

2007 SEP 12 A 11: 33

**IN THE MATTER  
OF  
CONCILIATION FINDING**

**FINDING & AWARD**

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<b>BETWEEN</b>	)	<b>SERB CASE # 06-MED-10-1177</b>
<b>THE</b>	)	<b>CONCILIATOR: E. William Lewis</b>
<b>SPRINGDALE PROFESSIONAL</b>	)	
<b>FIRE FIGHTERS, LOCAL 4027</b>	)	<b>DATE OF HEARING:</b>
<b>And the</b>	)	<b>August 16, 2007</b>
<b>THE CITY OF SPRINGDALE</b>	)	<b>DATE OF REPORT:</b>
	)	<b>September 10, 2007</b>

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**REPRESENTATION**

**BY**

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<b>Employer Representatives</b>	)	<b>Union Representatives</b>
<b>Paul Berninger, Attorney</b>	)	<b>Lenny French, Pres. Local 4027</b>
<b>Derick Parham, Asst. City</b>	)	<b>William Quinn, IAFF, 4<sup>th</sup> Dist. V. P.</b>
<b>Administrator</b>	)	<b>Mark S. Pelfry, Sec. Local 4027</b>
<b>Daniel M. Shroyer, Fire Chief</b>	)	<b>Joe Parks, FF/Medic—Local 4027</b>
	)	<b>Anthony Stanley II, FF/Medic</b>
		<b>Local 4027</b>

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**AUTHORITY**

This matter was brought before Conciliator E. William Lewis, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Conciliator is for consideration and directive based on merit and fact according to the provisions of ORC 4117, in particular those that apply to Safety Forces and mutual directives of the parties.

E. William Lewis was duly appointed by the State Employment Relations Board as Conciliator in this matter, in compliance with Ohio Revised Code, Section 4117.14 (D)(1) by letter dated June 27, 2007.

The Hearing was held on August 16, 2007, at the City of Springdale's Municipal Building. The parties timely filed the required pre-hearing submittals.

As a result of the pre-hearing filings and with the confirmation of the parties, at the commencement of the hearing, the following Articles remained unresolved for the Conciliation Hearing:

ARTICLE 8-----DISCIPLINE

ARTICLE 10-----HOURS OF WORK

ARTICLE 11-----WAGES

(The City listed three additional open Union Articles, however, at the hearing the Union testified that they were withdrawn.)

**BACKGROUND:**

This is the second renewal of a three year contract that began between the parties in 2000. The City of Springdale, hereinafter known as the City/Employer, located in Hamilton County, Ohio has a residential population of 10, 000 plus. The International Association of Fire Fighters, Local 4017, hereinafter known as the Union, represents all the full-time Fire Fighters. The bargaining unit is currently composed of approximately twenty-four approved positions. The classifications and numbers are as follows: 4- Firefighter/EMS, 17-Firefighter/Paramedics, and 3-Firrefighter/Paramedic Captains.

The current Agreement expired as of December 31, 2006, and the parties filed the necessary retroactivity waiver to ORC 4117.14 (G)(11). The parties met on

their own the months of November and December with little success. They were joined by a State Mediator on January 30<sup>th</sup>, and after two sessions they were able to reach tentative agreement on three Articles.

With the substantive issues unresolved they proceeded to Fact Finding on April 30, 2007. The Union accepted the Fact Finder's Report, however, the City rejected the Report by a seven to zero vote. The Union, by accepting the Report, accepted the Employer's position on three Articles; Vacations, Insurance and Certifications.

The parties were ordered to Conciliation on June 20, 2007. The necessary extensions were filed and a Conciliation Hearing was schedule for August 16, 2007. The required pre-hearing submittals were timely filed. The Union's pre-hearing position was the Fact Finder's Report. However, the City modified its position on wages, subsequent to the Fact Finder's Report, from 2% per year to 5%, first year, 4% second year, and 3.5% third year. At the hearing the conciliator consulted with the parties regarding a potential mediated settlement, however, neither were interested. During the Conciliation Hearing the parties were extended the opportunity to present such information, evidence and testimony as each considered relevant. After each party acknowledged that they had no additional information to present, the Hearing was closed.

In determination of the Conciliation Award and in compliance with ORC 4117.14 (G)(7) and related rules and regulations of the State Employment Relations Board, the following were taken into consideration in making this Award:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;

- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

**ISSUES AT IMPASSE:**

**ARTICLE 8-----DISCIPLINE**

**UNION POSITION:**

By accepting the Fact Finder's Report the Union has withdrawn its pre-Fact Finding proposal on timelines regarding the Pre-Disciplinary Hearing and findings. Therefore, their position on this Article is to provide for binding arbitration for all matters of discipline.

The Fact Finder's recommendation changes the following Sections of the current Agreement: 8.7 and 8.8. The current language is as follows:

8.7 Appeals of written reprimands will begin at Step 2 of the Grievance Procedure and shall be made within ten (10) days of the reprimand.

8.8 Appeals of the suspension, reduction in pay or position, and/or dismissal shall be made exclusively to the Springdale Civil Service Commission in accordance with Civil Service rules.

Fact Finder recommended language:

8.7 Appeals of all discipline will begin at Step 2 of the Grievance Procedure and shall be made within ten (10) days of the discipline.

8.8 Delete

The Union argues that the Agreement requires just cause for discipline and that neutral experienced arbitrators are best qualified to understand and apply the criteria for just cause.

Comparables both internally and externally support their demand, argues the Union. The other organized city bargaining unit (FOP) has binding arbitration. The binding arbitration is available to the FOP if they are unsatisfied by a Civil Service Commission decision. Submitted Union comparables (Un. Tab 7) shows that all entities except Springdale have binding arbitration for significant discipline.

The Civil Service Commission members, although an independent body, are appointed by the City without Union input, and do not necessarily have expertise to apply a just cause provision, states the Union.

The court system, according to the Union, is already bogged down and slow. For the Union to appeal a CSC decision would be too time consuming and costly, claims the Union.

The Union requests the conciliator to award the Fact Finder's recommendation.

#### **EMPLOYER POSITION:**

The Employer acknowledged that the FOP contract has binding arbitration available after a Civil Service Commission decision. The CSC has been an effective independent body in Ohio for over one hundred years, claims the City. Furthermore, per the City, the FOP has prevailed in their cases before the Commission.

The current Agreement provides for grievance adjudication through the Mayor, however, the eight Commission members are appointed by City Council, not the Mayor, declares the Employer.

The City requests the conciliator to keep current language.

#### **DISCUSSION AND DETERMINATION:**

The City did not submit external comparables on this issue, however, the Union comparables show that binding arbitration is a generally accepted practice for substantive discipline. Additionally, the internal comparables show that the other City bargaining unit (FOP) has binding arbitration.

This Agreement, as stated by the Fact Finder, provides for a just cause standard for discipline. It is also generally accepted that the most qualified persons to apply a just cause standard are experienced labor arbitrators.

It is the belief of this conciliator that a matter of this importance should be resolved as result of collective bargaining between the parties. However, considering the circumstances under which the issue comes before me, I can find no compelling reason not to agree with the Fact Finder's recommendation. This Agreement has a "loser pay" provision for arbitration, which is not liked by most arbitrators, however, in some quarters it is thought to minimize the appeal of frivolous grievances.

In accordance with the Fact Finder's recommendation and the Union's last best position, the conciliator's award is to change ARTICLE 8—DISCIPLINE, Sections 8.7 and 8.8 as follows;

8.7 Appeals of all discipline will begin at Step 2 of the Grievance Procedure and shall be made within ten (10) days of the discipline.

8.8 Delete

(It is suggested that the parties review Section 7.5 for possible deletion resulting from this award)

## **ARTICLE 10 HOURS OF WORK AND OVERTIME**

### **UNION POSITION:**

The Union's position on this issue is to adopt the fact finder's recommendation of reducing the hours of the work week from 53 to 48. This is to be accomplished by three changes; minus one (1) hour effective with the conciliation award, effective with the first pay period in 2008, minus two (2) hours and effective with the first pay period 2009 minus two (2) hours. Coupled with the five hour reduction there would be no wage increase over the life of the Agreement.

They argue that a 48 hour work week would reduce the high level of stress that is a recognized part of a fire fighters job (Un. Tab 8). In addition, states the Union, a 48 hour work week would help with retention and recruitment.

Furthermore, their job duties are ever expanding with EMS runs increasing, equipment, apparatus and hydrant repair, and training activities.

Many fire departments in the area work forty-eight weeks, per Union comparables (Un. Tab 8,9). The Union also points out that the Fact Finder's Report states that the forty-eight hour work week coupled with no annual wage increase was the most cost effective way (Un. Tab 1). Furthermore, pension costs would not be increased because total annual salary would remain the same. The Union's position on the 48 hour work week and the zero salary increase would save the City nearly 500,000, over the City's current proposal, claims the Union (Un. Tab 9).

The Union requests the conciliator award their position on Article 10, Hours of Work, as recommended by the Fact Finder. The Union's proposed language change is as follows:

#### **ARTICLE 10 HOURS OF WORK**

10.1 Unless assigned to a forty-hour work-week, the regular work period of a bargaining unit member shall be comprised of a tour of twenty-four consecutive hours of work followed by forty-eight hours of off duty. The sequence of tours shall include a "Kelly day" on which a member is not scheduled to work his/her regular tour. **At the signing of this agreement the work-week shall be reduced by 1 hour to a 52 hour work-week. January 1<sup>st</sup> 2008 the work-week shall be reduced by 2 hours to a 50 hour work-week. January 1<sup>st</sup> 2009 the work-week shall be reduced by 2 hours to a 48 hour work-week. The City and the Union shall develop Kelly dates & FLSA Cycles as required to meet these hours.**

Eliminate Section 10.7

#### **EMPLOYER POSITION:**

The Employer states that there is no cost savings, when giving employees more time off while they are being paid the same dollars. There is substantial cost by reducing the work week from 53 to 48 hours, argues the City. By reducing the work week to 48 hours each full time bargaining unit member gets 240 hours more paid time off. This, in the Employer's opinion, is equivalent to paid vacation.

If the work week goes to 48 hours the Employer will lose 6240 hours of manpower, and a conciliator should not impose such a drastic hardship on the City, they argue. The City, to maintain their standard of service, would have to replace the lost hours.

To replace the lost hours would require more part-timers (already at 20), overtime for current bargaining unit members or hiring additional full time Fire Fighter/Paramedics, declares the City. According to the City, part time Paramedics are not easy to find. The Fact Finder's recommendation would require the City to pay overtime, at a higher hourly rate, to the full timers for hours over 48, a substantial cost increase, argues the Employer.

The traditional comparables used by the City (Tab 3) show many Fire Fighters working 53 hours per week. The 53-hour week for Fire Fighters, is equivalent to a normal employee working a 40 hour work week, which is the FLSA standard, states the City. The Union's 48-hour comparables, many of which are really not comparable, show an average annual wage of \$44,000, substantially less than Springdale's, argues the Employer.

The wage freeze actually increases the bargaining unit member's hourly rate by 10.4 % over three years, not a wage freeze, argues the City.

Also, according to the Employer, there is substantial down and rest time on the Fire Fighter's 24 hour tour (Tab 1). The time allotted for sleep, per the Chief, is between 10p and 8a. In 2006 there were 107 days when no runs were made between 11p and 7a (Tabs 1, 3). The preponderance of runs were during business hours according to the Chief. They acknowledged that stress exists for a Firefighter/Paramedic, however, 70% of Springdale's have off duty jobs, per testimony. Of the twenty part-timers that Springdale employees, one-half come from other fire departments, according to the Chief.

The City says that the Firefighter/Paramedic's are not always in stressful situations per 24 hour tour, and they don't want to reduce their services. Therefore, the Union's position and the Fact Finder's recommendation is too costly. A tax increase recently got voters approval, and to decrease City fire protection and EMS services would be disingenuous, declares the Employer. There is no compelling reason to reduce the work hours to 48, and the City requests the conciliator to maintain current language.



## **DISCUSSION AND DETERMINATION:**

It appears to the conciliator that the Fact Finder's recommendation was an effort to meet the interests of both parties. The City's wage position was a minimal 2 % per year when before the Fact Finder. Since the Fact Finding Report the City has substantially increased its wage offer.

When examining the comparables on this issue both parties have selected four of the same cities. The four mutually selected cities have work weeks ranging from 52 to 54 hours. Of the Cities unrefuted traditional comparables, all but one have 52 to 54 hour work weeks (U Tab 8 & E Tab 3). The evidence corroborates (E tab 4) the City's argument that the Union's submitted 48 hour work week examples have substantially lower wages.

The City is the party that determines the level of services to be provided (Jt. 1). They have testified that they do not want to reduce services or manpower. Therefore, to reduce an employee's work hours by 240 or ten 24 hour tours would be costly to fill. Although part-timers can be used they must be available with the necessary job skills. Otherwise, using the current full time employees working their current number of hours, would require the City to pay an additional one-half time, at an increased hourly rate (10 %), for 240 hours. The Employer could also fill the additional 6240 lost hours by hiring additional full time Firefighter/Paramedics. Some combination of the above could be used. When the conciliator considers that the Department already has 20 part-timers, a part time solution would mean having more part-timers than full time employees. This would not be an effective operational mix, according to the City.

There is no doubt in the conciliator's mind that Firefighter/Paramedics have stressful jobs. However, a strong preponderance of Fire Departments work 53 hour type work weeks rather than 48 hour work weeks, according to SERB Benchmarks (E Tab 6).

Considering the Conciliation Guidelines under 4117.14(G)(7), and the absence of a meaningful quid-pro-quo for the nearly ten percent reduction in hours of work, the Conciliator's determination is to keep current language. This is in accordance with the Employer's last position in ARTICLE 10----HOURS OF WORK AND OVERTIME.

## **ARTICLE 11      WAGES**

### **UNION POSITION:**

The Union's position on this issue of wages is the Fact Finder's recommendation. The recommendation was no annual salary increase coupled with a five hour reduction in the work week. The work week was to be reduced from 52 hours to 48 hours commencing on July 1, 2007 through January 1, 2009.

The Union states that the Employer's current position of 5 %--4 %--3.5 %, first became known to them, on August 14. Heretofore, the Employer's position had been 2 % per year. A two-percent wage increase was unacceptable, states the Union, considering all other City employees received a three and one-half percent for 2007. Nevertheless, their position and the Fact Finder's recommendation is more important than the Employer's revised wage proposal, declares the Union.

According to the Union, the FLSA of a 53-hour normal work week for Fire Fighters is out of step with the reality of a Fire Fighters current duties. Fire fighting is critical, but is a minimal per cent of their work time, verses Emergency Medical Services, claims the Union.

The Union requests the conciliator to award the Fact Finder's recommendation.

### **EMPLOYER POSITION:**

The City, keeping the current hours of work, revised its wage offer following the Fact Finder's Report. Their offer at the Conciliation Hearing is as follows:

## **ARTICLE 11      WAGES**

11.1      Retroactive to the first pay cycle for 2007, an increase of 5 % on the base straight time rates for all bargaining unit personnel.

11.2      Effective the first pay cycle for 2008, an increase of 4 % on the base straight time rates for all bargaining unit personnel.

11.3 Effective the first pay cycle for 2009, an increase of 3.5 % on the base straight time rates for all bargaining unit personnel.

11.4 The rates for these various pay steps will be as follows:

**SALARY SCHEDULE TO BE ADJUSTED  
ACCORDINGLY**

The Employer argues that it does not want to reduce its manpower, nor does it want an increased part-time work force.

To substantiate their wage position, the City referred the conciliator to their comparable wage data, and the SERB data for Southwestern, Ohio.

The Fact Finder missed the point, claims the City, and they don't want to reduce their full time manpower hours. The City requested the conciliator to award their wage position, without a reduction to the 53-hour work week.

**DISCUSSION AND DETERMINATION:**

Although this is a issue by issue last best offer process, the issue of wages is directly related to the hours of work issue. The Union, in no way, would have considered a salary freeze without a substantial reduction in work hours. Their initial wage proposal was 5 % per year, however, that is not before the conciliator. This particular negotiation process has resulted, not in an issue by issue last offer, but a package of issues last offer. It would be unreasonable for the conciliator to split the packages.

It is apparent, in reviewing the comparable wage data supplied by the parties, that the City's wage offer is generally more than comparable when compared to area settlements and Statewide averages (E Tabs 3, 5, 6, 7). The first year wage increase of 5 % would put this bargaining unit comfortably in the middle of Southwest Ohio wage data. SERB Statewide data also shows that contracts settled in 2006 had wage increases on average of 3.08 % the first year, 3.04 % the second year, and 3.01 % for the third year.

The conciliator awards the City's position on this issue. ARTICLE 11--- WAGES is to read as follows:

11.1 Retroactive to the first pay cycle in 2007, an increase of 5 % on the base straight time rates for all bargaining unit personnel.

- 11.2 Effective for the first pay cycle for 2008, an increase of 4 % on the base straight time rates for all bargaining unit personnel.
- 11.3 Effective the first pay cycle for 2009, an increase of 3.5 % on the base straight time rates for all bargaining unit personnel.
- 11.4 The rates for these various pay steps will be as follows:  
(Salary Schedules to be adjusted accordingly)

### CONCLUSION

The Conciliation awards contained herein were arrived at after giving due consideration to the positions and arguments of the parties, and the Criteria enumerated in ORC 4117.14(G)(7). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations or the Fact Finding Report, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Conciliation Report.

Respectfully submitted and issued at Columbus, Ohio, this 10<sup>th</sup> day of September 2007.



E. William Lewis  
Conciliator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Conciliator's Report was sent by regular U. S. mail to:

Edward Turner, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> floor  
Columbus, Ohio 43215-4213

And

Paul Berninger, Attorney  
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And

Leonard French, President  
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This 10<sup>th</sup> day of September 2007.



E. William Lewis  
Conciliator