

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF  
FINAL OFFER SETTLEMENT AWARD  
BETWEEN:

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| City of Westlake, Ohio             | ) |                              |
|                                    | ) | Case No: 2013-MED-03-0380    |
| and                                | ) |                              |
|                                    | ) | Conciliator: Colman R. Lalka |
| Westlake Firefighters Association, | ) |                              |
| IAFF Local 1814                    | ) |                              |

HEARING

Dates of Hearing: February 10 and 11, 2014

Location of Hearing: Westlake, Ohio

ATTENDANCE AT HEARING

For the Employer:

Michael D. Esposito, Esq.

Sandy Conley, Esq.

Prashant Shah, Finance Director

Jazmyn Stover, Human Resources Manager

For the Union:

Ryan J. Lemmerbrock, Esq.

Patrick M Grealis, Local President

Craig Goodwin, Local Vice-President

Brian Wilker, Local Trustee

Tyler Kelly, Local Treasurer

Nick Tummino, Local Secretary

Phillip Gauer, OAPFF Vice-President

## BACKGROUND

The City of Westlake, Ohio recognizes the Westlake Firefighters Association, IAFF Local 1814 as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on February 28, 2013. Formal bargaining between the Parties has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report rejected. Said Fact-Finding Report, issued November 14, 2013, is incorporated herein by reference. Each Party timely submitted a written report to the conciliator as mandated by law and SERB Rules and Regulations, requested the Conciliator convene a hearing, and matters at impasse be determined pursuant to a final offer settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB.

The hearing was convened on the dates and at the place indicated above. At that time the Parties were provided the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award. The parties executed the following Waiver of Conciliation Transcript:

The City of Westlake ("City") and Westlake Firefighters Association, IAFF Local 1814 ("Union") hereby waive any requirement of a verbatim transcript as stated in *City of Warrensville Heights v. Ohio Patrolmen's Benevolent Association*, 2008-Ohio-2179, 2008 SERB 4-11 (8th Dist. Ct. of App.) interpreting Ohio Rev. Code 4117.14(G)(6), for the conciliation hearing scheduled for February 10 and 11, 2014 in the above-captioned matter.

## CRITERIA

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

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. The stipulations of the parties; and

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

## BACKGROUND AND ECONOMICS

The City of Westlake Fire Department is comprised of forty-four sworn Firefighters, including the Chief and Assistant Chief, who are not Union Members. Fire suppression personnel currently work one of three twenty-four hour shifts, followed by forty-eight hours off duty. For every week worked, fire suppression personnel are credited eight hours until twenty-four such hours are accumulated. Upon accumulation of the twenty-four hours, fire suppression personnel receive a "Designated Day" off. A schedule of twenty-four hours on duty followed by forty-eight hours off results in a fifty-six hour workweek. The use of Designated Days brings the hourly workweek for fire suppression personnel to forty-eight.

There are two fire stations in the City, manned twenty-four hours per day, seven days per week. The daily schedule generally calls for one Captain, two Lieutenants, and ten Firefighters. When Firefighters take leave, their complement is permitted to drop to eight. Firefighters operate the City's four advance life support ambulances, two engines, and two aerial trucks. In 2013, the Fire Department responded to 4,301 calls for assistance, of which 3,329 were EMS calls, 763 fire calls, and 209 service calls.

In addition to IAFF Local 1814, six other unions represent City employees, *viz.* four OPBA Units, Westlake Public Service Department Association,<sup>1</sup> and Westlake City Hall Employees Association.

The commencement of the Conciliation Hearing was devoted to the fiscal health of the City. The presentations regarding fiscal health were, for the City, through Prashant Shah, Finance Director, as well as data and argument offered by the City's advocate; and, for the Union, through the presentation of data and argument by the Union Advocate. That the City is fiscally sound is not contested, however, Mr. Shah noted the City's concerns regarding areas of uncertainty. The City enjoys the highest ratings available from the three rating agencies. Mr. Shah stressed, however, that was not always the case, that it took the Mayor and Council approximately fifteen years to obtain the highest ratings, and the City is concerned with being downgraded.

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<sup>1</sup> Formerly, AFSCME Local 3904, recently decertified.

With the distinct possibility of American Greetings relocating to Westlake, it will be necessary the City issue debt for upgrades in parking, water lines, and other capital improvements. American Greetings will bring approximately 1,340 new jobs to the City, along with increased revenue, however, Mr. Shah indicated, should American Greetings encounter economic difficulty and be unable to meet its obligations to the City, it is the City that will be responsible for the debt.

Mr. Shah has been attempting to convince the three rating agencies that the City can manage the debt. Ratings had not been released by the three agencies as of the date of the hearing, however, Mr. Shah stated, one agency will be downgrading the City to the second highest rating, and the remaining two have indicated the City is on the edge of a downgrade. Any further debt, cuts in funds, and other negative impacts on finances, Mr. Shah stated, will result in downgrades.

Mr. Shah stressed that agency downgrades result in increased costs of debt. For example, Mr. Shah continued, if Westlake ties in with the Avon Water System, a debt of \$25 million will be incurred. A Moody's downgrade from Aaa to Aa1 will result in increased cost of that debt in the amount of \$600,000.00 over twenty years.

Mr. Shah explained other areas of concern, including the loss or reduction of the Estate Tax, the Local Government Fund, and the Commercial Activity Tax, and stressed the City's conservative approach to fiscal management has kept the City on a sound footing economically.

The Union does not dispute that the City is taking a conservative approach to budgeting and finance. However, the Union asserts, the City enjoys a ninety percent carryover, is being overly cautionary, and is applying an overly cautionary fiscal approach to its employees. That is, there is no reason that employee benefits should be cut, and, the Union believes, wages can be increased.

American Greetings relocating to Westlake will benefit the City, bringing 1,340 new jobs, the Union points out, with an increase in income tax, and a further development of Crocker Park. The loss of the Estate Tax, LGF, and CAT will be more than offset by the increase in income tax. Moreover, the Union concludes, the City is home to a large number of other businesses, and the City's economic position can be viewed as expanding.

Throughout the Hearing, both parties presented documentary evidence in the form of tables, charts, graphs, and reports, and both parties were able to obtain all underlying data deemed necessary for its presentation and the cross-examination of the witnesses of the opposing party. In the absence of objection and in that all documentary evidence was subject to cross-examination, the Conciliator accepts all documentary exhibits even in the absence, in some instances, of the underlying data from which the exhibits were derived.

The issues at impasse will be discussed in the order presented at the Conciliation Hearing.

## ISSUES AT IMPASSE AND AWARDS

### Article XIV Hours

In addition to the current traditional Firefighter schedule of twenty-four hours on duty, followed by forty-eight hours off, the City proposes four shifts of twelve hours duration. The twelve-hour schedule will be mandatory only for new hires, and voluntary for existing Firefighters. Thus, the City states, its proposal will have no effect on current Bargaining Unit Members.

The rationale for the City's proposal is that most calls for assistance are between the twelve-hour period of 8:00 a.m. and 8:00 p.m., and those calls are overwhelmingly for EMS service. The addition of twelve-hour shifts, the City established, results in more coverage per Firefighter man hour during the 8:00 a.m. to 8:00 p.m. time period.

The Union opposes the twelve-hour shifts, arguing the City has failed to demonstrate any financial or operational need for twelve-hour shifts. Most structure fires occur in the City between the hours of 5:00 p.m. and 1:00 a.m., and what is needed, the Union asserts, are more twenty-four hour personnel, not twelve-hour daytime personnel. The Union indicates that it is unaware of any full-time fire department in Ohio that currently operates with a combination of both twenty-four and twelve-hour shifts. Moreover, the Union notes, at no point during bargaining has the City discussed twelve-hour shifts with the command staff, the rank-and-file, or the Union. The Union proposes current<sup>2</sup> contract language, as recommended by the Fact-Finder.

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<sup>2</sup> For clarity, the words "current" or "predecessor," as in "current agreement," "current language," "predecessor agreement," etc., refer to the Labor Agreement dated March 1, 2010 through February 28, 2013.

The Union points out that the proposal for twelve-hour shifts is the City's idea and did not emanate from the Fire Chief. Moreover, the Union continues, the City's proposed language does not address the work period of the twelve-hour shifts. That is, the City retains the option of unilaterally determining tour start and end times with no input from the Fire Department Command Staff or the Union. At no time in its past, the Union states, has it not had the ability to bargain over hours of work schedules.

The Union raises numerous other issues regarding potential problems with the implementation of twelve-hour shifts that have not been addressed by the City in its proposal. For example, the Union questions, what happens in the event a twelve-hour Firefighter goes on leave? Is the vacant slot filled with a twelve-hour Firefighter, is a twenty-four hour Firefighter called in for half a tour? If someone is suspended for a day, does that mean one twenty-four hour shift or two twelve-hour shifts? Can a twelve-hour Firefighter trade time with a twenty-four hour Firefighter? If there is a shortage of twenty-four hour Firefighters on a shift, will a twelve-hour Firefighter be permitted to fill in for a twenty-four hour Firefighter, or will a twenty-four hour Firefighter be called in on overtime? If a twenty-four hour Firefighter retires, will a twelve-hour Firefighter be permitted to bid into the twenty-four hour position? The Union raises other issues as well, but the foregoing present an idea of the Union's concerns regarding unaddressed issues.

The Conciliator notes that Fire Chief Hugh, according to the Fact-Finding Report, testified at the Fact-Finding Hearing. Conspicuous by their absence from the Conciliation Hearing were the Fire Chief or anyone from the command staff to testify on behalf of the City's position. The Conciliator also notes that the Fact-Finder raised the following issues in his recommendation regarding hours:

. . . Moreover, all of the operational bugs need to be addressed, discussed and resolved before the plan is permanently implemented. . . . Westlake's decision should be delayed until it is determined that the new shift schedule has a reasonable chance of addressing its coverage problems from an operational standpoint. It should assure itself that the new shift does not present a new set of unintended consequences that could otherwise be avoided if it did not hire these new 12-hour employees. Instead, it should first increase its staff to appropriate levels with existing 24/48 personnel before employing the new 12-hour shift personnel. Accordingly, I recommended that the existing contract language should remain with no change at this point in time.

Regarding the "operation bugs" over which the Fact-Finder expressed concern, and the numerous issues raised by the Union at the Conciliation Hearing, the City's only response was that the issues could be discussed and resolved once its proposal is implemented. In that the Fact-Finding Report was issued three months before the Conciliation Hearing, and such discussions have yet to commence, the Conciliator finds somewhat tepid the City's assurance such issues will be discussed and resolved after implementation of its proposal. In the view of the Conciliator, the City's proposed twelve-hours shifts, without prior resolution of the numerous affected ancillary issues will, as the Union emphasizes, lead to grievances as the parties attempt to work through the difficulties that will certainly arise. Such would not be conducive to harmonious labor relations.

Finally, the Conciliator notes that City's claimed impetus for its twelve-hour shift proposal is the number of 8:00 a.m. to 8:00 p.m. EMS calls. It was never established that extra persons available during the day will improve service to the public. The additional personnel will not place an additional vehicle on the road, and extra personnel during the day will not assist when fire suppression is needed in late evening and overnight hours. It is during a structure fire when manpower becomes critical, especially when the whereabouts of small children trapped in a structure fire are unknown. Small children have a tendency to hide in closets and under beds where they perish if not found, and sufficient manpower is needed for, ideally, an multi-pronged attack on the fire itself while a search is underway.

#### Award

It is the award of the Conciliator that the current language of Article XIV be carried forward into the parties' Successor Agreement.

#### Article XIX Holidays

The City proposes language be added to Article XIX to account for its proposed Article XIV modification to permit the addition of twelve-hour shifts. In that the City's proposed Article XIV language has not been awarded, its proposed addition to Article XIX has been rendered moot.

#### Award

The current language of Article XIX is to be carried forward into the Successor Agreement.

#### Article XXI Sick Leave

The City proposes a modification of Article XXI, at Section 21.02, to provide that employees hired on or after December 19, 2013 accumulate a maximum of two-thousand hours of sick leave. Currently, employees accrue sick leave to a maximum of two-thousand-five-hundred hours. As provided in the Current Agreement, once the maximum is reached an employee is to either take time off at the rate of one-fourth of the total hours over the maximum, or elect to be paid for hours in excess of the maximum at the employee's hourly rate multiplied by one-fourth of the excess hours. The City points out that its proposal does not affect current Bargaining Unit Members.

The Fact-Finder recommended the current language, however, the City argues that circumstances have changed since Fact-Finding. That is, the City states, a pattern is emerging wherein an identical sick leave proposal has been accepted by the OPBA Patrol Officers Bargaining Unit, Tentative Agreement has been reached with the remaining OPBA Units, and, the City believes, it will reach the same agreement with the Westlake Public Service Department Association.

The Union opposes the reduction in accrued sick leave hours, and requests the recommendation of the Fact-Finder be upheld. There are two aspects to the City's proposal, the Union points out, the number of hours that accrue, and the cash-out at retirement. Under the City's proposal, a new hire would have three-hundred-seventy-five less hours to cash out at retirement. Furthermore, the Union emphasizes, the purpose of sick leave is not only the cash-out. The purpose is to protect Bargaining Unit Members against long term illness or injury, and the City's proposal creates a two-tiered system wherein current Bargaining Unit Members would enjoy greater protection than new hires.

Decreases in sick leave benefits, the Union continues, are negotiated by political subdivisions that are in fiscal distress, which is not the case here. The City is simply attempting



to take from new hires a benefit that was obtained through bargaining, and, it is emphasized, the City has not offered anything in return.

#### Award

Other than an emerging, as opposed to an established, pattern, no justification was provided for reducing the sick leave benefit for new hires. In the absence of a justification being presented, and in that both parties were well represented by their respective advocates, the Conciliator presumes the impetus behind the City's proposal is strictly cost savings. The Conciliator finds compelling the Union's argument that sick leave was a bargained for benefit, and rather than removing that benefit through Conciliation, this Conciliator feels, in the absence of fiscal necessity or other compelling justification, a reduction in the sick leave benefit should be accomplished through the give-and-take of the bargaining table.

It is the award of the Conciliator that the Article XXI language of the Predecessor Agreement be carried forward into the Successor Agreement.

#### Article XLVI

##### Termination, Modification, Extension and Duration

The City proposes changing the title of Article XLVI by deleting the words "Termination, Modification, Extension and," providing the effective dates of the Successor Agreement as 12:01 a.m. March 1, 2013 until Midnight February 28, 2016, and deleting Section 46.02 which provides for a waiver of ORC 4117.14(G)(11). ORC 4117.14(G)(11) provides:

4117.14 Settlement of dispute between exclusive representative and public employer - procedures.

\* \* \*

(11) Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year. The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement.

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The City points out that Article XLVI, Section 46.02 acts as an automatic waiver, and is language generally not found in Labor Agreements. The Union, on the other hand, objects to the deletion of Section 46.02, arguing that Section has been in the Labor Agreement since the 2001 Collective Bargaining Agreement between these parties. The Union notes that Sec-

tion 46.02 was first proposed by the City, and has operated with no problems or prejudice to either party. Section 46.02 has allowed the City to negotiate individually with its Bargaining Units without the artificial limits set by statute, while ensuring the Union will not be harmed by delays in the bargaining process. Regarding the effective dates of the Successor Agreement, the Union accepts 12:01 a.m. March 1, 2013 through Midnight February 28, 2016.

#### Award

No compelling rationale for deleting Section 46.02 has been presented by the City. Consequently, the current language of Article XLVI, Section 46.02, is to be carried forward into the Successor Agreement.

Additionally, the effective dates of the Successor Agreement are to be 12:01 a.m. March 1, 2013 through midnight February 28, 2016.

#### New Articles

##### Physical Fitness Testing and Incentive Fitness for Duty

The Union proposes two new Articles, and, in that they are closely related, at the Hearing combined its proposal of two new articles into one presentation. The City opposes the addition of the new articles to the Successor Agreement. The parties, prior to Fact-Finding, engaged in negotiations regarding Physical Fitness and Fitness for Duty, and, originally, it was the City that proposed the new articles. Each party presented its desired versions of the articles at Fact-Finding, and the Fact-Finder recommended a combination of the two proposals, selecting portions of each, with modification where it was felt appropriate.

During negotiations, numerous proposals and counter-proposals were exchanged, and, the Union states, in that the Fact-Finder's recommendation included a monetary bonus, the City now opposes the new articles. The monetary award is *de minimis*, the Union indicates, consisting of \$100.00 or \$150.00, depending on where in the fitness events the Firefighter places. The City responds by indicating the converse, that is, the Union was opposed to the new articles until a monetary bonus was recommended. It was also stated at the Conciliation Hearing that the City was in favor of the new articles until the attorneys became involved. One of the City's concerns is the effect the new articles will have upon its workers' compensation claims, which, presumably, was brought to its attention by counsel.

Other issues were raised by the parties, including the current Fitness for Duty protocol found in the Westlake Fire Department's Policies and Procedure, due process rights if the City deems a Firefighter unfit for duty, OAC appeal rights, the lack of such articles in the Union's list of comparable communities, and the selection of examining physicians pursuant to the Union's proposal. In the opinion of the Conciliator, both parties presented arguments and counter-arguments that were compelling from each of their respective viewpoints. The City concluded its presentation by pointing out none of its other Bargaining Units has such provision in its Collective Bargaining Agreement, and no compelling reason has been established to include the provisions in this Labor Agreement.

The Conciliator finds the City's last two points particularly compelling. While it is unarguably important that Firefighters be fit to perform the functions of their positions, there is no evidence of record that the current system of addressing Physical Fitness and Fitness for Duty has proven less than satisfactory on even a single occasion.

#### Award

It is the Award of the Conciliator that the Union's proposed new articles not be included in the parties' Successor Agreement.

#### Article XXIII Salaries Appendix A Salary Schedule

Both parties propose no changes in Article XXIII with the exception of Appendix A, Salary Schedule. Both parties propose salary increases effective March 1, 2013, March 1, 2014, and March 1, 2015. They also agree to the same 2% salary increase for 2013. The City proposes a 2% salary increase on March 1, 2014, and a 2% salary increase on March 1, 2015, while the Union proposes a 2.25% increase on March 1, 2014 and 2.75% on March 1, 2015.

The Union notes that currently employee monthly healthcare premiums are capped at \$100.00, and both parties are proposing removing the cap. Taking healthcare into consideration, the Union contends, when compared to comparable communities<sup>3</sup> these Bargaining Unit Members are above average in salary, but below average in take home pay after healthcare

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<sup>3</sup> The Union uses as comparables the following cities: Avon, Avon Lake, Bay Village, Beachwood, Berea, Brookpark, Fairview Park, Lakewood, Middleburgh Heights, North Olmsted, North Ridgeville, Parma Heights, Rocky River, Solon, and Strongsville.

costs are factored in. Accordingly, the Union continues, larger wage increases are needed to offset rising healthcare costs.

The Union's cost projections of proposed salary increases indicate a total for 2013 through 2015 of \$532,358.00 under its proposal, and a total of \$482,973.00 based on the City's. The Union points out that the City budgets for a full staff of Firefighters, even though the Fire Department is not at full staffing levels. That is, the City budgeted \$433,000.00 more than expended, or, the Union emphasizes, approximately 75% of the Union's proposed salary increase over the life of the Contract.

The City counters the Union's arguments by stating that it is only when using the external comparables selected by the Union that the salary of Westlake Firefighters appears to lag. Using its comparable communities,<sup>4</sup> the City emphasizes, discloses the average hourly Firefighter/Paramedic rate of \$25.49, while Westlake Firefighters/Paramedics earn an hourly rate of \$28.19. This hourly rate places them first out of its comparable cities. The average for Lieutenants is \$28.89, and Westlake Lieutenants earn an hourly rate of \$31.30, also placing them first. For Captains, the average is \$32.00, and, in Westlake, Captains earn \$34.74, sufficient to place Captain pay the highest out of the City's external comparables. The Union points out that the City's hourly figures are adjusted by 4.7% to account for 4.7% less hours worked by Westlake Firefighters, and argues that an hourly rate is an hourly rate, and no adjustment should have been made.

Again using the City's external comparables, and adding Longevity at fifteen years, Paramedic Pay, and Uniform Allowance discloses an average Firefighter/Paramedic salary of \$69,909.00, and \$72,879 for Westlake Firefighters/Paramedics. This is the highest salary figure out of the City's comparables. Likewise, Westlake's Lieutenants and Captains receive the highest annual salary of the comparable communities used by the City.

The City also notes that of its comparables, the average pay increase for 2013 was 2.11%, is 1.5% for 2014, and is 1.5% for 2015, and believes it 2%, 2%, and 2% is in line with prevailing economic conditions. Using the Union's comparables, the City continues, discloses an average increase of 1.65% for 2013, 1.69% for 2014, and 1.75% for 2015.

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<sup>4</sup> The City uses as comparables, the cities of Avon, Avon Lake, Bay Village, Fairview Park, North Olmsted, North Ridgeville, and Rocky River.

The City also references the historical data regarding internal comparables between Police and Firefighters. Indeed, going back to 2003 discloses parity between the two Units, except for the years 2013 through 2015. In those three years, Firefighters earned slightly more than Police, \$353.00, \$721.00, and \$1,474 respectively. Thus, the City concludes, its 2%, 2%, and 2% keeps internal parity intact, and is in line with external comparables.

Award

The City has established a long-standing internal parity between Police and Fire, and also established its 2%, 2%, and 2% is in keeping with external comparables, both those offered by the City as well as those advanced by the Union. The Conciliator awards the City's proposal. The changes to Article XXIII, Appendix A shall read:

|                                      | 3/1/2013 | 3/1/2014 | 3/1/2015 |
|--------------------------------------|----------|----------|----------|
|                                      | 2%       | 2%       | 2%       |
| Fire Fighter (3 <sup>rd</sup> Grade) | \$60,433 | \$61,642 | \$62,875 |
| Fire Fighter (2 <sup>nd</sup> Grade) | \$64,741 | \$66,036 | \$67,357 |
| Fire Fighter (1 <sup>st</sup> Grade) | \$71,787 | \$73,223 | \$74,687 |
| Mechanic                             | \$75,378 | \$76,886 | \$78,424 |
| Lieutenant                           | \$79,684 | \$81,278 | \$82,903 |
| Captain                              | \$88,449 | \$90,219 | \$92,022 |

Article XXVI

Health Benefits and Spending Plan

Of the issues presented at the Conciliation Hearing, Article XXVI, Health Benefits and Spending Plan, was the most contentious. The City proposes amending the entire Article with the exception of two paragraphs, and the Union proposes minor modifications of existing language along with the addition of a new Paragraph and three new Sections, 26.04, 26.05, and 26.06. In general, there are two aspects to each party's proposals, the first being for the years 2013 and 2014, and the second being for 2015.

The City is self-insured, using the services of a Third Party Administrator (TPA) with a network that includes both Cleveland Clinic and University Hospitals. Other TPA's with limited networks are available, and it is a conscious decision on the part of the City to select a TPA offering a wider selection of health care providers so as not to limit employee choices. The City also has a stop-loss carrier, which, obviously, charges a premium for coverage. For the first two months of 2014, claims have been presented for \$200,000.00. The City's stop-loss begins at \$80,000.00, however, as claims increase, premiums increase. In 2012, the stop-

loss carrier paid \$120,771.00, and in 2013 paid \$233,565.00. To help control costs, every year the City accepts bids from stop-loss carriers for coverage.

The City presented a spreadsheet indicating the twenty-year history of hospitalization costs. The fees of the TPA and premiums for stop-loss coverage are combined into one category on the spreadsheet referenced as Administration Costs. In 1994 Administration Costs were \$138,872.00, and they have risen, fairly linearly, through 2013 when the costs were \$463,465.00. All other expenditures have likewise increased since 1994; pharmacy claims from \$99,395.00 in 1993 to \$353,395.00 in 2013, dental claims from \$91,488.00 to \$159,960.00, and medical claims from \$564,798.00 to \$1,655,346.00. Mr. Shah, indicated a good health care fund reserve is 65% of actual claims costs.

As costs continue to rise, the City feels, it is beneficial to have all City employees on the same plan. While the parties used the term "plan," the City clarified that the term "plan" is somewhat of a misnomer. In that the City is self-insured, differing coverage to various Bargaining Units is not the result of different "plans," but is the result of differing benefit levels. Also, Mr. Shah explained that should an employee or family member encounter medical difficulties not covered under the hospitalization plan, a committee is convened and a determination made of whether to add coverage. In the event of increased coverage, the TPA provides new rates to account for the additional coverage.

The City points out that the Firefighters' Bargaining Unit has 16.6% of the City's hospitalization enrollees, yet accounts for 28.2% of claims. The Union states that its current high claims rate is a snapshot in time, and is the result of a member's spouse having cancer. Medical claims, the Union continues, depend on which of the City's employees encounters problems. This year it is a Firefighter's spouse, next year it could be an employee, or the family member of an employee, in a different Bargaining Unit.

What the City is proposing, the Union states, is an unjustified overhaul of the Union's health insurance benefits. Focusing on the last five years, the Union points out that the City's health insurance fund has never been stronger. Over the last two Labor Agreements, the City requested changes in health benefits and the Union agreed. At the end of 2006, Firefighters paid up to \$1,800.00 annually for family coverage, and, over the course of two Labor Agreements, Firefighters are now paying \$4,700.00 for the same coverage.

In 2009, the self-insurance fund had a balance of \$1,015,962.00, and the balance has since increased to \$2,946,512.00 in 2013. That is, according to the Union, the parties negotiated increased costs to employees, and the strength of the fund increased. Now after successfully negotiating its way to an improved position, the City is attempting to remove the Union's right to negotiate over healthcare in its proposal for a Healthcare Committee.

The Union believes that the City is also proposing an unnecessarily complex matrix for determining employee contributions. Under the matrix, employees will contribute from 10% to 17.5% toward monthly premiums, depending on Wellness Screening and tobacco usage. These costs are unheard of, according to the Union, and the rule of reason must be applied to healthcare provisions of the Labor Agreement. The Union notes that it is not opposed to Wellness Screening, which it also proposes.

The Union's proposed modification to Section 26.01, in addition to removing surplus language regarding the effective date, removes the cap from employee contribution toward monthly premiums, and increases annual employee deductibles from \$100 to \$200 per person, and from \$200.00 to \$500 per family. The Union's final modification to Section 26.01 references its proposed modification to Section 26.05 providing for a Wellness Program, in the City's discretion, commencing in 2015. Should a Wellness Program be implemented, as provided in the proposal, the premium contribution may be increased by the City to 12.5%, provided, however, that if an employee meets the goals of the proposed Wellness Program, the employee is to receive a 1.5% credit, leaving a net contribution of 11%.

The City's proposed Wellness Program commences in 2014. Meeting certain conditions specified in its proposed Section 26.02 results in a 2.5% reduction in the premium, with the result of employee contribution between 10% and 17.5% as noted above. The City's premiums as set forth in the matrix found in its proposed Section 26.04, are, for the most part, higher than the contributions proposed by the Union.

Other modifications have been proposed by each party, with the most contentious being the City's proposed Health Care Committee. The Union, at new Section 26.04, proposes a Health Care Committee comprised of one representative from each of the City's Bargaining Units, and a number of non-Bargaining Unit and/or Management representatives in a number either equal to or less than the number of Bargaining Unit representatives in order to provide for an odd number of representatives.

The City, at its new Section 26.05, proposes that the Committee, commencing in 2015, be empowered to make binding recommendations from one of three enumerated options:

- A. To keep the same plan and/or benefit levels and pass on any cost increase above the levels set forth in Section 26.04 of this article to the participating employees; or
- B. To change the plan and/or alter the benefit levels to reduce or minimize the cost increase to be passed on to participating employees; or
- C. To change the plan and/or alter the benefit levels so that there is no increase in the cost of the plan.

Absent a valid recommendation, the City is to unilaterally implement one of the options. The selection of one of the options by the Committee, or the City, is final and binding upon Bargaining Unit Members, with no recourse to the grievance procedure or other avenue of appeal.

At the Conciliation Hearing, the City argued that under its proposal the Committee would be employee dominated. That is, the Committee would consist of one representative from each of the City's Bargaining Units, one non-Bargaining Unit representative, and, in order to allow for an odd number of representatives, Management representatives equal to or less than the number of Bargaining Unit representatives.

The City's contention the Committee would be employee dominated appears tenuous at best. The City's proposed language does not provide for the manner in which the non-Bargaining Unit representative is to be selected. The Union points out that representative could be the mayor's secretary, or a high-ranking City official, who would surely vote as the Administration directs. Thus, with seven representatives, one from each Bargaining Unit, plus a non-Bargaining Unit representative, for a total of eight, Management representatives would number seven to allow for an odd number of total representatives. The tie-breaker, as the Union fears, would be the non-Bargaining Unit representative.

Moreover, this Union notes that there are four OPBA Units in the City, and, this Union alleges, the four OPBA Units tend to vote in concert. Thus, it is argued, instead of this Bargaining Unit having an equal say on the Committee, it is outnumbered four to one. There is no guarantee, the Union continues, that the OPBA Units and this Union will agree on the best level of health benefits for Firefighters.

The Union's opposition does not end with the composition of the Committee under the City's proposal, but extends to the loss of bargaining rights regarding changes in health benefits. Indeed, commencing in 2015, the selection of one of the options is final and binding,



with no appeal rights. As the language currently stands, the Union is guaranteed comparable benefits should the City exercise its right to change carriers. There is no denial of grievance rights under that provision. Thus, as the Union indicates, under the City's proposal its right to bargain over health benefits is lost.

In the view of the Conciliator, it is one thing for a party to a Labor Agreement to relinquish its right to bargain over a certain provision, and quite another for that right to be stripped from a Bargaining Unit via Conciliation. That is not to say conditions for such an award via Conciliation could not exist, but, for such an award by a Conciliator, compelling evidence must be of record. No such evidence was adduced by the City. The City offered evidence of increasing costs, to which the Union noted the strong condition of its hospitalization fund. The City also indicated the ACA may increase its costs, and the Union responded by arguing one publication will indicate costs will increase under the ACA, while another indicates they will not. No one, the Union concludes, is able to say with certainty.

#### Award

Of the two proposals, the Unions' is reasonable, addresses fears of increased costs by compromising with additional contributions by its members, without the loss of its right to bargain over healthcare. It is the award of the Conciliator that the Union's proposal be implemented. Article XXVI of the Successor Agreement shall read:

26.01 Employees shall receive medical, hospitalization, dental, eye-care and prescription coverage as follows:

- a. Prescription co-pays shall be as follows:
  - i. Generic (Level 1) - \$0 Only applicable to generics available from all discounted generic providers (\$4.00 will be reimbursed by City).
  - ii. Generic (Level 2) - \$15
  - iii. Formulary (preferred) - \$30
  - iv. Non-Formulary (non-preferred) – 30%/\$100 CAP

Employees shall continue to pay the difference when a name brand or formulary is selected over an available generic or formulary.

b. The eye care plan shall be as follows: fifty (\$50.00) dollar maximum every two (2) years for an eye examination and one hundred fifty (\$150.00) maximum every two (2) years for qualified prescription eyewear. The annual maximum payment for qualified dental benefits is one thousand five hundred (\$1,500.00) dollars per covered person.

c. The dental plan shall be as follows: Annual maximum benefit of four thousand (\$4,000.00) dollars per each family member; two thousand (\$2,000.00) dollars orthodontic benefit for dependent children under age 19; schedule benefits based on UCR (usual, reasonable and customary) at the following percentages: a) diagnostic/preventative – one hundred (100%) per-

cent; b) minor restorative – eighty (90%) percent; and, c) major restorative – sixty (60%) percent. There is no deductible.

d. Premium Sharing: Employees shall be required to share in the Employer's cost for premiums. The premium sharing shall be ten (10%) percent of the total cost per employee per coverage type per month.

No earlier than January 1, 2015, and if the wellness program set forth under Section 26.05 has been established for the employees, the Employer may increase the employees' premium sharing to twelve and one-half (12.5%) percent of the total cost per employee per coverage type per month. However, if an employee meets the goals and screenings of the wellness program as set forth under Section 26.05, the employee shall receive a credit of one and one-half (1.5%) percent toward his or her premium contribution, making the employee's net contribution level eleven (11%) percent.

e. Office Visit Participation:

i. \$15 per visit (not including in calculation of deductible or out of pocket maximum).

ii. non-emergency use of emergency room - \$75 per visit

f. Employee Co-Pay Participation:

| Tier              | 80/20 limit           | 80/20 maximum |
|-------------------|-----------------------|---------------|
| out of pocket     |                       |               |
| Single            | 80/20 of max \$5,000  | \$1,000       |
| Employee + spouse | 80/20 of max \$10,000 | \$2,000       |
| Employee +1       | 80/20 of max \$10,000 | \$2,000       |
| Family            | 80/20 of max \$10,000 | \$3,000       |

g. Annual deductibles - \$200 per person and \$500 per family

26.02 The Employer reserves the right to self-insure or to change insurance carriers at its discretion, providing the benefits under the plan are comparable to those provided under this Agreement. A change in insurance carrier, plan administrator or health care system (PPO, HMO, etc.) that requires a change in health care providers but does not reduce financial or related benefits is a comparable benefit under this Section.

26.03 The Administration will establish a voluntary Section 125 qualified cafeteria plan (flexible spending) for employees that meet IRS requirements for pre-tax preferences for qualified expenses.

26.04 A health care committee will be created for the purpose of providing the Employer and/or the current provider suggestions on the provision of health care services and concerns with current coverage. The committee shall consist of one (1) representative from each of the bargaining units and a number of non-bargaining unit representatives and/or management representatives less than the total number of union representatives participating in the committee in order to allow for an odd number of voting representatives. The committee may discuss, and by majority agreement, issue recommendations regarding a change in health care providers or insurers or modifications to existing level of benefits for the following year. However, the committee is not responsible for selecting the health care provider or determining the level of benefits. Recommendations from the committee on such shall not be binding upon the parties. Any changes in health care benefits continue to be subject to good-faith bargaining and agreement by the parties.

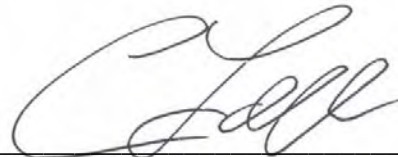
26.05 Commencing in calendar year 2015, the Employer may offer an annual voluntary wellness screening program to employees participating in the Employer's health insurance plan. The Employer shall notify all employees

participating in the Employer's health insurance plan of their eligibility to participate in the voluntary screening program at least thirty (30) calendar days prior to the effective date of the increase in employee premium contribution set forth under Section 26.01(d). The wellness screening program will allow each employee to receive a one and one-half (1.5%) percent reduction in their applicable monthly premium contribution for certifying to the Employer that they have been screened by the employee's health care provider in the following categories: (1) negative for tobacco use, (2) blood pressure, (3) cholesterol, (4) obesity, and (5) glucose level. The reduction will apply to the first month following submission of the required verifying documentation to the Employer. In order to receive the premium reduction, the employee shall complete a form provided by the Employer certifying that the screening has occurred and complete a release that will permit the Employer to verify with the employee's health care provider the date/time of the screening and a positive/negative result on the nicotine test.

26.06 An employee successfully completing the screening set forth under Section 26.05, or an employee that has medical insurance coverage through a plan other than that sponsored by the Employer, shall be entitled to a twenty-five (25%) percent reduction for annual membership dues to the City's recreation center for the employee and/or the employee's family members.

#### TENTATIVE AGREEMENTS

In addition to the above issues, the parties reached settlement on additional issues, and at the request of the Parties and with permission of the Conciliator, said settlement agreements are incorporated herein as the award of the Conciliator.



Colman R. Lalka, Conciliator

Dated: April 7, 2014  
Madison, Lake County, Ohio