STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between

Green Firefighters Association,
IAFF Local 2964

Employee Organization

Case No. 13-MED-09-1091

And

City of Green, Ohio

Conciliator: Jerry B. Sellman
Date of Report: Jan. 2, 2015

The Employer

REPORT AND AWARD OF CONCILIATOR

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Ryan J. Lemmerbrock, Esq. – Attorney with Muskovitz & Lemmerbrock, LLC, representing IAFF Local 2964
Matt Craddock – President of IAFF Local 2964, Witness
Mary Schultz – Employee with Sargent & Associates, Consultant to the Union, Witness

FOR THE EMPLOYER:

Michael D. Esposito - Director of Client Development, Clemans, Nelson & Associates, Inc., representing the City of Green, Ohio
Laurence Rush – Finance Director for City of Green, Witness
Jeff Funai – Fire Chief for the City of Green, Witness

Preliminary Information

This matter concerns an examination of unresolved issues between the City of Green, Ohio (hereinafter referred to as the "Employer" or the "City") and the Green Firefighters Association, IAFF Local 2964 (hereinafter referred to as the "IAFF" or "Union") under the terms of a successor Collective Bargaining Agreement.

The Union is the exclusive bargaining representative of all full-time employees in the City of Green Fire Department occupying the positions of Firefighter, Firefighter/Engineer, Firefighter/Paramedic, Fire Lieutenant/Paramedic, and Fire Captain/Paramedic. There are approximately forty (40) members of the bargaining unit; twenty-eight (28) Firefighter/Paramedics, one (1) Firefighter/Engineer, eight (8) Lieutenants, and three (3) Captains.

The City of Green is an affluent suburban community located in southern Summit County, close to the Stark County border. The City, 33.5 square miles in area, has seen steady population growth with its current population exceeding 25,000. While primarily residential, the City enjoys a growing commercial sector. The City is home to more than 1,200 businesses. Its largest employers include Diebold, 1-800 Flowers, InfoCision Management, Minute Men, Inc., and the Akron-Canton Airport. The City is home to ten (10) industrial and business parks, including the Foreign Trade Zone in the CAK International Business Park (143 acres of industrially zoned land). Many areas of the City are located in a State of Ohio Enterprise Zone, further enabling businesses to qualify for tax abatements and other local incentives. The City's proximity to the Akron-Canton Airport and multiple interstates has further contributed to the City's commercial and residential growth.

The City represents that it is one of the top growth communities in the area. Both

commercial and residential construction has continued to increase in recent years.

Along with residential and commercial development, the City's population has grown (growth rate of 1.2% annually). Also, the City and its residents have seen a marked improvement in economic indicators. The City's median income household of $61,361 is nearly $15,000 higher than the State's median income ($46,829 as of 2012). The median house or condo value within the City is $160,756, compared to the State's median house of condo value of $127,600 (also as of 2012).

The City is in sound financial condition. From 2001 to 2010, the assessed value of taxable property in the City increased from $510,439,727 (2001) to $725,072,240 (2010) - a 30% increase in the value of taxable property. During this same period the City's income tax collections increased nearly 67%, increasing from $5,732,780 (2001) to $17,159,840 (2010). Coinciding with these increases, the balance of the City's total government funds increased from $4,330,701 (2001) to $38,429,744 (2010) - an 89% increase in total funds.

Since 2010, the City's financial health has improved even further. From 2010 to 2013 the City's income tax collection increased each year an average of nearly $1.0 million, to an all-time high in 2013 of $17.2 million. During this period the City's Income Tax Fund balance increased by $5,484,000, tripling in just three years. Based upon collections as of November 2014, it appears income tax collections will reach $18 million in 2014.

The City's General Fund remains very healthy (60% carryover as of 12-31-2013), despite annual City expenditures increasing nearly $2.0 million since 2010. The combined carryover of the Income Tax Fund and General Fund as of 12-31-2013 was $21.4 million, approximately a 98% carryover reserve.

The City indicates that "major projects" will be undertaken in the future towards

improving the City's "infrastructure," including developing a central park that will include a "myriad of offerings." The City reports, "As the economy continues on an upward trend, and borrowing costs remain low, the budget constraints of the past will be eased in order to better address the infrastructure needs of the community." The City's borrowing costs are already low, given the City is one of only a handful of municipalities in the State that currently holds a bond rating of "AAA" - the highest bond rating that can be given to a municipality.

There are three (3) labor organizations in the City - IAFF Local 2964 and two bargaining units represented by AFSCME, Local 2714 (Service employees and Dispatchers). In 2014, the City came to terms with both AFSCME units, which included 2.0% wage increases for each year of 3-year deals and increases in employee insurance premium contributions over the life of the agreements, up to 10.0% (15.0% for non-participants in the "health fair").

The Fire Department is funded by the General Fund, the Fire/Paramedic Fund, and the Ambulance Revenue Fund. The majority of the Fire Department's wages are paid from the Fire/Paramedic Fund, which receives $5.0 million per year in transfers from the General Fund. Since 2010, all Firefighter overtime has been paid from the Ambulance Revenue Fund. While the City has increased funding to other Departments from the General Fund in recent years, the City has maintained the $5.0 million/year funding of the Fire Department. The Fire/Paramedic fund balance has remained relatively stable over the past 5 years. As of 12-31-2013, the combined carryover balance of the Fire/Paramedic Fund and Ambulance Revenue Fund was approximately $3.5 million, representing a 53% carryover reserve for the Funds.

While the City's population has increased and its residential and commercial developments have grown, the Fire Department's run volume has steadily increased. Over the same 10-year period discussed above, the Fire Department's run volume increased over 23%,

going from 2,669 calls per year in 2001, to 3,289 calls in 2010. However, despite the increase in annual calls over this period, the Fire Department's total staffing remained the same. Within the past 5 years, the Department's full-time response staffing has decreased and the Fire Department's total full-time personnel have decreased from 44 to 40.

From 2001 up until 2011, the Department assigned 12 full-time Firefighters to each of the Department's 3 shifts and maintained minimum staffing at 10 full-time Firefighters per shift. Pursuant to the CBA, when 2 full response stations are open a minimum of 10 full-time Firefighters must be on-duty per shift, while when 1 full response and 1 limited response station are open, there must be 8 full-time Firefighters on-duty per shift. As stated, since 2001, the City has elected to continuously maintain 2 full response stations.

In 2011, in negotiations for the current CBA, the City sought to delete the CBA's minimum staffing provisions and to utilize part-time employees towards response staffing. The Union vehemently objected and the parties proceeded to fact-finding on staffing and numerous other issues. By report dated August 4, 2011, Fact-finder William C. Binning rejected the City's proposals to delete the existing minimum staffing provisions and use part-timers towards response staffing. However, Fact-finder Binning recommended that the City be permitted to drop the 10-man minimum staffing level down to a 9-man minimum staffing level when 2 of the scheduled Firefighters were absent on an "EDO" (earned day off, or "Kelly day") and additional leave was scheduled. Fact-finder Binning stated that his recommendation was "an effort to protect language the Union has gained at the negotiating table in the past, but also to try to give the City some relief from the growing overtime costs." In addition, and in regard to the staffing issue, Fact-finder Binning recommended that a "two-tier wage schedule" be adopted, which would enable the City to hire additional full-time Firefighters and reduce the City's overtime

expenditures.

The City rejected Fact-finder Binning's recommendations, including the reduced rate for new hires. The parties proceeded to conciliation before Mitchell B. Goldberg. At conciliation, on October 18, 2011, the parties reached a settlement on the staffing terms. The City agreed to drop its proposals to utilize part-time personnel towards shift staffing and the Union agreed to allow the City to drop the full-time minimum staffing level from 10 to 9 when: (1) when there are 2 Firefighters off on EDO and additional vacation leave is scheduled; (2) when the response shift is at minimum staffing and an employee reports off using sick leave; (3) when 2 response shift personnel are off on simultaneous work-related injuries; or (4) when the response shift is at minimum staffing and one additional Firefighter utilizes injury leave for 3 consecutive shifts or less. The Union believed the settlement resolved the parties' staffing dispute and ended the part-timer issue.

On October 1, 2012, the City unilaterally began using part-time personnel to perform response services in the Fire Department. After the City rejected numerous requests from the Union to bargain the matter, on November 28, 2012, the Union filed an unfair labor practice ("ULP") charge with SERB, alleging the City's unilateral reassignment of the Union's bargaining unit work to part-time personnel violated R.C. §§ 4117.11(A)(1) and (A)(5). Over the course of the next year and into 2014, the staffing battle was fought before SERB and the court.

On January 31, 2013, SERB found probable cause for the ULP charge relating to the unilateral use of part-time personnel in the Fire Department and the matter proceeded to hearing before the SERB Administrative Law Judge ("ALJ"). On October 31, 2013, the ALJ issued his proposed order, recommending that SERB find the City violated R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally reassigned bargaining unit work to part-time non-bargaining unit

employees. The City opposed the ALJ's recommendations.

While the ULP was pending before SERB, on December 23, 2013, the City and the Union began negotiations for the successor CBA. While the financial condition of the City was sound, continued high levels of overtime and sick leave caused the City concern. In an effort to reduce overtime and sick leave costs, the City proposed numerous concessions from the Union, including reducing full-time daily staffing and utilizing part-time personnel, reducing the bargaining unit members' holiday and sick leave benefits, and other benefit cuts.

The parties met on January 15, 2014, and January 31, 2014, with no progress. On February 20, 2014, SERB issued its decision adopting the ALJ's proposed order. In a written opinion accompanying the proposed order, SERB concluded that the City violated R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally reassigned bargaining unit work to part-time non-bargaining unit employees. SERB ordered the City to cease and desist in its violation of R.C. Chapter 4117, return to the *status quo ante* prior to the City's illegal unilateral reassignment of bargaining unit work, and post notice of its violation of R.C. Chapter 4117. The City refused to comply. Instead, on February 25, 2014, the City appealed SERB's decision to the Summit County Court of Common Pleas (Case No. CV-2014-02-0984, Judge T. Parker).

Approximately a week later, on March 3, 2014, the parties met again for CBA negotiations. The City continued to focus on reducing full-time daily staffing and utilizing part-timers in lieu of the full-time bargaining unit members. When the Union indicated the City must comply with the SERB Order, the City accused the Union of failing to bargain in good faith.

Before SERB's Order, during the ULP proceedings, the Union attempted to resolve the staffing dispute, offering to allow the City to use part-timers to supplement staffing, so long as the part-timers did not displace full-time bargaining unit members on the daily shifts. The City

would not agree with the Union's proposal. During CBA negotiations, the Union offered the City a "package proposal," wherein certain leave benefits of the bargaining unit members would be reduced in return for the Fire Department's full-time staffing level being maintained at 10 full-time employees per shift at all times. The City rejected the concept entirely, insisting that part-timers be used in the place of full-time Firefighters on a daily basis. The parties proceeded to Fact-finding.

At mediation with the Fact-finder, the Union initiated an attempt to settle the matter, providing another "package proposal." The City, however, continued to maintain that its use of part-time personnel was within its management rights, and further, refused to bargain any terms that did not consist of significantly cutting the full-time Firefighters' daily staffing level to replace them with part-timers on each shift. As a result, the following issues were submitted to the Fact-Finder:

1.) Union Recognition – Art. 1
2.) Non-Discrimination – Art. 4
3.) Grievance-Arbitration Procedure – Art. 11
4.) Corrective Action – Art. 12
5.) Shift Bidding/Time Conversion – Art. 16
6.) Hours/Overtime – Art. 17
7.) Shift Trades – Art. 18
8.) Compensatory Time – Art. 19
9.) Minimum Staffing – Art. 20
10.) Wages – Art. 21
11.) Longevity – Art. 22
12.) Health Coverage – Art. 23
13.) Wellness/Fitness for Duty – Art. 25
14.) Special Certification Pay – Art. 26
15.) Tuition Reimbursement – Art. 28
16.) Vacation Leave – Art. 31
17.) Holiday Leave – Art. 32
18.) Sick Leave – Art. 33
19.) Residency – Art. 40
20.) Promotions – Art. 42
21.) Duration – Art. 46

The Fact-finding hearing was held on June 23 and July 18, 2014. On August 28, 2014, the Court of Common Pleas affirmed the Order and Opinion of SERB, rejecting the City's appeal. On September 2, 2014, the Fact-finder issued his Report and Recommendations, recommending the following:

1.) Union Recognition – No change
2.) Non-Discrimination – No change
3.) Grievance-Arbitration Procedure – Slight modification of selection procedure
4.) Corrective Action – No change
5.) Shift Bidding/Time Conversion – No change
6.) Hours/Overtime (overtime rate) – No change
7.) Shift Trades – No change
8.) Compensatory Time – No change
9.) Minimum Staffing – No change; reopener after Court of Common Pleas decision issued in SERB v. Green or 18 months after CBA signed, whichever is later
10.) Wages – 01/01/2014 – 2.0%, 01/01/2015 – 2.5%, 01/01/2016 – 2.0%, no change in Officer wage differential
11.) Longevity – "Convert to Fix $ Figure" (actual longevity amount not identified)
12.) Health Coverage – Increase employee premium contributions to 10.0%, uncapped, over life of CBA; "penalty" employee contribution of 15.0% for "less than full health fair participation"; implementation of "health fair" screening, testing and "other medical services"; reject allowing City to unilaterally change bargaining unit members' insurance benefits/terms.
13.) Wellness/Fitness for Duty – Modification of terms, recognition of "health fair" screening and "other services"
14.) Special Certification Pay – No change
15.) Tuition Reimbursement – No change
16.) Vacation Leave – No change
17.) Holiday Leave – No change
18.) Sick Leave – Reduce sick leave accumulation rates from allowing up to 12 tours per year down to allowing up to 6.8 tours per year, effective January 1, 2015
19.) Residency – No change
20.) Promotions – Minor language change accepted by City and Union at hearing
21.) Duration – Effective January 1, 2014 to December 31, 2016.

On October 2, 2014, the City finally dropped its appeal. The City notified SERB that the

City had stopped its use of part-time employees in the Fire Department, and that the City had posted notice of its violation of R.C. §§ 4117.11(A)(1) and (A)(5) and otherwise complied with SERB's Order

Immediately before the conciliation hearing, the parties reached tentative agreements on the following Articles (retaining current contract language with a few minor language changes): Non-Discrimination (Art. 4), Grievance-Arbitration Procedure (Art. 11), Corrective Action (Art. 12), Hours of Work/Overtime (Art. 17), Shift Trades (Art. 18), Compensatory Time (Art. 19), Special Certification Pay (Art. 26), Tuition Reimbursement (Art. 28), Residency (Art. 40), Promotions (Art. 42), and Duration (Art. 46).

The State Employment Relations Board (SERB) duly appointed the undersigned as the Conciliator on October 3, 2014. The Parties mutually agreed to hold a Conciliation hearing on December 16, 2014. Pre-hearing statements were submitted by the parties and the Conciliator considered the arguments and documentation submitted by each Party on the following issues:

Article 1 - Union Recognition
Article 20 - Minimum Staffing
Article 21 - Wages
Article 22 - Longevity
Article 23 - Health Coverage
Article 25 - Wellness/Fitness for Duty
Article 31 - Holiday Leave
Article 32 - Vacation Leave
Article 33 - Sick Leave
    Section 2 - Accrual Rate
    Section 11 - Sick Leave Incentive
    Section 12 - No Penalty for Utilization

A Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

(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 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, and 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;

(e) The lawful authority of the public employer;

(f) The stipulations of the parties;

(g) Such other factors, not confined to those listed in this section, 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.

After the hearing was closed, on December 22, 2014, the Green Firefighters Association, IAFF Local 2694 (Union) requested that the Conciliator stay the issuance of his Report and Award pending a determination by the State Employment Relation Board (SERB) on an Unfair Labor Practice (ULP) charge filed by the City of Green, Ohio (City) against the Union on December 15, 2014 (SERB Case No. 2014-ULP-0269). The Union requested a written Decision by the Conciliator. On December 23, 2014, the City formally opposed the Request. The Conciliator denied the Motion/Request for the reasons set forth in the written Decision attached as Exhibit 1 and proceeded to issue the subject Report and Award.

ISSUES

The following summarizes the positions of the parties, the evidence and arguments offered in support of each party's wage proposal, the Conciliator's analysis and the Conciliator's Award on the issue presented. In issuing an Award, the Conciliator considered all of the

proposals of the parties collectively, the tentative agreements and other fringe benefits as well as compensation received by other City employees.

ARTICLE 1
UNION RECOGNITION

Final Offers on Union Recognition

The Union proposes to add a provision to the Union Recognition Clause specifying that the bargaining unit members shall be exclusively responsible for performing all Fire and EMS services within the City, except as expressly agreed otherwise under Article 20.

The City objects to the submission of this issue entirely as a permissive subject of bargaining. It consequently proposes maintaining current language as recommended by the Fact-finder.

The Position of the Union

The Union submits that the adoption of new language in the Union Recognition clause is necessary due to the City's continued efforts to unilaterally transfer the Union's bargaining unit work to part-time non-bargaining unit personnel and refusing to acknowledge its obligation to bargain under Ohio law. The Union was forced to not only enforce its bargaining rights under R.C. Chapter 4117 through unfair labor practice proceedings, but then required to defend SERB's order against the City's appeal. For approximately two (2) years the City refused to acknowledge its obligation to bargain or that performing fire and EMS services were within the work jurisdiction of IAFF Local 2964, resulting in time consuming and financially draining litigation. The Union's position is that its work jurisdiction must be expressly set forth in the

CBA, aside from negotiated exceptions, and thereby enforceable through the CBA's grievance-arbitration procedure. Should this dispute arise again, the Union will be able to use the CBA's grievance-arbitration procedure to resolve the issue, rather than resorting to SERB or the Courts.

The Position of the City

The City objects to consideration of issues relating to Union Recognition because it is a permissive subject of bargaining and not subject to mandatory bargaining under state statutes. The Union is asking the Conciliator to consider new language that has never been submitted at any point in the bargaining process for consideration. The City, therefore, proposes retention of current language. Bargaining on this issue is not only permissive, it is not supported by any other comparable contracts and it would eliminate all aid to the City and require the elimination or the disapproval of any private sector company that sought to provide any like services within the City of Green. It is an attempt to take away the legal duties of both the fire chief and assistant fire chief; and it is intended to make the Union an "equal partner in running the business enterprise," something which SERB has directly rejected and firmly established was not the intent of R.C. Chapter 4117.

Analysis

The Conciliator recognizes the concerns of the Union that the work of the bargaining unit could ultimately be diminished by the hiring of non-bargaining unit firefighters. The Conciliator also recognizes the position of the City that it will not give up its rights to manage the services provided to the City through its elected officials. The history of disputes over work jurisdiction and manning issues has created distrust on both sides. I would agree with the Fact-finder, however, that the language proposed by the Union to address its concern in the Union Recognition Article is inappropriate at this time. It does infringe upon management rights on a

topic of permissive bargaining, is not supported by SERB precedent or other comparables.

The Conciliator has considered the arguments of the Union that permissive subjects of bargaining can be considered by a conciliator to amend the language in a proposed collective bargaining agreement. SERB stated in its Decision in *SERB v. Salem Fire Fighters, Local 283, IAFF*, SERB 2009-002 (10-1-2009) the following:

> Changes in permissive subjects that are currently included in a collective bargaining agreement must be made during the course of bargaining. The employer may properly bring to the attention of the fact finder or conciliator the fact that the subject being discussed is permissive in nature. The fact finder is not bound to accept the employer's position or to exclude the subject from the resultant fact finder's report. Instead, it remains an "unresolved issue"; the fact finder must apply his or her judgment within the perimeters established by O.A.C. Rule 4117-9-05(J). Likewise, a conciliator is not bound to accept the employer's position or to exclude the subject from the resultant conciliator's report"

Two factors exist here that weight against consideration of the Union's proposed language. Unlike the facts in *Salem*, the permissive subject (exclusive jurisdiction of the bargaining unit here) has not been included in the previous collective bargaining agreement as it was in *Salem*. And secondly, the evidence does support the City's position that this subject was not "negotiated" or "bargained" by the parties in meetings leading up to Fact-finding and Conciliation; certainly not to the extent that it can be determined that the City intended to alter the application and treatment of O.R.C. 4117.08(C)(9) to its collective bargaining agreement.

Award

The Conciliator selects the final offer of the City to retain current language.

ARTICLE 20
MINIMUM STAFFING

Final Offer of Minimum Staffing

The Union modified its proposal from Fact-finding. The Union proposes setting a "core staffing" of 40 bargaining unit members; requiring unexpected vacancies dropping below the core staffing to be filled within sixty (60) days; clarify that shift supervisors are to be full-time employees; allow the City to drop daily staffing from 10 bargaining unit members to 9 bargaining unit without restrictions; allow the City to utilize part-time fire medics to supplement the 9-man full-time daily staffing level, with the conditions that the full-time bargaining unit member "core staffing" be maintained at 40 members, that part-timers have certain certifications, not serve as Fire Officers, and not carry seniority over to a full-time position, should the part-timer be hired for such.

The City modified its proposal from Fact-finding. It proposes a "core staffing" of 40 bargaining unit members; clarify that shift supervisors are to be full-time employees; allow the City to drop daily staffing from 10 bargaining unit members to 9 bargaining unit without restrictions; allow the City to utilize part-time fire medics to supplement the 9-man full-time daily staffing level, with the conditions that the full-time bargaining unit member "core staffing" be maintained at 40 members; that part-timers have certain certifications, not serve as Fire Officers, and not carry seniority over to a full-time position, should the part-timer be hired for such. The City opposes a requirement to fill an unexpected vacancy within a sixty (60) day time period as proposed by the Union. In addition, the City proposes language that if the Employer is placed in fiscal watch or is forced to institute a reduction in force for financial reasons, the core staffing level is waived. The proposed language makes it clear that the Employer may utilize

part-time employees to supplement shift strength, avoid overtime, cover time-off and call-offs, and perform other duties as determined to be necessary.

The Position of the Union

The Union has previously resisted all attempts by the City to use part-time employees to perform bargaining unit work. It proposes staffing concessions in its final offer to the Conciliator in an effort to get a proposal adopted that will stem the City's ongoing assault on the bargaining unit members' daily staffing levels.

There is no financial basis to cut full-time Firefighter daily staffing and instead use part-timers. Overtime costs cited by the City could be overcome by hiring additional full-time firefighters. The City's substantial carryover balances and increasing revenue easily allow for the hiring of full-time Firefighters to replace the full-time Firefighters that have retired. There is no operational need for using part-timers rather than full-time Firefighters. A part-time workforce is less experienced and reliable than the full-time Firefighters. There is no bargaining history to support cutting the number of full-time Firefighters on shift each day and replacing them with part-timers. The Union previously agreed to cut full-time daily staffing with the understanding that it would resolve the parties' staffing dispute. The Union's prior concessions saved the City hundreds of thousands of dollars in the process.

The Union objects to any waiver language in maintaining core staffing, because such a provision will eventually erode the core staffing requirement. It also objects to new language in Section 4 where part-time personnel can be used to ensure the health, safety, and welfare of the citizens of Green.

The Position of the City

The Employer has modified its position from that at fact-finding. While it continues to

seek the use of part-time employees to stem the increasing costs of overtime, which was up to $363,339 in 2014 YTD,[1] it is willing to make some concessions while preserving its right to seek a waiver from the Union on core staffing issues for financial reasons. The Employer has proposed adding language acknowledging its right to use part-time employees, and adding language that would preserve the use of full-time personnel to meet manning exclusively at all times where the City is operating less than 2 full-response stations. With this change, the Employer's use of part-time employees for manning would be linked to its maintenance of at least 2 full-response stations. In those situations the City would be able to use not more than 2 part-time employees to satisfy a 10 or 9 man manning requirement, which fluctuates depending on the absences of full-time staff.

The Employer has also proposed to standardize relief that is provided in limited situations currently so that contractual manning levels will be lessened by one when bargaining unit members are off. Currently, it drops in only limited situations.

The City's proposed language requires part-time employees to meet the same certification requirements that all full-time firefighters in the department must have to be hired. The language also restricts part-time personnel from acting as officers and addresses the potential transition to full-time status.

This language was and is permissive. Even if this were not the case, its modification would be supported based on comparison to external contractual language, previous decisions by SERB neutrals, and other jurisdictions. The interest of the public in sound governance demands that the City's ability to manage and avoid unnecessary overtime be restored. The City opposes any limitation on the time needed to fill a vacancy, for it could not always occur within the sixty

[1] Overtime expense was $145,972 in 2004.

(60) days proposed by the Union.

Analysis

The Fact-finder recommended maintaining current language with a reopener by way of a Side Letter triggered by a decision on the Unfair Labor Practice (ULP) charge by the Court of Common Pleas, Summit County, Ohio. Subsequent negotiations were recommended to be conducted through the Ohio State Employment relations Board or the Federal Mediation and Conciliation Service. Both parties rejected this approach.

Key to the derailment of any consensus on multiple issues addressed in a successor collective bargaining agreement among the parties was the disagreement over the use of part-time employees to perform the work of firefighter bargaining unit work and resultant ULP litigation. The City portrays its position on hiring part-time employees as necessary to provide required services to its citizens, financially prudent to stem the rising cost of overtime and clearly within its management rights to execute. The Union asserts that hiring additional full-time firefighters would resolve many of economic issues relating to overtime and the hiring of non-bargaining unit part-time employees is nothing but a guise to take away bargained-for rights and reduce the size of the bargaining unit outside the scope of mandatory bargaining.

The issue of the City's requirement to bargain over this issue was resolved by order of SERB and the Common Pleas Court upholding the SERB order. As a result of the contentious litigation, the parties have responded by modifying their positions in order to make some concessions on both sides to resolve the issues of the use of part-time employees and minimum staffing. Based upon the bargaining history of the Parties and the interest and welfare of the citizens of the City of Green, Ohio, among other factors, the proposal of the Union is the most compelling in this case.

The proposals of both parties were very similar, but some of the language contained in the City's proposal could end up being subject to varying interpretations and undermining the bargaining process. I am persuaded by the Union's argument that the City's proposal to add a waiver in Section 2 could result in an interpretation nullifying the parties' agreement to most of the provisions in Article 20. Considering the financial strength of the City and its projected prosperity, the waiver provisions are unnecessary, particularly in light of future interpretation issues.

The City opined that filling vacancies within sixty (60) days of a vacancy could violate civil service laws and be unworkable. Evidence does not suggest that these concerns have materialized in the past and was not, therefore, considered to be so significant as to deem its adoption unworkable.

Award

The Conciliator selects the Union's final offer on Minimum Staffing.

ARTICLE 21
WAGES

Final Offers on Wages

The City proposes a two percent (2%) increase in wages for 2014, a two and one half percent (2.5%) increase in wages effective January 1, 2015 and a two percent (2%) increase in wages effective January 1, 2016, with no increase in differential pay.

The Union proposes that bargaining unit members receive salary increases of two percent (2%) increase for 2014, a two percent (2%) increase for 2015, and a two percent (2%) increase for 2016.

The Position of the City

This is the position recommended by the Fact-finder.

The Position of the Union

The Union sought a three and one half percent (3.5%) increase for each year of the three-year term of the Agreement and sought to increase differentials before the Fact-finder. As a concession for core staffing and maintenance of full time firefighters, as well as further reductions sought in sick leave, the Union has reduced its request for wage increases, which are in line with the wage increases received by the City's AFSME bargaining unit.

Analysis

Little analysis is necessary. The City is financially capable of the raises proposed and comparables support the level of compensation proposed by both parties. While the Fact-finder settled on a two percent increase for each year of the contract, he also froze longevity payments at current levels and recommended the longevity payments be expressed in fixed amounts, although no amounts were given. As is discussed below, fixed longevity payments were never bargained and the parties had not bargained the issue sufficiently to determine what the amount should be. As a result, the Conciliator is awarding the Union's position on wages in consideration of maintaining current contract language for longevity payments as well as the economic impact of selecting its proposal on Sick leave.

Award

The Conciliator selects the Union's final offer for a two percent (2%) increase in wages for 2014, a two percent (2%) increase in wages effective January 1, 2015 and a two percent (2%) increase in wages effective January 1, 2016.

ARTICLE 22
LONGEVITY

Final Offers on Longevity

The City proposes the Fact-finder's recommendation to modify the current longevity pay plan by setting a fixed amount as opposed to the percentage basis as outlined in the current Agreement. The Fact-finder did not identify what a fixed dollar amount he was recommending, so the City set forth specific amounts.

The Union's offer is that the longevity payments in Article 22 remain at the current levels and that employees eligible for increases during the period of the contract receive those increases.

The Position of the City

The Fact-finder adopted the City's proposal at fact-finding. By changing from a percentage based calculation to a fixed amount, longevity would be frozen and not unjustifiably increased with wage increases. No other city employees receive a longevity benefit.

The Position of the Union

The Union opposes the City's proposal because it lessens the bargaining unit members' longevity benefits when there is no financial basis to do so, results in the bargaining unit members falling further behind their peers in regard to overall longevity benefits, and undermines the bargain previously reached between the parties regarding the current longevity benefits.

The Green Firefighters have been historically behind comparable Fire Departments, primarily because their longevity pay tops out after twenty (20) years.

Analysis

The Fact-finder found both of the Parties' arguments compelling, but determined that the City's proposal to freeze longevity at a fixed rate to be reasonable. Testimony indicates that little time was spent bargaining on this Article, which is apparently why the City did not have any dollar amounts to present to the Fact-finder. While the Fact-finder did note that other city employees did not enjoy a longevity benefit, there was no discussion about the fact that the Union is the only first-responder safety unit in the City, that longevity benefits are common in safety force units, and that the Green Firefighters are already behind their peers in total longevity compensation. I am persuaded that the longevity benefits should remain the same in light of bargaining history, comparable rates paid in comparable jurisdictions, and the reduction in the wage rate awarded.

Award

The Conciliator selects the final offer of the Union that the longevity payments in Article 22 remain at the current levels and that employees eligible for increases during the period of the contract receive those increases.

ARTICLE 23
HEALTH COVERAGE

Final Offers on Health Coverage:

The Union proposes adopting the Fact-finder's recommendations, with changes regarding the "health fair" language (identifying the screenings employees are subject to), including accepting the increase in the bargaining unit members' premium contributions each year of the successor CBA from the current 5.0% (capped at $75/month for family, $30 for single) to

uncapped contributions of 5.0% in 2014, 8.0% in 2015, and 10.0% in 2016, and accepting the proposed increase in premium contributions to 15.0% in 2015 for members not participating in "health fair screening and testing." The Union also wants any screening results to remain confidential and an employee's failure to complete a screening cannot constitute a basis for the City to initiate any actions that may result in adverse employment actions against the employee.

The City proposes adopting the Fact-finder's recommendation. It opposes the changes requested by the Union that the substance of the screening is identified (may change year to year), that the information remain confidential (it already is) or that failure to complete a screening could be used to institute an adverse employment action against the employee (never have done that).

The Position of the Union

At fact-finding the City proposed to increase the bargaining unit members' health insurance premium contributions each year of the CBA, up to a 10.0% contribution rate by end of the CBA, with a 15.0% penalty imposed for failure to undergo "screening, testing and other medical services" at the City's "health fair." The City further proposed language allowing the City to unilaterally change the bargaining unit members' health insurance benefits mid-term, among other numerous language changes. The Union, conversely, proposed to establish caps on employee deductible and maximum out-of-pocket costs in light of the City unilaterally increasing both costs in 2014. The Fact-finder recommended the City's proposed premium contribution increases, including the 15.0% rate for non-participants in the "health fair", but rejected the City's proposed language allowing for unilateral mid-term changes in the insurance benefits and rejected the Union's proposed limits on deductible and maximum out-of-pocket costs.

As a part of the package of final offers presented by the Union, the Union accepted the increased premium contribution rates for the bargaining unit members, including the 15.0% rate for non-participants in the "health fair." However, the Union seeks language that identifies the screenings and testing done at the "health fair," deletes the ambiguous phrase "other medical services," and ensures that the results of any screenings and testing done will be kept confidential and not used for any adverse employee actions against the employee (aside from the 15.0% contribution rate) and insurance costs.

Position of the City

The Employer proposes as its final position the language recommended by the Fact-finder. The Fact-finder awarded language that would allow the City to control the plan design and plan offerings; it is a plan that mirrors the language already in other City Bargaining agreements. The City's ability to change plan design/benefit levels would be presented to an insurance committee and the Employer would meet and discuss changes with the Union, as requested.

The City's position will increase the employee contribution, currently at a generously low 5%, to a rate of 10% by the third year of the agreement. The Employer proposes a surcharge as a disincentive for those employees refusing to participate in a wellness health fair. The Employer's proposal is reasonable and in line with the Fact-finder's recommendation.

Analysis

The Union has significantly modified its position taken at Fact-finding and is proposing to adopt the Fact-finder's recommendation with a few exceptions, which exceptions the Conciliator believes to be reasonable in light of the concessions being accepted by the Union. The Union, in its final offer, has set forth specifics of the tests to be undertaken in the health fair

testing and screenings, with included body composition and blood pressure measurements, as well as blood testing results (total cholesterol, HDL cholesterol, LDL cholesterol, triglycerides and glucose). Evidence indicates that these tests are those anticipated to be administered under the health fair testing by the City. The City's only objection is that its Insurer may change the testing criteria. Since a bargaining unit employee is subjected to a 15% penalty for refusing a test, it is not unreasonable to be informed of the test that is to be administered.

The Union also wants the employee screenings to be kept confidential and wants to prohibit the City from using the employee's failure to complete the health fair screening or testing, or to attain certain levels, to form the basis of an adverse employment action against the employee. The City does not oppose the position of the Union, for it indicates that it does keep the information confidential and does not use any of the information as a basis for any adverse employment action against the employee, but it sees the language as unnecessary in the Agreement. Since the City does not intend to engage in the conduct sought to be prohibited by the Union, the Conciliator sees no reason excluding the Union's proposed language in the Agreement.

Award

The Conciliator selects the final offer of the Union.

ARTICLE 25
WELLNESS/FITNESS FOR DUTY

Final Offers on Wellness/Fitness for Duty:

The Union proposes to adopt the Fact-finder's recommended changes with two exceptions: (1) under Section 4, require that the health care provider notify the HR Manager and the employee by a written report, instead of an unspecified notification; and (2) under Section 7

terms, delete "This does not mean that an employee is exempt from other fair participation activities only that the screening requirement is not mandatory for that year.").

The City proposes adopting the Fact-finder's recommendation.

The Position of the Union

The Union believes that any notification regarding the results of tests under Article 25 should be in writing. Additionally, since the Fact-finder did not identify what "other fair participation activities" means or what it entails, it should be eliminated. The Union is aware that the proposed health fair screenings will consist of certain body composition, blood pressure, and blood test measurements. The Union has asked the City for information relating to the health fair, but is only aware of the screenings described. The Union has agreed to the imposition of a higher contribution rate for non-participation in the screening and testing performed at the health fair, with specification of what the screenings consists of, that the results are confidential and will not be used against the employee, and that the testing may be administered by the employee's own physician, if the employee so chooses. However, the Union cannot, on behalf of its members, agree to employees being penalized with a 15.0% contribution rate if they do not participate in unknown and undefined "other fair participation activities." "Other fair participation activities" could mean anything—mental or physical examinations, mental or physical exercises, invasive questionnaires—all or any of which could be objectionable to bargaining unit members and/or lead to disputes between the Union and the City regarding the "health fair." There is no reason to insert ambiguity into the CBA as the sentence at issue does. The Fact-finder's open-ended reference to "other fair participation activities" is contrary to the parties' mutual interest to identify what "health fair participation" means to the employees, and as such, should not be included in the CBA.

Position of the City

The City believes the language recommended by the Fact-finder is non-ambiguous and adopts it is full.

Analysis

Both parties have agreed on the substantive language in this article. The City is of the opinion that it should be able to require bargaining unit members to attend other Health Fair Events in years where they are required to undergo mandatory testing per Article 25. I would agree with the Union that the additional language added by the Fact-finder may add more ambiguity than clarity to the provisions of Article 25, when combined with the requirements of Article 24. As such, I would agree with the Union that clarity should trump ambiguity.

Award

The Conciliator selects the final offer of the Union

ARTICLE 31
HOLIDAY LEAVE

Final Offers on Holiday Leave:

The Union's final offer is to maintain current contract language, as recommended by the Fact-finder.

The City's final offer is as it proposed at Fact-finding. It proposes a complete revamp of the vacation and holiday provisions by paying response shift employees thirteen (13) hours, and day shift employees eight or ten hours, for each recognized holiday and creating a premium payment for holiday work. Holiday accrual would be eliminated. The City has also proposed to link holiday benefits to attendance issues; employees would be required to work the day before

and after a holiday in order to receive holiday pay. In addition, the City proposes deleting references to holiday selection under the Vacation Leave Article (Article 31) and holiday conversion under the Shift Bidding Article (Article 16).

The Position of the Union

Under the City's proposals each bargaining unit member would lose 110 hours of holiday leave annually and lose the ability to sell holiday leave back when it is not used. The City is enjoying historical levels of fund balances with projections that only indicate additional revenue streaming into the City with further commercial and residential development. The City's current economic position and fiscal health for the foreseeable future do not, in any way, warrant eliminating benefits that the bargaining unit members have had in place for several years; that have been bargained repeatedly by the parties; and that constitute a decent portion of annual income to the bargaining unit members that sell their leave. The City has not reduced the leave benefits of any other employee in the City, nor is there a need to.

The Union's current holiday leave benefits are in line with comparable Fire Departments. Several Fire Departments receive more recognized holidays than the Green Firefighters. Under the City's proposal, the Union would receive no leave, a lesser number of holidays paid at a premium rate than their comparables, and they would have to work the day before, the day of, and the day after just to qualify for holiday pay. Neither internal nor external comparables support the City's proposals. The impact the City's proposed cuts would have on the individual bargaining unit members is dramatic.

At no point has the City produced estimated savings under its proposal or offered any consideration to the Union for its proposed gutting of the Union's holiday leave benefits. The Union did propose to reduce the members' holiday leave in return for the daily staffing level

returning to 10 bargaining unit members at all times, but the City outright rejected it. With the Union now agreeing to reduce the bargaining unit member staffing level to 9 at all times, there is no staffing justification for City's Holiday/Vacation/Shift Bidding proposal

Position of the City

Currently, the firefighters receive holiday leave. The Employer has proposed these changes to address the disparity in holiday compensation received by firefighters compared to other city employees. The use of holiday leave increases scheduling issues and overtime. The City's proposal will correct this disparity and bring this unit in line with holiday benefits paid to other City employees. This proposal is also tied to the City's proposal regarding the use of part time employees to perform bargaining unit work under certain circumstances including coverage for full time employees who are on leave status.

.**Analysis**

The Conciliator would agree with the recommendations of the Fact-finder. The City is proposing a significant change in the handling of Holiday Leave, which would also have an impact on vacation and shift bidding provisions, and such changes were not thoroughly discussed at the bargaining table, as noted by the Fact-finder. From the evidence presented at the hearing, it cannot be determined the savings the City would realize with these changes. At the same time, accrued leave is the method of "payment" in comparable jurisdictions and there has not been presented a sufficient basis for withdrawing this bargained-for benefit from the members. Since the bargaining unit staffing level has been reduced by this award, the provisions of this article should remain the same.

Award

The Conciliator selects the final offer of the Union

ARTICLE 33
SICK LEAVE

Final Offers on Sick Leave:

The Union proposes to reduce the sick leave accrual rate for Response Shift employees effective January 1, 2015, from 0.1065088 to 0.07988166 for each hour in active pay status (results in a reduction of 12 possible sick days to 9 possible sick days per year) under Section 2; convert the current sick leave incentive from bonus leave (24-hour shift of personal leave for using less than 24 hours of sick leave) to bonus compensation, with bargaining unit members receiving varying bonuses each half of the year based upon how little sick leave is used (i.e., $250.00 for using zero sick leave through 6 months, $200.00 for using less than 16 hours of sick leave, $150.00 for using less than 24 hours of sick leave) under Section 11; and memorialize the parties' current practice of not counting funeral leave in determining sick leave incentive benefits, as previously agreed by the parties and as recommended by the Fact-Finder under Section 12..

The City proposes to adopt the Fact-finder's recommendation changing the amount of sick leave accrual to 13.65 hours per month for response shift firefighters and 10.5 hours per month for day shift firefighters under Section 2; maintaining current contract language under Section 11; and opposes adding any new language to Section 12, since the parties do not count funeral leave in determining sick leave incentive benefits.

The Position of the Union

The City's proposal for sick leave accrual for Response Shift bargaining unit members will cut the current benefit in half, resulting in those bargaining unit members being able to earn only 6.8 days per year sick leave, versus the current 12 days they currently earn. The Fact-finder

recommended the City's proposed accrual rate reduction, citing "internal comparables" and high sick leave usage.

There is no basis for these reductions. The Fire Department's number of personnel has decreased, while the department's work volume has remained the same. The seniority of the Department has increased, making the bargaining unit members more susceptible to injuries and longer recovery time. This increased risk associated with the aging is in addition to the already high risk Firefighters encounter on a daily basis in performing their duties.

Any injury suffered by a bargaining unit member requires him or her to utilize sick leave; there is no "injury leave" set forth in the CBA. The amount of sick leave is vital to the health and careers of the firefighters. Sick leave records show that each year there is a small number of bargaining unit members that suffer long-term injuries or illnesses, and as a result, rely upon the paid leave benefits provided by the current sick leave terms. Reducing sick leave to the degree proposed by the City will potentially prematurely end some of the bargaining unit members' careers due to the unavailability of a reasonable amount of sick leave.

Comparable Fire Departments receive an average of up to 240 hours (10 days) per year in sick leave. Under the City's proposal, the members will be left with only 163.8 hours per year – nearly 80 hours less than the average.

The idea that Response Shift personnel must have sick leave proportionate to 40- hour employees has been repeatedly rejected by neutrals. Again, the Response Shift bargaining unit members perform duties with a greater degree of risk of injury than the City's Dispatchers or Service Department or the City's administrative staff. Moreover, those 40-hour employees receive nearly 16 days of sick leave per year. The Firefighters currently receive 12. As neutrals have repeatedly recognized, a work day is a work day. That the Firefighters work longer days

than the City's 40-hour employees does not justify reducing the Firefighters' sick days.

While the Union objects to the reduction in the members' sick leave benefits, the Union is willing to concede to a reduced sick leave accrual rate for the sake of maintaining at least a minimum daily staffing level of 9 bargaining unit members. The Union's proposal-to reduce the accrual rate for Response Shift employees to 0.07988166-will result in each bargaining unit member losing 72 hours of sick leave per year. The City has previously argued that lessening the members' sick leave will result in less bargaining unit member absences and improved manning. The Union's proposed sick leave reduction, in combination with the proposed reduction to 9 bargaining unit members on shift each shift, will provide thousands more in savings beyond the savings already generated by the Union's staffing concessions in 2011.The Union's proposal under Section 2 serves two purposes, both of which would alleviate overtime expenditures: (1) provide a more effective cash incentive to members to not use sick leave, and (2) replace the usage of bonus leave with small cash bonuses. Replacing bonus leave with a cash incentive makes sense.

The Union proposal to convert the bonus leave incentive to a cash payment will provide a better incentive for limiting the use of sick leave. The Union's proposal will also eliminate the 24-hour bonus personal leave (in lieu of cash), further reducing a portion of the bargaining unit members' leave that the City has cited as a basis for its staffing cuts.

The Union's proposed modification of Section 12 is the same language agreed to by the parties at fact-finding, as noted by the Fact-finder. The language merely memorializes the parties' current practice. The City, however, has left it on the table because it is the Union's proposal, seemingly believing that the Conciliator is going to award the City one or more of its proposals merely because this issue is awarded "in the Union 's favor."

The Position of the City

The City maintains that its proposals regarding accumulation rates are consistent with all other employees of the City. Administrative consistency is a reasonable proposal, and it simplifies the tracking of sick leave balances. The Employer states that both internal and external comparables support its proposals. The Employer also argues that the use of sick leave among bargaining unit members has escalated and is excessive. Total sick leave hours used in 2013 spiked at 6213 hours for the bargaining unit, and usage was already at 5107 hours in July 2014. The Employer argues that the proposals of the Union are excessive with no justification and urges the Conciliator to reject them.

.**Analysis**

The evidence is clear that the amount of sick time used by the bargaining unit members is significantly higher than that of the average of comparable jurisdictions. The Union makes a valid point, however, that sick leave is not abused when examined by the evidence of who is using the sick leave. The average number of sick days is skewed by a few individuals who have used the sick days for injury leave.

While the City is doing well financially, it is financially prudent to cut unnecessary costs and reduce waste. Obviously, the Union also recognizes this by submitting a final offer that reduces the sick leave below current contract levels.

Based upon the reduced accumulation of sick leave proposed by the Union, a cash incentive to reduce sick leave, which may prove beneficial, and a mutual agreement not to charge funeral leave to sick leave, the Conciliator finds the Union's proposal to be the better proposal. It not only addresses the need of firefighters to recover from injuries, but the citizens of Green to have a health, well-functioning Fire Department.

Award

The Conciliator selects the final offer of the Union

Conclusion

After due consideration to the positions and arguments of the parties and the criteria enumerated in ORC §4117.14(G)(1) and ORC §4117.14(G)(3) regarding the scope of the issues before the Conciliator and ORC 4117.14(G)(7), the Conciliator awards the last best offer of the Union on all issues with the exception of Citys final offer on Article 1, Union Recognition. At the mutual request of the parties, the Conciliator also awards the tentative agreements reached by them.

This concludes the Conciliator's Report and Award.

January 2, 2015
Columbus, Ohio

Jerry B. Sellman

Exhibit 1
STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between
Green Firefighters Association,
IAFF Local 2964

Employee Organization — Case No. 13-MED-09-1091

And

City of Green, Ohio — Conciliator: Jerry B. Sellman
Date of Decision: Jan. 2, 2015

Decision on Request to Stay Issuance of Conciliation Award

On December 22, 2014, the Green Firefighters Association, IAFF Local 2694 (Union) requested that the Conciliator stay the issuance of his Award in SERB Case No. 13-MED-09-1091 pending a determination by the State Employment Relation Board (SERB) on an Unfair Labor Practice (ULP) charge filed by the City of Green, Ohio (City) against the Union on December 15, 2014 (SERB Case No. 2014-ULP-0269). The Union requested a written Decision by the Conciliator. On December 23, 2014, the City formally opposed the Request. The Conciliator provided the parties an opportunity to provide support for their positions prior to a Decision on the Request. In response thereto, the Union filed a Motion To Stay Issuance Of Conciliation Award Pending SERB'S Determination on ULP Charge Filed By City on December 29, 2014, and the City filed a Memorandum-In-Opposition to Union's Motion to Stay on December 29, 2014.

SERB duly appointed the Conciliator pursuant to O.R.C. 4117.14(D) to schedule and conduct a conciliation hearing in SERB Case No. 13-MED-09-1091. Pursuant to SERB's directive, the Conciliator scheduled a hearing a soon as practicable after said notice of

appointment, which hearing took place on December 16, 2014. At the beginning of the hearing, the Conciliator attempted to mediate the outstanding issues between the parties, but the offer was declined by the Union. Thereafter, the Conciliator conducted a hearing at which testimony from witnesses and arguments of the parties were taken in consideration of the multiple outstanding issues. The hearing was conducted pursuant to rules developed by SERB and the guidelines set forth in ORC 4117 (G), et seq. At the conclusion of the hearing, the Conciliator again sought to mediate some of the outstanding issues on which the parties were close to resolving, but the offer was again declined. Thereafter, the hearing was closed.

The day before the scheduled hearing, the City had filed an ULP Complaint against the City claiming the Union's Article 1, Union Recognition proposal, as submitted to the Conciliator prior to the hearing, was in violation of R.C. 4117.11(B)(2) and (B)(3). At the hearing, the City objected to any consideration of any change to the language in Article 1 of the Parties' Collective Bargaining Agreement, arguing that issues relating to the Union Recognition Article were permissive in nature and it was not required to bargain over permissive issues. In the alternative, the City presented its final offer to retain status quo in regard to the language contained in Article 1.

The Union did not seek to delay the hearing on the multiple unresolved issues, including those relating to Article 1, Union recognition. In its proposal regarding Article 1, Union Recognition, the Union argued that the Conciliator was empowered to consider its offer to amend the language in Article 1 pursuant to SERB's Decision in *SERB v. Salem Fire Fighters, Local 283, IAFF*, SERB 2009-002 (10-1-2009) wherein SERB concluded:

> Changes in permissive subjects that are currently included in a collective bargaining agreement must be made during the course of bargaining. The employer may properly bring to the attention of the fact finder or conciliator the

> fact that the subject being discussed is permissive in nature. The fact finder is not bound to accept the employer's position or to exclude the subject from the resultant fact finder's report. Instead, it remains an "unresolved issue"; the fact finder must apply his or her judgment within the perimeters established by O.A.C. Rule 4117-9-05(J). Likewise, a conciliator is not bound to accept the employer's position or to exclude the subject from the resultant conciliator's report"

At the close of the hearing, the Union did not request to stay the issuance of a Conciliation Award, although both parties indicated that they would inform the Conciliator if any issues could be resolved within the next couple of days prior to the issuance of an Award.

Pursuant to O.R.C. 4117(G)(7), after a hearing, a conciliator is mandated to resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

(d) Past collectively bargained agreements, if any, between the parties;

(e) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(f) The interest and welfare of the public, and 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;

(h) The lawful authority of the public employer;

(i) The stipulations of the parties;

Further, ORC Section 4114(G)(10) provides:

> "The conciliator shall make written findings of fact and promulgate a written opinion and order upon the issues presented to the conciliator, and upon the record made before the conciliator and shall mail or otherwise deliver a true copy thereof to the parties and the board."

The Ohio Revised Code does not provide a Conciliator with any authority to unilaterally grant a stay in the issuance of an Opinion or Conciliation Award. As such, based upon the

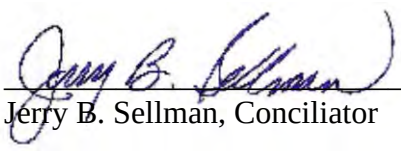
statutory authority given to a conciliator and the directives of SERB, the Request for a Stay in the issuance of the Conciliation Award must be denied.

The Union argues that SERB has the exclusive jurisdiction to resolve unfair labor practice charges filed under R.C. 4117.11 [*State ex rel. Ohio Dept. of Mental Health v. Nadel*, 98 Ohio St.3d 405, 410 (2003); *E. Cleveland v. E. Cleveland Firefighters Local 500, IAFF*, 70 Ohio St.3d 125, 127 (1994)] and in rendering an award on the Union Recognition issue, the Conciliator would be improperly determining issues that are not only within the exclusive jurisdiction of SERB, but are currently being investigated by SERB. The Union also argues that any consideration of the pending ULP would unfairly prejudice the Union. The Conciliator is not persuaded by the Union's arguments. At best, these arguments are prematurely raised, and certainly not supported by statutory mandates.

In following the statutory mandate to issue a conciliation award, the mere issuance of an award pursuant to and in conformance with statutory guidelines and SERB directives is not resolving a ULP charge before SERB. As argued by the Union at the conciliation hearing, and as determined by SERB's Decision in *SERB v. Salem Fire Fighters, Local 283, IAFF*, SERB 2009-002 (10-1-2009), the Union Recognition proposals by the parties are "unresolved issues"; the conciliator must apply his or her judgment within the parameters established by O.A.C. Rule 4117-9-05(J). An award on unresolved issues is yet to be accomplished.

For all of the above reasons, the Union's Motion to Stay Issuance of the Conciliations Award Pending SERB'S determination on ULP charge filed by the City is denied and an appropriate Award will be issued forthwith.

January 2, 2015



Jerry B. Sellman, Conciliator

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of his Decision on the Union's Motion for a Stay on the Issuance of the Conciliator's Report and Award was sent via email, receipt confirmed on January 2, 2015 to:

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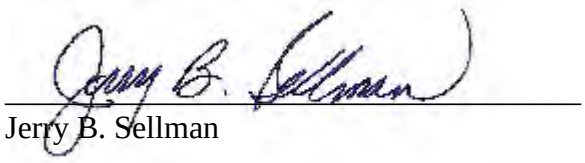

Jerry B. Sellman

[End Exhibit 1]

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Conciliator's Report and Award was sent via email, receipt confirmed on January 2, 2015 to:

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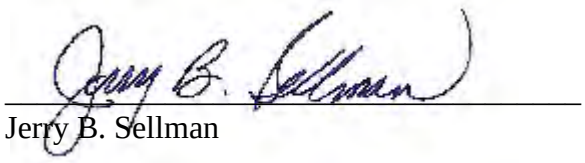

Jerry B. Sellman