

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF  
FINAL OFFER SETTLEMENT AWARD  
BETWEEN:

City of Hamilton, Ohio	)	
	)	Case No: 2012-MED-10-1268
and	)	
	)	Conciliator: Colman R. Lalka
Hamilton Professional Firefighters,	)	
IAFF Local 20	)	

HEARING

Date of Hearing: August 22, 2013

Location of Hearing: Hamilton, Ohio

ATTENDANCE AT HEARING

For the Employer:

Marc A. Fishel, Esq.

Matt Whitman, Esq.

Letitia S. Block, Assistant Law Director

Steven Dawson, Chief Hamilton Fire Department

Joshua Smith, City Manager

Holly H. Zistler, Finance Manager

Tim Werdmann, Deputy City Manager

For the Union:

Henry A. Arnett, Esq.

Kevin Rader, Local 20 Representative

John Bibish, CPA

Also in Attendance:

Eric Abney, Local 20 President

James Becham, Local 20 Vice-President

## PRIOR COLLECTIVE BARGAINING AGREEMENT

The City of Hamilton, Ohio recognizes the Hamilton Professional Firefighters, IAFF Local 20, as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2012, after the expiration of a January 26, 2010 Contract Extension and Amendment. Formal bargaining between the Parties has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report rejected by both parties. Said Fact-Finding Report, issued May 2, 2013, is incorporated herein by reference. Each Party timely submitted a written report to the conciliator as mandated by law and SERB Rules and Regulations, and requested the Conciliator convene a hearing and matters at impasse be determined pursuant to a final offer settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB.

The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award on all disputes between the Parties on an issue-by-issue basis. Provision was made by the Union for a written record of the proceedings.

## CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Conciliator in resolving the disputed issues were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H) through (H)(6) of the State Employment Relations Board, to wit:

1. Past collectively bargained agreements between the parties;
2. 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;
3. 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;
4. The lawful authority of the public employer;
5. The stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to final

offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

## ECONOMICS

The City of Hamilton Fire Department is comprised of ninety-six sworn Fire Fighters, including the Chief, plus one administrative secretary. The Bargaining Unit consists of ninety-five Fire Fighters below the rank of Chief, of which five are Administrative Staff. Except for the Administrative Staff, who work forty-hour weeks, Fire Fighters work one of three twenty-four hours shifts, followed by forty-eight hours off duty. A schedule of twenty-four hours on duty and forty-eight off results in an average workweek of fifty-six hours. To bring the workweek to forty-eight hours, seventeen Kelly Days per year<sup>1</sup> are interspersed throughout an individual Fire Fighter's schedule.

There are five fire stations throughout the City, designated as Stations 21, 22, 24, 25, and 26. Each station contains fire suppression units, and three of those Stations, 22, 24, and 25, contain medic units. A sixth fire station, Station 27, has been taken offline, and a unit located at Station 22 was also taken out of service. Due to the expiration of a federal grant, five Fire Fighters were laid off on June 5, 2013. A Minimum Manning requirement contained in the Collective Bargaining Agreement expired on December 31, 2012, and it was at that time the closings commenced. The City also engages in Brown Outs, temporary closures, which could be for part of a day, or longer. When a station is closed in such a manner, it is with the hope it will be reopened the following day.

Large portions of the presentations at the Hearing were devoted to the fiscal condition of the City, with the City emphasizing it is a Distressed City as defined in ORC 122.16. Both parties agreed all issues before the Conciliator had a direct economic impact on the City. The presentations regarding fiscal health were, for the City, through the testimony of Steven Dawson, Chief of the Hamilton Fire Department, Joshua Smith, City Manager, and Holly Zistler, Finance manager, and, for the Union, John Bibish, CPA and past Director of Finance for the city of Toledo, Ohio.

Both parties presented documentary evidence in the form of tables, charts, graphs, and reports, and were able to obtain all underlying data each deemed necessary for its presentation and the cross-examination of the witnesses of the opposing party. In the absence of objection

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<sup>1</sup> In some cases, depending on the shift, the number may be eighteen Kelly Days per annum.

and in that all documentary evidence was subject to rigorous cross-examination, the Conciliator accepts all documentary exhibits even in the absence, in some instances, of the underlying data from which the exhibits were derived.

The City has 625 employees and a population of 63,000. The City's fiscal year is the calendar year, and in June or July General Fund revenue for the upcoming year is estimated. Expenditures for the Fire Department come out of the General Fund, and, Mr. Smith testified, for 2013 General Fund revenue will be \$41 million against expenditures of \$43.5 million. General Fund revenue for 2014 is projected at \$40.1 million, and expenditures \$43.2 million.

Since 2008, revenue has trended downward, and will be down \$7 million as projected for 2014. An exception to the downward trend is 2011, when the City received an unanticipated \$6 million in estate taxes, a situation that, with the repeal of the estate tax, will not repeat. Additionally, the City notes, Local Government Funds have been cut more than half by the state, interest income is down, real property tax revenue is down, personal property tax is being phased out, and income tax receipts are down due to the loss of industry.

Prior to working as the Finance Manager for Hamilton, Ms. Zistler worked for the City of Cincinnati, with responsibility for labor negotiations and the costing-out of union proposals. A City's rating through one of the services, as, for example, Moody's, determines the interest rate it will pay in the bond market. Two items considered by a rating service are a City's Carryover Balance and, if one exists, its Structural Imbalance. Ms. Zistler explained that Cincinnati's rating was downgraded as the result of its Structural Imbalance, and she expressed concern that Hamilton's current economic circumstances will adversely affect its rating as the result of its low Carryover Balance and Structural Imbalance.

In discussing the City's Structural Imbalance, Mr. Smith testified that eighty percent of the City's expenditures are for personnel costs, with the Imbalance resulting from expenditures exceeding revenue. Moreover, Mr. Smith continued, the City's Carryover Balance has been decreasing. The Government Finances Officers Association (GFOA) recommends a Carryover of two months of expenditures, or 16.67% of total expenses. The City's Carryover Balance exceeded the recommendation in only two years since 2005, those years being 2011 and 2012. It will be recalled 2011 was the year of the unanticipated \$6 million estate tax receipt, and the increased Carryover Balance of 2012 was the result of the 2011 receipt. The recommended Carryover Balance for 2013 and 2014 is \$7.2 million in each year, and the Car-

ryover Balances for 2013 and 2014 are projected to be \$5.7 million and \$2.6 million, respectively. This amounts to approximately 14% and 6% of expenditures. Should the City's rating be downgraded, Mr. Smith indicated, the increased cost of borrowing will come from the General Fund.

The City's 2013 budget was passed in December 2012, and has been amended four times. In 2011 the Fire Department budget was \$13.6 million, in 2012 it was \$12.8 million, and in the 2013 amended budget, \$11.5 million. The City indicates the 2013 amended Fire Department budget includes a projected layoff of eighteen Fire Fighters and an increase in the workweek from forty-eight hours to fifty-two.

In an attempt to alleviate the Operating Deficit, the City, for the 2014 budget, instructed all Department Heads to reduce their budgets seven percent below 2013. The Union points out that it conceded its Clothing Allowance and Physical Fitness pay. The City counters by indicating those concessions are insufficient to assist in a meaningful manner.

In addition to its cross-examination of the City's witnesses, the Union attempted to establish the City's fiscal health was not as dire as indicated through the testimony of Mr. Bibish. Mr. Bibish's testimony, however, was less than compelling. Mr. Bibish's testimony on direct regarding his qualifications to discuss a City's fiscal health left the impression of an experienced individual. Mr. Bibish indicated he was responsible for developing and managing Toledo's \$620 million budget throughout his years of service from 1999 until his retirement in 2009.

On cross-examination, however, Mr. Bibish admitted that prior to his retirement he had been demoted to Commissioner of Budgeting, and that he was aware Toledo officials stated the reason for his demotion was the inaccuracy of his budget forecasts. Mr. Bibish, on redirect, indicated he was demoted as the result of politics. That is, he was appointed by one mayor, and retained by another, but wasn't as flexible as desired, so was demoted.

In preparing his report, Mr. Bibish used the web sites of the City and State Auditors and obtained a copy of the City's 2012 Comprehensive Annual Financial Report. When questioned if he had taken the State of Ohio designating Hamilton as a Distressed City into consideration when preparing his analysis, Mr. Bibish responded he was unaware of what the term, Distressed City, really means. For an individual experienced in municipal budgetary matters, that response is not credible, especially when considered in light of Mr. Bibish's re-

view of the web sites of Hamilton and the State Auditor, and the Ohio Revised Code definition of a Distressed City also being online.

Another point that brings Mr. Bibish's testimony into question regards the 2011 one-time estate tax receipt. It was Mr. Bibish's opinion the City's economic health would have improved without the one-time receipt, and in another point in his testimony, when referencing the one-time receipt, indicated there are always extraordinary events in life, supposedly meaning that if the one-time receipt had not occurred, something else would have. Mr. Bibish did not indicate why other receipts resulting from those extraordinary events failed to materialize, nor did Mr. Bibish explain how the City finances would have improved in the absence of the one-time receipt.

Mr. Bibish also obtained employment statistics from the Ohio Jobs and Family Services web site, and provided a line graph of employment in Hamilton since 2009, with a positive trend line superimposed. The line graph depicts highs and lows in the employment figures, which Mr. Bibish stated are probably due to seasonal work. The positive trend line, Mr. Bibish indicated, means that in the future the positive trend will likely continue.

In addition to other charts and graphs, the City presented a line graph dating back to 2003, indicating income tax collections are trending downward. The City points to a change in the nature of employment, indicating higher paid manufacturing jobs have left the City and lower wage service positions now make up a larger percentage of the City's workforce. This results in lower income tax revenue, and Mr. Bibish admitted it is the tax revenue that is the important figure.

According to Mr. Bibish, transfers out of the General Fund have increased from \$605,000.00 and \$877,522.00 in 2009 and 2010, to \$2.1 million and \$2.8 million in 2011 and 2012. Transfers out of the General Fund are permitted, provided the proper authorization for the transfer is present. That is, Mr. Bibish stated, the transfers are the result of policy decisions by the City. Additionally, according to Mr. Bibish the City is reporting less in revenue than indicated in the budget. This, Mr. Bibish contends, is the result of the budget not being prepared pursuant to Generally Accepted Accounting Principles (GAAP), and leads to confusion and a lack of transparency that is otherwise present when GAAP is used. In 2011 and 2012, Mr. Bibish believes, the transfers out of the General Fund helped create a deficit. That is, the City chose to create the deficit.

Ms. Zistler is responsible for creating and monitoring Hamilton's budget. Ms. Zistler testified she is familiar with accounting standards to a certain extent, however, Ms. Zistler continued, applying GAAP to budgeting is inapt. GAAP is used in financial reporting, while budgeting tracks revenues and expenditures. That is, budgeting, as the name implies, budgets the City's revenue.

Mr. Bibish admitted on cross-examination that some of the transfers may have been for debt service and transfers to other funds. Mr. Bibish added that he was unable to determine the purpose of the transfers from the City's financial documents. Mr. Bibish previously testified transfers from the General Fund are permissible if properly authorized, and indicated he has no problem with the City using the General Fund to service debt.

Without recounting all of Mr. Bibish's testimony in detail, suffice it to say Mr. Bibish concluded that notwithstanding the point that the City's last good year was 2008, and despite the City's suggestion that things have not improved, the GFOA ten key Ratios of Financial Condition for 2012 establish an improved financial position. This indicates, Mr. Bibish holds, the City is in a broad position of ability to pay. This testimony is not convincing.

The Conciliator is convinced, based on the evidence of record, that the City currently is in financial straits, and there is nothing in the record to indicate a change in the next several years.

## ISSUES AT IMPASSE AND AWARD

### Article 7 – Work Complement

In its position statement, the City identifies four issues:

- Reduction in number of employees manning Life Squads/Ambulances. Paragraph A.
- Layoff language applies to all bargaining unit employees, not just "firefighters." Make layoffs appealed to Hamilton Civil Service Commission. Paragraph B.
- Remove expired minimum manning clause. Paragraph C.
- Grammatical clean-ups. Paragraph B.

The City indicates it is the moving party regarding its first issue, and requests the language awarded by the Fact-Finder. The Union proposes current Contract language for Article

7, Paragraph A, accepts the Fact-Finder's recommendation for Paragraph B, and proposes the following for Paragraph C:

The Local's proposal would mirror the department's current staffing practice of maintaining a minimum of twenty- two (22) bargaining unit members on duty each day. The union's proposal will include the additional provision that effective January 1, 2014 the minimum daily staffing will be increased by two (2) for a total of twenty-four (24) firefighters per day. This modification would memorialize the employer's intent to place into service in 2014 an additional medic unit taking the current complement of three medic units to four units.

#### Argument of Parties

The Predecessor Agreement provided for a minimum staffing level of two state certified EMT-Paramedics on its Life Squad/Ambulances. In order to reduce potential overtime costs resulting from this manning requirement, the City proposes reducing the number of EMT-Paramedics from two to one. This change, the City maintains, will provide needed flexibility to best determine how to provide this service to its citizenship, without adversely affecting overtime costs. Patient care is the driving issue, the City argues, and placement of EMT-Paramedics should be determined by the Chief, not the Labor Agreement.

To analyze Fire Department efficiency, the City commissioned a study in 2012 culminating in the Berkshire Report. The City's current complement of medic units is three, and its goal, Ch. Dawson testified, is four as recommended in the Berkshire Report. Mandating two EMT-Paramedics per unit will increase minimum staffing to twenty-four Fire Fighters per shift.

The Union agrees the driving issue should be providing the best victim care, and adds situations of multiple victims must be considered. With one EMT-Paramedic responding, care provided to multiple victims could be compromised. The Union points out that 75% of Fire Fighters are certified EMT-Paramedics, and Ch. Dawson indicated he never called anyone in on overtime for a medic unit and never had an EMT-Paramedic staffing issue.

Finally, while Ch. Dawson stated it was his intent to keep two EMT-Paramedics per unit, the Union points out that the City Manager is also the Safety Director, and if the Safety Director orders one EMT-Paramedic per unit, the Chief must comply. The Union is concerned that the City may unilaterally reduce staffing to one EMT-Paramedic per unit.

Regarding the second of the City's four issues, the City proposes deviating from the Fact-Finder's recommendation that layoffs be appealed through the contractual grievance pro-



cedure to providing layoffs are to be appealed to the Hamilton Civil Service Commission. In that the Hamilton Civil Service Commission is charged with ensuring compliance with civil service law, the City contends, it is only logical that the Commission hear layoff appeals. Moreover, the City believes, appeals through the Commission likely will be resolved more quickly and less expensively than by using the grievance procedure.

The Union believes the Fact-Finder's recommendation should be followed. Layoff language is in the Labor Agreement, and alleged violations of the Labor Agreement should be appealed through the procedures of the Agreement. Its proposed language is not unusual, the Union adds, and comparable communities provide for appeals through their contractual grievance procedure. Finally, the Union expresses concern regarding appeals to the Civil Service Commission in that the Commission is appointed by the City.

Regarding Minimum Manning, the City points out the Predecessor Agreement is still in effect by operation of law, and notes that the Minimum Manning Clause, found in Article 7, Paragraph C, expired on December 30, 2012. For its third issue, the City proposes removing the expired Minimum Manning Clause from the Successor Agreement, and also notes the Fact-Finder recommended its removal. This third issue is heavily related to overtime costs, and costs related to hiring nine new Fire Fighters to meet Minimum Manning requirements. According to the City, the nine new Fire Fighters will cost the City \$675,000.00 per year, and that cost will increase as the new Fire Fighters gain seniority. The City provided thirteen comparable communities, and notes that of those comparable communities, the Labor Agreements of nine do not contain Minimum Manning requirements.

In the absence of the Minimum Manning clause, Ch. Dawson staffs at twenty-two Fire Fighters per shift. If staffing falls below twenty-two, the Chief calls in Fire Fighters on overtime. Previously, Minimum Manning, based on vehicles, was at twenty-eight, which resulted in overtime expenditures of \$1.1 million per annum. For 2013, overtime was budgeted at \$80,000.00, and, Ch. Dawson testified, if that figure has not been reached as of the date of the hearing, it will be exceeded by the end of the year.

Currently, unanticipated overtime results when staffing drops below twenty-two due to injury or sick leave, and such overtime cannot be projected and budgeted. Budgeted overtime includes calling in Fire Fighters to cover for Paramedic continuing education, and other rea-

sons that can reasonably be predicted. Ch. Dawson indicated a rough approximation of current overtime usage would be Fire Fighter(s) being called in on overtime every third day.

The Union points out that steps have not been taken to curb overtime in the Police Department, and questions the City's claimed need for flexibility. The FOP Lodge 38 Labor Agreement, the Union emphasizes, was extended for a year, and extended again before the first extension expired. If Minimum Staffing falls below one-hundred-four, remaining members of the Bargaining Unit were eligible for, and in fact received, a lump-sum bonus payment. Additionally, the FOP Agreement prohibits layoffs. Even in the event of Officers being hired as the result of grant funding, when the funding expires the Officers hired under the grant cannot be laid off.

The City notes that 911 Call Center restructuring has been at least part of the problem in reducing Police overtime. The City's 911 Call Center is in the process of being transferred to the Sheriff Department, resulting in dispatchers leaving. Until the 911 Call Center is transferred, Police Officers are filling-in at the Call Center.

The Union proposes retaining the current manning level of twenty-two Bargaining Unit Members on duty each shift, with the minimum increasing to twenty-four on January 1, 2014. This increase, the Union states, would memorialize the City's stated intent to place an additional medic unit into service in 2014.

The Minimum Manning clause, the City argues, does not reflect current realities in the Fire Department. According to the Berkshire Report, approximately 83% of runs are emergency medical, not responses to fires. The Union, also relying on the Berkshire Report, states the Hamilton Fire Department is a busy Department, with between 11,000 and 12,000 runs per year. According to the Berkshire Report, from July 1, 2011 to June 30, 2012, the Fire Department had 1,329 single Engine unit responses to calls. Single Engine responses are for car fires, Dumpster fires, and the like. The Union points out this translates to three or four call per day.

When discussing Minimum Manning of twenty-two or twenty-four, the Union emphasizes, it is addressing safety concerns. Attacking a fire, the Union emphasizes, requires sufficient manpower. In 2012 there were one-hundred-fifty-one structure fires where hose was pulled off an Engine, or approximately one structure fire every other day. The majority of

structure fires involve two-and-a-half story wood frame residential dwellings, built in the 1920's or 1930's, with three or four layers of roofing.

The Berkshire Report, which indicates response time is outside National Fire Protection Association guidelines, was prepared when the City had six pieces of apparatus. It now has five, the Union notes, and during an aggressive attack on an intense fire, as in the above type of dwellings, only one piece of equipment remains available for the remainder of the City. The Union maintains that the City is creating an unsafe environment for Fire Fighters and Hamilton residents.

#### Discussion and Award

Regarding first of the City's four issues, the Union's points out that 75% of Fire Fighters are certified EMT-Paramedics, with Ch. Dawson having indicated he never called in anyone on overtime for a medic unit and never had an EMT-Paramedic staffing issue. A strong argument in favor of mandating a minimum of EMT-Paramedics on life squads/ambulances is situations of multiple victims. However, with 75% of Fire Fighters being EMT-Paramedic certified, the Conciliator is not convinced the requirement of two EMT-Paramedics on each medic unit is necessary.

The Conciliator is convinced, based on the evidence of record, that a problem resulting from insufficient staffing of EMT-Paramedics will not be an issue, even though they may be on different units. That is, in the event of emergencies with multiple victims, the City, through the dispatch of multiple units, should have sufficient EMT-Paramedics on hand. Importantly, the City's proposed language provides the Chief with needed flexibility to cut down on overtime costs.

Regarding the Union's concern that the Safety Director may mandate one EMT-Paramedic per medic unit, the Safety Director to date has not interfered with the Chief's current staffing of two EMT-Paramedics, and there is no compelling reason to believe the Safety Director will do so in the future.

The main point in the City's second issue is adding language to require violations of Paragraph B regarding layoffs be appealed through the Hamilton Civil Service Commission. The argument in support of the City's proposal is speculative, with the City offering nothing

more than the argument that appeals through the Commission will likely be less expensive and will take place more quickly than through the grievance procedure.

The Union, on the other hand, is fearful of a biased Commission in that the Hamilton Civil Service Commission is appointed by the City. Moreover, in that layoffs are governed by the Labor Agreement, the resolution process of the Labor Agreement is suited for addressing alleged violations, rather than a Civil Service Commission. The City's argument that layoffs must be in accordance with civil service law, and therefore it is logical the Civil Service Commission hear these appeals, is not compelling. Moreover, as the Union points out, appeals of layoffs through parties' contractual grievance procedures are not unique to this City.

The remaining point regarding the layoff language of Article 7, Paragraph B is clarification that the word "firefighters" encompasses all members of the Bargaining Unit. The Union's proposed language, wherein layoffs are appealed through the grievance procedure, contains such a clarification.

The salient point to be noted regarding the Minimum Manning clause of Paragraph C, is, since the expiration of the clause on December 30, 2012, the reduction in Fire Department overtime costs decreased from \$1.1 million annually to approximately \$80,000.00 at the end of August of this year, or roughly \$120,000.00 per annum. These \$1.1 million in costs resulted from calling in Fire Fighters on overtime to maintain the Minimum Manning as mandated in the Predecessor Agreement. In addition to the overtime costs, to maintain the Minimum Manning level of twenty-four as proposed by the Union, would require hiring nine new Fire Fighters, at an annual cost of \$675,000.00, including roll-ups. This is an expense the City cannot afford given its current fiscal situation.

The Minimum Manning clause, by agreement between the parties, expired on December 31, 2012, and given the City's current fiscal difficulties, the Conciliator, while agreeing Minimum Manning increases public safety and the safety of Bargaining Unit Members, views it as impossible for the City to finance the Union's Minimum Manning proposal. Given the City's fiscal situation, the City must be provided the flexibility to staff its Fire Department to best provide service within its budgetary constraints.

The Conciliator awards the City's proposed language for Paragraph A, and, as requested by the City, the elimination of Paragraph C in the Predecessor Agreement. The Conciliator

awards the Union's proposed language regarding Paragraph B. The language of Article 7 of the Successor Agreement is to read:

Article 7  
Work Complement

A. The Municipality agrees that, the aerial tower, each engine company and each quint utilized as a pumper/quint shall be manned by not less than one (1) officer or acting officer, one (1) certified operator/driver, and one (1) firefighter. Life Squads/Ambulances shall be manned by not less than one (1) State of Ohio certified EMT-Paramedics. Those units utilized as "Reserve Squads" shall not be subject to EMT-Paramedic staffing requirements.

B. The Municipality agrees that if they intend to implement a reduction in force of the number of firefighters and other employees covered by this Agreement, they will follow the process and procedures of the Ohio Revised Code, Civil Service, Layoffs, 124.06; 124.321 to 124.328 and 124.37. Any violations of this section shall be appealable through the grievance procedure.

Article 9 – Work Week

The parties reached tentative agreement on Paragraphs B through D. Regarding Paragraph A, the City proposes to:

- Increase work week hours from 48 to 50 (all references and assumptions in contract relating to average work week to reflect this change). Paragraph A & throughout contract where applicable.

The Union proposes the Fact-Finder's recommendation, a continuation of the forty-eight hour workweek.

Argument of Parties

Given the expectation of lower 2013 and 2014 carryover balances, the City indicates deviating from the Fact-Finder's recommendation on this issue is justified, and points out that it modified its proposal from fifty-two hours per week to fifty. The City notes that for Fire Fighters to reach a forty-eight hour workweek, they receive seventeen or eighteen Kelly Days per year. What this means, the City states, is that through overtime, the City, throughout the year, is covering for ninety employees who are off on Kelly Days.

The City also notes that according to its comparable communities and the Berkshire Report, Hamilton Fire Fighters are at the high end of the spectrum in terms of Kelly Days, and at the low end of the spectrum in terms of hours worked per week. The increase in the work-week will reduce the number of Kelly Days per year from the current 17.38 to 13.52, thereby dropping overtime costs, and will not affect employees' annual salary.

The Union rejects the City's contention that salary will not be affected. An increase in the number of hours worked per week without a commensurate increase in salary, the Union emphasizes, is tantamount to a reduction in the hourly wage rate. No other City employees have been asked to take an hourly reduction in salary. Moreover, the Union continues, to gain the forty-eight hour workweek in the Predecessor Agreement, the Union conceded sixteen hours of holiday pay. This was done, the Union claims, to balance the schedule in order to meet the twenty-eight day overtime cycle of the FLSA.

The Union also points out that the workweek of forty-eight hours obtained through holiday leave concessions was reached through bargaining to mutual agreement. The Union notes that the City proposes increasing the workweek, without returning the conceded holiday leave. The Union points out that taking leave as a whole, if the City's proposal is granted without the return of holiday leave, and taking vacation time into account, Hamilton Fire Fighters will be working 2,480 hours per year. Out of its comparable communities, only two work this number of hours per year. Of its comparables, Youngstown and Springfield are also distressed cities, and their Fire Fighters annually work 2,380 and 2,360 hours, respectively.

#### Discussion and Award

The Conciliator agrees with the Union that an hourly increase in the workweek without a concomitant salary increase is tantamount to a decrease in the hourly wage rate. These Bargaining Unit Members would be the only City employee receiving an hourly wage reduction, which, as the Fact-Finder noted, cannot be considered "shared sacrifice" by members of this Bargaining Unit compared to other City employees. It is also noted the number of hours worked per week, if the City's proposed language were to be granted, places Hamilton Fire Fighters at the high end of the spectrum in terms of total hours worked annually.

In the view of the Conciliator, the City's proposed language increasing the workweek without some concession of the recently conceded holiday time, through mutually bargained agreement, places too much of the City's attempt to decrease expenditures on this specific Bargaining Unit. Regarding Article 9, Paragraph A, the Conciliator awards the Union's proposed language:

#### ARTICLE 9 WORK WEEK

- A. The average work week of an employee working on the basis of a 24-hour duty tour shall be forty-eight (48) hours.

#### Article 10 – Kelly Day

With the exception of the Paragraph dealing with the hours of the workweek, the parties reached tentative agreement on all remaining Paragraphs in Article 10. The Paragraph pertaining to workweek has been discussed above. The Union's proposed language is awarded:

- C. The average work week shall be forty eight (48) hours.

#### Article 12 – Wages, General Adjustment

The parties reached tentative agreement on Paragraphs E and F, and the proposal to modify the wage scale to reflect a fifty hour workweek has been rendered moot. Regarding the open Paragraphs, in its position statement, the City proposes:

- Wage freeze for duration of collective bargaining agreement. Wage scale.
- Remove expired language. Paragraphs A-D.

The Union proposes no wage increases for 2013 and 2014, and a 1.5% wage increase for all Bargaining Unit positions in the final year of the Successor Agreement. That wage increase, the Union proposes, is to take effect January 1, 2015.

#### Argument of Parties

The Union points out that it is in the third year of a wage freeze, and the City's proposal would result in five years of no wage increases. The FOP has agreed to a five-year wage freeze, however, the Union emphasizes the City's amendment to its Collective Bargaining Agreement with FOP Lodge 38. In that Amendment, executed in 2011, the City granted each FOP member an additional sixty hours of comp time, and, effective the first pay period in calendar year 2012, an additional sixty hours. Moreover, the Union continues, as of August 31, 2014, FOP members are to be paid for all banked comp time above two-hundred-forty hours.

Longevity for FOP Lodge 38 was increased by 1% while the City proposes eliminating Longevity from this Bargaining Unit, and, as will be discussed more fully below, each FOP member received \$1,500.00 when the number of its members fell to one-hundred-four, plus an additional \$500.00 based on seniority. The other FOP Unit also received a 1% Lon-

gevity increase as well as an increase in education achievement pay. In February 2012, all non-union City employees received a one-time Special Pay in the amount of \$1,000.00.

The City states that FOP Lodge 38 settled for a wage freeze through 2015, for a total of five years, and all other Unions have three year freezes through 2013. Non-Union employees have had no wage increases from 2008 through 2013, for a total of six years. Moreover, the City continues, comparing the Fire Department budget to the Police Department's establishes a decrease of 5% in actual Police expenditures, to an increase in Fire Department expenditures of 8%.

The City looks to the overall expenses of the Police Department vis.-a-vis. the Fire Department, and notes that eighty percent of General Fund expenditures are for personnel costs. The Police Department has had many more reductions in its costs compared to the Fire Department. FOP Lodge 38, the City points out, with concessions dating back to 2009 for Fitness and Education, five furlough days, and Clothing Allowance, totals a savings of \$352,804.00. For the FOP Corrections Officers Unit, concessions for the same period amount to \$970,960.00. Moreover, the City is decommissioning its 911 Call Center, which will result in a savings of \$500,000.00 per year.

Finally, the City emphasizes that the average annual salary, including benefits, is higher for a Fire Fighter than for a Police Officer. The Union contends annual salaries of Police versus Fire is not comparing apples to apples. Most Fire Fighters are certified paramedics, that is, they have dual certifications, while Police Officers have only a single certification.

#### Discussion and Award

Dual certifications notwithstanding, evidence of record convinces the Conciliator that the City's finances will not improve through the end of the Successor Agreement. That is, the City will be in no better fiscal condition than it currently finds itself, and will be unable to meet the raise proposed by the Union, however modest over the life of the Agreement. Additionally, expired language is to be removed, and the rank differential between Captain and Deputy Chief will remain unchanged in the Successor Agreement.



The Conciliator awards the City's proposed language:

Article 12

Wages, General Adjustment

Paragraphs A through D in the Successor Agreement are to be removed in the Predecessor Agreement.

A. Wage rates for members of the bargaining unit shall be in accordance with Appendix A to this Agreement.

The wage differential between captains and deputy chiefs shall be 15%.

Article 15 – Longevity

The City proposes:

- Suspend longevity pay for 2014-2015.

The Union proposes:

- Longevity step advancement be frozen for 2014 and reinstated January 1, 2015.

Argument of Parties

Each party feels the Fact-Finder recommended its proposal. The City points to its argument to the Fact-Finder, wherein the City proposed, "During the period of this Agreement, calendar years 2013 through 2015, employees shall not receive longevity pay." In his report, the Fact-Finder indicated the City's proposal had merit, and recommended, ". . . that the Merit Adjustments provided for in Article 15 be frozen for 2013 and 2014, but be fully reinstated effective January 1, 2015." That is, the City believes, the Fact-Finder recommended its proposal, but used the word "frozen" instead of "suspended."

The City is no longer proposing Longevity be suspended in 2013, but is, rather, currently proposing Longevity be suspended in 2014 and 2015. The City's proposal has been modified since Fact-Finding to avoid situations of employees being required to disgorge Longevity Pay received in 2013.

In support of its argument, the City provided tables of Longevity Pay by Fire Fighter that indicates a Longevity freeze only results in a savings in 2014 of \$10,545.00, as opposed to a suspension that would result in a savings of \$478,375.00 in that same year. With a suspension, there would be a total saving of \$956,736.00 through 2015. The City does not believe the minimal savings under a freeze is what the Fact-Finder intended in his report.

The Union believes the Fact-Finder recommended employees continue to receive Longevity, with each Fire Fighter remaining frozen in the current step until 2015. Longevity is based on percentage, and, the Union emphasizes, Fire Fighters with twelve to fifteen years service receive approximately \$3,500.00 in Longevity, with higher seniority Fire Fighters receiving greater amounts. Most employees live payday-to-payday, the Union argues, and suspending Longevity is tantamount to a wage reduction. No other employees in the City have had such a large amount of cash taken out of their pockets as what the City is proposing for Fire Fighters.

#### Discussion and Award

The Conciliator is in agreement with the Union's position. To require an annual loss of between \$1,180.00 on the low end to a high of \$5,903.00 in Longevity pay, based on the City's tables for 2013, would be, in the Conciliator's view, too draconian a measure to assist the City in balancing its budget. The Conciliator awards the Union's proposal. The following paragraph is to be added at the end of Article 15, Section 1:

Effective January 1, 2014 employees will not be permitted to advance as per the schedule in Section 1. This freeze in advancement is only for the period of January 1, 2014 through December 31, 2014.

#### Article 21 – Vacation

The parties have reached tentative agreement on all provisions of Article 21, with the exception of Section 2.A. Regarding Section 2.A, the City proposes to reduce the number of persons permitted off on any one date from seven to four. The Union proposes current language.

The City stands on the Fact-Finder's recommendation of reducing the number from seven to four. This change, the City contends, would provide the Chief with more flexibility in scheduling. The Fact-Finder noted the Union provided no compelling argument against the City's proposed change. At the Conciliation Hearing, however, the Union argued that permitting only four off per day will be insufficient to accommodate vacations and Kelly Days. The Union then points out that Article 21, Section 1.C provides that accrued vacation is to be removed from an employee's credit unless the balance is approved by the City Manager. While it is also noted that Section 1.J provides employees are to be compensated for accrued but un-

used vacation, employees, nevertheless, may prefer time away from the job with their families or on personal business rather than being compensated for vacation that was unused due to an insufficient number of openings to accommodate all vacation and Kelly Days.

The City was awarded its proposal for a reduced minimum staffing of two EMT/Paramedics to one per Medic Unit, and was awarded its proposal for the elimination of Minimum Manning in Article 7. The City desired the elimination of both of those issues to provide the Chief with more flexibility in scheduling. The Conciliator is not convinced the City needs a limitation on the number of Fire Fighters that can be off per day on vacation and Kelly Days to provide still more scheduling flexibility. The Union's proposal is awarded. That is, the language of Article 21, Section 2.A is to be carried forward into the Successor Agreement.

#### Article 23 – Attendance Incentive

The City proposes deleting the entire article, and the Union proposes carrying Article 23 forward unchanged.

#### Argument of Parties

According to the City, Attendance Incentive, that is, paying someone to show up for work, is obsolete. In light of the City's current economic difficulties, several other Unions have suspended the Attendance Incentive.

In other Bargaining Units, the Union points out, Attendance Incentive was suspended, not eliminated as the City proposes here. In point of fact, the Attendance Incentive was eliminated for non-Union employees, while all other Bargaining Units retained the incentive with the exception of the two AFSCME Units. In those Units, the City points out, the Incentive was tied to the Incentive of non-Union employees. In that non-Union employees no longer receive the Attendance Incentive, the two AFSCME Units also no longer receive the Incentive. The smaller of the two FOP Units also suspended its Attendance Incentive.

The Union emphasizes that the FOP recently negotiated its Agreement, and the new Agreement provides for an Attendance Incentive based on a four-month period. For every four months of perfect attendance, an FOP Member receives four hours of comp time, and each Member who has perfect attendance for the year receives an additional twelve hours

comp time. Fire Fighters, the Union points out, must have perfect attendance for the entire year to receive a \$300.00 Incentive. One absence during the year results in an Incentive of \$175.00 and two absences results in a \$100.00 Incentive.

#### Discussion and Award

The Attendance Incentive was suspended or eliminated from the Agreements of only three of the City's Unions, and the Conciliator does not find compelling that it should be removed from this Unit's Successor Agreement on the claim that it is now obsolete. As the Union noted, such provisions are common, both internally and externally. The Conciliator awards the Union's proposal. That is, Article 23 is to be carried forward unchanged into the Successor Agreement.

#### Article 30 – Medical Insurance

In its position statement, the City identifies four issues as follows:

- Remove requirement of types of plans City must provide. Modify authority of health care committee to advisory. Add language that permits the City to change content of insurance plan or insurance carrier. Section 1.
- Limit City share of premiums to 85%, and provide that employees must pay at least 85%<sup>2</sup> or the amount required of other City employees. Add meet and discuss language relating to situations when premium costs increase. Section 1.
- Add language clarifying that costs of health insurance are understood to impact total economic proposals in successor negotiations. Section 1.
- Remove requirement that City pay its portion of premiums for employees for six months following expiration of an employee's sick leave. Section 2.

These issues, the City points out, were all recommended by the Fact-Finder.

In its position statement, the Union proposes minor grammatical changes which, if granted, would have no material effect upon the interpretation or application of this article.

#### Argument of Parties

Regarding the Article 30 Issues, Tim Werdmann, Deputy City Manager, testified for the City. From 2003 through 2010, Mr. Werdmann was the City's primary representative during negotiations with its Unions. Mr. Werdmann also serves as the Chairman of the Joint Insurance Committee.

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<sup>2</sup> This figure if 85% is obviously a typographical error in the City's position statement. This figure should be 15% as indicated in the City's proposed Contract language.

That Committee consists of a representative and alternate from both represented and unrepresented employees in each City department. The Committee reviews options, plans, costs, and other factors relative to insurance, and was intended to be consensus based. As time progressed, Mr. Werdmann testified, the Committee meetings turned into bargaining sessions rather than meetings wherein consensus is sought.

Double-digit premium increases have been the recent experience of the City, however, changes to some plans have resulted in single-digit increases to premiums for those plans. A monthly report compiled by the City's hospitalization carrier through May 2013 indicates that for the preceding twelve months claims outpaced premiums collected resulting in a monthly loss ratio of 110%. Hospitalization carriers, the City states, expect to be at a loss ratio of 80% to 82%. This, the City emphasizes, will affect premiums in 2014.

After a review of the medical care expenditure category of the Consumer Price Index, the City established a 2014 budget parameter of \$6.3 million for the Health Benefits Committee. The \$6.3 million figure constitutes an increase of 2.8% over 2013, and the City admits it will be required to modify benefits to reach its budget parameter.

To control costs, Mr. Werdmann continued, the City requires flexibility from all Unions, not just the Fire Department. On cross-examination, however, it was admitted the City attempted to gain a concession from the larger of the City's FOP Units, Lodge 38, that it is currently proposing to the Fire Department, but was unsuccessful. The language of the current FOP Agreement is similar to the language in this Union's Predecessor Agreement. The Conciliator notes a Memorandum of Agreement between the City and FOP Lodge 38 provides for a health care reopener on August 1, 2014. No such provision is contained in either party's proposal.

The City points out that the smaller of its FOP units, the Corrections/Special Police Officers Unit, has accepted language similar to the language proposed for the Fire Department, as have AFSCME Local 3169 and AFSCME Local 475. Those Agreements have been negotiated in the last three months, and the City is proposing similar language to two other Unions. The City maintains it needs the flexibility it would obtain by bringing everyone under the same umbrella.

The Union argues that what the City claims it is requesting versus its proposed language must be considered. The Union proposes language that requires the City to contribute

85% of the total premium costs, as in the Predecessor Agreement, and points out FOP Lodge 38 has such language in its current Agreement. Moreover, the Union notes, the City proposes to delete catastrophic coverage found in Section 2(B), of Article 30.

The Union also argues it is not true, as the City claims, that the City's proposed language is a trend toward which other communities are moving. The Union points to Middletown, Springfield, Youngstown, and Decatur, Illinois as comparable communities, and notes employee contributions toward premiums are less than in Hamilton. Springfield and Youngstown, the Union emphasizes, are also distressed cities. The City is attempting to remove issues of health care coverage from the bargaining table, the Union claims, subjecting Bargaining Unit Members to future problems with coverage.

#### Discussion and Award

The main reason for the City's proposed language is the reduction in costs of providing its employees with Health Care coverage. It proposes to do this by the elimination of contractual mandates of types of coverage, which must be recommended by the Joint Health/Benefits Subcommittee, the amount it must contribute toward coverage, and the requirement of providing coverage for six months after expiration of an employee's sick leave.

The City is attempting to gain this flexibility from all its Unions, not only this Unit. This flexibility will permit it more control over the amount of premium increases, and assist in attaining its stated goal of no more than a 2.8% increase in 2014 over 2013. The current loss ratio of 110% will certainly contribute to continued steep rises in premiums.

The smaller of the City's two FOP units has accepted the language proposed by the City to this Bargaining Unit, as have two AFSCME Locals. The City will be presenting the same language to two other Unions. FOP Lodge 38 declined the City's proposed language, however, it did agree to a reopener on August 1, 2014.

In the view of the Conciliator, the difficulty with the City's proposals is the City's total control over Health Care provided to this Unit. Under its proposals, the Joint Health/Benefits Subcommittee will be advisory only, the City's contribution to premiums can be reduced to any figure it desires, and the catastrophic coverage would be eliminated. To attain its stated goal of permitting no more than a 2.3% increase in its premium costs in 2014 over 2013, there

can be no question that the City will be required to implement reductions in the type of coverage, or the percentage of its contribution.

With this Union having lost Minimum Manning resulting in reduced overtime pay, to permit the City to chose to decrease coverage to Bargaining Unit Members or increase their premiums to what it feels will assist it in balancing its budget, is unreasonable. While the Conciliator is cognizant that the City is not in business of providing overtime for its employees, the loss of overtime, from an aggregate of \$1.1 million in 2012 to \$80,000.00 at the time of the hearing, combined with other concessions and losses, is too great a loss for these Bargaining Unit Members.

It must be considered that unilateral changes in coverage and premium contributions can have a catastrophic impact on Bargaining Unit Members and their families, both in terms of their physical well-being as well as increased out-of-pocket premium costs deducted from their salaries. Such deductions are tantamount to salary decreases.

The Conciliator awards the Union's proposed language, to wit:

ARTICLE 30  
MEDICAL INSURANCE

Section 1— Costs and Plan Designs

The City shall provide to full-time permanent employees, on either a single, single + 1, or family plan basis, a plan of health insurance that has been recommended by the joint health/benefits subcommittee. The current plan is described as a managed care, point of service plan. That plan will be packaged with a vision plan and dental coverage unless the subcommittee makes adjustments subsequent plan years. The City and the employees shall share in the overall premium cost of the insurance plan in the following manner: The City shall contribute 85% of the total premium cost and the employees shall contribute 15% of the total premium cost through payroll deduction.

Section 2 — Eligibility

A. Original appointees to the class of Firefighter shall be eligible for coverage under the medical/hospital/surgical plan on the monthly billing date next following the employee's completion of his/her first thirty (30) calendar days of employment.

B. The Municipality will pay its portion of premiums for hospitalization, surgical-medical and life insurance for a period not to exceed six (6) months beyond the expiration of the respective employee's accumulated sick leave.

C. In those instances in which the Municipality employs both spouses of the family unit, the Municipality will be required to provide only one (1) family plan of coverage in accordance with the choice of the affected individuals.

However, if these individuals fail to agree on the designated spouse, the plan will be applied to the spouse whose birthday occurs first. An open enroll-

ment period for such selections and designations shall be made available at least annually.

Section 3 — Health & Benefits Committee

A. IAFF Local 20 agrees to participate in a Joint Insurance Committee and to adhere to Committee recommendations of cost-saving administration of benefits suggestions made by the committee.

B. The parties agree to meet and discuss regarding the increase in premium cost for the purpose of discussing alternatives to maintain cost, including, but not limited to, alternate insurance coverage, and alternate means of providing coverage. The Union recognizes the right of the Employer to secure alternate insurance carriers and to modify insurance coverage, which measures may be used to maintain or reduce premium costs.

C. The parties agree that the City may periodically change the insurance plan and/or the insurance carrier after discussions with representatives of the affected bargaining units.

Article 35 – Educational Assistance Program

The City proposes removing Article 35, while the Union proposes carrying the current language into the Successor Agreement.

Argument of Parties

The City argues this benefit is unique to this Bargaining Unit. Other Bargaining Units may receive additional pay for having an Associate's or Bachelor's degree, but do not receive tuition reimbursement for obtaining a degree. The cost to the City in 2012 for this program was \$9,500.00.

The Union points to the FOP Units, while emphasizing those members receive additional pay each year for Associate's and Bachelor's degrees, something Fire Fighters do not receive. In lieu of additional salary, Fire Fighter receive tuition reimbursement.

Discussion and Award

The Conciliator notes that in order to receive tuition reimbursement, the course of study must be pre-approved by the Chief and must be job related, related to the Fire Fighter's current position, or to future City development and promotion. Additionally, Fire Fighters must participate in University level courses on their personal time. As the Fact-Finder indicated, the cost to the City for this program is minimal, and the nature of work today as a Fire Fighter or Paramedic requires an educated workforce. That is, this program provides value to the City at minimal cost.



The Conciliator awards the Union's proposal. That is, the language of Article 35 is to be carried forward into the Successor Agreement.

#### Article 46 – Duration of Agreement

For Fact-Finding, the City proposed the Successor Agreement be effective on the date of execution through December 31, 2015, and the Union proposed it be effective January 1, 2013 through December 31, 2015. For Conciliation, the positions of the parties have reversed, with the City now proposing the duration to be January 1, 2013 through December 31, 2015, and the Union proposing the Successor Agreement being effective on the date of execution through December 31, 2015.

The reason advanced by the Union at the hearing for its current position is that the City proposed amending the workweek without specifying a date the change would take effect. The Union is concerned that a change in workweek and an effective date of January 1, 2013 of the Successor Agreement could result in givebacks being demanded of Bargaining Unit Members. At the hearing, the City indicated it would not agree to amend its proposal to clarify it would not be seeking givebacks should a change in the workweek be awarded.

In that the workweek was not changed, this issue appears to be rendered moot. However, to ensure changes awarded herein are prospective in nature, and not retroactive, the Conciliator awards the Union's proposed language. To wit:

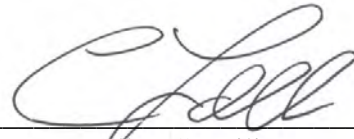
The provisions of this Agreement, except as otherwise herein provided, shall become effective as of the date of execution and shall terminate, supersede and replace the pre-existing agreement and shall remain in full force and effect until and including December 31, 2015 and for successive annual periods thereafter unless not more than ninety (90) and not less than sixty (60) days prior to the end of the original term or any annual period thereafter either party shall serve written notice upon the other of its interest to alter, modify or terminate the provisions of this Agreement. The party first filing a Notice to Negotiate with the State Employment Relations Board shall submit its proposal to the other party within twenty (20) calendar days of the filing of such notice.

#### MEDIATION AND AGREEMENT

Prior to the commencement of the hearing, mediation was offered by the Conciliator, however, in that settlement discussions have been ongoing, and settlement reached on numerous issues prior to the hearing, mediation was declined. The parties also engaged in settlement discussion after the hearing.

Settlement was reached on the following issues, and at the request of the Parties and with permission of the Conciliator, said settlement agreements are included herein as the award of the Conciliator:

Policy, Articles 1 through 6, 8, 11, 13, 14, 16 through 20, 22, 24 through 29, 31 through 34, 36 through 45, and Articles 9, 10, 12, and 21 with the exception of those provisions of Articles 9, 10, 12, and 21 awarded above.



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Colman R. Lafka, Conciliator

Dated: October 1, 2013  
Madison, Lake County, Ohio