

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF	:	
CONCILIATION BETWEEN:	:	CASE NO. 2012-MED-08-0712
	:	
INTERNATIONAL ASSOCIATION OF	:	Date of Hearing: July 10, 2013
FIRE FIGHTERS LOCAL 3742	:	Date of Award: July 31, 2013
	:	
Union,	:	
and	:	
	:	
THE CITY OF FRANKLIN	:	
Employer.	:	

**CONCILIATION AWARD**

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## **CONCILIATION AWARD**

### **I BACKGROUND**

On May 8, 2013, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the case of International Association of Fire Fighters, IAFF Local 3742 and the City of Franklin (Case No. 2012 –MED – 08-0712). A Conciliation Hearing was held at 10:00 A.M. on July 10, 2013, at the Franklin City Administration Building, 1 Benjamin Franklin Way, Franklin, Ohio 42005. The International Association of Fire Fighters, IAFF Local 3742 (“IAFF”, “Union” or “Association”) was represented by Susan Jansen, Esquire, Doll, Jansen, Ford & Rakay, and the City of Franklin (“City” or “Employer”) was represented by Brett Geary, Regional Manager, Clemans – Nelson & Associates, Inc. Also, in attendance on behalf of the IAFF were Captain Tony R. Abston, President of IAFF Local 3742 and Lieutenant Michael Perry, Secretary/ Treasurer of IAFF Local 3742. Franklin City Law Director Donnette Fisher, Esquire, also attended on behalf of the City.

As required by SERB’s rules, an attempt was made by the Conciliator to mediate the outstanding issues. Although there was some indication that a tentative agreement could be reached, such did not occur, and the parties chose to submit the outstanding issues for determination and award by the Conciliator. Both parties presented evidence in support of their respective positions. At the conclusion of the hearing, the parties agreed that the Conciliator’s Award would be issued via email to the parties’ representatives and SERB on July 31, 2013.

#### **A. Description of the Bargaining Unit**

The Union is the certified exclusive representative for a bargaining unit that consists of six (6) employees of the Fire and EMS Division of the City of Franklin in the classifications of Captain, Lieutenant, and Fire Fighter. Their duties involve the prevention and suppression of fires and the provision of emergency medical services. The employees in the bargaining unit work 2756 hours a year based upon a schedule of 24 hours on duty followed by 48 hours off duty. In addition to the full time employees in the bargaining unit, there are approximately

twenty-one (21) part-time firefighters employed by the City who are not in the bargaining unit that supplement the full-time employees on a regular basis.

The City has approximately 11,800 residents with a mean household income of about \$48,000, according to the 2010 U.S. Census, and it has about 78 full-time and 42 part-time employees. It is also a party to three (3) other collective bargaining agreements.

One agreement, which expires June 30, 2014, is with the Franklin Law Enforcement Association (FLEA) for a bargaining unit consisting of lieutenants, sergeants, patrol officers, and dispatchers. Two other contracts are with Teamsters' Local 100. One contract covers clerical positions, which includes tax clerk, deputy tax administrators, utility clerks, zoning and code enforcement officers, secretaries not in confidential positions, custodian, and city park service workers. That contract is effective from January 1, 2012 through December 31, 2014. The other contract with the Teamsters' Local 100 is for a bargaining unit of utility employees in the City's Service Department.

## **B. History of Bargaining**

The last, or current, collective bargaining agreement covered the period from October 12, 2009 through October 11, 2012. This agreement was arrived at after a fact finding before Fact Finder Howard Trolley. Negotiations for a successive agreement were held on November 8 and 28, 2012, and on February 11, 2013. Since no agreement resulted from these negotiation sessions, the parties proceeded to fact finding. A Fact Finding Hearing was held on February 21 and March 19, 2013 before Fact Finder William Slonaker. He issued his report on April 11, 2013. This report was accepted by the Union, but rejected by the Employer.

## **C. Summary of the Fact Finder's Recommendations**

The following is a brief summary of Fact Finder Slonaker's report.

### **ISSUE 1: ARTICLE 9: SICK LEAVE**

**Recommendation:** that the parties maintain current language – but that they accept the insert to Section 9.04, "(a " day" meaning [8] hours)"

**ISSUE 2: ARTICLE 24: INSURANCE**

**Recommendation:** that the City's proposal to increase the FTF's share of premiums by ½% per each of the three years be accepted; and that the Union's proposal for additions and for changes to Section 24.02 not be accepted by the Parties.

**ISSUE 3: ARTICLE 26: HOLIDAYS**

**Recommendation:** that the parties not accept the City's proposal to eliminate Section 26.05; but rather that the Parties maintain said section with its current language.

**ISSUE 4: ARTICLE 38: WAGES**

**Recommendation:** that the Parties not accept the City's proposal for 1.5%, 1%, 1%; and, that the Parties not accept the Union's proposal for 5%, 4%, 3%; but rather that the Parties accept 3%, 3%, 3% for each year of the term of the Agreement, retroactive to January 1, 2013.

**ISSUE 5: ARTICLE XX: MINIMUM MANNING**

**Recommendation:** that the Parties not accept the Union's proposal for minimum manning.

**ADDITIONAL RECOMMENDATION**

That the Parties agree that all tentative agreements reached by them be part of their Collective Bargaining Agreement, and that all unchanged provisions of the current contract be maintained as current contract language and part of their collective bargaining agreement.

**D. Resolved Issues**

Prior to the hearing the Parties were able to reach agreement on numerous issues. These Agreed to issues are incorporated herein, along with all unchanged provisions of the current agreement, as being part of this Conciliation Award and are made part hereof by reference. They are not more specifically addressed.

**E. Unresolved Issues**

1. Article 9 - Sick Leave, Sections 9.01 and 9.04
2. Article 24 - Insurance, Section 24.02
3. Article 26 - Holidays
4. Article 38 - Wages
5. Article 47 - Duration (Effective Date)

## II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator is required to give consideration to the following criteria in choosing between the Parties proposals, on an issue- by- issue basis. That statute in pertinent part reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact –finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

\* \* \*

(G)(7) After hearing the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (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 stipulation 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 remaining unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter choosing between each of the Parties' last best offer on the each issue.

### III ISSUES

#### ARTICLE 9 – SICK LEAVE, SECTIONS 9.01 and 9.04

##### **Employer's Position**

The Employer has proposed reducing the rate at which bargaining unit employees accrue sick leave under Section 9.01. It argues that every employee within the City who works a 2080 hour work year accrues approximately 120 hours of sick leave in a calendar year, including represented employees in the police and Teamsters bargaining units. In contrast, employees in the IAFF bargaining unit who work a 2,756 hour work year accrue 348 hours per year, or almost three times more sick leave accrual for working only 1 1/3 more hours during a calendar year. The Employer maintains that the Union can neither justify the gross disparity, nor can show comparables to support its position.

The Employer has also proposed adding to Section 9.04 at the end of the first sentence the following: (a "day" meaning eight (8) hours) as recommended by the Fact Finder. The Union has expressed that it is agreeable to this addition.

##### **Union Position**

The Union has proposed to maintain the current contract language with respect to sick leave accrual under Section 9.01 as recommended by the Fact Finder. It is also agreeable with the Employer's proposed changes in Section 9.04 stating that a day means eight (8) hours for the purposes of that section.

##### **Discussion and Award**

The Conciliator concurs with the Fact Finder's recommendation that there be no change to Section 9.01, and that Section 9.04 be changed as proposed by the Employer. As set forth in the Fact Finding Report, this recommendation was based upon the practice of the Parties over the years, the fact that the provisions of Section 9.01 have been in the agreement since 1997, the lack of any consideration or *quid pro quo* to make the change proposed by the Employer,

and the lack of any compelling evidence that such a change is necessary to the Employer's financial ability to pay or administer the benefit.

Therefore, the Conciliator finds that language of Article 9, Section 9.01 shall remain the same as in the Parties' previous Collective Bargaining Agreement covering the period from October 12, 2009 through October 11, 2012. Further, the agreed to changes to Section 9.04 of Article 9 as proposed by the Employer shall be incorporated into Article 9, Section 9.04 of the Collective Bargaining Agreement. Section 9.04 shall read in pertinent part as follows:

Section 9.04. In any one year, sick leave credits may be converted to cash under the following schedule for employees hired prior to October 11, 2006 ( a "day" meaning eight [8] hours):

#### **ARTICLE 24 – INSURANCE, SECTION 24.02**

##### **Employer's Position**

The Employer has proposed maintaining current language with the exception of increasing the amount of employee premium contribution by ½% each of the years of 2013, 2014 and 2015, with rates being 12 ½%, 13% and 13 ½% respectively. This would mirror the increases of other bargaining and non-bargaining employees in the City and be consistent with the Fact Finder's recommendation.

The Employer argues that Union's proposal at Fact Finding of no change in the current premium contribution of 12% was not justified when everyone else in the City pays a higher rate. Also, the Employer states that the Union's proposals at Fact Finding for changes to the HAS and for a HRA were misguided.

##### **Union's Position**

The Union's last offer presented in its position statement is consistent with Fact Finders recommendation and the Employer's position, except for the effective dates of the premium increases. The Employer's position and the Fact Finder's recommendations provide for the 1/2% increases to be effective January 1, 2013, January 1, 2014 and January 1, 2015. The

Union, however proposes the premium increases to be effective July 1, 2013, July 1, 2014 and July 1, 2015. The Union has dropped its proposals for changes in the HAS and for a HRA.

### **Discussion and Award**

The Conciliator concurs with the Fact Finder that the Employer's position should be adopted and incorporated into the successor Collective Bargaining Agreement. It is comparable to what other bargaining unit employees and non-bargaining unit employees are, and will be, paying for health insurance premiums.

Therefore, Article 24, Section 24.02 shall read as follows:

Section 24.02. The City of Franklin shall make available to all bargaining unit employees the same major medical/hospitalization care insurance plans, health insurance accounts (HSAs) and dental plans that are available to non-bargaining unit City of Franklin employees. All insurance requirements (e.g., fees, co-payments, etc.) specified for such non-bargaining unit City employees shall also be applicable to bargaining unit employees; this does not include premium contributions, described below. The City will have the right to change carriers. If an insurance buyout is offered to non-bargaining unit employees, it shall be offered to employees covered by this labor agreement on the same basis.

The participating employee shall pay twelve and one-half percent (12 ½%) of the applicable premium rate in 2013, thirteen percent (13%) of the applicable premium rate in 2014 and thirteen and one-half percent (13 ½%) of the applicable premium rate in 2015. Employee contributions shall be by payroll deduction and shall be divided into two (2) equal deductions per month.

The parties shall establish a Joint Insurance Committee consisting of representatives from the bargaining unit and management and/or other representatives from other City bargaining units. This Committee will investigate alternate plans and benefits and will submit package recommendations to the Franklin City Council; however, Franklin City Council maintains the right to determine appropriate coverage.

## **ARTICLE 26 – HOLIDAYS, SECTION 26.05**

### **Employer's Position**

The employer has proposed a modification to current language of Article 26, Section 26.05 to eliminate excessive benefit pay for holidays. The Employer argues that the bargaining



unit has many excessive benefit levels, and the Employer will attempt at every level to reign in unnecessary spending.

### **Union Position**

The Union proposed that there be no change in section 26.05 of Article 26 and that it remain in the successor Collective Bargaining Agreement.

### **Discussion and Award**

The Conciliator concurs with the Fact Finder's recommendation that Section 26.05 should not be eliminated from the Collective Bargaining Agreement as proposed by the Employer. The reasons set forth by the Fact Finder are persuasive. The current holiday pay as set forth in Section 26.05 has been part of the negotiated agreement since 1997, and it was a practice before that date. It has been a longstanding part of the full time firefighter's economic package. The full time fire fighters work more hours per year than do other employees, and except for the police perform work fraught with significantly more danger than other City employees. These differences have been properly recognized when comparing classifications of employees. In addition, the City has not offered any significant consideration or *quid pro quo*. Also, the City has paid for additional holiday pay and there has been no evidence to indicate that it cannot continue to do so.

Therefore, the Conciliator finds that language of Article 26, Section 26.05 shall remain the same as in the Parties' previous Collective Bargaining Agreement covering the period from October 12, 2009 through October 11, **2012**.

## **ARTICLE 38 – WAGES**

### **Union Position**

The Union has proposed the wage increases which the Fact Finder recommended. Bargaining unit wages would be increased by three percent (3%) retroactive to January 1, 2013,

three percent (3%) effective January 1, 2014, and three percent (3%) effective January 1, 2015. The Union has made the following arguments in support of its position.

First, is an increased work load. The Union has presented evidence at the Fact Finding Hearing and the hearing before the Conciliator of an increased work load for employees in the bargaining unit. Specifically, since January 1, 2013, the City terminated its contract with the Joint Emergency Services (JEMS) and began dispatching Franklin Fire Department certified paramedics and EMT providers on dispatched medical runs. This has resulted in an increased number of runs for medical emergency service. The benefit to the City is faster service to its citizens and the ability to bill Medicare and insurance companies.

Second, are the financial concessions made by the Union. In order to assist the City in passing a fire levy and assist with the transition to taking emergency medical runs, the Union agreed to forego Article 38, Section 38.04 which provides that bargaining unit members receive a two dollar (\$2.00) per hour stipend on their base hourly rate of pay if they are certified EMT paramedics performing EMT/paramedic functions. A Memorandum of Understanding to freeze this provision was entered into on June 18, 2012 and expires October 11, 2015. Also, not only did the Firefighters take the lead in getting the EMS levy passed and agreed to forego the \$2.00 per hour increase they were contractually entitled to receive, but the IAFF also took the lead among all employees in the City in agreeing to forego their scheduled 3% increase they were to receive January 1, 2011, under the terms of the contract.

Third, the Union argues that its proposal is reasonable, fair and necessary in order for the Union to achieve a comparable ranking with fire fighters in other cities. In support of this argument, the Union submitted evidence of comparables of the wage rates and pay for firefighters of cities in the surrounding area indicating that the City's lieutenants and captains were paid significantly below their peers.

Fourth, the Union submits that the City has sufficient resources to pay the proposed increase. The City 's asset to liability ratio of 2.5 at the end of 2011 meant that it had general fund assets of \$2.50 for each \$1.00 in general fund liabilities, reflecting an 82.5% improvement since 2008. The general fund balance increased over 21% from 2003 to the end of 2011 and more than doubled from 2008 to 2011. The cash at the end of fiscal year 2011 was sufficient to

cover more than 100% of the general fund balance which is a positive indicator and the City's income tax withholding was increased to two percent (2%) effective with the first payroll issued after July 1, 2011, revenues and transfers into the General fund were ahead of expenditures and transfers out. The City is also in good health with respect to the General Fund balance and the Unreserved Fund balance according to *Moody's on Municipals* published by Moody's Investor Services.

In addition, the Fire Levy Fund asset to liability ratio of \$1.70 at the end of fiscal year 2011 means that the City had Fire Levy Fund assets of \$1.70 for every \$1.00 in Fire Fund liabilities, which is a positive ratio, and it increased 14% from fiscal year 2003 to 2011. Cash at the end of fiscal year 2011 was sufficient to cover more than 100% of the Fire Levy Fund balance. Finally, in the fiscal years 2003, 2005, 2007, and 2009 and 2011, the revenues and transfers into the Fire Levy Fund exceeded expenditures and transfers out.

### **Employer Position**

The Employer has proposed 1 ½ % increase for 2013, a 1% increase for 2014, and a 1% increase for 2015. The Employer claims this proposal is generous given the conditions of the local and national economies. It will put this unit on par with the increases felt by all other units in the City from 2011-2014, which is a total of 5 ½% over that time period. The evidence presented indicates that this bargaining unit has outpaced all other bargaining and non-bargaining units in the City, and it has outpaced CPI and SERB data from 1998 through 2011.

Second, the national and local economies do not suggest that a large wage increase is justified. The nation is pulling itself out of the Great Recession, and not all economic factors suggest a clear recovery. Also, the State of Ohio has seriously damaged local government funding in a number of significant ways, including the slashing of Local Government Funds and the elimination of the Estate Tax. The City is now obligated to plug various holes in its budget.

Third, of special concern is the fact that the City has assumed EMS functions from another local provider. Although the City is at some future date to receive a percentage of the local provider's assets and equipment, the process could take years. In the meantime, the City's General Fund must foot the bill for extra expenses and equipment purchases. It is not

clear what the financial ramifications of assuming EMS functions will be for the City. Now according to the Employer is not the time to inflate salaries and benefit packages.

During the attempted mediation process at the Conciliation hearing, the Employer proposed a settlement that it would accept the Union's wage offer of three percent (3%) each year of a three year contract on condition that the Section 38.04 of Article 38 be deleted from the contract. This would eliminate the \$2.00 per hour stipend for certified EMT/Paramedic employees performing EMT/Paramedic functions. The Union's counter proposal was that it would accept such if each employee in the bargaining unit were to receive a one-time bonus. Although the Parties were not able to agree on a specific amount for the bonus, they did agree to a range between \$0 and \$350.00 and waived the requirement that the Conciliator had to pick either \$0 or \$350.00, but could award a specific amount within the range of \$0 to \$350.00.

#### **Discussion and Award**

The Conciliator concurs with the Fact Finder's Recommendations regarding wages. The City's proposal of 1.5%, 1% and 1% was clearly too low. Conservatively, based upon the financial data presented by the Parties, the City can afford to increase the wages for its firefighters by 3% for each of the three years of the new Contract. Considering the Union's agreement to forego until 2015 the stipend for employees with EMT/Paramedic certifications performing that function, the agreement to forego the three (3%) base wage rate increase for 2011, and the comparison of wage rates with other fire departments, the three percent (3%) increase each year of a new three year contract is reasonable.

As to the proposal to delete Section 38.04 of Article 38 from the Collective Bargaining Agreement, the Conciliator finds that the consideration or *quid pro quo* for the elimination of this provision should be \$325.00, to be paid as a one-time bonus payment. While this amount is at the upper end of the scale, the Conciliator believes it is a reasonable consideration under the circumstances. The \$2.00 per hour for certified employees performing EMT/Paramedic services is a considerable wage differential. Although the payment of this differential has been waived until 2015, in the future, it would be beneficial to the employees performing those duties and costly to the City.

Therefore, Article 38, Section 38.01 shall be amended to reflect increases in base wage rates of three percent (3%) effective January 1, 2013, three percent (3%) effective January 1, 2014 and three percent (3%) effective January 1, 2015. In addition, Section 38.04 of Article 38 shall be deleted from the successor Collective Bargaining Agreement and a provision shall be made for the payment of a one-time lump sum bonus of \$325.00 to all bargaining unit employees as soon as practical.

#### **ARTICLE 47 – DURATION**

The Parties on March 19, 2013 signed a tentative agreement as to the duration of the successor contract effective for the period from October 12, 2012 until October 11, 2015. Provisions relating to the retroactivity of wage increases and healthcare premiums are specifically set forth under the provisions of those Articles of the Collective Bargaining Agreement.

#### **CERTIFICATION**

The Conciliation Report and Award are based on position statements, and the evidence and testimony presented to me at hearing conducted July 10, 2013. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Conciliator

July 31, 2013

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**PROOF OF SERVICE**

This Conciliation Report was electronically transmitted this 31st day of June, 2013, to the persons named below.

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/s/ John F. Lenehan  
John F. Lenehan

