

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Conciliation Between:

The City of Mansfield, Ohio

Case No. 2013 MED-01-0013

and

Conciliation Award

International Association of Fire Fighters
Local 266

Margaret Nancy Johnson
Conciliator

Statement of the Case

This matter came on for hearing on March 18, 2014, in a conference room at City Hall, in Mansfield, Ohio. Having been mutually selected by the parties, Margaret Nancy Johnson was appointed by the State Employment Relations Board, hereinafter "SERB," to preside as Conciliator. The City of Mansfield, hereinafter "City," was represented by Mark Lucas, President, Clemans, Nelson and Associates. Kevin Rader, principal with Arnett Rader Consulting, Inc., argued the case on behalf of Local 266, International Association of Fire Fighters, hereinafter "Union," or "IAFF."

With a population of approximately 47,200, Mansfield is the principal city and county seat of Richland County, located in the north-central area of the state. The bargaining unit engages in fire prevention and suppression, as well as in emergency medical services. Currently, the unit consists of approximately 75 firefighters and 11 Captains, including about 40 paramedics.

The parties herein have had a lengthy bargaining history, with their most recent Agreement having an expiration date of March 31, 2013. Negotiations for a successor contract have occurred in the context of Fiscal Emergency, more fully discussed hereinafter. Unable to reach agreement, the parties engaged in fact-finding with recommendations for resolution being issued in a Report dated November 18, 2013.

Rejection by the Union of the Recommendations of the Fact-finder gives rise to this Conciliation proceeding. By agreement the terms of the current agreement will remain in effect until the conclusion of these impasse procedures. Additionally, the parties have entered into 4117.14(G)(11) waiver to the extent necessary to allow for economic increases to be retroactive to April 1, 2013. Tentative Agreements on issues not submitted to Conciliation are incorporated in this Award as if fully rewritten herein. During these impasse proceedings, the parties entered into additional agreement on Article 2.1, Wages; Article 23.5, Holidays; and Article 24, Insurance. These Agreements are also incorporated herein as if fully rewritten.

Prior to convening for an evidentiary hearing, the parties had submitted timely Position Statements setting forth final offers on the issues in contention. At the hearing the City and the Union had the opportunity to enter into the record an opening statement, argument, sworn

testimony and documentary evidence supportive of respective positions taken by the parties. The parties mutually waived a transcript and agreed that the record of the Conciliator as well as the documents submitted into evidence constitute the entire record of the proceedings. This Conciliation Award is now issued in accordance with statutory mandates.

Fiscal Emergency

At the time of this proceeding, the City of Mansfield remained in the state of fiscal emergency declared on August 19, 2010, by the Auditor of the State, hereinafter "AOS" (See City Tab 7.H). In the presentation of its case, the City called upon Nita Hendryx from the Office of the AOS to describe the conditions and processes for cities under fiscal emergency. Ms. Hendryx testified that in the case of the City substantial deficit balances in funds, set forth in detail in the Fiscal Emergency Analysis, triggered the declaration of fiscal emergency. Pursuant to the declaration, a seven (7) person Financial Planning and Supervision Commission including representatives from the State and the City, was established to assist in formulating a recovery plan to guide the City out of its financial crisis. Ms. Hendryx testified that the City remains in fiscal emergency until it can demonstrate ability to balance its budget for a five year period.

Project Manager with the AOS, Laura Brown, provided further testimony as to the financial oversight of the City by her office. Testimony was elicited as to the technical and support services rendered by the AOS to the City, principally through the Local Government Services, or "LGS." Indeed, from financial documents prepared by the City, LGS updates five year summaries two of which have been presented for review in this proceeding.

Pursuant to its statutory authority, on June 12, 2011, the AOS conducted and issued a performance audit including a review of the Fire Department (See City Exhibit 7.W). Relevant to this proceeding, key recommendations included reductions in staffing and overtime, conditional upon "negotiating to eliminate minimum manning requirements" (City Exhibit 7.W, p. 8). Implementation of a June 13, 2012 Financial Recovery Plan was approved by the Commission (See City Exhibit J.2, Fact-finders Report, p.3).

While the City remains under state supervision, the parties concur that termination of fiscal emergency is, indeed, imminent. Significant reductions in expenditures have been enacted by the City. Moreover, in November 2013, the electorate approved an additional .25% income tax levy, half of which is dedicated to safety services. The City had initially projected the tax will generate \$25,807,499 in 2014 (City Tab 7.K, p.3). Based upon actual tax collections, the Union projects receipts of \$27,742,710 starting in 2014 (see Union Exhibit G). Though Ms. Brown acknowledged error in revenue to be realized from the additional tax, the conclusion that "there is not much capital for any department" remains unchanged.

On October 21, 2013, the City submitted an updated Financial Recovery Plan with the objective of eliminating those conditions which had given rise to the financial emergency (See City Exhibit 7.J). In its Plan the City identifies those actions which have been begun or completed to restore fiscal integrity. Included in the plan was the previously referenced .25% increase in Income Tax, approved by the electorate subsequent to the issuance of the Plan. Contract concessions from the IAFF reducing minimum manning from 21 to 18 and the reduction of overtime costs were listed in the Plan as completed action (p.5).

Issues in Dispute

Evidence and argument have been submitted on the following issues: Article 11, Probationary Period; Article 18, Minimum Manning; Article 19, Paid Leaves of Absence; Article 21, Wages, including Section 21.2, Longevity and proposed Section 21.8, Rescue Squad Pay; Article 21, Holidays.

Statutory Criteria

In rendering the award which follows, the Conciliator has taken into account the criteria listed in the O.R.C. Section 4117.14(G)(7).

1. Issue: Article 11: Probationary Period

The City

Proposing deletion of this language, the City argues the contract language is obviated by its proposal to eliminate the contractual manning requirement, as recommended by the fact-finder. Nonetheless, specific language in contention, prohibiting the use of a probationary employee to meet minimum manning requirements, is unusual in Ohio for bargaining agreements with firefighters, even those including minimum manning. Elimination of this provision, based upon accepted assumptions, could save the City about \$104,000 per year.

The Union

The Union asserts that current contract language in Section 11.2 prohibiting use of probationary employees for the purpose of minimum manning can and should be retained regardless of a conciliation ruling on Article 18, Minimum Manning. In support of its position, the Union presented testimony on safety needs of firefighters engaged in fire suppression and the imperative that the crew consists of skilled personnel. Because minimum manning requirements exist whether by contract or by policy, the Union contends the City may be required to ensure that only skilled fire suppression personnel are utilized to meet those requirements.

2. Issue: Article 18: Minimum Manning

The City

Consistent with the recommendations of the AOS which were adapted by the Fact-finder in his Report, the City proposes elimination of the contractual mandate on minimum manning. Requirements to maintain a specified number of employees impose significant financial hardship on the City in overtime accumulation caused by holidays, vacation and sick leave. Excessive overtime has been identified as a factor contributing to the financial crisis giving rise to fiscal emergency. Not only is the manning requirement costly; it is also unnecessary.

National safety standards provide a guideline that four persons be at the site of a fire, but that standard does not mandate a particular number of persons on duty or employed by the City. Similarly, the State safety regulations incorporate four persons at the scene of a fire, but not a particular number of persons on duty or employed by the City. Nor do the safety regulations require all firefighters be from the same firefighting unit. Mutual aid agreements entered into the City ensure adequate fire suppression personnel are present at the scene of a fire.

Consistently Conciliators and Fact-finders have recognized that for a public entity in financial difficulty, minimum manning imposes unwarranted hardship. Financial challenges have justified the removal of previously negotiated mandates on manning in similar situations. While acknowledging the strong argument of the Union in favor of retaining the manning language, the fact-finder in this proceeding determined that manning levels ought to remain under the control and discretion of the administration. The conciliator ought to do the same.

The Union

Arguing an insufficient justification for the removal of this long standing contract term, the Union seeks current contract language on manning, consisting of 18 firefighters per day. Prior to 2011 concessions, the departmental staff consisted of 88 persons, and 21 firefighters assigned per day, with the ability of the City to reduce staff through attrition. Willingness on the part of the Union to agree to significant mid-term concessions has enabled the City to emerge from the fiscal crisis.

Reasoning by the fact-finder on the issue of manning is clearly erroneous and does not properly taken into consideration the statutory guideline of prior agreements. Since 1979, the agreement between the parties has included a manning requirement which the parties have by agreement modified to meet changing needs. Moreover, analysis by the fact-finder of comparable jurisdictions is not accurate. Departments cited by the fact-finder are significantly different from the City Fire Department in terms of services rendered and deployment. In fact, the City lags behind comparable departments in terms of staffing per station and per apparatus.

Reliance by the City on its overtime costs has been overstated. In fact, overtime costs for this unit have significantly decreased and are presently below the targets set forth in the Fiscal Recovery Plan which the City has implemented.

Manning is a safety issue. Reductions in staff result in reduced response times, endangering the public as well as the firefighters. Daily minimum safety standards promulgated by the National Fire Protection Association suggest a minimum staff of four on-duty personnel at each fire company (See Union Exhibits O.14). Reflective of the NFPA recommendations, the manning requirements agreed upon by the parties should be maintained.

Mutual aid agreements cited by the City and the fact-finder cannot meet the needs of this jurisdiction as the neighboring departments are quite small and in two instances are volunteer departments. Based upon its long-standing agreement with the Union and obligation to the public to provide fire safety services, the City should maintain the manning mandate.

3. Issue: Article 19: Paid Leaves of Absence

The City

Arguing comparability to the statutory accrual rate of .0577 per hour in active pay status, the City proposes reducing the current rate of sick leave accrual once the City has reduced all unrepresented employees in the City. Paid leaves of absence have contributed to the excessive overtime. Moreover, the accrual rate for firefighters far exceeds that of other City employees (See City Exhibit 7.Y). The fact-finder accepted the arguments presented by the City and the Conciliator ought to render appropriate deference to the analysis and judgment of the fact-finder.

The Union

Accrual rates for firefighters are based upon both the hazardous working conditions as well as work schedules. While a normal lost shift consists of 8 hours of sick leave, for a fire fighter a lost shift uses 24 hours. The proposal of the Union is to partially accept the recommendations of the fact-finder but limit the reduced rate to employees hired after April 1, 2014. Since no other bargaining unit has been asked to reduce a negotiated benefit, the sick leave accrual rate for current fighters ought to be retained. Total benefits for the firefighters are already less than that provided to the FOP.

4. Issue: Article 21.2: Longevity

The City

The City adapts the recommendation of the fact-finder on the issue of longevity, making the longevity benefit of the unit similar to but not exactly the same as that provided to the members of the AFSCME unit with which the City bargains. For employees hired prior to April 21, 2011, there is no change in longevity payment; employees hired between April 1, 2011 and March 31, 2014 who attain five years of service with the City shall receive longevity payment of One Hundred Dollars (\$100.00) per year of service.

The Union

Adapting language recommended by the fact-finder, the Union proposes current contract language with the provision that employees hired after April 1, 2011 attain five years of service prior to receipt of longevity. The Union rejects, however, the concept that collectively bargained benefits should be summarily eliminated, especially those bargained over a period of time.

The fact-finder erred in his analysis of comparables. A comprehensive review of external comparables indicates that this benefit is not dissimilar to that of other jurisdictions. While the Fact-finder relied upon the AFSCME agreement, subsequent to the issuance of his report, the police units retained longevity, as did non-union employees. Thus, not only is there error in analysis, but there is also new evidence and information unavailable to him at the time of his report.

5. Issue: Article 21.8 Squad Pay

The Union

The Union proposes adding Squad Pay to the terms of the Agreement between the parties. Specifically the language would entitle members assigned to work on the rescue squad an additional \$1.00 for each hour assigned to that apparatus and limiting the number of personnel so assigned to two per occurrence. Other jurisdictions provide a similar premium for firefighters. In the City, the police unit and AFSCME members receive watch or shift differentials. Increased usage of EMS transport services and a corresponding increase in EMS revenues further justify the additional compensation.

The Union cites numerous flaws in the reasoning of the fact-finder on the issue of Squad Pay. These include erroneous assumptions such as the cost to the City, the benefit affecting only a few employees, as well as an anticipated reduction in shift differentials for the FOP. The cost

to the City is not significant, the police did not lose shift differentials, and all IAFF bargaining unit members would benefit from Squad Pay.

The City

Given the continuing state of fiscal crisis and the intent of the City to emerge from financial supervision, the City opposes any language which would increase its financial obligations.

6. Issue: Article 23.1: Holidays

The City

In its efforts to contain overtime costs the City proposes that 48 hour work week employees receive eight (8) 24 hour holidays per year rather than the contractual eleven and that the eleven (11) holidays specified in Section 23.1 apply only to 40 hour per week employees. Unit employees receive an extraordinary amount of time off at a significant cost to the City. The Holiday language proposed by the City is a cost saving measure justified by comparability, both external and internal.

The Union

Rejecting the City proposal on Holidays, the Union argues that it has already made significant cost saving concessions on holiday pay which have resulted in savings to the City. Having collectively bargained holiday pay provisions, firefighters should not be required to relinquish a benefit which has historically been part of an economic package. No other City employee has been required to concede a negotiated benefit. By this proposal the City is essentially seeking a reduction in pay for firefighters, demanding more hours of work for the same pay.

Discussion

Statutory Criteria

While specific statutory standards will be considered in the analysis of the individual final offers, the financial status of the City warrants some preliminary review. Additionally, prior to discussing the merits of the final offers submitted by the parties, the conciliator identifies and considers factors traditionally taken into consideration in impasse proceedings.

Ability to Finance

These contract negotiations have occurred in the context of the 2010 declaration of fiscal emergency triggered by deficit fund balances. Documentation submitted by the City establishes a financial trend of diminishing income. Between 2008 and 2012, revenue had declined from \$12,350,629 to \$10,960,850 (City Exhibit 7.K). Increased and unanticipated revenue in 2013, referenced by the Union in its Exhibit F, is explained by receipt of \$1,612,760 in estate taxes without which income for 2013 would have been less than in 2008.

Cross-examining Ms. Brown on income tax receipts set forth in City Exhibit 7.K, the Union suggests that since 2009 income tax receipts have actually trended upward; and, with the ratification of the additional .25% tax, additional monies dedicated specifically for the Safety Fund are anticipated. Nonetheless, these additional funds will be offset by elimination of the inheritance tax and reduction of local government revenue (City Exhibit 7.K. p 4). Significantly,

too, in 2015, the Fire Department will lose \$1 million in a SAFER grant which is currently financing several fire fighters. When the grant ends, expenses will correspondingly increase.

Indeed, in balancing a budget, expenditures as well as revenue must be considered. Imbalances between receipts and expenses through 2010 precipitated Fiscal Emergency and resulted in the extraordinary reductions the City has been required to make. The Union submits that since Fiscal Emergency was declared, the “cash position” of the City has risen in each quarter of each year, from \$ 16,030,266 in 2010 to \$40,008,474 (Union Exhibit G). It further points out that since 2010 actual revenue in the General Fund and the Safety Fund has exceeded expenditures in each fund (See Union Exhibit G). The surpluses cited by the Union, however, are due to the cost containments compelled to stem systemic pre-2010 imbalances and these surfeits are less sanguine in the context of the cost.

To manage its limited financial resources, the City has been required to reduce, defer or eliminate public services including street lighting, equipment replacement, parks and recreation. Personnel have been reduced and no city employee has received a pay raise since 2008. Significant reductions in all city departments have occurred and no public service has been singled out to bear a disproportionate burden in this difficult process (See City Exhibits 7.I and 7.K, further discussed below). In the Common Pleas Court Order issuing a Preliminary Injunction, the Judge wrote that the “recovery plan was thoughtfully prepared after consulting with all interested parties and it spreads the necessary budget cuts in a reasonable and fair manner” (City Exhibit 7. Q., p. 2).

Although the City has implemented cost saving measures and has successfully increased its income tax receipts, the five year forecast summary includes decreasing end of the year cash balances from 2014 through 2018, indicating expenses will continue to exceed receipts. The Conciliator therefore finds that the tenuous financial condition of the City warrants circumspection in collective bargaining. As stated by the fact-finder at p. 4 of his report:

In order to meet the Ohio requirements to come out of fiscal emergency, Mansfield can not return to deficit spending at 2008 expenditure levels, can not fully restore program cuts, and must take care to avoid unsustainable cost increases in union contracts.

It is imperative that the City not negate its revenue gains by incurring expenditures it cannot sustain.

Factors Traditionally Taken into Consideration

Statutory guidelines also include factors traditionally taken into consideration. Two such factors warrant some discussion herein: 1) Internal comparability, and 2) deference to the recommendations of the fact-finder.

As to internal comparability, the Union suggests that between 2009 and 2013, firefighters have made greater concessions than either of the police units represented by FOP or non-safety employees represented by AFSCME (See Union exhibit H). Moreover, discussing Union exhibits, the Local President, Daniel Crow, contends that compensation and benefits paid to firefighters lags behind that received by police (See Union Exhibit I). Thus, in this impasse procedure, the Union resists further modification and seeks to retain its previously negotiated

benefits. On the other hand, in proposing elimination of the minimum manning provisions in the firefighters' contract, the City cites internal comparability asserting that neither of the other units in the City has a comparable provision. As to sick leave accrual, the City contends the firefighter accrual rate exceeds that of other units.

Firefighters provide an essential service to the community in a life-endangering profession. In making its final offers in this proceeding the City neither disputes nor diminishes the value of that service. It recognizes, however, that employees must make adjustments given the severe financial restraints of the City.

Just as contractual components and economic packages for the differing services are not identical, so concessions made by each unit will differ. Documentary and testimonial evidence demonstrates that concessions and cuts have been felt across the board and no one unit has been sheltered from the impact of fiscal emergency.

David Remy, Human Resources Director, testified that through lay-offs the AFSCME unit was reduced from 230 members to approximately 130 and contractual benefits have been reduced for new AFSCME hires. The reduction in the AFSCME labor force has meant substantial cuts in city services.

Significant personnel reductions in the Police Department have also occurred (City Exhibit 7.K). In negotiations with the FOP the City has sought modification on a number of contract terms. Each unit in the organized labor force has been asked to make some modification to negotiated terms.

Addressing deference to the recommendations of the fact-finder, the Conciliator observes that generally, in the absence of error or changed conditions, the report of a fact-finder will be upheld, though some adjustments may be appropriate. Additionally, a conciliator may deviate from a recommendation which lacks supportive rationale. To the extent additional information has become available subsequent to fact-finding modification may be justified.

Moreover, as is frequently the case, in this instance, negotiations between the parties continued subsequent to fact-finding. Moving into conciliation, the bargaining landscape has shifted and not all the issues presented to the fact-finder have been argued to the conciliator. The case presented to the conciliator is simply not the same case presented to the fact-finder. While his Report is a factor to be considered in the following analysis of issues, it does not bind the conciliator to the recommended resolution.

Issues

1. Article 11 : Probationary Employees

As part of its bargaining objective to contain costs and reduce manning requirements, the City suggests the language in Article 11, Section 11.2 which presently prohibits use of probationary employees to meet manning requirements, will be a "non-issue" should the removal of minimum manning in Article 18 be awarded. In the presentation of its case the Union has argued that Article 11.2 may remain in the agreement regardless of proposed changes to the manning requirements set forth in Article 18.

Interestingly, this was not an issue specifically addressed by the fact-finder in the body of his Report, though he did strike Section 11.2 in his recommended language. Indeed, it is unclear whether the issue was bargained to impasse pursuant to statute. At any rate, in the absence of

rationale for its removal in the fact-finding report, the Conciliator is not constrained by the concept of deference.

On the merits of the dispute, there are fire scene manning standards promulgated by the state designed to ensure the safety of both firefighters and the public. Moreover, as argued by the Union, departmental policies establish safety and operational requirements. Though not *contractual*, there is a manning regulation to which the language in Article 11.2 may apply.

As to safety, the Union elicited persuasive and extensive testimony from Captain Daily, discussing the “nuanced” nature of firefighting in an older city having a unique geography as well as specific apparatus and operations. Captain Daily described the growing number of fire alarms as well as EMS calls in the City. He also related fire scene safety to competent personnel fully qualified on firefighting equipment.

Minimum manning standards implemented by the state or by policy for fire suppression activity are protective measures. These levels are rendered meaningless in the absence of trained and knowledgeable firefighters. Thus, the conciliator finds there is justification in requiring that those engaged in fire suppression include a minimum number of non-probationary employees.

More significantly, however, there is little reason for removing this safety language. Changing previously agreed upon language must be warranted by a need to remedy problematic terms or conditions. In this case any financial gains are minimized by safety risks. Potential costs in terms of lost life and property damage far outweigh any savings which may be made by its elimination, approximately \$104,000 according to City calculations.

Finally, the conciliator concurs with the Union that this provision does not “disappear” by default. Any modification of Article 11.2 must be collectively bargained and processed through the statutory impasse process. Recommendation of the fact-finder on this issue is without supporting rationale to which deference would be warranted.

The Conciliator awards the position of the Union and orders retention of current contract language.

2. Article 18: Minimum Manning

As to the proposal to eliminate minimum manning language in the Agreement, the Union argues the fact-finder erred both in his failure to consider bargaining history and also in his analysis of comparable jurisdictions. Indeed, in general, changes to contract provisions which have been previously negotiated and agreed upon must be justified by a need for modification. When the language has a considerable history, the reason for change must be genuine and factually compelling.

Minimum manning language included in the firefighters’ contract has a lengthy history, but the criterion of past agreements is not intended to preclude change. Rather, changing circumstances will dictate contract modification and current needs may justify amending long-standing provisions. In this instance the fiscal emergency from which the City is emerging is the mandate for change. The Fact-finder thoroughly considered the challenging economic situation which has confronted the City for several years. Given the financial implication of minimum manning, his recommendations on the issue warrant due deference in accordance with established practice in impasse proceedings.

In the case at hand, excessive overtime is cited by both the City and the AOS as contributing to the deficits which caused fiscal emergency. Over a period of time the contractual minimum manning standard has generated extraordinary overtime for this unit, and the City argues the reasons for overtime must be controlled in order to restore financial stability. On the other hand, citing mid-term concessions in the manning standard and recent reduction of overtime costs, the Union contends that overtime is being controlled and therefore, the need to eliminate minimum manning is overstated.

Even so, one reason why overtime costs for this unit have been reduced is that the City has been able to employ firefighters under a SAFER grant. When that grant terminates in 2015 the City must have the flexibility to determine and control staffing requirements. Mandates to maintain manning undermine the ability of the City to balance its personnel needs with its financial ability to compensate for services rendered. Elimination of the minimum manning provisions will generate greater future flexibility in administering the Department.

The Union argues the fact-finder erred in his consideration of comparability and that he overstated the position of neutrals on the issue of manning. Yet, the Union has presented no comparable contract which not only mandates a daily manning level, but also controls the total number of fire suppression personnel *and* precludes layoff of any unit member. The only contractual language submitted by the Union for comparison relates to manning when "a Fire Department vehicle is placed into service for emergency response situations" (Union Exhibit O.10).

Union Exhibit O.8 is a "wider comparison of fire staffing," but the exhibit does not establish whether staffing for the listed cities is mandated by contract. Labor agreements for five of the listed cities have been submitted by the City and a review of those contracts indicates the absence of mandatory manning. Euclid has bargained the right to reduce personnel, and Newark has agreed to "make a concerted effort to maintain sufficient staffing of each company, within the financial capability of the City," but the Employer retains the right to layoff "due to lack of work or lack of funds."

In a City with an increasing number of emergency calls in an inherently dangerous profession, the Union argues that the manning requirement is a safety issue. Yet, the Conciliator finds that the safety concerns of the Union may be satisfied without imposing costly mandates on the City. Labor Agreements with firefighters in both Lima and Euclid, for example, include Safety and Health provisions, while Warren mandates the City provide safe equipment. The City of Elyria has agreed to establish a Union safety committee "to identify unsafe conditions as they exist" with the right to grieve disputed conditions. To the extent the Conciliator has agreed that only experienced firefighters shall satisfy administrative and regulatory standards for fire suppression, some of the safety concerns of the Union have been addressed. Additional safety concerns may be raised in subsequent collective bargaining.

Arguing the Safety Levy has been renewed with promises to maintain staffing levels, the Union suggests that minimum manning constitutes a commitment to the public. In fact, successful passage of the additional income tax in 2013 was a validation of securing adequate services voters can afford (Union Exhibit O.12). Rather than a breach of trust, negotiating a fiscally sound collective bargaining agreement fulfills City obligations to its citizens.

The Conciliator notes the minimum manning recommendation of the fact-finder was balanced by his recommendations for increased compensation and additional rank (See Fact-

finding Report, p. 6). Consistent with principles of contract negotiations, the fact-finder endeavored to reach a compromise, removing manning but enhancing wage provisions by establishing new rank and rates which the parties have agreed to accept. Based upon his recommendations on wages, the conciliator cannot conclude the fact-finder erred on manning. In his report, the fact-finder tied the two together in the process of give and take.

The position of the City on minimum manning is awarded.

3. Article 10.1 Sick Leave

Recommending a reduction in the rate of sick leave accrual, the fact-finder cited internal and external comparables as well as “extraordinary severance obligations.” In his discussion of the issue, he relied on the 2011 Performance Audit and its discussion of severance payouts. Yet, just as sick leave accrual and severance payouts are separate sections within Article 10, the cited Performance Audit makes separate recommendations on sick leave accrual and severance pay provisions. It also recommends taking steps to reduce sick leave use. The only issue presented by the parties to the conciliator has been the accrual rate, not severance payouts, as discussed by the fact-finder.

On the issue of accrual, the Union has agreed to a reduction for new hires bringing the accrual rate in line with peers as identified in the Audit. Its proposal calls for a reduction in the accrual rate to .0577 hours for each non-overtime hour in active pay status for all employees hired after April 1, 2014. Given this concession, the conciliator finds there is little justification for reducing the accrual rate for current bargaining unit members. Prior to eliminating a negotiated benefit for current members, the parties should explore other possible modifications to sick leave language, such as caps to severance payouts.

While the City cites the considerably higher sick leave accrual for the Fire Department when compared with other departments in the City (See City Exhibit Y), the Union points out differing negotiated components to sick leave benefits. The FOP contract, for example, has a partial sick leave conversion section and the AFSCME agreement includes an annual conversion option.

As to external comparables, the sick leave accrual rate of Firefighters in Newark is similar to that of Firefighters in this City, but those parties have also agreed to both conversion language and also a cap on accrued but unused sick leave upon retirement. Concurring with the Union, the Conciliator finds that rather than taking back a negotiated benefit, the parties should bargain upon components of the issue.

Recommendations set forth in the 2011 Performance Audit are suggestions only, not mandates. As pointed out by the Union, the Audit made several recommendations regarding the current employees of the Police Department, including a reduction in the shift differential, which the City will not require of the FOP. Moreover, the underlying problem with sick leave usage as identified in the Audit has abated.

Excessive overtime has been the driving force both for eliminating minimum manning and also for reducing sick leave accrual. In its recommendations the AOS states that the City should reduce sick leave use to further reduce overtime expenditures (City Exhibit 7.W. p. 61). Yet, evidence not available to the fact-finder demonstrates that the overtime costs in the fire department have been significantly reduced. The Union argues without dispute that through March 7, in 2014 the City has incurred \$19,103.52 in overtime, well within budget. A need to control on-going overtime costs, especially considering future loss of the SAFER grant, justifies

flexibility in manning but does not necessarily extend to the elimination of a monetary benefit which current members have collectively negotiated as part of their economic package. There is no rationale for requiring unit members to relinquish a benefit for which they have bargained in the give and take process of contract negotiations.

The proposal of the Union on Paid Leaves of Absence is awarded.

4. Article 22.2 Longevity

At fact-finding, the City sought to freeze longevity payments to the March 31, 2013 levels and eliminate longevity for new hires. Citing a 2011 concession whereby longevity for new hires was deferred until completion of five years of service, the Union sought retention of current contract language. The fact-finder recommended a compromise by retaining longevity payments for members hired prior to April 21, 2011 and eliminating it for employees hired after March 31, 2014. Employees hired between April 21, 2011 and March 31, 2014 would receive longevity after five years of employment.

In these conciliation proceedings, the City proposes the recommendations of the fact-finder which essentially eliminates longevity for new hires and defers longevity for those hired between 2011 and 2014. Relying upon external and internal comparables including City Agreements reached subsequent to fact-finding, the Union seeks current contract language including the five year deferral for employees hired after April 21, 2011.

Relying upon an internal comparable, the fact-finder asserted he was persuaded by the longevity provisions of the AFSCME contract. Subsequent to the fact-finding hearing, however, the City entered into Agreements with two FOP units which retain longevity benefits and do not include a "waiting period." Moreover, on February 4, 2014, the City passed an ordinance authorizing longevity payments for non-unit employees (See Union Exhibits Q and J).

Longevity has a lengthy history not only in this unit but in bargaining units across the state. Lump sum payments provided by longevity provisions enable employers not only to recognize and reward continuing service of employees but also to enhance income without increasing the base wage. Absent in evidence now presented is any mandate for curtailing this negotiated benefit.

Deference by a conciliator to the recommendations of a fact-finder is based upon similarity in the facts under consideration. In the case at hand subsequent to fact-finding two other safety units retained their longevity payments in spite of fiscal emergency. Additionally, though of less probative value in impasse proceedings, the City authorized longevity payments for non-union employees. There simply is no way of knowing what the fact-finder would have recommended had he known the other safety units would retain their longevity benefits and the City would enact longevity for non-union employees.

Moreover, subsequent to the issuance of the fact-finding report, employment brochures disseminated by the City in early 2014 inviting applications for positions within the fire department list longevity as a component of the compensation package (See Union Exhibit I). Certainly, if the City intends to offer longevity to its new hires in the fire department, then that benefit must be included in its Collective Bargaining Agreement with the unit. Facts presented to the conciliator are quite different from those considered by the fact-finder on the matter of longevity.

The conciliator looked at external comparables submitted by both the Union and the City. Because of the differing components of economic benefits included within bargaining agreements, as well as differing demographic and geographic factors, comparable compensation for comparable service rendered is a particularly challenging criterion. Nonetheless, in addition to jurisdictions cited by the Union, comparable agreements submitted by the City for comparison include some form of benefit based upon length of service. Indeed, even those three cities used by the LGS for benchmarking purposes in its performance audit, Elyria, Newark, and Warren, provide a longevity payment (See City Exhibit 7.W., p. 3; Union Exhibit Q).

Elimination of longevity as proposed by the City will have little appreciable impact upon the finances of the City for the duration of the contract now in dispute, a factor which significantly undermines City reliance on a fiscal mandate for modification of a benefit with considerable history. Nowhere in either the AOS Performance Audit or in the 2013 Recovery Plan drawn up by the City is there any reference to savings contemplated by the elimination of longevity. In the absence of a statutory standard by which elimination of the longevity provisions of the Agreement can be justified, **the Conciliator awards retention of current language for Article 21.2, as proposed by the Union.**

5. Article 22.8 Squad Pay

Citing increased responsibilities and additional duties for EMS transport, the Union proposes a premium payment of \$1.00 per hour for additional life support services rendered, a proposal which the City opposes. In its arguments to the Conciliator the Union suggests a number of errors made by the fact-finder rejecting the Union proposal, including the financial impact of Squad Pay.

Like the fact-finder, the Conciliator finds the Union has made a strong case for the additional benefit of Squad Pay, including comparability. Yet, just because other jurisdictions have Squad Pay does not mandate that this unit should have a similar monetary benefit. Also like the fact-finder, the Conciliator questions the justification for creating a new cost/benefit at a time when the City is endeavoring to maintain a balance between revenue and expenditures. This is especially true when the City has agreed to significant rank and wage adjustments for the bargaining unit. As pointed out by the City and recognized by the fact-finder, comparable cities are not in fiscal emergency.

While squad pay alone may not “make it more difficult to come out of fiscal emergency,” in determining the propriety of a new wage component, the financial package should be considered as a whole, including those additional enhancements/costs upon which the parties have agreed as well as retained economic benefits. Some financial gain has been achieved for the Union in the course of negotiations for this successor contract, but termination of fiscal emergency requires economic recovery and the containment of on-going costs. Squad Pay has not been included in the financial forecasting for the City. In the opinion of the conciliator, statutory criteria do not mandate the additional cost of Squad Pay at this time.

The position of the City is awarded.

6. Article 23: Holidays

Both parties propose retention of language that was included in 2011 whereby paid holidays for employees hired after 2011 incrementally increase up to eleven paid holidays after 20 years of employment. While the Union seeks current language for all other employees, the City seeks a reduction effective January 1, 2015 for all forty-eight (48) hour employees to eight (8) twenty-four (24) hour holidays and language to the effect that the progression for employees hired after April 1, 2011 shall apply only to forty (40) hour employees. In his report, the fact-finder recommended the position of the Union, specifically referencing the deletion of Article 18.

In its Position Statement, the City expressed a willingness to accept the recommendation of the fact-finder on holidays "if the conciliator awards the City's position on minimum manning" (Position Statement, p. 5). As the Conciliator has, indeed, awarded the deletion of minimum manning, the position of the Union on Holidays is awarded. As a "housekeeping" item, reference to Article 18 should be deleted in the language for Section 23.5 upon which the parties have agreed and signed off.

The position of the Union is awarded.

Summary

The Conciliator awards as follows:

1. Article 11.2: Current contract language as proposed by the Union;
2. Article 18: Elimination of minimum manning as proposed by the City;
3. Article 19.1 : Position of the Union, reducing the sick leave accrual rate for employees hired subsequent to April 1, 1014;
4. Article 22.2: Position of the Union retaining longevity, with deferral for new hires;
5. Article 22.8: Position of the City rejecting Squad Pay;
6. Article 23.1: Contract language on holidays as proposed by the Union.

Respectfully submitted,

s/s Margaret Nancy Johnson

Service

The foregoing Conciliation Award has been served this 25th day of April, 2014 upon: Kevin Rader, IAFF Representative, at krader@arnettrader.com; Mark Lucas, City Representative at MJLucas@clemansnelson.com; and on the State Employment Relations Board, at serb.state.oh.us.

s/s Margaret Nancy Johnson