

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of)
Conciliation Between:)

SOLON FIREFIGHTERS ASSOCIATION,)
IAFF, LOCAL 2079)

-and-)

CITY OF SOLON)

Case No. 97-MED-05-0596

Jonathan I. Klein,
Conciliator

FINAL OFFER SETTLEMENT AWARD

APPEARANCES

For Union:

Susannah Muskovitz
Attorney for Union
Charles (Tim) Taylor
President, Local 2079
Michael Sager
Firefighter
Eric Ekstrand
Firefighter
Al Benedict
Firefighter

For Employer:

Joseph F. Lencewicz
Labor Relations Rep. for City
Chris Lencewicz
Labor Relations Rep. for City
David A. Morris
Human Resources Coordinator
Dennis Tellep
City Councilman

Date of Issuance: September 7, 1998

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I. BACKGROUND

This matter came on for hearing on May 1, 1998, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board (SERB) on February 24, 1998, pursuant to Ohio Rev. Code Section 4117.14(D)(1). The hearing was conducted between the City of Solon (hereinafter "City" or "Employer"), and the Solon Firefighters Association, IAFF, Local 2079 (hereinafter "Union" or "Local 2079"), at Solon City Hall, 34200 Bainbridge Road, Solon, Ohio.

A fact-finding hearing took place on November 11, 1997, and the fact-finder issued his report and recommendations on January 26, 1998. The recommendations were rejected by the City and accepted by the Union, and as of the conciliation hearing the parties remained at impasse on six issues pertaining to overtime, paramedic pay, rank differential, vacations, holiday schedules and holiday premium pay. The present bargaining unit consists of all full-time members of the fire department, including approximately thirty-two firefighters, seven lieutenants and three captains. The fire chief and senior captain are excluded from the bargaining unit.

II. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, from between the parties final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code § 4117.14(G)(7)(a)-(f), and Ohio Admin. Code § 4117-9-06(H)(1)-(6). These criteria consist of the following:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties;
- (6) Such other factors, not confined to those listed in this section, 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.

III. FINDINGS OF FACT AND OPINION

Issue No. 1: Article 6(A)(2) - Rate of Pay for Overtime Calculation

The City's final offer proposes to change the basic hourly rate of pay for purposes of overtime calculation from the current method of dividing an employee's annual salary, including longevity, by 2080 hours. The City's proposal is that effective January 1, 1999, the overtime calculation should be based on the actual number of hours the employee works per year, 2,756, rather than the current method based on an employee working forty hours per week. The calculation for any employee within the bargaining unit scheduled to work a forty-hour week will continue to be based on 2,080 hours.

The City described this issue and all others before the conciliator as economic in nature, and offered as background for all issues what it deemed to be the comparable, contiguous communities. (City Ex. 1). It highlights Twinsburg, Aurora, Bedford Heights, Bedford, Maple Heights, Garfield Heights, Warrensville Heights and Beachwood. The parties have already agreed to increase the base wages by three and one-half 3½ percent in 1998, 1999 and 2000. It offered a 1997 wage comparison for firefighters and lieutenants in each of these jurisdictions at the top rate, as well as percentage increases in the base wages. (City Exs. 2 and 3). In terms of current wage/benefit costs of the current agreement, the City emphasizes what it terms "non-productive costs" of pay for time not worked such as longevity, pension, workers' compensation, medical insurance, vacation and holidays. This cost amounts to 60.7 percent of total wages. (City Position Statement, Tab 3).

Moreover, the City urges that a comparison of the overtime calculation to comparable jurisdictions reveals that only three of the nine cities, including Solon, calculate overtime using 2,080 hours, rather than hours worked. (City Ex. 4). The cost impact would not affect employees who have retired this year as demonstrated by City Exhibits 5 and 6. In the case of a retired captain, the payout was made based upon an hourly rate of \$23.98, which resulted in a total payout amount of \$41,976.16 for vacation earned and accrued, accrued longevity, sick leave, and holidays earned but unused. This figure is to be compared with the \$32,052.28 that would have been paid had the City's proposal been in effect -- a difference of almost \$10,000. Another retiree was paid \$46,685.41, rather than \$35,456.64 under the City's proposal, most of which is based on the hourly rate of pay for sick leave which is accrued, but unpaid.

However, when combined with a 3½ percent base wage increase and increase in rank differential of ½ percent as proposed, the City would owe the two retirees an additional \$1,679.05 and \$1,867.30 each. (City Exs. 7 and 8). Finally, when evaluating the four bargaining unit employees who could retire effective April 30, 1998, the City's proposal represents a total retirement cost savings of \$22,562.27 for those four individuals alone. (Revised City Ex. 9).

The City argues that the fact-finder utilized a "results oriented" calculation for his decision on overtime based on the fact this calculation was premised on more than twenty-five years of history between the parties, including collective bargaining agreements, and the City's ability to afford the recommendation. In the City's opinion, the fact-finder's report is inconsistent with the statutory criteria. On other issues, the fact-finder relied primarily on comparability and when that criteria favored the Union he recommended the Union's position. This rationale should be rejected. Ability to pay should not be a shield to change in order to meet current events. The 2,080 hour base is predicated on the bargaining unit members working a forty-hour work week, except for those employees assigned to the fire prevention bureau. Indeed, the anticipated retirement costs for those employees within the City's fire department who were eligible to retire as of April 30, 1998, would cost the City \$91,984.59; under the City's proposal this figure would drop to \$69,422.32.

The City also rejects the fact-finder's acceptance of the Union's position that overtime is relatively constant, and overall low in comparison to the department's total budget. To the extent that the fact-finder's report indicates a decrease in the use of overtime by members of

the department any such conclusion is erroneous. (City Ex. 11). As demonstrated by a letter from the fire chief to the City's Safety/Public Properties Committee, City Exhibit 10, various injured and absent employees generated an additional \$36,000 in overtime costs. David Morris, human resources coordinator, testified that City Exhibit 10 was directed more toward manpower requests. A copy of this letter was forwarded to the finance committee, and as of the date of hearing no adjustments to overtime costs had been made as the amount required might increase even more. City Exhibit 12 represents actual overtime expenditures for 1995, 1996 and 1997 for firefighters, and through April 24, 1998 of the current year. He emphasized that because the department is on a nineteen-day schedule employees are permitted discretionary use of six off days, rather than taking them when they fall. Consequently, the impact on overtime will be increased when employees give notice of their intent to retire. A two or three-year history is insufficient to predicate overtime use, and the corresponding rise in costs. The overtime rate based upon 2,080 hours is both artificial and outlandish.

The Union described the background of the current negotiations commencing with a reopener in the third year effective May 15, and the expiration of the collective bargaining agreement on December 31, 1997. Similar language has been agreed to for the successor agreement in order to commence negotiations early, end negotiations early and to avoid the end-of-the-year rush. The length of the negotiations here is "crazy," particularly in light of the City's request for givebacks and the minuscule differences on the remaining two issues. The contract for the police settled quickly and amiably, and included increases in base wages of 3.5 percent for each year, receipt of ten holidays (which has been in place for the last twenty-five

years), rank differential which was increased in the last agreement by 1.5 percent, and overtime compensation if employees actually work five of the major holidays. Any other changes were minimal, and the police and City settled their differences.

Here, the Union agreed to a 3½ percent wage increase — a ballpark increase which was reasonable. The Union urges that this hearing is neither completely de novo nor an appellate forum where the fact-finder's report must be shown to have reversible error. The fact-finder's report is very relevant, and he rejected the requested givebacks by the City. He also looked at a rank differential and paramedic pay and his recommendation on those issues was somewhere in the middle. It was a modest award and well reasoned, but the City rejected it because of the rationale, not the result. Unlike most other conciliations, there is no reason that the City, on the facts, should prevail on any issue before the conciliator. The Union modified downward its proposal on rank differential and paramedic pay to meet the fact-finder's recommendation, and its position is less than it was before.

On the overtime rate, the firefighters here work 2,756 hours per year, except for the fire prevention bureau where the employees work 2,080. The overtime rate in effect today means that the person working in fire prevention makes the same overtime rate as the firefighter working twenty-four hour shifts. If a firefighter and police officer are working overtime on any given emergency, the contract provides that each is paid the same amount based upon the 2,080 hour standard. On average, most fire departments in Cuyahoga County do calculate the overtime rate differently, although not all departments. However, it is a part of wages and has been in effect for twenty-five years in the City. There has been no evidence

produced by the City of a single city where the overtime rate has ever been changed. It is a question of money and the salaries paid to members of the bargaining unit, and the City is at the top in terms of revenue. The unexpected event which might trigger extra costs in terms of overtime is just as likely to occur in other jurisdictions as in the City, but the difference here is the City's financial ability to deal with the extraordinary incident. This argument should not suffice to cut the pay of the firefighters as the City proposes.

The Union calculates that the financial loss to an individual firefighter, on average, would result in a reduction in wages of \$659.00 — a 1.46 percent wage reduction in 1998, thereby reducing the 3.5 percent agreed upon wage increase to slightly more than 2 percent. No other city employee is receiving less than a 3.5 percent increase in 1998, and overtime is not used excessively by the department.

In terms of comparability, the Union initially examined twenty-seven fire departments. (Union Ex. A, at 11-12). It reasons that the size of the departments must be considered. The City has forty-three firefighters in the department, compared with Aurora in Portage County offered as a comparable by the City which has only eight firefighters. The fact-finder rejected this comparable. The same can be said of Twinsburg in Summit County which has only eighteen full-time firefighters. Cities such as Warrensville Heights, Bedford Heights, Bedford, Beachwood, Maple Heights, Garfield Heights within the county are worth examining, so that from the outset the City's comparables are unfair, biased and unreasonable. In addition, the City's argument consists of proposing a decrease in retirement buyouts due to

placement of the sole female firefighter in the department on off duty status for the birth of her child. (City Ex. 10).

The Union further submits that City Exhibit 12 which summarizes overtime in the City's fire department overstates the overtime usage in that it includes overtime for schools, mandatory meetings, and special assignments and shift maintenance. The chief has discretion in the scheduling of on-duty training. Testimony from the Union established that in 1996 four employees were injured on duty, one of whom retired after a long period of treatment on sick leave. That same year two other employees retired. In March 1997, two firefighters retired and they have already been replaced with one employee who needs training, but the other new hire did not require training. In sum, the City was not hurt financially by the retirements and the hire of new employees at lower rates of pay which proved cost-effective overall. Moreover, in the case of the female firefighter, the Union and City arranged her holidays and vacations to cover all but two shifts during her maternity leave — overtime is not an issue. Finally, the injured captain mentioned in the March 31, 1998, letter from the fire chief was replaced by a lieutenant from the fire prevention bureau at no overtime expense.

The Union agrees that the overtime calculation does have an enormous impact upon the employees who are retiring, particularly since they earned their compensation with certain expectations. (Union Ex. C). Thus, in the case of one firefighter who recently retired with a base rate of pay at \$49,887.12, and using the applicable sick leave buyout provisions under the current agreement (there is a two-tier payout depending on whether an employee is a pre-1989 or post-1989 hire), the City's proposal would have cost the retiree \$8,931.72 in his sick leave

buy out payment.¹ Moreover, the firefighter who never uses sick time and reports to work all the time thereby having the greatest sick time on the books, suffers the maximum loss. None of the four givebacks the City has placed on the table are justified, and none of the other union and non-union City employees have suffered similar reductions.

Moreover, the Union has cooperated with the City when a reduction in costs is warranted. For example, in 1994 the City's medical plan premiums were generating a considerable expense to the City, and at the negotiating table the Union agreed to move to a managed care plan with specific medical providers. (Union Ex. D). Because the Union so agreed to this change despite pressure from its members and other bargaining units, the police and all other employees consented to the change in the medical plan generating "millions of dollars in savings" by the City's own public statements. This is an illustration of the Union's willingness to take action when justified, and now only three years later the City seeks significant cuts in benefits without financial justification for doing so.

Information compiled from the City also proves that the City's overtime costs as compared to its fire department budget is far less than those percentages in the fire departments both parties listed in their comparables: Westlake, Strongsville, Brookpark and Willoughby. (Union Ex. E). Thus, even with Solon's favorable overtime rate relative to these other comparable communities, the total dollars spent on overtime is less. (See also, Union Ex. A at 11-12). Only two cities out of twenty-seven in 1997 had more revenue per

1. There are sixteen employees who are pre-1989 hires, twenty-six post-1989.

capita than the City. Since the City has revenue, the Union cannot understand why the City talks about givebacks when there is no economic justification for the givebacks, and the benefits the City seeks to cut, such as vacation and overtime, have been constant for the last twenty-five years.

Finally, the Union offered evidence of the overtime cost comparison per employee based upon the average hours worked by each employee over the last three years of 76.64 hours per year, as determined by the current overtime calculation using 2,080 hours, and the City's proposal based upon 2,756 hours. (Union Ex. B at 25 replacement). The difference in cost taking into consideration the 3.5 percent increase is \$5,429.76 more in 1998, as compared with the City's proposal which would generate a savings of \$20,793.01.² Using 1997 as a base, the total cost over the term of the agreement in overtime for the Union's position is \$25,864, whereas the City's proposal would generate savings of \$51,923. The City argues these figures do not take into account current conditions of overtime use relative to employees off due to injury or childbirth.

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2. This figure takes into account the fact that those employees in the fire prevention bureau continue to have their overtime rate determined by 2,080 hours. Presently, overtime is calculated at the rate of one and one-half times the basic hourly rate of pay, including longevity, fire prevention bureau bonus pay and paramedic pay. In other words, the basic hourly rate of pay includes the annual salary, longevity, paramedic and fire prevention bonus pay divided by 2,080. (Union Ex. B at 15).

Last Best Offer

During the presentation at the conciliation hearing on this issue and two other issues, the City requested the right to file a post-hearing brief. The request was granted, and the Union was provided an opportunity to file a reply brief. In its brief, the City accused the Union of making inflammatory, fabricated and emotionally laden statements "to divert the Conciliator from the facts." (City's post-hearing brief at 1). In addition, the City reiterated that its proposal is supported by evidence that of eight other communities, six base overtime on the actual number of hours worked. (City Ex. 4). To ensure that the effects of the City's proposal are minimized for the 1998 calendar year, its proposal is effective January 1, 1999. Further, it criticizes the Union's use of the City's expenditure on overtime costs as a percentage of budget in that it fails to consider issues of manpower levels or workloads. Since overtime cannot be controlled, the focus must be on how employees are paid when overtime results. Due to the fact the City's firefighters are paid overtime at a rate well above average, the rate should be adjusted downward consistent with the City's proposal. Finally, any notion that the payout of sick leave at retirement should be a consideration in this matter is an inappropriate factor to consider. Sick leave is to assist those injured or who become ill at work, and such sick leave was earned at rates much lower than the current hourly rate.

In its reply to the City's post-hearing brief, the Union maintains that the City's brief is so inflammatory and unprofessional that it should be dismissed out of hand. Accordingly, as to all arguments raised by the City in the post-hearing brief, the Union relies on its position statement, and the testimony and documents presented at hearing.

This conciliator has remarked in the context of other disputes of this nature that the fact-finder's report is to be given such weight as warranted by the depth of the fact-finder's rationale and analysis, and whether the report appears reasonable based upon all the evidence and statutory criteria. Additional consideration must be given to any changes in position by either party subsequent to the report and recommendation, and other probative evidence elicited during the conciliation hearing itself. The conciliator does not sit as an appellate court which will uphold the fact-finder's report under all circumstances except in the case of clear and harmful error.

The fact-finder's twenty-eight page report is well-reasoned and reflects consideration of the statutory criteria, including the selection of comparable communities. In the selection of six communities, Brooklyn, Brook Park, North Olmsted, Strongsville, Willoughby and Westlake as adequate for the purposes of making external comparisons, the fact-finder noted, and the conciliator concurs with the following statement:

The choice of representative communities is not easily made.

This Fact-finder believes that ideally comparable communities ought to be located nearby in the same labor market and county, be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with similar need for fire protection and paramedic services, and maintain similarly sized Fire departments.

Unfortunately, developing a list of comparable communities which meet all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from a community which does meet the criteria. Id. at 6 -7.

In his findings on the issue of overtime, the fact-finder noted not only did the City not plead "inability to pay," but also that its financial condition is strong with increasing revenue streams and significant unencumbered balances in its General Fund -- a fact not disputed by the City. He concluded that the City requests a "giveback" in the overtime compensation earned by the firefighters as a cost-cutting measure generated by concern over future economic conditions. In rejecting the City's proposal, the fact-finder noted that these concerns were unjustified.

During the conciliation hearing, the City made light of the fact-finder's notation that the total number of overtime hours within the department has been decreasing, and that compared to other fire departments, the City's overtime cost expressed as a percentage of the department's budget at four (4) percent is less than the comparable communities. The conciliator agrees with the City when it states that factors such as manning levels and scheduling play an important role in minimizing overtime, but to describe the fact-finder's rationale for maintaining the current method of overtime compensation as "results oriented" and inconsistent with the statutory criteria is a mischaracterization of the fact-finder's report and recommendation. The fact that the method of calculating overtime compensation and the firefighters work schedules have coexisted for more than twenty-five years is clear and convincing evidence of one statutory criterion. The cost of overtime analysis is additional evidence that the City is not engendering excessive expense for overtime relative to other comparable fire departments. The brief historical overview of overtime costs reveals such costs have remained relatively constant. (City Ex. 11).

Nor can it be said that the fact-finder ignored the fact that the majority of the comparable fire departments base overtime calculations on the actual scheduled hours, and he specifically noted that the City has “traditionally been more liberal than most cities in providing overtime compensation to its firefighters.” Id. at 13. He further noted that the fire chief maintains some control over overtime through approval of scheduling of vacations and other days off, and may reschedule training which accounts for 25 percent of total overtime.

There was little offered at the conciliation hearing to alter the sound conclusion reached by the fact-finder in this case. Clearly, the overtime calculation utilized is not the norm among the comparables; however, this does not mean that due to this factor alone the current contract language must be changed. There has been no evidence of changing circumstances during the twenty-five years (or more) that such language has been in existence which warrants the modification proposed by the City. Indeed, the Union is correct to note that the proposed change in overtime calculation represents a cost to the bargaining unit members equivalent to a 1.5 percent reduction in the 3.5 percent agreed upon wage increase, and the impact on payouts at retirement would be profound as demonstrated by City Exhibits 5 and 6.³

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3. In the two examples of employees who retired this year, the City’s proposal would have resulted in reductions in retirement payouts of \$9,923.88 and \$11,228.77, respectively. The conciliator is of the opinion that such a change does constitute a “giveback” in the sense that there appears to be no quid pro quo for the City’s proposal other than its desire to reduce expenditures by elimination of a current and long standing economic benefit to members of the bargaining unit which it clearly has the ability to finance and administer.

While the total overtime costs have fluctuated somewhat for the years 1995-1997, the fact remains that as a percentage of the fire department budget overtime has remained relatively constant. (City Exs. 11 and 12; Union Ex. E). The City urges that unexpected contingencies have caused overtime use to accelerate in 1998 through April 24, 1998. (City Exs. 10 and 11). However, overtime use is best viewed in a historical perspective, for barring a major catastrophe or extraordinary event, the only constant in the prediction of overtime is that unexpected events will occur which may cause a need to employ overtime to meet the normal scheduling and manning requirements. Even the City's human resources coordinator recognized that the letter from Chief Zupan, City Exhibit 10, is more concerned with manning levels than with overtime per se. However, counsel for the Union goes too far in asserting that City Exhibit 10 was offered to justify the proposed change in the overtime calculation on the basis that the department's only female firefighter became pregnant.

In conclusion, the conciliator concurs with the fact-finder's rejection of the City's proposal to change Article 6, Section A(2) relative to the basic hourly rate of pay for the purposes of overtime calculation, and the current contract language shall be maintained.

Issue No. 2: Paramedic Bonus - Article 6(J)

The current contract language provides for the following paramedic bonus:

- J) Paramedic Bonus
 - 1) Employees who attain and maintain certification as an Ohio EMT-Paramedic, and perform paramedic duties shall receive, in addition to all other compensation, an annual bonus as follows:

January 1, 1989 - \$600/year (50/month)
January 1, 1990 - \$720/year (60/month)
January 1, 1991 - \$840/year (70/month)

- 2) The paramedic bonus shall be paid in equal monthly payments and if for any reason the employee fails to perform paramedic duties, the payments shall be discontinued.

The Union submits that when the six comparable communities are analyzed for total salary (absent longevity payments) in the year 1997, including the paramedic premiums, the City ranks last: Willoughby, \$48,348; Strongsville, \$44,722; North Olmsted, \$44,585; Westlake, \$44,117; Brooklyn, \$43,700; Brookpark, \$43,624; and finally Solon, \$43,610. (Union Ex. A at 5). In terms of ranking strictly based on paramedic pay, four of the six comparable jurisdictions rank higher. (Union Ex. A at 7). At fact-finding, the Union requested paramedic pay equal to 4 percent of the employee's annual salary. This was rejected by the fact-finder and he recommended an amount slightly more than the City's proposal. The Union urges the selection here should not be lower than recommended.

In contrast, the City urges this issue is not before the conciliator because of the money at issue, but rather it is the principle which is at stake. The City acknowledges the paramedic pay is low, but rejects the fact-finder's recommendation as not making sense — it is "totally one-sided." In fact, the recommendation improperly rounded up the payments to comport with a subjective view of the scheduled paramedic bonus payments. It proposes the annual paramedic bonus should be, as follows:

January 1, 1998 — \$1,000/year
January 1, 1999 — \$1,050/year
January 1, 2000 — \$1,100/year

The fact-finder reached the conclusion that paramedic duties and certification did not change so as to warrant any special consideration. He rejected the Union's proposal to convert lump sum payments into percentages of employees' annual salary as discriminating between employees performing the same functions based on relative longevity, a practice not to be included in the collective bargaining agreement. He further found the Union's "total compensation" argument unpersuasive due to the failure to include longevity payments, together with the base pay and paramedic bonus.

Last Best Offer

The conciliator differs only slightly from the fact-finder's findings and recommendation relative to the adjustment made to the City's proposal on paramedic pay which he deemed the most reasonable. The basis for this difference rests on the view of the fact-finder that the paramedic bonus should be increased to maintain the City's same relative position in light of potential wage increases and paramedic payments in contracts yet to be negotiated during the term of the agreement. However, the conciliator finds that with respect to wages, the parties already agreed on an appropriate wage increase for the term of the agreement in light of past and future wage increases.

Further, there is no evidence to suggest the frequency of pay adjustments to the various paramedic bonus provisions, or the reasonable likelihood of paramedic payment increases in the comparable jurisdictions during the term of the agreement. To the extent it appears these factors formed the basis for an additional \$20, \$78 and \$100 per year in paramedic bonus payments above the City's proposal, and taking into consideration the average paramedic pay of \$1,059 from the comparable cities, the conciliator selects the City's last offer on this issue.

Issue No. 3: Rank Differential (Article 6, Section L)

The current collective bargaining agreement provides for a salary differential of 8 percent between ranks. The Union submits that historically the bargaining unit employed a rank differential 1 percent below that utilized in the police department. For a very long time the police rank differential was 9 percent, the fire department was 8 percent. However, three years ago the police managed to increase their rank differential from 9 to 10½ percent, and after the firefighters settled their contract they realized the police had achieved a 1½ percent increase. The bargaining unit approached city council on equitable grounds seeking an increase in their rank differential, but such efforts proved fruitless.

At fact-finding, the Union sought to increase the rank differential to 10 percent by the third year of the agreement. The traditional 1 percent differential between police and fire was to be reduced to ½ percent due to the past loss of rank differential when compared to the police. According to the Union, the fact-finder recommended a 9½ percent compromise with no phase in, and the recommendation is the position the Union is willing to accept.

The City rejects the fact-finder's recommendation on this issue, and resubmits its proposal that the rank differential be phased in from 8 percent to 8½ percent in the first year; to 9 percent in the second year, and to 9½ percent in the third year. It reasons that the police department is an improper unit for comparison persons in that firefighters are not patrol officers. Moreover, fire department employees currently have a more generous holiday and vacation benefit package than police department employees. Finally, when compared to other departments, the City's proposed rank differential is comparable. (City Ex. 2).

Last Best Offer

The fact-finder acknowledged, and the conciliator concurs, that as evidenced by comparable jurisdictions there is a base line of 10 percent in rank differential between firefighters and promoted officers who supervise. If, as the City contends, an internal safety force bargaining unit with rank differential has absolutely no relevance based upon Ohio Admin. Code §4117-9-06(H)(2) (a position with which the conciliator does not concur, and which may be taken into consideration as evidence pursuant to Ohio Rev. Code §4117.14(G)(7)(f) and afforded the appropriate evidentiary weight), then the comparable jurisdictions suggest that the rank differential should be even higher than recommended by the fact-finder. Using such comparables, the average rank differential is 10.58 percent. (Union Ex. F).

As noted by the fact-finder, a majority of the comparables offered by the City provide a rank differential of 10 percent or higher. (City Ex. 2). Nor does the City dispute a history of

a rank differential for the fire department pegged at 1 percent below the internal comparison with the City's police department, but asserts that a phase-in to 9½ percent is more appropriate. The conciliator concurs with the fact-finder's rationale that the 1 percent rank differential should be restored effective immediately, rather than phased in as the City has proposed. Accordingly, the conciliator selects the Union's last offer on this issue.

Issue No. 4: Vacations - Article 8

The City's proposal on vacations is to change the current method of calculating vacation from weeks of vacation to tours of duty. (City Position Statement, Tab 5). Because of the date when the conciliation was held, the City offers to make its proposal effective January 1, 1999, with the current benefit level remaining the same for 1998. Comparable employees receive vacation benefits based on tours, not weeks and days. (City Ex. 14). In its view, the City argues this issue is not truly an economic one, but operational in nature.⁴ For no matter how many tours of duty an employee is off during his or her weeks of vacation, they receive the same pay. The question is whether a two-tour week or three tour week becomes the week of vacation, and as is evident from the vacation weeks taken in 1996 (City Position Statement, Tab 6), of the 100 weeks of vacation enjoyed by bargaining unit employees, 89 were taken during the weeks when the employees were scheduled for three tours.

4. When pressed, the City claimed that under the current method of calculating vacation 89 extra tours of duty are being utilized for vacation, almost the equivalent of employing an additional employee.

The impact on the department's operation is significant in terms of the number of times the employees are away during three tour weeks. Other employees have this schedule due to their working forty hours per week, not 2,756 hours annually with twenty-four hours on, forty-eight hours off work. Since the fire chief has worked to accommodate and schedule the employees for vacation as requested, the only way to meet the reduction in available employees required to satisfy the manning levels is to hire new employees or to work overtime. This vacation practice has an adverse impact on operations of the department. The fact-finder, according to the City, stated during mediation that the City has the right to schedule anyway it wants, a factual impossibility. There are simply not enough weeks in the year to schedule vacation on two tour weeks. However, if vacation eligibility is reduced to tours of duty, then it is a specific tour of duty an employee takes off, rather than a week in which an employee can slip in a three tour week.

This situation is further compounded by the fact that effective October 1, 1997, a rule promulgated by the Police and Firemen's Disability and Pension Fund (PFDPF) established new procedures for the posting of contributing service credit to individual members which fairly and accurately assigns appropriate service credit to member accounts based on an hours-worked/compensated standard. (City Ex. 15). According to David Morris, this resulted in a new reporting format issued to the City. Prior to this date, the City could report vacation in weeks because the PFDPF did not request hours scheduled or worked. Since October 1997, however, the report must show the hours scheduled, the hours actually worked and the type of

hours worked. If the City went to tours of duty for vacations, the needs of the PFDPF would be met exactly and reporting would encompass actual hours used.

For its position, the Union contends that from the beginning of negotiations the City has urged that it does not care for weeks because of administrative uncertainty, but its true intent is to reduce the vacation bargaining unit employees currently receive. The Union's final offer is that vacation under the current agreement should not be changed from the current schedule which falls within the normal range of vacations paid to firefighters in comparable communities. In none of those locations has the vacation level been reduced during the past two decades. While most employees take three to four weeks for their vacation, some take two to four weeks.

Moreover, the Union urges that the City is simply seeking to reduce the vacation schedule from current levels by defining vacation by tours, rather than weeks. Indeed, the chief admitted to the fact-finder that he has had no problem at all scheduling vacations and holidays. Moreover, vacations and holidays in the City result in no overtime because if this were to occur, the employee would not receive the requested vacation and holidays the scheduling of which is controlled by the chief. (Testimony of Taylor). It does affect the manning which cannot drop below minimum standards, but one must look at the work week — a very high fifty-three hour work week. In terms of the contracts in comparable communities, two of the six comparables (Brookpark and Strongsville) refer to vacation in terms of weeks, rather than tours. (Union Ex. B at 4).

Further, the evidence shows that based upon current contract language the bargaining unit employees are in the middle of the comparables with the number of vacation hours when viewed based on total hours worked (less vacation and holidays) during the calendar year. (Union Ex. B at 1). The City's proposal would move the bargaining unit to last place among the comparable jurisdictions. (Union Ex. B at 3). While financially, the employees fall at the top, in terms of vacation they are in the middle of comparable jurisdictions. It has been this way for at least twenty-five years. Even expanding the list of cities to twenty-seven, the City ranks in the middle in terms of vacation hours, holiday hours and total hours worked. (Union Ex. B at 6-8). The only difference with cities such as Westlake which schedule employees forty-eight hours per week is that the employees in those jurisdictions end up with more Kelly days. The police and service departments in the City settled their respective contracts and did not have a change in vacation days.

Tim Taylor testified that PFDPF's problem with the new administrative rule was determining whether an employee was part-time or full-time. Originally, pensions were based on weeks, and if an employee worked one day per week the employee received a full week credit, and this problem had to be corrected. With fire departments, the PFDPF had to look at a variation of scheduling. On weeks when a firefighter works two shifts or forty-eight hours, it was determined that an employee who worked more than forty-five hours worked full-time. It has nothing to do with working a three-day week. According to Taylor, the City's human resources coordinator Morris reports to PFDPF an employee who works a Sunday, Monday and Saturday — it is so noted on the report form. The same applies if an employee is off those

days and there is no problem with that kind of reporting. The problem the City is having is computer related due to the varied hours employees in the department work — one week a firefighter may work forty-eight hours, the next week seventy-two hours. Once an employee works forty-five hours he or she has earned a week of credit toward pension benefits under the PFDPF rules.

After considerable discussion on this component of the City's argument, it became clear the City's problem centered primarily on internal bookkeeping relative to deducting the vacation utilized from the so-called bank of vacation that each particular employee is entitled to receive. The City then withdrew any argument as to PFDPF reporting requirements in support of its position on vacations. The City also asserted its objection to the Union's reference to hours of work as having any bearing on vacation benefits. If taken on a strictly mathematical formula of internal or external comparison, 4.416 tours of duty represent the ratio of eighty hours vacation to 2,080 hours worked. In its post-hearing brief, the City urges that vacation benefits should be based upon tours of duty as is the case with an overwhelming majority of fire departments, as opposed to weeks and days.

Last Best Offer

The fact-finder concluded that based upon the present seniority structure of the City's fire department, there is no significant difference between the vacation time allowed its firefighters and those of six other comparable communities. After five collective bargaining agreements, the fact-finder noted that it ". . . is a little late in the day for the City to contend

that vacations based upon a forty-hour week may be inappropriate for Firefighters who work tours of duty pursuant to 'twenty-four hours on and forty-eight hours off,' scheduling." He further emphasized the ability of the fire chief to control the scheduling of vacation time, thereby being able to minimize vacation time on weeks when employees would be scheduled to work three tours of duty, rather than two.

The conciliator finds this issue somewhat troubling based on various assertions and evidence, including the fact-finder's recommendation. First, the conciliator's review of the current contract language suggests an error in the Union's calculation that an employee receives 288 vacation hours at ten years of service. The correct figure based on three weeks at 3 tours per week is 216 hours, rather than 288. (Union Ex. B at 1). This would alter the total tours per year from 92.8 as claimed by the Union to 95.83. Moreover, the fact-finder appears to have misstated the proximity of Brook Park's vacation schedule to the City for firefighters having from five to eleven years of service. Based on the Brook Park agreement's contractual definition of forty-eight hours pay for each week of vacation, Brook Park falls considerably below the City's present benefit for approximately a five-year span commencing at five years of service.

In contrast, the City's proposal moves too far in the other direction. On average, the City's last offer represents an increase to members of the bargaining within each five-year vacation bracket of two additional tours of duty per year. The conciliator concurs with the fact-finder that no evidence was presented to show that within its discretion to grant vacations the City has attempted to restrict usage to weeks in which the affected employee is scheduled

for two tours of duty. Due to the City's current position relative to the comparable bargaining units, the absence of any proof efforts to control the vacation schedule were made and proved unsuccessful, together with the presence of this provision in numerous prior collective bargaining agreements between the parties, the conciliator must concur with the fact-finder's recommendation that the current vacation provisions of Article 8 be maintained in the new collective bargaining agreement without change. The Union's last offer is selected on the issue of vacations.

Issue No. 5: Holidays and Holiday Premium Pay - Article 8, Section B

This issue mirrors the arguments made by the parties relative to vacations. Specifically, the Union seeks to maintain current language on holidays which provides for the following ten holidays: New Year's Day, Good Friday, July 4, Columbus Day, Employee's Birthday, President's Day, Memorial Day, Labor Day, Thanksgiving Day and Christmas Day. The current agreement also provides for compensation at the rate of one and one-half times the employee's base rate of pay for three of the listed holidays: Thanksgiving, Christmas and New Year. In contrast, the City seeks to reduce this holiday schedule by the elimination of all holidays, to substitute in lieu thereof eight tours of duty and elimination of all premium pay currently provided for three of the holidays effective January 1, 1999. (City Position Statement at Tab 5).

The City reasons that with its current proposal the bargaining unit members will still receive more holidays than most other similarly situated employees, and they should not

receive a premium for working the holidays. This compensation is not a form of overtime, but an added premium paid to the employees. The fact-finder noted that the City has an advantage over the comparable jurisdictions in this regard, but improperly left it unchanged. The City's ability to pay has no relevance to whether such provisions belong in the collective bargaining agreement.

The Union submits that this proposal represents a reduction, and the City would have the conciliator give no consideration to its ability to pay for the respective proposals except under those situations when the Union proposes to increase compensation or benefits. The Union pointed to the City's error in failing to report that Beachwood pays its firefighters premium pay for four holidays at time and one-half, and in Warrensville Heights if an employee works any of ten holidays the employee receives 12 hours compensatory time. (City Ex. 16 and Union Ex. B at 5). It urges that the City only pays premium pay for three holidays, not ten. The Union further points to the fact that the City's police department currently receives five holidays at time and one-half. This is significant because police only lose part of the holiday (8) hours, rather than the entire day. In contrast, the firefighters are gone for twenty-four hours. Further, this is a very common benefit as evidenced by Union Exhibit B, and the City wants to eliminate the benefit — a position rejected by the fact-finder.

Last Best Offer

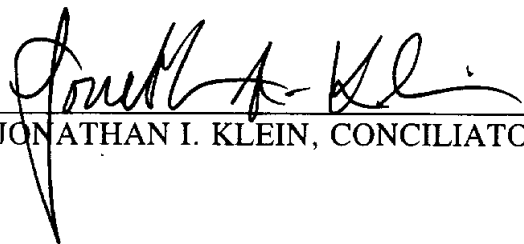
The conciliator concurs with the fact-finder's recommendation that no change in economic or other relevant conditions warrant granting the City's last best offer on holidays.

As he noted, five of the six agreed upon comparable communities require a work week shorter than that of the bargaining unit. Only Strongsville equals the work week of the bargaining unit employees.

The City's approach to the firefighters remains a mystery when it recently agreed to pay its police officers five holidays at a time and one-half premium. Further, of the six comparable communities, Brooklyn pays its firefighters 240 hours for ten holidays, including twenty-four hours compensatory time, and time and one-half for working the Christmas holiday. Strongsville pays its firefighters 264 hours of holiday pay. While the City has improved its last offer from the five tours of duty which it presented to the fact-finder, there remains little evidence in support of changing the current contract language. The fact-finder's statement that "[a]doption of the City's proposal to reduce holiday and vacation time off would thus increase the Solon Firefighters hours of work to a total greater than prevailing in any other comparable community, and concurrently reduce their compensation" remains persuasive in light of the City's last offer.⁵ For each of these reasons, the conciliator selects the Union's last offer on holidays and holiday premium pay for inclusion in the collective bargaining agreement.

5. The City's first place ranking with the highest number of tours worked per year would hold true for the employee with one year of service; for an employee with five years service the number of tours would place the City behind only North Olmsted; for the ten-year employee the total tours worked per year would rise again to first place; fall to second place behind Strongsville at the fifteen year mark; and to a similar position for the twenty-year employee. (Union Ex. B).

The conciliator further directs that all previously executed tentative agreements, and all other terms of the expired collective bargaining agreement which remained unchanged or unaltered by agreement of the parties or this Award, shall be incorporated into the new collective bargaining agreement.

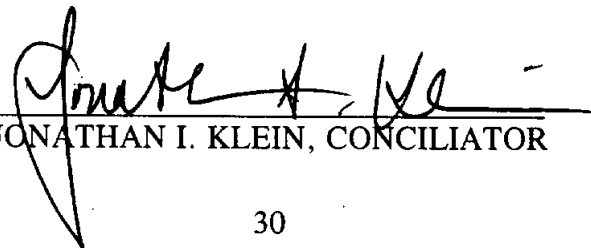


JONATHAN I. KLEIN, CONCILIATOR

Dated: September 7, 1998

CERTIFICATE OF SERVICE

An original of this Final Offer Settlement Award was served upon Joseph F. Lencewicz, J. F. Lencewicz & Associates, Suite 303, 45 East Washington Street, Chagrin Falls, Ohio 44022, and upon Susannah Muskovitz, Esq., Faulkner, Sackett & Muskovitz, LLP, 820 West Superior Avenue, Ninth Floor, Cleveland, Ohio 44113-1800, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by regular United States mail, sufficient postage prepaid, this 7th day of September 1998.



JONATHAN I. KLEIN, CONCILIATOR