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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of Conciliation between:)	SERB Case No. 2015-MED-08-0723
)	
BATH PROFESIONAL FIRE FIGHTERS,)	Before Mitchell B. Goldberg,
IAFF LOCAL 4130,)	State Appointed Conciliator
)	
Labor Organization,)	Hearing: August 2, 2016 at
)	Bath Township, Ohio
and)	
)	Date of Award:
BATH TOWNSHIP, OHIO,)	August 13, 2016
)	
Public Employer.)	

CONCILIATION AWARD

Appearances: Ryan J. Lemmerbrock, Esq. Muskovitz & Lemmerbrock, LLC, for the Union; and Robin L. Bell, Regional Manager, Clemans, Nelson & Associates, Inc., for the Employer

I. Introduction and Background.

The State Employment Relations Board appointed the undersigned as the conciliator of this public employment labor dispute on June 8, 2016 in accordance with Ohio Revised Code Section 4117.14(D)(1). By agreement of the parties, this matter was scheduled for hearing at the Township's offices on August 2, 2016. They timely filed their position statements before the scheduled hearing with the conciliator and served each other in compliance with Ohio Administrative Code Rule 4117-9-06(E). The conciliator considered the written report and recommendations of the Fact Finder, issued on May 10, 2016.

The parties offered oral evidence and submitted documentary exhibits at the hearing. The following represents the following final and binding award on each of the submitted disputed issues, by selecting from between each of the party's final settlement offers on an issue-by-issue basis. The awards took into consideration the factors outlined in Ohio Revised Code Section 4117.14(G)(7). The

factors are summarized as follows: (1) past collectively bargained agreements; (2) comparisons with other public and private employees performing comparable work, while considering factors peculiar to the area and job classifications; (3) the public interest and welfare, the ability of the public employer to finance and administer the proposed issues, and the effects of the adjustments on the normal standards of public service; (4) the public employer's lawful authority; (5) the parties' stipulations; and (6) other factors normally or traditionally considered in determining the submitted issues to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The parties began negotiations for collective bargaining agreement in September 2015 to succeed the CBA that was to expire on December 31, 2015. They engaged in multiple negotiation sessions and reached tentative agreements on a number of issues until they reached impasse. They engaged in fact finding and reached more tentative agreements after the issuance of the Fact Finding Report. They settled more issues at the conciliation hearing, leaving only the following issues to be resolved by the conciliator. This award hereby incorporates all of the tentative agreements reached between the parties, those agreements and settlements reached before and after the fact finding process, and those reached during the conciliation hearing for purposes of this final and binding award. The unresolved and addressed issues are: (1) Article IX – Wages/Compensation; (2) Article XII - Sick Leave Cap; (3) Article XIX - Overtime Work Hours and Compensatory Time; and (4) New Article - Off-Duty Calls.

II. The Fire Department and the Bargaining Unit.

The Fire Department is staffed with 6 Fire Medics, 2 Lieutenants, a Fire Chief, and Assistant Chief, and approximately 24 part-time firefighters. The Fire Medics and Lieutenants are in the IAFF bargaining unit; the rest of the staff are excluded from the unit. There are an additional 18 “contractual” firefighters who are jointly employed by BTFD and neighboring Copley Township. These jointly employed firefighters work out of Station #2 that covers both townships. The IAFF

members work 24 hours/7days in 3 rotating 24 on/48 off shifts. Three IAFF members are assigned to “A” shift, 3 are assigned to “B” shift, and 2 to “C” shift. The part-timers are limited to working a maximum of 28 hours/ week or 1,500 hours per year (Ohio Rev. Code Section 505.60).

III. The Township.

Bath is an affluent rural Akron suburb located in Summit County. It is fully developed for residential purposes, with only 400 housing units that are available for future development. Its present population is 9,635 with a median family income of \$117,712. Fifty-five per cent of the families earn over \$100,000 per year, and 45% earn less than \$100,000 per year. This median family income is more than twice the level of Summit County as a whole, and the median level in the state of Ohio.

IV. Financial Evidence.

The dispute over that which one should take away from the abundance of undisputed financial evidence is somewhat unrelated to the specific financial disputes regarding the unresolved bargaining issues. There is no issue regarding the Township's ability to pay. The dispute centers around the Township's view that the remaining economic proposals should be resolved in accordance with the historic conservative principles of Township governance and management that has permitted the Township to weather financial downturns such as the great recession of 2008, the slow recovery, and the removal of a considerable part of its operating funds that was generated by its large collections of inheritance taxes and monies from the state's local government funding. Specifically, the Township, prior to 2013, could count on about \$950,000 per year in general fund revenue. The recession caused a substantial reduction in both commercial and residential property values that have yet to produce the types of historic property appreciation that accounted for approximately 59% of its general fund revenue. For example, in 2011, property tax revenue was \$981,000. It declined to \$917,000 in 2012, rose to \$929,000 in 2013, declined to \$924,000 in 2014 and declined to \$922,000 in 2015. The inheritance tax revenue that accounted for the bulk of the remaining percentage of general fund revenue

has been entirely eliminated. Receipts from the local government fund were reduced by \$580,000 over the period from 2012-2015.

Two separate funds, the Fire District fund and the Ambulance/EMS fund are collected from separate property tax levies. They provide specific funding for the Fire Department. In the past, certain funding for the Fire Department was supported from the general fund, including portions of firefighter wages and pension costs. This supportive funding from the general fund has declined significantly beginning in 2015.

The loss of tax revenue for the general fund has reduced its year-end balances from \$4,160,000 in 2011 to \$2,973,000 that is estimated for year-end 2016. The Township has managed to keep its expenditures in line with this decreased revenue. By year-end 2015, it still was able to have a substantial carryover reserve. The budget for the general fund in 2016 plans an anticipated 98% carryover. The Township estimates and has budgeted for positive ending balances for the special funds as well as the general fund for 2016.

The parties disagree as to what should be the appropriate ending reserve balance percentage for the Township. But, whether the percentage should be 2 months of operating expenditures, or 3 months of operating expenditures, the Township will far exceed these expert opinion benchmarks. Under a \$3 million budget of monthly \$250,000 average expenditures, a 3-month reserve would amount to a year-end carryover of \$750,000. The general fund ending balance in 2015 carried over to 2016 far exceeds this figure, and the carryover from the two specific fire/ambulance funds at the end of 2015 was \$634,589.

The final wage offers for the 8 bargaining unit members that are set forth below amount to only a 2% difference, 1% in year one, and 1% in year two. The total cost difference between the final two proposals is \$45,051, including roll-ups, out of approximated revenues, based upon historical figures, of \$8-9 million over the next 3-year term. The total fire wages paid in 2015 were \$687,574; 1% of

which is only \$6,876.

Moreover, the Township has an untapped reserve from which to operate from in the event of an unforeseen revenue downturn. As pointed out by the Fact Finder, the Township has chosen not to charge residents for ambulance/EMS services. This is an anomaly among public sector jurisdictions, since the fees for the most part would be paid by insurance companies under policies that are maintained by the residents. The Fact Finder correctly couched the parties' respective positions in terms of the disputed financial issues: The Township wants to maintain its conservative management by constraining its spending and exercising fiscal control over its budget. It focuses upon its internal comparisons with wages and benefits paid to the police unit, the service unit, and its non-bargaining unit staff. It further want to control what it believes is its increasing overtime costs. The Union, on the other hand, wants to preserve its present standing as compared to external comparisons with wages and benefits paid to those in surrounding areas for firefighter/paramedic/EMS work.

V. Unresolved Issues.

(1) Article IX – Wage/Compensation

The Township proposed to the Fact Finder wage increases of .75%, .75% and .75% for the 3-year term, and that it would add 2 additional steps to the existing scale for new hires. The Union proposed increases of 3%, 3% and 3%, and a modification of the existing me-too clause. The Fact Finder recommended 3% in year one, 3% in year two and 2% in year three. He also recommended modifying the me-too clause on wage increases to provide the firefighter unit with equivalent wage increases paid to other Township employees in the event they receive higher percentage pay raises than the raises paid to firefighters under their CBA (the me-too clause).

The Union, for purposes of this conciliation proceeding, has modified its wages offer. It now proposes 3%, 3% and 2%, the same as recommended by the Fact Finder, and it has agreed to withdraw the me-too clause in its entirety. The Township has modified its wages proposal to 2%, 2% and 2%,

with the elimination of the me-too clause.

Internal Comparisons

As stated above, the Township's final offer is based upon its perceived attempt to restore internal annual wage parity between its safety forces. The police unit received 4 years of pay freezes, which were remedied by the Township's agreement to pay the police 3% increases for 2015, 2016 and 2017. The fire unit was able to apply the me-too clause to the last year of its expired CBA (2015), which increased the stated 2% into a 3% raise for 2015. The Township believes that granting the Union's proposal of 3% and 3% for 2016 and 2017 will cause the police to demand a parity increase, thereby spiraling continuous pay increases as between the two units. The Union believes that one should look at a longer pay history than the last 5 years. It would show that there has been relative parity over this longer period of time, when the police received higher wages than the fire unit in certain years. There has been, and will be relative parity when the issue is viewed from a longer perspective.

External Comparisons

The Union, as stated above, wants attention directed at external comparisons. The parties disagree as to which jurisdictions should be considered for purposes of comparisons. The Township believes that it is not appropriate to consider wages paid by nearby cities, and that one should only be concerned with wages paid to firefighters in townships similar to the administrative government in Bath. The Union, on the other hand, contends that the firefighters/paramedics in the surrounding geographic market perform the same work, whether they are employed in a city, a village or a township. It is the market for their services that should control the pay scales.

The Union's evidence shows that Bath firefighters with only 8 full-time members have a run volume higher than the average of 13 nearby departments and that its calls per firefighter exceed the average among the members in the group of departments. It believes that one should focus upon the

hourly rate paid in nearby departments; the Township wants to consider the higher number of annual work hours available to those in other nearby departments. When total work hours are considered for example, a Copley Township firefighter earns more in total maximum compensation due to working 2,600 annual hours compared to 2,496 at Bath. If the Copley total was adjusted to a 2,496 level, the Copley total maximum adjusted annual compensation would be \$73,887 compared to Bath's \$74,633. The Township believes that this shows that its firefighters are paid at the highest level compared to nearby departments, and its wage proposal would keep that parity. The Union believes the focus should be on the hourly rate paid to firefighters, regardless of how many annual hours are worked. If this analysis is used, the Copley top hourly rate is \$26.20, compared with Bath at \$23.99. The Union believes that its proposal would bring Bath up to the highest top hourly rate, where it should be based upon the Township's extremely healthy financial condition.

I find, after a review of all of the economic evidence, and the parties' arguments, that the Union's final offer is a more reasonable one. This is based upon the following factors. First, the me-too clause, which was troubling for the Township, has been withdrawn by the Union. Secondly, the Union has agreed to adjust the overtime pay rate from a premium rate over 40 hours/week to premium pay over 48 hours/week. This will save the Township considerable money by reducing its overtime costs. Third, the Township will save more overtime costs through its policy decision to prohibit its full-time bargaining unit members from responding to level one calls from the period of 7:30 am to 3:30 pm while off-duty. Instead, those calls will be served by part-timers, whose pay rates are considerably lower than the full-time firefighter rates, and the overtime premium rates that they would be paid if they responded to calls while off-duty as in the past. Fourth, in terms of internal comparisons, the police are being paid 3% in 2016 and 3% in 2017. Fifth and finally, a Fact Finder's recommendations for wages paid to the service department workers represented by the Teamsters is 3% for 2016 and 3% for 2017.

Award: The Union's final wage offer is awarded: Beginning (retroactive to) January 1, 2016, the wage steps and levels set forth in Article IX shall be increased by 3% across-the-board. Beginning January 1, 2017, the rates shall be increased by another cumulative 3% across-the-board. Beginning January 1, 2018 and until the end of the contract term (December 31, 2018) the rates shall be increased by 2% cumulative across-the-board.

The sentence providing for the payment of overtime rates shall be amended to state: “ In addition, the overtime rates, set forth above, shall be one and one-half times the 48 hour rate, calculated to include with the addition of longevity and incentive pays. The paragraph containing the me-too clause shall be deleted. The remaining language in Article IX shall be unchanged.

(2) Article 12 – Sick Leave

The Union has modified its final offer with respect to its proposal before the Fact Finder. It seeks to remove the cap or maximum number of accumulated sick leave hours (1,980). But, it attempts to address the Fact Finder's recommended removal of the cap without addressing the retirement pay-out in Section 9. Its proposal would provide for a lump sum payout equal to 25% of the employee's 48-hour rate multiplied by the accumulated sick leave hours in that employee's account *up to a maximum of twenty-five (25%) percent of 1,980 hours (495 hours)*. The Township's final offer is to retain the current language (the 1,980 cap) except for the agreed-upon Section 6 modifications per the parties' TA.

The Fact Finder's rationale for recommending the removal of the cap is based upon his finding that the Bath cap amount is “substandard” compared to the accrual of sick leave provided by other comparable employers. He further stated firefighters have an increased risk for injuries and illnesses due to their job duties than other Township employees. The Township believes that internal internal comparisons should control this issue. It considered the firefighters' higher risks by providing them with much hire sick leave accrual hours than the other employees. They have 1,320 hours or 33 weeks off, when firefighters are provided with 1,980 hours and over 41 weeks off.

This is one of those issues that would lead a neutral to accept some type of cap on both the number of accrued sick leave hours as well as a cap on retirement pay-out, when other Township employees, including the police, have a lower cap. However, it is apparent to me that the Fact Finder was persuaded by the evidence that an accrual cap is outside the norm for firefighters working in this economic market. Of the 13 jurisdictions in the Akron area, only 2, New Franklin and Springfield Township have caps. Both have much larger caps than Bath's caps, 4,134 and 2,920 respectively, compared to 1,980 for Bath. The remaining 10 jurisdictions including Copley, Stow, Coventry, Green, Richfield and Fairlawn have unlimited accruals. The Union has remedied the omission of the Fact Finder to address the removal of the cap as it relates to the retirement pay-out. Accordingly, I cannot find that the Fact-Finder's recommendation was unreasonable, or that it was erroneous, based upon his decision to consider the benefit that exists among other comparable departments.

I would have preferred a negotiated settlement, probably on a higher cap, in order to give some deference to the fact that the police contract has a cap. It is certainly an occupation with high risks of injury. Nevertheless, the external evidence is irrefutable that the norm among firefighters in the area is that no caps are applied to sick leave accrual. However, I must choose between the last two final offers where the Township is sitting on the status quo, without proposing a sizable increase in the number of cap hours, and the Union's final offer of removes the cap, and corrects the Fact Finder's omission in not addressing the cap on the retirement payout. Accordingly, I award the Union's final offer.

Award: The last sentence of Section 1 is deleted such that there is no cap on the number of sick leave hours that may be accumulated. The language in Section 6 is changed pursuant to the parties' TA.

Section 9 shall read:

An Employee retiring from the Township with at least fifteen (15) years of full-time service with the Township shall be paid a lump sum amount equal to twenty-five (25%) percent of the employee's 48-hour rate multiplied by the accumulated sick leave hours in that employee's account *up to a maximum of twenty-five (25%) percent of 1,980 hours (495 hours).*

(3) Article XIX – Overtime (Compensatory Time)

The Union's final offer is to increase the maximum number of compensatory time hours that an employee can accrue from the current 120 hours to 240 hours, and to increase the number of accrued compensatory time hours that an employee may retain from year-to-year to 96. The expired CBA provided for 48 hours. The Township's final offer is modified from its offer before the Fact Finder. It proposes to keep the current maximum accrual at 120, but maintains its proposal that would limit both the accumulation of hours annually, but also requires that the employee utilize the 120 hours in any calendar year. The Township also proposes to maintain the current 48 hour carry over of compensatory time.

The Fact Finder recommended the increase from 120 to 240 and he recommended increasing the number of compensatory time hours that an employee may accrue to 96. This recommendation, however, was included with other Township proposals under Article XIX, and there was little discussion or rationale stated for the recommendation. The Township's reasoning for requiring utilization is that this is a small department and it would subject itself to operational problems if additional leaves are taken for compensatory time. Raising the level above 120 would create additional leaves that would need to be filled by part-timers or by full time firefighters with overtime pay. The existing cap is referred to by the Township as a “soft” cap because there is no limit to the level of use. An employee may take compensatory time, reach the level, use the time, and then begin to accumulate more time until a new level is reached. The Township believes that the employees would not be disadvantaged by its proposal since the employee would otherwise be receiving overtime pay. Keeping the level at 120 will help assure that employees will work their scheduled hours.

The Union believes that the Fact Finder's recommendation should be upheld. There is no evidence that providing additional time off increases the Township's overtime costs. Moreover, there is already a built in limitation regarding the use of compensatory time. Only one bargaining unit member

may use compensatory time per shift. This has produced a constructive usage limitation that is shown by the usage statistics. The average number of compensatory hours used per unit member in 2015 was 93.25 hours, which is less than 4 shifts per year. Only 15 hours resulted in overtime payments in 2015. The external comparisons favor the Union's proposal, and the new proposal to limit the “use, reach level, accrue more” (a soft cap) system with a hard cap system that would stop any accrual over 120 would unfairly affect the carry over amount that could be taken in the following year.

As is often the case, I am not enthralled by either proposal. Copley is at a maximum of 96 hours. I don't see the need to go from the existing 120 hours to 240 and increasing the 48 hours to 96. But, I am particularly concerned about changing the “soft” system to a hard cap. It appears that the Township is protected from any adverse affects of the Union's proposed increases by the current policy of only permitting one unit member to be out on compensatory time per shift. On the other hand, a new system with the hard cap may present unforeseen problems that the parties did not flush out during the hearing, or possibly even during their bargaining. Because of the proposed change in the system from a present soft cap to a hard cap and its possible adverse consequences, I will default to the Fact Finder's judgment that is incorporated into the Union's final offer, that retains the current soft cap system.

Award: The Union's final offer will be accepted and Sub-Issue (b), Section 2 shall read:

During the term of this Agreement, an employee may accrue up to a maximum of two hundred forty (240) compensatory time hours. Any compensatory time that may have accrued beyond two hundred forty (240) hours will either be promptly taken in time off, or paid, at the employee's discretion. Based on the accrual balance as of December 1 of each year of the contract, any accrual balance of over ninety-six (96) hours will be paid to the firefighter as hours worked.

(4) New Article – Off-Duty Calls

The Union proposes a new article with language stating that unit members shall not be treated differently than non-IAFF members and/or part-timers in regard to eligibility to respond to off-duty

call-ins for emergency responses. It proposes that its members would be compensated for a minimum of one hour for all off-duty call-ins and shall be compensated in accordance with Article XIX (overtime rates). The Township rejects this proposal in its entirety.

The basis for the Union's proposal is its reaction to a Township unilaterally imposed policy that bars IAFF members from responding to emergency call-ins from 7:30 am – 3:30 pm on Mondays through Fridays. The Township has decided to utilize its part-timers for these emergency responses instead of calling in full time firefighters who are off-duty. This policy has dropped the Township's overtime pay to the members by 77%. The Union believes that the Township's action is unfair and has changed a longstanding practice of utilizing the full-time off duty members for these call-ins. It believes that its members are being treated in a discriminatory manner in comparison to the treatment of the part-time personnel.

The Township believes that it has acted within its managerial or administrative rights under the existing CBA when it implemented this policy. The Union contends that the Township's action amounts to an unfair labor practice and that the Township was bound to negotiate this material change in the terms and conditions of employment. However, the Union did not file a ULP with SERB, or any grievance over the Township's decision. The ULP issue is beyond my jurisdiction. I can only decide whether the Union's bargaining proposal is more reasonable than the Township's rejection. I believe that the Township may schedule its workforce in whatever matter it chooses, except in a manner that is arbitrary, capricious or clearly discriminatory in the sense that it is implemented to damage the Union or the collective bargaining rights of its members. The record before me does not clearly show that the Township waived or gave up its scheduling rights, notwithstanding that it called in unit members regularly over a long period of time, until it chose to exercise its management rights in a different manner. The goal to reduce its overtime costs, which was clearly the result of its decision, is a reasonable financial decision from an operational standpoint. Accordingly, I find in favor of the

Township's rejection of the Union's proposed new article.

Award: The Union's final offer is rejected.

Date of Award: August 13, 2016

/s/ _____
Mitchell B. Goldberg, Conciliator

CERTIFICATE OF SERVICE

The foregoing award was served by electronic mail upon the following persons and entity on the 13th day of August, 2016:

SERB Email: med@serb.oh.us

Ryan J. Lemmerbrock: Lemmerbrock@mllabor.com

Robin Bell: rbell@clemansnelson.com

/s/ _____
Mitchell B. Goldberg

