of an officer at Station 2 shall be paid a differential of **One Dollar and Twenty-Five Cents (\$1.25)** per hour for all such hours worked in that capacity, provided that the City shall only be required to have one firefighter performing the duties of shift supervisor on any given shift, and provided staffing does not drop below 3 at Station 2 on a regular basis.
2. The senior on-duty firefighter who is required to function as the shift supervisor in the absence of an officer at Station 1 shall be paid a command payment differential of **Two Dollars and Fifty Cents (\$2.50)** per hour for all such hours worked in that capacity, provided that the City shall only be required to have one firefighter performing the duties of shift supervisor on any given shift.

3. Duties of the shift supervisor shall include, but are not limited to:
 - A. General
 1. Complete daily log
 2. Complete daily run reports
 3. Complete an up-to-date overtime list
 - B. Complete basic shift forms as needed:
 1. Accidents Report
 2. Injury Reports
 - C. Schedule and carry-out daily duties and ensure they are completed.

ARTICLE 32 - PROBATIONARY PERIOD

SECTION 1. The probationary period for all newly hired employees shall be twelve (12) months.

SECTION 2. During the first six (6) months of a probationary employee's appointment, he may be dismissed for dishonesty, use of drugs, drunkenness, immoral conduct, insubordination, discourteous treatment of the public and neglect of duty, but not for unsatisfactory service. During the second six months of a probationary employee's appointment, he may be dismissed for any and all of the above, including unsatisfactory service.

SECTION 3. All provisions of the Agreement shall be applicable to probationary employees, except the following:

- A. No Union dues deductions shall occur during the first sixty (60) days of employment.
- B. Probationary dismissals during the one (1) year probationary period shall not be subject to appeal through the grievance procedure.

ARTICLE 33 - HEALTH AND SAFETY

SECTION 1. The City agrees to maintain safe working facilities, vehicles, tools and equipment, which are of a nature other than the normal hazardous duty of a firefighter, in conformance with minimum standards of applicable laws where economically feasible and considering the pre-existing condition of City property.

SECTION 2. The City shall maintain suitable first aid kits at all work sites and its equipment where appropriate.

SECTION 3. Safety issues of concern to the parties of this Agreement may be raised before a Health-Safety Committee comprised of two (2) Union members and two (2) Management employees at a regularly scheduled meeting scheduled for the first Wednesday of each month at 7:00 a.m., provided there is an agenda supplied by the party requesting the meeting to the other party at least 48 hours in advance of the scheduled meeting.

SECTION 4. The City will make available a list of agencies and providers in the local area who specialize in mental health and substance abuse counseling. Coverage for these services are governed by the terms and conditions of the City's group health benefit plan. The City will not be responsible for charges incurred by employees who are not covered under the City's benefit plan.

ARTICLE 35 - DURATION OF AGREEMENT

This Agreement shall be effective as of **November 14, 2004**, and shall remain in effect through **November 11, 2007**, and shall continue thereafter for successive periods of twelve (12) months, unless either party to this Agreement on or before ninety (90) days prior to the expiration of any such period, notifies the other party, in writing, of its intention to terminate this Agreement. Within ten (10) days after receipt of any such notice, a conference shall be arranged between the parties hereto and such conference shall be held at a time mutually agreeable to the parties.

The conciliator hereby adopts the above referenced language for each of the thirteen Articles agreed by the parties, and adopts by reference all language previously agreed by the parties as if fully reprinted herein, and directs that this language be included in the parties' successor collective bargaining agreement. The Articles previously agreed are Article 1, 2, 3, 4, 5, 7, 12, 17, 18, 22, 23, 25, 26, 27, 28, 29, 30, 31, and 34, and Addendum #2.

DISPUTED ISSUE - ARTICLE 19 - LONGEVITY

DISCUSSION

The parties' most recent collective bargaining agreement contains Article 19, Longevity, which authorizes, in addition to the wages specified in Addendum #1, an additional payment after five, seven, nine, eleven, thirteen, and fifteen years of service to the city of Athens. After five years of city service the longevity bonus is 1%; after seven years the longevity bonus is 2%; after nine years the longevity bonus is 3%; after eleven years the longevity bonus is 4%; after thirteen years the longevity bonus is 5%; and after fifteen years and thereafter a longevity bonus of 6% is paid. Article 19, section 2 limits years of service to uniformed employment within the Fire Division, and provides for the payment of the longevity bonus in a lump sum in the first pay period in December of each year following completion of an employee's anniversary period set forth in section 1 of Article 19.

Article 19, section 2 in the parties' most recent collective bargaining agreement provides that when an employee who is eligible for payment under Article 19 terminates his employment during the term of the Agreement, the annual payment is prorated for the period of his employment.

The Union proposes that the most recent longevity language be retained in the parties' successor agreement.

The Employer proposes in its final offer on longevity that longevity benefits expressed in Article 19 remain in effect for those city of Athens firefighters now employed in the bargaining unit, but for all new hires entering the bargaining unit after the effective date of the parties' successor collective bargaining agreement, longevity is to be eliminated. The Employer points out that this proposed change to Article 19 would impart no effect upon the benefits of bargaining unit members presently employed; the change would only affect future bargaining unit members.

The Employer expressed it's intention, over a span of years, to eliminate longevity as a benefit among all city of Athens collective bargaining units and among all exempt city employees. The Employer points out that the bargaining unit containing city service workers in its most recent negotiations for a successor collective bargaining agreement, an agreement now in effect, agreed to eliminate longevity in the new agreement.

The Employer notes that it intends to eliminate longevity from the police bargaining unit, has already eliminated longevity among exempt employees of the city, and seeks a similar change within the

new collective bargaining agreement between the Employer and the firefighters' bargaining unit. The Employer points out that while longevity, at present, is retained within the most recent police collective bargaining agreement, this police agreement is only for one year. The Employer intends to eliminate longevity through bargaining with the police bargaining unit in the successor police collective bargaining agreement.

The Employer believes longevity to be an old, outdated, and old-fashioned concept and the Employer notes that prior cost of living adjustments (COLAs) have been eliminated.

The Employer points out that the annual cost of longevity to the Employer is \$223,000, a significant amount. The Employer believes that longevity is not a significant factor in the employment of new hires nor is it a significant factor affecting whether an employee decides to leave.

The Employer points out that non-organized employees had longevity payments phased out in 2001, and the service workers' bargaining unit phased out longevity in 2003. The Employer stated that rather than expend money in funding longevity payments, the Employer would prefer to invest these funds in wage increases.

The Employer points out that ninety-five percent of the city of Athens's annual operating budget is devoted to wages, benefits, and medical costs. The Employer points out that with increased costs among wages, medical costs, and benefits, something must go, and that is longevity payments for future hires. The Employer claims that it's final offer as to longevity is intended to control

expenses, act in a fiscally responsible way, and compensate future employees through wages.

The representative of the Union at the conciliation hearing explained that AFSCME helps administer fifty-four local unions in the Ohio region containing the city of Athens, and the city of Athens is the only Employer that has proposed ending longevity for future employees.

The Union points out that longevity is a reward paid to people who stay employed with the city of Athens's Fire Department. The Union points out that the Athens's police bargaining unit retains longevity, as do public employees of Morgan County, employees of the Perry County Department of Job and Family Services, employees of the city of Cambridge, employees of Washington Court House, and employees of the city of Nelsonville.

The Union confirmed that the city of Athens's service workers' bargaining unit gave up longevity benefits but that was a choice made by that bargaining unit. It is stressed that the firefighters' bargaining unit is not the same as the service workers' bargaining unit, and as a party to this conciliation, the city of Athens' firefighters' bargaining unit is entitled to its own choice.

The Union points out that no new hire occurred within the bargaining unit over the past five years, and the bargaining unit member first eligible for retirement will not be retirement eligible for another six years. Considering that longevity, as a benefit, does not begin, at the one percent level, until after five years of employment, the Union points out that any additional costs

for a new hire as a result of longevity payments are likely not to occur for at least eleven years. The Union sees little reason to eliminate a benefit that may not cost the Employer additional funds until sometime in 2016.

The Union emphasizes that it is opposed to the Employer's final offer as to longevity because if the offer were to be accepted by the conciliator, two classes of firefighter bargaining unit members would be created, one class of bargaining unit members with longevity benefits and one class of bargaining unit members without longevity benefits. The Union contends that those bargaining unit members without longevity will inevitably view themselves as second class bargaining unit members, with growing resentments attendant to such feelings.

The Union points out that a majority of the city of Athens' firefighters' bargaining unit does not wish to eliminate longevity for future bargaining unit members. The Union points out that the Employer has made no claim that these payments, which are only to begin, if then, eleven years from now, cannot be funded under the parties' successor agreement in effect from November, 2004 through November, 2007. The Union suggests there are other ways to save money and urges that the conciliator adopt the Union's final offer which seeks to retain the longevity language within the parties' predecessor agreement.

There is nothing sacrosanct about longevity pay, and the Employer's desire to eliminate this benefit in the future is based on the conviction that to do so will be fiscally responsible and

therefore beneficial to the city. The Employer's stated intention to eliminate longevity among all of the city of Athens's bargaining units proposes no evil outcome as there is nothing inherently wrong in eliminating a benefit that had previously been enjoyed. The Employer rightfully points out that the service workers' bargaining unit has agreed to the elimination of longevity and the same is now demanded of the firefighters' bargaining unit. As pointed out by the Union, the decision to forego longevity payments was a decision of a separate and distinct bargaining unit entitled to make such a choice in the best interest of that bargaining unit. The Union stresses, however, that as a distinct and separate bargaining unit, the firefighters' bargaining unit wishes to exercise the same decision-making prerogative allowed the service workers' bargaining unit.

The Employer's final offer as to longevity, to have been agreed by the Union, would have required from a majority of the firefighters' bargaining unit membership an indifference to the circumstances of future members of the bargaining unit relative to longevity payments. This opportunity to protect one's own financial interest at the expense of new members of the bargaining unit was available to the firefighters' bargaining unit and rejected. The firefighters' bargaining unit believes it to be of paramount importance that bargaining unit members maintain an equality within the bargaining unit as to the guarantees and benefits bestowed by the bargaining unit's collective bargaining agreement. The firefighters' bargaining unit is resistant to the creation of a

second class of bargaining unit members as it relates to longevity benefits, claiming that to refuse such a separate class of bargaining unit members causes no practical expense to the Employer over the next decade and the Union believes that the equality and fraternity intended to occur among the members of the firefighters' bargaining unit requires a rejection of the Employer's final offer on longevity.

Whether one agrees with the views of the Union as to what is to be the nature of the bargaining unit or not, these views remain the views of the bargaining unit and are entitled to substantial deference in determining the nature of the bargaining unit. The conciliator declines to impose upon the bargaining unit an internal structure within the bargaining unit, as it relates to longevity, that is wholeheartedly rejected by the bargaining unit members as inconsistent with how they view the composition of their bargaining unit.

As stated above, the conciliator understands the legitimate fiscal reasons underlying the Employer's final offer as to longevity. The conciliator finds more compelling, however, the right of the firefighters' bargaining unit to determine how their bargaining unit is to be constructed and how it is to function. The firefighters' bargaining unit had the opportunity to vote their personal financial interests as to the Employer's final offer on longevity but rejected this approach in favor of a collective position that considers the interests of future bargaining unit members who will not arrive for many years to come. The conciliator

is unwilling to impose upon the bargaining unit members a bargaining unit that the members find disruptive to their interests and that they believe will loosen rather than strengthen the bonds among bargaining unit members. The conciliator therefore acknowledges the legitimate fiscal purposes underlying the Employer's final offer on longevity, but the conciliator defers to the Union's judgment as to what is in the best interest of the bargaining unit as a bargaining unit. Accordingly, the conciliator adopts the final offer from the Union as to longevity.

ARTICLE 19, LONGEVITY - Language Selected by the Conciliator

SECTION 1. SCHEDULE. In addition to the wages specified in Addendum #1, each employee covered by the terms of this Agreement shall be entitled to receive additional payment in accordance with the following schedule:

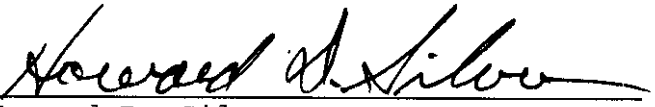
<u>Schedule</u>	<u>Longevity Bonus</u>
After 5 years of Service	1% of salary
After 7 years of Service	2% of Salary
After 9 years of Service	3% of Salary
After 11 years of Service	4% of Salary
After 13 years of Service	5% of Salary
After 15 years of Service	6% of Salary

SECTION 2. DEFINITIONS. The years of service period shall be determined by starting with the beginning of employment of an individual with the division in a uniform status. Payment shall be made in lump sum in the first pay period in December of each year

following each completion of the employee's anniversary period set forth in Section 1 above.

In the event that an employee who is eligible for payment under this Article terminates his employment during the term of this Agreement, the annual payment herein shall be prorated for the period of his employment.

In making this final offer settlement Award, the conciliator considered the criteria required by Ohio Revised Code sections 4117.14 (G) (7) (a) - (f), and Ohio Administrative Code sections 4117-9-06 (H) (1) - (6).


Howard D. Silver
Conciliator

November 2, 2005
Columbus, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Offer Settlement Award of Conciliator in the Matter of the City of Athens, Ohio and the American Federation of State, County and Municipal Employees, Ohio Council 8, and Local 3351, was filed via hand-delivery with the State Employment Relations Board and was sent via facsimile transmission and by ordinary U.S. mail, postage prepaid, this 2nd day of November, 2005, to the following:

Garry E. Hunter, Esquire
Director of Law
City of Athens
Law Administration Building, Suite 301
Athens, Ohio 45701-2411

and

Gary W. Arnold
Staff Representative
AFSCME, Ohio Council 8
36 South Plains Road
The Plains, Ohio 45780-1348


Howard D. Silver
Conciliator

November 2, 2005
Columbus, Ohio