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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	2015-MED-10-1164
Springdale Professional Firefighters,	:	
IAFF Local 4027,	:	CONCILIATION AWARD
	:	
and	:	August 22, 2016
	:	
City of Springdale	:	

APPEARANCES

For the Union:

Leonard French, President
Jon Harvey, Vice President
Jeff Bryant, Firefighter

For the City:

Edward Dorsey, Attorney
Jerry Thamann, Assistant City Administrator
Anthony Stanley, Assistant Fire Chief

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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on July 1, 2016, pursuant to Ohio Revised Code Section (ORC) 4117.14(D)(1). The parties are the City of Springdale, Ohio (Employer or City) and the Springdale Professional Fire Fighters, Local 4027, International Association of Fire Fighters, AFL-CIO (Union or Fire Fighters) Effective January 1, 2013, Expires December 31, 2015. The Employer is a suburb of Cincinnati located on the north side of Hamilton County, along the I-275 corridor. Founded in 1806, it became a city in 1971 following the suburban sprawl of the 1950s and 1960s. It has a population of approximately 11,200, but boasts a daytime population of approximately 30,000 with the influx of office workers. The Union represents all employees of the Fire Division except the Chief, Assistant Chief, and Chief of the Inspection Bureau. The bargaining unit at issue here consists of 21 full time employees, including 18 Fire Fighter/EMT-B/EMT-Ps and three (3) Captains. The Fire Department also employs approximately 22 part-time Fire Fighters who are not in the bargaining unit.

The parties met for fact finding on March 24 and April 7, 2016 with Robert G. Stein as Fact Finder. After unsuccessfully attempting to mediate, the Fact Finder issued his Recommendations and Findings on June 9, 2016 on 12 issues: Article 9, Holidays; Article 10, Hours of Work and Overtime; Article 11, Wages; Article 14, Scheduling of Overtime; Article 15, Scheduled Time Off; Article 16, Compensatory Time; Article 18, Trading Time; Article 20, Sick Leave; Article 21, Vacation; Article 22, Injury Leave with Pay; Article 32, Layoff/Recall; and Article 36, Insurance. The City accepted the report, while the Union rejected it. The City signed a 4117.(G)(11) waiver through October 21,

2016. The City's position in conciliation was to adopt the Fact Finder's Report in its entirety. The Fire Fighters asked the Conciliator to consider Article 27, Outside Training, and Article 31, EMS Training, as well. It submitted that these proposals were tentatively agreed on in mediation during fact finding, but, since mediation was not successful, the tentative agreements were no longer effective and it put these proposals back on the table. The City countered that the Fact Finder's Report included all tentative agreements, so these were incorporated into the Report and are no longer at issue.

II. THE HEARING

The conciliation hearing was held on Wednesday, August 3, 2016 at the City's Municipal Center, 11700 Springfield Pike, Springdale, Ohio. Each party provided a pre-hearing statement. The hearing began at 9:00 a.m. and concluded at approximately 12:30 p.m. In their pre-hearing statements or at the hearing, the parties agreed to the following issues:

1. Article 9, Holidays;
2. Article 14, Scheduling Overtime
3. Article 18, Trading Time;
4. Article 20, Sick Leave;
5. Article 21, Vacation;
6. Article 32, Layoff/Recall.

The remaining issues are:

1. Article 10, Hours of Work;
2. Article 11, Wages;
3. Article 15, Scheduled Time Off;

4. Article 16, Compensatory Time Off;
5. Article 22, Injury Leave with Pay;
6. Article 27, Outside Training;
7. Article 31, EMS Training;
8. Article 36, Insurance.

The parties jointly introduced the Collective Bargaining Agreement between The City of Springdale And the Springdale Professional Fire Fighters, Local 4027, International Association of Fire Fighters, AFL-CIO, Effective January 1, 2013, Expires December 31, 2015. They also introduced the following exhibits:

City Exhibits

- A. 2015 Fire Fighter/Paramedic and Police Officer Comparables.
- E. 2015 Fire Fighter/Paramedic Comparables.
- H. June 14, 2013 Report and Recommendations of Fact Finder Martin R. Fitts in 12-MED-10-1248, City of Springdale and IAFF Local 4027.
1. City of Springdale Administrative Policy No. 204: Injury Leave with Pay.
2. Article 31, EMS Certification Tentative Agreement dated March 24, 2016.
3. Article 27, Outside Training Tentative Agreement dated March 24, 2016.

Union Exhibits

1. Springdale Fire Department Rules and Regulations, Section 3-3.
2. Beck v. City of Cleveland, Ohio, 390 F3d 912 (6th Cir. 2004).
3. July 10, 2006 Conciliation Award of Conciliator Daniel G. Zeiser in 05-MED-02-0145, Alliance Professional Firefighters, IAFF Local 480 and City of Alliance.
4. E-mail from Jeremy Garson to Jon Harvey re compensatory time.
5. Ohio Bureau of Workers' Compensation Policy #CP-19-09 re Salary Continuation/Wages in Lieu of Temporary Total Compensation.
6. The Center for Local Government, meeting of minutes of the Benefits Pool Committee, May 18, 2006.
7. The Center for Local Government Benefits Pool brochure.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Conciliator is to consider in making an award. The criteria are set forth in Ohio Administrative Code Section (OAC) 4117-9-06(H) and are:

- (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 employees 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 the 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.

III. ISSUES AND RECOMMENDATIONS

City Position

The City of Springdale is about 20 miles north of downtown Cincinnati. It occupies approximately five (5) square miles. Its population is relatively stable – about 11,200 – and its residents are about 55% white and about 30% African-American. The median

household income is about \$49,575 and census data show that 23% of the population lives below the poverty level. About 55% of the residence own their home, with a mean value of \$125,000. In contrast, the base annual income for a top rate Fire Fighter/ Paramedic in Springdale is \$71,407, about 48% more than the median household income in the City, up from about 42% in 2013. The City is bordered by Fairfield to the north, Sharonville to the east, and Forest Park to the west. Other nearby cities include Montgomery, Mason, and Blue Ash. Overall, Springdale is smaller, less populous, and has lower household income and less wealth than these nearby cities.

The City has two (2) groups of employees who are unionized: Police and Fire. The FOP represents the Police, whose contract expires at the end of 2016. The City and the FOP went to fact finding in early 2014 before Fact Finder Stein, who recommended wage increases of 2% each year in 2014, 2015, and 2016, with a “me too” clause providing that, if City Council awarded non-bargaining unit employees an increase of greater than 2%, the FOP would receive the same increase.

The Fire Fighters became unionized in the late 1990s and the parties entered into their first collective bargaining agreement in 2001. The parties’ bargaining history has been marked by an inability to reach complete agreement without resort to SERB’s impasse procedures. In 2013, the parties went to fact finding before Martin Fitts and both sides accepted his report without conciliation.

The City currently employs 21 full-time and 22 part-time Fire Fighter/Paramedics. It attempts to use full-time employees as much as possible. Though they are more expensive because of the benefits they receive, they have a number of distinct advantages over part-timers. Most of the full-time Fire Fighter/Paramedics have worked

for the City for several years, and they know the City, Department policies and procedures, the equipment they use, other Fire Department personnel, and other like issues. As a result, they are better able to provide quality service to the City and its residents. Although they are less expensive, part-time Fire Fighters/Paramedics work for the City less frequently and are thus not as knowledgeable about issues important to quality fire and EMS services. They are also more likely to call off sick or otherwise not show up for a scheduled shift. The Affordable Care Act has exacerbated these issues by reducing the frequency with which cities will schedule part time Fire Fighters. Because the ACA requires employers to offer health insurance for any employee who works an average of 30 hours or more per week, this deters cities from using any particular part time Fire Fighter/Paramedic more than one (1) shift per week on average. The ACA has also put part-timers in high demand, making it difficult to recruit sufficient part-timers.

Despite the recent recession, the Fire Fighters have received annual wage increases of 5%, 4%, 3.5%, 0%, 0%, 2.5%, 2%, 2%, and 2% since 2009, for a total increase in straight time compensation of 22.93%. SERB wage data show an average increase of 14.9% for government contracts in the Cincinnati area and an average increase of 17.95% for Fire Fighters across Ohio. Springdale's Fire Fighters have thus received substantially greater than average increases compared with government employees in the Cincinnati area and Fire Fighters across the state.

Like most Ohio cities, Springdale was hit hard by the 2008 recession. Although eight (8) years ago, the weak recovery since then has suppressed economic activity, leading to sustained lower tax revenues for local governments. Property values have

remained low, resulting in lower property taxes. The State of Ohio has restructured its finances to achieve a balanced budget, decreasing or eliminating some funds available for local governments. Springdale has coped with lower revenues by deferring capital expenses to replace or repair aging infrastructure and equipment. Meanwhile, expenses continue to rise. Personnel expenses are approximately 75% of the City's cost of operations. Employees have continued to expect some annual wage increases, the cost of health insurance and related expenses continues to rise over the last three (3) years, and inflation, though low, increases costs.

Data show several sources of revenue are now gone or nearly so. The tangible personal property tax has been eliminated, producing zero revenue since 2013. The estate tax is similar. While it produced over \$1.2 million in 2007, it brought in just over \$5,000 in 2015. Because of lower property values, real estate taxes have dropped from over \$1.3 million in 2007 to approximately \$900,000 for 2015 and 2016. The City's largest source of revenue, the earnings tax, produces about \$2 million less now than in 2007. The only source of revenue that produces more now than in 2007 is paramedic services. The City now receives about \$200,000 more, not nearly enough to offset other losses in revenue. As a result, the 2016 budget is "extremely lean."

By law, Springdale operates with a carryover from one year to the next. This fund is used to pay current operating expenses incurred in the next year before tax and other revenue streams are collected that year. It also operates as a reserve in the event of unanticipated expenses. From 2012 to 2015, the City's Ending Fund Balanced decreased from \$4.7 million to \$3 million. The trend is forecast to continue in 2016,

dropping the Ending Fund Balance by an additional \$2.2 million to about \$800,000. This level of deficit spending cannot continue.

Union Position

The parties have had a collective bargaining relationship dating back to 2000. This is a board certified unit. The parties have generally never been able to reach agreement on successor collective bargaining agreements without going to fact finding or conciliation. Historically, the negotiation process between the Fire Fighters and the City has required intervention. This is the sixth contract since the inception of the Union in 2000. Unfortunately, every negotiation has necessitated the intervention of a third party neutral. On March 24, 2016 the parties scheduled fact finding and the Fire Fighters agreed to the City's request for mediation. During negotiations, the City made no reference to the inability to pay or a financial hardship. The City is on good financial ground — it always has and continues to carry a surplus of funds. It was not until fact finding that the City presented documents showing a \$3 million decrease in the general fund. The City maintains this is for the "redevelopment" of a dilapidated hotel. The Union finds this noteworthy since it is not mentioned in the City's latest CAFR report. Many other "future projects" are listed in the report, none with a price tag anywhere close to that of this supposed project. The Union maintains this is nothing more than a ploy to confuse negotiation. Noteworthy here is that, over the past nine (9) years, the City has had several developers submit plans to redevelop the property in question, all of which have been rejected by the city. Now, all of a sudden, without any mention of it anywhere, it proposes moving forward with a 3 MILLION dollar project. The current status of the project is unknown.

Issue: Article 10, Hours of Work and Overtime

Union Position: Reduce the workweek from 53 to 52 hours in the third year of the contract in lieu of the 2% increase recommended by the Fact Finder.

City Position: Adopt the Fact Finder's recommendation and maintain current language.

Findings: The Fire Fighters argue that they were awarded a reduced workweek in fact findings in 2007 and 2010. However, when the parties accepted the reports, the City issued layoff notices and the parties agreed to forgo the reduced workweek in exchange for no layoffs. The Fire Fighters simply seek what they were awarded earlier. Additionally, a one (1) hour reduction equals a 1.9% wage increase, which would be offset by agreeing to the reduction rather than the 2% wage increase in the third year. Furthermore, five (5) Fire Fighters have left the City, and the Fire Department provides EMS services for another community and part of a nearby township. This results in a greater load on the Fire Fighters and they have tried to reduce their workweek for years to reduce the burden.

The City contends that any hours reduced would have to be filled by someone else, which often results in overtime. Fire Fighters currently get sufficient time off that a reduced workweek is not necessary. For example, a seven (7) year Fire Fighter gets 495 hours of time off. While one (1) hour or less in the workweek does not sound like much, it would result in 1512 unfilled hours per year. Additionally, 1.9% filled through overtime would equal a 2.85% increase to the City. And while the Fact Finders in 2007 and 2010 recommended a reduction, Fact Finder Fitts in 2013 found it was not warranted. Fact Finder Stein also concluded it was not warranted. Furthermore, the impact of the 2008 recession makes this round of negotiations different than 2007 and

2010. Finally, the issue is fair compensation and the evidence shows the City is fairly compensating the Fire Fighters.

While the Fire Fighters claim a one (1) hour reduction equates to a 1.9% increase only, this does not include the added cost to the City of filling those hours. While the Fact Finders in 2007 and 2010 awarded the reduced workweek, both Fact Finders Fitts and Stein found that a reduced work week was not warranted. Conditions now are different than they were in 2007 and 2010. The recession did not begin until the end of 2007 and the State of Ohio reduced the local government in 2012 and eliminated the estate tax in 2014. Further, while the economic condition of the City is stable, or perhaps slightly improved, when the need for capital improvements that have been put off is considered, the condition does not support a reduction at this time.

Recommendation: Adopt the Fact Finder's Report and maintain current contract language.

Issue: Article 11, Wages

City Position: Adopt the Fact Finder's recommendation of 2% increases in each year of the contract, with a "me too" clause providing that, should the City grant non-bargaining unit employees an across-the-board increase greater than 2% in 2017 or 2018, the bargaining unit shall receive that same wage increase.

Union Position: Wage increases of 2% in 2016 and 2017, with a one (1) hour reduction in the workweek (see Article 10, above) equaling a 1.9% increase in 2018. In the alternative, the Union accepts the Report of the Fact Finder for 2% increases in each year, with a "me too" clause. The Union would be willing to forgo the "me too" clause for the third year of the contract.

Findings: The City claims that, while the Union argues the one (1) hour reduction equals 1.9%, there is a "me too" clause which would require an increase if the City gave an increase to its non-bargaining unit employees. And while the Union argues that pay should be increased more to retain Fire Fighters, those Fire Fighters who have left did not necessarily leave because of pay. For example, one (1) Fire Fighter left to join the Cincinnati Fire Department, a much larger organization, while another left to be closer to home in Dayton. The City is able to continue hiring, so pay is not a deterrent in recruitment.

The Union understands the City's point regarding the extra cost required to fill the reduced hours on an overtime basis, but this is a manpower issue that the City must address. The 2% increase recommended by the Fact Finder is consistent with the SERB average and is needed to maintain pay comparable to surrounding cities.

The wage issue is tied to the one (1) hour workweek reduction. The Fact Finder recommended 2% increases in each year, with a "me too" clause in years two (2) and three (3). As the Conciliator has concluded that the workweek reduction is not warranted, and both parties have indicated a willingness to adopt the Fact Finder's recommendation, it is adopted. The two percent (2%) wage increases are consistent with the latest SERB data.

Recommendation: Adopt the Fact Finder's recommendation of a 2% increase retroactive to the first pay cycle in 2016, and 2% increases effective the first pay cycle of 2017 and 2018. Additionally, should the City grant its unrepresented employees an across-the-board increase of greater than 2% in 2017 or 2018, the bargaining unit shall receive that same wage increase.

Issue: Article 15, Scheduled Time Off

Union Position: A minimum of two (2) Fire Fighters shall be allowed off per shift for vacation and Kelley day. Employees on injury, sick, bereavement, training, or other leaves shall not count toward the minimum.

City Position: Adopt the Fact Finder's recommendation, which was to accept the City's proposal.

Findings: The Union argues that Springdale has allowed two (2) Fire Fighters off per shift. However, recently the Chief has decided to change the scheduling practice and allow the second person off if it does not cause overtime. Allowing two (2) people off has been a long-standing practice, mutually agreed upon and acceptable to the parties. Springdale cannot unilaterally change this practice without at least bargaining.

Springdale counters that the Union seeks more flexibility in scheduling time off, while its issue is to avoid overtime and have sufficient Fire Fighters on duty to provide service. Springdale prefers to have full-time Fire Fighters on duty because they know the City and provide better service. However, there is a tension between time off and enough staff. Fact Finder Stein accepted Springdale's proposal. Additionally, Springdale believes scheduled leave should be included when scheduling time off, while the Union does not want to consider sick and injury time when scheduling the second employee off. Springdale's proposal moves in the Union's direction, but is a reasonable compromise.

Further, Springdale disputes the Union's contention there has been a practice of always allowing two (2) Fire Fighters off. The current language "Two (2) bargaining unit members may be scheduled off per shift..." has always been in the contract. The Chief

sometimes allowed the second person off and other times did not. Moreover, not counting sick or injury leave could result in overtime and still having people off, which would require more overtime to staff the shift. There are seven (7) employees per Tour, six (6) Fire Fighters and a Captain. If two (2) employees are off, this reduces the shift to four (4) Fire Fighters. If anyone else on the Tour is off because of illness, bereavement leave, or another reason, manpower becomes thin. In addition to this proposal, the Union is also requesting a person be allowed off on compensatory time.

The contract has no minimum manning requirement. The Department schedules eight (8) for each shift, but it always needs more. Fire Fighters have other duties besides emergencies, so having more people always helps. That is why the Chief began allowing only one (1) person off per shift unless it resulted in no overtime. Finally, the Union's proposal does not account for time off for holidays and other deficiencies.

Fact Finder Stein adopted Springdale's proposal as a balance between having adequate personnel to provide quality service and treating the Fire Fighters fairly in terms of taking time off. While not guaranteeing that two (2) employees will be able to schedule time off, it does allow for it. Further, while the Union claims that there has always been a practice of allowing two (2) Fire Fighters to be off, the record is not clear as to this practice. The contract language provides that two (2) bargaining unit members "may" be off. This language has been in the contract since it was first negotiated and contradicts the Union's argument that there has always been a practice.

Recommendation: Adopt the Fact Finder's recommendation.

Issue: Article 16, Compensatory Time Off

Union Position: Allow employees to accumulate and replenish up to 72 hours of compensatory time each calendar year. An employee may use more than 72 hours of compensatory time in a calendar year and any compensatory hours earned above 72 shall be paid to the employee at the employee's overtime rate. Finally, at least one (1) employee shall be permitted to use compensatory time each shift and additional personnel may be granted comp time at the Chief's discretion.

City Position: Maintain current contract language.

Findings: The Fire Fighters contend that there is no set policy on time off and the City has restricted employees from using more than 72 hours of comp time per year regardless of the number of hours accrued. Their proposal would not increase the maximum accrual of comp time, but would merely allow employees to use the time they have earned. They further submit that the City uses overtime as the sole factor to refuse an employee's use of earned comp time. This is improper under the Fair Labor Standards Act (FLSA) and applicable state law, which provides that overtime by itself is an insufficient reason to deny the use of comp time.

The City responds that the current cap of 72 hours is reasonable. Employee use of comp time can increase the City's overtime costs and create scheduling difficulties. The Fire Fighters' proposal is functionally equivalent to removing the cap altogether, since comp time can be replenished throughout the year. The Fact Finder found no reason to change the current practice and allowing replenishment could cause scheduling problems and additional overtime. He recommended maintaining the current language and the City agrees. Additionally, the FLSA does not mandate comp

time, it creates an exception allowing comp time in lieu of paying time and a half for overtime. The parties agreed that comp time would be capped at 72 hours some years ago and its use would be subject to the Chief's approval.

The Conciliator agrees that the evidence does not support a change in the current cap of 72 hours of compensatory time. And the current language gives the Fire Chief the right to approve comp time. However, the Fire Fighters' position as to the FLSA is correct. The payment of overtime to honor a request for compensatory time off does not "unduly disrupt the operations" of the City. Therefore, that the City would have to pay overtime cannot be used as the sole justification to deny the use of comp time.

The Fire Fighters propose that a minimum of one (1) employee per shift must be permitted to use comp time each shift. This does not take into account other manpower issues on a shift, though. With six (6) Fire Fighters and a Captain scheduled each shift, it is not unlikely that there could be absences due to illness, injury, or another reason. Requiring one (1) employee to be permitted to use comp time could result in the shift being shorthanded. The Chief could legitimately deny use of comp time in such a situation, not because it would require overtime, but because allowing another Fire Fighter to be off would result in insufficient manpower.

The Conciliator concludes that no change in the language is needed. An employee must request compensatory time, which is subject to the Chief's approval. The law allows an employee to take comp time, even if doing so would require the City to fill those hours via overtime. The Chief cannot deny the employee's request to use comp time when overtime is the sole basis. However, the Fire Fighters' proposal goes too far and could require the City to honor a comp time request even though it could

result in a shift being shorthanded. The City could be faced with a grievance for refusing to grant the comp time request or having too few Fire Fighters on duty. The Conciliator concludes this is not what either party desires and the proposal, as written, is not warranted.

Recommendation: Adopt the Fact Finder's recommendation and maintain current contract language.

Issue: Article 22, Injury Leave with Pay

Union Position: The Union seeks to change the language of Section 22.11 to:

An employee on injury leave with pay shall be entitled to receive all pay and benefits in this agreement.

City Position: Maintain current contract language.

Findings: The Union wants to ensure that an employee who is injured and unable to work maintains all benefits while off work. The City responds that this proposal was not presented to the Fact Finder and cannot be considered in conciliation. Additionally, City policy is consistent with the contract language and the Union's proposal would be different from all other City employees. Finally, any rights as to injured workers should be pursued through the Ohio Bureau of Workers' Compensation (BWC).

The Union alleges that this was presented to the Fact Finder. Its fact finding position statement included Article 22. That the Fact Finder missed it shows that his report was incomplete. The City counters that, after two (2) days of mediation, Fact Finder Stein asked the parties for their final issues and the Union presented nothing on Article 22. The fact finding Report, page 70, indicates that neither party proposed a change to the language.

The Union points to BWC Policy CP-19-09 regarding salary continuation or wages in lieu of temporary total compensation. This policy ensure that the BWC properly identifies and records payment of salary continuation by the employer of record (EOR) to ensure that full wages are being paid and the EOR's reserves are accurately calculated when the employer opts to pay salary continuation. It defines regular benefits as "Any benefit, (e.g., accrual of vacation leave, holiday pay, and scheduled pay increases) the injured worker (IW) would have received if he/she continued to work for the EOR."

It is not clear whether the Union presented this issue to the Fact Finder. That it is not included in the Report could mean it was not presented or the Fact Finder missed it. As a result, the Conciliator will address this issue as though it were presented.

The Conciliator is no expert on workers' compensation. However, the BWC policy appears to provide that an employee who is injured should be paid what he or she would have been paid had he or she continued to work. Under the current contract language, a Fire Fighter with Springdale who is on injury leave with pay is not entitled to receive holiday pay and does not accrue holiday or sick leave credit. The Fire Fighter does accrue vacation and longevity pay credit. There does not appear to be an inconsistency here. That is, a Fire Fighter injured on the job who is receiving salary continuation at Springdale's option is paid on the same basis as he would have been paid had he been working. Since the contract does not provide for holiday pay or holiday or sick leave accrual, the Fire Fighter would not receive those benefits under salary continuation through the BWC. If there is any inconsistency, it appears an injured Fire Fighter should pursue those rights through the BWC. On this record, the

Conciliator concludes the Union has not shown the contract language is unlawful and should be changed.

Recommendation: Adopt the Fact Finder's Report on this issue and maintain current contract language.

Issue: Article 27, Outside Training and Article 31, EMS Training

Union Position: Maintain current contract language.

City Position: Adopt the language tentatively agreed upon during the fact finding process.

Findings: The Fire Fighters claim that these were City proposals and tentative agreements were reached on these articles. The City's position was that, should it decide to hire an EMT-Basic or a candidate with no EMS experience, it would be costly to train the employee. The Fire Fighters responded that it has become industry standard to hire Paramedics only, and a tentative agreement was reached on these. However, the agreement was based on movement by the Fire Fighters only and the City refused to move on any of their proposals during mediation. When mediation failed, these issues were put back on the table. As such, the Fire Fighters seek to maintain the current language and not adopt the tentative agreements. The Fire Fighters do not want to interfere in the hiring process. They recognize the City has a right to establish qualifications. They simply want employees to be compensated for training.

The City responds that it adopted the Fact Finder's Report in its entirety, including all tentative agreements, and these issues were agreed upon during the fact finding process. The Fact Finder incorporated these tentative agreements into his Report. These issues have arisen where employees required training and the Fire

Chief approved the training, but the Fire Fighters wanted to be paid for off days plus all costs. The Chief has denied some training as a result and the City wanted to make the language clear.

The statutory negotiation process, including the impasse procedures found in 4117, are designed to help parties negotiate and reach settlements as to contracts. The conciliation process in particular, which requires conciliators to choose between the parties' positions on each issue, on an issue by issue basis, forces parties to narrow their differences and make the most reasonable case they can to a conciliator. Allowing a party to revoke any tentative agreement reached in fact finding and place those issues already agreed upon back on the table reverses the process, widening the differences. Additionally, allowing this practice would give parties an incentive to tentatively agree, knowing they could revoke those agreements and place those issues back on the table in conciliation. Further, it would increase costs by adding to the time involved in conciliation, increase the likelihood of gamesmanship by the parties, and is antithetical to the collective bargaining process. Once agreed upon, the parties should be able to rely on that agreement and move on to other issues.

It goes without saying that, if a party misrepresented some material fact to obtain a tentative agreement or somehow engaged in fraudulent conduct to obtain an agreement, the other side could challenge the agreement on the basis it was misled into reaching that agreement. That is not the case here, however. The Fire Fighters' evidence was that the City engaged in hard bargaining by not agreeing to their proposals, requiring movement from them alone. When mediation did not work and an overall contract could not be reached, it suggests that this was grounds for the tentative

agreements to no longer be valid. For the reasons noted above, the Conciliator disagrees.

Recommendation: Adopt the tentative agreements as to Articles 27 and 31 that were incorporated into the Fact Finder's Report.

Issue: Article 36, Insurance

City Position: Adopt the Fact Finder's recommendation.

Union Position: Maintain current contract language.

Findings: Springdale proposes that Fire Fighters participate in wellness programs on the same basis as its non-union employees. These plans are designed to be beneficial to the health of individual employees by encouraging them to adopt healthful behaviors and avoid unhealthful behaviors. These also lower overall medical expenses benefitting Springdale and its employees. The requirements are not onerous. In fact finding, Springdale sought to increase employee premiums, but it accepts Fact Finder Stein's recommendation to increase them in the third year only. Finally, it proposes that, if an employee is hired during the plan year, Springdale's contribution to that employee's HSA/HRA account be prorated. This is consistent with current practice. Fact Finder Stein adopted Springdale's proposals regarding wellness and prorating its contribution to a new hire's HSA/HRA account.

The Union responds that employees cannot sustain big increases to health care each year. Additionally, it has had difficulty getting information about the insurance pool of which Springdale is a member. It would like to be able to receive information as to meeting minutes or proceedings of the pool so it can adequately analyze and respond to any proposed changes in health care. It is concerned it is losing its voice at the table

in determining the insurance plan. Further, the Union does not oppose a wellness program, but would prefer something tailored to Fire Fighters. Finally, a wellness program should not be punitive.

Under current language, bargaining unit members receive the same health insurance benefits made available to all non-union employees at the same rates, with the same co-pays, deductibles, and obligations. Springdale's proposal regarding wellness programs would be consistent, making compliance with wellness programs part of the obligations of bargaining unit members. While it is understandable that the Union would like a program tailored to Fire Fighters, this does not appear to be practicable. The FOP would undoubtedly want a program tailored to Police Officers, while non-bargaining unit employees would like programs tailored to non-safety employees. This would result in several wellness programs and would increase the cost. The current trend in health insurance is to have all employees in the same plan to cut the cost of the plan itself and any administrative costs. Springdale's proposal seeks to accomplish this. Perhaps tailoring wellness programs to different groups of employees can be accomplished, but it makes sense to get all employees into the program first and see how it affects costs before trying to tailor a program to each group. Once employees are part of a wellness program, it might save even more money to have features geared toward different groups of employees. But that is for a later date.

SERB data show that the average employee premium for health insurance is 12.3%. Keeping the premium at 12% for 2016 and 2017 is consistent with this data. Since Senate Bill 5 was introduced and sought to require all public employees to

contribute 15% toward health insurance, public employers have been trying to get employees to that 15% mark. This is particularly so as health insurance costs continue to rise. The Fact Finder's recommendation to move to 14% in the third year of the contract is reasonable and keeps the Fire Fighters below the 15% mark. Further, with employee premiums continuing to rise, it should be right around the state average, or even still under, when 2018 rolls around.

Springdale's proposal and the Fact Finder's recommendation regarding prorating its contribution to a new hire's HSA/HRA account is reasonable. The evidence is that it is consistent with current practice. The Union did not directly address this issue and does not appear to object to it.

Finally, the Union is entitled to obtain information about the health insurance plan and any proposed changes to it. The Fact Finder recommends adding language requiring Springdale to provide the information it receives about the plan and any changes to it.

Recommendation: Adopt Springdale's position and the Fact Finder's recommendation regarding any wellness programs, employee premiums, and prorating the HSA/HRA contribution for any employee hired during the plan year. Add a Section 36.11 as follows:

No later than 60 days before the beginning of the plan year (or a different date agreed to by the parties), the City shall provide to the Union any information it has received from The Center for Local Government Benefits Pool (or other health insurance pool of which the City becomes a member) regarding the health insurance plan and proposed changes to the plan. This information is to include any minutes of meetings, any materials provided to pool members during such meetings, any emails sent regarding such changes, any information provided by the insurance plan or broker to insurance pool members, and similar information.

Dated: August 22, 2016



Daniel G. Zeiser
Conciliator