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State Employment Relations Board
Conciliation Report
June 19, 2012

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| In the Matter of: | ) | |
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| The City of Brook Park | ) | |
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| and | ) | SERB Case No. 10-MED-11-1693 |
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| The International Association of Firefighters Local 1141 | ) | |
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Appearances

For Local 1141:

Thomas Hanculak: Attorney for Local 1141
James Astorino, President of Northern Ohio Firefighters
Bill Bennett, City of Brook Park Firefighter
Matt Lynch, City of Brook Park Firefighter
Brian McClain, City of Brook Park Firefighter
Matt Wright, city of Brook Park Firefighter

For the City of Brook Park:

Gary Johnson, Attorney for the City of Brook Park
Mark Elliott, Mayor, City of Brook Park
Greg Cingle, Finance Director, City of Brook Park
Marty Healy, Assistant Finance Director, City of Brook Park
Lisa Zamiska, Personnel Director, City of Brook Park

Conciliator: Dennis M. Byrne

**Introduction:**

This Conciliation involves members of the Brook Part Fire Department represented by International Association of Firefighters Local 1141 (Union) and the City of Brook Part (Employer). The parties' journey to this conciliation hearing has been long and arduous. The parties are currently in Common Pleas Court in both Columbus and Cleveland contesting the issues surrounding their relationship. In addition, they have been involved in a number of hearings before the State Employment Relations Board (SERB). In recognition of these facts, the Union asked for a delay in the hearing until the Cleveland Court issues a ruling on the case before it. The City objected to the delay claiming that it was a continuation of the Union's stalling tactics that had prolonged the negotiations for a new contract. The Union strongly disagrees with this characterization of events.[1]

The parties went through a Fact Finding Hearing with Fact Finder Robert Stein on December 11, 2011; and he issued his report on February 16, 2012. The City did not vote on the document; and according to the SERB rules, the contract was deemed ratified. The Union rejected the report on February 22, 2012. SERB appointed the Conciliator on March 13, 2012. The conciliation hearing was held on May 21, 2012.

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[1] An exact chronology of the events leading up to this conciliation was provided by both parties in their Pre-Hearing Statements. In the interest of brevity that chronology will not be part of this report. If there are questions about the events leading up to this report, the Conciliator will furnish a copy of the chronology upon request.

The Fact Finder had problems scheduling and holding a hearing due to the legal issues surrounding the contract. Briefly, the City and the Fire Fighters operated under an imposed contract for calendar year 2010. The Union objected to the Fact Finder hearing evidence based on articles found in the (imposed) 2010 contract. The Union believes that contract is invalid and that the last contract between the parties covered the 2008-2009 period. The Fact Finder contacted SERB and was instructed to hear evidence on a successor contract from calendar year 2011 forward.

The Conciliator was also involved in discussions over the same issues and also contacted SERB. He was instructed to discuss the issues that were heard by Fact Finder Stein. Therefore, the Conciliator's report will discuss the issues and recommendations made by the Fact Finder.

## CRITERIA

The Ohio Revised Code enumerates the criteria to be considered by a Conciliator when making recommendations. The criteria are found in ORC 4117-9-06-H(1) to ORC 4117-9-06-H(6). The criteria are:

1. Past collectively bargained agreements, if any, between the parties
2. Comparisons
3. The interests and welfare of the public and the ability of the public employer to finance the settlement
4. The lawful authority of the public employer
5. The stipulations of the parties
6. Such other factors not itemized above, which are normally or traditionally used in disputes of this nature.

The following report will use these factors as the basis for the Conciliator's findings.

**Background:**

The parties to this conciliation have gone through the fact-finding process and have been unable to bridge the differences that divide them. Conciliation in Ohio is an issue-by-issue final offer process where the Conciliator is required to select one of the parties' final position(s) on the issue(s). This procedure has been in place since the passage of ORC 4117 in 1984.

In the early years of collective bargaining, the fact-finding process was often a dress rehearsal for the conciliation hearing. This was not the intention of ORC 4117. The Act was intended to help the parties reach an agreement on a new contract, and each step in the process was intended to move the parties toward that agreement. However, the early steps in the process (mediation and fact finding) sometimes turned into a dress rehearsal for the parties to refine their respective positions in preparation for conciliation.

Moreover, fact-finders and conciliators often disagreed with each other, and sometimes there was little reason for the disagreements outside of personal predilection. Therefore, the fact-finding process did not always move the parties toward a settlement. In recognition of this result, many neutrals began to see conciliation as a type of appellate process. These neutrals would often affirm the fact-finder's recommendations even if they might have reached a different conclusion if they were the fact finders in a given case.

This Conciliator agrees with that view of the conciliation procedure and believes that a conciliator should not overturn a fact-finder's recommendation without a good reason. This position gives the fact-finding process some weight and

helps to bring the negotiation process to an end. At a minimum, it should lead to fewer issues being certified for conciliation.

The result is that this Conciliator believes that a fact-finding report should be given deference unless one of the parties can show that the fact-finder made a mistake, new information becomes available that affects the issue, or there is some change in a condition that affects the outcome of a case. However, this does not mean that a conciliator is merely a rubber stamp for the fact-finder. Any conciliator must examine the evidence presented by the parties with an unbiased eye, and decide the issues before him/her fairly.

In this particular instance, the Union argued that the conciliator should reexamine the fact-finder's recommendations because the Union argues that the fact-finder did not understand its positions. The Union also believes that the fact-finder erred because he often used the language sound in the contested 2010 agreement when discussing the issues.

The Conciliator believes that the process must be impartial, which of course implies that the neutrals involved in the process are impartial. Consequently, the Conciliator has undertaken a complete examination of the data presented by the parties. The information outlined in the paragraphs below gives both parties an understanding of the underlying conditions upon which the Conciliator bases his recommendations. This is an unusual step for this Conciliator. However, given the complexity of the parties' relationship, the legal wrangling surrounding the contract, and stakes involved for both parties, the Conciliator believes that it is necessary.

**Demographics:**

The Letter of Understanding that lies at the heart of the current dispute was signed by Mayor Thomas Coyne on January 1,1993. In this letter Mayor Coyne states, " Upon implementation of Central Dispatching, the current nine (9) man minimum will remain effective." These few words have been the reason for numerous legal proceedings, arbitrations, and disputes between the parties for years. In order to understand the parties' positions, it is instructive to view the City as it was in 1993 and as it is in 2012.

According to information from the 1990 census, Brook Park's population was 22,865, the median income was $36,612.00 per household, the median age was 34.8 years, and the median home value was $70,900.00. In 2000, the population was 21,218 people, the median income was $46,333.00, the median age was 40.1 years, and the median home value was $112,400.00. In 2010 the population was 19,212, the median income was $48,465.00, the median age was 43.8 years, and the median home value was $126,267.00 (U.S. Census Department, various years).

Comparing the 1990 figures with the 2010 numbers, the data show that population has fallen by approximately 10.0% and the age of the average citizen has risen by nine years or 23%. The median home price has risen by approximately 80%. This figure is not adjusted for inflation and the rise in prices over the same period has been 76.0% (USInflationCalculator.com). Adjusting the median 1990 value for inflation gives a home value of approximately $124,784.00 in 2010 dollars. Therefore, home values in Brook Park have risen approximately 2.0% over the

twenty- year period. The median income has risen by an unadjusted 32%. Adjusting for inflation median income has fallen by over 35%.

The results of the above "analysis" show that the Brook Park population is rapidly aging and is becoming much less affluent. In addition, home prices have stagnated in real terms. Finally, the numbers show that the population is falling. The combination of a falling population and a rising average age implies that the City is becoming grayer. That is, the younger population is leaving, and the remaining population is aging. The figures cited above must be viewed with caution, but it is clear that the twenty-year trends have not been positive.

In response to the above facts and especially in light of the precipitous drop in real income, the City has trimmed its labor force. The Fact Finder used a figure of 26% fewer employees in his report. The testimony at the hearing was that the City currently employs 147 individuals down from a total of 207 a few years ago. This equates to a reduction of 29% in the City's labor force. Regardless of which number is correct, the data clearly show that the City is attempting to cut expenditures by cutting employees.

This is a figure that most neutrals consider when deciding if a jurisdiction has financial problems. That is, if a jurisdiction claims financial exigency, but has not reduced its labor force, then most neutrals take a somewhat jaundiced view of the claims that the jurisdiction has an inability to pay. In this case, the City's claims regarding its finances are substantiated by its actions to cut its payroll.

The above facts directly affect the Brook Park Fire Department. First, because the population of Brook Park is rapidly aging, there should be an increased

demand for Emergency Medical Services leading to an increasing number of ambulance runs within the City. The data presented by Union show that EMS runs have increased over the years (Union Evidence Folder on Manning). However, the falling real income of the City's residents means that there is less revenue available for funding the various City Departments. The firefighters, like all other City workers, are faced with the prospect of having to do more with less.

If it is assumed that another factor is the provision of fire and emergency medical services is size of the population, then Brook Park's falling population would imply that there is a need for fewer firefighters. With a population of 22,865 individuals in 1993, the Fire Department roster was forty-five; then as the population declined to the present level of 19, 212 individuals, the Fire Department would need approximately 37.8 firefighters, all other things held constant.

The Conciliator recognizes that judging staffing needs by looking only at population is unreasonable. There are myriad other factors that need to be examined to determine if the current staffing of the Department is reasonable; but by one rough measure, the Department's current roster of thirty-seven (37) is not totally out of line with the needs of the population.

**Income:**

The major reason that the City is attempting to change the manning level in the Department is that the City Administration believes that it can no longer afford to fund the Fire Department's minimum nine (9) man staffing level. The City presented voluminous information on this topic (Employer Exhibits 1 thru 10). The

Union offered testimony from an expert witness, Mary Schultz, to provide a different perspective on the City's financial position (Union Exhibit 2). Ms. Schultz entered her report on the City's finances into the record (Union Exhibit 6).

The usual range of taxes and fees that all municipalities use to raise revenue are in place in Brook Park. These funding sources include income taxes, property taxes, estate taxes, the Local Government fund, and fees for services. The City's main revenue source is the Income Tax Fund, and revenue is transferred from the Income Tax Fund into the General Fund. The two major sources of funds are the City income tax that generates 71% of the General Fund revenues and the property tax that generates 8% of the General Fund revenues. The remaining 21% is financed by an amalgam of specific taxes and fees (Employer Exhibit 3). The City also funds its Capital Improvement Fund from the Income Tax Fund; and currently, 85% of the Income Tax Fund goes to the General Fund and 15% goes into the Capital Improvement Fund (Employer Exhibit 3). This percentage is determined by the City Council, and it can only be changed by Ordinance.

The City presented evidence on its financial condition including graphs and charts that traced the income generated by the City income tax by year back to 1998. According to the City's Finance Director, Greg Cingle, the City's income tax revenues are currently less than the City collected in 1999 and will remain below the 1999 levels for the foreseeable future (Employer Exhibit 3). The City also testified that it was facing further revenue problems in the future because both the estate tax and the Local Government Funds distributed by the State are being phased out.

The City's overall revenues are also shown in Employer Exhibit 3. The total revenue is estimated to be approximately $21,300,000.00. Using the US Inflation calculator to determine the rate of inflation from 1999 to 2012 gives an inflation number of 37.9%. Adjusting the City's revenues for inflation shows that real revenue is approximately $15,600,000.00. For the income tax, the real taxes collected are $11,100,000.00. That is, The City's revenues have not kept up with inflation.

The Union's expert examined the City's financial statements and made a number of observations. She stated that the City's revenue projections were conservative. She testified that Finance Directors were conservative by nature and that the city's financial statements reflected that bias. She went on to say that the City had underestimated its income tax receipts for fiscal 2011 by approximately $1,000,000.00. She also pointed out that the City did not transfer some available monies into its General Fund, making the fund balance seem smaller than it actually was. She also stated that the City was not using all of the revenue from some of its revenue sources for current operations. She singled out the insurance fund, the Retiree Accrued Benefits fund, and the Admissions (Hotel tax) fund for special mention. Finally, she stated that the City had increased the amount going from the Income Tax Fund to the Capital fund by 5%. Ms. Schultz said that all of these facts made the City's financial position appear worse than it actually is (Union Exhibit 6).

She also analyzed the City's expenditure patterns. According to her analysis, the City was spending less on public safety and more on discretionary items over

the last few years, and she testified that the City could afford to pay the firefighters' demands with little effect on its overall financial health.

The Finance Director testified about a number of Ms. Schultz's contentions. He agreed that the City had underestimated its 2011 income tax collections. However, he stated that most of the underestimate came from one-time collections. For example, he stated that the Ford Motor Company had hired a demolition firm to raze the foundry at its Brook Park plant. This generated over $600,000.00 of income tax for the City. However, once the plant was demolished, the contractor's employees would leave the City. This would result in less revenue from the city income tax and a reduction in the City's capital stock.

In a similar way, the Finance Director stated that the Employee Retirement Fund balance was high because the City was "buying out" members of its staff and had to pay for the early retirees benefits. He also stated that the amount in the Hotel Tax fund was allowed to accumulate for a few years; then the account was used to fund current operations. He stated that the fund balance was included in the 2012 budget. He also testified that the City Council did change the distribution of monies going into the General and Capital funds. However, he stated that the City had put 30.0% of its revenues in capital expenditures for years; but during the recession it had changed the allocation to only 10.0% for capital projects to avoid lying off City employees. He testified that last year the percentage was increased to 15% because the City needed more money in the Capital Fund because there were certain infrastructure projects including sewer and road repairs that needed to be funded.

The two sides also discussed the prospects for new business expansion in the City. Ford's prospects appear bright, and there is some possibility that this will translate into some further employment at its Brook Park plant. However, even the most optimistic forecasts do not imply that employment in the plant will increase markedly. Also, a new business, Heartland Payroll Systems, is relocating into Brook Park. This will add 170 to 200 new jobs in the City. However, PNC is in the process of closing or has closed its Brook Park operations center; and this will more than offset any expected employment gains. At the current time, the City does not foresee any significant change in employment.

In general, the Conciliator finds that the revenue received by the City is trending down. The tax receipts are stagnating, and the other sources of revenue cannot make up the loss in funding from the estate and Local Government Funds. Given the age of Brook Park's labor force and the overall economic conditions in Northeast Ohio, the Conciliator believes that the City's financial condition is unlikely to improve markedly. Therefore, the Conciliator finds that the City did not overstate its financial problems.

There is always a chance that the overall economic situation will improve, and that will positively impact Brook Park. However, the big economic impetus to the State economy is coming from the booming natural gas industry. Unfortunately, Brook Park is not in a position to capitalize on the energy boom, and the prospects for new business development are not bright. Up to this point, the City has not laid-off any employees, but it is still trying to reduce its labor force by an ongoing buyout

and attrition. In this context, the decline in the Fire Department's manpower is symptomatic of the total employment picture in Brook Park.

**Fire Department**

The Brook Park Fire Department currently consists of 37 members. In 2010, the bargaining unit consisted of 31 firefighters through the rank of Lieutenant. The complement of firefighters is down from 39 members in 2003. This equates to two platoons of 10 and one platoon of 11 firefighters.[2] However, the unique scheduling requirements of the 24 hour / 48 hour off schedule means that there is always some personnel off work on "C" days (Kelley days) and usually other firefighters on vacation, and/or holiday leave. There are also times when a firefighter is ill and calls off on sick leave. The Department operates with a nine (9) man minimum staffing requirement, and the combination of small platoons and contractual time off means that the Department usually has two (2) members being paid overtime for shift fill (Employer Exhibit 34).

This is the major stumbling point to the parties' attempt to reach a settlement. The firefighters are adamant that the nine (9) man minimum per shift is really a minimum for the safety of the citizens of Brook Park and the firefighters themselves. The City argues that the nine (9) man minimum is a vestige of an earlier time when the City finances were not so strained. In a nutshell, the City argues that it cannot afford to pay the overtime that the minimum entails. The City believes that

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[2] At the current time all firefighters must be EMTs and some are also paramedics. The report will discuss firefighters rather than firefighter/paramedics in the interest of brevity.

the minimum encroaches on Management's Rights and often requires the City to pay firefighters to sit around and do nothing.

The Department's workload has changed over the years. Years ago the main job of a firefighter was to fight fires. However, over time the main job of most firefighters has become medical care and transport. Currently, almost all fire departments require their members to be certified as an EMT and/or a paramedic. This requirement is needed because firefighters are usually the first responders to medical emergencies.

However, one of any fire department's main functions is still to fight fires. The Conciliator could not find data on the number of fires that the Fire Department responded to. The City of Brook Park's Resource Development Study published in April 2011 shows the number of fires in Brook Park as a rate per 1000 inhabitants on page 11. That rate is 3.3 fires per 1000 residents. This works out to approximately 65 fires per year in a Department that responds to over 2,600 emergency calls per year. Therefore, the fire department's main responsibility is EMS service, and it responds to a fire call every 5.6 days on average. This data includes all fire calls because there was no information on the number of house fires, field fires, car fires, etc.

One unique aspect of providing fire and EMS service in Brook Park is that the City surrounds Cleveland Hopkins Airport and is bisected by a number of railroad tracks. The Fire Department contends that it needs three (3) stations and a nine (9) man minimum because travel is difficult and response times will suffer if either a station is closed or manpower falls below the nine man threshold.

The City closed Fire Station #4 in April 2011. There were no data presented on the effects of the closure. The parties have had over a year to analyze the effects of the closing, but apparently have not used that time for a laboratory study of the effects of the City's action on EMS response times or the impact on the citizens of Brook Park. The Conciliator does not have any way to judge whether or not the closing of Station #4 caused serious problems or had little or no effect on the provision of service. However, the data presented by the parties showed that up to the closing of Station #4 that the response times were well within NFPA 1710 recommendations (Union Exhibit 12). The only testimony of the effect of closing Station #4 was a general statement that some residents of the City would experience an increase in response times.

The Fire Department's representatives also pointed out that the City must provide fire and EMS services to NASA' s Glenn Research campus. NASA is a major employer and contributes a significant amount to the City's income tax collections. The testimony showed that NASA has a large number of buildings, and a fire would cause significant problems for the Department. However, if a fire broke out, the mutual aid provisions with other fire departments, especially the Cleveland Hopkins Fire Department would be invoked (Union Exhibit 12). In the case of EMS services, the best data available show that the Department made thirty (30) runs to NASA in 2009. Chief Ramach's April 2010 reported that the EMS runs presented no real problems to the Department (Union Exhibit 12).

Brook Park also contains a Ford Motor Co. plant. The City must provide fire and EMS services to the facility. Chief Ramach's report stated that the facility

usually had three (3) to five (5) fires per year. The report went on to say that most of the fires were in the foundry. Because the foundry has been closed and is in the process of being demolished, the number of fires at the plant should decrease. However, if there were a major fire at Ford Brook Park, mutual aid pacts would have to be invoked.

In terms of EMS services provided to the Ford plant, Chief Ramach states that most of the calls are for Advanced Life Support (ALS). The volume of calls has decreased as the number of employees has fallen. In the last year for which data is available, the Department made forty(40) runs to the plant.

There is one final fact that must be discussed. The Department takes great pride in the fact that it dispatches two units to every (most) EMS calls. This is unusual for a city the size of Brook Park. The testimony and evidence showed that NFPA 1710 Standard and the American Heart Association recommend this level of response to an EMS call. However, there is a difference between Basic Life Support situations (BLS) and Advanced Life Support (ALS) emergencies. It is clear that a BLS call does not require two ambulances to respond. In addition, it is also clear that the NFPA recommendation is just a recommendation because the report specifies that each department should meet the response standards mandated by the individual state laws. In Ohio, the Ohio Administrative Code mandates one ambulance and three EMT/Paramedics for both BLS and ALS calls (OAC 5101:3).

The two-unit response recommendation seems to give no consideration to the cost(s) of compliance. Unfortunately, the tradeoff between cost and the optimal response where cost is not an issue is not a realistic scenario in Brook Park or the

State of Ohio in the current fiscal environment. This fact was recognized by authors of the City of Brook Park Fire Department Evaluation, who recommended three-man response teams dispatched in one ambulance (Union Exhibit #12, p. 26). The authors stated that this would save wear and tear on the ambulances, lower cost, and minimize the potential for accidents when the ambulances are responding to emergency calls.

The Conciliator recognizes that the Fire Department wishes to provide the best EMS service possible to the citizens of Brook Park. Unfortunately, the use of two ambulances to respond to every call is a luxury that the City can no longer afford. The firefighters begrudgingly accepted this fact, and during the hearing agreed that they would accept an eight (8) man minimum staffing level. Part of the Union's explanation of how an eight (8) man minimum would work was based on one ambulance with a three (3) man crew response to most emergency calls.

The preceding paragraphs give the background for the analysis of the parties' positions. The following paragraphs will discuss the issues in detail.

**Issue:** Article 2 – Recognition

**City Position**: The City wishes to delete Section 3 from the contract. Section 3 specifies a ratio between firefighters and lieutenants of five (5) to one (1).

**Union Position:** The Union wants to maintain the status quo on this issue.

**Fact Finder's Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The City contends that the ratio is unique to Brook Park and that all other, comparable jurisdictions do not mandate that a lieutenant must be on duty to supervise 5 firefighters (Employer Exhibit 12). The City argues that similar language in the Police Sergeants and Lieutenants contract was negotiated out of that agreement. Therefore, the City argues that there is no reason to retain the language in the contract.

The Union contends that the provision costs the City nothing and that it helps maintain safe and efficient operations within the Department. The Union believes that there is no reason for deleting the current language when all of the facts are examined.

The Conciliator has looked at the information supplied by the parties and does not have some of the pertinent information to fully evaluate this proposal. The current nine (9) man minimum always insured that at least two lieutenants were scheduled on every shift. Unfortunately, the Conciliator could not find information on the number of lieutenants in the Department. Consequently, the full impact of this language cannot be determined. However, there is no doubt that mandating a ratio of one (1) lieutenant to five (5) firefighters will have an impact on the cost of running the Department because of the rank differential.

Given the facts that 1) there are no other comparable departments that have language that specifies the ratio of officers to firefighters, 2) the Police Sergeants and Lieutenants deleted similar language from their agreement, and 3) the Fact Finder recommended that the language be removed from the contract. The

Conciliator finds that the Fact Finder's recommendation is reasonable and that Article II (3) should be deleted from the contract.

**Issue:** Article X – Overtime

**City Position:** The City demands that all overtime be paid at the forty-eight (48) hour rate.

**Union Position:** The Union agrees that the overtime rate for shift fill shall by paid at the forty-eight (48) hour rate, but demands that all other overtime be paid at the forty (40) hour rate.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The City has been attempting to change the payment for overtime hours for a number of years. The City originally paid all overtime at the forty (40) hour rate even though the workweek was forty-eight (48) hours. Given the minimum manning provision, the City was paying overtime everyday at the forty (40) hour rate. This was extremely expensive. Finally, the City was able to change the rate during negotiations for the 2008-2009 contract. The Fact Finder in that negotiation recommended that overtime be paid at a forty-four (44) hour rate. This was an attempt to find some middle ground in the parties' positions.

When the City imposed a contract on the firefighters one of the main changes that it insisted on was a change in the overtime rate to a forty-eight (48) hour rate. The City raised the same point in this negotiation and presented the issue to the Fact

Finder, who agreed that the forty-eight (48) hour rate was reasonable (Employer Exhibit 15).

The Union has grudgingly accepted the forty-eight (48) hour rate for shift fill. However, the Union demands that all other overtime be paid at the forty (40) hour rate. The implications of this demand were not discussed. Therefore, the disagreement is now over the rate paid for all overtime with the exception of shift fill. At the hearing, the City's Finance Director stated that the City was willing to pay emergency call-ins at the forty (40) hour rate. The City does not believe that other scheduled overtime for training, etc., should be paid at the forty (40) hour rate.

The rationale for this distinction seems to be that the firefighters can plan for overtime for training, etc., but emergency callbacks are unpredictable and might cause a real inconvenience for the firefighters. The City believes that this unpredictability should be rewarded. The Conciliator agrees with this logic and amends the Fact Finder's award to include a forty (40) hour rate for emergency callbacks. This recommendation does not exactly match either party's position statement, but it is based on the statements made by a senior City official at the hearing.

**Suggested Language:** The sentence, "Emergency callback overtime shall be paid at a forty (40) hour rate." shall be included as the last sentence of Article 5 (1).

**Issue:** Article 12 – Vacation

**City Position:** The City proposed to delete Sections 5 and 6 from Article 12. Section 5 allows two (2) men to be scheduled off on vacation at one time. Section 6 says

that a second paramedic cannot select a vacation day on any occasion that will leave the Employer with less than three (3) paramedics scheduled for that day.

**Union Position:** The Union demands the status quo on this issue.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The discussion on this issue will be coupled with the discussion on the Holiday provision immediately following.

**Issue:** Article 13 – Holidays

**City Position:** The City demands that the number of firefighters scheduled to be off, excluding "C" days be reduced from four (4) to one (1).

**Union Position:** The Union demand is for an increase in holiday hours from one hundred and forty four (144) hours (6 tours), to one hundred and sixty eight (168) hours (7 tours, and a continuation of the language in Section 13 (2) that states that no more than three (3) employees shall be allowed off on vacations, holidays or "C"-days at the same time.

**Discussion:** The parties' demands on these issues reflect the manning issue that is as the heart of this dispute. The City contends that the nine (9) man minimum coupled with the current vacation and holiday language means that up to four (4) firefighters can be scheduled off on the same day. According to the City, this has come to mean that it must call in at least two (2) firefighters for shift fill at an overtime rate (almost) every day of the year (Employer Exhibit 35). The City

presented evidence that this was extremely costly. The City argued that it could not afford to pay this overtime and that it often amounted to "featherbedding".

The Union argued that the nine (9) man minimum was necessary, but offered to make some concessions to help alleviate some of the financial problems facing the City. According to the Fact Finding Report, the Union offered a package proposal that would temporarily reduce the manning requirement to an eight (8) man minimum along with a proposal to allow one (1) man off on a "C" day each day of the week and language that would insure that no more than three (3) firefighters could be off at one time in return for retaining the nine (9) man minimum after the end of the current contract. The Union has taken the same position on these issues, but because conciliation is an issue-by-issue procedure, the package component of the proposal has been abandoned. It is true that the Union desires the Conciliator to accept the proposed package in pieces, but the package concept no longer applies.

The City demands that Section 12 (5) be deleted from the agreement. This language allows two firefighters to be scheduled off work for vacations on the same tour of duty. The City believes that the language of Article 13 (2) that limits the number of firefighters that can be scheduled off to a maximum of three (3) is controlling on this issue and the language of Section 12 (5) is no longer necessary. The Conciliator agrees with the City on this issue.

The City also demands that Section 12 (6) be deleted from the contract. This provision specifies that at least three (3) paramedics must be scheduled every day. The Conciliator cannot make an informed judgment on this proposal, because there was no evidence presented on the number of paramedics in the Department.

However, the staffing of an ALS ambulance requires that at least one (1) paramedic be at the scene of the accident or life-threatening emergency. Therefore, some paramedics must be on call each shift. The Conciliator believes that the City Administration should have some say in setting staffing policy in the Fire Department and it must have the flexibility to schedule in a way that serves the public interest and saves scarce resources. Therefore without specific testimony on the necessity of Section (6), the Conciliator agrees that the Section should be deleted from the contract.

The Union proposal on Vacations and Holidays seems to meet most of the City's requirements for cutting overtime (Union evidence folder on Holidays). In addition, the data presented at the hearing shows that the Brook Park firefighters work more hours than other comparable departments. Therefore, the combination of language restricting the number of firefighters who can be off duty on each day and an adjustment in the hours of paid time off seems to be a reasonable solution to the vacation/holiday conundrum. However, all of the time off discussion must ultimately return to the manning issue. Therefore, manning will be discussed before any recommendations on paid time off are given.

**Issue:** Letters of Understanding (Manning)

**City Position:** All of the Letters of Understanding attached to the contract ended with the expiration of the parties' last contract.

**Union Position:** The Letters of Understanding remain in effect.

**Fact Finders Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Note:** This is related to the ongoing dispute between the parties over the imposed contract issue. However, the parties' positions on this issue are crystal clear; and in many ways, are not related to the legal issues involved in this dispute.

**Discussion:** Minimum manning is the major issue in dispute between the parties. The Union has framed the issue as a safety issue, and the Fire Chief has come down squarely on the side of the firefighters. The Mayor and other City officials argue that the City can no longer afford the cost of the nine-man minimum and that it must be changed.

Mayor Coyne signed the Letter of Understanding that is the basis for the nine (9) man minimum staffing provision in 1993. The parties have been at loggerheads over the issue ever since. The firefighters argue that the minimum is related to the safety of the citizens and of the members of the fire department (Union evidence folder on Minimum Manning Operations). The City argues that no other comparable jurisdiction has a minimum staffing provision and that the combination of the contract's paid time off provisions coupled with the manning provision has led to huge amounts of overtime (Employer Exhibits 30, thru 35). The City contends that the real reason that the firefighters wish to maintain the staffing provision is because it increases their income by many thousands of dollars (Employer Exhibit 22). The City believes that given its financial condition that it must cut costs throughout the City including the Fire Department. The Fact Finder discussed the issue at length and agreed with the City's position.

The Conciliator also agrees with the City's position on this issue with some reservation. The Union's position that this is a safety issue is true to some extent, but the firefighters also recognize that changing the long-standing manning provision will also negatively impact their incomes.

The City has a number of reasons for demanding a seven (7) man minimum. First, the financial implications of the change are significant. However, there are issues related to Management Rights and the role of the City Administration in setting policy in the Fire Department that are also important considerations for the City. Consequently, this issue is one that both parties believe is crucial for myriad reasons.

Fact Finders and Conciliators are required to weigh the provisions of a contract against a series of criteria. In this brutal economic environment, the ability to pay must be carefully considered. In this instance, both the Fact Finder and Conciliator found that the City was facing ongoing financial problems. It is true that the City is funding capital improvement projects with 15% of its Income Tax Fund, but a neutral cannot substitute his/her opinion for the judgment of elected City Officials without overwhelming evidence that the City Officials are acting in bad faith. No such evidence was proffered in this instance. Therefore, the Conciliator believes that the City proved that it must make necessary infrastructure investments in its sewers, roads, etc.

Moreover, the City has already closed one fire station. The station was closed over a year ago, and there was no testimony that any person (firefighter) has suffered as a result. The City Administration made a decision, and the evidence does

not support any finding that the decision was incorrect. However, the evidence does support a finding that the dispatching of two (2) ambulances and four (4) firefighters on each emergency call is excessive, at least in some situations, i.e., BLS calls do not require a two-ambulance response. In addition, the OAC only requires one ambulance and a three (3) man crew including a paramedic for ALS runs.

The Conciliator understands that Fire Department Personnel take great pride in their work and that the use of two ambulances for every call errs on the side of safety. Furthermore, there are agencies that recommend sending two units and four firefighters to every call. However, those recommendations must be balanced against the financial position of the employer.

The firefighters also made a strong presentation over the safety of the department's personnel if there is a fire at the same time there is an EMS call. In this case, the Department's personnel would be stretched regardless of whether there is a nine (9) man staff or a seven (7) man staff. In the case of a large fire, mutual aid would be necessary. In recognition of this fact, the City and the Cleveland Hopkins Airport Fire Department always aid one another in fire calls for the NASA Glenn Center (Union Exhibit 12).

The record supports a finding that the City has made some hard decisions in light of its financial condition. There is nothing to suggest that these decisions were taken lightly or without consideration of all the relevant facts. Ultimately, the City of Brook Park is facing a budgetary crisis; and given the demographics and employment outlook within the City, there is no reason for optimism in the near to intermediate future. Consequently, without any evidence that the changes proposed

by the City have caused safety problems for either the firefighters or the citizens of Brook Park, the Conciliator believes that the Mayor and City Council are doing the jobs that they were elected to do in the best way that they can.[3]

Ultimately, this decision is simply a reflection of the fact that times have changed in the City. The Letter of Understanding that is causing the problem was signed almost twenty years ago. Times have changed, and over time Brook Park has also changed. In another twenty years, the City may be prospering, and then the size of the entire City workforce including the Fire Department may increase. However, at the current time the City cannot afford to continue to pay the overtime that the nine (9) man minimum staffing requirement entails.

This leads back to the Vacation and Holiday issues. The nine (9) man minimum staffing requirement is at the heart of the overtime issue in the City. However, if the nine (9) man minimum is no longer a concern, then there is a question of whether the City needs language that is as restrictive as it proposed on the Vacation and Holiday articles. The City's proposed language, adopted by the Fact Finder, limits the Union membership to one person off on vacation or holiday per shift. Coupled with the language regarding "C" days (shift smoothing days) that allows two (2) firefighters to be off on a shift a few days per month; these changes should reduce overtime by a substantial amount. The City's proposed language would also mean that only two (2) firefighters could be scheduled off on most days.

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[3] The way that citizens show that they do not believe in the policies that an elected official takes is by voting him/her out of office. The citizens of Brook Park will show their true feelings about the issues raised during the hearing at the next election.

This would materially restrict the firefighters' use of their accumulated vacation and/or holiday time.

The basic question that needs to be answered is what is the size of a platoon? That is, does a seven (7) man minimum and language that allows three (3) firefighters to be off per tour end mandatory shift fill overtime? For all of the discussion over manning, there are minimal references to the actual daily staffing in the record. There was an allusion to two ten (10) man platoons and one eleven (11) man platoon. In addition, the Mayor testified that the City wanted a thirty-eight person Department made up of a Chief, an Assistant Chief, a Fire Prevention Officer, an an Assistant Fire Prevention Officer, and thirty-four firefighters. This would imply that each platoon would have at least eleven (11) firefighters on the schedule. In this case, an eleven (11) man platoon with three (3) firefighters scheduled off on a "C" day, vacation and/or holiday leave would leave eight (8) firefighters on duty. That would cover the seven (7) man minimum staffing, and on most days eight (8) firefighters would be present for duty

The contract does have in place provisions where the City repurchases time earned but not used. The Conciliator is mindful of the twenty-four (24) hour on and forty-eight (48) hour off schedule of firefighters tends to magnify staffing problems. However, the firefighters should have some chance to use their earned time. The Conciliator believes that the combination of a seven (7) man minimum coupled with the Union's language that allows no more that three (3) firefighters to be scheduled off on any tour should reduce the amount of overtime paid significantly.

The City also raised the issue of sick leave during the fact finding. The Fact Finder examined the issues surrounding sick leave and found no evidence of any abusive behavior. However, if the amount of sick leave used should rise significantly and cause a spike in overtime, the City can discipline any firefighter who is proved to be abusing sick leave. In addition, the parties will return to the negotiating table within a year; and if the Employer can prove that the use of sick leave is leading to significant overtime payments then it can use that information in future dispute resolution hearings.

Unfortunately another problem arises here. The law requires a conciliator to select from the best offers submitted by the parties on an issue-by-issue basis. The Union also presented a demand that the number of holiday hours be increased by twenty-four (24) hours. This is equal to one (1) tour. The evidence in the record shows that the Union's demand is reasonable when the Brook Park Fire Department is compared to other departments if the evaluation criterion is total hours worked per year. However, the same data also show that the problem arises because the vacation leave in Brook Park is substantially less than the same leave in comparable jurisdictions, especially for longer tenured firefighters. Therefore, the Union is attempting to correct a problem with vacation leave by tweaking the Holiday leave article. The Conciliator might be willing to change the number of vacation hours for more senior firefighters regardless of the Fact Finder's recommendation, but he is precluded from doing so by the parties' submissions on this issue.

Therefore the Conciliator is recommending the Union's language with respect to the number of firefighters who can be off on any given shift and the Fact

Finder's recommendations on the other issues. That is, the Conciliator has examined the evidence and finds that the nine (9) man minimum, while desirable from some points of view, is no longer affordable in Brook Park. Coupling the new seven (7) man minimum with language that allows no more than three (3) firefighters to be off per shift is a reasonable step toward controlling the excessive overtime used for shift fill in the City. If overtime use is still excessive, the next round of negotiations is the place to revisit the issue.

**Contract Language:** Current Language on the Holiday Issue, and deletion of Article 12 (5) and (6) in the Vacation Article. In addition, the LOU on minimum manning shall be deleted from the prospective contract.

**Issue:** Article 14 – Compensation

**City Position:** The City is proposing that the base wage rate be increased by two 2%) percent on 1/1/12 and another two (2%) percent on 1/1/13.

**Union Position:** The Union is demanding a three (3.0%) percent wage increase on 1/1/13 and a second three (3.0%) percent increase on 7/1/13, which equates to roughly four and one-half (4.5%) percent for the 2013 calendar year.

**Fact Finder Recommendation:** The Fact Finder recommended two (2.0%) percent payable 1/12012 and /1/2013.

**Note:** The Fact Finder recommended some other significant changes in the Compensation Article, but most of these changes were not referenced in the parties' Pre-Hearing submissions; and consequently the Conciliator will not discuss these changes.

**Discussion:** The only issue presented was the amount of the general wage increase, and upon examination there is less difference on this issue than it appears. The Union's demand is for roughly four and one-half (4.5%) percent over the remaining life of the agreement. The Union argued that the Conciliator could not recommend a wage increase for 2012 according to ORC 4117, but the City produced a signed G-11 waiver for 2012. That is, the City accepted the Fact Finder's recommendation for a two (2.0%) percent raise in 2012. Consequently, the present value of the parties' positions is similar (Union Evidence Folder on Compensation: Employer Exhibit 31). Therefore, the Conciliator agrees with the Fact Finder's proposed language on this issue.

**Issue:** Article 15 - Insurance

**City Position:** The City is offering two insurance plans: one with no premium but high deductibles and out of pocket maximums. The second plan has a ten (10%) percent premium share but lower copays and deductibles.

**Union Position:** The Union accepts the concept of a zero premium share and high copays and deductibles or a ten (10%) percent premium share with lower copays and deductibles. However, the Union demand is for reduced copays and deductibles for both plans.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The Union's position on this article can be summed up in the phrase "too much, too soon" (Union Exhibit 21). The Union argues that the City's proposed

copays and deductibles are out of line with comparable jurisdictions and would raise the average union member's health care cost by up to four hundred (400%) percent. The Union believes that an increase of this magnitude is unrealistic especially in light of the fact that the City's health care expenditures have fallen over the last few years.

The City argues that all other City employees with the exception of the police officers and the firefighters are already on the proposed plan (Employer Exhibits 23 and 24). Moreover, the City contends that the comparability data do not show that the plan is unusual for the belt of cities around Cleveland. Therefore, the City believes that the plan is fair under any conditions; but given its financial condition, the City argues that the plan is necessary to restrain medical care costs. The City also pointed out that the plan provides excellent benefits.

The Fact Finder examined the evidence and determined that both the internal and external comparability data showed that the City's plan was reasonable. Moreover, the Fact Finder pointed out that the City's pool of eligible employees was considerably smaller than it had been in the past and that negatively affects the price of coverage. Consequently, he recommended the City's position on this issue.

There are two factors that need some discussion on this issue. First, everyone who looks at copays and deductibles always assumes that the employee will pay the maximum out-of-pocket expense. This is only true if an employee or a family member has a catastrophic accident or illness. For most (almost all), the out of pocket expense will be far less than the maximum. Second, the expense is far less

for an in-network provider. The Conciliator understands that many individuals prefer their "own" doctor and do not wish to pay the higher out-of-pocket copays and deductibles that apply to out-of-network physician visits. However, that decision is a choice of the employee. All city employees have the right to expect the City to provide a reasonable benefit plan, but it is not reasonable at the current time to expect the City to subsidize individual choice when if faces severe financial pressure.

The Conciliator must take note of the fact that all other City employees are on the proposed plan with the exception of the police officers who have a "me too" clause with the firefighters. Therefore, acceptance of the Union's position would entail either two medical plans within Brook Park with identical benefits but different costs or changing the terms of the other employees' plan to match the firefighters' plan.

The Conciliator recognizes the pain that the adoption of the new plan will cause the employees. However, the City's financial condition necessitates that the City Administration find ways to lower costs wherever possible. This is especially true given that the City is attempting to maintain the level of health benefits that it provides to its employees.

Another unknown aspect of any discussion of health insurance is the political drama playing out in both Columbus and Washington that may change the law regarding the provision of health insurance. There is a distinct possibility that the parties to all labor contracts may have to amend their policies (contracts) to comply with changes in the applicable law. However, regardless of any potential changes in

the law, the Conciliator is recommending acceptance of the Fact Finder's recommendation on this issue based on the facts in the record.

**Issue:** Article 17 – Miscellaneous

**City Position:** The City wants to add language into the contract that states that no more than two (2) and not less than one (1) firefighter shall be scheduled for a "C" every day of the year.

**Union Position:** The Union wants to maintain the status quo on this issue. That is no more than three (3) firefighters shall be scheduled for vacation, holiday, and/or "C" days per tour.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's Position on this issue.

**Discussion:** (See Vacation, Holiday, and Letter of Understanding, (Manning) for the discussion of this issue.) Scheduling a 'C" day on every tour would go a long way toward simplifying scheduling vacation and holiday leave within the Department. "C" days must be scheduled to insure that the firefighters' schedules meet both the relevant contract language and the requirements of the Fair Labor Standards Act. If a "C" day is scheduled for every tour of duty, then the slots for vacation/holiday leave are open. If 'C" days are not scheduled until there is a necessity to schedule them, then there may be times when vacation/holiday leave will be have to be changed. Consequently, the Conciliator strongly urges the parties to agree on the scheduling of "C" days. However, there is no evidence to prove a need for the City's

suggested language; and consequently, the Conciliator is not recommending its inclusion into the contract.

**Contract Language;** The Conciliator agrees with the Union position on this issue and recommends that the current language in Article 13 be retained in the agreement.

**Issue:** Article 17 – Miscellaneous

**City Position:** The City demands that the current promotion language be changed to give the City a list of three (3) names from which to select the individual to be promoted.

**Union Position:** The Union demands the status quo. That is, the top candidate is the person promoted.

**Fact Finder Recommendation:** The Fact Finder agreed with the Union's position on this issue.

**Discussion:** The current language has been in the contract for a number of years and there was no evidence presented that it has caused any problems. In the existing language there is a provision for psychological testing to determine a candidate's fitness to make command decisions. Failure to receive a psychological clearance will eliminate a candidate from consideration for promotion.

The City's position is standard, i.e., some people are good at taking tests, but are not the best qualified for command. The Union's position is also standard, i.e., there is a possibility of bias in a process that leaves the determination of who is promoted to the Employer. Both sides are reasonable. In this instance, the Fact

Finder did not find any compelling reason to change the current system. The Conciliator agrees. Without any evidence of problems with the current procedure, there is no cogent reason to change the current language.

**Contract Language:** Current Language

**Issue:** Article 21 – Fire Prevention Bureau

**City Position:** The city accepted the Fact Finder's recommendations on this issue.

**Union Position:** The Union demands that the Fire Prevention Bureau schedules remain four (4) ten-hour (10) shifts regardless of the number of employees assigned to the Bureau. In addition, the Union demands that the Assistant Fire Prevention Officer receive a $1,500.00 stipend if he/she maintains his/her paramedic certification.

**Fact Finder Recommendation:** The Fact Finder agreed to change the shift worked from four (4) ten-hour (10) shifts to five (5) eight-hour (8) shifts if there is only one (1) individual assigned to the Fire Prevention Bureau. The Fact Finder did not recommend paying the Assistant Fire Prevention Officer a stipend.

**Discussion:** The question of whether the Fire Prevention Bureau should be open five (5) days a week when there is only one (1) person assigned to the Bureau is a question of service to the public. An extra day the Bureau is open for business is a twenty (20%) percent increase in days that the Bureau is manned. The tradeoff is that the Bureau is open for less time each day that it is manned. This is actually a question that can be answered by data. That is, what is the need for staffing? Are there busier times? Does the ten (10) hour schedule allow people who work to

contact the Bureau after work? Without data, there are no answers to these questions (Union Exhibit 16 and Employer Exhibit 25).

Even though the Fact Finder decided that the Bureau should be open five (5) days a week, he had no testimony that the current schedule is causing problems. Without such testimony, the Conciliator does not agree with a change to a long-standing provision.

In terms of the stipend for the Assistant Fire Prevention Officer, the Conciliator notes that the Fire Prevention Officer receives a stipend of $2,100.00 for maintaining his/her paramedic certification. The rationale for the Union's demand is self-evident. It should also be noted that the City was adamantly against the Union 's proposal that allowed a Lieutenant to let his/her paramedic certification to lapse. The City argued that it needed all of the paramedics currently on the force to retain their paramedic certification. Assuming that the Assistant Fire Prevention officer can be dispatched to the site of an emergency (there was no testimony on this topic), the payment to maintain the certification is reasonable. This is especially true in light of the City's testimony on its need for paramedics.

**Contract Language:** Current Language with the addition of a New Section 10.

Section 10: The Assistant Fire Prevention Officer who maintains paramedic certification shall be granted $1,500.00 annually and divided into the biweekly pay.

**Issue:** Letters of Understanding

**City Position:** The City demands that all three (3) Letters of Understanding be deleted from the contract.

**Union Position:** The Union demands the status quo on this issue.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The main issue separating the parties is the Letter of Understanding specifying a nine (9) man minimum staffing level for each tour of duty in the Department Manning has been discussed at length earlier in this report, and both the Fact Finder and the Conciliator have recommended that the staffing LOU be deleted from the contract. There are two other LOUs attached to the contract. These letters were mentioned only in passing during the hearing and there was little (no) discussion or debate on either. Consequently, the Conciliator is recommending that the Fact Finder's recommendation be accepted.

**Contract Language:** The three Letters of Understanding that are attached to the contract will not be attached to the prospective agreement.

**Issue:** Article 23 – Duration

**City Position:** The City demands a three year contract running from 1/1/11 to 12/31/13.

**Union Position:** The Union demands a one-year contract running from 1/1/11/to 12/31/11.

**Fact Finder Recommendation:** The Fact Finder agreed with the City's position on this issue.

**Discussion:** The contract under discussion ended on 12/31/2010. Even though the Union's Prehearing Statement indicated that the Union desired a one year

agreement, the wage demand in the same document was for the 2013 calendar year. The Conciliator believes that the Union changed its demand in light of the Fact Finder's recommendation and reluctantly agreed to a three-year term for the prospective contract. Therefore, the Conciliator agrees with the Fact Finder's recommendation on this issue. The successor agreement will run for three years starting on January 1, 2011 and ending on December 31, 2013.

Signed the 19th day of June 2012 at Munroe Falls, Ohio

Dennis M Byrne, Conciliator