

**State of Ohio**

**State Employment Relations Board**

<b>In the Matter of Conciliation</b>	:	SERB Case Number: 2015-MED-01-0035
	:	
Between:	:	
	:	
City of Fairborn, Ohio	:	
Employer	:	Date of Hearing: August 26, 2016
	:	Date of Award: September 14, 2016
And:	:	
	:	
Fairborn Professional Firefighters	:	
Association, IAFF, Local 1235	:	Felicia Bernardini, Conciliator
Union	:	
	:	

**Conciliation Award**

**Appearances:**

**For City of Fairborn; Employer**

Kelly Babcock, Clemans, Nelson & Associates, Conciliation Spokesperson  
Deborah McDonnell, City Manager, City of Fairborn  
Mike Riley, Fire Chief, City of Fairborn  
David Reichert, Division Chief, City of Fairborn  
Randy Groves, Finance Director, City of Fairborn

**For Fairborn Professional Firefighters Association, IAFF, Local 1235; Union**

Kevin Rader, ArnettRader Consulting, Inc., Conciliation Spokesperson  
John Howard, President, Local 1235  
Joey Lykins, Negotiation Team, Local 1235  
Zachariah Pitstick, Negotiation Team, Local 1235  
Sean Woodmansee, Negotiation Team, Local 1235

## Introduction

### Case Background

Felicia Bernardini was appointed as conciliator in the above referenced case by the State Employment Relations Board (SERB) on February 23, 2016 in compliance with Ohio Revised Code (ORC) Section 4117.14D(1). The case concerns a conciliation proceeding between the City of Fairborn (hereafter referred to as the “Employer” or the “City”) and the Fairborn Professional Fire Fighters Association, IAFF, Local 1235 (hereafter referred to as the “Union” or “Firefighters”).

A conciliation hearing was scheduled for August 26. The hearing was in the City of Fairborn, at the Fairborn Fire Department Training Room. Both parties timely filed the required pre-hearing statements. The pre-hearing statements identified eight unresolved issues. At the suggestion of the conciliator the parties agreed to participate in mediation prior to the hearing.

All but one of the unresolved issues was settled as a result of mediation. The tentative agreements (TAs) on these seven issues (Article 22: Overtime and Call In; Article 27: Healthcare; Article 31: Longevity; Article 32: Uniforms; Article 35: Wages; Article 39: Impasse; Article 43: Duration) are incorporated into this award, as are all prior TAs negotiated by the parties and undisputed/unopened sections of the contract. The parties also agreed that the signing of the tentative agreements on the day of the hearing settled the underlying issues of the pending Union ULP filed at SERB. It was the mutual agreement and desire of the parties that the ULP be resolved without proceeding to hearing.

The parties proceeded with a conciliation hearing on one remaining unsettled issue, Article 30: Company Strength. The conciliator’s single task in this matter is to select between the parties’ competing proposals on this one unresolved issue. In making an award the conciliator is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). Comparison of the unresolved issues 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 interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d). The lawful authority of the public employer;

- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### General Background Information

The City of Fairborn is located in Greene County near Dayton and Wright-Patterson Air Force Base. Fairborn covers approximately 14 square miles and has a population of approximately 33,000 as of 2013. The City has four fire stations staffed by 48 fulltime, uniformed personnel that provide professional firefighting and EMS services to the community. There are 36 firefighters and 12 lieutenants in the bargaining unit. All bargaining unit members are required to be certified paramedics.

## **Positions, Discussion and Award**

### Article 30: Company Strength

#### *Employer Position*

Throughout bargaining the Employer had maintained the position that matters of staffing are a management right, and as such 'company strength' (minimum staffing) should not be part of the collective bargaining agreement. Therefore the Employer proposed to eliminate this provision from the contract. However in early August, in an effort to settle the final unresolved issues, the Employer adopted a compromise proposal on company strength as part of a full package of settlement offers. This package of settlement offers was 'TA'ed by the parties and brought to a vote of the membership as required by law. The final tentative agreement was rejected by the Union membership. It is this compromise offer on company strength included in the final settlement package that the Employer brings to conciliation.

Rather than eliminate the Company Strength provision from the contract, the Employer proposes two modifications to current contract language. First, current contract language provides for a minimum staff level of two employees at Station 3, even though the deployment of department equipment would suggest that Station 3 should be regularly staffed by more employees. At a point in

time, the parties had agreed to expand the two-employee carve-out in effect at Station 3 to include Station 2, but only for a fixed period of time. That carve-out for Station 2 ended upon the expiration of an earlier contract on January 1, 2012. The Station 2 carve-out was then set forth in an MOU, which expired at the end of 2014. The Employer's proposal is to reestablish the two-employee minimum staff carve-out at Station 2 as ongoing contract language. Second, current contract language sets the overall minimum staff level at 70% of the authorized platoon of bargaining unit members. The Employer has maintained its management right to set the platoon size, and has varied it as necessary over the years to meet budgetary and operational demands. The Employer's proposal is to eliminate the 70% standard and establish a fixed minimum staff level of 12 bargaining unit members. This modification has the effect of setting the minimum staff level at one higher than is required by the current contract language and current operational platoon strength.

As for issues raised by the Union regarding the minimum staffing level, the Employer maintains that Fire Department personnel safety is driven by policy rather than staffing. In Fairborn, by policy, an appropriate company for incident response is achieved by deploying multiple apparatus when necessary. At structural fires safety standards are maintained by following '2-in/2-out' practices when a full company has assembled. Prior to an entire company having assembled at a structure fire, personnel are to engage in a variety of tasks to fight the fire that can safely be done without entering the structure.

#### *Union Position*

The Union maintains that current staff levels are inadequate to ensure a safe and efficient operation. The Union opposes the Employer's proposal to reestablish the two-employee minimum staff carve-out for Station 2, and proposes that the overall minimum staffing level be set in the contract at 13 bargaining unit members rather than the current contract language that requires 70% of the authorized platoon.

The Union emphasizes that minimum staffing is a matter of safety. In the City of Fairborn, Fire Department apparatus are staffed by only two bargaining unit members. This level of staffing is below the common practice of most area jurisdictions which deploy three staff per apparatus. It is also under the profession's current recommended standard of four staff per apparatus. Responding to a structure fire with only two firefighters on an apparatus severely limits the effectiveness of the response. In the initial moments of a response there are multiple tasks that must be undertaken: establish an incident command, size up the situation, secure a water supply, assess life-safety risk,

place the apparatus in service, deploy the lines and fight the fire. Each water line is to be operated by two personnel, each Search and Rescue Team is to consist of two personnel, as is a Ventilation Team. With Fairborn operating at just two personnel per apparatus, the number of firefighters at the scene simply does not add up to the complement needed to safely manage the situation. Too few firefighters on an apparatus creates an unsafe working condition for Department personnel and is ineffective and unsafe for Fairborn residents.

The Union further points out that within Greene County there is a mutual aid agreement among the many jurisdictions in the area which establishes minimum apparatus staffing for fire engines and ladder trucks at three personnel. When Fairborn responds to an incident in a neighboring jurisdiction three personnel per apparatus are sent, and when surrounding jurisdictions send apparatus to aid at a Fairborn incident the apparatus arrives with three personnel. For further comparison purposes the Union submits, among its hearing exhibits, a list of surrounding jurisdictions (both cities and townships) showing call volumes and population; each jurisdiction listed in the exhibit staffs its engines with three personnel.

Of the 6,861 incidents to which the Department responded in 2015, many were handled by a single engine (i.e., two personnel). 5,356 of the incidents were EMS calls. Of the remaining calls, 26 were structure fires and 225 were motor vehicle accidents that would have involved several engines responding. The remaining incidents including cooking fires, vehicle fires, alarm investigations, gas leaks, service calls and fuel spills are single engine responses and therefore handled by only two personnel. In these instances deploying hoses and/or setting up fans for ventilation (both two person tasks) are being performed by a single individual. Handling this equipment without assistance can easily lead to musculoskeletal injuries. Here again, the Union emphasizes that Fairborn firefighters perform all necessary tasks when responding to a call, but the general safety of firefighters and the efficiency of their response is adversely impacted by virtue of the two person per apparatus staffing standard.

#### *Discussion and Award*

For this conciliator, a minimum staffing provision is clearly related to the terms and conditions of employment and therefore reasonably understood to be a mandatory subject of bargaining. Furthermore, even if it were determined to be a permissive subject of bargaining reserved under the caveat of management rights, the parties have voluntarily converted it, for all intents and purposes, to a mandatory subject of bargaining by having included it in its collective

bargaining agreement during an earlier set of negotiations. This being the case, the issue is properly and fairly before the conciliator for determination.

The 'Fairborn Fire Department Current Standard Response Listings and Assignments', a document included among the Employer's exhibits, identifies 52 separate response codes from bomb threat to water rescue. 16 of the codes merit a single engine response; in some cases a single medic, in others a single engine. The remaining 36 codes are all assigned multiple apparatus responses (i.e., multiple engines and/or combinations of engines & medics). What is not available with respect to this list is the frequency of each type of service call in the City of Fairborn. Data on service calls was made available at the hearing, however the categories of response types differs across documents and cannot easily be compared. Regardless, across all provided data sets (from both the Union and Employer) over the last four years to-date, the data show that 79%-84% of all calls are EMS responses. Neither party raised concerns or issues pertaining to single-apparatus EMS responses. The heart of the minimum staffing dispute is how it impacts fire responses. Provided data show that all types of fire responses account for between 1.1%-1.3% of all Department responses over the last four years to-date. Service calls and fire alarm investigations make up the majority of the remaining Department responses. Critical though they are, fire responses are a small percentage of overall Department calls for service. Requiring the Department to staff 24/7 at a higher minimum level is not supported by the provided evidence. This is especially so given that the Department can, and does, deploy multiple apparatus to most fire responses; and can rely on the Greene County mutual aid agreement as needed to assemble an appropriate company for fire calls.

Both parties acknowledge and agree that annually Station 2 has fewer total runs than other stations. In fact, Station 2 is very like Station 3 when it comes to total annual service calls. Provided data for Station 2 reveal that EMS calls represent a slightly higher percentage of total calls than the Department-wide percentage. At Station 2, EMS service calls represent 84%-90% of all calls over the last four years to-date. This data supports the parties past agreement to treat Station 2 like Station 3, rather than Stations 1 and 4, when it comes to minimum staffing. It seems reasonable to continue the status quo until a case can be made (supported by data) that staffing at Station 2 should be increased to match an increase in demand for service.

Charted data provided at the hearing also show that the Employer is currently staffing at, or above, its proposed minimum staff level of 12. In fact, the data reveals that 49% of the time the Department is staffed above the Employer's proposed minimum. On any given day there is about a 50% chance that the Fairborn Fire Department will be staffed at the Employer's proposed 12

minimum staff, and about a 50% chance that the Department will be staffed at, or above, the Union's proposed minimum staff level of 13. The difference between the two competing proposals, and the difference between the competing proposals and current actual practice, is minimal. Two years ago, three firefighters were hired by the City of Fairborn, thus bringing the full complement of firefighters to 36; a return to prerecession staffing levels. The Employer has expressed a commitment to raise overall staffing levels, and in particular staffing at Station 2, as the geographic area served by Station 2 grows in development, population, and service calls.

Neither party presented a cost analysis of its own, nor of the competing proposal. Such information is an important consideration for any fact finder or conciliator when evaluating options that change the status quo of a significant term/condition of employment, as is the case here.

Having given full consideration to all data and arguments presented on this key contract section, and upon evaluation of the data and arguments with respect to the statutory criteria, I support the Employer's position because it represents continuation of the status quo in terms of both overall minimum staffing and Station 2. At this time the data and arguments do not add up to a compelling reason to set the minimum staff level above the status quo. The fact that the Employer often (49% of the time) staffs above the minimum staff level is to its credit and to the benefit of the bargaining unit.

The Employer's proposal dated 8/8/16 is accepted and the Union's proposal is rejected. Incorporated into this award are all articles and sections of the labor agreement on which the parties reached tentative agreement, as well as all unopened and undisputed articles and sections.

Respectfully submitted and issued at Columbus, Ohio this 14<sup>h</sup> day of September, 2016.



---

Felicia Bernardini,  
Conciliator

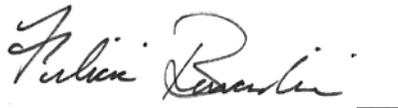
## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Conciliation Award was sent by e-mail on September 14, 2016 to:

State Employment Relations Board  
Mary E. Laurent  
65 E. State Street  
Columbus, Ohio 43215  
[med@serb.state.oh.us](mailto:med@serb.state.oh.us)

Fairborn Professional Firefighters Association, IAFF, Local1235  
c/o Kevin Rader; ArnettRader Consulting, Inc.  
[1335](mailto:krader@arnetrader.com) Dublin Road, Suite 108-B  
Columbus, Ohio 43215  
[krader@arnetrader.com](mailto:krader@arnetrader.com)

City of Fairborn  
c/o Kelly Babcock; Clemans, Nelson & Associates, Inc.  
485 Metro Place South, Suite 200  
Dublin, Ohio 43107  
[kbabcock@clemensnelson.com](mailto:kbabcock@clemensnelson.com)



Felicia Bernardini