

2007 JUN 28 P 12:00

**IN THE MATTER OF CONCILIATION
BETWEEN**

CITY OF BAY VILLAGE)	
)	CASE NO. 06-MED-10-1148
)	
AND)	
)	
)	<u>OPINION AND AWARD</u>
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1144)	

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE UNION

S. Randall Weltman, Esq.

FOR THE CITY

Gary C. Johnson, Esq.

SUBMISSION

This matter concerns conciliation proceedings between the City of Bay Village (hereinafter referred to as the Employer or City) and the International Association of Fire Fighters, Local 1144, AFL-CIO (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. Conciliation proceedings were held on March 19 and May 2, 2007.

This conciliation proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation proceeding, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report.

The bargaining unit consists of all full-time firefighters, lieutenants and captains employed by the City in its fire department. There are approximately twenty-five employees in the bargaining unit.

This conciliator in resolving the dispute between the parties by selection between each of the parties final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). This conciliator therefore after carefully reviewing all of the arguments presented by the parties hereby submits his Opinion and Award with respect to each of the outstanding issues.

1. WAGES

The Union proposes that initially \$650 is to be added to each bargaining unit member's base rate effective January 1, 2007. Under the Union's proposal there would be an increase of 2.5% on January 1, 2007, followed by increases of 2.75% on January 1, 2008 and another 2.75% increase on January 1, 2009. The Union also proposes to increase the rank differential from the current 10% to 11% effective January 1, 2007.

The Employer proposes three annual wage increases in the amounts of 2.5%, 2.5% and 2.75% after a \$650 adjustment is made in January 2007. The Employer would also propose to increase the rank differential by 1% to 11% effective January 1, 2007.

The Union submits that its wage proposal is the same as that which the fact-finder recommended in this matter. The Union points out that the fact-finder properly reviewed comparable wages in the area prior to making his recommendation herein. The Union has once again presented comparables for the past two years which indicate that the overall compensation received by the Bay Village firefighters falls about 1.61% below the average for the area. The Weshare communities of North Olmsted, Westlake, Rocky River and Fairview were used for wage comparison purposes. In that the City failed to demonstrate that the fact-finder committed a clear error in making his wage recommendation, the Union maintains that its final wage proposal must be awarded.

The Union further disputes the City's claim that a wage pattern has been established which should be followed in this case. According to the City, the same percentage wage increases as that granted to other bargaining units should be adopted for

the firefighter unit. The Union claims that even if the police unit and others in the City receive the same wage increases for the next three years, the comparable evidence submitted herein shows that the pattern wage settlements should not be followed with respect to the firefighters' bargaining unit. The Union cites the fact that other neutrals have broken the pattern where the evidence supports a different wage increase for one of the safety force units. The Union emphasizes that comparable evidence supports the wage increases proposed for the firefighters including the increase in the rank differential to 11%.

The City contends that the same wage increase granted to all other bargaining units should also be provided to the firefighters' unit. The City points out that the only difference between the two final proposals submitted by the parties relates to the second year wage increase. The City notes that the police and other bargaining units accepted a lower percentage increase in the second year so that they could be provided with a better healthcare plan with reduced deductibles and co-pays. As a result, other employees will be receiving a 2.5% wage increase in 2008 rather than a 2.75% increase which the firefighters' Union is seeking here. The City has proposed the same healthcare plan for the firefighters as that provided to other employees.

The City emphasizes that a wage pattern has been established and should be followed in this case. The two police units as well as the AFSCME bargaining unit will all be receiving the same increases as that which is being proposed for the firefighters here. The City cites the fact-finder's report in this case where he noted that when a

majority of the bargaining units agree to the same terms, a true pattern emerges. The City claims that the Union has failed to establish any basis for deviating from the clear wage pattern that has been established.

ANALYSIS – After careful review of the evidence and arguments presented by the parties, this conciliator awards the City’s final proposal with respect to wage increases. That is, there are to be three annual wage increases in the amounts of 2.5%, 2.5% and 2.75% after a \$650 base wage adjustment is made in January 2007. Initially, it must be noted that the only difference between the two final proposals submitted by the parties with respect to wage increases pertains to that which is to be awarded for 2008. This City has proposed that there be a wage increase of 2.5% for that year whereas the Union has requested a 2.75% increase for 2008.

The evidence establishes that all other bargaining units will be receiving the same wage increases as that which are being awarded herein for the firefighters. A clear wage pattern has been established and this conciliator does not find any reason to deviate from that wage settlement pattern. It was shown that the police patrolmen’s unit, the police sergeants and lieutenants, as well as the AFSCME bargaining unit will all receive the same wage increases as that which the firefighters will be receiving over the term of their new Contract. Each of the other bargaining units also have contracts with wage increases becoming effective on January 1, 2007 with the last increase being provided in January 2009. Again, it should be reiterated that the only difference between the Union’s final wage proposal here and that of the City’s relates to the second year wages. Even

when one looks at the comparable data submitted, there does not appear to be any justification for providing the firefighters with an additional .25% increase in the second year as compared to that which all of the other bargaining unit employees will be receiving for 2008. Even with a 2.5% increase on January 1, 2008, the firefighters will maintain their relative standing with respect to wages in comparable jurisdictions in the area.

This conciliator also must point out that the other bargaining units all agreed to accept a lower wage increase in 2008 so that the City could provide them with a better healthcare plan with lower deductibles and co-pays. As will be discussed under the healthcare insurance issue, this conciliator must find that it would be reasonable to likewise provide the firefighters with the identical healthcare plan as that given to the other bargaining units. For that reason, it would also be appropriate for the second year wages here to be reduced by .25% as was done with respect with the other bargaining units. All other employees will be under the City's amended healthcare plan and for 2008 will receive a 2.5% wage increase. It should also be pointed out that the fact-finder in this case was not presented with the healthcare insurance issue. As a result, he did not have the opportunity to analyze the wage increase issue in light of the change in the healthcare plan which has been implemented for all other bargaining unit employees. Therefore even though this conciliator is deviating slightly from the fact-finder's recommendation in the second year of the Agreement with respect to wage increases, it is apparent that there is justification for doing so in light of the wage pattern which has been

established and the new healthcare plan which has been implemented for all other employees. It should be reiterated once again that with the exception of the 2008 wage increase which is being reduced from 2.75% to 2.5%, there are no differences in the two final proposals submitted with respect to wage increases for the firefighters' bargaining unit. Both parties also proposed an increase in the rank differential of 1% to 11% and as such this is included in the award herein.

AWARD

This conciliator hereby awards the City's proposal with respect to wage increases for the firefighters' bargaining unit.

ARTICLE XX, RATES OF PAY

Effective January 1, 2007 – Add Six Hundred Fifty Dollars (\$650) to the base wage of each firefighter. Increase the adjusted base wage of each firefighter by 2.5%. Provide an 11% wage differential between the rank of firefighter and lieutenant, and between the rank of lieutenant and captain.

Effective January 1, 2008 – Increase the base wage by 2.5%.

Effective January 1, 2009 – Increase the base wage by 2.75%.

2. PARAMEDIC PAY

The Union proposes to increase the current paramedic pay by the amount of two hundred dollars (\$200). The City opposes any increase in paramedic pay.

The Union maintains that its proposed increase in the current paramedic pay by the amount of \$200 would address the disparity that exists between the bargaining units' paramedic pay and that in comparable jurisdictions. The Union presented comparables for 2006 and 2005 for all of the Weshare communities. The Union also points out that the fact-finder determined that comparability justified an increase in paramedic pay.

The City maintains that when one considers that all firefighters are required to be paramedics, it is apparent that it is total compensation which must be used for comparison purposes. Such a comparison of total compensation received by a firefighter/paramedic shows that there is no justification for an increase in paramedic pay. Moreover, the City points out that the fact-finder recommended an increase in paramedic pay because at that point in time no pattern existed with respect to wage increases granted to the police units and other bargaining units. However, a pattern has now been established and the police units did not receive any greater increase in compensation than that which the City has proposed herein.

ANALYSIS – This conciliator must find from the evidence presented that the Union's proposal for an increase in paramedic pay for the firefighters is to be awarded. The fact-finder recommended such an increase in paramedic pay based upon his analysis of comparables in the Weshare communities for 2006. That comparison indicates that

Bay Village paramedic pay of \$1,025 is less than the \$1,300 paid in North Olmsted, the \$1,300 in Fairview Park and the \$1,250 in Lakewood. Even a comparison of total firefighter/paramedic pay shows that Bay Village paramedics receive less than their counterparts in Westlake, Fairview Park and Lakewood. The evidence establishes that Bay Village paramedic pay falls below the average in these comparable jurisdictions. As such, a modest increase of \$200 in paramedic pay is warranted.

This conciliator does not find that the pattern argument presented by the City with respect to paramedic pay should be controlling here. As other arbitrators have noted, there are occasions when a deviation from the so-called pattern should be considered. This is especially so in a case such as the instant one where comparable evidence clearly demonstrates that the paramedic pay provided to Bay Village firefighters falls below other Weshare communities. It should also be noted that the City itself has deviated from its pattern of bargaining with respect to its final proposal submitted herein for the firefighters. It was shown that the police bargaining units received \$100 signing bonuses in their respective contracts. However, the City's final amended proposal did not offer any such signing bonus to the firefighters.

Moreover, it is commonly held that in order for a conciliator to render an award which differs from a fact-finder's recommendation it must be established that there was "clear error" on the part of the fact-finder. In this case, the comparable analysis which was previously discussed supports the fact-finder's recommendation that there be an increase of \$200 to paramedic pay. There being no clear showing made that an error was

committed by the fact-finder, this conciliator must agree with his recommendation that there be an increase of \$200 in paramedic pay for the firefighters.

A W A R D

This conciliator hereby awards the Union's final offer with respect to Paramedic Pay.

ARTICLE XX, PARAMEDIC PAY

20.08 Effective in the first pay period in January 2007, 2008 and 2009, each employee certified as a paramedic shall receive a paramedic pay bonus as a bi-weekly pro-rata adjustment on their base salary as follows:

<u>Job Title</u>	<u>Wages</u>	<u>Prob.</u>	<u>1 yrs.</u>	<u>2 yrs.</u>	<u>3 yrs.</u>
Firefighter		\$915	\$995	\$1,100	\$1,225
Lieutenant	\$1,330				
Captain	\$1,440				

3. HEALTH INSURANCE

The City proposes to modify the healthcare plan to provide for 80/20 co-insurance with an increase in out-of-pocket maximums after deductibles are met of \$500 for single coverage and \$1,000 for family enrollment. The Union proposes a modification to the healthcare plan which would have the out-of-pocket maximums of \$750 for single coverage and \$1,500 for family coverage per year. Under the Union's proposal there is also to be an office co-pay in the amount of \$10 per office charge. The Union further proposes a Flexible Spending Plan for firefighters which is to be paid for by the City. This is opposed by the City.

The City contends that it is offering the firefighters the same healthcare plan which has been agreed to by each of the other bargaining units. The two police agreements as well as the AFSCME contract include the new healthcare plan which the City proposes herein for the firefighters. The City contends that a pattern has been established and therefore the healthcare plan now in effect for all other employees should also be incorporated into the firefighters' Contract. The City opposes paying for any employee Flexible Spending Plan as proposed by the Union.

The Union maintains that its insurance proposal is reasonable and should be adopted. According to the Union, it had reached a tentative agreement with the City concerning modifying the health insurance plan. In effect, the Union agreed to accept the healthcare concessions that were proposed by the City during the parties initial meetings.

However, the City has now repudiated that tentative agreement. The Union also points out that the Flexible Spending Plan was recommended by the fact-finder.

ANALYSIS – This conciliator has determined to award the City’s final health insurance plan. It was established that all other bargaining unit contracts have incorporated this modified health insurance plan. This would include the two police contracts as well as the AFSCME agreement. In that a basic pattern has been set with respect to health insurance, this conciliator must find that the City’s health insurance proposal should also be incorporated into the firefighters’ Contract.

It is important to recognize that the other bargaining units agreed to a reduction in their wage increase for 2008 from 2.75% to 2.5% as a tradeoff for a better healthcare plan than previously proposed by the City. The healthcare plan which was agreed upon by these other bargaining units does not contain a \$10 office co-pay and includes a lower out-of-pocket maximum than the City originally proposed. Moreover, the out-of-pocket maximums for in-network of \$500 single and \$1,000 family are applicable through December 31, 2009. This conciliator finds that the same healthcare plan provided to the other bargaining units should now be provided to the firefighters. Likewise as previously discussed under the wage issue, the firefighters’ wage increase for 2008 should also be reduced by .25% as a tradeoff for this healthcare plan.

With respect to the Flexible Spending Plan issue, this conciliator finds that there was insufficient basis established to have the City pay for the cost of such a flexible spending account for firefighters. Although the fact-finder urged the City to institute a

Flexible Spending Plan, he did not address the question as to who was to pay for the cost of the program. Although, this conciliator would agree with the general concept of a health benefit flexible spending program for firefighters, he cannot adopt the Union's final proposal because it provides that the City at its cost is to offer the program. There simply was no clear showing made that the Union's proposal for a Flexible Spending Plan was justified. It should also be noted that there are no Flexible Spending Plan provisions like that proposed by the Union herein in any of the other collective bargaining agreements including the two police contracts.

AWARD

This conciliator hereby awards the City's proposal with respect to Health Insurance.

ARTICLE XIX, INSURANCE

19.03 Hospitalization coverage is subject to annual deductibles of \$250 for single coverage and \$500 for family coverage. Once deductibles have been met, individuals will receive in network coverage of 80%, with the out-of-pocket maximums of an additional \$500 for single enrollment and \$1,000 for family enrollment. Thus the maximum out-of-pocket for single health coverage is \$750 and for family enrollment \$1,500 per year. The aforementioned maximums include deductibles, but do not include any co-pays relative to prescriptions, vision coverage, or dental benefits. Out-of-network coverage shall remain at 60% with maximum out-of-pocket limits of \$1,500 single/\$3,000 family, excluding deductibles.

There is to be no Health Benefit Flexible Spending Program provision.

4. UNIFORM MAINTENANCE ALLOWANCE

Both the City and Union proposed to increase the uniform allowance by \$100 in the second year of the Contract. This was the same as recommended by the fact-finder. As a result, this conciliator awards a \$100 increase in the uniform allowance in the second year of the parties' Agreement.

A W A R D

This conciliator hereby awards the following increase in the Uniform Maintenance Allowance.

ARTICLE XVIII, UNIFORM MAINTENANCE ALLOWANCE

18.04 Schedule of uniform allowance is as follows:

**2007 : \$1,100
2008 : \$1,200
2009 : \$1,200**

5. RESIDENCY REQUIREMENT

The Union proposes to modify the current twenty mile residency requirement. At the conciliation hearing, the City agreed to the Union's final offer. As a result, this conciliator hereby awards the residency requirement language proposed by the Union.

AWARD

This conciliator hereby awards the Union's proposal with respect to Residency Requirement.

ARTICLE V, RESIDENCY REQUIREMENT

5.01 The City of Bay Village and IAFF Local 1144 agree to follow applicable State Law with respect to residency requirements. Unless State Law mandates something different, all Fire Fighters shall reside within the City of Bay Village or within a twenty (20) mile radius from the center of Bay Village. If the twenty (20) mile radius enters any city or township, the entire city or township shall be included in the residency requirement.

6. SICK LEAVE

The Union proposes to modify the Sick Leave Bonus Provision by shortening the time period and enhancing the benefit. Under the Union's proposal, any employee who utilizes 24 hours or less of sick leave between January 1 and June 30 shall receive 24 paid hours off each year. Any employee who utilizes 24 hours or less of sick leave between July 1 and December 31 shall receive 24 paid hours off each year. The Employer proposes to shorten the time frame to receive a bonus for non-use of sick leave from annually to semi-annually but wants to maintain the current maximum bonus payouts. The current provision provides for 25 hours of paid time off to employees who use less than 25 hours of sick leave in one year.

The Union contends that the current measuring period is too long and that the benefit is not as generous to the employee as it is to the City. The Union indicated that one reason the bonus did not work was that if a firefighter was ill at the beginning of the year, then they could not earn the bonus for the rest of the year and as a result that individual would have no incentive to curb sick leave use. The Union points out that its proposal is similar to that which was recommended by the fact-finder herein.

The City maintains that its proposal to modify the Sick Leave Bonus Provision is reasonable. An employee would be able to earn a sick leave bonus even if they utilized less than 25 hours of sick leave in one-half of the year. It permits an employee to take two tours off during the year rather than one and still collect the entire 25 hour bonus. In effect, one-half or 12.5 hours would be available every six months. The City points out

that the Union's proposal actually doubles the amount of the bonus which would be too expensive.

ANALYSIS – This conciliator has determined from the evidence that there should be a modification in the Sick Leave Bonus Provision as proposed by the City. In effect if an employee utilizes 25 hours or less, they would receive 12.5 hours paid off per half year. This would shorten the time frame for an employee to receive a bonus for non-use of sick leave from annually to semi-annually but the current maximum bonus pay outs on a yearly basis would remain the same. Such a modification would enhance the benefit to employees while at the same time addressing the short-comings of the current provision. With the change awarded herein, an employee would be able to take two tours off sick during the year rather than the current one and still collect the entire 25 hour bonus. Again, one-half or 12.5 hours would be available every six months.

This conciliator must find that the Union's proposal concerning the sick leave incentive benefit lacks merit for several reasons. First, the Union's proposal would double the bonus amount of time off which an employee could earn per year. Under the Union's proposal, an employee who utilizes 24 paid hours or less of sick leave for each half of the year would be entitled to receive 24 hours off each one-half year. In effect, under the Union's proposal a firefighter could receive two tours off per year. This could prove to be quite costly for the department.

Moreover, the Union's proposal exceeds that which was recommended by the fact-finder. The fact-finder only recommended that employees could earn 30 hours off

each year. Again under the Union's proposal, a firefighter could earn up to 24 paid hours off each year for non-use of sick leave. The City's proposal concerning the Sick Leave Bonus Provision is more in line than that recommended by the fact-finder and therefore this conciliator finds that it should be awarded herein.

AWARD

This conciliator hereby awards the City's final offer with respect to the Sick Leave Bonus Provision.

ARTICLE XI, SICK LEAVE BONUS

11.18 Effective January 1, 2007, any forty-hour (40) employee who utilizes sixteen (16) hours or less of sick leave in the period between January 1 and June 30 or the period between July 1 and December 31 shall receive one-half (½) paid day off for each such period. Any employee who utilizes eight (8) hours or less of sick leave in the period between January 1 and June 30 or the period between July 1 and December 31 shall receive one (1) day off for each such period. Any employee who utilizes zero (0) hours of sick leave in the period between January 1 and June 30 or the period between July 1 and December 31 shall receive one and one-half (1½) paid days off for each such period.

11.19 Effective January 1, 2007 any employee who utilizes twenty-five (25) hours or less of sick leave between January 1 and June 30 shall receive twelve and one-half (12.5) paid hours off each year when such employee meets the standard in the previous year. If any employee utilizes twenty-four (24) hours or less of sick leave between July 1 and December 31 shall receive twelve and one-half (12.5) paid hours off each year when such employee meets the standard in the previous year.

7. HOLIDAYS

The Union seeks to add Labor Day as a holiday paying time and one-half if worked. The City opposes any increase in the number of holidays that require premium pay for hours worked. Currently, the City pays time and one-half to firefighters who work on New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, and Christmas.

The City also proposes to substitute Martin Luther King Day as a holiday in lieu of the employee's birthday. The Union in its final offer accepted the City's proposal to exchange the employee's birthday for Martin Luther King Day as a paid holiday.

The Union maintains that the five premium paid holidays for working falls below the average of paid premium holidays for comparable jurisdictions. Said holidays are less valuable to the firefighters than the premium paid holidays granted to the City's police officers. The Union points out that its proposal is in line with that recommended by the fact-finder.

The City maintains that none of its other safety force employees receive this benefit. It would also prove to be quite costly for the City. The Employer contends that the fact-finder committed clear error when making the internal comparison with the police department. The City points out that police officers earn a \$100 bonus only for working on three holidays and not five as suggested by the fact-finder.

ANALYSIS – This conciliator must find from the record before him that there was no basis established for increasing the number of holidays that require premium pay for hours worked under Section 13.03 of the parties’ Agreement. As indicated, the City currently pays time and one-half to firefighters who work on New Year’s Day, Memorial Day, Fourth of July, Thanksgiving and Christmas. As the fact-finder noted, there are “no real external comparables on this issue.” In some jurisdictions such as Westlake and Fairview Park, there is a premium paid on only a few holidays. In others like North Olmsted and Rocky River, firefighters receive premium pay for up to thirteen holidays. Therefore as the fact-finder determined, the external comparables on holiday premium pay for fire departments in the area is “inconclusive.”

This conciliator has further determined that the fact-finder committed clear error in making an internal comparison with the police contracts. Contrary to the fact-finder’s finding, police officers are only given a \$100 bonus for working three holidays per year. Moreover, the evidence fails to show that firefighters earn significantly less holiday pay per year as compared to police officers. There simply was insufficient basis established for adding an additional holiday that would require premium pay for hours worked for the firefighters.

AWARD

This conciliator hereby awards the City's final proposal with respect to the Holiday Provision.

ARTICLE XIII, HOLIDAYS

13.01 - Substitute Martin Luther King Day for the employee's birthday.

13.03 - Current language, no change.

CONCLUSION

In conclusion, this conciliator hereby submits the above referred to awards on each of the outstanding issues presented for his consideration. Further, this conciliator incorporates herein all tentative agreements previously reached by the parties which are to be included in their new Collective Bargaining Agreement.

JUNE 20, 2007



JAMES M. MANCINI, CONCILIATOR