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STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In the Matter of the Conciliation Proceedings Between:

THE CITY OF BROOK PARK, OHIO	)	Case No. 95 MED 10-0935
	)	
and	)	CONCILIATION AWARD
	)	
BROOK PARK FIRE FIGHTERS	)	Margaret Nancy Johnson
ASSOCIATION, IAFF, Local 1141	)	Conciliator

Introduction

In accordance with Ohio Revised Code Section 4117.14(D)(1), the State Employment Relations Board appointed Margaret Nancy Johnson conciliator to resolve the bargaining impasse between the parties herein by selecting on an issue by issue basis from between each of the final settlement offers submitted. These conciliation proceedings convened at 10:00 a.m. on April 26, 1996, in a conference room of a municipal building in Brook Park, Ohio. Marc J. Bloch and Mark F. Humenik, Attorneys with the law firm of Duvin, Cahn and Hutton, presented the position of the City of Brook Park, hereinafter "City." Also in attendance on behalf of the City were Neal J. Donnelly, Chief of Fire; Eileen McNamara, Commissioner, Human Resources; and Glenn Krueger, Captain, Fire Department. David P. Byrnes, President, Northern Ohio Fire Fighters Association, represented the Fire Fighters, hereinafter "Union," in these proceedings. Also present for the Union were James P. Astorina, Local President; Edward J. Dargay, William J. Tyler, and Terry Rinas, members of the Local Negotiating Committee.

Located southwest of the City of Cleveland, Brook Park is a suburb having the responsibility of maintaining and administering fire prevention and suppression as well as paramedic services for the residents and businesses in the community. Fire safety service and paramedic care is a responsibility of the bargaining unit comprised of approximately 37 firefighters up to the rank of lieutenant.

Since the inception of the Collective Bargaining Act the parties herein have functioned under the terms of a labor agreement, the most recent of which expired on December 31, 1995. Negotiations for a successor agreement did not result in a contract and on February 23, 1996 a fact-finding hearing convened pursuant to state law. Fifteen items were presented for consideration to the fact-finder who issued his recommendations on March 3, 1996. Thereafter, the Union rejected the report of the fact-finder.

Through additional negotiations, the parties reduced the

number of issues in dispute to eight (8). In compliance with the Ohio Administrative Code 4117-9-06(E) prior to the conciliation hearing each party submitted to the Conciliator its final settlement position on those eight issues.

### Issues

The issues which have been presented for resolution through conciliation proceedings are: Compensatory time, Vacation, Holidays, Wages, Paramedic Manning, Residency, Nine-Man Staffing, Me-Too Clause.

### Position of the Parties

Compensatory Time. The City proposes the elimination of compensatory time as an alternative to overtime. Current employees with accrued compensatory time as presently provided for in the agreement between the parties would be able to use the same. The Union seeks to maintain the current language without modification.

Vacation. The City proposes modifying current language by limiting vacations to one employee per shift. The Union seeks to maintain the current language.

Holidays. The Union proposes additional holiday hours for employees while the City proposes maintaining the current contract language.

Compensation. The City proposes 4%, 3% and 3% wage increases for 1996, 1997, 1998 respectively. The Union seeks a 4% wage increase for each year of the contract.

Paramedic Manning. The City proposes eliminating contract language on paramedic decertification and adding language which would permit decertification if it does not result "in the City having insufficient employees to perform all paramedic functions." The Union opposes the City proposal because of the lack of specificity as to when decertification will not be permitted.

Residency Requirement. The City proposes maintaining current contract language. The Union proposes permitted employees to live within twenty miles of the city.

Nine Man Staffing. The Union proposes maintaining current language on nine man staffing while the City seeks to remove this letter of understanding from the Agreement

Me Too Clause. The Union proposes maintaining current language while the City seeks to eliminate the letter of understanding from the agreement.

### Discussion

In rendering her award in these conciliation proceedings the hearing office has taken into consideration those factors specifically referenced in O.A.C 4117-9-06(H) which include:

1. past Collective Bargaining Agreements;
2. comparison of issues submitted for 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 standards of public service;
4. the lawful authority of the public employer;
5. the stipulations of the parties;
6. such other factors not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of 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.

In addition to the above criteria and following a standard established by conciliators operating under the terms of the Ohio Collective Bargaining Act, this hearing officer has given considerable weight and consideration to the report and recommendations of the fact-finder. On the basis of these factors the Conciliator issues the award which follows.

Three of the matters in contention involve letters of understanding upon which the parties have previously negotiated. The residency requirement, nine man staffing and the me-too clause constitute prior contractual commitments. In each of these matters, it was the recommendation of the fact-finder to maintain the contract language. Finding the recommendations of the fact-finder reflect the bargaining history of the parties this conciliator affirms the recommendations of the prior hearing officer.

Additionally, the conciliator affirms the recommendations of the fact-finder pertaining to elimination of compensatory time with a grandfather clause permitting current employees to use accrued time. The recommendation of the fact-finder reasonably takes into consideration the fiscal and operational needs of the employer as well as a concern for current employees with accrued time. While enabling the City to control overtime costs, the recommendation does not deprive current employees of an earned benefit.

Finally, the conciliator affirms the recommendations of the fact-finder pertaining to wage increases for the three years of the successor contract. The 4%, 3% and 3% increases recommended by the fact-finder for each year of the contract is consistent with wage increases in comparable communities. In the absence of flagrant error on the part of the fact-finder in making this recommendation, the conciliator is constrained

to give some considerable weight to his findings. Accordingly, the conciliator awards the 4%, 3% and 3% wage increases recommended by the prior hearing officer.

While upholding the recommendations of the fact-finder on the Letters of Understanding, wages and compensatory time, the conciliator deems it appropriate to vary from the fact-finder on the matters of holidays, vacations and paramedic decertification. In the absence of evidence of a need to modify contract language controlling managerial matters, this conciliator is of the opinion that current contract language generally ought to be maintained. The modus operandi of an entity evolves from both bargaining and operational needs and reflects what the parties have mutually worked out to serve their respective purposes. Generally, then, only when one party can demonstrate that the method needs modification ought a hearing officer to interfere with established policies. This analysis justifies not only maintaining the Letters of Understanding but extends also to the vacation and holiday provisions of the contract. In the absence of evidence of a need to change vacation scheduling or holiday provisions, this conciliator is of the opinion that current contract language ought to be maintained.

Both parties agree that modification to the paramedic decertification provisions are appropriate. Apparently evolving from the actual application of the article, modifications are proposed by the Union as well as the City. While the issue was addressed by the fact-finder, there appears to be an ambiguity in his recommendation leading this hearing officer to now consider the matter de novo. Although the Union is willing to concede to the deletion of language permitting current paramedics to decertify after nine years and new employees after fifteen years of service, the Union seeks some specificity as to when the city may be authorized to disallow decertification. In the City's proposal, a proviso justifying rejection of decertification on the basis of "insufficient employees to perform all paramedic functions" gives broad discretionary authority to the city on this matter. In its proposal the Union seeks to very specifically identify when decertification will not be permitted. Accordingly, the Union seeks to limit refusal of decertification to when the same will result in an excessive amount of overtime. Since "insufficient employees" will necessarily incur "excessive overtime," the conciliator is of the opinion that the Union proposal provides what the parties herein seek to accomplish. The Union language adequately authorizes managerial control over decertification while providing the Union with specificity as to when decertification may be refused.

## Award

The Conciliator issues the following award:

1. Letter of Understanding: Residency Requirement.  
The Conciliator awards the City's offer to maintain the current language.
2. Letter of Understanding: Nine Man Staffing.  
The Conciliator awards the Union's offer to maintain the current contract language.
3. Letter of Understanding: Me-Too Clause.  
The Conciliator awards the Union's offer to maintain the current contract language.
4. Article XII: Vacations.  
The Conciliator awards the Union's offer to maintain the current contract language.
5. Article XIII: Holidays.  
The Conciliator awards the City's offer to maintain the current contract language.
6. Article X: Overtime  
The Conciliator awards the City's offer to eliminate the compensatory time but to permit current employees with accrued time to use the same.
7. Article XIV: Paramedic Manning  
The Conciliator awards the Union's final proposal to delete language in Article XIV, Section (C) (4) authorizing decertification after nine years and after fifteen years for employees hired after January 1, 1994, and replacing the deleted terms with language granting the opportunity to decertify based on seniority of paramedic certification "provided that this procedure will not result in an excessive amount of overtime. However, this process shall have no bearing on the status of EMT cards which will be maintained in accordance with Department policy."
8. Article XIV: Wages.  
The Conciliator awards the City offer of wage increases of 4%, 3%, 3% for each of the three years of the contract.

Respectfully submitted,

Margaret Nancy Johnson  
Conciliator

**SERVICE**

A copy of the foregoing Conciliation Award has been sent by regular mail this 6th day of May, 1996 to: Mr. David Byrnes, President, Northern Ohio Fire Fighters, 17703 Grovewood Avenue, Cleveland, Ohio 44119-3100; Marc J. Bloch and Mark F. Humenik, Attorneys at Law, Duvin, Cahn & Hutton, Erieview Tower, 1301 East Ninth Street, Cleveland, Ohio 44114; G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.

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Margaret Nancy Johnson  
Conciliator