CONCILIATOR'S OPINION AND ORDER

In the Matter of:	)	
Union Township Trustees	(	Case No: 95-MED-10-0925
(Fire Department) - and -	)	
Union Township Firefighters,	(	
IAFF Local 3412	)	

Conciliator:	Lawrence I. Donnelly Resident of Hamilton County, Ohio
For the Township:	Charles A. King Clemans, Nelson & Associates, Inc.
For the Union:	Brian H. Holbrook President of IAFF Local 3412
Date of Hearing:	April 30, 1996
Place of Hearing:	Trustees Conference Room Union Township Building
Date of Opinion and Order:	May 15, 1996

BACKGROUND

On March 9, 1996, Mr. James L. Ferree issued a Fact-finder's Report in the matter of Ohio SERB Case No. 95-MED-10-0925. This Report was issued due to a bargaining impasse between the Union Township Trustees (Fire Department) (hereafter referred to as the Employer) and the Union Township Firefighters, IAFF Local 3412 (hereafter referred to as the Union). The membership of the Union rejected the Recommendations in this Report; the Trustees of the Township did not act upon the Report and it was deemed accepted by them. In accord with ORC 4117.14, (D), (1), the case moved to conciliation. Mr. Lawrence I. Donnelly, resident of Hamilton County, Ohio was selected by the Parties and appointed by SERB as Conciliator to hear this matter and issue a written opinion and order upon the issues presented to him.

Hearing on the matter was held on April 30, 1996 in the Union Township Hall, as mutually agreed to by the Parties and the Conciliator. The Conciliator received materials from each Party within the time frames provided for in ORC 4117.14, (G), (3). At the hearing, the Employer filed a procedural objection. In this, the Employer claimed that it had not received from the Union the materials directed under ORC 4117.14, (G), (3); instead, it received a letter of notice from the Union which declares that "Our presentation to the Arbitrator, Mr. Lawrence I. Donnelly, is equal in content to that given the Fact-finder, Mr. James Ferree." (Employer Exhibit). After consideration of this objection, the Conciliator determined that it would be appropriate to move forward with the hearing; he had received all appropriate materials from the Union. He did not deem it to be within his prerogative to reach a determination on the legalities involved in the Employer's procedural objection. He notes this objection here. Further, he recognizes the privilege of the Employer to carry this matter to the Board for a subsequent determination about the propriety or impropriety of the Conciliator's action.

Before commencing with the testimony and presentations of the Parties, the Conciliator verified several factual matters. At the time of the hearing, the bargaining unit consisted of nineteen platoon or continuous operation firefighters; no firefighters are on non-platoon or 40-hour non-continuous operation status. The nineteen involve one Lieutenant EMT, two Firefighters EMT, and sixteen Firefighters PAR. All are assigned to either the Eastgate Station or the Withamsville Station. In addition, the Fire Department involves a Chief, an Assistant Chief, two Captains, and some fifty part-time Firefighters, none of whom are in the bargaining unit. Both Parties acknowledged that they have not held any bargaining sessions after their action on the Fact-finder's Report. Further, both Parties declared that they judged that further mediation would not likely be fruitful. They noted that they had been meeting over the course of several months, and their differences were genuine. In discussing the prospect of mediation, the Conciliator reminded the Parties that his role requires him to select the final position of one Party or the other on an issue by issue basis. He further reminded the Parties that conciliation occurs within a process in ORC 4117.14; it is not a substitute for bargaining on the former Agreement nor for the Fact-finder's Report. He reminded the Parties of the general favor within labor-management relationships of an agreement reached by the Parties in preference to an agreement imposed by a third party. The Parties judged that conciliation best serves their situation at the present time.

Present at the hearing for the Employer were:

Mr. Charles A. King, Director of Labor Relations, Clemans, Nelson & Associates, Inc. (presenter).
Mr. Ken Geis, Union Township Administrator
Chief Stan Deimling, Union Township Fire Department

Present at the hearing for the Union were:

Mr. Brian H. Holbrook, President, Local 3412
Mr. Kevin Ollier, Secretary-Treasurer, Local 3412

The Parties agreed that seven issues remain open. These involve:

Article 16:	Hours of Work and Overtime
Article 17:	Wages
Article 18:	Insurances
Article 19:	Vacation
Article 20:	Holidays
Article 29:	Duration
Article 30:	Time Off and Shift Trades

As is noted below, only particular segments of these Articles are involved; the Parties have already tentatively agreed to many Sections within these Articles. In addition, during their negotiations, the Parties have tentatively agreed to numerous other Articles. This fact is particularly noteworthy in this case because the Parties are effecting in the new Agreement a new format and sequence of Articles from those found in the recently expired Agreement.

At the hearing, the Employer presented a binder with identifying Tabs 1 through 8; Tab 7 is further subdivided A through G and Tab 8 is further subdivided A through P. In his discussion, the Conciliator refers to these as Employer Exhibits. The Union also presented a booklet, which was forwarded to the Conciliator before the hearing; references to this material are designated as Union Exhibits. Hearing was conducted wherein each Party provided testimony about its respective positions upon the issues at impasse. At the end of the hearing, both Parties acknowledged that they had the opportunity to present whatever material or testimony which they judged to be appropriate to their respective cases. Further, each Party acknowledged that it had the opportunity to examine and question whatever was presented by the other Party. Finally, the

Conciliator notes that in reaching his decisions on the issues at impasse, he has taken into consideration the criteria noted in ORC 4117.14, (G), (7), (a) through (f).

OPINIONS AND ORDER

1. ARTICLE 16: Hours of Work and Overtime

POSITIONS OF PARTIES

In the recently expired Agreement, there is no corresponding Article. (Copy of the Agreement is found in Union Exhibit Appendix III and in Employer Exhibit 4.) In the new Agreement, the Parties have tentatively agreed to Sections 16.3 and 16.4. Their impasse exists over five matters in Sections 16.1 and Section 16.2. These are

a. In Section 16.1, use of the terms platoon and non-platoon or continuous operation and non-continuous operation in describing firefighters.
b. Identification of overtime in Section 16.1.
c. In Section 16.1, restriction on scheduling "Kelly days" or hourly reduction days.
d. In Section 16.2, maximum accumulation for compensatory time.
e. In Section 16.2, a provision to treat the schedule and the use of compensatory time.

ANALYSIS AND OPINION

In Article 16, the Parties are trying to craft explicit coverage for many topics which were not explicit in their prior Agreement but which occurred in practice. Further, they are transferring into their new Agreement the explicit coverage of compensatory time, treated in Article 38 of the prior Agreement. Neither Party raised the criterion of comparables nor the criterion of ability to pay. Further, each Party advanced some favorable reasons in its support for one or another part

of their impasse. Yet, the Conciliator must direct the adoption of either the Employer's language for Section 16.1 and Section 16.2 or the Union's language for these Sections.

Should the firefighters be referred to as platoon and non-platoon (as proposed by the Union) or continuous operation and non-continuous operation (as proposed by the Employer)? The Parties do not make any such distinction of Firefighters in Articles 8, 9, 10, or 11 of the provisions on which they have tentatively agreed (as seen in Employer Exhibit 5). Thus, the language used in other parts of the Agreement do not offer guidance. At the hearing, the Parties seemed equally comfortable in their use of either set of terms. The Employer did express dismay that the Fact-finder used the language of platoon and non-platoon (as well as continuous and non-continuous) in his recommendation for Section 16.1. The Employer stated that no agreement had been reached on use of platoon and non-platoon; the Parties always used the other terms. In the Conciliator's judgement, however, this matter of vocabulary is not determinative of his Opinion or Order; either set of terms would be acceptable.

Of what significance is the Union's proposal to include in Section 16.1 the language "All hours worked in excess of the employee's standard work period shall be considered overtime"? The Employer claims that such language is not needed; the Union offers it as a specific clarification. On this matter, also, the Conciliator cannot see the issue as determinative in his Opinion and Order, although he can see the clarification as preferable.

The Employer proposes in Section 16.2 the following sentence: "Compensatory time off shall be scheduled and used at a time mutually agreed upon by the employee and the Fire Chief."; the Union omits this language. There are reasons to favor the adoption of this. First, it reflects language found in Article 38 of the prior Agreement. Second, it addresses an instance of

scheduling which affects Management Rights under Article 5, Section 5.1, #7 of the tentatively agreed to Sections for the new Agreement (see Employer Exhibit 5).

Most of the Parties' attention at the hearing was directed to two points of contention. First, should "Kelly days" or hourly reduction days be discontinued, as proposed by the Union and opposed by the Employer? Second, should comp days be capped at 120, as the Union proposes, or at 96, as the Employer proposes? [Conciliator's note: The topic of reductions of already accumulated comp time beyond the new cap is not before the Conciliator.]

"Kelly days" are obviously an important topic to the Parties. These reflect a practice which is very common among platoon or continuous operation firefighters due to the 24/48 schedule. The prior Agreement was silent on "Kelly days." It did treat questions of schedules and calculation of overtime in Article 12; these questions are now treated in Article 16 of the new Agreement. According to the Employer (Employer Exhibit 5), a proposal to include explicit mention of the continuation of the practice of "Kelly days" had been on the table, but was dropped. The Union seeks explicit language to discontinue the practice. The Union claims the Parties had orally agreed to drop "Kelly days"; the Employer denies any such oral agreement. The Employer noted that the use of "Kelly days" had led to significant amounts of overtime (Employer Exhibit 8a). Still, "Kelly days" are seen by the Employer as a critical part of the right to schedule under Article 5. The Union contends that the employees had experienced sizeable losses of income due to the uses of "Kelly days"; but, the Union offered no specifics of this claim for the Conciliator. In light of all the above, the Conciliator judges that the weight of prudence in the administration of the unwritten practices about "Kelly days" favors continued silence about this in the Agreement. This silence would not prohibit the pursuit of any specific problem within

the Grievance Procedure in Article 14 of the new Agreement.

Both Parties favor a dramatic reduction in the cap for accumulated comp time from the 480 hours in Article 38 of the prior Agreement. The Union proposes 120 hours while the Employer proposes 96. Through Employer Exhibit 8,G, the Employer points out that only four employees have accumulated more than 96 hours. As a matter of fact, these four also have accumulated more than 120 hours. The Union understandably is interested in protecting the capability of workers to accrue the equivalent of five 24 hour shifts in preference to four 24 hour shifts (or fifteen 8-hour days in preference to twelve 8-hour days). But, as the Employer notes, only four of the nineteen current firefighters would be immediately affected by either of the proposed caps. In practice, these employees would have to collect overtime pay as it occurs. The Union also sees this cap as linked with "Kelly days" and shift switches. But, the Conciliator has no power to fashion packages between conditions. Rather, he must take the positions of the Parties as submitted to him. So, on the cap, the Conciliator sees merit in the level proposed by the Union; but, at present, only four employees would be adversely affected by either of the reduced caps.

In his assessment of all five parts of this Issue, the Conciliator judges that the relative weights favor the Employer's proposal. He judges that the facts and testimony provided in favor of the Employer's proposal on Kelly days outweigh the facts and testimony provided in favor of the Union's proposal on the cap for comp time. He further sees the weight which favors the Employer's language in Section 16.2 to exceed any weight which favors the Union's language in Section 16.1 on defining overtime. As noted several times, the Conciliator must order either the Employer's proposal or the Union's proposal; he has no middle ground available to him.

ORDER OF CONCILIATOR

ADOPT THE LANGUAGE OF THE EMPLOYER FOR SECTION 16.1 AND SECTION 16.2 (AS FOUND IN EMPLOYER EXHIBIT 7,A). THESE ARE TO BE COMBINED WITH SECTION 16.3 AND SECTION 16.4 (ALREADY TENTATIVELY AGREED TO) TO BECOME ARTICLE 16 IN THE NEW AGREEMENT.

2. ARTICLE 17: Wages

POSITIONS OF THE PARTIES

Both Parties agree to annual adjustment of wage rates during a three-year Agreement. The Union proposes 6%, 6% and 6%; the Employer proposes 3%, 3% and 3%. Further, the Union seeks a continuation of the schedule in hourly rates; the Employer proposes a schedule of annual rates of pay with reference in Section 17.3 for the calculation of hourly rates from the number of base hours scheduled annually. Third, the Union proposes that the rank of Lieutenant be divided into Lieutenant/EMT and Lieutenant/PAR with a higher rate for the latter rank; the Employer opposes this.

ANALYSIS AND OPINION

The Conciliator sees merit in keeping hourly rates within the wage schedule in preference to converting to annual rates of pay. The prior Agreement used hourly rates. Many benefits are calculated in terms of hourly rates. The Employer did not advance any explicit reason for the conversion to annual rates. The Union does not dispute the accuracy of the Employer's list of current annual amounts. However, the Conciliator notes that the Fact-finder recommended the adoption of the annual schedule (without comment). He also notes that the copy used by the

Parties in fashioning the transition Agreement (Employer Exhibit 5) lists annual amounts in the wage schedule. But, this difference between the Parties about Article 17 pales in comparison with the other two differences: namely, separation of Lieutenant rates and overall level of wages.

The Union did not establish a case for separating the Lieutenant rates. It offered no testimony at the hearing on this matter. Further, the Union acknowledged that, at present, only one Lieutenant is in the unit. So, even if this issue were to have merit, it would not be a current pressing issue; it would rise in importance when and if more Lieutenants are added to the force.

In the Conciliator's view, the Issue in Article 17 rises or falls on the relative merits of the cases by the Parties for the level of adjustment each year. Should it be 6-6-6 as proposed by the Union or 3-3-3 as proposed by the Employer? All members would be affected by this; as noted in Employer Exhibit 8,G, the costs to the Employer differ by some $164,000.00. Both Parties acknowledge their agreement to waive the limits of applicability for the adjustments which are found in ORC 4117.14,(G),(11) (copy submitted in Employer Exhibit 1). The topic of timing for the adjustments is addressed head-on under Duration, Article 29. At this stage, the Conciliator addresses the topic of the level of the adjustment.

Much of the emphasis at the hearing centered around the criterion of comparabilities and external comparisons -- ability to pay really never entered into the discussions at the hearing. Without dissent from the Union, the Employer noted that its proposed adjustment covered current movements in the consumer price index; the Union does not claim that the added three percent per year in its proposal is warranted by current or recent inflation. In its Exhibit Appendix II, the Union notes how other employees in the Township were just awarded an 8% catch-up adjustment; the Union asks for similar treatment. The Employer, however, pointed out that these employees

had not received adjustments for some 30 months; firefighters had received at least two 4% increases during this time frame (Employer Exhibit 8,D).

Both Parties accept the accuracy of the date about wage changes after 1990 in Employer Exhibit 8,D; their interpretations of these adjustments differ. From the time the Department was established in 1990, overall increases of wages occurred five times (3.5%, 3.5%, 4%, 4%, and 4%). Thus, wages have risen over 20% on the 1990 base (an average of some 4% per year on the base of 1990). This compares with adjustments around the State for Townships (4.27%) and Fire Personnel (4.06%) (Employer Exhibit 8,C, p. 3); for the last two years, township wages were adjusted on the average 3.79% and 3.91% and firefighter wages were adjusted on the average 3.61% and 3.72% (Employer Exhibit 8,C, p. 3). From these, a case can be made that Union Township firefighters have shared in the growth of wages among similar personnel around the State but at possibly a marginally lower rate. Some small catch-up could be argued for, but hardly the size of the Union's proposal (3-3-3 above the Employer's proposal). The Police in Union Township are currently in negotiations with the Township; this Conciliator will not speculate with the outcome of wages there.

Both Parties offered local fire districts for comparison. Overall, rates in Union Township exceed those in some districts and they fall below rates in others. Each Party advanced reasons to support their comparable districts and to attack the other Party's comparable districts. This is not an uncommon phenomenon in relatively new bargaining relationships. This relationship is only six years or so old and is also trying to effect a new format for its Agreement. The Conciliator has neither the power nor the wisdom to mandate which districts in the area the relationship should use for local comparisons, whether the Parties should use three districts in

Hamilton County (as the Union does) or these three plus several in Clermont County or some other combination (as the Employer does). Rather, he can advise the Parties to address this topic in the future with the labor-management meetings envisioned in Article 7 of the tentatively agreed to provisions. The Conciliator also concludes that Township firefighters are "in the pack" of local firefighters wages. Likely, the Employer's proposal will keep this bargaining unit at relatively the same level; the Union's proposal would clearly raise the unit's position within the local array of wages. The Union's statistics in its Exhibit (p. 1 and Appendix II) are far too fragmentary to support the conclusion in favor of sizeable movement at the present time on the basis of "comparable district."

"Kelly days" came up in the discussion of overall adjustment rates. As the Employer notes in Employer Exhibit 8,A, a lot of overtime occurs allegedly because of the Employer's approach to "Kelly days". Again, the Union urged the EMPLOYER to guarantee not to schedule "Kelly days." But, this topic belongs directly under Article 16, where it has been treated.

The Union expressed concerns that its efforts in the levy campaign last year are being overlooked. The Conciliator notes, though, that added monies are going to the firefighters in the form of eight new people since the Fact-finder's award and will also be directed to the operation of the third station. The testimony of Firefighter Holbrook and Firefighter Ollier illustrates a strong professional pride in both their work and the mission of the Department. The residents have responded with financial support for the Department. But, does the support translate into 6-6-6; does it show up in a 3-3-3- adjustment?

The Conciliator notes that he shares the same general judgment with the Fact-finder. When all the presented facts are judged by him with the appointed criteria, the 3-3-3- proposed

by the Employer is clearly warranted. In addition, some measure over this would be suitable. But, the Conciliator does not have the lee-way of Ordering a "wise middle-position." He must order with the Employer's 3-3-3 or the Union's 6-6-6. Not only does he judge that the Union has not established a case for its proposal; he judges that a "wise middle" would be closer to the Employer's proposal, as analyzed above. Thus, he directs the adoption of the Employer's proposal for Article 17.

ORDER OF CONCILIATOR

ADOPT THE EMPLOYER'S PROPOSAL FOR ARTICLE 17, FOUND IN EMPLOYER EXHIBIT 7,B.

3. ARTICLE 18: Health Insurance

POSITIONS OF PARTIES

Article 18 replaces Article 40 of the prior Agreement. The Union proposes for Section 18.1, that the Parties adopt the former Section A with the exception of the explicit mention of a carrier. The Union proposes in Section 18.1 that deductibles and no-cost premiums remain the same as in the current health insurance. The Employer proposes in Section 18.1 that health and hospitalization insurance be made available to bargaining unit employees on the same basis as provided to non-bargaining unit employees; also, Section 18.2 would provide cost free to each employee $15,000 of life insurance.

ANALYSIS AND OPINION

As is clear, the Union seeks a guarantee of current benefits, deductibles, and premiums. The Employer claims that such an approach is both unworkable and inadvisable under the legal and insurance climates in Ohio. The Conciliator is persuaded by the case made by the Employer.

As indicated in Employer Exhibits K and J, the Employer is required by law to provide uniform coverage for all employees in the Township. This would include the coverage for Trustees, administrators, non-union employees, members of the three police units, members of the AFSCME unit, and members of the firefighters unit. In Employer Exhibit I, the Employer provides language from the AFSCME Agreement as well as language from an alleged tentative agreement with the police. The Employer's proposed Section 16.1 appears in both of these documents. This language allows the Employer or its representative broker to shop for the best coverage when the current plan expires in the Summer of 1996 as well as later expirations in the Agreement. In addition to the legal issues, it simply makes administrative common sense for the Employer to shop for one Township-wide plan rather than many smaller-coverage plans.

The Conciliator does understand the concerns of the employees about the Employer's proposal. Their current plan matches up favorably with the plans represented within the other jurisdictions in Employer's Exhibit I. Although the Parties did not go into details at the hearing, they have a history of difficulties during the previous times of change in plans. Unfair labor practices cases have occurred. Also, the Union raised the possibility that, at some time in the future, the Trustees will not seek coverage for themselves. The Union is fearful that benefits could erode, or deductibles increase, or premiums be shifted to the employees. As the Employer noted, any changes in such matters could not be arbitrarily imposed. The Employer would be held

to bargain with the Union any impacts of changes of plans. In Section 23.1 and Section 23.3 of the AFSCME Agreement, this point is made explicit. For some unannounced reason, the Employer does not include this provision in its proposal to the Firefighters. However, in the Conciliator's view, these provisions offer the assurance to the Unions in Union Township that their members will not be sacrificed during a change of insurance carriers. This language would back up the statements of both Mr. King and Mr. Geis that the Township would keep the Union informed and negotiate any question of impact from change in carrier.

ORDER OF CONCILIATOR

ADOPT THE EMPLOYER'S PROPOSAL FOR ARTICLE 18, FOUND IN EMPLOYER'S EXHIBIT 7,C.

ARTICLE 19: Vacation

POSITIONS OF PARTIES

In six sections, the Union proposes a visibly different and improved vacation schedule along with procedural provisions which are similar to the expired Agreement. In three Sections, the Employer proposes a schedule like the current one (but with some rewording) along with procedural provisions which are visibly different from the ones in the expired Agreement.

ANALYSIS AND OPINION

The Union raised several favorable points for improving upon the current schedule. Accumulated comp time is reduced from 480 hours maximum in the prior Agreement to 96 hours in the new Agreement (by Conciliator Order). As the Union acknowledged at the hearing, comp

time is not an entitlement as would be vacation days. However, comp days do provide the same benefit of paid time off at the worker's initiative. Further, both Parties compare the bargaining unit with firefighters in Delhi Township, Anderson Township and Green Township (Union Exhibit and Employer Exhibit 8,M). Union Township lags all three by twenty-four or forty hours (on a 24/48 schedule) at the top of the schedule. Some improvement at the top of the schedule would be warranted in terms of mutually accepted comparables. However, the Conciliator finds two major limitations in the Union's proposal. First, the Union tops vacations at 336 hours. This is a major move past all three of these other Departments. Second, the Union's proposal scrambles the early years of progression in the schedule. Uniformly, the other three (as well as the old Agreement) require blocks of years before a firefighter obtains an added week of vacation after one year of service. In the Union's proposal, after the first year a firefighter would add 24 hours each year to the 120 vacation base to reach 216 hours in the sixth year. This would put Union Township way ahead of the other three comparables whereas now the Township's schedule progresses similarly to the others. Although the Employer offered no calculations for its assertion that the Union's proposal would necessitate an additional six to eight firefighters (as a 32% increase in vacation time), the Conciliator sees the point made. The Union's proposal on vacation would require significant additions of personnel and could create major scheduling problems.

Internal comparisons clearly weigh against the Union's proposed schedule. The firefighters' vacation time already compares favorably with Police, AFSCME and non-union personnel (Employer Exhibit 8,L). The Union's proposal would put the firefighters very far out of line.

On procedural questions, both Parties agree that "Vacation must be taken in 12 hour

increments for 24/48 hour employees and in 8 hour increments for 40 hour employees." Beyond this, the Union proposes the least change from the current system. However, neither Party spent much time on procedural issues at the hearing. The Employer offers, for instance, no reason for discontinuing carry-over rights. On the other hand, the Employer's proposal offers clarity (as does the Union's) for initial scheduling of vacations.

As noted earlier, the Conciliator does not enjoy the latitude of a Fact-finder in ordering a compromise to "capture" the best of both Parties' proposals. He must take one or the other. He judges that the weight of evidence clearly supports the Employer on the schedule due to the criteria of comparabilities, cost burden, and administrative standard of service. The Employer, however, does not offer compelling reasons for the procedural changes, although the proposed procedures seem reasonable enough. The Conciliator orders with the Employer's proposal because the changed schedule proposed by the Union (compared to the Employer's schedule) has less merit than the procedural changes proposed by the Employer (compared to the procedural provisions of the Union).

ORDER OF CONCILIATOR

ADOPT THE EMPLOYER'S PROPOSAL FOR ARTICLE 19, FOUND IN EMPLOYER'S EXHIBIT 7,D.

5. ARTICLE 20: Holidays

POSITIONS OF PARTIES

The Union proposes that the Parties carry forth the previous agreement on holidays with one exception: namely, that the limit of hours for receiving twice the regular pay for hours worked

on a holiday be increased to twenty-four hours from the current level of sixteens hours. The Employer does not disagree with the Union on carrying forth the listed ten holidays. It does rework the other Sections of the Article, as discussed below.

ANALYSIS AND OPINION

The Union seeks an extension in the number of hours worked at the double time rate. Currently, firefighters can earn double time on a holiday for up to sixteen hours. This issue actually affects the continuous or platoon or 24/48 hour firefighters rather than non-continuous operation or non-platoon or 40 hour firefighters. In the Conciliator's opinion, the logic of the Union's proposal has appeal. It extends the logic of double time pay for all hours actually worked on a designated holiday. It uses the calendar day and not some artificially established eight hour block of time, as the Employer's proposal connotes with the language in Section 20.1: "All holidays are eight (8) hours in length." Hypothetically, an employee could receive fifty-six hours of pay on a designated holiday by combining the twenty-four hours worked (at the rate of double time) with the eight hours for the holiday (at the normal rate of pay). The Union claims its proposal matches the practice when the Department was established; this practice was changed and the Union seeks a return to the earlier language. The Employer does not dispute these factual claims.

The Employer offers its proposal as a way to limit the premium rate to those continuous employees who actually start their shift or tour on a designated holiday. Yet, as the Conciliator reads the Parties' old Agreement as well as the proposals of both Parties, they agree that the holiday premium should apply in consideration for hours worked on a holiday. With 24/48

schedules, this premium could affect both employees who end a tour and employees who start a tour on a designated holiday. The scheduling rights of management under Article 5 are not compromised by the Union's proposal. This proposal instead clarifies the question of rates of pay for hours worked on a designated holiday. In the Conciliator's judgment, the Employer's proposal in Section 20.1 clouds this question. He further judges that the holiday pay provisions in other jurisdictions in the Township are really not comparable because the 24/48 hour schedule does not apply to them (Employer Exhibit 8,N).

The Employer offered no reasons from current practice for modifying the former Sections 20.2 and 20.3 (covering holiday pay and sick leave, vacation, and leaves of absence). Further, the Employer offers no experience of problems in designating holidays which fall on week-ends for the non-continuous operation or non-platoon firefighters. Without a reason for changing existing practices, the Conciliator finds no merit in such proposed changes.

The Conciliator, then, orders the adoption of the Union's proposal for Article 20. Within this order, he would advise the Parties to transfer the Union's proposal into the format which is used in the other tentatively-accepted Articles for consistency in their new Agreement.

ORDER OF CONCILIATOR

ADOPT THE UNION'S PROPOSAL FOR ARTICLE 20, FOUND IN THE UNION'S EXHIBIT UNDER ARTICLE 20 - HOLIDAYS.

6. ARTICLE 29: Duration

POSITIONS OF PARTIES

Both Parties agree on a three year Agreement, with wage adjustments on the Anniversary dates of the Agreement. At issue is the effective date for the three year Agreement. The Union proposes that the "agreement shall become effective at 12:01 a.m. on December 21, 1995 and shall remain in full force and effect for three years until midnight of December 20, 1998." (Union Exhibit under ARTICLE 29 - DURATION OF AGREEMENT). The Employer proposes that the "Agreement shall become effective on the date of the conciliator's award in S.E.R.B. Case No. 95-MED-10-0925, and shall remain in force and effect for a period of thirty-six (36) months from that date." (Employer's Exhibit 7,F).

ANALYSIS AND OPINION

The Issue in Article 29 arises because of the Parties' response to ORC 4117.14,(G),(11). The applicable part of the Statute provides: "Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award;" by mutual agreement, the Parties chose not to wait for "the fiscal year next commencing after the date of the final offer settlement award" as is protected further on in ORC 4117.14,(G),(11). On December 11, 1995, the Parties signed the following Agreement and Notice of Waiver for 95-MED-10-0925. After listing the Parties, this agreement reads:

> The above named parties are currently in negotiations for a successor labor agreement. On November 27, 1995 the parties filed a Notice of Extension of Factfinding with the State Employment Relations Board. That Notice

> extends the statutory period for factfinding until December 15, 1995. The parties anticipate an additional extension, which would unable the State Employment Relations Board to direct the matter to conciliation in calendar year 1995, and the conciliator will not be able to award increases in compensation effective in 1996.
>
> Therefore, the parties waive the restrictions of O.R.C. 4117.14,(G),(11) pertaining to the award by a conciliator of increases in rates of compensation and other matters effective in calendar year 1996. The Employer specifically has no objection to a conciliator awarding increases in rates of compensation and other matters with cost implication effective in calendar year 1996. (Entered as part of Employer Exhibit 1)

Clearly, this Agreement and Notice of Waiver is controlling in this case. Does it uphold the Union's proposal or the Employer's proposal? The Union claims that the intent of the waiver was to make wages retroactive to January 1, 1996. The Conciliator finds two problems with this. First, their proposal explicitly states retroactivity to December 21, 1995. Any date in 1995 clearly exceeds the retroactivity limits in the Agreement and Notice of Waiver. Second, if the Parties had agreed to a specific calendar date in 1996 (like January 1), they could have put this into their agreement on December 11, 1995.

Rather, the Conciliator is persuaded by the testimony of the Employer for interpreting the meaning of the Agreement of December 11, 1995. The Employer claims it did not agree to January 1, 1996 as the date for retroactivity. Clearly, 1995 is rendered invalid by the explicit language of the Agreement and Notice of Waiver - 1996. Absent any specific date in the Agreement to specify the retroactivity date, the Conciliator accepts the logic behind the Employer's proposal. So, of the two proposals, he orders the Parties to adopt the Employer's proposal of retroactivity to the date of the Conciliator's Order. He suggests that the Parties place this date in the language of Article 29 in lieu of the language "the date of the conciliator's award in S.E.R.B. Case No. 95-MED-10-0925."

ORDER OF CONCILIATOR

ADOPT THE EMPLOYER'S PROPOSAL FOR ARTICLE 29, FOUND IN THE EMPLOYER'S EXHIBIT 7,F.

7. ARTICLE 30: Shift Switches

POSITIONS OF PARTIES

The Union proposes an additional Article to treat the use of comp time or vacation time at the initiative of the Firefighters; this proposal includes three Sections. The Employer simply opposes the adoption of this proposal.

ANALYSIS AND OPINION

The Union's proposal carries over and modifies Article 13 of the old Agreement. Section 30.1 treats the use of vacation time (supplementary to Article 19 in the new Agreement already ordered), the use of comp time (supplementary to Article 16 in the new Agreement already ordered), and Section 30.3 deals with required certifications by firefighters seeking shift switches. This Article would preserve practices and customs in place and protected under the prior Agreement.

The opposition of the Employer follows two main paths. First, the Article is not necessary because it is redundant to Articles 19 and 16. True, Article 19 treats vacation time and Article 16 treats comp time. But, Article 30 treats a detail of these two matters not already covered above: namely, the practice of an employee shifting already set schedules with another employee. Under the new Article 19, vacation schedules would be set in March. Article 30 would preserve the ability of a Firefighter to effect a trade, once vacation schedules are set; it also sets out the

procedure to be followed. Under Article 16, "Compensatory time off shall be scheduled and used at a time mutually agreed upon by the employee and the Fire Chief." The Union's proposal in Article 30 further clarifies this provision. The Conciliator agrees that it would be neater if the content of Section 30.1 were incorporated into Article 19 and the content of Section 30.2 were incorporated into Article 16. He has no such power to tidy up the Parties' Agreement. Rather, he sees the Union's proposal as an effort to preserve in the new Agreement some rights of the employees under the old Agreement. The Union claims these switches are seldom used; the Employer does not contest this claim. The Union suggests that the Employer would be rightly concerned by abuses in such switches; but, if that is the case, the Employer can protect against individual abuses of the use of rights without eliminating the rights. Chief Deimling indicated his desire that harmony and camaraderie continue to develop among the Firefighters wherein the personnel know and perform roles; he sees the Union's proposal as inimical to this. The Conciliator understands and applauds any efforts along this line, especially in public services which are so essential and so reliant on team work as are firefighting or paramedic response. But, he fails to see how the Union's proposal is inimical to harmony, camaraderie, and role fulfillment. Even "new wave" personnel practices seem to look favorably upon such practices especially as occasional practices.

As a second line, the Employer opposes the proposal on legal and managerial grounds. The Employer questions the propriety of Section 30.3 under existing law, offering Employer Exhibit 8,O with ¶553.31(d) of Selected FLSA Regulations.

> In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done . . .

Section 30.1 and Section 30.2 explicitly treat the method by which management is to be informed of any switch; these Sections also protect the right of approval or denial by management. Section 30.3 logically is to be read in light of Sections 30.1 and 30.2; to this extent, trades are allowable if personnel are of equal certification. The Employer is not prohibited from turning down the request for other causes.

The Employer expressed opposition to negotiating shift changes. Article 30 does not raise a new topic at the table. As noted above, it treats a topic which has already been negotiated and contained in the Parties' old Agreement. This Conciliator certainly does not expect management to bargain topics which are safely sheltered under a Management Rights clause. But, such is not the case here. To adopt the Employer's proposal means that the Conciliator would order the abolition of workers' negotiated rights under the old Agreement. He finds no reason to do this. So, he rules with the Union's proposal. He would suggest that the Parties renumber this to Article 29 and renumber Duration to Article 30.

ORDER OF CONCILIATOR

ADOPT THE UNION'S PROPOSAL FOR ARTICLE 30, FOUND IN THE UNION'S EXHIBIT UNDER ARTICLE 30.

CLOSING

The above consists in the Conciliator's set of Opinions and Orders on the seven issues at impasse presented to him at a hearing by the Parties. He has applied the criteria in ORC 4117.14,(G),(7) to the materials presented to him by the Parties. He wishes the Parties well as they live out their new Agreement, both the Articles ordered by him and the Articles tentatively

agreed to by the Parties themselves. He wishes them well under their newly structured Agreement. He reminds them of the potential power of their own creation of labor-management meetings under Article 7 to help them continue to build upon and to improve their relationship. Both Parties as well as the residents of the Township would benefit.

May 15 1996

Dated: May 15, 1996

Lawrence I. Donnelly

Signed: Lawrence I. Donnelly
1085 Pinehollow Lane
Cincinnati, Ohio 45231