STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

CITY OF LORAIN, OH	Case No.05-MED-05-0657
-and-	
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LORAIN PROFESSIONAL FIREFIGHTERS, LOCAL NO. 267	

CONCILIATION AWARD

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CONCILIATION CRITERIA

In the determination of the facts contained herein, the Conciliator considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

(1) Past collectively bargained agreements, if any, between the parties;

(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

This matter came on for hearing January 30, 2006 and continued on February 16, 17 and 28, 2006 at a neutral situs in Lorain, Ohio. Mediation was not requested nor was it attempted by the Conciliator.

The Fact-finding sessions were concluded with the issuance of a Report and Recommendation issued on November 10, 2005. The undersigned was mutually selected and signed-off on as Conciliator for this final and binding stage of interest arbitration.

At the Conciliation hearings the City's representatives and

witnesses were:

Jack L. Petronelli, Esq.....Labor Counsel
Craig Miller,.....Lorain Safety Director
Hon. Craig Foltin,.....Lorain Mayor
Michael J. Scherach, Esq.,.....Lorain Operations Deputy
Tom Brown,.....Lorain Fire Chief
Ron Mantini,.....Lorain City Auditor
James Penning,.....Assistant State Auditor

and the Employee Organization's representatives and witnesses were:

Susannah Muskovitz, Esq.,.....Labor Counsel
Anthony Bucci,.....President, IAFF Local 267
Capt. Roy Cochran,.....Vice-Pres. IAFF, Local 267
Brian Molina,.....Treasurer, IAFF, Local 267
Jonathan K. George,.....Secretary, IAFF, Local 267
Dan Russell,.....Lorain Firefighter
Gary Burls,.....Captain, Lorain F. D.
Anthony Cuevas,.....Asst. Chief, Lorain F. D.
Cel River,.....Lorain Chief of Police

No transcribed record of the four hearing days was taken. Witnesses were sworn in by the Conciliator but were not sequestered during the proceedings.

The City of Lorain, Ohio (hereafter the "Employer", the "City" or "Management") is the largest city in Lorain County, Ohio and generally regarded as being in the region of "Northeast Ohio" said county being contiguous to Ohio's most populous county, Cuyahoga, in which the City of Cleveland is located.

Historically, these parties have what I would not hesitate to term a "mature" collective bargaining relationship. These parties, through voluntary recognition of Local 267, have a bargaining history which pre-dates Chapter 4117 of the ORC by a substantial number of years.[1]

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[1]Both in hearing day scheduling conferences with the respective advocates and the initial plenary session with the parties and their committees, the undersigned disclosed that approximately thirty (30) years ago he had represented Local 267 in the mid to late seventies. Both sides acknowledged this disclosure and neither one objected to my serving as Conciliator.

The Employee Organization, hereafter the "Union", "IAFF" or Local 267", came to the bargaining table in the later part of 2005 seeking a new collective bargaining agreement ("CBA") to cover a mutually desired one (1) year duration in calendar year 2006.

Besides the agreement on a one year retroactive (to January 1, 2006) Duration clause, the City did not propose a modification to the Vacation Separation Bank clause so this is not an open issue for purposes of this Conciliation award.

Over the course of the hearing days the parties presented copious exhibits and extensive testimonial evidence of both the direct and cross-examination variety. The Union has fifty-two (52) exhibits in this record and the Employer adduced forty (40) of its own documents. The parties undertook, mostly through said direct and cross-examinations, to develop their respective stances as to why they disagreed with each other's views regarding the primarily economic open issues. More to the point, the crux of these parties' divergent viewpoints is centered upon this public employer's ability to pay and plan to pay *in futuro,* the wages and fringe benefits as well as demands concerning operational language for this CBA which have a distinct economic nexus.

While the economic pressures confronting most municipal entities are no less present in Lorain, the City has an added measure of economic and political tension at this time brought about by a drive to pass an increased income tax levy in the most recent (November, 2005) general election. Although the tax levy passed by a four to one (4 to 1) margin, the political fallout I refer to resides in the split view whether the electorate was induced to vote for this levy by either overt or implied representations that fire department staffing levels and services (e.g.: EMT service) would not be reduced. Politicians, elected officials, police and fire officers and union officials worked tirelessly to urge passage of the tax increase through a campaign group called "Sustain Lorain" or something similar.

The economic strife facing the City commenced in the last quarter of 2002 when the Ohio State Auditor's office relegated Lorain to its current state of being on the Fiscal Watch list. The gravamen of such a designation is that it commences a process whereby the State's guidelines, if breached by the manner in which the listed municipality realizes, collects or spends (or borrows)

revenue will lead to Fiscal Emergency status, an intermediate step and the one short of State control akin to receivership.

The record is replete with data and testimonial evidence touching on Lorain's various revenue streams and how those funds have been spent and accounted for as well as projected financial data indicative of the City's ability to avert being placed on Fiscal Emergency. At this juncture, being taken off of Fiscal Watch in the short run is less of a likelihood since City Auditor Ronald Mantini has certified a General Fund deficit of $2.8 million dollars ($2,800,000.00) for fiscal year 2005.

Besides the contention over how the levy was "sold" to the citizenry and its obvious impact upon the Union's proposal seeking to establish a "minimum manning" pledge in the CBA requiring that the daily complement of firefighters shall not fall below nineteen (19) employees, the major economic event bearing on the wage and benefit levels in the parties' CBA is the decision of the Ford Motor Company to close its Lorain Assembly Plant beginning in 2005. Some sixteen hundred (1600) unionized and salaried jobs were experienced in this closing with the 2006 revenue loss projected to be $2.4 million dollars ($2,400,000.00).

While there are always many nuances or less subtle opposing viewpoints on matters of public finance, the more salient economic proofs in this record, as advanced by the parties, shall be noted in the following review and decision of each open issue.

Before addressing the open issues *seriatim,* I feel that a word is necessary about the burden of proof required to be utilized herein. On page two (2) of its thirty-eight (38) page brief the IAFF states that the City and the Union agree that in order to rule on an issue contrary to the recommendation made by the Fact-finder, a Conciliator must have demonstrated to him or her the "clear error" of said Fact-finder's analysis or conclusion.

While this appellate court-like approach has utility and indeed has been often adhered to by the undersigned and other neutrals experienced in Ohio's interest arbitration process, it remains an approach to conciliation; not an exclusive review mechanism such that all others are rendered impermissible. Without attempting to issue a treatise on the subject, in a case where newly derived evidence comes into the hands of a party at the

conciliation stage which was either not known or not in existence during the fact-finding process the record of proof which is thus created constitutes a reliable and probative means with which to decide between the two competing positions. There is no need to fictionally claim the Fact-finder "erred" in some regard before issuing a contrary ruling. So too, would an admission against interest operate if a party, during conciliation, informed the neutral that its data or other type of evidence presented at fact-finding was incorrect or did not come into being as projected. There is no call to attribute "error" to the Fact-finder. Also, if a party modifies its position in conciliation the award may be different than what the Fact-finder recommended but this doesn't subsume "error" need be alleged on the part of the first neutral who's R&R was premised upon a different record established in the earlier proceeding.

Thus, while it facilitates conciliation awards to predicate awarding an issue upon reports which are patently erroneous, such as, the Fact-finder made a mathematical mistake, omitted making a recommendation on a presented open issue, or recommended a "me too" clause or a new contract provision/language which neither party sought or posited or that state-wide wage settlements in 2006 were averaging 7% *per annum*, there is still room to weigh the record made to the conciliator if only to address matters which came into existence in the interim between fact-finding and conciliation.

Therefore the undersigned is not constrained to insist that "error" be alleged and proven by a party seeking to modify or reverse a fact-finding recommendation.

Moving back to the background premises for the open issues, it is no secret that in recent years the City's industrial base has receded while the need for typical municipal and safety services has remained constant. Better than a decade prior to the closing of the Ford plant, the steel industry, once the pre-eminent private sector employer in Lorain and Lorain County had gone through several major ownership changes and production diminution which foretold the economic crisis of the City and was emblematic of what was occurring throughout the Great Lakes region of America. Lorain also has long since lost its ship building industry and in more current times has seen the loss of the Marconi company and the severe curtailment of operations at A. Compana Industries. Much the same of what took place in the Cleveland area and the Mahoning Valley has happened in the City of Lorain. In fact, if

America's "Rust Belt" needed a poster child, Lorain would be a strong candidate.

As required by law, the parties furnished "contract ready" language for incorporation into their CBA once same is determined by the undersigned..

Although extensive study of this voluminous record was undertaken only a summary reiteration of the respective positions of the parties, as requested by the undersigned, shall be set forth in this Award for each open issue.

Under conciliation legal parameters, the undersigned is required to designate which Employer or Union demand or offer is found more appropriate for inclusion in their CBA. There cannot be any modification or "middle ground" selection made to a party's position. As noted, the parties having prepared contract ready language, the same shall be incorporated into the particular CBA affected.

It must be noted that either party's demands or positions taken either during contract negotiations or before the undersigned at the conciliation hearing which are not expressly referenced in the following Award are either rejected, deemed withdrawn or were agreed to prior to this hearing. Thus, the following mutually agreed open issues, once ruled upon in this Award, shall constitute together with the unchanged clauses and new bargained language and terms form the complete CBA with an effective date of calendar 2006.

OPEN ISSUES FOR RESOLUTION:

The parties have agreed upon the number of unresolved proposals and they shall be analyzed in the order set forth in the Union's brief.

Issue 1. **ARTICLE 21 LONGEVITY**

The IAFF seeks to modify the parties' longevity provision to make it equal what Lorain 's Police Officers (FOP) receive. The Union's rationale is that in Fact-finding with the FOP unit the City's effort to

reduce its longevity clause's payments was not recommended. Local 267 also maintains that this increase in longevity payments pushes the overall wages of this unit closer to comparable firefighter units.

Both sides agree that this demand would cost ninety-five thousand dollars ($95,00.00)

The City seeks to maintain the *status quo* citing its economic crisis as why it does not accede to this economic demand.

AWARD

The Fact-finder rejected increasing longevity costs and his analysis noted that the Union is fourth out of the twelve comparable firefighter units studied.

Whereas the Union states in its brief herein that it would demonstrate the "clear error" on the part of the Fact-finder (Un. Br. Pg. 3) regarding his recommendation no mention of what was erroneous is offered. The Union does term its demand in this area "moderate" and maintains this increase is necessary to achieve closer wage parity.

I am opposed to longevity pay being sought as an outright component of wages. The purpose of longevity pay is to allocate the public employer's resources to longer tenured employees as a measure to retain experienced workers. There is no record evidence that Lorain has lost more experienced, fully trained and skilled firefighters to other departments or careers because of this CBA's wage rates.

Nor do I agree that $95,000.00 is a modest expenditure in a department comprised of seventy-eight (78) employees.

I do not grant the Union's demand regarding longevity pay and Article 21's terms shall remain unchanged per the City's position.

Issue 2. **ARTICLE 23-VACATION SEPARATION BANK**

As previously noted, since neither side came into Conciliation with a modification proposal there can be no award.

Issue 3. **ARTICLE 24-HOLIDAYS (Holiday Sell-Back only)**

The Union seeks to increase the number of holidays it may "sell back" to the City from three (3) to four (4) which is from 72 hours to 96 hours. The Fact-finder recommended this; perhaps because it is said to reduce overtime.

The City's only stance is that this has a"direct impact on cash flow". Of course, they also cite their financial situation, about which a more extensive dissertation shall be referenced in their position on Wages.

AWARD

I cannot quibble with allowing another holiday to be sold back to the Employer. The cost to the City of doing so is offset at least in part by whatever reduction in overtime comes about.

I grant the Union's demand on this part of the Holiday Article in accordance with the Holiday Sell-Back recommendation made by the Fact-finder.

Issue 4. **HEALTH INSURANCE**

The Union points out that since both parties have made changes to their positions on Health Insurance there must be *de novo* review afforded this issue rather than charge a party with the need to demonstrate that the Fact-finder erred.

Upon closer scrutiny of the evidence and the arguments I have concluded that the Fact-finder made an appropriate recommendation in siding with the City as far as imposing a co-pay feature on the monthly insurance premium. I also conclude that the Fact-finder made an appropriate recommendation in awarding the City's position on the insurance plan to be the same as the Steelworkers' and non-bargaining unit employees and accordingly, award the City's position on the change in the health care plan.

Since the IAFF is amenable to the $20 single coverage-$40 family coverage co-pays sought by the City, I adopt the Local 267 position herein to the extent that the City's conciliation position regarding retroactive application of these co-pays back to January 1, 2006 is rejected. As per the Fact-finding Report, the effective starting date of these co-pay terms shall be July 1, 2006.

Issue 5. **ARTICLE 25-INSURANCE COVERAGE-(Dental)**

Not recommended by the Fact-finder, the addition of dental insurance to this CBA would spend around forty-six thousand dollars ($46,000.00) per year. Thus, it really is a satellite demand to what the Union's position was on Health Insurance; albeit a demand for a new coverage as opposed to the adoption of premium co-payments.

I conclude there was no glaring oversight in the Fact-finder's advice to begin co-pay provisions. To term it "preposterous" not to allow the City some cost relief in the area of health insurance premiums it cannot be viewed as warranted to add new coverage. In fact, the Fact-finder said it was not the time to add dental insurance and termed doing so "counterproductive".

While the FOP unit may have dental coverage there is an indication that the City is seeking to eliminate it in that negotiation process which is also in conciliation. The difficulty in relying upon language or a benefit which exits in another unit's CBA is that I have no way of learning how or what that benefit was bargained for. To carry out this sort of "me too" approach in all negotiations would result in all CBAs becoming remarkably similar. So while one party says they want it because another bargaining unit has it and the other side says you should not have it because we're seeking concession of it from the unit which has it, the first neutral had to be left with the obvious conclusion that because it's a cost item of some substance is the more compelling reason not to award it.

Therefore, I do not find any aspect of omission or misunderstanding such that it could be determined to be "error" to have denied this demand. Accordingly, I grant the City's position on dental coverage .

Issue 6. **ARTICLE 30-WAGES**

The Local 267 posture on a pay raise is the three and one-half per cent (3.5%) increment to the base rate recommended by the Fact-finder. The Union had sought a higher increase but at this stage has settled on what was in the R&R. While the Employer had been seeking a freeze (or at least hadn't offered any money) it moved to two and one-half per cent (2.5%) about a week before conciliation started. The Union chided Management for finally putting some money on the table. The IAFF's representation to the Conciliator was that the City was forced to offer some money lest the Union's 3.5% demand wind up being more compelling than $0 given that only one of the final offers could be awarded.

The Union further maintains that a third wage freeze in four years time can not be endured. The Firefighters say that they must earn a living wage. Lorain is behind comparable cities plus Springfield and Hamilton, identified by the State Auditor as comparable municipalities for purposes of its Performance Audit.

The CPI for 2005 was 3.4% but this unit took a wage freeze. Even 3.5% won't keep pace with inflation but it would allay further falling behind. The SERB statistics mat ark firefighter average raises at 3.29% for 2004, a year when this unit accepted a freeze.

The complement of firefighters in Lorain will stand at 77 by mid-2006. This lowers the total cost of for each firefighter and also realizes a $516,000.00 labor savings as the City faces what's beyond 2006.

The Union cites the Fact-finder's summarization that the Employer cannot solve its financial woes by not taking care of its employees. He concluded that the City should have no problem funding a 3.5% wage hike.

The Union also cites the Fact-finder's stated belief that the financial prospects of Lorain will not be as bleak as the Employer maintains.

The IAFF conclusion on wages is that the City did not meet its proof requirement and thus, the 3.5% recommendation should be awarded.

For its case on wages the City places great emphasis upon the

Fiscal Watch designation and what it means for the immediate future. Upon review of the State Auditor's Performance Audit it can be seen that Local 267 members are not underpaid or otherwise compensated in terms of benefit levels. The 2001-03 CBA represented a 27.63% escalation. It covered wages, longevity, an insurance buy-out rolled into the base rate, uniform allowance and compensatory time sell off. This tempers the two (2) wage freezes dramatically.

The City feels that the Fact-finder was not well-acquainted with the financial picture because he issued his R&R inside of seven (7) days and stated that he relied upon verbal evidence and summations.

The Employer submits that glaring errors were made by the Fact-finder such as the two million dollars ($2,000,000.00) in revenue he referenced from construction of a Wal Mart store has not come to fruition. That project (incorrectly termed a "levy") was met with voter disapproval of the necessary re-zoning referendum. Even if it had been able to be built, this retail store project would have generated around ninety thousand dollars ($90,000.00) from withheld income tax; a far cry from $2,000,000.00.

Another error was the statement that three (3) wage freezes were taken by this bargaining unit. One freeze on wage rates was in 2003 and the other, in 2005, was predicated upon not having lay-offs and committing $250,000.00 for overtime costs.

Also, a Health levy on the November, 2005 ballot was defeated and the referenced half million dollar ($500,000.00) of annual revenue will not be realized.

In addition, a retail-commercial development project called "Lighthouse Village", said to contribute three hundred thousand dollars ($300,000.00) annually has been stalled by citizen group action which has petitioned the re-zoning needed to be on the November, 2006 ballot.

Even in light of these missing pieces of the Fact-finder's optimistic view of revenue recovery for Lorain the Employer is offering a 2.5% raise for its firefighters. This position is based on expected cost savings from moving this unit to group health insurance premium co-pays, deductibles and prescription co-pays as

well.

In addition, the City notes that the wage settlement herein needs to take into consideration the impact upon Police and Steelworker wage rates now being negotiated.

AWARD

Without a doubt, a wage adjustment is the keystone in collective bargaining agreement negotiations. Similar to a keystone, the wage piece of a CBA exerts its force downward upon most of the other economic issues presented in interest arbitration.

Thus, it becomes the preeminent topic in structuring fact-finding and conciliation awards. In the approximately twenty-two (22) years since the full implementation of ORC Chapter 4117 a yardstick has emerged with which neutrals may assess the merit of a public employer's position on wages. This test is a determination of an alleged *inability to pay* versus a claimed *unwillingness to pay.*

The parties produced a great degree of testimonial and documentary evidence. In the area of wages, this is best summed up as support for either the City's claim of an *inability* to pay or the Union's position that the City is *unwilling* to meet the market with regard to firefighter wages.

Upon pondering the proofs and weighing the arguments I have concluded that the most salient fact in this process between these parties at this point in time is Lorain's Fiscal Watch status.

The Auditor of State's process is not alleged to be flawed or otherwise inappropriate in making designations of Fiscal Watch or Fiscal Emergency. The triggering point for declaring Fiscal Watch is when the aggregate deficit fund balance exceeds one-twelfth (1/12) of the general fund balance plus receipts of those deficit funds. (ORC 118.022(A)(2)).

In all candor, I am not very conversant with this and most other examples of "auditor speak". However, it is significant to me that having served on the SERB interest arbitrator rosters since 1985, I cannot recall having a public employer in fiscal Watch or Emergency. This scarcity is also attested to in the fact that Lorain is

one of only six (6) Ohio entities on the Watch list. (ER A-7). The prospect of Lorain avoiding the next rung on the State's fiscal ladder is unclear, but escalation to Fiscal Emergency status is nonetheless palpable.

What makes Fiscal Emergency or at least continued Fiscal Watch listing likely is the major punch to the City's economic solar plexus, the closing of Ford's assembly plant. Sixteen hundred (1600) jobs of that caliber cannot be cajoled out of new employers or created in a few years through new business ventures.

I note with interest that the Union's brief does not even acknowledge the City's being on Fiscal Watch status. This, despite some seventeen (17) pages of preliminary background data, bargaining history and a subsection entitled "The City's Financial Condition And The Need To Maintain Minimum Staffing At Nineteen". (Un. Br. Pg. 7)

Much time was spent examining the City's plans for economic recovery. This included new job attracting measures, improved tax collection and future levy drives. Also extensive was the effort to draw out the Employer's expenditures practically on a line item basis.

However, even after the crumbs had seemingly been combed from the City's cupboards there is insufficient proof to cogently maintain that Lorain has funding available (or "hidden") to meet all the IAFF demands.

This CBA is for 2006 only. Whatever offset the UAW's pay continuation program for the displaced Ford employees had on the lost income tax revenue took effect in 2005. The City also established that the Ford/UAW sourced tax revenue in 2005 was a component in their agreement to fund the FD's overtime account in the amount of $250,000.00. This money lasted until mid-December of 2005, which in turn kept FD lay-offs at bay.

Another major concern I have is the representation that the City had "missed" collecting on between one million seven hundred thousand ($1,700,000.00) and six million two hundred thousand ($6,200,000.00) dollars. What this claim suggests is an indictment of the citizens of Lorain for being dishonest with regard to reporting their incomes for tax purposes. True, the City does not participate in the Regional Income Tax Authority ("RITA") but uncollected

revenues, even at the low end's $1.7 M level, would mean that the taxpayers were under-reporting their incomes by about five million ($5,000,000.00) dollars! In actuality, the City Treasurer made an extra tax collection push and brought in another $50,000.00 if my memory serves me correctly. In fact, most of what the City has undertaken during this financial crunch has been rather small gains or savings.

But the alleged Super Wal Mart with its supposed $2,000,000.00 influx is clearly not real. So too is the Lighthouse Village project not going to materialize in 2006. I regard these matters not so much as error on the Fact-finder's part as I do newly adduced evidence since his R&R issued before last year's November election.

In any event, either thru error or subsequent history, the recommendation to set the Union's pay raise at 3.5% is not well taken. The 2.5% pay raise offered by the Employer is granted because it is to be retroactive to January 1, 2006 and it is within the range of average State wage settlements for public employees.

The alternative to not getting off Fiscal Watch could lead to receivership during which retaining firefighter jobs could be the major issue; not wage increases.

Issue 7 **ARTICLE 32-PRESENT BENEFITS AND PAST BENEFITS**

Management seeks to delete Article 32 and replace it with a "Total Agreement" clause. The IAFF questions when the City was ever precluded from doing something by virtue of having past practice language.

Lorain counters by saying past practice claims have caused "uncertainty and controversy". In addition the City seeks to "zip up" its CBA terms by adding its proposed "Total Agreement" language.

I'm not constrained to make such a change primarily in accordance with the dearth of instances which have allegedly caused "uncertainty and controversy"; an outcome which remains cryptic at best in my mind.

AWARD

I award the Union's position not to delete Article 32 and deny the City's call for a Total Agreement clause in its stead.

Issue 8-**ARTICLE 37-DURATION OF AGREEMENT**

AWARD

As noted *supra,* the parties have mutually determined that this CBA shall be for one (1) year in calendar 2006. This Award shall hereby conform to that understanding.

Issue 9 **ARTICLE 49-FITNESS**

The Fact-finder recommended the City be required to have repairs and maintenance on its FD fitness machines performed at City cost. He did not continue the ten thousand dollar ($10,000.00) fund for equipment purchase.

Local 267 dropped its demand for the $10,000.00 funding; but not for the two sections on repair and maintenance.

Management pledges its best effort to repair or replace the equipment at issue.

AWARD

So since it seems that the City recognizes it has an investment in the exercise machines it makes sense to grant the Union's language on repair/replace only. The $10,000.00 fund is no longer a demand and the scope of the Union's remaining demand is reasonable and thus, granted.

Issue 10 **ARTICLE 52-HEALTH CARE REDUCTION PROGRAM**

Whereas the Fact-finder did not recommend this mandatory

new program covering physical and well-being training due to the cost involved, the Union has tempered its original demand and lowered the compensation for participating from $1,000.00 to $500.00. Local 267 states that compensation is critical on account of the program being mandatory.

The Employer resists due to the thirty-nine thousand ($39,000.00) cost plus notes the fitness requirement is already in the firefighter job description.

AWARD

I do not see this program as being anything else than progressive and well-intentioned. The timing of this demand is what makes it not confirmable. The cost element, even when halved as the Union has done herein, dictates that it not be granted. The financial plight of the Employer requires it to seek small revenue gains where they can be had. In that event, spending $39,000 on making more strident fitness levels mandatory is not wise, no matter how advanced or cutting edge such programs may be. There is no evidence of record that current unit members have declining physical skills which have caused concern to Department's supervisors.

Issue 11 **ARTICLE 53-MINIMUM STAFFING**

This is a new provision proposed by the Union and one carrying a lot of "baggage" between these parties. A great amount of time and effort was expended on presenting the recent history of what was also marked as "Article 53" in the 2005 extension agreement as well as Local 267's concerns with firefighter safety and service to the public issues.

It is uncontroverted in the record that the parties agreed to fund a $250,000.00 line item in the FD budget for purposes of meeting overtime requirements in order to forestall laying off bargaining unit members. The Union acknowledges that it was also made manifest that exhaustion of this funded overtime money could lead to a reduction in daily manning levels. (See Un. Br. Pg. 31).

A staffing allocation of nineteen firefighters was then set up. It was this level-nineteen (19) firefighters including the mechanic and excluding officers working in fire prevention, which became the crux of one of the IAFF's demands and was carried into the Fact-

finding stage.

It was described as "no change to the daily minimum staffing level established in Article 53." There was no demand for specific funding nor was there an intent to earmark funds similar to the 2005 extension's provision for same. The Union says this is because it was not seeking a similar type of agreement; it simply made demand for a minimum staffing level of 19.

Further, the Union takes strong exception to what it terms as Management's raising of a procedural issue to the extent that the City would parse the Fact-finder's recommendation and offer up a differing interpretation.

When the City's constituents voted for the tax increase it was "sold" to them as a measure to keep the first responder program and avoid lay-offs in the days ahead. The Union only wants what is prudent for the circumstances and best serves the citizens and supports their own job related safety.

The Union concludes that the Employer knows it cannot show clear error on the part of the Fact-finder so it has resorted to attempting a "clever procedural argument" in hopes of restating the obvious meaning of the R&R on this issue.

Lorain counters the IAFF position on minimum staffing by asserting its statutory responsibility and management right from both ORC 4117.08©) and Article 33 of this CBA.

The City chooses to retain the authority to close or partially close a fire station, determine the apparatii it will deploy and set the manpower provisions in league with its budget.

If strict economic measures loom more likely in the future Lorain needs the flexibility to manage its safety forces.

What the Fact-finder recommended was putting the expired Article 53 from the 2005 extension agreement. But since the *quid pro quo* for the 2005 arrangement was a wage freeze in exchange for funding overtime, it cannot be carried over as a 2006 CBA term because the City is offering a wage raise.

I've scrutinized this issue's testimony and exhibits in great

detail. I agree with the Union that the Fact-finder only intended to recommend a minimum staffing level of nineteen (19) firefighters.

However, I do find error to the extent that the Fact-finder acknowledges the City's economic crisis. In the same analysis after he premises his recommendation upon the testimony of the firefighters, the Fire Chief and the industry standards, he terms the City's monetary woes as being "exorbitant", a word my thesaurus defines as "greatly exceeding the bounds of reason or moderation".

It is this inconsistent analysis plus the directive for the City to "come up with a way to maintain a safe and efficient fire department." which concerns me.

The SERB Fact-Finding guidebook cautions neutrals that they "may not merely advise the parties to resolve the issue on their own." (SERB Dispute Settlement Procedures, pg. 9)

Throughout the hearing it was shown that the City was not hell-bent on decimating its FD because it wanted to. When called for due to absences they have went below 19 employees on occasion. But there is no indication that the City intends to drop below 19 firefighters as a staffing policy.

What is the difficult thing to relate herein is that the management right to determine the staffing and equipment trumps any implied promise to the electorate. I see the campaign effort as a means to keep having a fire department or component services of one. The economic crisis is not imagined; preparing for what's at hand means the City needs to keep its discretionary power inherently needed to manage any city service.

AWARD

The Union's demand for a minimum staffing level of nineteen (19) firefighters is denied.

Issue 12-VOLUNTARY FITNESS TESTING

The Union seeks this proposal in the alternative with Issue 10. Employees would be tested twice a year and if they pass receive

an hour's pay or compensatory time without incurring overtime. No exact cost in dollars is in the record. However, if they were seventy-five (75) employees eligible and each one qualified, it would cost the Employer 75 x 52 or 3900 hours of pay.

The City opposes this plan similar to its stance on being cost intensive on Issue 10.

AWARD

I do not grant this costly program to be added to the CBA. Although the presentation by Union President Bucci was impressive and the effort appears to be very progressive and "cutting-edge", I cannot justify incorporating its cost at this time given the exigent financial state in Lorain.

Issue 13**ARTICLE 55-EMT BONUS**

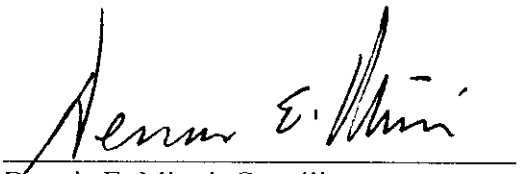
The IAFF seeks a five hundred dollar ($500.00) annual payment for seventy of the seventy-seven current unit members for doing the EMT work.. This deletes the Incident Command Training payment sought before the Fact-finder as well as this EMT bonus.

The City opposes this thirty-five thousand ($35,000.00) expense because it just adds to wages.

AWARD

I cannot grant this bonus given the exigent financial state in Lorain. Also, since conciliation requires me to award one party's position or the other's, I cannot compromise or modify what is being sought herein. If I could, I would halve the bonus or make it commence in the second half of the year to make it more affordable. But since I cannot, I can only note the City's statement in its brief (pg. 10) that if its finances improve, it would "consider modifying...bonus payments accordingly". I would expect that applies to instituting a bonus as well. I'd urge the City to entertain an EMT bonus given a better revenue stream because the ENT services were prominently mentioned in the income tax levy campaign.

Respectfully submitted this 2nd day of April, 2006 at Strongsville, Ohio.



Dennis E. Minni, Conciliator