

STATE EMPLOYMENT RELATIONS BOARD
CASE NO: 13-MED-07-0831

In The Matter of The Conciliation Between:

THE CITY OF AVON)
)
 -AND-)
)
 INTERNATIONAL ASSOCIATION)
 OF FIREFIGHTERS,)
 LOCAL 4310, AFL-CIO)

ATTENDANCE:

For The City:

Sandy Conley	Employer Advocate
Melisa Fisco	Senior Employer Advocate
Chief Frank Root	Fire Chief
Tim Golay	Assistant Fire Chief
Bill Logan	Finance Director
Beth Racevich	Assistant Finance Director
Tania Gray	Human Resources Director

For The Union:

Ryan Lemmerbrock, Esq.,	Attorney
James T. Fischer	Union President
Dennis Danczak	Union Secretary
David Conlon	Union Representative

BEFORE ALAN MILES RUBEN, CONCILIATOR

Tele: (216) 687-2310
Fax: (216) 687-6881
E-Mail: a.ruben@csuohio.edu

BACKGROUND:

The Employer, The City of Avon, Ohio, provides a full range of municipal services to its some 21,772 residents located within its twenty-one square mile jurisdiction.

The City's Fire Department renders fire prevention and suppression, and emergency medical transport services to the City's residents. The approximately thirty members of the Avon Fire Department in the classifications of Captain/Paramedic, Lieutenant/Paramedic and Firefighter/Paramedic form a Bargaining Unit exclusively represented by the Avon Firefighters, Local 4310, IAFF, AFL-CIO.

The City and the Union were parties to a Collective Bargaining Agreement entered into as of January 1, 2011 for an initial term which expired on December 31, 2013.

During the course of the ensuing collective bargaining negotiations, the parties tentatively agreed to retain and carry forward, into the successor Agreement, mutatis mutandis, the following provisions:

"Agreement and Purpose:
"Article 1 - Recognition;
"Article 2 - Management Rights;
"Article 3 - Union Rights:
"Article 4 - Bulletin Boards;
"Article 5 - No Strike/No Lockout;
"Article 6 - Non-Discrimination;
"Article 7 - Rules and Regulations;
"Article 9 - Sick Leave, Sections 9.02; 9.04; 9.05;
9.07;
"Article 8 - Probationary Period;
"Article 10 - Funeral Leave;
"Article 12 - Jury Duty Leave;
"Article 14 - Military Leave;
"Article 15 - Uniform Allowance;
"Article 16 - Longevity;
"Article 21 - Safety Committee;
"Article 25 - Shift Exchange;
"Article 26 - Pension;
"Article 27 - Dues Check Off;
"Article 28 - Payment to Estate Upon Death;
"Article 29 - Educational Credit;
"Article 30 - Savings Clause;
"Article 31 - Seniority and Layoffs;
"Article 32 - Bargaining Unit Application of Civil
Service Law;
"Article 33 - Labor-Management Conference;
"Article 34 - Waiver in Case of Emergency;
"Article 35 - Mileage".

The parties also tentatively agreed on amendments
to the following Articles:

"Article 9 - Sick Leave - Sections 9.01;9.03;9.08;9.09
and 9.10;
"Article 13 - On-Duty Injury Leave;
"Article 18 - Vacations;
"Article 23 - Grievance procedure;

"Article 24 - Disciplinary Procedure, and
"Article 36 - Duration of Agreement.

Proposals involving amendments to the text of six other Articles remained at issue and the parties declared impasse.

Howard D. Silver was appointed Fact-Finder and conducted a hearing on November 25, 2013. Thereat, the parties agreed to a "limited waiver" of O.R.C. Section 4117.14(G)(11), which, as here relevant, allows Awards on matters involving rates of compensation and other subjects with cost implications to become effective in 2014.

On January 8, 2014, the Fact-Finder issued his Report and Recommendations.

The City did not vote on adoption of the Report, and was thereby deemed to have accepted the Fact-Finder's Recommendations. However, on January 14, 2014, the Union voted to reject the Recommendations.

Thereafter, the parties mutually selected the undersigned to serve as Conciliator and, on February 13, 2014, his appointment was made effective by the State Employment Relations Board.

At the direction of the parties the conciliation hearing was held on April 10, 2014 at the City of Avon Police Department.

The Advocates for the parties offered opening statements and made evidentiary presentations with respect to the unresolved issues. (The issues remaining in dispute are set forth below).

The parties jointly submitted a copy of the expired Agreement; the predecessor Agreements (commencing as of January 1, 2004) and Fact-Finder Silver's Report.

Among the other informational documents submitted individually by the parties were: the 2012 annual report of the Avon Fire Department; the seniority roster of the Avon Fire Department; classification specifications and position descriptions for all Avon

Fire Department positions; a ten year analysis of runs made by the Avon Fire Department; a wage/benefit survey of Firefighters/Paramedics in jurisdictions considered comparable by the City (from 2003 through 2010); the demographics of cities deemed comparable by the Union; a comparison of the hourly and weekly work schedules of employees in other Avon Bargaining Units; a projection of the additional cost which would result from a reduction in the workweek; a summary of overtime costs incurred for the twelve month period ending on October 12, 2013; a list of the weekly work hours of Firefighters in 119 Ohio cities; pay scales in Fire Departments in 234 non-Ohio cities; an analysis of Avon's income tax receipts and expenditure allocations over the past five years made by the Financial Office of the IAFF, and a May 15, 2013 credit research report issued by Moody's Investors Service.

In reviewing the evidentiary materials and making his Awards the Conciliator has considered the factors set forth in O.R.C. Section 4117.14(G) (7), viz.:

"(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 interest 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 proceedings in the public service or private employment".

The Conciliator normally sets forth the final offer of each party and the recommendation of the Fact-Finder on each issue. However, in this proceeding, the parties agreed that the Conciliator was to Award one of the parties' final proposals on each disputed issue without reference to the other party's unsuccessful

offer, or to the Fact-Finder's Recommendation on the issue.

Further, the parties stipulated that the Conciliator was not to submit an explanatory analysis or provide the rationales for his Awards.

Because of the unusual circumstances of this Conciliation proceeding, the Conciliator's Award on each issue is not to be considered as precedential should either party wish to revisit the issue in a subsequent negotiation, Fact-Finding or Conciliation proceeding.

UNRESOLVED ISSUES:

Issue 1: Article 9, Section 9.06 Sick Leave
(Maximum Accumulation):

The Conciliator Awards the City's final offer.

(Current Contract language):

"9.06: Accumulation of sick time shall be limited to two thousand four hundred (2400) hours.

..."

Issue 2: Article 9, Section 9.11 - Sick Leave
(Payout at Separation - renumbered as Section
9.10):

The Conciliator Awards the City's final offer:

"Pay Out of Sick Leave at Separation:

"9.11: Upon service or disability retirement, a shift employee shall be paid for any accumulated and unused paid sick leave at the ratio of one (1) hour's pay for each two (2) hours accumulated, up to a maximum of twelve hundred (1200) hours of pay. Upon service or disability retirement, a forty (40) hour per week employee shall be paid for any accumulated, unused sick leave at the ratio of one (1) hour's pay to each two (2) hours accumulated, up to a maximum of nine hundred, sixty (960) hours of pay. To be eligible for retirement under this section, the employee shall have worked full-time for the City for at least ten (10) years and shall:

Have been approved under the pension system for disability or service retirement."

Issue 3: Article 11, (Emergency Leave):

The Conciliator Awards the Union's final offer:

"Article 11 - Emergency Leave:

"11.01: In the case of a sudden or serious illness or emergency in the employee's immediate family, and upon securing approval of the Chief of Fire or his designated representative, the employee may be granted time-off without any loss of compensation or benefits not to exceed four (4) hours, to aid the family and complete any urgent business concerning the emergency.

Upon completion of said emergency, the employee shall return immediately to duty. In the event that an employee is denied emergency leave, said employee has the right to appeal that decision directly to the Chief of Fire. Should the employee be denied emergency leave by the Chief of Fire, the employee shall have the right to appeal to the Safety Director of the City of Avon. Should the employee be denied emergency leave by the Safety Director of the City of Avon, the employee has the right to appeal to the Mayor of the City of Avon.

"11.02: If emergency leave is granted and additional time is necessary, the Chief of Fire/designee may approve sick leave or vacation leave as applicable on an hour-for-hour basis as necessary".

Issue 4: Article 17, Section 17.02 - (Holidays):

The final offers of both parties were identical and the Conciliator Awards as follows:

"Article 17, Section 17.02 - Holidays:

"17.02: Shift employees who have completed one (1) year of service as of January 1st of the applicable calendar year shall receive five (5) tours of duty as holiday pay or time in consideration of all of the designated holidays as set forth above, provided the employee works the regularly scheduled days surrounding the holiday, and when scheduled, the holiday itself. Employees with less than one (1) year of service as of January 1st of the applicable calendar year shall receive holiday time on a pro-rated basis.

"Forty (40) hour per week employees who have completed one (1) year of service as of January 1st of the applicable calendar year shall receive eight (8) hours of holiday pay or time, as applicable, for each of the designated qualifying holidays. Employees with less than one (1) year of service as of January 1st of the

applicable year shall receive holiday time on a pro-rated basis.

"Holiday time not used or scheduled shall be paid in the first pay of December of the applicable calendar year".

Issue 5: Article 19, Sections 19.01 and 19.02

Hours of Work (Hours and Schedules):

The Conciliator Awards the City's final offer:

"Article 19, Section 19.01 and 19.02 - Hours of Work:

"19.01: Hours and Schedules. These provisions are intended to define the normal range of work hours for regular full-time bargaining unit employees for the purpose of overtime compensation, and shall not be considered as a guarantee of work per day or per week. Nothing contained herein shall be construed to prevent the Employer from restructuring the normal work day, platoon system, or from establishing work schedules.

"19.02: Work shifts, assignments, and schedules shall be established by the Employer. The normal shift schedule currently consists of a twenty-four (24) hours period on duty commencing at 7:00 a.m., followed by a forty-eight (48) hour period off-duty. ..."

Issue 6: Article 19, Section 19.02 - Hours of Work

(Work Week):

The Conciliator Awards the Union's final offer:

"19.02 ... Work schedules shall not normally exceed an average of fifty-one and seven tenths (51.7) hours for shift or platoon (shift) employees. The average annual hours for shift employees shall be two thousand, six hundred, eighty-eight (2,688) hours based upon a two

hundred six and eight tenths (206.8) average hours in each twenty-eight (28) day work period, and based upon a perpetual calendar. The work year shall consist of fifty-two (52) weeks per year, thirteen (13) twenty-eight (28) day work periods.

"The Department of Fire, through the Chief/designee(s), and as approved by the Director of Safety, may institute alternate schedules provided that average hours worked do not exceed 212 hours in a twenty-eight day period. Work shifts shall normally consist of a twenty-four (24) hour period on duty followed by forty-eight (48) hours off duty. Employees will utilize two hundred twenty-four (224) hours of 'relief time' or 'leveling-off time' per year to attain the average 51.7 hour work week (e.g., ten [10] tours (24 hour days) for one [1] year and nine [9] tours for two [2] years out of a three [3] year cycle). Leveling-off time will be scheduled, or authorized with prior approval of the Chief of Fire/designee, during each scheduling period that would exceed permissible straight time hours of work. Leveling-off time will be considered an unscheduled day.

"Effective January 1, 2015, the work schedules for shift employees, as set forth above, shall not normally exceed an average of fifty and three-tenths (50.3) hours per week or two thousand six hundred fifteen and six-tenths (2,615.6) per year, based upon a two hundred one and two-tenths (201.2) average hours in each twenty-eight (28) day work period, and based upon a perpetual calendar. The work year shall consist of fifty-two (52) weeks per year, thirteen (13) twenty-eight (28) day work periods. Shift employees will utilize 296.4 hours of 'relief time' or 'leveling-off time' per year to attain the average 50.3 hour work week (e.g., thirteen [13] tours (24 hour days) for one [1] year and twelve [12] tours (24 hour days) for two [2] years out of a three [3] year cycle). Leveling-off time will continue to be taken-off as specified above. ..."

Issue 7: Article 19, Section 19.02 - Hours of Work

(Forty Hour Positions):

The Conciliator Awards the City's final offer:

"19.02 ... One (1) Lieutenant/Paramedic and/or Captain/Paramedic may be assigned to a forty (40) hour work week schedule with the assignment made at the discretion of the Chief of Fire and with the approval of the Director of Public Safety and the Mayor".

Issue 8: Article 19, Section 19.03 - Hours of

Work (Basic Rate of Pay):

The Conciliator Awards the Union's final offer:

"19.03: Basic Rate of Pay. The basic rate of pay or regular rate of pay for a shift position shall be computed on the basis of the applicable annual compensation for the position divided by two thousand six hundred eight-eight (2,688) hours. Shift employees shall be compensated on a salary basis, based upon an average of 103.4 hours bi-weekly pay period, provided the employee remains working and/or in active pay status (paid status).

"Effective January 1, 2015, the basic rate of pay or regular rate of pay for a shift position shall be computed on the basis of the applicable annual compensation for the position divided by two thousand six hundred fifteen and six-tenths (2,615.6) hours. Shift employees shall be compensated on a salary basis, based upon an average of 100.6 hours bi-weekly pay period, provided the employee remains working and/or in active pay status (paid status).

"The annual compensation for an employee assigned to a forty (40) hour work week schedule shall be computed

based upon the regular hourly rate of pay multiplied by a projected two thousand eighty (2,080) hours. In the case of a salaried forty (40) hour per week employee, the annual compensation shall be divided by two thousand eighty (2,080) hours to determine the hourly rate equivalent.

..."

Issue 9: Article 19, Section 19.04 - (Overtime

Pay):

The Conciliator Awards the Union's final offer:

"19.04: Overtime Pay and Call Back. The Employer shall determine the necessity for excess hours of overtime. When a shift employee is required by the Employer to work in excess of the 206.8 hours of work in a twenty-eight (28) day work period, or the employee works and is in active pay status for more than 206.8 hours in a twenty-eight (28) day work period, the employee shall be compensated for all such hours worked or in paid status in excess of 206.8 hours of work at time and one-half (1 ½) his regular pay.

"Effective January 1, 2015, when a shift employee is required by the Employer to work in excess of the 201.2 hours of work in a twenty-eight (28) day work period, or the employee works and is in active pay status for more than 201.2 hours in a twenty-eight (28) day work period, the employee shall be compensated for all such hours worked, or in paid status, in excess of 201.2 hours of work at time and one-half (1 ½) his regular pay.

..."

Issue 10: Article 19, Section 19.05 - Hours of

Work (Compensatory Time):

The Conciliator Awards the Union's final offer.

(Current Contract language):

"19.05: At their option, employees may elect to take overtime compensation in the form of pay or compensatory time-off. Conversion of overtime to compensatory time is available for whole hour increments only. Employees may not accrue nor use more than one hundred twenty (120) hours of compensatory time at any one time or use more than one hundred twenty (120) hours in any calendar year. If an employee does not indicate an election for compensatory time, or has an accumulation of the maximum number of compensatory hours, the employee shall be paid for the overtime. Requests for overtime compensation or compensatory time shall be made within the same work period the overtime was earned. Compensatory time-off shall be scheduled in advance at the request of the employee subject to the approval of the Chief and operational needs.

"An employee may convert compensatory time to 'cash' in an amount not to exceed fifty (50) hours in any calendar year. Conversion must be requested in writing to the Chief/designee and the Department of Finance at least two (2) weeks in advance of the anticipated conversion. Compensatory time conversion to cash may occur only in June and/or December of the calendar year.

..."

Issue 11: Article 20 - Wages:

The Conciliator Awards the City's final offer:

(Set forth in Appendix "A" hereto)

Issue 12: Article 22 - Health Care Benefits:

The Conciliator Awards the City's final offer.
(Current Contract language):

(Set forth in Appendix "B" heretofore)

The Conciliator further Awards and directs that all
Tentative Agreements entered into by the parties be
incorporated into the successor Agreement.

Award signed, dated and issued at Cleveland, Ohio
this 2nd day of June, 2014.

Alan Miles Ruben
Conciliator

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