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CONCILIATION AWARD

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

August 11, 1998

In the Matter of :

City of Campbell)

and)

Campbell Professional Firefighters)
Association, IAFF Local 2998)

Case No. 97-MED-09-0901

APPEARANCES

For the Employer:

Richard P. Gortz, Advocate
Elizabeth A. Davis, Advocate
David G. Horvath, Fire Chief
Charles M. Terek, Director of Administration

For the Union:

Dennis Haines, Attorney
Richard Chuey, President
Charles Mrakovich, Vice President
Eugene Skelley, Secretary-Treasurer

Conciliator:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Campbell and the Campbell Professional Firefighters Association, IAFF Local 2998. The city has approximately 10,000 residents and remains economically depressed as a result of the closing of the Youngstown Sheet and Tube plant more than a decade ago. The union represents one cadet, five fighters, and four captains.

Negotiations for a successor to the collective bargaining agreement due to expire November 11, 1997 began in the fall of 1997. When no agreement was reached, the dispute was submitted to factfinding. The Factfinder's report was issued on May 7, 1998 but was rejected.

The Conciliator was appointed on June 2, 1998. A hearing was held on July 13, 1998. At that time mediation resulted in agreement on Article 4 - Union Activity/Non-Discrimination; Article 13 - Overtime, Section 2 - Distribution; Article 23 - Health Benefits; Article 29 - Duration; and a new article titled First Responder. However, when no overall settlement was reached, a hearing was conducted and this decision was prepared.

The Conciliator is required to select one party's offer or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of 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.

ISSUES

The parties submitted nine issues to the Conciliator. For each issue he will describe the current contract provision, summarize the arguments and evidence presented by the parties, provide a brief rationale for his selection of a final offer, and furnish the necessary contract language.

1) Article XII - Hours of Work/Shift Exchange - The current contract provides for four platoons working a combination of 10- and 14-hour shifts resulting in an average of 42 hours per week which is reduced to 40 hours per week by four shifts of compensatory time every six months. The city seeks a three platoon system where employees work 24 hours followed by 48 hours off duty with compensatory time to reduce average hours to 53 per week. The union seeks to retain the current schedule.

City Position - The city argues that it is necessary to change the schedule to three platoons working 24-hour tours in order to implement the first responder program. It states that with four platoons only two employees are normally scheduled while with three platoons three employees would generally be on duty. The city maintains that it is necessary to have three employees on duty to insure the safety of citizens and employees.

The city contends that it cannot increase the number of employees. It points out that a charter provision limits the number of fire personnel to one per thousand residents. The city notes that the current population of 9,700 limits it to the present force of ten employees.

The city contends that 24-hour shifts are the norm. It points out that David Horvath, the chief, testified that he was unaware of any department not working 24-hour tours. The city notes that area departments with similar populations -- Conneaut, Dover, Salem, and Struthers -- all work 24-hour schedules and have average work weeks ranging from 48 hours per week to 56 hours per week.

Union Position - The union claims that it is not necessary to change the work schedule to implement the first-responder program. It indicates that in 1994-95 the prior chief wanted to implement a first-responder program and believed that it could be done with the existing work schedule. The union observes that Horvath testified that even if the work schedule is not changed, he would still want to begin the first-responder service. It stresses that the city should implement the program under the current schedule and then if any problems justify a change, it can negotiate a change in the work schedule when the contract expires in 18 months.

The union charges that the city is implementing the first-responder program on the backs of fire department employees. It points out that the city's proposed schedule change constitutes a 25% increase in hours of work which results in a significant decline in hourly wages. The union indicates that the wage increase offered by the city in return for going to a 24-hour work schedule is created by incorporating benefits employees already receive into the base wage.

Analysis - The Conciliator must select the city's final offer. The city has no ambulance service and current highway and bridge problems create unacceptable response times to emergency calls especially considering the aging city population. The union recognized this situation by agreeing to implement a first-responder program on December 1, 1998.

The issue is whether the program can reasonably be implemented under the current schedule. It appears that trying to run a first-responder service with only two employees on duty could create significant operational and safety concerns. Horvath testified that

going to three platoons would reduce the number of shifts with only two employees on duty from 90% to 25%.

The Conciliator must also recognize that the 24-hour tours that the city is seeking are clearly the norm in comparable departments. The union did not indicate any department working other than 24-hour tours.

The Conciliator recognizes that the new schedule will require fire department employees to make adjustments in their own schedules. He believes, however, that the city's demand is justified. The Conciliator also feels that in the long run fire department employees will find the new schedule acceptable just as the firefighters have in nearly all Ohio fire departments.

Award - See Appendix A.

2) Article XIII - Overtime, Section 1 - Rate and Section 6 - 53-Hour Workweek - The current contract provides for an overtime rate of one and one-half times an employee's hourly rate of pay. The city proposes that if its hours of work offer is selected, the overtime rate be calculated as follows:

$$\frac{\text{hourly rate} \times 2756}{2080}$$

Analysis - The city's offer must be selected based on the selection of its proposal for hours of work.

Award - See Appendix B.

3) Article XV - Wages - The current contract provides for salaries as follows:

	<u>Annual</u>	<u>Hourly</u>
Captain	\$26,960	\$12.96
Fireman/Inspector	26,174	12.58
Fireman	26,174	12.58
Cadet (less than 1 year)	23,014	11.06

The union demands that these rates be increased 3% effective December 1 of 1997, 1998, and 1999. The city presents two wage offers. First, assuming that its offer for hours of work is selected, it offers a 2.5% increase effective December 1, 1997; a 3% increase effective December 1, 1998 plus an adjustment to reflect the 24/48 hour work schedule of \$4032 for captain, \$3823 for firefighter/inspector and firefighter, and \$1916 for cadet firefighter; and a 3% increase effective December 1, 1999. Second, if its proposal for hours of work is not chosen, it offers a 2.5% increase effective December 1, 1997 and 3% increases effective December 1 of 1998 and 1999. In both offers the city proposes adding \$500 to the captain's salary effective December 1, 1997.

City Position - The city argues that it faces a bleak financial situation. It indicates that one-third of its residents are retired and one-third are on public assistance. The city states that income tax revenue has been flat in real terms for the last ten years and that there is unlikely to be any increase in the foreseeable future. It observes that its 2.5% income tax is relatively high and that it faces a renewal levy in November 1998 at a time when a number of tax levies have been defeated in the Mahoning Valley. The city reports that the fire department's carryover at the end of 1997 was only \$2300 in a budget of \$595,000.

The city contends that despite the budget situation it is offering a fair wage. It points out that if its proposals for hours and wages are selected, on December 1, 1998 fire department employees will receive annual salaries and hourly wages comparable to similar communities. The city stresses that it is simply proposing similar pay for similar work.

The city maintains that it can pay its proposed wages without any layoffs. It notes that it will save \$20,000 in overtime costs. The city observes that its proposal for hours eliminates holiday pay and the shift differential. It indicates that its workers' compensation premium was reduced from \$325,000 to \$153,000.

Union Position - The union argues that it has attempted to cushion the city's claimed financial problems. It points out that it agreed to the city's proposal for a PPO

which will save the city \$80,000. The union notes that the city not only received a reduction in its workers' compensation premium but a rebate of \$219,000 which will more than pay the three-year costs of its wage proposal including roll-up. It indicates that it gave up retroactivity on the time and one-half it was due on the shift differential and did not pursue double damages and attorney fees.

The union raised the possibility of layoffs. It stated that the city's proposal for wages under the new work schedule would increase the city's costs over three years by more than \$300,000. The union indicates that if the city can not afford this increase in costs, it will lay off firefighters just as it has done in the past.

The union complains that employees are losing certain benefits. It points out that the city's wage proposal for the revised work schedule eliminates a number of holidays and compensatory time. The union states that it understands the city's claim that they are rolled into the base wage.

Analysis - The Conciliator must select the city's wage proposal. As indicated above, he believes that a revised work schedule is necessary for the city to safely and reasonably implement the first-responder program. The city's wage proposal is an essential adjunct to the new hours of work.

The Conciliator believes that the city's wage proposal will result in fire department employees having wages that compare favorably on an annual and hourly basis with comparable departments. The data supplied by the city show the following rates as of December 1, 1998:

<u>City</u>	<u>Hourly Wage</u>	<u>Annual Salary</u>
Campbell		
Captain	\$11.98	\$33,010
Firefighter	11.41	31,456
Cadet	9.51	26,213
Conneaut		
Captain	13.25	33,072

Firefighter	11.79	29,428
Cadet	9.74	24,311
Dover		
Captain	11.03	32,116
Firefighter	10.83	31,551
Cadet	9.85	28,670
Salem		
Captain	11.76	32,401
Firefighter	11.02	30,369
Cadet	7.76	21,387
Struthers		
Firefighter	11.01	32,064
Cadet	9.28	27,030

Rates in the city exceed the hourly and annual rates of the majority of the other cities.

Award - See Appendix C:

4) Article XVII - Vacation, Section 6 - The current contract defines vacation leave based on weeks. The city proposes a new section to be effective December 1, 1998 which defines a week of vacation as 53 hours.

Analysis - The city's offer must be selected based on the selection of its proposal for hours of work.

Award - See Appendix D.

5) Article XVIII - Holidays, Sections 1, 2, and 3 - The current contract provides for 12 holidays and for 2 1/2 times the base rate for hours worked on a holiday. The city proposes that effective December 1, 1998 employees be granted 5 1/2 shifts off in lieu of holidays.

Analysis - The city's offer must be selected based on the selection of its proposal for hours of work.

Award - See Appendix E.

6) Article XX - Sick Leave/Injury Leave, Section 1 - Accrual - The current contract provides that employees earn sick leave while on active pay status. The city seeks to prohibit employees from earning sick leave while on sick leave. The union opposes this change.

City Position - The city indicates that the recent revision of the Ohio Revised Code permits the exclusion of time spent on sick leave from the accrual of sick leave.

Union Position - The union states that the current provision ought to remain. It points out that sick leave has been considered in active pay status since the first contract between the city and the union. The union notes that it can negotiate more than what is contained in the Ohio Revised Code.

Analysis - The Conciliator must select the union's offer. The city offered nothing in support of its proposal to justify the change in a long-standing contract provision.

Award - The Conciliator awards the union's position of the current contract language.

7) Article XX - Sick Leave/Injury Leave, Section 5 - Conversion - The city proposes that sick leave acquired prior to December 1, 1998 be converted to correspond to the new hours of work by multiplying the number of hours by 1.325.

Analysis - The city's offer must be selected based on the selection of its proposal for hours of work.

Award - See Appendix F.

8) Article XXI - Funeral Leave, Section 1 - Death Benefit and Section 3 - 53-Hour Workweek - The current contract allows an employee four days off, including scheduled days off, for the death of a member of the employee's family. Contingent on the selection of its hours of work offer, the city proposes that an employee

be granted leave of two 24-hour shifts and the intervening days for a death in his or her family.

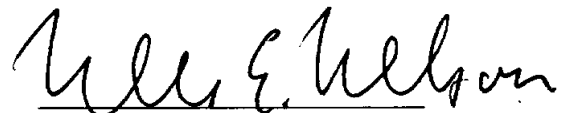
Analysis - The city's offer must be selected based on the selection of its proposal for hours of work.

Award - See Appendix G.

9) Article XXVIII - Vehicle Allowance - The current contract requires a payment of \$20 per call to an employee who must respond to an emergency in his or her own personal vehicle because no safety vehicle is available providing he or she responds within 45 minutes. The city seeks to reduce the minimum response requirement to 15 minutes. The union opposes the city's proposal.

Analysis - The city's demand must be denied. It provided no evidence of any problem with the response of employees under the current requirement.

Award - The Conciliator awards the union's position of the current contract language.



Nels E. Nelson
Conciliator

August 11, 1998
Russell Township
Geauga County, Ohio

CITY OF CAMPBELL
Proposal to
IAFF

July 1, 1998

ARTICLE 12
HOURS OF WORK/SHIFT EXCHANGE

Section 1 Prior to December 1, 1998, members of the bargaining unit shall be assigned to work a four (4) platoon system which shall yield a forty (40) hour workweek in the following manner:

A platoon shall work on a continuous rotation of: two (2) ten (10) hour day shifts, commencing at 7:00 AM and ending at 5:00 PM; followed by seventy-two (72) consecutive hours off duty; followed by two (2) fourteen (14) hour night shifts, commencing at 5:00 PM and ending at 7:00 AM; followed by forty-eight (48) hours off duty; followed by a return to day shift at which time the above schedule repeats.

Effective December 1, 1998, the work hours and schedule shall constitute a fifty-three (53) hour work week, averaged over a twenty-eight (28) day work cycle. Work schedules in the Fire Department shall be scheduled on the basis of three (3) platoons. Each platoon shall work a twenty-four (24) hour work day, followed by a minimum of forty-eight (48) hours off duty.

Section 2 Prior to December 1, 1998, or as long as employees are scheduled according to ten (10) and fourteen (14) hour shift rotation, the schedule as described in Section 1 of this Article will result in a forty-two (42) hour workweek. As compensation for hours worked in excess of the normal forty (40) hour workweek, members of the bargaining unit shall accumulate at a rate of the equivalent of four shifts of compensation time off for every six months served on active pay status. Accrued compensative time-off shall not exceed 480 hours at any time in accordance with the Fair Labor Standards Act. Such time off shall be granted upon the employee's request and ~~one (1)~~ four (4) days prior notice.

No more than two (2) fire fighters will be granted time-off at any one time.

Effective December 1, 1998, in order to reduce work hours to an average of fifty three (53) in the cycle, each employee shall be scheduled to work nine (9), twenty-four (24) hour turns in each twenty-eight (28) day work cycle. The difference between fifty-three (53) hours and fifty-four (54) hours in the work cycle shall accrue as compensatory time-off at the rate of one and one-half hour per hour worked.

Accrued compensatory time-off shall not exceed 480 hours at any time. Such time off shall be granted upon the employee's request, with a minimum of four (4) days prior notice, subject to the approval of the Chief.

Section 3 *This section to remain unchanged.*

Section 4 *This section to be deleted from the contract and replaced with the following language:*

On November 1 of each year, employees shall submit to the Chief requests for transfer to another platoon, effective the first work cycle in the next year. In considering such requests, the Chief may consider the qualifications and special training of individuals, seniority, and desires of other members of the Department. Platoon assignment shall be made at the sole discretion of the Chief.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____

CITY OF CAMPBELL
Proposal to
IAFF

July 13, 1998

ARTICLE 13
OVERTIME

Section 1 Rate - In the event that a need for overtime occurs in the Fire Department, overtime shall accrue to members of the bargaining unit, and shall be voluntary. **Prior to implementation of the fifty-three (53) hour work week**, The employees shall be paid at the rate of time and one half (1 ½) the employee's hourly rate for all hours worked in excess of the forty (40) hour workweek, or hours worked in excess of the employee's shift, with a minimum of four (4) hours on any call back to duty. Should the overtime occur on a holiday, the employee shall receive double time in addition to his normal holiday compensation.

Section 2 Distribution - All overtime shall be ~~distributed~~ **offered** and rotated equally among employees by seniority. The Employer agrees to maintain a log to show the time of call and response from each employee called as to whether it was refused, accepted, no answer, **off sick, off on vacation**, etc.

Section 6 53 Hour workweek - After December 1, 1998, the rate of any overtime pay will be calculated at the applicable hourly rate as follows:

$$\frac{(\text{hourly rate}) \times 2756}{2080}$$

Overtime shall be paid for all hours worked in excess of the fifty-three (53) hour workweek, or hours worked in the excess of the employee's shift.

All other sections of this article shall remain unchanged.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____

APPENDIX C

City of Campbell				
Position	Current	12/1/97 2.50%	12/1/98 3.0% ¹	12/1/99 3.0% ¹
Captain ²	26,960.00	28,134.00	33,010.02	34,000.32
Firefighter/Inspector	26,174.00	26,828.35	31,456.20	32,399.89
Firefighter	26,174.00	26,828.35	31,456.20	32,399.89
Cadet Firefighter	23,014.00	23,589.35	26,213.03	26,999.42

CITY OF CAMPBELL
Proposal to
IAFF

July 13, 1998

ARTICLE 17
VACATION LEAVE

Section 6 **Effective December 1, 1998, one week of vacation shall equal fifty-three (53) hours.**

All other sections of the Article shall remain unchanged.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____

CITY OF CAMPBELL
Proposal to
IAFF

ARTICLE 18
HOLIDAY PAY

Section 1 Holidays - Prior to December 1, 1998, employees of the Fire Department shall receive Holiday Pay for hours worked on the following holidays:

- | | | |
|-------------------|---------------------------|--------------------|
| 1. New Year's Day | 2. Martin Luther King Day | 3. President's Day |
| 4. Good Friday | 5. Easter Sunday | 6. Memorial Day |
| 7. Fourth of July | 8. Labor Day | 9. Columbus Day |
| 10. Veteran's Day | 11. Thanksgiving | 12. Christmas Day |

Section 2 Holiday - Prior to December 1, 1998, employees of the Fire Department shall be paid two and one-half (2½) times his base rate of pay for the hours worked on said holiday. Employees who do not work on a given holiday, or who are on vacation during the week of said holiday, shall receive eight (8) hours of straight time pay in addition to their normal compensation.

Section 3 53 Hour Workweek - Effective December 1, 1998, in lieu of holidays or holiday pay, employees will receive five and one-half (5½) shifts off to be taken under same conditions as vacation.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____

APPENDIX F

CITY OF CAMPBELL
Proposal to
IAFF

July 13, 1998

ARTICLE 20
SICK LEAVE / INJURY LEAVE

Section 5 Conversion - Sick leave accrued prior to December 1, 1998, shall be converted multiplying the number of accrued sick hours by a factor of 1.325.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____

CITY OF CAMPBELL
Proposal to
IAFF

July 13, 1998

ARTICLE 21
FUNERAL LEAVE

Section 1 Death Benefit - **Prior to December 1, 1998**, an employee shall be entitled to a personal leave of four (4) days off, including scheduled days off, for the death of a member or members of the employee's "family". For the purpose of this article, the employee's "family" shall be defined as the employee's spouse, child, step-child, grandchild, mother, father, sister, brother, mother-in-law, father-in-law, grandfather, or grandmother.

Section 2 *Shall remain unchanged.*

Section 3 53 Hour Workweek - **Effective December 1, 1998**, an employee who experiences the death of a family member shall be entitled to a personal leave of two (2), twenty-four (24) hour shifts and the intervening days off. These days off should include the day of the funeral. "Family" shall be defined the same as in Section 1.

AGREED:

For the City of Campbell: _____

For IAFF, Local 2998: _____

Date: _____