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STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In the Matter of Conciliation Proceedings between:

CITY OF NEW PHILADELPHIA	)	CASE NO. 96 MED 09 0793
	)	
and	)	<u>AWARD</u>
	)	
NEW PHILADELPHIA FIRE FIGHTERS,	)	Margaret Nancy Johnson
IAFF LOCAL 1501	)	Conciliator

Appearances

For the Association:

Kendall Bick, Local President  
John O'Neill, District Vice-President  
Mike Pearch, Committeeman  
Brian Graham, Committeeman  
Jim Parrish, Committeeman  
Robert G. Smith, Committeeman

For the City:

Robert J. Tscholl, Esq.  
Gregory E. Erb, Mayor

Background

Fire suppression and emergency response personnel employed by the City of New Philadelphia, hereinafter "City" or "Employer," are represented by the International Association of Fire Fighters, hereinafter "Association" or "Union." The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 1996. Unable to negotiate a successor contract, the parties engaged in factfinding. The recommendations of the factfinder which were issued on January 9, 1997 were rejected by the City. Pursuant to Ohio Revised Code Section 4117.14(D)(1) the State Employment Relations Board appointed Margaret Nancy Johnson conciliator to resolve the impasse by selecting on an issue by issue basis from between each of the parties final settlement offers.

In compliance with Administrative Code Rule 4117-9-06(E) the parties submitted final position statements in advance of the conciliation hearing scheduled for February 27, 1997. The parties convened on the date referenced and offered evidence and argument in support of respective positions on the disputed issues.

### Issues

The issues remaining in dispute and presented to the Conciliator for resolution include wages and vacation schedules.

### Criteria

In rendering her award the conciliator has taken into consideration the factors outlined in Ohio Revised Code Section 4117.14(G)(7).

### Positions of the Parties

#### I WAGES

The Union is seeking a 3 per cent raise for each year of the contract. Average per centage wage increases awarded to safety forces in Ohio pursuant to impasse proceedings since 1993 exceed 3 per cent. Moreover, the Union demonstrates that the wage per hour paid to New Philadelphia Fire Fighters is the second lowest paid to fire fighters in the same geographic region. To further justify its demand, the Union submits graphs evidencing the dramatic growth in calls per day, EMS transports, as well as figures establishing urban growth and ability to pay.

The City offers the Union a 2.5 per cent increase, the same percentage negotiated for the bargaining unit represented by AFSCME. Considering inaccuracies in the consumer price index, the City argues that a 2.5 increase is an adequate cost of living adjustment.

#### II VACATION

The City seeks a new vacation schedule for employees hired subsequent to January 1, 1997. Endeavoring to bring fire fighters more in line with vacation benefits provided in the private sector, the City argues the present vacation entitlements are far in excess of what is fair and reasonable. While no current employee would incur a loss of a benefit by reason of the City proposal, new hires would find their vacation schedules more consistent with those enjoyed by the average citizen and tax payor served by fire fighters.

The Union seeks to maintain its present vacation schedule. A comparison with comparable units establishes New Philadelphia firefighters among the highest in the area for total hours on the job. Moreover, New Philadelphia Police work less hours and have more vacation privileges than the Fire Fighters. Finally, firefighters spend more hours on the job than private sector employees, justifying the way in which vacations for firefighters are scheduled.

### Discussion

The two issues presented to the Conciliator for resolution were addressed by the Factfinder. His recommendations were based upon evidence submitted to him by the parties and upon efforts at mediation. There is no contention in this proceeding that the factfinder erred in his consideration of the evidence submitted. Nor is there any suggestion that new evidence not

previously available or properly reviewed by the factfinder is now presented. The report and recommendations previously issued are found to be consistent with the statutory criteria set forth in Ohio Revised Code 4117. Accordingly, in compliance with general practice among conciliators, "great weight" has been ascribed to the report and recommendations of the factfinder in the present proceeding.

The report, however, is not binding upon the conciliator, and the statutory impasse proceedings contemplate the conciliator will independently review the issues presented. In rendering the award which follows, then, the Conciliator has analyzed the arguments presented with the supporting data and information submitted by the parties to determine whether or not a result different from that of the factfinder is warranted.

Considering the issue of wages, the Conciliator is of the opinion that the 3 per cent wage increase sought by the Union and recommended by the factfinder is appropriate. While recent reports question the accuracy of the consumer price index, this bargaining unit should not be held to a cost of living adjustment different from that presently applied in contract negotiations across the state. In the absence of any contention of inability to pay, a wage increase consistent with trends in collective bargaining is reasonable and proper. Moreover, a review of comparables establishes that the 3 per cent increase conforms to increases provided to safety forces, and specifically, firefighters in recent negotiations. Finally, the increase proposed by the Union merely maintains the rank of New Philadelphia Firefighters at the lower end of wage rates paid by comparable communities. In summary, the conciliator finds that the 3 per cent increase is consistent with statutory criteria.

Addressing, next, the matter of vacations, the conciliator sustains the position of the Union. The vacation schedule presently in the Agreement between the parties has been in place since 1986 when the Firefighters forewent a wage increase. In order to take back a benefit previously granted, it appears to this conciliator that there must be some overriding justification for doing so--financial hardship, scheduling problems, manning shortages. Rather than argue hardship, however, the City contends that the ten year-old vacation schedule of firefighters is unreasonable. In support of its argument, the City compares the vacation hours of firefighters with vacation hours of the private sector, and asserts that the time off granted to firefighters is excessive.

Section 4117 of the Ohio Revised Code warrants a "comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees." The language on criteria, however, identifies the private employees as those "doing comparable work" and further provides that consideration be given to factors particular to the bargaining unit. A comparison of the private sector with firefighters is problematic due not only to the unique work schedules of firefighters but also due to the service rendered.

Indeed, vacation scheduling among the safety forces typically tends to be distinct due both to the non-traditional hours worked and also to the essential nature of the service performed. In other words, vacation scheduling has arisen as a means of compensating this classification of employee for working around the clock, for working holidays, for availability in life-threatening situations, and for potentially stressful and hazardous duties. Accordingly, this hearing officer is of the opinion that vacation comparisons for this unit must be with like units and not with the private sector.

A review of comparable units establishes that the vacation time currently provided to the firefighters of New Philadelphia is not at all excessive or unreasonable. On the contrary among other communities having similar characteristics, New Philadelphia provides a standard vacation schedule. In addition, it must be noted that this fire department does not provide the Kelly days granted to other units for greater flexibility in non-traditional work schedules.

The conclusion reached by this conciliator is that there is no overriding justification or need to change the vacation schedules currently in the collective bargaining agreement. For the past ten years the City and the firefighters have worked with the present schedule without apparent problems either financial or administrative. The conciliator is not persuaded there is a need to release the City from a bargain previously struck or to take away an entitlement negotiated by the parties. As Article 40 of the Collective Bargaining Agreement reasonably compensates employees for hours on the job and for non-traditional work weeks without interfering with managerial prerogatives or fiscal responsibility, it ought not to be changed.

Award

I Wages: The Conciliator awards the position of the Union.  
3% wage increases for each year of the contract.

II Vacation: The Conciliator awards the position of the Union.  
Current contract language.

Respectfully submitted,

  
Margaret Nancy Johnson

SERVICE

A copy of the foregoing Award has been issued this 13th day of March, 1997, by Federal Express to Robert J. Tscholl, Attorney at Law, 740 United Bank Building, 220 Market Avenue South, Canton, Ohio 44702-2181; Kendall L. Bick, President, 518 Beaver Avenue N.E., New Philadelphia, Ohio 44663; and G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.

  
Margaret Nancy Johnson