

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:

City of Fostoria)	
)	
and)	
)	CASE NO. 2013-MED-03-0238
International Association of)	
Fire Fighters,)	
Local 325)	

CONCILIATION AWARD

RICHARD J. COLVIN, Conciliator
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APPEARANCES:

For the City:

David M. Smigelski, Esq.
Spengler Natherson P.L.L.
Hon. Eric J. Keckler, Mayor
Steven J. Garner, Auditor
Allyson Murray, SSD
Keith Loreno, Fire Chief

For the Union:

Michelle T. Sullivan, Esq.
ALLOTTA FARLEY CO., L.P.A.
Jason Root, IAFF Local 325
Warren Digby, IAFF 325

Introduction

Background:

The City of Fostoria is located in Seneca, Wood and Hancock Counties and has a population of approximately 13,392. The bargaining unit, the IAFF, Local 325, presently consists of approximately 18 members.

The collective Bargaining Agreement between the parties was effective on May 2, 2012 and expired on May 31, 2013.

At the onset of their negotiations, the parties entered into ground rules, including a R.C.4117.14(G)(11) waiver of the limitation of the Conciliator's jurisdiction to award increases in wages or on other matters with cost implications for the same fiscal year in which in which the Conciliator is appointed.

The parties participated in a Fact-Finding Hearing on October 29, 2013 before Fact-Finder Mollie H. Bowers. Fact-Finder Bowers issued her Report and Recommendations on November 12, 2013. **All open issues were resolved except for wages and duration.**

Fact-Finder Bowers recommended that a **three-year** Agreement be adopted with wage increases as follows:

Retroactive to June 1, 2013:	3.0% increase
On June 1, 2014:	1.5% increase
On June 1, 2015:	1.5% increase

The City's Council members **rejected** the Fact-Finder's recommendations.

The Union **adopted** the Fact-Finder's recommendations, with a **reduction** to the period of retroactivity for the 2013 wage increase to **November 12, 2013**.

The subsequent two (2) wage increase proposals for 2014 and 2015 are to take effect on June 1 of each respective year.

On December 9, 2013, SERB appointed Richard J. Colvin to be the Conciliator in this matter in accordance with O.R.C. Section 4117.14(D)(1).

Accordingly, and upon the agreement of the parties, the Conciliator scheduled a hearing for February 3, 2014 at which the parties were present. The parties had provided the Conciliator, the other party and the Board with timely position statements/documents summarizing the unresolved issues.

At this hearing, on an issue-by issue basis, the parties were afforded full opportunity to present their arguments, verbal and documentary, engage in discussions and rebuttal of the submissions and arguments of the other party.

CONCILIATION CRITERIA

The Ohio Public Employee Bargaining Statute sets forth the following criteria, which the Conciliator was mandated to consider and did consider in making his Award in this case. The criteria are set forth in ORC§4417.14(G)(7)(a)-(f) and are as follows:

- (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 responsibility of the Conciliator is to make written findings of fact and to:

1. Promulgate a written Opinion and Order upon the issues presented to him or her, and upon the record made before him or her: 2. Deliver a true copy to the parties and to the Board.

In the Conciliation process, the Conciliator is not at liberty to devise his or her language to resolve the issues. He or she is to choose between the proposals as they were presented to him by the parties.

In the instant case, the parties have presented him with only two disputed issues:

1. Wages to be granted, if any, for the duration of the Agreement.
2. The duration of the Agreement, two years as proposed by the City, or three years as proposed by the Union.

POSITION OF THE CITY

1. WAGES:

It is the position of the City that no general increase (0%) should be awarded for the duration of this Agreement. While Step Increases may continue pursuant to existing pay matrix mechanisms, current wage rates would remain intact at their current levels.

**ARTICLE 7
WAGES**

Section 7.1 Rate

Wage rates for employees covered herein shall be as set forth in Addendum A attached hereto and shall be made a part hereof.

Section 7.2 Step Increases

Employees shall receive step increases after serving the designated years in the entitled step until the maximum step is received. There shall be no step increases beyond the maximum shown in Addendum A.

APPENDIX A

New Hires and/or employees of the City who are employed in positions in the City Fire Department after the effective date of this Agreement shall be paid the following hourly rates during the term of this Agreement.

40-Hour Rate

Firefighter	Step A	Step B	Step C	Step D	Step E
2013/2014	\$15.17	\$16.15	\$18.08	\$20.03	\$22.02

51-Hour Rate

2013/2014	\$11.8980	\$12.6666	\$14.1803	\$15.7098	\$17.2705
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**51-Hour
Bi-Weekly
Rate**

2013/2014	\$1,213.60	\$1,292.00	\$1,446.40	\$1,602.40	\$1,761.60
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Lieutenant

Step A Step B

2013/2014 (40-hour)	\$23.56	\$24.22
2013-2014 (51- hour)	\$18.4784	\$18.9960
Bi-Weekly	\$1,884.80	\$1,937.60

Captain

Step A Step B

2013/2014 (40-hour)	\$25.92	\$26.64
2013/2014 (51-hour)	\$20.3294	\$20.8941
Bi-Weekly	\$2,073.60	\$2,131.20

The City's Rational:

Due to the City's dire financial condition, which shows no sign of improving, it simply cannot afford any wage increase for its firefighters. This grim situation, particularly when evaluated in context with the bleak outlook for Northwest Ohio in general renders a wage package with any increase (other than the appropriate step increase) both reckless and fiscally irresponsible. The City's goal at this juncture is to retain as many employees as possible. In light of this objective, a soft wage freeze is absolutely necessary.

Despite indications that the economies in some other areas and municipalities may be improving slightly, the City remains in a dismal condition, The City continues to face significant declines in revenue from its employers and residents, as well as from the state and federal governments. The City additionally must contend with intensifying competition for necessary grant funding. Income tax collections have decreased such that the City's collections are barely half the amount that they were in 2007. In August 2013, for example, the City's tax collections were 41 percent lower than in August 2012. Taxpayers are earning lower salaries, and large employers, such as ThyssenKrupp and Honeywell, have imposed mass layoffs and continue to leave the City for new locales.

Critically, in spite of the City's inability to provide wage increases at this time, the current wage rates for the City's firefighters are competitive with other similarly situated communities. If anything, the City's firefighters enjoy a compensation package more beneficial than employees in surrounding municipalities of a similar size and constitution, particularly when factoring in the City's favorable provisions for overtime, holidays, and education and certification bonuses.

The City has taken substantial measures to cut costs and effectively manage its budget and personnel. Still, it wholly lacks the resources to provide the increases proposed by the Union for the three-year term of a new contract. The City cannot continue to provide wage packages with increases in the face of plummeting revenues. The harsh reality of the City's economic condition has forced the City to focus upon the escalating challenge of retaining its current employees. Any wage increase at this time would counteract those efforts. While a soft wage freeze cannot guarantee that future layoffs will not occur, it is the best the City can offer based upon its current financial situation.

POSITION OF THE UNION

1. WAGES

"The 2013 wage rate is effective on November 12, 2013 and represents a 3% wage increase.

The 2014 and 2015 wage rates are effective on June 1 of each respective year. The rates reflected herein represent a one and one-half percent (1 ½%) for 2014 and 2015, respectively.

Section 7.1 Rate

Wage rates for employees covered herein shall be as set forth in Addendum A attached hereto and made a part hereof.

Section 7.2 Step Increases

Employees shall receive step increases after serving the designated years in the entitled set until the maximum step is received. There shall be no step increases beyond the maximum shown in Addendum A.

APPENDIX A

New Hires and/or employees of the City who are employed in positions in the City Fire Department after the effective date of this Agreement shall be paid the following hourly rates during the term of the Agreement.

40-Hour Rate

Firefighter	Step A	Step B	Step C	Step D	Step E
2012 Rate	\$15.17	\$16.15	\$18.08	\$20.03	\$22.02
2013 Rate	\$15.63	\$16.63	\$18.62	\$20.63	\$22.68
2014 Rate	\$15.86	\$16.88	\$18.90	\$20.94	\$23.02
2015 Rate	\$16.10	\$17.14	\$19.19	\$21.25	\$23.37

40-Hour Bi-Weekly Rate

2012Rate	\$1,213.60	\$1,292.00	\$1,446.40	\$1,602.40	\$1,761.60
2013Rate	\$1,250.01	\$1,250.01	\$1,489.79	\$1,650.47	\$1,814.45
2014Rate	\$1,268.76	\$1,268.76	\$1,512.14	\$1,675.23	\$1,841.66
2015Rate	\$1,287.79	\$1,287.79	\$1,534.82	\$1,700.36	\$1,869.29

51-Hour Rate

2012Rate	\$11.8980	\$12.6666	\$14.1803	\$15.7098	\$17.2705
2013Rate	\$12.2549	\$13.0466	\$14.6057	\$16.1811	\$17.7886
2014Rate	\$12.4388	\$13.2423	\$14.8248	\$16.4238	\$18.0554
2015Rate	\$12.6253	\$13.4409	\$15.0472	\$16.6702	\$18.3263

51-Hour Bi-Weekly Rate

2012 Rate	\$1,213.60	\$1,292.00	\$1,446.40	\$1,602.40	\$1,761.60
2013 Rate	\$1,250.01	\$1,330.76	\$1,489.79	\$1,650.47	\$1,814.45
2014 Rate	\$1,312.51	\$1,397.30	\$1,564.28	\$1,733.00	\$1,905.17
2015 Rate	\$1,332.20	\$1,418.26	\$1,587.75	\$1,758.99	\$1,933.75

Lieutenant	Step A	Step B
2012 (40 hour)	\$23.56	\$24.22
2012 (51 hour)	\$18.4705	\$18,9960
Bi-Weekly	\$1,883.99	\$1,937.59
2013 (40 hour)	\$24.27	\$24.95
2013 (51 hour)	\$19.0246	\$19.5659
Bi-Weekly	\$1,940.51	\$1,995.72
2014 (40 hour)	\$24.63	\$25.32
2014 (51 hour)	\$19.3100	\$19.8594
Bi-Weekly	\$1,969.62	\$2,025.65
2015 (40 hour)	\$25.00	\$25.70
2015 (51 hour)	\$19.5996	\$20.1573
Bi-Weekly	\$1,999.16	\$2,056.04

Captain	Step A	Step B
2012 (40 hour)	\$25.92	\$26.64
2012 (51 hour)	\$20.3294	\$20.8941
Bi-Weekly	\$2,073.60	\$2,131.20
(40 hour)	\$26.70	\$27.44
2013 (51hour)	\$21.9863	\$22.5970
Bi-Weekly	\$2,135.81	\$2,195.14
2014 (40 hour)	\$27.10	\$27.85
2014 (51 hour)	\$22.3161	\$22.9359
Bi-Weekly	\$2,167.85	\$2,228.06
2015 (40 hour)	\$28.45	\$28.27
2015 (51 hour)	\$22.6508	\$23.2800
Bi-Weekly	\$2,200.36	\$2,261.48

The Union's Rationale:

Bargaining unit members have not received a general wage increase since approximately 2007 and have paid increases on health insurance costs. In the meantime, the other unionized City employees have received pay increases each year. A synopsis of the Union's position beginning with the year 2008 was presented to Fact-Finder Bowers. It appears on page 7 and 8 of her Report and Recommendations issued on November 12, 2013:

The Fact-Finder¹ cited these facts as being key to her Recommendation that these bargaining unit members receive a 3.0 percent increase effective June 1, 2013, a 1.5 percent effective June 1, 2014 and a 1.5 percent increase effective June 1, 2015. The Union is adopting this Recommendation as its position with the following modification: The 3.0 percent increase will be effective November 12, 2013, which was the date of the issuance of the Fact-Finder's Recommendation.

Since 2007, the rate of inflation steadily increased, while the bargaining unit members' pay stagnated. Not only has their pay failed [to] increase at the same rate as other employees, but they have experienced an erosion of their spending power over this period of time. Further, the bargaining unit members' pay rates lag behind the pay rates earned by similar employees in other jurisdictions. The percentage increase proposed by the Union is appropriate at this time to prevent the bargaining unit members from losing more ground in comparison to the employees of other fire departments and to maintain parity internally with the Police Department. The wage increases [are] necessary to enable the employees to keep up with increases in the cost of living.

POSITION OF THE CITY

2. ARTICLE 33-DURATION OF THE AGREEMENT

Section 33. 1 This Agreement shall be effective upon signing by both parties and shall continue in full force and effect through May 31, 2015. It shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives notice as provided herein.

The City's Rationale

In 2011, the City of Fostoria was awarded a SAFER grant (Staffing for Adequate Fire and Emergency Response). The original amount of the grant was \$1,233,285 and was received by the City over a 24-month period. It was intended to assist with the recall of eight firefighters that were laid off prior to 2011. The grant expired in October of 2013.

¹ The reference is to Fact-Finder Mollie H. Bowers in the instant Case No. 2013-MED-03-0238

Recently, the City of Fostoria applied for an additional SAFER grant. Like the previous grant, it would also be paid over a 24-month period and should cover eight firefighters. Although the City maintains hope that the grant will be awarded, there is no assurance that the award will be forthcoming. FEMA, the grant sponsor, is expected to begin announcements of the grant recipients in early 2014.

As mentioned above, the Fostoria Fire Department is staffed at 18 firefighters including those eight firefighters supported by the grant. The award of an additional SAFER grant would allow the City to continue to provide full-time fire protection and emergency medical services to the Fostoria community at its current levels. Absent the award, the City's ability to maintain such services would be jeopardized.

A two-year Agreement makes sense whether or not the additional SAFER grant is awarded. Because the grant is for two years, a two-year Agreement would allow the parties to better understand the financial situation of the City and more effectively negotiate a successor Agreement. If the grant is not awarded, then the City will be required to revisit the terms of the Agreement sooner rather than later in order to protect the level of services provided to its residents. A three-year Agreement, on the other hand, could potentially thrust the parties into reactionary positions after the damage has already occurred. The City would prefer to anticipate the difficulties and address the issues before they become impossible situations.

POSITION OF THE UNION

2. ARTICLE 33-DURATION OF THE AGREEMENT

The Union proposes the following language for this Article:

Section 33.1 This Agreement shall be effective upon signing by both parties and shall continue in full force and effect through May 31, 2016. It shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice as provided herein.

Section 33.2 If either party desires to modify, amend, or terminate this Agreement, it shall notify the other in writing of such intent no earlier than one hundred and twenty (120) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration of this Agreement. The parties shall commence negotiations within two (2) calendar weeks upon receipt of the notice of intent.

Section 33.3 Subsequent negotiations on a replacement Agreement shall take place under the provisions of Section 4417 ORC.

Section 33.4 The parties acknowledge that during the negotiations, which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this

Agreement constitute the entire agreement between the Employer and the Union, and all prior agreements and practices either verbal or written, are hereby cancelled. Therefore, the Employer, the employees, and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right and each agrees that the other shall not be obligated, unless otherwise specifically provided herein, to bargain collectively or individually with respect to any subjects or matters even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

The Union's Rationale:

The Union proposes a three-year contract in order [to] afford greater stability to the labor-management relationship and minimize the disruptions to the department that typically accompany contract negotiations. To negotiate any more frequently requires an unnecessary use of each party's resources, including financial resources.

SUMMATION

This Hearing was convened on February 3, 2014 at 10:06 A.M. and was declared closed at 12:08 P.M. The testimony and evidence centered upon the issue of the City's ability or lack of ability to pay wage increases during the term of the Agreement.² The issue of the proposed term of the Agreement was discussed in much less detail.

As of February 3, 2014 it was testified to that all entries to the General Fund had not been made and the books would not be closed for possibly six months.

Another unknown was the status of the SAFER Grant.

² In the Fact-Finding Hearing there was no dispute between the parties that the Step increases contained in the current Agreement would remain in effect when a new Agreement was reached.

WAGE INCREASE HISTORY

2008	0% pay increase for the Fire Fighters, 3% increase for Police
2009	0% pay increase for the Fire Fighters, 3% increase for Police
2010	0% pay increase for the Fire Fighters, 3% increase for Police
2011	0% pay increase for the Fire Fighters, 0% increase for Police
2012	0% pay increase for the Fire Fighters, 1.5% increase for Police

Internal comparables favor the Union.

PERFORMANCE AUDIT OF THE CITY OF FOSTORIA

Dave Yost, Auditor of State, presented this Audit to the City. Among the primary conclusions of the Audit were that the City of Fostoria could save approximately \$200,900.00 annually by improved management of benefits, changing its administrative span of control and limiting overtime. This amount is approximately 3.2 percent of the City's 2011 General Fund expenditures. Additional, non-monetary recommendations could also affect future budgets.

Earlier implementation of the recommendations of this Audit would be to the City's financial betterment.

The City has failed to convince the Conciliator by the testimony or by evidence presented at this Hearing that it does not have the ability to pay the wage increases called for in the Fact-Finder's Report and Recommendations dated November 12, 2013. The Conciliator adopts the positions taken by the Fact-Finder in her Report and Recommendation on this issue.

DURATION:

The City has failed to convince the Conciliator by the testimony or by the evidence presented at this Hearing that the three-year duration of the parties'

Agreement as called for by the Fact-Finder in her Report and Recommendations should be modified. The Conciliator adopts the positions taken by the Fact-Finder in her Report and Recommendations on this issue and agrees that a three-year Agreement between the parties would provide for a more stable negotiating environment. The City did negotiate a three-year Agreement with AFSCME. The Union has, in the Conciliator's opinion, been continuously placed in a disadvantageous bargaining position.

AWARD

The Fact-Finders Award is affirmed. The City is to implement the terms and conditions of the Fact-Finder's Report and Recommendations.³

The date to be used in calculating retroactivity/payment of the initial wage increase of 3% is November 12, 2013. The second wage increase of 1.5% is to be dated/paid June 1, 2014. The third wage increase of 1.5% is to be dated/paid June 1, 2015.

The expiration of the Agreement is to be May 31, 2016.

Richard J. Colvin
Conciliator
March 3, 2014

³ Modified only by the Union's subsequent proposal to make the first wage increase effective November 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that one copy of this Conciliation Award in SERB Case No. 2013-MED-03-0238 (City of Fostoria and International Association of Fire Fighters, Local 325) is being sent by electronic mail to SERB and to each of the following Parties on the date set forth below:

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March 3, 2014

Richard J. Colvin, Conciliator