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STATE EMPLOYMENT RELATIONS BOARD
State of Ohio

In the matter of Conciliation between:)	SERB No. 11-MED-12-1759
)	
CITY OF DELAWARE, OHIO,)	Hearing: October 9, 2012
)	at Delaware, Ohio
Public Employer,)	
)	Date of Award:
and)	December 3, 2012
)	
INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 606,)	
)	
Employee Organization.)	

CONCILIATOR'S FINAL OFFER SETTLEMENT AWARD

Before Mitchell B. Goldberg, Appointed Conciliator

Appearances:

For the City:

Mark Lucas,	Chief Negotiator
Thomas Homan,	City Manager
Dean Stelzer,	Finance Director
John L. Donahue,	Fire Chief
Darren Shulman,	City Attorney
Jessica Feller,	H.R. Specialist

For the Union:

Henry Arnett,	Counsel, Local 606
Matthew Kasik,	President, Local 606
John Stuart,	Fire Fighter
Clint Archangel	Fire Fighter

I. Introduction and Background.

The Ohio State Employment Relations Board ("SERB") appointed the undersigned as the Conciliator of this public employment labor dispute on July 31, 2012. The parties jointly agreed to

schedule the hearing for October 9, 2012. They filed timely position statements with the Conciliator in accordance with SERB Rules and Guidelines. The hearing proceeded on October 9 at the City's offices in Delaware, Ohio. A reporter transcribed the hearing and prepared the official record. The purpose of the hearing is to resolve the remaining unresolved issues after the parties exhausted their negotiation efforts. They participated in many negotiation sessions, engaged in mediation, and they proceeded through the Fact Finding process. The Fact Finder issued his Report on July 5, 2012. The Conciliator is charged with resolving the dispute and the unresolved issues between the parties on an issue-by-issue basis, from between each of the party's final settlement offers for a collective bargaining agreement ("CBA") to succeed the CBA that was scheduled to expire on March 31, 2012. The Award is to consider the following factors outlined in O.R.C. Section 4117.14(G)(7):

- (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 interests 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.

The parties presented testimonial evidence and submitted documentary exhibits in support of their respective positions on each unresolved issue. They filed post-hearing briefs after receiving the reported transcript. All tentative agreements and unchanged provisions of the expired contract are incorporated herein for purposes of this Award.

II. Unresolved Issues.

Factual Background.

The City of Delaware is a prosperous municipal corporation located north of Columbus with approximately 34,000 residents. It lies adjacent to the Polaris commercial and shopping areas and near the businesses near and along the I-71 – I 270 interchange. It is a growing community that has not experienced the worst of the great recession, high unemployment and economic stagnation that many Ohio cities have weathered since 2008. Nevertheless, State government policies that have reduced taxes to deal with state deficits, along with the reduction of State services, has negatively impacted the City's revenue streams. Specifically, the reduction in the State's contribution to the local government fund, the elimination of the inheritance tax, and decline in personal property tax revenue has produced a cautious and conservative climate relative to the expected increases in future revenues. The City wants to improve its efficiency and provide the same or better services with less expenditures wherever possible within its projected budget.

In terms of fire protection, the City residents passed a fire income tax levy that has permitted it to build two new facilities, one in the northwest quadrant, and one in the southeast quadrant, adding to the existing two stations. It has replaced outdated and worn out equipment and increased its fire fighting staff. Local 606 now represents approximately 44 members, and there are plans to hire more fire fighters that will increase Union membership.

A. Article 18, Hours of Work and Overtime.

The City proposes to implement an revised work schedule for some fire fighters to expand its coverage during daytime and early evening high call periods, the greatest portion of which are medical and related emergencies. The new schedule would be in addition to the existing schedule of most fire fighters who work the traditional 24 continuous hours, and are off 48 hours. Others work an 8-hour per day, 40-hour week schedule. The new schedule would involve 42-hour rotating weeks as in the

following example:

A fire fighter would be scheduled to work the first week on Wednesday and Thursday in the first week of a two-week pay period. He/she would be off on Friday, Saturday and Sunday, but would be scheduled to work the following Monday and Tuesday. They would work that week from 8:00 am - 8:00 pm. On the following week of the pay period, they would work Friday, Saturday and Sunday, but would be off the previous Wednesday and Thursday and the following Monday and Tuesday. Another shift of fire fighters would work a similar 42-hour schedule, but their hours would be from 10 am-10pm each day.

The purpose of the schedule is to address high peak service usage that exists between 8:00 am and 10:00 pm each day. The fire fighters working these shifts would be working with the existing 24/28 fire fighters who are on duty. The City relies upon data collected from March 2009 through September 2012 showing that a large increase in incidents requires responses during this time period each day. 72% of the incidents occur during this time period. Concurrent calls, or calls for services at the same time involving more staff and the use of more equipment are also heavier during the period, almost 80% of concurrent call volume. The types of incidents during all hours are mostly medical emergency calls, but calls also involve other non-fire related calls such as false alarms, gas line ruptures and other such matters. Fire related calls only represent 2% of the total incident types. Fire incidents within the new shift time periods (8:00 am –10:00 pm) represent 75% of the total fire loss incidents. Accordingly, the City's proposed schedule would allocate more on duty work hours during this peak service period. These employees would be working with the fire fighters who are working the 24/48 continuous operation schedule. The increased manpower will, in the City's opinion, improve response time, particularly for medical, fire, rescue, and hazardous materials emergencies. It hopes to achieve the following goals: (1) improved response time throughout the City with the addition of the two new stations, 303 and 304; (2) limit cross-staffing of personnel, which in turn will improve turn-

out time by not transferring turnout gear between responding equipment; (3) improve the focus on company operations, with dedicated fire/EMS units; (4) increase personnel specialties; (5) expand the EMS service with the amount of units; (6) provide the ability to staff a ladder company; (7) provide distribution of medic units throughout the City; (8) provide a dedicated shift command officer; (9) provide Company officers for the stations; (10) prevent maintenance increases caused by the excessive running of engines; (11) enable DFD to be less dependent upon Delaware County EMS and TTFD for assistance; and (12) continue the security of DVEMS back up when needed.

The Union opposes this shift schedule change for a number of reasons. The principal objection is that the proposed schedule neglects the safety issues that are present with nighttime fires and medical emergencies. The evidence shows that response times are longer at night due primarily to calls that occur after the fire is already in progress but is not as yet detected. This produces more dangerous fires. The City's proposal will provide more medic units during the day hours, but no additional apparatus or equipment during the night hours.

Delaware is unique in terms of addressing fire response needs. The City's population increases during the night when residents return home from working in Columbus or nearby areas. This produces more runs than would otherwise be the case in other areas, such as in urban areas where population decreases after workers leave work to travel to their suburban residences. The increase in concurrent runs is a problem throughout the department, but the City's plan does not address the increasing number of concurrent runs at night.

Continuous operation schedules are the heart and soul of fire departments that must deliver fire fighting services and medical emergency services when they occur, at any time during the day or night. There are no comparable jurisdictions to Delaware that employ fire fighters on 12-hour or similar shifts instead of 24-hour shifts. It believes that the City misrepresented its plans to citizens when it promoted, along with the Union's members, the passing of the tax levy to raise additional revenue. It

did not advise the taxpayers that it intended to staff some EMS units with only 2 fire fighters, It stated that it needed between 12-15 fire fighters for an initial response to a house fire. It will not honor this promise with the new proposed schedule. NFPA standards are in accord with the City's representations. The standards state that at least 15 fire fighters should respond to a basic residential house fire. The DFD current standard is 10. All additional new hires, in the Union's opinion, should be 24-hour shift fire fighters for safety purposes. No chart, graph, or statistic can predict when a major response is needed for a fire or medical emergency, but it is certain that those emergencies will occur at night and that they will need the appropriate response time. While mutual aid from other departments will be forthcoming, it is the initial response time that is important in preventing loss of life or major injuries.

The Union believes that the City's proposal will not address and remediate the current recognized cross-staffing problems, where fire fighters are required to staff both a medic unit and a fire truck. They respond to a medic call by operating a medic unit, leaving no person to operate the fire truck if a fire call comes in. The reverse is true when both fire fighters are called to respond to a fire. This leaves the medic truck vacant. Currently, there are two cross-staffed vehicles and only one dedicated vehicle in service.

The safety issue also involves the protection of the fire fighters, who need the appropriate numbers of staff to respond to any particular incident. Too little back-up will result in employee injuries. The Union also is concerned with the reduced family and personal time that its members will have with the proposed schedule. It believes that the City will incur increased training expenses as its 12-hour employees leave after being trained to take advantage of opportunities elsewhere for traditional 24/48 work. Moreover, the City has not addressed all of the collateral problems that will result from this new schedule. These include all of the problems that will develop because of the necessary changes to the other CBA articles that are affected. These include the impact upon holiday pay,

vacations, sick leave, injury leave, and earned time off. All of these issues are affected by the 42-hour proration that is necessary due to a new schedule.

There are other numerous problems and unanswered questions. Most importantly, fire fighters working the new proposed schedule under present conditions will be without supervision for parts of their shifts. The EMS Captain will be their supervisor, but the Captain leaves at 4:30 pm, leaving a gap in supervision from 4:30 pm until 10:00 pm. There will be substantial staffing and scheduling problems related to coverage while members are on vacation, in job posting/bidding issues, in shift trades, overtime, transfers and other CBA issues.

The City believes that it is addressing taxpayer concerns with its proposal. Taxpayers expect the DFD to run efficiently, to not employ more staff than is needed, and to allocate its resources based upon its needs. It produced a list of other departments that utilize 12-hour shifts with the use of part time fire fighters. The City in the past used part-timers, but part-timers cannot be bargaining unit members, and the Union would undoubtedly contest the City's right to use part-timers to staff 12-hour shifts when the work would be taken away from unit members. Departments within and outside the state are implementing shift work schedule changes of the type proposed here in order to deal with their needs, available resources, and the particular demands of their workplaces.

The City produced data relative to its recruitment and retention of employees. Applications for vacancies have increased dramatically from 2007 to 2011. This is due to the large number of fire fighters who have been laid off during the recession, and the attractiveness of working in a place like Delaware, a small town, but close to a large city. In terms of retention, there have been minimal departures after fire fighters have been hired. The City believes that it is maintaining appropriate safety standards and adequate staff to deal with the most serious incidents and emergencies. It believes that it considered the safety of its citizens and of its workforce in making its proposal.

The Union believes that there are better options to deal with the staffing issues, all of which are

better than imposing the 12-hour shifts. Its preference is to add more firefighters to the 24/48 shifts for all of the above reasons.

Fact Finder E. William Lewis found that the parties were at loggerheads regarding this issue. The City proposed “their way,” and the Union responded “no way.” He believed that alternative solutions were available to address each party's interests, but the parties failed to consider these alternatives in their bargaining. For example, he believed that existing 40-hour employees could be used to address the City's needs in peak times. He rejected the City's proposal and recommended current contract language with the hope that the parties would return to the table to address the City's needs without incurring unreasonable cost increases.

The parties continued to meet and bargain over this issue. At this point, the Union has not openly agreed with the Fact Finder's assumption that the City may, under the existing CBA language, assign 40-hour shift personnel to cover the peak hours. The City has hired 8 new fire fighters, each of whom agreed from the outset that they would work the 42-hour schedule if they were assigned to one. Moreover, the City has agreed to grandfather the existing 24-hour shift fire fighters by not assigning any of them to 42-hour shifts unless they voluntarily bid on the assignment. Only the 8 new hires, future new hires, existing 24/48 fire fighters who volunteer, and existing 40-hour fire fighters who volunteer would be subject to the new schedule.

Award:

My statutory responsibility is to choose between the two respective positions on this issue. There is no longer any wiggle room to vary from either of the asserted positions, even if the conciliator believes some alterations would be reasonable as a compromise. After reviewing the transcript, the exhibits and the persuasive arguments in each brief, I conclude that the City's position should go forward as the final resolution.

I believe that the City has considered all of the Union's concerns and the Fact Finder's

recommendation. Both parties thereafter continued to bargain in good faith, but the City has moved further by adjusting its position to provide for grandfathering and volunteers for staffing the new shifts. The parties have legitimate concerns and face continuing implementation problems, but the bottom line is that City management must deal with its financial resources and projections, and continue to operate within its budget. The City, in the final analysis, has made a proposal in accordance with its management obligations to its citizens and taxpayers that addresses its needs and manages its risks regarding public safety and employee safety. I find that its proposal has a rational basis and is not arbitrary. While the Union continues to disagree, the City's right to staff in accordance with its judgment of the City's needs and responsibilities should be implemented, particularly after it negotiated further toward the Fact Finder's suggestions and concerns.¹

The 42-hour work shifts should be implemented, and the City's language changes regarding Article 16-Wages, Article 24-Holidays, Article 25-Vacation, Article 26 Sick Leave, Article 27-Injury, and Article 39-Earned Time should be amended to adjust to the new shifts in accordance with the City's proposal.²

B. Article 16 – Wages

The only remaining issue after the parties reached agreement on a wage increase of 7.891% in exchange for the City to no longer pay the employee's share of their pension contribution. They have also agreed to add a Lieutenant rate and to slot it in as recommended by the Fact Finder. The only remaining dispute is whether and to what extent an across-the-board wage increase should be paid in the first CBA year, 2012. The Fact Finder recommended a 2% increase. The Union accepts this recommendation and proposes a 2% increase.

¹Arbitrators have historically deferred to management's judgment in terms of its operational needs such as shift changes. See e.g., Diamond Shamrock Corp., 55 LA 827, 828 (Britton, 1970) (Shift change made to keep terminal open for business to provide adequate staffing during particular periods of the day).

²The parties tentatively agreed to strike Section 1(D) of Article 27, leaving only the 42-hour week pro-ration.

The City proposes a 0% increase for 2012 for the following reasons: It should not be

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considered a wage freeze because increases are being paid for years 2 and 3. More importantly, it has requested that all other bargaining units and non-represented employees take a 0% for one year. All have agreed except the police, but the City will demand that they fall in line when their negotiations begin in 2013. There is no policy or practice in place for exact comparability between the two safety forces' pay contracts. There should be no equalization because their jobs and schedules are not comparable. The fire fighters compensation has outpaced other higher pay classifications within the City. DFD firefighters are paid comparable rates compared to those in nearby jurisdictions, even those in Columbus suburbs. According to SERB, many contracts throughout the state received small increases in 2010 and 2011, and many unions accepted freezes due to the federal, state and local economic problems. The City's projected revenue losses are real. It will lose revenue due to the loss of the inheritance tax, declines in local government fund revenue, and higher expenses, including those from increased staffing, and higher health insurance costs. There is a high demand for employment in Delaware. Recruiting is not a problem. Since wages are comparable both internally and externally, and the work is desirable, there is no sound economic reason for paying a wage increase in 2012, when all other employees will be paid 0% for one year.

The Union has a different take on the City's financial condition and prospects. Its bottom lines have improved substantially over the past 5 years. It now has a separate fund for the Fire Division, with a substantial carryover. All bargaining units and non-represented employees received a 2% increase in 2012. The City has budgeted for a 2% increase in this CBA for 2012. The members will not keep up with inflation if they are not paid some increase in 2012. They will be behind police wages and the disparity internally with police pay will unfairly be increased. The agreed upon elimination of the pension pick-up will benefit the City's finances in the future, while at the same time will cause increased expenditures for members trying to fund their retirements.

Award:

I believe that the City has the opportunity to obtain considerable cost savings and economic benefits by implementing the new 42-hour shift due to increased efficiencies. Awarding the City's position on this issue amounts to a considerable concession on the Union's part. Accordingly, after reviewing all of the economic evidence and statutory factors, the arguments, and the Fact Finder's recommendation, I find that the Union's position should be awarded. The City shall pay a 2% across-the-board wage increase to all members for 2012.

C. Article 23 – Insurance

Both parties have agreed to increase premium contributions to 11% and to 15% when the percentage applies to police employees' share of the monthly total insurance premium. The City proposes some language changes to what it states is “obsolete language.” Fire fighters currently pay 5% and police employees pay 8%. The Union opposes any language changes that were not recommended by the Fact Finder, including the increase in contributions on the first pay in April and any changes that would apply if both employee spouses work for the City. It is willing to accept the Fact Finder's recommendation on the percentages. The parties disagree on the interpretation of the Fact Finder's recommendation relative to the continuance of caps or limits on contributions. The Union believes that he intended to retain the caps in some form; the City believes otherwise.

The Fact Finder did not address the spouse changes or whether he intended to retain or adjust the caps. His reasoning for recommending contribution increases, however, explains his overall thinking:

Health insurance costs for the Fire Division have increased 43% in the last four years It is, in the fact finder's opinion, unrealistic not to expect the employees to bear a portion of that burden. Public employees, in general, enjoy high quality healthcare coverage, and this bargaining unit is no exception

I conclude that the Fact Finder did not intend to retain the existing cap amounts, or increase

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them to coordinate with the new percentage increases. If he did, he would have included the specific adjusted cap amounts in his recommendation. The Union made specific proposals to increase the caps from \$150/\$75 to \$160/\$80 in year one, \$170/\$85 in year two and \$180/\$90 in year three. It is unreasonable to conclude that the Fact Finder intended to retain the caps in any form when he did not refer to the Union's proposed increases. This is so, considering that the existing caps if applied could substantially reduce the employees' actual dollar contributions below those based upon the percentage increases if insurance costs continue to escalate.

Under existing language, if two spouses are employed for the City, neither pays anything toward health insurance premiums. I am not sure as to the underlying rationale for this provision, but the proposed change will not adversely affect any member of this bargaining unit, since no member has a spouse employed by the City. I believe this spouse benefit will eventually be removed from all contracts, including the police contracts that are coming up for negotiations.

I believe that adopting the City's position would place them at an unreasonable economic disadvantage relative to the police contracts in the short term, but I believe the City when it states that it intends to bring the police units into line so that all City employees will have the same insurance premium obligations.

Award:

I award the City's proposal that omits any caps, and includes the City's proposed language changes.

Date of Award: December 3, 2012

/s/ _____
Mitchell B. Goldberg, Conciliator

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CERTIFICATE OF SERVICE

The above Award was electronically served upon the following persons on December 3, 2012:

1. SERB Email: med@serb.state.oh.us
2. Mark J. Lucas, Attorney for City, mjlucas@clemensnelson.com
3. Henry Arnett, Attorney for Union, mailto:counsel@oapff.org

/s/ _____
Mitchell B. Goldberg

