

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

In the matter of Conciliation between:)	SERB No. 2012-MED-09-0975
)	
BROOKLYN FIREFIGHTERS, IAFF,)	
LOCAL 1145,)	Hearing: May 9, 2014
Employee Organization,)	at Brooklyn, Ohio
)	
and)	Date of Award:
)	June 20, 2014
CITY OF BROOKLYN, OHIO,)	
Public Employer.)	CONCILIATION AWARD

Before Mitchell B. Goldberg, SERB Appointed Conciliator

Appearances:

For the Association:

Ryan Lemmerbrock,	Counsel
Lt. Jeff Lee,	Member, Loc. 1145
Brady Cribbs,	President, Loc. 1145
Mary Schultz,	Financial Expert
James Astorino,	President, NOFF

For the City:

Patrick Hoban,	Counsel
Scott Clausen,	Law Director
Dan Enovitch,	Finance Director
Joe Zemek,	Fire Chief
Scott Mielke,	Police Chief

I. Introduction and Background.

SERB appointed the undersigned as the Conciliator of this public employment labor dispute on March 12, 2014. The City and the Association are parties to a collective bargaining agreement (“CBA”) that expired by its terms on December 31, 2012. They engaged in multiple bargaining sessions in 2013, but they were at impasse on a number of issues, to the point where they requested fact finding in October 2013. They continued to negotiate and reached tentative agreements in January

2014 of all but two issues. Those issues proceeded to fact finding on January 23, 2014 before Fact Finder John Lenehan. One issue was resolved through mediation at the hearing, leaving only one remaining issue for resolution before the Fact Finder. Fact Finder Lenehan issued his recommendation to resolve the issue on February 19, 2014. The issue, however, remains at impasse and is now before the Conciliator for final resolution.

The City is well located southwest of Cleveland near the interstate beltway and Hopkins airport. It has a large commercial and industrial tax base with a population of about 11,000. The per capita income and median household income is somewhat below the average numbers in Ohio.

Local 1145 is the representative for one of 7 bargaining units. Three other unions represent the other units. The IAFF unit consists of 25 employees that include 6 lieutenants, 15 firefighter-paramedics, and 4 firefighter-EMTs. The department employs part-time firefighters that are excluded from the unit.

The Issue

The expired CBA contains a Letter of Understanding (“LOU”) dated January 1, 2011. It deals with the utilization of part-time firefighter-paramedics. “All available open time that needs to be filled in order to satisfy the minimum manning requirement shall be offered to part-time firefighter/paramedics first. Available time that is not filled by part-time personnel shall then be filled by full-time members on overtime. Part-time firefighter/paramedics will not be eligible for 'backfill' time unless a departmental recall is needed. No more than one (1) part-time firefighter/paramedic shall be on duty at any one time. At no time shall less than five (5) full-time personnel be on duty.”

The LOU further provides: “There shall be no more than sixteen (16) part-timers employed at any time. No part-timer may be employed more than thirty-six (36) hours per week.”

The City's proposal before the Fact Finder was to delete or cancel the LOU in all respects. It has altered its proposal before me, as the result of the Fact Finder's recommendation. It now wants the

ability to schedule two part-time firefighters on a shift when a full-time firefighter is absent for more than 20 consecutive shifts. In that event, it wants to lower the minimum full-time staffing level from 5 to 4. Once the full-time firefighter returns from the extended leave, the full-time minimum staffing component would return to 5. The Association proposed no change to the LOU before the Fact Finder and wants the full-time staffing component to remain at 5 during the time the full-time firefighter is on the extended leave. It proposes here that the Fact Finder's recommendation be adopted and that it be interpreted in accordance with its understanding of the language.

The Fact Finder rejected the City's proposal to delete the LOU entirely from the CBA. However, he recommended a modification in the provision limiting the use of part-time firefighters to one per shift. He stated on page 11 of his Report:

The City has submitted evidence of the cost of overtime and the savings that could be had with the use of two rather than one part-time employee to cover absences per shift. Long Term absences of [a] full-time firefighter have resulted in a high and costly use of overtime. While the City would be able to pay for overtime under the current LOU for a period of a couple of years, or the term of the proposed agreement, its financial future is unpredictable, especially considering the exodus of the American Greeting Card Company.

He found that the Association's concern in protecting the full-time members in the unit by limiting the number of part-timers used was "legitimate." The Association argued, as it did here, that the City has other contractual and management alternatives to control overtime costs, and that removing or altering the LOU as the City proposes produces only a minimal savings in its budgeted expenditures. The Fact Finder attempted to reach a balance as between each proposal. He found that a few employees have been absent for extended periods of time due to illness or injuries. He believed that the City should have the discretion of assigning a second part-time firefighter if the need exists when there are absences that exceed 20 consecutive work shifts (24-hours). He believed that this was a reasonable balance between the Association's legitimate interests in maintaining the bargaining unit and

the City's interest of securing a reasonable and efficient system of assigning overtime work to full-time firefighters, which if implemented, would “provide the City with some relief on overtime pay.”

The Fact Finder thereupon recommended a modification to the second paragraph of the LOU to read:

No more than one (1) part-time fire fighter/paramedic shall be on duty at any one time, except two (2) shall be allowed when a full-time employee has been absent[t] for more than twenty consecutive shifts or twenty, twenty-four hour consecutive assignments and available open time needs to be filled in order to satisfy the minimum manning requirement. At no time shall less than five (5) full-time personnel be on duty.

The City believed that the above recommendation was ambiguous and did not reflect the Fact Finder's true intention of providing it with overtime pay relief. It believes that it would only be provided with material overtime reduction if it could replace the full-time firefighter who is on leave with a part-timer to fill the slot. This would alter the minimum staffing during this occurrence from 5 to 4. It is willing to accept this outcome and requested that the Fact Finder alter his recommendation. The Association contends and is willing to accept the Fact Finder's modification, but only if the minimum staffing of full-time firefighter remains at 5 during the absence of the full-time firefighter who is out on the extended absence.

The Fact Finder agreed to consider the City's request for clarification over the Association's objection. However, he declined to offer a formal modification of his Report. Instead, he wrote the parties in an email stating: “ While arguably the language in the Recommended LOU could be more artfully drafted, there was no error that needs correction.” He proposed what he believes is clearer language that explains his same recommendation:

No more than one (1) part-time fire fighter/paramedic shall be on duty at any one time, except two (2) shall be allowed when a full-time employee's absence for illness or injury exceeds twenty consecutive work days and available open time needs to be filled in order to satisfy the minimum manning requirement. At no time shall less than five (5) full-time personnel be on duty.

Notwithstanding the Fact Finder's proposed language change to his recommendation, I find that his intent is clear and remains the same, that there should be 5 full-time firefighters on duty at all times, even when there are full-time employees on extended leaves, whose absences require replacement personnel. A full-time employee on extended leave must be replaced by another full-time firefighter when it is necessary to maintain the required minimum manning at 5 for full-timers.¹ Two part-timers can be used in the special circumstance when a full-timer's absence for illness or injury exceeds 20 consecutive work days. Otherwise, the part-timer use remains at one per shift.

Regardless of the dispute over the Fact Finder's intention or language, the issue remains whether the City, in order to save material overtime costs, should be able in this special circumstance to reduce the minimum full-time staffing level to 4 while employing 2 part-timers. The Association insists that minimum staffing for full-timers should remain at 5, as stated by the Fact Finder, but more importantly, for legitimate reasons based upon the submitted evidence.

II. Economic Evidence.

The City weathered through the recession by cutting costs to maintain a balanced budget. The IAFF unit and the other unions went through wage freezes, low increases and increases in health insurance costs. Staff was reduced and needed capital expenditures were delayed. An income tax increase of .5% has helped to shore up the loss in revenue to the point where a reasonable or better general fund carryover now exists. The elephant in the room, however, is the certain loss of a major taxpayer, American Greetings (“AG”). AG's tax payments account for between \$3 million to \$4 million per yr. New businesses have come in, but the loss of AG's employees and their income tax payments presents a substantial problem for the immediate future. The income tax increase addressed the loss of revenue from the state's local government fund, the loss of estate tax revenues, and lower investment income due to low interest rates, but the loss of AG revenue is material.

The City has allocated a portion of its general fund revenue to a budget stabilization fund, but it

needs to make capital improvements in order to attract replacement businesses. All of these economic facts undoubtedly have driven the collective bargaining agreements that have been negotiated with the other unions, and the TAs that have been reached in these negotiations.

III. Minimum Manning Issues and Bargaining Unit Security.

Reduced staffing in the Fire Department and the use of a part-time workforce has been the focus of intense bargaining between the parties since 2003. While the determination of the size of the workforce is a managerial right, the parties began addressing the City's use of part-time firefighters when full-time shift sizes started declining. Shift sizes earlier consisted of 10 full-time firefighters, but were minimally at 7 with up to 3 full-timers off or absent on leaves. Full-time staff was reduced through attrition. In 2003, the parties negotiated an LOU specifically directed toward the utilization of part-timers. Part-timers were given a "pick day" for being scheduled the following month. If picks were not made, any overtime caused by unscheduled absences was given to full-timers, not part-timers. The full-time shift component was at 9 with a minimum of 7 when as many as 3 full-timers could be off. In 2008, the parties agreed to a provision that "no more than one part-time firefighter/paramedic shall be on duty at any one time."

In 2010, the parties further amended their LOU. The City agreed to a minimum shift manning requirement for full-timers, but the Association agreed that the City could fill all "available open time" with part-timers. If the time could not be filled with part-timers, full-timers would be used with the payment of overtime. Part-timers would also not be eligible for "backfill" time; this time would be filled with full-timers unless a departmental recall is needed. Again, no more than 1 part-timer shall be on duty at any one time, and at no time shall less than 5 full-timers be on duty.

During the negotiations for the CBA that began in 2011, the City proposed to increase the number of part-timers from 1 to 2 per shift, and to reduce the minimum number of full-timers from 5 to 4. The Association wanted to maintain prior levels, and it proposed adding a limitation upon the City

for the total number of part-timers that the City could employ at any one time. It fixed the maximum number at 16 and provided that no part-timer could be employed more than 36 hours per week.

Fact Finder Nelson recommended that the limit of part-timers should remain at 1 per shift and that the minimum staffing per shift of full-timers should remain at 5. Moreover, he recommended that the Association's proposed limit on the number of part-timers (16) and their hours (36) be accepted. The LOU attached to the expired CBA dated January 1, 2011 contains Fact Finder Nelson's minimum shift staffing of full-timers, and the maximum number of part-timers and their maximum hours.

It is clear that the minimum full-time shift staffing level reduction over the years from 7 to 5, and the increased numbers of part-timers has materially impacted the Association unit from an economic standpoint. One may further reasonably assume that the reduction of full-time shift staffing and the use of part-timers has negatively impacted the unit's bargaining strength and its security. Focus should then be upon the needs of the department and the City's savings that could be achieved as a whole to assist in its efforts to minimize the substantial revenue loss from the AG move.

The City's best estimate is that it could save approximately \$20,000 - \$26,000 in overtime costs annually during the life of the CBA if it could reduce the full-time shift staffing minimum level to 4 instead of 5. The City's net estimated cost savings is in the range of \$80,000 when roll-up costs are included. It is unclear from this record what, if any, cost savings would occur if it were permitted to use 2 part-timers per shift instead of 1, while keeping the minimum full-timers at 5 instead of 4. I believe there could be some savings, but any clear conclusion is uncertain because of the complexity of scheduling. Nevertheless, the total approximate overtime cost savings over 3 years of \$60,000 (\$80,000 with roll-ups) must be balanced against the Association's legitimate interests as remarked upon by Fact Finer Lenehan.

Moreover, overtime costs would be substantially lowered with the hiring of more full-timers, particularly when there is a need for more full-time staff. The Association contends that there is a dire

need for more full-timers. The present full-time staff is composed of more senior personnel. This presents the likelihood of more workplace injuries. This has already been shown by the fact that the disputed issue has developed due to the fact that multiple full-timers are absent due to extended injury leaves.

Chief Zemek's presentation bears heavily on this precise issue. He believes there is a present shortage of experienced full-timers. He has advocated for the hiring of 3 more full-timers. He has applied for grants to fund these positions so that the City's budget would not be materially affected. So far, the grant applications have been turned down. He made it clear that while in the special circumstance presented here, an excess of full-timers on leave, the City would receive overtime cost savings if the minimum limit was reduced to 4 instead of 5, he would never want to convert his department to a staff that was filled with a substantial number of part-timers. Notwithstanding that he would like to receive more full-timers, he does not believe that Council would ever approve additional hiring costs without the assistance of outside grants.

The overtime hours caused by firefighters taking injury leaves and obtaining workers compensation has definitely spiked from 2011 figures, from 1,926 in 2011, to 2,262 in 2012, to 2,696 in 2013. Nevertheless, the estimated overtime cost savings of \$60,000 - \$80,000 should be viewed against a budget with total expenditures of over \$23 million. We are dealing with a maximum estimated cost savings of .003.5%. Fact Finder Lenehan believes that the Association's legitimate interests in maintaining its bargaining unit and preserving the LOU by limiting the use of part-timers should weigh more heavily against the City's projected overtime cost savings. Considering that some cost savings could occur by the use of other management directives that are not in conflict with the CBA, and that there will be some cost savings that are received by the Fact Finder's recommended increase in part-timers per shift from one 1 to 2, while keeping the minimum of full-timers at 5 instead of 4, I cannot find fault with his analysis.

DECISION:

The Association's final offer is accepted and sustained. I interpret this to be the Fact Finder's revised language in his attempt to clarify the language in his Report. The LOU dated January 1, 2011 attached to the expired CBA shall remain unchanged except for the second paragraph, which shall be amended to state:

No more than one (1) part-time fire fighter/paramedic shall be on duty at any one time, **except two (2) shall be allowed when a full-time employee's absence for illness or injury exceeds twenty consecutive work days and available open time needs to be filled in order to satisfy the minimum manning requirement.** At no time shall less than five (5) full-time personnel be on duty.

Date of Award: June 20, 2014

/s/ Mitchell B. Goldberg, Conciliator

CERTIFICATE OF SERVICE

The above Award was served upon the following parties by electronic mail this 20th day of June, 2014:

Ryan Lemmerbrock, lemmerbrock@mllabor.com
Patrick Hoban, pjh@zrlaw.com
SERB: MED@serb.state.oh.us

/s/ Mitchell B. Goldberg