CONCILIATION REPORT

In the Matter of Conciliation	)	**State Employment Relations Board**
Between	)	Case No. 12-MED-12-1407
CITY OF CLEVELAND, OHIO	)	Hearing: June 9 and 10, 2014
And	)	Report: July 7, 2014
CLEVELAND ASSOCIATION OF RESCUE EMPLOYEES ILA Local 1975	)	Paul F. Gerhart, Conciliator

Present for the Hearing

For City of Cleveland:

Jon Dileno, Esq., Zashin & Rich, LPA, Cleveland, Ohio

Nicole Carlton, Commissioner, EMS

Nycole West, Labor Relations Manager, City of Cleveland

For Cleveland Association of Rescue Employees, ILA Local 1975:

Susannah Muskovitz, Esq., Muskovitz & Lemmerbrock, LLC, Cleveland, Ohio

Mary Schultz, Financial Expert Witness

Orlando Wheeler, President, CARE

Marilyn Vasicek, Secretary, CARE Paul

Herbert Del Ville, First Vice Pres., CARE

Paul Melhuish, Second Vice Pres., CARE

Background

The Cleveland Association of Rescue Employees (CARE), ILA Local 1975 (the Union) is the duly recognized agent for purposes of collective bargaining for approximately 240 Emergency Medical Technicians, Emergency Medical Dispatchers, Paramedics and Sergeants in the Division of Emergency Medical Service, Cleveland, Ohio (the City).

The parties' most recent collective bargaining agreement (Agreement, UX 3) was due to expire by its own terms on March 31, 2013. Such Agreement includes the following:

> ARTICLE XXVII
>
> VOLUNTARY DISPUTE SETTLEMENT PROCEDURE
>
> Either the City or the Union may initiate negotiations by letter received by the other party no earlier than 150 days before and no later than 120 days before the Agreement expires. The parties shall hold their first negotiation session within fifteen (15) days of notification, at which time they will jointly notify S.E.R.B. of the commencement of negotiations and impasse procedures identified in this Agreement in place of the procedure alternatively provided and then in effect under Rev. Code 4117.14 and related sections.
>
> All negotiation sessions shall be closed to the public and media and conducted during times mutually agreed upon by the respective parties.
>
> If within forty-five (45) days before the nominal expiration of the Agreement, or a date mutually agreed upon, tentative agreement on all items is not reached, either party may use the services of the Federal Mediation and Conciliation Service (FMCS) or S.E.R.B. mediation, as follows:
>
> A. FMCS or S.E.R.B. shall be contacted by either party so that mediation may start within three (3) days after petitioning FMCS or S.E.R.B. on the date mutually agreed upon.
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> B. Once started, mediation shall continue until tentative agreement is reached on all unresolved items with mediation sessions being held at the direction of the mediator.
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> In the event parties are unable to reach agreement by March 31, 2010 or a date mutually agreed upon, either of the parties may request a list of arbitrators from either the State Employment Relations Board or the American Arbitration Association and the parties shall select an arbitrator by an alternate strike-off method, beginning with the Union. As soon as practical thereafter, the parties' positions with respect to all unresolved issues will be presented to the arbitrator for a final and binding decision.

> The arbitrator shall select either the City's proposal or the Union's proposal on an issue-by-issue basis.

The parties commenced negotiations pursuant to the above provision of their 2010-2013 Agreement. They also continued to work under the terms of such Agreement while their negotiations progressed. Sometime after September 2013, a federal mediator assisted in the process and many of the open issues that were initially presented for negotiation were tentatively resolved. Nevertheless, they were unable to completely resolve all outstanding issues, so on April 2 the undersigned arbitrator (referred to as "conciliator" in ORC 4117) was notified of his appointment pursuant to the above Dispute Settlement Procedure.

By mutual agreement, a hearing was held on June 9 & 10, 2014, at a conference room of the Burke Lakefront Airport Administration building, Cleveland, Ohio beginning about 9:30 AM. Both parties were afforded the opportunity to provide evidence and argument in support of their positions.

Tentatively Agreed Issues

As noted above, the parties have reached tentative agreement on a substantial number of issues. These are set forth in ATTACHMENT A and made a part of this AWARD pursuant to ORC 4117.14 (G)(7)(e).

Criteria for Awards on Unresolved Issues

The parties mutually agreed dispute resolution procedure (Article XXVII, quoted above) provides, "The arbitrator shall select either the City's proposal or the Union's proposal on an issue-by-issue basis." Such procedure does not specify any criteria for use by the arbitrator to make his selection. In this regards, however, the Ohio Revised Code does provide a standard and-well respected list of criteria which have guided the arbitrator here. Such criteria are provided at O.R.C. 4117.14 (G)(7):

> (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 stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The arbitrator in the instant matter has given careful consideration to these criteria as they relate to this dispute.

Ability to Finance

At the outset it is important to take particular note of the evidence concerning the City's ability to finance the proposed contract changes as provided through the testimony of City expert witness, James Gentile, CPA, Assistant Director of Finance for the City, as well as Mary Schultz, CPA, the Union's expert witness. This is necessary because the current and prospective financial condition of the City forms the context for several of the following recommendations.

Mr. Gentile testified concerning the City's financial crises of 2004 and 2010. He noted that in both cases, concessions were made by some unions representing City employees, but for Police and Fire, there were layoffs. The impact is still felt and the City is currently employing a thousand fewer employees than in 2004. He noted that "the sky does fall" on occasion. It is not an idle threat.

The 2008-09 "great recession" brought the City into its 2010 financial crisis as income tax receipts fell by $20 million. The strict hiring freeze implemented at that time is still in place with exceptions made only with the Mayor's approval. At the same time, state funding has been cut. Some union and non-union employees took unpaid furloughs to avoid outright layoffs. For some groups there was a temporary halt to payment of some benefits. There were layoffs for unions that did not accept furloughs or other benefit cuts. These reductions were the only way to meet the budget shortfall.

The City has a "rainy day fund". It tries to add to such fund every year. It is financially prudent to have such a fund in addition to a carry-over balance equal to about 15 percent of the budget. This year it was 10 percent. Each year there is a tendency for expenditures to increase while revenues are decreasing. Public safety increased by 247 employees last year but such increase was aimed at reducing overtime by $3 million. The City has also taken steps to self-insure for its employee medical plans. This year there is also extra pressure for street repair due to the extreme winter of 2013-14.

Mr. Gentile also testified that 10 City employee unions had already settled for the pattern proposed by the City here, 1%, 2% and 2% over a three year agreement. He stated the aggregate general fund impact of a 1% wage increase for all City employees was $3.148 million (CX 13). To emphasize the City's distressed financial state, Mr. Gentile identified the list of deferred maintenance projects totaling 36 pages of about 30 items per page. He also noted that the City is no longer able to issue General Obligation Bonds because the revenue from the City's property tax base is already fully encumbered.

Finally, Mr. Gentile noted that he was concerned about the 1-2-2 wage increase pattern. He characterized it as a "stretch". Anything beyond that level of expenditure would put the city in position for future financial stress. One unexpected event such as the loss of a major employer would tip the balance.

Mary Schultz testified that she too had substantial experience in local government finance. In general, she found nothing to disagree with in Mr. Gentile's exhibits. She noted that the City's budgetary picture was improving, however, despite its structural deficit in 2013. She cited the unusual increases in capital expenditures in 2012-13 for the Justice Tower and other capital projects as well as contributions to the rainy day fund. Thus, the City has been able to achieve a number of its financial objectives.

She agreed that the Government Finance Officers Association recommended a 16% carryover for municipal governments under normal circumstances, but with the caveat that larger entities could be healthy with less. She noted Cleveland's projected carryover is 13% for 2014. [Mr. Gentile noted, however, that such projections do not take into account the retroactive wage increases that are being paid out as union contracts are settled during the course of 2014.] Ms. Schultz noted that the City has been historically conservative in its projections. The September projection for 2012, for example, had been a carryover of only $103,000, but the actual amount, four months later, was over $50 million. For

2013, the projection from a City presentation in February was just over $4 million. The actual carry over in 2013 was over $49 million.

Ms. Schultz noted that over 50 percent of the EMS budget is actually derived from fees for service so that General Fund shortfalls are less of an issue. In her view, the Union's request in the instant dispute was affordable for the City. Ms. Schultz agreed, on cross-examination, however, that such assessment was based only on granting such an increase to the EMS Division – not city-wide for all bargaining units.

Orlando Wheeler, President of CARE, testified that the Union was well aware of past City fiscal crises. In 2010, the Union had agreed to take the cap off comp time accumulation so the City could avoid paying out cash for overtime; and they gave up their clothing allowance to avoid the layoff of 21 Paramedics. Only four were laid off. Mr. Wheeler said there has been a steady increase in run volume and the City has started to hire additional EMS staff.

On cross-examination Mr. Wheeler indicated he works a 12-hour shift with 36 hours one week and 48 the next. He receives a "built in" overtime payment in his "long" weeks which is computed into his regular pay.

Conclusion. The conclusion the arbitrator is compelled to reach is that while the City is hardly on the verge of collapse, the City's financial situation is fragile. As Mr. Gentile testified, an unexpected negative turn of events could put it in peril so prudence demands modesty with respect to the City's economic commitments.

ISSUES IN DISPUTE, ANALYSIS AND RECOMMENDATIONS

The following analysis lists the issues identified by the parties as still in dispute at the time of the hearing ended, describes the positions of the parties at the hearing on such issues, analyses the positions with respect to the criteria outlined above, and awards the more reasonable position of the two that are offered.

1. Base Annual Salaries

Position of the Union. The Union proposed as follows:

- For 2013, there shall be a one percent (1%) wage increase added to the base rates of each classification retroactive to April 1, 2013.
- For 2014, there shall be a three percent (3%) wage increase added to the base rates of each classification retroactive to April 1, 2014.
- For 2015, there shall be a three percent (3%) wage increase added to the base rates of each classification retroactive to April 1, 2015.

Position of the City. The City proposed the following:

- Retroactive to on or about April 1, 2013 – 1% wage increase
- Retroactive to on or about April 1, 2014 – 2% wage increase
- Effective on or about April 1, 2015 – 2% wage increase

(The Step Schedule of Article XXXII shall be modified consistent with the above wage increases.)

Analysis. The parties started their presentations with the City's ability to finance. Their expert witnesses' exchange on this matter has been set forth above in some detail. The conclusion above is that although the City is not in fiscal crisis, its financial condition is fragile. Any unexpected shock could create a structural deficit. Accordingly, only a modest wage increase can be justified.

With respect to comparable EMS units, a comparison is difficult. Virtually all cities in Ohio have combined Fire and EMS into one unit where most if not all paramedics and EMTs are also firefighters. The nearest major city where this is not the case is Pittsburgh where the evidence shows that after annual scheduled overtime of $5017 is added to the pay of Paramedics in Cleveland and other allowances are considered, Cleveland Paramedics are paid about $1400 more per year. New York and Washington, D.C. Paramedics are paid 10 to 25 percent more than Cleveland, but no evidence was adduced regarding the ways in which the actual jobs compare. Moreover, the arbitrator does not consider them relevant because of differences in their environments and cost of living.

Private ambulance and EMS operators in the Cleveland area pay substantially less than Cleveland, and provide fewer benefits, as well (CX 28). As the Union noted, however, with only one or two exceptions, these services are limited to transporting patients from one medical facility to another, so the actual nature of the work is different. Moreover, even where EMS is contracted out to such companies, the suburban environment in which they function is considerably

different from that of a major city like Cleveland and the Union indicated, without rebuttal, that the training is less rigorous. Therefore this data has been given little weight in the arbitrator's consideration of wages.

The most relevant comparisons are within the City of Cleveland, itself. Inasmuch as some Cleveland Firefighters are also paramedics, that comparison is relevant. The Journeyman Firefighter rate with clothing allowances amounts to $56,457 at present while the Paramedic III with Shift differential, scheduled overtime, and clothing allowances amounts to $56,471. Because of shift scheduling differences, the Firefighters are on duty 168 hours more than Paramedics. Accordingly, there is no reason for an extraordinary wage increase based on this comparison.

The most important comparable is the pattern that has already been established across 11 bargaining units in the City, so far. With the well-reasoned Factfinder Report issued by Robert G. Stein on the first day of the hearing in this matter, the pattern of 1% retroactive to April 1, 2013; 2% retroactive to April 1, 2014; and 2% effective April 1, 2015 has been cemented into place.

On balance, in light of the City's fiscal circumstances and the discussion of the City's "ability to finance" discussed above, the City's proposal is the more reasonable.

Award. The City's position is awarded.

2. Master Medic

Position of the Union. The Union proposed the addition of the following paragraph to Article XXXI, Compensation:

> Master Medic – All paramedics who have maintained their functioning status for five (5) years shall be considered Master Medics, and shall be provided a Two Thousand Seven Hundred-Fifty Dollar ($2,750.00) annual payment in addition to their regular base pay (but not rolled into the regular pay), paid out in installments in each regular paycheck. These installments shall be paid so long as the employee is designated as a Functioning Medic.

Position of the City. The City opposes the addition of the Master Medic language and wage increase for Paramedics.

Analysis. The Union proposed the Master Medic to match premiums that have been offered to other safety forces such as the single officer patrol premium for police and the Firefighter-Paramedic premium that was proposed for the new Firefighter contract which has not been ratified. That proposal is where the amount of $2750 was derived.

With integration of EMS and Fire, Paramedics may also have an opportunity to become Firefighter-Paramedics, but there is a substantial disincentive, related to pensions, to take such a step. By state law, the City has contributed considerably more to the pension funds of Firefighters than to the pension funds for EMS Paramedics. The Union sees the Master Medic step increase as a partial compensatory measure in that regard. Another concern is that with integration, Paramedics lose all opportunity for promotion (unless, of course, they move into Firefighter-Paramedic positions). Finally, the Union noted the work load for Paramedics is increasing annually as run volume continues to increase relative to Fire, which continues to decrease (UX 42). This is another rationale, in the Union's view, for providing a premium for experienced Paramedics.

The City opposed the new classification on at least two grounds. First, the City argued that the proposed Master Medic grade is simply a step wage increase for Paramedics already at the top step with no new duties – only longevity. The City argued that even the more experienced Paramedic is not comparable to the Fire-Paramedic rating proposed by the City in the Firefighter negotiations. In fact, upon integration, many of the EMS Paramedics will have the same option to become Fire-Paramedics. Several dozen Fire-Paramedics now exist in the Fire Department and they do not yet currently receive the premium payment proposed by the City.

The City's second concern is cost. Since all Paramedics would eventually be eligible for the Master Medic rate after they achieve five years as a functioning Paramedic, the City computed the eventual annual cost to the City, including pension costs, to be over $700,000. Anticipating that the other safety forces would seek a similar premium step increase at the top of the pay scale, the City estimated that the total cost to the City would be over $8 million per year. Notwithstanding the Union's rebuttal that only half the Paramedics would qualify for the benefit and that Police and Fire had already received special premiums, in years past, there is

no doubt that adding another step onto the pay ladder for Paramedics has significant cost implications.

The arbitrator is sympathetic with many of the Union's arguments regarding the Master Medic classification and pay premium, particularly the added effort that increasing run volume requires. On the other hand, the implications of integration are not fully known as yet. As the duties and responsibilities of the City's present corps of Paramedics become clearer, the new classification may be justified. In short, though the Union's position has merit and may in the future be justified, the time is not yet right for this addition to the Agreement. At this point in time, the City's position is the more reasonable.

Award. The city's position is awarded.

3. Uniform Allowance

The current 2010-2013 Agreement provides for an annual Maintenance Allowance of $200 plus an annual Uniform Allowance of $350.

Position of the Union. The Union proposed that effective March 1, 2014, the Maintenance Allowance be increased to $325, and that effective June 1, 2014, the Uniform Allowance be increased to $475.

Position of the City. The City proposed no change.

Analysis. The Union noted that there had been no change in the allowances for four years but that the costs of both maintenance and new uniforms have gone up. Moreover, the Union asserted that the demands and requirements with respect to uniforms are comparable to the Division of Fire. The increases would only bring them equal to what already exists in Fire and would still be below Police. The City's position is apparently based on the increased cost associated with the allowances.

Although it is not clear to the arbitrator that the actual costs incurred by EMS personnel for the maintenance and purchase of their uniforms has risen by the full $250 that is here requested, it is plain that costs have risen over the past four years. Moreover in light of the impending integration of EMS into Fire, it is reasonable to bring them into line with regard to uniform allowances. The Union's position is therefore the more reasonable.

Award. The Union's position is awarded. Note that in implementing this term of the Agreement, it must be recognized that the allowances have already been paid for the current year (2014). Thus, members of the bargaining unit are entitled only to the increase ($250) in the allowance for 2014 upon the effective date of the new agreement. They would then receive the full allowances in 2015.

4. No-Fault Attendance Policy

Position of the City. The City proposed the following addition to Appendix A of the Agreement:

> The City reserves the right to implement a no-fault attendance policy to replace Appendix A. The City will notify the Union prior to implementing such a policy and will meet and confer with the Union regarding the policy. The Union reserves the right to file a grievance regarding the reasonableness of a newly-implemented policy.

Position of the Union. The Union rejects this proposal and requests no contract change.

Analysis. The City identified the attendance issue as fairly significant. Exclusive of FMLA time, the average sick time used in the EMS Division is 66 hours per year, equivalent to 5½ 12-hour days, excluding FMLA leave. There are higher numbers in other bargaining units, and this is a city-wide issue.

The proposed language would give the City the right to implement a no-fault attendance policy which means employees would accumulate points for using sick leave and eventually be subject to progressive discipline if they exceed specified limits. The problem with the current policy is that it is proof based. The City must prove fraudulent use in order to impose discipline. This is very difficult and even more difficult for this group of employees who have ready access to doctors throughout the City so they can easily obtain doctors' notes.

So far, 10 of the 11 unions for which the City has completed negotiations with ratified contracts have agreed to the language proposed here. For the AFSCME agreement, there is a unique clause that the City believes would ultimately allow the City to implement a no-fault program. The Union's concern

here is that the language "gives the City a blank check" and that the City might adopt a Draconian policy. In fact the language provides for a meet and confer process and also, in the event no agreement is reached, it allows the Union to challenge the reasonableness of the policy before an arbitrator. So there are checks and balances.

These kinds of policies are widely used in union and non-union environments, in the public and private sector, e.g., Cleveland clinic, MetroHealth, Hospital, Cleveland Metro Parks. So it is not outlandish.

The City asserted there are three reasons the City's proposal is reasonable. First, the City has a severe attendance policy that must be addressed. The current policy allows up to 15 days of sick leave and some (not all) employees view these days as paid holidays. Something needs to be done. Second, there are adequate checks and balances in the proposed language that will prevent the City from implementing an unreasonable policy. And third, if it were unreasonable, the City would not have 11 unions already lined up with the language. What is good for them is good for these folks. There is no basis for privileged treatment.

The Union opposes the proposal. At the outset, it noted the negotiated language of the current Agreement, Article IX, Section I, paragraph 1 which effectively says, "if you are sick, you may take sick leave", period. The City claims abuse but this new policy would take an employee, who could be an exemplary employee, who is sick, and gets disciplined because he is sick. This is what the no-fault policy can lead to. As a paramedic, the patient sneezes in his face, and he gets sick, and he gets disciplined.

The contract has an Appendix A concerning attendance that has been there for decades. The policy has been renegotiated several times over the years to change the number of steps and include tardiness. It includes a review of an employee's record if he or she has more than 30 hours of sick leave in a rolling calendar quarter period. Once the employee hits that threshold, every absence must be supported by a doctor's excuse, and the City has the prerogative to verify the excuse by calling the doctor. EMS Sick Abuse records (UX 39) reflect over 100 cases of employee discipline for sick abuse since 2011, so this is not a case where people are not being caught and punished for sick abuse. The policy is strict, but if you are legitimately sick, you are not disciplined.

Comparing EMS with Police and Fire, there are many fewer cases of sick abuse registered for these departments and among the forty or so cases in Fire,

none passed step 1 of the discipline process. The City is clearly able to manage the existing process but they simply don't want to. The problem with the no-fault program is that it will not catch the abuses, but only those that have legitimate illness – themselves or their family members.

Attendance policy has been the subject of negotiation in every round of bargaining since 1992. There have been MOUs as well as arbitration decisions to define patterns of abuse and other matters. During the instant negotiations proposals have been exchanged about changes in the existing contractual provisions without any indication from the City about their desire for a no-fault policy. Only on October 10, 2013, was the present proposal put on the table. At that point, a number of provisions for change had already been tentatively agreed. After that time, even though it was on the table, the no-fault policy was never discussed throughout the remainder of the negotiating sessions.

From the first introduction of the no-fault proposal by the City, the Union has taken the position that they would not write a "blank check". It invited the City to write a no-fault policy that the Union said it would consider. Such a policy must be negotiated, not unilaterally determined by the City. It is unclear how such a policy would affect existing provisions in the contract. The other 10 bargaining units that agreed to the City's proposal are irrelevant. If the City wants a no-fault attendance policy, they should write it up and let the Union read it.

In response to the above Union view of a no-fault absence policy, the City asserted that a no-fault policy does not penalize someone for taking a day off. Moreover, the existing policy has not led to a single termination in the past three years – that is how effective it is. A no-fault policy could not penalize people for taking FMLA leave either.

The history of the City's effort to negotiate the proposed no-fault language included its initial proposal in October 2013 when the Union rejected it out of hand. It was not taken off the table but no further discussions occurred concerning it until the Union asked about it in March 2014. The City then provided additional language but no progress was made.

The existing policy provides for 120 hours of sick leave, all of which can be taken without running afoul of the discipline policies. Some employees manage to exploit the policy. This is unacceptable. The City believes a no-fault policy can be intricate and believes the best approach is to have the right to implement a policy after conferring with all of the City's unions concerning the details of it.

The Union concluded by saying that their existing policy was negotiated, so any revision or replacement policy should be negotiated. The parties will be back at the table in 1½ years. At that time the Union would entertain any concrete proposal the City would like to offer. To take away the negotiated right of employees to sick time and replace it with a unilateral City right to impose a no-fault absenteeism policy is not acceptable.

The arbitrator has carefully considered these alternative views on a no-fault attendance policy. As with any other proposal in this process, the burden is on the "moving party" – the party seeking change – to prove the need for change and in doing so, that its position is the more reasonable. Here, the City is seeking to replace the negotiated Attendance Policy which appears in Appendix A of the 2010-13 Agreement with the unilateral right to impose a new no-fault attendance policy, albeit after engaging in "meet and confer" discussions with the Union concerning such policy.

The City noted that its absenteeism rate for CARE bargaining unit employees averages 66 hours per year out of a total expected working time of 2184 hours or about 3.0%. The arbitrator takes notice that in 2013, the US Bureau of Labor Statistics reported from its Household Survey that health care support workers average about 2.3% absenteeism – among the highest of any category of employees in the survey. Thus, although the Cleveland EMS unit experiences a slightly higher rate of absenteeism than might be expected, the difference is not great. As the City noted in its presentation, other groups of City employees surpass this particular group with respect to absenteeism. It was apparent from the City presentation that its principal focus is on absenteeism in other bargaining units and because of its belief that a uniform system of dealing with absenteeism across all bargaining units was preferable, it made its no-fault proposal here.

Perhaps the most compelling argument against the imposition of the City's proposal on the Union is the history of this issue. As Union counsel noted, the *negotiated* contract provisions have been in the Agreement since at least 1992 – 22 years. Over that period, they have been renegotiated a number of times to address the City's concerns or Union interests. The City's proposal here effectively has the potential to wipe out this history and allow the City to unilaterally impose its own rules for the purpose of controlling absenteeism. In the arbitrator's view, this factor alone carries enough weight to yield a ruling against the proposal. This is particularly in light of the fact noted above, that this bargaining unit does not have an extraordinarily poor absenteeism record.

The arbitrator is familiar with no-fault absenteeism policies on the basis of his role as a grievance arbitrator in many settings. Such systems are *not* inherently unfair or unreasonable particularly since the passage of the Family Medical Leave Act which removed the most serious injury and illness cases from the purview of the no-fault policy. To be reasonable, however, a no-fault plan must be modified to meet the peculiar circumstances of a bargaining unit. It is for this reason that the arbitrator is not convinced that imposing the terms of a single uniform City-wide policy on this bargaining unit is appropriate. This is not to say that a no-fault policy cannot be crafted for this bargaining unit – only that such a policy should take into account the circumstances peculiar to this unit. Further, in accord with the previous paragraph and in light of the history of the attendance issue in this bargaining unit, it would be better left to bilateral negotiation than unilateral establishment by the City.

Accordingly, the arbitrator must conclude that the Union's proposal for no change in the new agreement is the more reasonable.

Award. The Union's position is awarded.

5. Integration of Fire and EMS

For the past several years the City and its affected unions have been engaged in an effort to integrate the Fire and EMS Divisions. To that end, CARE and the City have reached a tentative agreement with respect to a significant modification to Article XLVIII, Work Jurisdiction and Integration. The only outstanding matter in this regard is with respect to paragraph 7 of Appendix C which is associated with the integration of the two Divisions.

Position of the Union. The Union proposed the addition of the following to Paragraph 7 as it presently appears in Appendix C. (See ATTACHMENT A, p41):

> The parties agree that the age restrictions of R.C. Section 124.42 and City ordinance Section 135.071(b) regarding original appointment as a firefighter shall not apply to Division of EMS paramedics who were employed by the City as of March 1, 2014. However, such employees will not be permitted more than one opportunity to enter the Fire Training Academy.

Position of the City. The City opposed this addition.

Analysis. The Union argues that it is essential for Paramedics and other EMS personnel to become fully functioning members of the new integrated Fire-EMS Division if they are to benefit from the integration and to avoid discrimination in work assignment and workload. The Union's concern is that Firefighter-Paramedics in the new Division will be held in reserve to respond to fire scenes while those who hold only single-role Paramedic status will be assigned to respond to accident, injury and illness calls. This is a logical strategy since the Firefighter-Paramedics can assist at a fire scene in a wider set of roles than can a Paramedic. It would, nonetheless, lead to disparate workloads since, as noted elsewhere in this Award, the pattern over the recent past has been for fire related runs to decline while EMS runs have increased.

The City's only apparent reservation about accepting the Union's proposal is the legal one. A potential impediment to bringing all Paramedics into full status as Firefighter-Paramedics is the age restriction in Ohio R.C. Section 124.42 and City Ordinance Section 135.071(b). Both contain an age limit of 40 for new recruits into the Fire Academy. Since many of the CARE Paramedics are over 40, they would effectively be foreclosed from the benefits of integration if this limit were applied to them.

The Union offered the following to counter the City's concerns:

1. ORC 124.42 places age restrictions on an "original appointment as a firefighter" in a fire department. Under the MOU already agreed to, it is clear that these are promoted positions, not initial appointments. As a result, the statute does not apply. In fact, under Section 11 of the MOU (which has been agreed to by the parties), the language states, "If an employee had previously been classified as a single-role paramedic, the position of Firefighter Medic shall be considered a promotion."

2. The Collective Bargaining Act specifically provides that language in a collective bargaining agreement supersedes state laws, with the exception of specific statutes designated under Section 4117.10(A). Age restrictions for firefighters are not specified. As a result, there is no question that the CBA between the City of Cleveland and CARE can supersede any age restrictions in state law.

3. Article XXXIII of the current CBA is titled Legality, and provides that if it is determined by proper authority that any provision of the CBA is in conflict with law, that the provision is null and void and shall not affect the validity of the remaining paragraphs of the CBA. That language protects both parties from any argument that the arbitrator may not rule on the merits of the parties respective proposals on the Integration MOU.

The arbitrator is persuaded by the Union's argument that the Paramedics in the City's EMS unit cannot be considered new recruits into the Fire Division. This is particularly so if the Collective Bargaining Agreement covering the newly integrated Division of Fire and EMS contains a provision for premium pay for those achieving Firefighter-Paramedic status. That job would obviously be promotional. Moreover, the parties are authorized by the terms of ORC 4117.10 (A) to disregard the age restriction of ORC 124.42. Finally, in consideration of the Union's basic argument for fairness, the arbitrator is compelled to find that the Union's proposal which would allow Paramedics to take full advantage of integration is the more reasonable.

Award. The Union's position is awarded.

ARBITRATOR/CONCILIATOR

Grand County, Colorado
July 7, 2014