

IN THE MATTER OF
THE CONCILIATION BETWEEN

BOARDMAN TOWNSHIP)	CASE NO. 13-MED-12-1610
)	Conciliator, Gregory J. Lavelle, Esq.
Employer)	
)	
and)	CONCILIATION AWARD
)	
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,)	
LOCAL 1176)	
)	
Union)	

Appearances:

For the Employer:

Robin Bell, Regional Manager
Jason Loree, Township Administrator
Mark Pitzer, Fire Chief
Stephanie Landers, Deputy Township Administrator

For the Union:

Dennis Haines, Esq., Counsel
Harry Wolfe, President, Local 1176
Jim Hoover, Vice-President, Local 1176
Mike Walsh, Trustee, Local 1176
Shaun Serich, Firefighter

November 20, 2013

HISTORY OF THE PROCEEDINGS

The Boardman Township Trustees (hereinafter, Boardman) and the International Association of Firefighters, Local 1176 (hereinafter, the IAFF) were parties to a collective bargaining agreement, effective March 1, 2011 through February 28, 2014, (hereinafter, the 2011 Agreement) covering sworn employees of the Fire Department, excluding the Fire Chief. (Article 2, Recognition) No increases were provided in the 2011 Agreement. In addition, a two-tiered wage schedule was established, employees hired prior to October 1, 2010 being covered under Side Letter # 2 (2011 Agreement, Page 48) until such time as they were promoted to another classification. New employees and employees promoted after January 1, 2011 were covered by Appendix A. (2011 Agreement, Page 40)

The parties entered into negotiations for a successor collective bargaining agreement. Failing to reach agreement, the parties proceeded to Fact-Finding before Michelle Miller-Kotula on August 5, 2014, with respect to five (5) issues; Article 4, Bargaining Unit Application of Civil Service Law, Article 27, Overtime, Article 32, Wages and Salaries, Article 40, Vacations and Article 46, Injured on Duty.

The IAFF, in negotiations, proposed a two percent (2%) increase in wages in each year of the collective bargaining agreement. Boardman proposed lump sum payments of seven hundred fifty dollars (\$ 750.00) for the 2014 and 2016 contract years and an across the board wage increase for the 2015 contract year of six hundred eighty-nine dollars (\$ 689.00) to be rolled into the wage rates.

Findings and recommendations of the Fact-Finder were issued on September 3, 2014. The Fact-Finder, with respect to the wage issue, issued a recommendation that differed from the positions of the parties, recommending wage increases of one thousand two hundred and fifty dollars (\$ 1,250.00) in each contract year to be incorporate into the wage scales. The wage Increases recommended by the Fact-Finder exceeded the proposal of the IAFF for all but two (2) employees in the first contact year and was more than two and one half (2 ½) times the IAFF proposal for second tier employees.

Boardman rejected the Report and Recommendation of the Fact-Finder. Conciliator, Gregory J. Lavelle, Esq. was appointed by SERB and the parties accepted the appointment. A Conciliation Hearing was set for November 14, 2014 and the parties submitted timely Position Statements with respect to the same issues which had been presented in the Fact-Finding.

The bargaining unit at the time of Conciliation Hearing consisted of thirty-seven (37) employees, ten (10) of whom were second tier employees. The parties, at the Conciliation hearing, stipulated that

the notes of the conciliator and exhibits admitted would constitute the written record of the hearing, waiving the attendance of a court reporter. The parties further waived the taking of oaths. The parties requested mediation and were able to resolve all issues except for wages. Presentations were made by the parties with respect to the wage issue. All offered documents were admitted into evidence and the hearing was declared closed.

POSITIONS OF THE PARTIES

POSITION OF THE IAFF

The IAFF proposes that the Conciliator adopt the recommendation of the Fact-Finder that there be a one thousand two hundred fifty dollar (\$ 1,250.00) increase in the wage scales in each year of the collective bargaining agreement.

POSITION OF BOARDMAN

Boardman has altered its position from that taken in Fact-Finding to propose a bonus of one thousand two hundred fifty dollars (\$ 1,250.00) in the first and third years of the collective bargaining agreement and a wage increase of two hundred fifty dollars (\$ 1,250.00) incorporated in the wage scale in the second year of the collective bargaining agreement.

DISCUSSION

A Conciliator is not permitted to make the best possible award, being constrained to decide in favor one of the final offers of the parties on an issue by issue basis. The matters which can be considered are defined by statute:

O.A.C. 4117-9-06

(H) The conciliator shall take the following into consideration in resolving the dispute between the parties:

(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 employers 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 in this rule, 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.

The IAFF urges the Conciliator to adopt the decision of the Fact-Finder. The process of Conciliation, however, is designed to be a *de novo* review of the issues submitted. Reliance on the decision of the Fact-Finder, therefore, would seem to be inappropriate under the statutory scheme.

The decision herein has been made on the basis of the evidence without consideration of the Fact-Finding

Award.

The position of Boardman is founded on the principles of accountancy, 3.4, Convention of Conservatism which provides that an accountant should anticipate no profits, but provide for all possible losses. This is a sound premise on which to base economic forecasts. Boardman, being financed mainly by property taxes, anticipates flat revenues for the coming years and expects little if any income from estate taxes, since the same have been eliminated for estates of persons passing away on or after January 1, 2013. Since estate tax returns in Ohio are to be filed within nine (9) months of the date of death, no potential revenue from estate taxes should be considered in budget estimates.

Boardman has also considered potential major expenditures for replacing outmoded facilities and equipment. Boardman has also experienced increases in costs for road salt and health care.

The IAFF, however, points out that Boardman had received a refund of workers compensation premiums of one hundred sixty-five thousand dollars (\$ 165,000.00) from the State of Ohio and

maintains that additional refunds will be received. (See Union Exhibit 4) The IAFF also projects the potential retirement of seven (7) first tier Firefighters at a claimed savings of over fifty thousand dollars (\$ 50,000.00) per Firefighter.

In terms of assets and expenditures, the IAFF points out that the carryover for Boardman has increased by four million dollars (\$ 4,000,000.00) to over five million dollars (\$ 5,000,000.00) and asserts that ten percent (10%) of the budget expenditures for the Fire Department, over four hundred thousand dollars (\$ 400,000.00) is discretionary. Boardman argues that while the General Fund Balance is over five million dollars (\$ 5,000,000.00) at the present time, that it must budget to pay all expenditures for the remaining year as well as the for the first quarter of next year.

IAFF points out that the wages paid to Firefighters decreased by two hundred twenty thousand dollars (\$ 220,000.00) between 2011 and 2013. The decrease in wage expenditures, including a thirty-five percent (35%) roll-up would be nearly three hundred thousand dollars (\$ 300,000.00).

The IAFF points out that the bargaining unit has not received an increase in four (4) years while at the same time having had the wage scale adjusted with a two-tier system. The IAFF further points out that all other bargaining units have received increases. (Boardman Exhibit H). In terms of overall compensation, the IAFF points out that the increase in health insurance cost for family coverage has been over sixty dollars (\$ 60.00) per pay, over one thousand five hundred sixty dollars (\$ 1,560.00) per year.

The IAFF points out that the starting rate for Boardman Firefighters is the lowest among Townships of similar size; that the starting rate is over twenty-thousand dollars (\$ 20,000.00) lower than the average starting rate and that the average rate for the bargaining unit is three thousand seven hundred fifty-six dollars and eighty-eight cents (\$ 3,756.88) lower than the average for other such bargaining units. (See Union Exhibit 7 at Page 6). The IAFF further claims that many on the new hire wage scale are seeking to leave Boardman for higher paying jurisdictions and points out that the starting rate for Fighters in Boardman is approximately eight dollars and seventy-one cents (\$ 8.71), per hour

just sixty-one cents (\$.61) per hour above the minimum wage for Ohio which is to go into effect in 2015. The IAFF indicates that Boardman, in light of substandard wages, would become the training ground for other jurisdictions.

The objections of Boardman to the IAFF proposal, summarized are that a cash flow problem would be created by agreement to the IAFF proposal due to the timing of revenues and expenses; that a pattern would be established by the increases being incorporated into the wage scale which would be then expected and incorporated into the wage scales for the other units and that Boardman could not afford to make the wage increases in light of flat revenues and major contingencies.

The cash-flow argument of Boardman must be rejected, since revenues and expenditures are cyclical and would even out over the year. In addition, the proposal of Boardman would create a larger cash-flow problem in the first year than the proposal of the IAFF, since under the Boardman proposal, the full impact of the wage increase would be felt immediately instead of being extended through February 28, 2015. There is a General Fund Balance of over five million dollars (\$ 5,000,000.00) and revenues appear to have exceeded estimates, over ninety-eight percent (98%) of projected revenues having been received by the end of the third quarter of 2014. It appears, moreover, that at least in 2014, Boardman received 43.6% of its budgeted revenue by April 11, 2014 ($\$ 2,028,000 / \$ 4,650,000 = 43.6\%$) shortly after the end of the first quarter per Boardman Exhibit X.

The argument by Boardman that the IAFF proposal should be rejected because a pattern would be established which would then have to be incorporated into the wage rates for other bargaining units is also not persuasive. There is no requirement that a Fact-Finder or Conciliator adopt a "pattern" established by a prior neutral. Even if adopting the IAFF proposal were considered to evidence a "pattern", the fact that this bargaining unit alone failed to receive an increase in the last collective bargaining agreement should be understood by a neutral as a valid reason why the alleged "pattern" established by the award for the IAFF should be rejected in considering the wage rates to be

awarded to the other units. There are also various ways to consider “patterns”. The wage increase, proposed by the IAFF, considered against the wages of the average first tier employees, is slightly over two percent (2%) in the first year, almost exactly two percent (2%) in the second year and slightly under two percent (2%) in the third year. A two percent (2%) increase is consistent with the average increase given to comparable jurisdictions. The pattern of Boardman Firefighters increases, when compared on a 2010 to 2014 basis, is far lower than the average of comparable jurisdictions.

The IAFF unit, compared to other bargaining units has fallen behind. The most comparable unit would be the Patrol Unit which has received three thousand dollars (\$ 3,000.00) in increases since the last IAFF increase, not counting any other economic enhancements granted to the Patrol Unit in their last collective bargaining unit.

Another way to look at the appropriateness of wage rates is to review whether the employee after receiving the wage increase is as well off as he had been the prior year. Inflation has hovered between 1.7% and 2.1% for the last year. Considering the increases in health care costs, a 2% increase may not result in bargaining unit employees having the same purchasing power, net of health care costs. It should also be noted that according to the Bureau of Labor Statistics there has been an 11.2% increase in the consumer price index between 2009 and 2014. Increases of 2%, 2% and 2% would still leave the Boardman Firefighters behind over the period from 2009 through the end of the proposed collective bargaining agreement, even if there was no further inflation at all over the next two years.

There is another matter which the Conciliator is required to consider; the welfare of the public. The IAFF has indicated that a number of Boardman Firefighters are considering or are in the process of seeking to become employed by other fire departments. While there is no evidence that any firefighter has left Boardman, it is well-recognized in human resources circles that employers paying below market wages experience higher turnover and thus higher training costs. Turnover also leads to inefficiencies as inexperienced employees replace trained and experienced employees. Inefficiencies lead to negative

consequences. Inefficiencies of firefighters as opposed to inefficiencies of service or production workers carry far heavier consequences, including risk not only to property, but also risk to human life

The ultimate question in this case, based on the other factors, is whether Boardman can afford to pay the increases proposed by the IAFF. Boardman has indicated that it wanted to be conservative and stick to a five (5) year plan, taking into account some very serious contingencies. There is evidence, however, that would seem to indicate that over the course of the remaining two and two thirds (2 2/3) years of the collective bargaining agreement, Boardman can afford the increases.

Boardman is not contending that it can not afford the increase in the first year of the collective bargaining agreement. The cost to Boardman in the first year is the same as the IAFF proposal, the timing of the payment being the only difference. In fact, the cost to Boardman may actually be less, under the IAFF proposal, depending on whether bargaining unit employees leave employment between the date of this award and February 28, 2015.

In the second year of the collective bargaining agreement, the cost difference between the IAFF and Boardman proposals is approximately sixty-two thousand four hundred thirty-seven dollars and fifty cents (\$ 62,437.50) and in the third year, one hundred fifty thousand nine hundred twenty-three dollars and thirty-four cents (\$ 150,923.34). Weighed against these additional costs are the following; a General Fund Balance of over five million dollars (\$ 5,000.00000), a payroll figure in 2013 that was two hundred twenty thousand dollars (\$ 220,000.00) lower than in 2011 and a receipt of one hundred sixty-five thousand dollars (\$ 165,000.00) in refunded workers compensation premiums.

There are also some potential income from Workers Compensation refunds and some potential savings through attrition. It has been contended that Seven (7) firefighters are considering retirement. The retirement of a single Firefighter on March 1, 2015 would save Boardman over ninety thousand Dollars (\$ 90,000.00)

\$ 59,802.39	\$ 61,052.39
<u>25,250.00</u>	<u>28,000.00</u>
\$ 34,552.39	33,052.39
	<u>34,552.39</u>
	\$ 67,604.78
X 1.35	\$ 91,266.45

The potential additional income and potential savings may not necessarily come to fruition. Likewise, the contingencies which Boardman considers in formulating its budget, likewise may not become reality. Based on the evidence, it appears that Boardman can afford the increase proposed by the IAFF. That proposal is fair and consistent with other settlements awarded to similar jurisdictions and consistent with other bargaining units within Boardman, considered over the six (6) year period from 2009 through 2015. Should Boardman experience shortfalls and not be able to afford the wage increases awarded herein, there are mechanisms available to address such a situation. There is no mechanism to correct the wages to be paid to Firefighters should the estimates and projections of Boardman prove to be overly cautious.

CONCLUSION

For the above reasons, the Conciliator finds that the proposal of the IAFF must be awarded. Per agreement of the parties, the wage increase for 2014 shall be retroactive to March 1, 2014.

Respectfully submitted,

/s/ Gregory J. Lavelle
GREGORY J. LAVELLE
Conciliator

S E R V I C E

True copies of the within Award of the Conciliator were served electronically upon Boardman c/o Robin Bell at rbell@clemansnelson.com, upon the IAFF c/o Dennis Haines, Esq. at dhaines@green-haines.com and upon the Ohio State Employment Relations Board at MED@SERB.state.oh.us this 20th day of November, 2014.

s/s Gregory J. Lavelle
Gregory J. Lavelle, Esq.
Conciliator