

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation	*	
Between	*	
	*	AWARD
EASTLAKE FIREFIGHTERS	*	2010-MED-10-1552
IAFF LOCAL 2860	*	Case No. 10-MED-1852
	*	
	*	Anna DuVal Smith
	*	Conciliator
and	*	
	*	
CITY OF EASTLAKE	*	
	*	

Appearances

For the Eastlake Firefighters, IAFF Local 2860:

Josh Saperstein
35150 Lakeshore Blvd.
Eastlake, OH 44095

For the City of Eastlake:

Sandy Conley
Clemans, Nelson & Associates, Inc.
6500 Emerald Parkway, Ste. 100
Dublin, OH 43016-6235

I. SUBMISSION

This matter came for hearing at 9:30 a.m. on October 11, 2011, following a day of pre-hearing settlement discussions at the City Hall in Eastlake, Ohio, before Anna DuVal Smith who was appointed Conciliator pursuant to Chapter 4117 *O.R.C.* Present for the Eastlake Firefighters, IAFF Local 2860 were Josh Saperstein, Jim Astorino, Michael Kaska, Jason Bvora, Paul Moorhead, Jason Cahill and Mike Esposito. Present for the City of Eastlake were Sandy Conley, Michael Slocum and Ted Andrzejewski. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions. The oral hearing concluded at 6:00 p.m. on October 11, 2011, whereupon the record was closed. Issues submitted on pre-hearing statements were: a Memorandum of Understanding on the Return of 1% Pension Contribution - Wage Adjustment; Article 22, Minimum Manning; Article 23, Part-Time Personnel (incl. Staffing Levels formerly addressed under Article 9, Reduction in Force and Recall); Article 24, Section 2 General Wage Increases; Appendix A Step Expansion; Article 25, Insurances, Sections 1 and 3; Article 26, Longevity; Article 32, Holidays; Article 34, Sick Leave Sections 13 and 16; Article 46, Duration. Prior to opening the hearing the parties settled Article 25, Insurances; Article 34, Section 16 Sick Leave (Personal Incentive Time); Article 46, Duration; and the Memorandum of Understanding on pension contributions. Those agreements are included herein as if written at length. This left seven issues for the Conciliator: Article 22, Minimum Manning; Article 23, Part-Time Personnel (including Staffing Levels); Article 24, Section 2 General Wage Increases and Appendix 4, Step Expansion; Article 26, Longevity; Article 32, Section 3, Holidays (Work Option), and Article 34, Section 1, Sick Leave, and a Memorandum of Understanding on the Return of 1% Pension Pick-Up. In rendering this Award, the Conciliator has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(G)(7) and Rule 4117-9-06 (H) O.A.C., to wit:

- (1) Past collectively bargained agreements 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) 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 procedures in the public service or in private employment.

II. IMPASSE ITEMS

Article 22. Minimum Manning

Language in the predecessor contract requires “a minimum of seven (7) Fire Fighters on duty at all times.”

Fact-Finder Lalka recommended the following, explaining his intent was to make clear that the City, if faced with the dire necessity of layoffs to remain out of Fiscal Emergency due to a lack of funds (or lack of work as provided in Article 9), could reduce the minimum to 6 suppression personnel if it also discontinued part-time employees.

The City shall maintain a daily minimum of seven (7) fire suppression personnel (Fire Fighter, Lieutenant and Battalion Chief, excluding the Fire Marshal) on duty at all times. If the use of part-time employees is discontinued, the City shall maintain a daily minimum of six (6) fire suppression personnel (Fire Fighter, Lieutenant, Battalion Chief, excluding the Fire Marshal) on duty at all times.

For the Life of this Agreement, it is agreed that should “Shift Fill” overtime costs exceed \$80,000 in any given year, the City shall have the ability to adjust daily staffing levels to 6 for the remainder of the year. On January 1st of the following year, staffing shall be returned to the level as deemed by this Agreement and the “Shift Fill” cost shall be reset to \$0. “Shift Fill” costs shall be determined by adding the cost of the hours filled, plus any associated pension costs if applicable.

For the life of this Agreement, the City shall be able to reduce daily staffing requirements pursuant to Article 9.

The City nonetheless wishes to eliminate entirely this provision in order to save money in these difficult economic times. In support of its position it argues that manning levels and levels of service are inherent rights of management and, therefore, permissive and should not be included in a CBA without mutual agreement. The City believes the Fact-Finder erred in making his recommendation to allow adjustment of daily staffing requirements if layoffs occur. It further

points out that Conciliator Imundo has removed the manning levels from the police contract as have neutrals in other fact-findings and conciliations.

The Union accepts what Fact-Finder Lalka recommended but with some additional language (underlined below), to wit:

The City shall maintain a daily minimum of seven (7) fire suppression personnel (Fire Fighter, Lieutenant and Battalion Chief, excluding the Fire Marshal) on duty at all times. If the use of part-time employees is discontinued, the City shall maintain a daily minimum of six (6) fire suppression personnel (Fire Fighter, Lieutenant, Battalion Chief, excluding the Fire Marshal) on duty at all times.

For the Life of this Agreement, it is agreed that should "Shift Fill" overtime costs exceed \$80,000 in any given year, the City shall have the ability to adjust daily staffing levels to 6 for the remainder of the year. On January 1st of the following year, staffing shall be returned to the level as deemed by this Agreement and the "Shift Fill" cost shall be reset to \$0. "Shift Fill" costs shall be determined by adding the cost of the hours filled, plus any associated pension costs if applicable.

For the life of this Agreement, the City shall be able to adjust daily staffing requirements if layoffs of bargaining unit members occur pursuant to Article 9: Reduction in Force and Recall.

First, the Conciliator notes that the expiring contract contains a staffing requirement and so the City has already yielded its right to set staffing requirements. Second, as this Conciliator has consistently held, a conciliator should ordinarily give great weight to what the fact-finder who preceded conciliation found and recommended. For one, conciliation should not be just another roll of the dice. For another, it supports settlements post-factfinding, pre-conciliation. Third, if there is no settlement prior to conciliation, the positions of the parties tend to become more moderate and more acceptable, and thus more self-enforcing. Here, the employer who previously agreed to minimum manning (or had it thrust upon it by a previous conciliator), wants to get rid of it but offers no assurance that safety standards and coherent teams will be maintained. The Union, on the other hand, has made some concessions. The Conciliator awards for the Union.

Article 23. Part-Time Personnel

The current provision provides as follows:

Section 1. The Union acknowledges that in order to ensure the health, safety, and welfare of the citizens of Eastlake and maintain the integrity of fire department operations, the Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer agrees that the use of part-time personnel shall not cause a reduction in force (i.e., layoff or job abolishment) of regularly scheduled hours of bargaining unit members. Additionally, prior to instituting a layoff among regular full-time bargaining unit members, the Employer will first reduce all part-time firefighters.

Section 2. Overtime Work. Whenever the Employer determines that overtime work is necessary, it will offer the overtime work opportunity to eligible full-time bargaining unit members prior to offering the overtime work to part-time firefighters.

The Union, seeking protection from erosion of the unit due to the use of part-timers, proposes the following which was recommended by the Fact-Finder:

Section 1. The Employer shall have the ability to utilize part-time personnel to supplement shift strength, cover time off, cover call offs, avoid overtime, or otherwise perform duties that it determines necessary. The Employer cannot utilize part-time firefighters unless the full-time bargaining unit consists of 27 full-time fire suppression bargaining unit members (Firefighters, Lieutenants and Battalion Chiefs, excluding the Fire Marshal). If overall staffing is reduced below 27 regular full-time fire suppression bargaining unit members (Firefighters, Lieutenants and Battalion Chiefs, excluding the Fire Marshal) due to attrition of any kind, the Employer shall have 6 months to fill the vacancy. If this time frame is exceeded, the use of part-time firefighters must be discontinued until such time as the full-time fire suppression bargaining unit is returned to 27 members. Additionally, prior to instituting a layoff among regular full-time bargaining unit members, the Employer will first reduce all part-time firefighters. For the life of this Agreement, the City shall be able to maintain a minimum of 24 full-time fire suppression bargaining unit members (Firefighters, Lieutenants and Battalion Chiefs, excluding the Fire Marshal). All other language is still applicable. The only intended changes is that 27 members will temporarily be reduced to 24.

In addition, the Union would retain Section 2.

The City insists that staffing levels is a permissive subject and contrary to the clear language in Article 23, Section 1.

The Conciliator credits the Fact-Finder's conclusion that "despite prior assurances to the contrary, the City is attempting to erode the Bargaining Unit through an interpretation of the language it proposed during the last round of bargaining that is at odds with its stated intent" and that the full-time Fire Fighters should be protected from being replaced with part-time employees. The Union's position which is set forth above is awarded for both sections.

Article 24, Section 2. Salary Schedule

Position of the Union

The Union offers a wage freeze for the duration of the Agreement with a wage reopener for 2013. In addition, in light of Senate Bill 5 (now before the electorate), the Union requests that an additional 1% be included upon a concomitant removal of the 1% pension “pick-up” which currently exists and which had been negotiated in lieu of wage increases in past negotiations.

Position of the City

The City submits that it has experienced reduction in revenue over the past few years and is not in a position to increase personnel costs. Indeed, it needs to become more efficient and reduce costs. It points out that this is largely the result of actions taken by State government and notes the following

*Revenues from the Local Government Fund are to be cut 50% between July 2011 and December 2012.

*Reductions in revenue from Commercial Activity Tax (CAT) reimbursements.

*Reductions in Electric Deregulation reimbursements.

The City is going to the citizens in November with a 4.0 mil levy for operating expense. But even if it is successful, there will still be a shortfall of about \$300,000. What it needs is more flexibility from its labor unions and a wage freeze. It proposes a 3-year wage freeze with a re-opener on wages only for 2013 in October of 2012 upon the request of either party.

The Conciliator notes that the parties agree to await the results of the November 8th election and the state of the economy before committing to wages in 2013 but their proposed language has some important differences. The Union’s permits only the Union to initiate the reopener whereas the City’s permits either party to do so. The Union’s also includes a guarantee of its pension pick-up provision but the City’s does not. The Conciliator adopts the City’s as it permits either party to reopen:

Award: Section 6. The parties agree that either party may reopen negotiations for the purpose of renegotiating wages for calendar year 2013 by submitting written notice to the other party between October 1 and October 15, 2012.

Article 26, Section 1. Longevity

The City in fact-finding proposed to remove this article from the Contract because it has had no problem attracting and retaining employees and because of public scrutiny. In conciliation it moderated its goal, proposing to grandfather all firefighters hired before January 1, 2011. The City states that the FOP originally agreed but then it became an issue in conciliation. Nevertheless, it has other bargaining units that have agreed to grandfathering.

The Union objects to removal of this benefit, submitting data from five other cities to support the claim that this is not an unusual benefit.

The Conciliator notes that the data brought by the parties establish no particular pattern other than that some units within Eastlake and other jurisdictions have longevity while others do not. The Conciliator would need more data to support the change requested by the City. Moreover, she is disinclined to create a 2-class society amongst firefighters who must work together for their own safety and that of the civilians they serve without a compelling reason. She therefore follows the Fact Finder, rejects this proposal and adopts current language.

Article 32, Section 3. Holidays

The City, citing what it believes to have been a clerical error of omission by the conciliator of the 2008-2010 Agreement. While the matter is presently under consideration by the courts, the City nevertheless seeks to have the missing language restored in this proceeding.

Current Language

Section 3. Holiday Work Option. At the discretion of the respective department head with consideration of workloads and department needs an employee may work designated holidays. The employee may then elect to then to take the additional holiday compensation in the form of payment.

What the City says is missing is the phrase “not regularly scheduled” in the last sentence: “The employee not regularly scheduled to work....” The City also points out that this language parallels the current requirements of the FOP contract and, in reality, applies only to non-suppression personnel because suppression personnel receive time off in lieu of any designated holidays. The Union states that what it wants is what the Fact-Finder recommended, keeping current contract language.

The problem with the Union’s position is that what it says is “current language” was the result of a mistake of omission. Fact-Finder Lalka acknowledged this when he wrote, “Thus, it is apparent, as argued by the City, the Union obtained increased wages as a trade-off for the abolishment of the holiday cash-in benefit” and then he recommends against modification of Section 3 as requested by the Union. Moreover, my own reading of Conciliator Meredith’s Award persuades me that there was, indeed, an error of omission by virtue of the following language in his Award at page 9 which refers to “loss of the holiday cash-out benefit”: “Along with the enhanced wage increase (Issue 5, below), this should be sufficient to compensate for loss of the holiday cash-out benefit.” (Emphasis added)

Award

Section 3. Holiday Work Option. At the discretion of the respective department head with consideration of workloads and department needs an employee not regularly scheduled may work designated holidays. The employee may then elect to then [sic] to take the additional holiday compensation in the form of payment.

Article 34, Section 13-Sick Leave Conversion

Citing affordability, the City proposes to modify and rein in conversion of accumulated unused sick leave at the time of retirement. The current conversion provision is:

<u>Length of Service</u>	<u>% of 1344 Hours</u>
10-12 years	25%
13-15 years	50%
16 and over	75%

The City wants to drop the top step (i.e., 75%). It also proposes language for employees hired on or before December 31, 2010, which would make them eligible for only the 25% rate. The City says there are seven firemen at the top rate now. In support it points out that Conciliator Imundo granted the City's request for the police unit and the AFSCME unit has agreed, too, even without grandfathering.

The Union is opposed to this change without grandfathering because of the impact on those at the top. Eastlake's provision is already inferior to comparable cities' except for Willoughby's. Moreover, it is not appropriate to look to the private sector for comparison's sake.

The Conciliator agrees that, without grandfathering employees at the top step, the City's proposal suffers because it has more firefighters now at the top step than the other units. However, she bows to the doctrine of internal comparability and awards for the City.

Respectfully submitted,

A handwritten signature in black ink that reads "Anna DuVal Smith". The signature is written in a cursive, slightly slanted style.

Anna DuVal Smith, Ph.D.
Conciliator

Cuyahoga County, Ohio
November 7, 2011

CERTIFICATE OF SERVICE

I certify that on the 7th day of November 2011, I served the foregoing Award of Conciliator upon each of the parties to this matter by emailing a copy to them at their respective addresses as shown below:

joshsaperstein@yahoo.com

Sconley@clemansnelson.com

I further certify that on the 7th day of November 2011, I submitted the foregoing Award of Conciliator by email to the State Employment Relations Board at med@serb.state.oh.us.



Anna DuVal Smith, Ph.D.
Conciliator