

STATE EMPLOYMENT RELATIONS BOARD

CASE NO. 15-MED-09-0945

IN THE MATTER OF: *

CITY OF ELYRIA *

EMPLOYER *

AND *

ELYRIA FIRE FIGHTERS *

IAFF, LOCAL UNION 474 *

UNION *

AWARD OF THE CONCILIATOR

CONCILIATOR: I. BERNARD TROMBETTA

HEARING DATES: MAY 25, 2016
JUNE 28, 2016

PLACE OF HEARING: ELYRIA CITY HALL
131 COURT STREET
ELYRIA, OHIO

HEARING

The undersigned was selected as the conciliator in this matter which is between the International Association of Firefighters, Local Union 474, hereinafter sometimes referred as the "Union" or "IAFF" and the City of Elyria, sometimes referred to herein as the "Employer".

This matter was heard over the span of two days, May 25th and June 29th. The hearing site was the Elyria City Hall.

BOTH PARTIES WAIVED THEIR RIGHT TO HAVE THESE PROCEEDINGS TRANSCRIBED EITHER ELECTRONICALLY OR BY A COURT REPORTER. The written waiver is in the possession of the Conciliator.

APPEARANCES

On Behalf Of The Union

Ryan Lemmerbrock, Esq., Attorney for the Union
Dean Meeks, President, Local 474
Local 474 members

On Behalf of the City

Susan E, Keating Anderson, Esq., Attorney for the City
Brendan Healy, Esq.

WITNESSES

On Behalf Of The Union

William Bryson, Expert Witness- on Staffing
Mary Schultz, Expert Witness- on Finances

On Behalf Of The City

Richard Benton, Fire Chief- City of Elyria
Holly Brinda, Mayor of Elyria
Mary Siwierka, Safety/ Service Director- City of Elyria
Ted Pielski, CPA- Finance Director- City of Elyria
John Farrell, Deputy Finance Director- City of Elyria
Phil Dore, Former Chief, City of Lorain- Expert Witness
Robert Malanga, PE- Expert Witness

EXHIBITS

Both parties presented numerous exhibits. Many were bound in notebook fashion. Most exhibits were also used during fact finding. A few contained updated material. The exhibits were exchanged between the parties at the beginning of these proceedings or at the time of use.

The exhibits were accepted by the Conciliator.

BACKGROUND

This matter reached conciliation because the recommendations of Fact Finder William C. Binning, Ph.D. were not accepted by the City. The two issues which apparently triggered the rejection were minimum staffing and wages (the Fact Finder recommended the City's position on the other issues). The Union did not vote since the City rejected the findings.

Elyria is the county seat of Lorain County which lies along the north shore of Lake Erie between Cuyahoga and Erie counties. The City is about 8 miles inland from the lake along the forks of the Black River. The river is a navigable waterway with direct access to the lake, but is not navigable for commercial purposes within city limits.

The fire fighters unit consists of 63 members, 44 fire fighters, 9 lieutenants, 7 captains and 3 assistant chiefs. The union is the sole bargaining agent for this unit. The present contract is a successor agreement. The number of fire fighters has yoayed over the years with as few as 52 members in 2009 and as many as 75 in 2001. The number has been consistent since 2015.

Due to longevity benefits, vacation time, sick leave and bereavement time, off-duty firefighters are called in to meet the current 13-man shift minimum used by the City. Consequently, the City incurs overtime expenses which cost \$5,737 per member in 2001 when the department had 75 members; \$5,800 per member when the department had 63 members, \$2,619 per man in 2014 when there were 71 members and \$5,800 per member when the department was operating with 63. (See. City Ex. 31). Overtime costs do not seem tied to the number in the department. However, as departmental seniority increases, overtime expenses should be expected to increase benefits also increase and are factored into overtime pay.

The contract provides for different wages for Step A and Step B

members who are limited to EMT/ Firefighters and Firefighters. Step B members are paid approximately \$4,000 a year less than Step A firefighters holding the same rank. Lieutenants, Captains and Assistant Chiefs are classified in Step A.

The step differentiation in the ranks of the firefighters appears tied to the date of hire, but Article 13.1 (A) does not define the breakdown and there was no discussion concerning wage steps and whether a firefighter can transfer out of Step B into Step A short of receiving a promotion- the difference between EMT/Firefighter and Firefighter is certification and not promotion. Firefighters with EMT certifications receive about \$1,725 more than firefighters without the certification.

Additionally the contract contains numerous perks not available in the private sector, but likely comparable to the perks offered firefighters in close-by departments. Manpower retention appears to be an important factor in the wage and benefit structure.

The City is divided by the forks of the Black River and operates 3 firehouses. Operating out of 3 houses was justified by explaining that the river cuts through the City, leaving certain areas separated except by bridges and reducing the number of firehouses may leave certain areas exposed to not arriving on scene with 4 minutes of being called out as recommended by the National Fire Protection Association (NFPA). Arrival times when 1 house is called out is close to the 4 minute limit and increases if more than one house is called and significantly increases if other cities are called in through mutual aid. Reducing the number of firehouses was not discussed.

Elyria, with a population of 55,000, is the second largest city in Lorain County. It is served by rail, the Ohio Turnpike and other major highways. Water access is marginal. The Black River narrows considerably once past Lorain, and is not navigable, except for recreational craft (canoes), but transporting commercial goods in and out of the City is not difficult since the City of Lorain has ample docking facilities.

At one time Elyria had a vibrant industrial base that provided many jobs. Over the years, however, many of those jobs disappeared when major employers closed or moved. Steel mills and automobile assembly factories once a key employer in the county and surrounding counties, have cut back or closed. These industries provided numerous jobs in the form of support businesses. Today, Elyria's two largest employers are Lorain Community College and University Hospital's Elyria

Medical Center. Its largest industrial employers are Invacare Corporation and Ridge Tool. Riddell Corporation and other companies have moved or are slated to move out of the city, but not out of the area. The income taxes generated by those jobs have moved to other municipalities and the City left with a residential income tax only paid by the residents.

The City's residences have a median valuation of \$107,000 and more than half are owner occupied. There is little new residential building planned or underway. As the county seat, the City houses the county courthouse. It also houses the Elyria Municipal Court, the Elyria Medical Center and the LCC. All are multi-story structures.

Surprisingly, at least to this Conciliator, is that the number call-outs for fires have been declining for the past few years, even as the housing and buildings age. The overall number of calls, however, have increased due to medical call responses.

The City provides the usual municipal services, including police and fire protection, service department and recreation. The municipal payroll consists of 477 employees with the income tax providing 77% of municipal revenues. Property taxes, local government funding and service fees provide the balance. The current income tax rate is 1.75%. A .5% increase went into effect in 2016, the former rate of 1.25% had been in effect for a number of years. The ballot language of the increase is claimed by the City to limit the areas on which the income generated by the raise can be used. The fire department is not one of the areas. Whether omitting the fire department was an oversight or by design was not disclosed. The City maintains that the ballot language restricts the use of the income produced by the tax increase to those mentioned.

CRITERIA

The criteria used in conciliation are found in Ohio Revised Code 4117.14(G)(7)(a) through (f) and Ohio Administrative Code 4117.14(G)(7)(a) through (f) and include past collectively bargained agreements between the parties, comparison of issues between the affected employees with those issues related to other public and private employees doing comparable work; the interest and welfare of the public; the ability of the of the public employer to finance and administer the issues proposed and the effect of the adjustments on the normal standard of public service.

A Fact Finder is able to consider the positions of the respective parties, weigh the evidence and make recommendations which do not, necessarily, have to be the position advanced by either party.

A Conciliator does not have that authority and, instead, must choose between the final offers of the parties. In this case both parties submitted final position statements as required and the Conciliator has no discretion other than to make a choice between final positions.

A Conciliator may reject the Fact Finder's recommendation when the recommendation is adopted by one of the parties as its final position and choose the final position of the other party but the criteria the Conciliator is to use are not found in either the Ohio Revised Code or the Ohio Administrative Code. Over the past 30 plus years the test used in conciliation has pretty much remained a constant requiring the party seeking the change to meet a standard of "clear error" in order to set aside the fact finder's recommendations. This standard is attributed to Professor Drotning in one of the early cases involving the Ohio collective bargaining procedure.

Most conciliators agree that conciliation is not a de novo proceeding and many apply a "clear error" test. The party seeking to overturn the recommendation of the fact finder must prove "clear error" by showing that the fact finder erred in his findings of fact, or failed to consider material evidence (evidence sufficient to influence the outcome of a recommendation) on an issue, or produce material evidence that may not have been available at the time of fact finding, but which was available at the conciliation hearing.

I find the "clear error" standard to be too exacting for collective bargaining purposes. Nevertheless, the party seeking an award different from the recommendations of the Fact Finder must prove error, either of omission or commission or the new evidence material to a change from the recommendations of the fact finder. It is not enough to simply disagree with or have a difference of opinion with the fact finder and establishing error is more difficult when the fact finder's recommendations are supported by well-reasoned positions. The party challenging the Fact Finder bears the burden of establishing factual or legal error. In this instance the Fact Finder supported his recommendations with his reasons for making the recommendations contained in his report.

While many may consider this to be an exacting burden, it is, nevertheless, the standard used in these proceedings. The burden lies with the party seeking changes to the Fact Finders recommendations.

Neither party accepted all the recommendations of the Fact Finder and so reliance must be placed on each party's final position statement to determine which is seeking a change to the recommendations. The burden lies with the party seeking the change to the recommendations.

ISSUES

The following issues were raised in fact finding and in the Final Position Statements:

Issue No. 1: Article 13- Wages

Issue No. 2: Article 34- Minimum Apparatus Staffing

Issue No. 3: Article 13- Driver Operator Pay

Issue No. 4: Article 1 and Letter of Understanding- Recognition

Issue No. 5: Article 13 (k)- Paramedic Training

Issue No. 6: Duration of Agreement- Article 35

The issues noted above will not be addressed in the same order as recommended by the Fact Finder since Issue No. 1- wages has been resolved with the City agreeing to a 2% per annum increase as recommended by the Fact Finder. The parties entered into a memorandum reflecting this agreement, the original is in the possession of the Conciliator and the parties furnished with a copy.

Also, Issue No. 2- Minimum Apparatus Staffing was agreed to be argued out of order likely to try to accommodate the Union's out of town expert. At the conclusion of their respective presentations on the Minimum Staffing Issue, the parties agreed to submit the remaining issues without further testimony.

ISSUE NO. 2

ARTICLE 34.3- MINIMUM SHIFT STAFFING

A NEW SECTION PROPOSED BY THE UNION

FACT FINDER'S RECOMMENDATION: The Fact Finder recommended that the following language be adopted as Section 34.3 in the new contract: "In an effort to provide for the safety of the Firefighter and the citizens of the City of Elyria, there shall be a minimum of fourteen (14) bargaining unit members on duty at all times."

BURDEN OF PROOF: The Union proposed this change to the agreement and the Fact Finder recommended the change. The final position of the Union, however, tacked on new language, i.e. creating an exception to the increase, by exempting compliance in the event of a declaration of fiscal emergency or fiscal watch.

Had the Union proceeded on the basis of the Fact Finder's recommendation, the burden of proof would lie with the City. The question before the Conciliator is whether the added language alters the nexus of the recommendation so as to place the burden back upon the Union.

The City argued against the Union's original proposal which the Fact Finder recommended as well as the Union's Final Position Statement. The burden of proof in conciliation rests with the party seeking to change the recommendations, but the Union successfully met the burden originally, so the question remains whether it again has the burden because it modified the recommendation.

The addition of the terms "fiscal watch" and "fiscal emergency" actually benefit the City and demonstrate the Union's flexibility on the issue. The Conciliator deems the City to be the party seeking a change in the recommendations since the modified language as contained in the Union's final position does not significantly alter the recommendation. The burden of proof still is with the City.

UNION'S FINAL POSITION: There shall be a minimum of 14 bargaining unit members on shift at all times, except the 14-man minimum would not have to be maintained during a fiscal emergency period or a period the City was in fiscal watch.

CITY'S FINAL POSITION: The City opposes the Fact Finder's recommendation and the Union's Final Position on the grounds that (1) staffing is a management right; (2) increasing the staffing level "handcuffs" the City's ability to manage its operations; (3) the number of active fire incidents have been dropping while EMS calls are increasing (presumably meaning EMS calls can be responded to by

fewer personnel) and (4) the Fact Finder exceeded his authority by recommending a proposal that is a matter of permissible collective bargaining and should not have been addressed in bargaining or fact finding.

DISCUSSION:

[1] STAFFING LEVELS ARE A SUBJECT OF MANDATORY BARGAINING

Cutting to the heart of the City's position, the Conciliator concludes that minimum staffing levels constitute and are part and parcel of this unit's working conditions and are the subject of mandatory collective bargaining.

Increasing staff levels, even by one, would permit the City to be able to make sure that the first unit on scene is a 4 man team, the number recommended by The National Fire Protection Association. If this department were to comply with those recommendations, the first responders would not enter a structure until the arrival of the second unit. There was evidence that the men would not wait for the second unit if it was felt that there was danger of injury or death to those occupying the structure. This would constitute an extra risk that the men would not necessarily be exposed to if 4 men were to be the first to arrive on scene. It is hard to fathom what could be considered a more basic working condition. Minimum shift staffing is a working condition and the subject of mandatory collective bargaining.

[2] RECOMMENDATIONS NEED NOT SEPARATELY ADDRESS EACH OBJECTION

The City raised numerous grounds to support its position that the new subsection not be added to the new contract. The Fact Finder's report did not specifically address each objection. The Conciliator is not aware of any statute or regulation requiring a Fact Finder to separately address each ground raised by a party, either in support or against a proposal. Some Fact Finder's write an abbreviated finding, and others author lengthy and sometimes even verbose recommendations. The statute and regulations only require the Fact Finder to consider all relevant factors, not write about them.

A fact finder must consider each of the matters raised in Sec. 4117/14(G)(7)(A) through (F) of the Revised Code and the Administrative Code. The key word is "consider". Neither the Revised Code nor the Administrative Code require his findings to address each in his findings.

The Conciliator, too, must the factors enumerated in Sec. 4117-09-06 (H) into consideration and he too need not specifically address each objection raised by a party opposing the others position. Those grounds roughly parallel the grounds which a fact finder is to consider.

The Fact Finder appears to have addressed the factors contained in both the statute and the administrative code and that is what is required of him.

[3] THE REASON FOR CITY'S REJECTION OF A STAFFING INCREASE IS AN UNWILLINGNESS AND NOT INABILITY TO PAY

The City allocates its manpower between 3 stations, two with a 20-man shift and one with a 19-man shift. This allocation does not mean that 20 or even 19, as the case may be, report for duty.

Preplanned vacations are taken into account, but routine calls requesting sick days, bereavement or other short notice leaves for time-off are commonplace and this frequently results with fewer than the assigned number of men scheduled to report for duty. When the number of "leave" requests cause the number of firefighters to fall below 13 per shift, off-duty firefighters are called-in. If 13 report or when that number is reached through a call-in, the shift is run with that number. 13 is the minimum number per shift.

There is no evidence that the City is currently operating a shift with fewer than 13 men, though this was not always the case and that drew the ire of Conciliator Grody-Ruben. But there is no guarantee that the City would not revert to its past understaffing practices unless contractually prevented from so doing.

The City seems intent on keeping 3 firehouses open. This may be due, in part, to the geographical split caused by the Black River or it may be due to the unwillingness to face a public challenge. Reducing the number of firehouses received only passing mention during this hearing. The Union would not push this as a solution since fewer stations would likely mean fewer firefighters.

The City argued that increasing the shift manpower level by just one fireperson would require it to hire 3 additional firefighters. The costs of 3 new hires would be less than the overtime costs for off-duty call-ins. This may be due, in part, to the pay scale with new hires receiving less top of the pay scale firefighters who would be called in from off duty.

The estimates, however, were based on time record analyses. No attempt was made to actually call in off-duty personnel, and while the analyses may be accurate, attempted compliance with the recommendations would have been more convincing in supporting the City's defense. This may not have been the determining factor in overruling the recommendations, but would have helped prove the City's argument that its opposition is based on inability to afford the recommendations and not an unwillingness to do so.

The Fact Finder was not convinced that the City was unable to meet the costs of paying for the increase in shift staffing and spent 3 pages in his recommendations in reviewing and ultimately rejecting those arguments.

The Fact Finder found, as does this Conciliator, that the restrictions on the use of the income tax increase to be unusual. Additionally, the Conciliator opines that such restrictions may not be quite as binding as argued by the City. Even if restricted, expenses now paid from the general fund can be reallocated to the tax increase fund, freeing up general fund money to pay for the costs of increased staffing whether overtime or new hires. The unusual ballot language should not be interpreted as being a mandate from the electorate since it is likely few, if any, voters read the proposal. Most voters probably saw the issue as being a straight up or down issue. It is unlikely that any voters were swayed to vote for the increase because fire department usage was omitted as a use of those funds. The mayor testified that she has been advised to spend the funds only on the enumerated purposes, but the party responsible for placing the restricted language on the ballot is likely the same party who is advising the mayor to enforce the restrictions.

The Fact Finder's recommendations indicate that he considered the City's financial condition. His findings just didn't agree with the City's claims. The City's financial condition and claim of inability to afford an increase in staffing is not as clear as many of its witnesses portrayed it to be. The Fact Finder did not believe it to be so. This a case classic case of unwillingness versus inability and unwillingness is not an accepted reason to oppose a change.

The Fact Finder appears to have considered public and staff safety in making his recommendation. He referred to Conciliator Grody-Ruben's award which was limited to equipment staffing, but which addressed safety issues at length. Shift staffing was not before the conciliator in that case. If it had been, this problem

may have been addressed in that award. Both the conciliator in the earlier case and the Fact Finder in this case were concerned with the issue of safety and operating a department at two persons short of the staff recommended by in NFPA 1710. Running with the present levels was viewed as exposing the public and members of this department to risk of injury or worse. The Fact Finder worried that the City might return to past practices and while there is no evidence that the City is contemplating such a move, addressing minimum shift levels in a contractual manner is the best avenue to assure that it will not recur.

Administrations come and go, but an agreement withstands changes in administrations. This department was operated with as few as 53 firefighters. That is a dangerously low number, particularly that number is allocated between 3 houses. Safer grants were used to expand the number, but that number is almost 10 short of the number on the force just a few years ago.

The recommendation, as was the proposal, still falls one man short of the number recommended by NFPA. To what degree, if any, does increasing staff levels by a single firefighter lessen the dangers faced by this unit or those faced by the public was not, and likely cannot be proven. If a firefighter or member of the public is injured while the City is running a 13-person shift, there are probably a myriad of explanations other than the number of personnel per shift to explain it. More personnel per shift has not been proven to increase the safety of the firefighters or the public, but more personnel per shift may mean that the first responders on scene could enter an engulfed building sooner and with a greater degree of personal safety, and for that the City should be willing to pay.

4) NFPA STAFFING RECOMMENDATIONS ARE VOLUNTARY

The NFPA staffing recommendations on staffing were cited in the recommendations. NFPA is a voluntary association off firefighters, administrators, manufacturers and the public. Firefighters constitute a substantial portion of those serving on the committee recommending staffing levels, so it does not seem likely that the committee would set levels at a number which would mean fewer firefighting jobs, but those staffing recommendations are the only recommendations in evidence. Furthermore, there are no other public or private associations setting staffing levels that were cited in the City's brief or at this hearing. Compliance with most of the staffing recommendations seems unlikely, if not impossible for a

department the size of this city's. Obviously a major fire in a substantial structure would necessitate a call-out of a neighboring department under mutual aid. Meeting NFPA staffing standards for a single-family residence home is more attainable than meeting those standards for large multi-family dwellings or multi-story buildings.

Fifteen 15 firefighters is an achievable standard by this department. Running a 13 person shift was not proven to have resulted in injury to the public or to this staff, but running an understaffed department is an invitation to the possibility of injury or worse and that appears to be the principal reasons the Fact Finder increased shift levels not to 15 as per the NFPA standards, but to 14 as suggested by the Union.

The alternative to the NFPA recommendations are the opinions of administrators and fire chiefs most of whom hold their positions because of the administrations they do and state what is expected of them to retain their positions. Because Lorain does not employ minimum staffing does not mean that Elyria should follow suit.

The Fact Finder did not have to find that the present staffing levels caused injury to justify a staffing increase. The Fact Finder based his recommendations on concern for the public and staff safety. He also considered the history between the parties. Staff levels are just a part of the overall picture of staff and public safety. Equipment and numbers of personnel manning the equipment also come into play and neither was made an issue in these proceedings. The Fact Finder's reliance on 1710 of the NFPA was proper and not contradicted by any evidence produced by the City.

5. THE UNION'S FINAL POSITION IS ESSENTIALLY THE SAME AS
RECOMMENDED BY THE FACT FINDER

Neither party adopted the recommendations of the Fact Finder as its final position. The City continued to urge that Subsection 34.3 be rejected and the Union maintained the adoption of the modified version of 34.3 be upheld.

The addition of the terms "fiscal watch" and "fiscal emergency" do not change the essence of the Fact Finder's recommendation. They were likely adopted to provide the City with a means of relief in the event of a severe economic downturn. "Fiscal Watch" and "Fiscal Emergency" are terms used by the Auditor of State when a public body is in danger of defaulting and generally are applied only after an audit, but there was evidence to establish that such status can be requested by a

municipality. The City claimed the additions offer no relief and are applied too late to provide financial relief when a public body is in financial distress. Conciliator, however, believes that the qualifying language proffered by the Union can assist the City if it found itself to be in financial straits.

The Union's suggested language did not provide for the number of firefighters per shift if the City is designated as being in Financial Watch or Fiscal Emergency. Does staffing levels go back to 13 or to some other lesser number. The Conciliator has no authority to add to the final positions of either party and is limited to a choice between the final positions. Nevertheless, the Union's final position on this issue, is more desirable and closer to the Fact Finder's recommendation than the City's which refused to recognize minimum shift levels.

6. THERE WAS NO EVIDENCE THAT THE FACT FINDER FAILED OR ERRONEOUSLY CONSIDERED MATERIAL EVIDENCE

In order to prevail at conciliation, the party rejecting the Fact Finder's recommendation must introduce evidence that was not presented at fact finding because it was newly discovered, unavailable, or arose after the hearing or that the evidence introduced at fact finding was erroneously interpreted or ignored. Conciliation does not present a dissatisfied party an opportunity to re-litigate the issue on the same evidence, hoping for a different result. Conciliation is not a trial de novo. Very little new evidence was presented by either party and none was so compelling as to cause this Conciliator to reject the recommendations of the Fact Finder.

The City also complained that the Fact Finder misconstrued or ignored evidence it had introduced, but could not point out any evidence that was misconstrued or ignored, except of course its financial evidence which as explained in the preceding subsection was viewed differently by the Fact Finder than by the City. City's financial evidence can be and was interpreted differently than as suggested by the City's witnesses. The Fact Finder clearly noted the testimony of the Union's expert on finances. This is a "difference of opinion".

Both parties used expert witnesses in conciliation. They testified on staffing and finances. The City's first expert, Philip Dore is a former firefighter and retired chief of the Lorain Fire Department. Lorain is a larger municipality with a larger fire department. Dore testified that Lorain did not have minimum staffing while he was chief

which he believed to be a management right and the subject of permissible, not mandatory, collective bargaining.

The second expert, Robert Malanga is the president of a private consulting firm providing fire explosion analysis, fire protection, life safety and risk management and long absent from both firefighting and the administration of a city-wide fire department. He also opined that staffing is a management right and added that there are many avenues other than increasing staffing levels to assure efficiency and safety of the men and the public. He held that educating the staff, educating the public, increasing inspections were just some of the avenues other than increasing staff levels available to the City. The witness did not know whether the City had attempted any of his recommendations before this hearing.

The third expert is a city employee. He simply reiterated the City position that it could not afford to pay for increasing staffing levels.

While the experts agreed that staffing levels are a management prerogative, neither provided any evidence which would allow this Conciliator to make an award different from that recommended by the Fact Finder.

AWARD: The Conciliator orders that the new Article 34, Subsection 3 as proposed by the Union in its Final Position Statement included in the new collective bargaining agreement.

ISSUE NO. 3

ARTICLE 1- RECOGNITION AND LETTER OF UNDERSTANDING

PARAMEDICS

FACT FINDER'S RECOMMENDATION: The Fact Finder recommended against the following Union proposal:

Section 1.2: If City employees (directly employed by the City) are required to be certified to perform advanced life support services (ALS), those City employees shall be considered members of the Union's bargaining unit and the City and the Union shall enter into negotiations regarding the terms and conditions of employment for those employees pursuant to the attached Letter of Understanding regarding Paramedics.

Letter of Understanding: The Elyria Fire Fighters, IAFF Local 474 and the City of Elyria (City) hereby agree that if the city seeks to mandate Elyria Fire Department employees to be a certified Paramedic (Advance Life Support Response) or create new City positions that will be required to be certified as a Paramedic, the Union and the City shall immediately reopen the Collective Bargaining Agreement for the limited purpose of negotiating the terms and conditions of employment of those Paramedics. The City shall provide the Union at least thirty (30) calendar days' notice of its intent to employ Paramedics (i.e. required to be certified as a Paramedic). Should the parties reach an impasse in their reopener negotiations the dispute resolution procedure shall be set forth under Ohio Rev. Code 4117.14, except the conciliation restrictions set forth in Ohio Rev. 4117.14(G)(11) regarding award cost implications are waived for the reopener negotiations.

UNION'S FINAL POSITION: Adopt the proposal overruling the recommendation of the Fact Finder.

CITY'S FINAL POSITION: Uphold the recommendation of the Fact Finder.

DISCUSSION: The Fact Finder recognized the concern of the Union over this issue. The role of the fire department has changed over the years. At one time the firefighters performed paramedic and transport services. Today those services are provided by Life Care, a private company, under contract with the City. In 2013, City Council adopted a resolution declaring that the City will not invest further resources into providing emergency medical transport within the City. (Resolution No. R213-15).

While no reason was given for the resolution, one must suspect that costs were involved. Apparently, the private company has fulfilled the terms of its agreement and arrived on scene with time limits set by the City and provided the necessary services competently and at less expense than this unit did in the past. There was no evidence that using a private company resulted in an injury or death. Additionally, Life Care agreed to build a garage in the City to house its equipment and base the staff used in performing Elyria's work. Basing some of its employees in the City means those employees will pay Elyria's income tax which they would likely not do if based in another municipality.

Moreover, the City denied it intends to begin transporting EMS calls once again. It also denies any intention of requiring firefighters

to perform Advanced Life Support [ALS] services. Once members of this unit arrive on scene, they are expected to provide services to injured or distressed persons until Life Care arrives on scene. If a firefighter is an EMT and certified in ALS services, the firefighter is expected to use those skills until the Life Care personnel arrive on scene at which point Life Care assumes control.

If a firefighter has those skills and certifications, the City expects a firefighter to use them to benefit the public, but has no intention of canceling Life Care's contract or return to assigning such duties to its fire department. The dividing line is clear. If the City returns to medical transporting or if it required ALS or paramedic certification to obtain or retain a firefighter position, the issue can be revisited.

Since this was a Union proposal, it bears the burden of proof. As it stands now there is no evidence that the City has any intention of either getting back into transporting injured or ill persons when the fire department is called out, nor does it require nor does it intend to require paramedic or ALS certification from its firefighters. The Union has not proven either and has failed to meet its burden of proof.

AWARD: The Conciliator orders current contractual language be retained.

ISSUE NO. 4

ARTICLE 13: WAGES AND LONGEVITY

SECTION 13.1 (G)

O/W STIPEND FOR OPERATING FIRE DEPARTMENT APPARATUS

FACT FINDER RECOMMENDATION: The Fact Finder recommended current contract language be retained.

UNION'S FINAL POSITION: The Union proposed to modify subsection (g) by exchanging the word "qualified" for the word "assigned" and removing the following language: "and eligible for acting officer pay (Chief Bulletin #67 3/1/200 and Bulletin #25 9/1092".

CITY'S FINAL POSITION: The City urged that the Fact Finder's

recommendation be upheld and current contract language be retained in the new agreement.

DISCUSSION: The Union claimed that the language in this subsection was agreed to before staff reductions of the past and that bargaining unit members with less than 5 years of service now drive department vehicles. It claimed that imposition of the 5-year seniority clause is unfair to those members who operate equipment but who do not have enough seniority.

The City, on the other hand, claimed that this clause was intended as a reward for longevity and not as a stipend for being "qualified" to operate equipment. Additionally, the City claimed that the word "assigned" in the proposal is ambiguous and can lead to claims of a member asked to drive equipment in an emergency situation as being eligible for this stipend.

The Conciliator is also confused by use of the term "assigned". He is also confused by use of the term "qualified to operate". It does not seem likely that the City would assign or permit an unqualified firefighter to operate any equipment and there was no evidence that the City had done so in the past.

The Fact Finder admitted to being in a quandary over this issue and may have had difficulty in comprehending its purpose as written. He recommended that current language be retained and denied the Union request.

If the parties intend this to be a stipend for longevity then the language of the contract should so state, but if the parties intended that any unit member who is assigned to or operates equipment receive this "stipend" then the language of this agreement needs clarification.

Besides this section speaks of the duties of Class A Fire Fighters regarding vehicle maintenance and removal of equipment from service or determining whether a particular piece of equipment is safe and reliable is out of place in this section and serves only to becloud its purposes. Vehicle maintenance and inspections would be better placed in a section specifying the duties of "Class A Fire Fighters".

But this matter was submitted to the Conciliator on the basis of the final position statements and the recommendation of the Fact Finder which adopted the City's position. The Conciliator can find no error in retaining current contract language. The Fact Finder's

recommendation must be sustained.

AWARD: The Conciliator orders that current contract language be retained in the agreement.

ISSUE NO. 5

ARTICLE 13- WAGES AND LONGEVITY

SUBSECTION 13.1(K)- A NEW SECTION

FACT FINDER RECOMMENDATION: The Fact Finder recommended against adding the proposed subsection (k) to the new agreement.

UNION'S FINAL POSITION: The Union proposed adding the following subsection:

(k) For any member that is a certified Paramedic and performs the duties of Paramedic, the City shall provide the training associated with maintaining the Paramedic certification. Such members shall be compensated in accordance with Article 14, Section 14.1[C] for participating in any training occurring on the member's scheduled day off.

CITY'S FINAL POSITION: The City opposed this proposal.

DISCUSSION: The Fact Finder concluded that the reason behind the proposal was the expectation that the City will require Paramedic Training in the near future which is tied to the possibility of not renewing its contract with Life Care.

The City maintains that paramedic certification is not a prerequisite to employment as a firefighter. It offers, but does not require a firefighter to obtain and retain such certification. Additionally the City claimed that it has a generous overtime policy and that it should not have to pay overtime to off-duty firefighters to obtain or maintain this voluntary certification.

The proposal is aimed at the City in the event it changes its stance on ALS and/or transporting EMS calls. The City denies it intends to change its position of such certifications. There has been no evidence that such a move is contemplated, much less implemented.

The Fact Finder believed the request to be premature. Perhaps this was a Union suggestion early-on in the bargaining process thinking that the parties would have to work and live under a 3-year agreement. However, there is barely 17 months remaining on the new agreement and the City has given no indication of requiring its firefighter to be certified or to retain such certification once obtained. Since the certification is voluntary, the Conciliator as did the Fact Finder before him, concludes that the requested changes are unnecessary. If the City requires paramedic training but refuses to compensate the members of this unit, this issue is likely the subject of bargaining over a new contract which will start in approximately 12 months. At this point the request is premature.

The Union has not met its burden of proof and the Fact Finder's recommendation is sustained.

AWARD: The requested addition is denied and shall not be added to the new agreement.

Respectfully submitted,

/s/ I. Bernard Trombetta

I. Bernard Trombetta, Conciliator

SERVICE

A copy of the foregoing Award was served upon Ryan Lemmerbrock, Attorney for the Union and Susan Keating Anderson, attorney for the City and the Bureau of Mediation, State Employment Relations Board on this 22ND day of July, 2017 electronically.

/s/ I. Bernard Trombetta

I. Bernard Trombetta, Conciliator

