

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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November 16, 2005

In the Matter of the Conciliation Between

THE CITY OF EASTLAKE

and

EASTLAKE FIRE FIGHTERS,
LOCAL 2860

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Case No.: 04-MED-09-0983

APPEARANCES

For the City:

Jack L. Petronelli, Esq.
Michael H. Slocum
Ted Andrzejewski
Richard d. Sabo

Attorney
Finance Director
Mayor
Fire Chief

For the Union:

Kenneth R. Adams
Robert Lloyd
Jeffrey Kirkner
Douglas Drake
Keith Skinner
Kurt Zevnik

Vice President, NOFF
President, L-2860
Vice President, L-2860
Secretary/Treasurer, L-2860
Shift Representative, L-2860
Shift Representative, L-2860

Conciliator:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the conciliation proceeding between the City of Eastlake (the "City") and the Eastlake Fire Fighters, IAFF Local 2860 (the "Union"). The bargaining unit consists of 27 full-time members, which includes Fire Fighters, Lieutenants, Captains and Battalion Chiefs, who are engaged in fire suppression, fire prevention and activities incidental to a fire department. The parties' expired collective bargaining agreement covered the period from January 1, 2004 through December 31, 2004.

Upon reaching impasse during negotiations for a succeeding Agreement, the parties engaged in a full evidentiary fact-finding hearing before Fact-Finder James M. Mancini on June 17, 2005. Mr. Mancini issued his recommendations on August 19, 2005. The parties did not accept the Fact-Finder's recommendations on all issues. They continued to negotiate, but were unable to reach a resolution.

Virginia Wallace-Curry was appointed conciliator in this matter on September 21, 2005 by the State Employment Relations Board. A conciliation hearing was held on October 19, 2005. The parties were given a 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.

The unresolved issues that were presented at conciliation involved the following provisions:

1. Article XXII - Salary Schedule
2. Article XXI - Insurances
3. Article XIII - Sick Leave
4. Article XXXIX - Grievance Procedure

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

- (1) Past collectively bargaining 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) Any stipulations of the parties;
- (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 procedure in the public service or in private employment.

UNRESOLVED ISSUES

1. Article XXII - Salary Schedule

A. Wages

The City accepts the Fact-Finder's recommendation on wages and proposes increases of 2% for each year of the Agreement. The City's argues that its financial condition will not support greater increases without layoffs. The City is in Fiscal Emergency and must work within the framework mandated by the State oversight committee. Revenues have been flat and are expected to continue to be flat for the next five years. Expenditures have been rising and have caused deficit spending. The

goal mandated by the State is to reduce the deficit to zero. This must be achieved by cutting expenditures and keeping wages modest. Any wage increase over 2% will result in lay-offs to the Fire Department workforce which is already reduced by several employees who recently retired and have not been replaced.

The Union proposes wage increases of 3% for each year of the Agreement, retroactive to January 1, 2005. The Union contends that it has cooperated with the City in reducing expenditures last year and are entitled to a greater increase this year than that proposed by the City. In 2004, fire fighters agreed to a wage freeze and an increase in health insurance contribution of approximately 6%. The wages for fire fighters have fallen below that of the contiguous cities and will be eroded further by the City's proposal. The City has the ability to raise revenues by reducing the reciprocity tax credit and eliminating the half-time position of a fire department trainer and have employees conduct training. The Union argues that the fire fighters should not bear the brunt of the stadium costs.

Analysis - The City's position proposing a 2% wage increase for each year of the Agreement is selected. The City has convincingly shown that it cannot afford to pay greater wage increases without laying off fire fighters. The fire fighters' work force has already been reduced by retirees and further layoffs would not be helpful to the fire fighters or the public safety.

The fire fighters have certainly cooperated with the City in reducing costs and, unfortunately, must continue to do so. The City is strapped with paying exorbitant amounts in debt retirement for the stadium. This and poor management decisions in the past have gotten the City into its current financial state. Even though the fire fighters and other City employees may be guiltless in contributing to this crisis, they must share the burden created, because no other option is available.

The Union's proposals for increasing revenues would be either detrimental to the City (reducing the reciprocity tax credit) or would not raise sufficient money to justify the Union's wage proposal (elimination of fire department trainer).

The Fact-Finder made a thorough written analysis of the financial data, which was also presented at the conciliation hearing. As Conciliator, I agree with his analysis and concur in his finding that a 2% wage increase is appropriate under the financial conditions of the City.

AWARD

WAGES

Effective January 1, 2005 - Two Percent (2%) wage increase.

Effective January 1, 2006 - Two Percent (2%) wage increase.

Effective January 1, 2007 - Two Percent (2%) wage increase.

B. Hours of Work

The Union proposes reducing the workweek from the current 52 hours to 49.8 hours effective January 1, 2006. It argues that the reduction in the workweek would, in essence, raise hourly rate earned by employees currently. Fire fighters in comparable jurisdictions work fewer hours than Eastlake Fire fighters. The Fact-finder saw the need to reduce the number of hours worked but did not do enough when lowering the hours to 51.7 per week.

The City accepts the Fact-finder's recommendation and proposes that the workweek be reduced to 51.7 hours per week, effective January 1, 2007. The City argues that current staffing levels and the City's financial condition prohibit any further reduction in hours. The Union's proposal would

require an increase in overtime hours, thus costing the City more money.

Analysis - The Conciliator agrees with Fact-finder Mancini's reasoning for lowering the number of hours of the workweek to 51.7 hours. The workweek of the City's firefighters are higher than that in the surrounding communities. A reduction from 52 hours to 51.7 hours may be only a start; however, the estimated cost of the further reduction proposed by the Union would be \$50,532 per year. The City cannot afford this extra expense at this time when severe cuts have already been made elsewhere in the budget. Therefore, the City's proposal of reducing the workweek to 51.7 hours is selected.

AWARD

Effective January 1, 2007, the workweek is reduced to 51.7 hours.

2. Article XXI - Insurances

A. Premium Contribution, Co-pays and Deductibles

The City proposes that employees pay 8% of the cost of their medical/ hospitalization coverage for the current plan. The City argues that it can no longer absorb the significant increases in health care premiums and seeks an eight percent (8%) contribution from employees beginning in January 2006. The Fact-finder recommended an 8% contribution with a cap. The City argues that a cap would be too costly for the City should the premiums sky-rocket as they have done in the past. In 2004, the average employee contribution to health care costs was 8.4% for cities of less than 25,000. The City's proposal that employees share 8% of the cost is reasonable, given the City's financial condition.

The City also proposes to eliminate the practice of reimbursing employees for co-pays and deductibles, effective January 1, 2006. This practice defeats the purpose of having deductibles or co-

pays. No other public employer in Lake County has this practice.

The Union accepts the current plan and agrees to pay all co-pays, but proposes that the employees' monthly contribution only increase by \$10 in 2006 and \$10 in 2007. The Union also proposes that the City pay all deductibles applicable to the insurance coverage. The Union argues that City fire fighters are paid less than those in comparable jurisdictions and should not be asked to contribute the same as those jurisdictions.

Analysis - The City's position is selected. Due to the rising health care costs and flat revenue streams, many employers are being forced to ask employees to contribute more to the cost of their insurance coverage. Because Eastlake is in a state of fiscal emergency, the need here is even greater than in other communities. Therefore, employees will have to begin to contribute 8% of the cost of medical/hospitalization coverage for the current plan, effective January 1, 2006. Employees will also be responsible for all co-pays and deductibles associated with that plan.

AWARD

ARTICLE XXI

21.01 The Employer will pay 92% of the cost of medical/hospitalization coverage, attached as Appendix A, for full-time employees, after satisfactory completion of initial 90 days without any reimbursement by the city for co-pay or deductibles. The employees shall pay the remaining eight percent (8%) through automatic payroll deduction.

B. Mid-term Bargaining

The City accepts the Fact-finder's recommendation that an insurance committee be established to review health care plans and to provide input into which plan should be selected for the second and

third years of the Agreement. The City proposes deleting Section 21.03 and substituting language forming an Insurance Committee and providing for a dispute resolution procedure if disputes reach impasse.

The Union opposes mid-term bargaining. It argues that employees' wages are fixed and costs must be fixed and cannot be open to negotiation. Employees must be able to budget.

Analysis - The Union's position, keeping the current language of Section 21.03 and rejecting mid-term bargaining, is selected. Although joint health insurance committees may allow bargaining unit members more input into the kind of health care plan the employer selects, mid-term bargaining for this Agreement seems unwise.

The provision proffered by the City and by the Fact-finder is quite cumbersome and lengthy. In the event of an impasse, the procedure provides that a fact-finder will be selected to provide a recommendation. If the recommendation is rejected by either party, a conciliator will be appointed to render a final and binding opinion. This procedure would take months to complete and by the time a final decision is rendered, this Agreement may be close to expiration or may have already expired. The contract language on health care, proposed by the City and accepted by this Conciliator, is not effective until January 1, 2006. The Agreement expires on December 31, 2007. The cost in time and money of mid-term bargaining may not be worth the gains the City *might* make in securing contributions to health care costs.

With employees contributing a percentage to the cost of premiums, without caps, the City is already sharing with the employees any increases imposed by the insurance providers. In addition, the current language of Section 21.03 gives the City the flexibility to change carriers and shop for better

pricing, while maintaining comparable benefit levels for employees.

AWARD

ARTICLE XXI

21.03 Maintain current contract language.

3. Article XIII - Sick Leave

The City is proposing a change in the current sick leave conversion so that after sixteen (16) continuous years of full-time service with the City, employees would be entitled to seventy-five percent (75%) of the first 1,344 hours of accumulated sick leave. The City's proposal is consistent with what the surrounding public employers provide their employees as far as the amount of sick leave conversion for a normal retirement, disability retirement or death of a full-time employee. The potential amount of payout under the current language creates an excessive amount of liability on the City's books and is difficult to budget not knowing when an employee will retire. Moreover, the City is in fiscal emergency and is required to provide a budget demonstrating that it is making an effort to reduce the deficit.

The Union accepts that Fact-finder's report which recommends keeping the current sick leave buyout formula which allows employees with sixteen or more years of service to cash in 1,344 hours of sick time at 100%. All hours of sick time over 1,344 hours is paid at the rate of 20%.

Analysis - The City's proposal is selected. The City originally proposed that employees be entitled to only 50% of the first 1,344 hours of sick leave. Fact-finder Mancini reasoned that this was a drastic reduction which would deprive fire fighters, who have been avoiding the use of sick leave to preserve it for retirement cash out, the benefit of their efforts and their bargain. However, Mr.

Mancini's reasoning on this issue is no longer viable and also flawed. The City modified its drastic position and now proposes that employees be entitled to cash in 75% of the first 1,344 hours of accumulated sick leave, which is only a 25% reduction from the current language. Furthermore, the current sick leave buyout formula of 100% of 1,344 hours is a relatively new one. In the 1998-2000 agreement, the sick leave buyout formula entitled employees to only 50% of the first 1,344 hours of accumulated sick leave, which was the City's original position at Fact-finding. Consequently, long-term fire fighters who are nearing retirement accumulated the bulk of their sick leave hours with the understanding that they could cash in only 50% of the first 1,344 hours. It has only been for four or five years that employees believed they would be entitled to 100% of the first 1,344 hours of sick leave. A sick leave buyout of 75% is more than most of the City's fire fighters expected in the past, although it is somewhat less than the current buyout plan.

Given the financial condition of the City, a reduction in the sick leave buy out formula is reasonable to lower the potential liability of the City. Even at 75% of the first 1,344 hours of accumulated sick leave, plus 20% of all hours in excess of 1,344, Eastlake's sick leave buyout is more generous than most jurisdictions and is, therefore, still competitive.

AWARD

ARTICLE XIII

13.12 Upon the normal retirement, disability retirement, or normal death of a full-time employee who has completed not less than ten (10) years of continuous full-time service with the Employer, such employee (or the employee's spouse or estate in case of death) shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement or death, based on the following schedule. All hours of sick time that an employee earns over the 1,344 hour figure will be paid at the rate of twenty percent (20%) of all

hours in excess of 1,344.

<u>Length of service With the City of Eastlake</u>	<u>Percentage of 1,344 Hours</u>
10 to 12 Years	25%
13 to 15 Years	50%
16 and over	75%

4. Article XXXIX - Grievance Procedure

The Employer is proposing a change to Section 39.04, Step 2, where the Union, and not the aggrieved party, has the right to determine whether or not the matter will be pursued through arbitration. The Agreement is between the City of Eastlake and the Union; therefore, it should be a party to the Agreement which makes the decision as to whether or not a grievance is going to be pursued through the arbitration process.

The Union accepts the Fact-finder's recommendation that the language in Section 39.04 remain unchanged in the Agreement. The Union argues that it is reasonable to allow an individual employee the right to make the decision as to whether or not their grievance should be processed through the arbitration procedure.

Analysis - The Union's proposal is accepted. The Conciliator agrees with the Fact-finder that the City failed to demonstrate a need to change the contract language. There was no evidence of any problems that occurred which would warrant the deletion of language allowing an employee to decide to pursue a grievance through the arbitration process, should the Union decline to do so. The obligation placed on the employee to pay for the cost of an attorney or representative and the cost of the

arbitrator should the employee lose at arbitration should be disincentive enough to pursue a case to arbitration.

AWARD

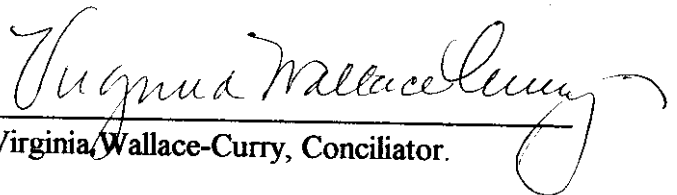
ARTICLE XXXIX

39.04 - Maintain current contract language.

TENTATIVE AGREEMENTS

All tentative agreements previously agreed to by the parties are incorporated into this conciliation award and adopted by the Conciliator

Submitted by:


Virginia Wallace-Curry, Conciliator.

November 16, 2005
Cuyahoga County, Ohio

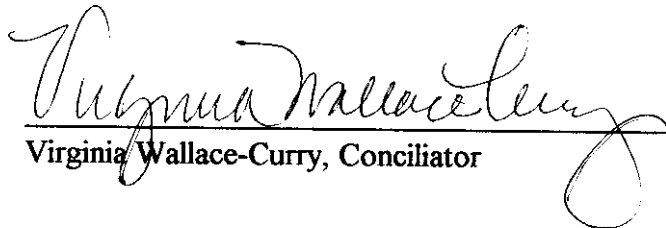
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Conciliation Award for the City of Eastlake, Ohio and the Eastlake Fire Fighters, IAFF Local 2860 was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, November 16, 2005. The Conciliation Award was served upon:

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Virginia Wallace-Curry, Conciliator