

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	:	
CONCILIATION BETWEEN:	:	CASE NO. 2017-MED-10-1201
	:	
INTERNATIONAL ASSOCIATION OF	:	Date of Hearing: September 27, 2018
FIRE FIGHTERS LOCAL 445	:	Date of Award: December 7, 2018
	:	
	:	Employee
	:	Organization,
and	:	
	:	
	:	
THE CITY OF NORWOOD	:	
	:	Employer.

CONCILIATION AWARD

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CONCILIATION AWARD

I BACKGROUND

On July 3, 2018, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the case of International Association of Fire Fighters, IAFF Local 445 and the City of Norwood (Case No. 2017 –MED –10-1201). A Conciliation Hearing was held at 10:00 A.M. on September 27, 2018, at the Federal Mediation and Conciliation Services' Offices, 4600 Montgomery Road, Suite 100, Cincinnati, Ohio. The International Association of Fire Fighters, IAFF Local 445 ("IAFF", "Union", "Association" or "Employee Organization") was represented by Stephen S. Lazarus, Esquire, Lazarus & Lewis, LLC., and the City of Norwood ("City" or "Employer") was represented by Kelly E. Babcock, Account Manager, Clemans, Nelson & Associates, Inc. Also, in attendance on behalf of the IAFF were: Alex Beck, Esquire, Bobby Schlachter, IAFF Local 445 President, Tom McCabe, IAFF Local 445 Vice President and Dane Fienning. Ryan Woodward, Consultant from Clemans, Nelson & Associates, and Joseph C. Geers, Safety Director were attendees on behalf of the City.

There was no indication by the parties that mediation would be productive. Prior to the commencement of the hearing, the Employer moved to strike the Union's proposals and submissions as being invalid and not in compliance with Ohio Revised Code Section 4117 and the Ohio Administrative Code Section 4117.09. The Employer's reasons for the motion were that the Union's proposals are outside the jurisdiction of the Conciliator. The Union presented citations and arguments to the contrary. At that time it was indicated by the Conciliator that the motion and arguments of the parties would be taken under advisement and ruled on as part of the conciliation award.

Both parties presented evidence in support of their respective positions. At the conclusion of the hearing, the parties agreed that the Conciliator's Award would be issued via email to the parties' representatives and SERB.

A. Description of the Bargaining Unit and the City

The Union or IAFF is the deemed certified exclusive representative for a bargaining unit that consists of a current staffing level of fifty (50) employees in the classifications of Firefighter, Fire Lieutenant and Fire Captain. Their duties involve the fire safety, prevention, and suppression, as well as EMS/Paramedic responsibilities for the citizens of the City of Norwood. The Fire Chief is excluded from the bargaining unit.

The City of Norwood is completely surrounded by the City of Cincinnati, Ohio. It consists of 3.15 miles with a population of just around 20,000. On October 6, 2016, the auditor of the State of Ohio declared the City to be in fiscal emergency. When this occurs, the City must adopt a Financial Recovery Plan (FRP) and submit a five year plan overseen by the Auditor and a Financial Planning and Supervision Commission ("Commission") which consists of the Auditor, and appointees from the State Office of Management and Budget, the State Treasurer, and appointees of the Governor's office and the local legislative body.

B. History of Bargaining

The City has four collective bargaining units covered by four separate labor agreements. Two of those agreements involve safety force bargaining units, including the unit represented by the IAFF in this case. The current agreement between the IAFF and the Employer was signed by the parties in December of 2016, and is effective through December 31, 2018.

In the Fall of 2016, the Union and the Employer had reached impasse during negotiations for the current collective bargaining agreement. The parties proceed to fact-finding. At the mediation prior to the fact-finding hearing, they reached a tentative agreement. As a result, the current collective bargaining agreement ("CBA") effective through December 31, 2018 includes reopener clauses. IAFF filed for two of the three reopeners. They are:

- Before October 1, 2017, either party may reopen this Agreement for the purpose of negotiating Article 6 (Wages and Benefits). The reopener(s) may be commenced by filing a Notice to Negotiate with the notice and dispute resolution procedures contained in Chapter 4117 of the Revised Code.
- Before October 1, 2017, either party may reopen this Agreement for the purpose of negotiating Article 16 (Minimum Manpower- whether it will remain at 11 or go above 11). The reopener(s) may be commenced by filing a Notice to Negotiate with

the notice and dispute resolution procedures contained in Chapter 4117 of the Revised Code.

On September 29, 2017, the Union timely filed notices to negotiate the reopeners for wages and minimum manning under the foregoing provisions. The parties met for negotiations on October 31, 2017 and December 8, 2017. Following negotiations, they proceeded to fact-finding. The fact-finding hearing was held on June 5, 2018 before Fact-finder Jack E. McCormick. He issued his Report and Recommendation on June 8, 2018. On June 11, the Union voted to accept Fact –Finder McCormick’s recommendations. The City on June 12, 2018 voted to reject the Fact-Finder’s recommendations. Subsequently, SERB issued a notice of conciliation to the parties.

C. Summary of the Fact Finder’s Recommendations

The following is a brief summary of Fact Finder McCormick’s report.

ISSUE 1: ARTICLE 6 - WAGES AND BENEFITS

Finding of Fact: Presently there are not sufficient facts to support the Union’s proposed retroactive three percent (3%) wage increase. However, there are sufficient facts to support a cost of living increase based on the Department of Labor CPI-U for the Cincinnati Area, beginning with the first full pay period after June 30, 2018.

ISSUE 2: ARTICLE 16 - MINIMUM MANPOWER

Finding of Fact: The Union’s proposal to increase the number of fire fighters on a shift from the current eleven to thirteen is supported by the facts set forth herein.

II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator is required to give consideration to the following criteria in choosing between the Parties proposals, on an issue- by- issue basis. That statute in pertinent part reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of those section.

* * *

(G)(7) After hearing the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulation of the parties;
- (f) Such other factors, not confined to those listed in this section, 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.

The unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter choosing between each of the Parties' last best offer on the each issue.

III ISSUES

UNION'S POSITION ON ARTICLE 6 – WAGES AND BENEFITS

The Union's final offer on Wages and Benefits for Conciliation is the Fact-finder's recommendation of an annual COLA increase. Because the Parties have not executed a

retroactivity waiver, the Union proposes that its final offer be effective January 1, 2019. The final offer proposed by the Union reads as follows:

Wages: Wage rates under this Agreement are as established for the appropriate classifications as ordained by the Council of the City of Norwood, Ohio. A schedule of those rates is marked as Appendix B, attached hereto and make a part hereof. All Fire employees shall be paid bi-weekly. All new employees in the Fire Department shall start at the "on-appointment" step of the appropriate pay scale in Appendixes A or B.

Wage increases shall be as follows:

Effective January 1, 2016 -----0% Increase

Effective January 1, 2017-----0% Increase

Effective January 1, 2018-----Reopener

Before October 1, 2017, either party may reopen this Agreement for the purpose of negotiating Article 6 (Wages and Benefits). The reopener(s) may be commenced by filing a Notice to Negotiate with the State employment Relations Board and should be conducted in accordance with the notice and dispute resolution procedures contained in Chapter 4117 of the Revised Code.

Effective January 1, 2019, and each successive January 1 thereafter, all employees covered by this Agreement shall receive a Cost of Living basic wage increase. All Fire Department salaries shall be increased by a percentage equal to the percentage increase in the BLS Consumer Price Index (CPI-W), Cincinnati area of the first half of the previous fiscal year. In each year, the percentage increase salary shall be used as the new base to compute a new table for paying cost of living. In each successive year the base shall be further increased by the percentage increase in the consumer price index as set forth above.

The Union argues, citing conciliators reports, that deference should be given to the fact-finder's recommendation unless it can be proven that the Fact Finder made a serious error in his/her report. It also argues and submits evidence that both internal and external comparables support the COLA.

While the Union acknowledges that the City is in fiscal emergency status and cannot make any expenditure contrary to the Financial Recovery Plan (FRP) without preapproval from the financial planning and supervision commission, it maintains that the City has the ability to fund the Union's Cost of Living proposal under the RFP because the City is realizing significant personnel savings in 2018 that can be used to fund the COLA increase.

The Union states that although the Bureau of Labor Statistics (“BLS”) has not released Cincinnati area cost of living data for the first half of 2018, the BLS has released national CPI-W increased increases in the National CPI-W over the last five years, the National 2.6% increase is an appropriate benchmark for the projected increase in the Cincinnati area CPI-W for the first half of 2018. According to the Union with the current complement of 50 firefighters, a 2.6% COLA increase will cost the City approximately \$116,000, including roll-ups. Considering that the City has already saved \$154,800 in 2018 through personnel vacancies, the City has the ability to fund the Union’s proposed COLA increase, effective July 1, 2019.

UNION POSITION ON ARTICLE 16 – MINIMUM MANPOWER

The Union’s final offer on Minimum Man Power for Conciliation reads as follows:

- A. Effective January 1, 2017, the minimum manning shall be Eleven (11) full-time Fire fighters on the line at any given time. **Effective January 1, 2019, the minimum manning shall be thirteen (13) full-time Fire fighters on the line at any given time.** Eight (8) hour personnel, excluding the Chief, will be considered as part of the required minimum manpower only if they are on-duty to fill in for short term absences of Fire Fighters or EMS personnel who are in court, school or on emergency leave. In the event there are extended periods of time in excess of forty-five (45) days where the minimum manpower benefit must be paid (for reasons other than the City’s failure to fill a vacancy) , the City reserves the right to include eight (80 hour personnel. This forty –five (45) day period may be waived with mutual agreement of the Chief and union President. It is understood that any personnel assigned to the line will perform all duties; normally performed by line personnel.
 - Before October 1, 2017. Either party may reopen this Agreement for the purpose of negotiating Article 16 (Minimum Manpower – whether it will remain at or above 11). The reopener (s) may be commenced by filing a Notice to Negotiate with the State Employment Relations Board and shall be conducted in accordance with the notice and dispute resolution procedures contained in Chapter 4117 of the Revised Code.
- B. Fire employees, when required to work minimum manpower hours, shall be compensated for such work at the following rate:
 - A per hour rate equal to one and one-half (time and one-half) times the individual’s own hourly rate.
- C. Employees called to work for any other reason than the above will be compensated as set forth in the Overtime provision of this Agreement.

The Union states that on September 29, 2017, it timely filed a notice to reopen negotiations for minimum manning. During negotiations, the Union proposed increasing minimum manning to 13 firefighters per shift. In 2016, the Union had agreed to reduce the minimum manning from 13 full-time firefighters per shift to 11. At the time the parties also agreed to include a reopener on minimum manning for the contract year 2018.

At the Conciliation, the union's final offer is Fact-Finder McCormick's recommendation to increase minimum manning to 13 fire fighters per shift. Because the Parties have not executed a retroactivity waiver, the Union's proposal would be effective January 1, 2019.

As it did regarding the COLA, the Union argues that the Conciliator should defer to the Fact Finder's recommendations to increase minimum manning. Fire Chief Wallace testified under oath at both the Fact Finding hearing and the Conciliation hearing as to the necessity of increasing the manning. The current staffing model, according to Chief Wallace, falls below the National Fire Protection Association ("NFPA").

In conclusion, the Union argues that the City cannot overcome its burden of proving that Fact Finder McCormick's report was based upon serious error. As his report showed, he closely considered safety and operational needs in recommending the union's proposal for increasing minimum manning from 11 to 13 firefighters. Without the increase the department will continue to operate below NFPA standards for apparatus operation, putting Norwood's residents and its firefighters at risk. While the City may argue that it cannot financially sustain the Union's proposal, there is money available to fund additional personnel expenditures in 2019.

Thus, argues the Union, the Conciliator should award the Union's proposal to increase minimum manning from 11 to 13 firefighters per shift.

EMPLOYER'S POSITION ON ALL ISSUES

A. PREHEARING MOTION OBJECTING TO THE UNION'S SUBMISSION STATEMENT AND THE JURISDICTION OF THE CONCILIATOR TO CONSIDER SAME.

At the commencement of the hearing, the Employer objected to the Union's proposals and submissions, submitted on September 21, 2018, as being invalid and not in compliance with Chapter 4117 of the Ohio Revised Code and 4117.09 of the Ohio Administrative Code. According to the Employer, the Conciliator lacks jurisdiction to consider the Union's proposal or final offer. Thus, the Employer moved to strike the Union's submission in its entirety including all proposals, rationale, testimony, and evidence in support thereof, leaving only Employer's final offer for consideration by the Conciliator.

The reasoning behind the Employer's motion was that the Union's final offer proposals presented an effective date of January 1, 2019. The current contract in which the Conciliator was appointed for expired on December 31, 2018. According to the Employer, the authority of the Conciliator is derived from the case number assigned by the State Employment Relations Board in this matter, which is: 2017 – MED- 10-1201, which is a reopener for wages and minimum manning only under the contract that expires December, 31, 2018. It does not include reopening the termination clause. The reopener in this case was for the calendar year 2018 only. A new case (2018-MED- 02 -02-0125) has been filed with a notice to negotiate for a new or successor contract commencing January 1, 2019.

The employer further argued that should the Conciliator consider evidence on the Union's proposals and eventually rule in favor of the Union's proposals, the Conciliator's opinion in this case would be subject to appealable error under 2711.10 of the Ohio Revised Code as not being a final and binding award.

B. THE CONCILIATOR IS PROHIBITED BY LAW FROM AWARDING ANY INCREASE IN WAGES OR OTHER MATTERS WITH COST IMPLICATIONS.

In its position statement, the employer cites the provisions of Ohio Revised Code Section 4117.14 (G) 11 as prohibiting the conciliator from awarding any economic increases effective during the fiscal year in which he was appointed. The Employer

argues that since the parties were directed to conciliation by SERB on June 25, 2018 and the City's fiscal year runs from January 1, through December 31 of each year, the Conciliator is prohibited from awarding an increase in the rate of compensation other matters with cost implications for calendar year 2018. Also, according to the Employer no award can be made for any fiscal year beyond 2018.

C. ANY AWARD IN FAVOR OF THE UNION WOULD VIOLATE CHAPTER 118 OF THE OHIO REVISED CODE.

The City of Norwood was declared in fiscal emergency on October 6, 2016, by the Auditor of the State of Ohio. When a City is declared in fiscal emergency, a recovery plan must be adopted by the City Council and approved by the State Financial Supervision and Planning Commission. Following ratification of the current CBA, the City adopted its initial Financial Recovery Plan ("FRP") on or about July 6, 2017. In March of 2018, through the State Auditor's Office, the Commission adopted a "Revised" FRP. The revised plan incorporates a reduction in personnel for both Police and Fire Departments, an increase in health insurance costs to the City, and continues the assumption of no wage increases through 2022. Ohio Revised Code Section 118.13 in pertinent part reads as follows:

- (A) No appropriation measure may be adopted contrary to the financial plan approved by the financial planning and supervision commission. Any existing appropriation measure inconsistent with the approved financial plan is ineffective for purposes of any expenditures to the extent it authorizes expenditures in excess of the revenues available after approval of the financial plan, and shall be amended promptly by the legislative authority of the municipal corporation, county or township to be consistent with the financial plan....

Thus argues the Employer, based upon the foregoing statute and the authority granted to the Financial Planning Commission, nothing in Conciliator's award can be inconsistent with the approved financial plan. The Union's position on wages and manning would require increases that are not included in the revised financial plan.

D. THE FACT FINDER'S AWARD WARRANTS NO DEFERENCE IN CONCILIATION.

The Employer sets forth four arguments to support its position that no deference should be given to the Fact Finder's award by the Conciliator. First, the recommendation of the Fact Finder would be an illegal award for a conciliator pursuant to 4117.14 (G) (11). Second, the Fact Finder's award violated Ohio Revised code Chapter 118. Third, since the fact finding hearing the expenses and problems in the fire department continue to escalate.

E. EMPLOYER'S POSITION ON ARTICLE 6 - WAGES AND BENEFITS

The Employer's position has remained unchanged since October of 2016, and that is to continue the wage freeze for 2018, except for those employees who are still eligible for step increases. According to the Employer, the Union has refused to make any concessions during the current difficult times.

As to internal comparables, the Employer states that while both Police and Fire union contracts guarantee certain levels of staffing, the other unions have seen a significant decline in staffing and funding. The Public Works Department has reduced employees through attrition and layoffs from approximately 120 employees to the current number of 15. On wages, while the AFSCME groups have received an average of only 44.4% (2.2% per year) increase since 1997. The fire Department bargaining unit employees realized a 64.9% (3.21% per year) increase in base wages. The two AFSCME units that had reopeners for 2018 did not exercise that option and by default accepted a wage freeze for 2018. Although the Police union received a 2% one-time (lump sum) payment, that was in exchange for concessions in staffing and minimum manning the this Union is refusing to make.

As to external comparables, the Employer states that the present condition of the City's finances do not support the consideration of external comparables. However, even considering external factors, the City of Norwood exceeds the pay and benefits of any comparable City in fiscal emergency in Ohio. It even exceeds for local cities with a much higher population and median income levels that are not in fiscal emergency.

F. EMPLOYER’S POSITION ON ARTICLE 16- MINIMUM MANPOWER

The Employer’s position is current contract language to remain at 11 and to eliminate the reopener language. An increase to 13 would increase overtime costs. As of August 31, 2018 the Fire Department has spent over \$100,000.00 in overtime. The revised FRP only planned for \$50,000.00. If the minimum staffing increases to 13, there would be a guaranteed need for overtime on each and every shift, nearly every single day for the rest of the year.

The Employer states that the Union will no doubt cite safety concerns. The Employer maintains that the NFPA safety standard is a guideline, an “ideal” standard, not a mandatory requirement that addresses firefighter manpower at a fire scene. It addresses the 4 person team and the “2 in 2 out” rule at the scene. The City is technically compliant with that recommendation and the associated state safety regulation. However, none of those regulations require a specific number of personnel on duty per day, at a particular station, or total positions filled. Nor do the regulations require all fire fighters be from the same firefighting unit. The City has mutual aid agreements to ensure adequate fire suppression personnel are present at the scene of a fire. Thus, according to the City the regulations do not justify the continuance of a minimum man power level that City cannot afford.

IV

AWARD

The representatives of the parties have done as complete and through job of presenting the evidence and arguments in support of their clients’ positions as is possible. Based upon the Criteria set forth in Ohio Revised Code, Sections 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Position statements submitted by the parties, the transcript of the testimony at the hearing, the Fact Finder’s Report, the exhibits submitted and the arguments of the parties, the Conciliator submits the following award.

A. Article 6 – Wages and Benefits

The Union’s final offer of a COLA increase effective January 1, 2019, should be rejected and the Employer’s final offer should be adopted.

The Fact Finder Recommended a COLA increase effective with the first pay after June 30, 2018. The Employer presented three objections to the COLA. One was Ohio Revised Code Section 4117.14 (G) 11 as prohibiting the conciliator from awarding any economic increases effective during the fiscal year in which he was appointed. Apparently, the Union agrees with the Employer that the COLA could not be effective during 2018, without agreement of the Employer, and thus changed the effective date to January 1, 2019 in its final offer.

The Employer also argued that the granting of the COLA is contrary to the provisions of Ohio Revised Code Chapter 118.13. The third objection presented by the Employer was that the Conciliator's jurisdiction was limited to the reopener for 2018, on wages, not for the period for a new contract commencing January 1, 2019.

Unlike a fact finder, a conciliator's jurisdiction is more limited. While a factfinder can make recommendations which can be accepted or rejected, the Conciliator must make a final and binding decision which becomes the parties' collective bargaining agreement. The applicable criteria set forth in 4117.14 (G) (7) (c) and (d) require the Conciliator to consider:

(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

Does the Employer have the ability to finance and administer the COLA? Does it have the legal authority to do so? These are questions that the Conciliator must answer in the affirmative. Such, however is not possible. The evidence is clear that the Employer does not have the ability to finance and administer the COLA. Nor does it have the lawful authority to do so.

Fact Finder McCormick acknowledged these limitations at page 2 of his award where he stated:

* * *

On October 6, 2016, the Auditor of the State of Ohio declared the City to be in fiscal emergency. By law, when this occurs, the City must adopt a Financial Recovery Plan (FRP) and submit a five year plan overseen by the auditor and Financial Planning

and Supervision Commission (the Commission) which consists of the Auditor, and appointees from the State Office of Management and Budget, the State Treasurer, and appointees of the Governor's Office and the local legislative body.

According to O.R.C. Section 118.13 (inter alia):

(A) No appropriation measure may be adopted contrary to the financial plan approved by the planning and supervision of the commission.

In March of 2018 the Commission adopted a revised FRP in which it was ordered that the City reduce personnel for both the City Police and Fire Department and no wage increases through 2022.

This means that notwithstanding any finding by any fact finder, or conciliator, nor agreement by the parties, FINAL arbiter is the Commission. The statute above prohibits any award (s) that is not approved by the Commission.

* * *

Although the Fact Finder's recommendation for a COLA could have been accepted by the parties with approval by the Employer on retroactivity, it would have to be submitted to the Commission to determine whether the cost of the COLA fell within the FRP, or the FRP would have to be amended. Any such amendment would be within the discretion of the Commission. The Employer as result of the fiscal emergency does not have the ability to finance and administer the COLA. Nor does it have the legal authority to do so.

B. Article 16 – Minimum Manpower

The Union's final offer to increase minimum manning, effective January 1, 2019, to thirteen (13) full-time Fire Fighters on the line at any given time, should be rejected and the Employer's final offer should be adopted.

Based upon the expert and excellent testimony at the hearing of the City's Fire Chief Ron Wallace and Consultant William Kramer and his Analysis of Fire Department Facilities , Staffing and Operations for the City of Norwood, Ohio, there is no dispute that staffing should be increased to thirteen (13). However, the authority and jurisdiction for the Conciliator to grant the Union's final offer is limited for the same reasons set forth above for denying the COLA to be effective January 1, 2019. Parts of Consultant William Kramer's testimony are relevant

here. Excerpts of his testimony as set forth in the transcript (pages 204-227) are set forth below.

Q. Now that we've got the background behind us, tell us briefly what's in your 169 pages or so of your report and recommendation.

A. I would like to see the Norwood Fire Department succeed and be stable going forward. I do know that there are funding limitations. And I do know that the fiscal emergency is not fiction; it's a reality within which the fire department must operate.

I would like to see their minimum staffing maintained. Currently, it's at 11, and currently, I do not see funding available for an immediate increase.

If funding were not an issue, if there were no fiscal emergency, what would the needs be for the city? I've stated to the chief and to the Local that I feel if funding were no object, a minimum of 13 people on duty every day plus one, making 14, that additional every day plus one, making 14, that additional one I would recommend would be a 24-hour chief officer for supervision.

Now, I don't see the funding available for that, so what I would like to see is the current minimum maintained until we come out of the fiscal emergency.

I consider the state auditors the final authorities. I looked very thoroughly at all the financial data, and I do believe they feel that's 2020.

At that point we can look at augmenting that staff to get up to what the ideal needs of the fire department would be. I would like to see them increase that minimum by 1.

I think there are ways to do that, and I think the union has proposed ways of doing that on a no cost basis to the city, which would bump it up to 12 rather quickly.

Overall, there's a need for better dialogue, better intercommunications between the city and its workforce so that we can make some of these improvements.

* * *

Q. So there were some exhibits presented by the union related to safety. I'm going to show you those. It's Union Exhibit 3, which is Ohio Administrative Code 4123.

Are you familiar with that administrative code section?

A. I am familiar with that, yes.

Q. As part of your review, I noticed there's a part in your report that deals with OSHA standards and then also NFPA standards.

Did you consider that standard in writing your report?

A. I did consider all of the national standards, the state standards, the OSHA standards. And in general, I can say that these are ideal standards that we would love to reach in all departments.

I could also say that no department is ever fully compliant with all standards, and it's usually because of the inability to fund the number of persons that would be necessary to meet those ideal standards. The funding is usually not available in most communities.

It is clear, based upon the evidence, that here would be a cost to increased staffing. Also, that the safety issues are being dealt in the same manner as they are in other cities.

The Employers' objection on jurisdictional grounds to granting a COLA and increase manning effective January 1, 2019 has merit. The reopeners are for the year 2018, not for a new contract. The parties have filed a notice to negotiate for an agreement commencing January 1, 2019. Further litigation would not serve the public interest. This same issue was before Conciliator Melvin E. Feinberg *In the Matter of Goshen Township and the Internal, Association of Fire Fighters Local 3932 (SERB Case No. 11-MED-1636)*. His award in relevant part reads:

. . . "Under these circumstances, the Employer is correct in its argument that the language of ORC Section 4117.14 (G) (11) prohibits the Conciliator from awarding an increase in the rate of compensation in the year 2012 as is requested by the Union. Moreover, awarding a wage increase to commence with January 1, 2013, would be inappropriate inasmuch as the current collective bargaining agreement between the Parties expires on December 31, 2012, and contract negotiations for 2013 are already being contemplated."

The fiscal emergency imposed by the State Auditor pursuant to statute strips the City of exclusive fiscal or financial autonomy. The City's expenditures must be within the confines of the FRP or it must seek an amendment of the plan. Unless, parties demonstrate that proposed expenditures for wage increases or staffing level increases are within the FRP or that the Commission will amend the plan, this Conciliator does not believe that he could issue a final and binding award granting such.

Therefore, in summary, for the reasons set forth herein, the Conciliator concludes that the Employer's proposals for the reopener on wages (Article 6) and manning (Article 16) should be

adopted , and that the Union's proposals for COLA effective January 1, 2019 and an increase in manning to 13, should be rejected

V

CERTIFICATION

The Conciliation Report and Award are based on position statements, and the evidence and testimony presented to me at hearing conducted September 27, 2018. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4117.14 and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Conciliator

December 7, 2018

VI

PROOF OF SERVICE

This Conciliation Report was electronically transmitted this 7th day of December, 2018 to the persons named below.

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/s/ John F. Lenehan
John F. Lenehan

