STATE OF OHIO

State Employment Relations Board

IN THE MATTER OF:

WILLOWICK FIRE FIGHTERS ASSOCIATION

"Employee Organization"

and

CITY OF WILLOWICK, OHIO

"Employer"

CASE NO. 97-MED-10-1188

CONCILIATOR:
DONALD N. JAFFE, ESQ.
1410 Terminal Tower
Cleveland, Ohio 44113
(216) 241-3737

REPORT AND AWARD OF CONCILIATOR

APPEARANCES:

Representative on Behalf of Employee Organization:

Thomas M. Hanculak, Esq.
Law Offices of Joseph W. Diemert, Jr.
& Associates Co., L.P.A.
1360 SOM Center Road
Cleveland, Ohio 44124-2189
Telephone No.: (440) 442-6800

Representative on Behalf of Employer:

Tom Grabarczyzk
Labor Relations Management, Inc.
6800 West Central Avenue,
Suite L-2
Toledo, Ohio 43617
Telephone No.: (419) 842-0100

DATE OF REPORT: MARCH 13, 1998

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I. INTRODUCTION

These matters come before the Conciliator as a result of a referral on January 6, 1998 by the State Employment Relations Board ("SERB") pertaining to conciliation protocol between the Willowick Fire Fighters Association (hereinafter referred to as "Association") and the City of Willowick (hereinafter referred to as "City"). By agreement of the parties, a preliminary conference, which was in the nature of a mediation session, was held on February 9, 1998. Although the parties' respective positions were clarified, unfortunately, an ultimate resolution was not achieved and, as a result, a conciliation hearing for the submission of issues and the presentation of the parties' positions was held on March 4, 1998, the hearing being held at the Willowick City Hall.

The Conciliator has taken into consideration the statutory guidelines enunciated in Revised Code §§4117.14(G)(7)(a) through (f) and SERB Regulations 4117-9-06(H)(1) through (6). In addition, the Conciliator has reviewed and taken into consideration the Report and Recommendations dated December 15, 1997, filed with SERB on December 17, 1997, submitted by Fact-Finder Robert G. Stein. (See Revised Code §4117.14(G)(6).) Revised Code §4117.14(G)(7) provides: "After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers, ..." The Conciliator thus emphasizes that he is not at liberty to fashion his own remedy or his perception of what constitutes an equitable public sector settlement, but, rather, he is required to accept or reject each of the parties' final offers, on an issue-by-issue basis,

taking into consideration the statutory and administrative rule guidelines as referenced above, the parties' position statements, the testimony and the evidence presented.

In addition to the representatives identified on the face sheet of this Report, the following were in attendance and/or testified:

On Behalf of the Association

Terry Simonian, President, Willowick Fire Fighters Association
Robert Posipanka, Vice President, Willowick Fire Fighters Association

Although no one appeared on behalf of the City other than the City's negotiating representative, it should be indicated that the Fire Chief, the Assistant Fire Chief and other fire fighters were present and had participated in the mediation conference on February 9, 1998. Also, it was indicated that unanticipated conflicts prevented the appearance of the Fire Chief or the Assistant Fire Chief. The absence of any City officials at the conciliation hearing was not, however, so crucial or detrimental to the City that its positions were not fully or forcefully presented by its representative. The representatives of both the Association and the City are to be commended for their thorough presentations.

The Conciliator had received from the parties and reviewed a number of exhibits and documents which have been taken into consideration in reaching the award set forth herein. Included among those exhibits are the following: (1) Collective Bargaining Agreement between the City of Willowick and the Willowick Fire Fighters Association for the period January 1, 1995 to December 31, 1997, this being the parties' most recent Collective Bargaining Agreement; and (2) Report and Recommendations of Fact-Finder James M. Mancini in the matter of City of Willowick and Willowick Fire Fighters Association, SERB Case No. 94-MED-10-1172.

II. BACKGROUND

The City of Willowick is located in the far western portion of Lake County and has a current population of approximately 18,000, covering an area of two square miles. Unlike many fire departments, the City maintains a 100% part-time department consisting of 57 employees as follows: Fire Chief, Assistant Fire Chief, 2 Captains, 6 Lieutenants, and 47 Fire Fighters. The bargaining unit, totalling 55, consists of all Fire Fighters and officers except the Fire Chief and the Assistant Fire Chief.

III. ISSUES IN DISPUTE AND AWARD

ARTICLE 17 - WAGES AND OTHER COMPENSATION

Article 17 deals with wages and related compensation issues. The Fact-Finder had ultimately recommended a 12% wage increase payable 4% in each year for three years, commencing January 1, 1998. Ultimately, both parties agreed to accept the Fact-Finder's recommendation as their final positions on this matter. Accordingly, the Conciliator affirms the Fact-Finder's recommendation and, therefore, orders that Article 17 be amended as follows:

> "Section 1.
>
> Effective January 1, 1998, hourly wage rates shall be established and paid for hours worked as set out in the schedule below:
>
> | | |
> |---|---|
> | 3/C Fire Fighter | 8.28 Per Hour |
> | 2/C Fire Fighter | 9.17 Per Hour |
> | 1/C Fire Fighter | 10.32 Per Hour |
> | Lieutenant | 12.83 Per Hour |
> | Captain | 14.40 Per Hour |
>
> Effective January 1, 1999, hourly wage rates established above, shall be increased by four percent (4%) and set out in the schedule below:

3/C Fire Fighter	8.61 Per Hour
2/C Fire Fighter	9.54 Per Hour
1/C Fire Fighter	10.73 Per Hour
Lieutenant	13.34 Per Hour
Captain	14.98 Per Hour

Effective January 1, 2000, hourly wage rates established above, shall be increased by four percent (4%) and set out in the schedule below:

3/C Fire Fighter	8.95 Per Hour
2/C Fire Fighter	9.92 Per Hour
1/C Fire Fighter	11.16 Per Hour
Lieutenant	13.87 Per Hour
Captain	15.58 Per Hour

Section 2.

All members of the Bargaining Unit who possess, obtain, and maintain, paramedic certification shall be paid an additional one dollar and ten cents ($1.10) per hour while so certified and on line.

Section 3.

For purposes of this Article, the base rate of pay specified for each classification of Bargaining Unit employee in Section One (1) hereof, or that rate together with the additional one dollar and ten cents ($1.10) per hour provided for qualified employees under Section Two (2), shall be referred to as an employee's "regular rate of pay".

Section 4.

Employees who respond to a call out for services of any kind (including calls from the Director of Public Safety for emergency stand-by duty during windstorms, tornadoes, riots, flood, or other disaster) while off duty shall be paid at their regular rate of pay, and shall be afforded, or paid for, not less than two (2) hours of work.

Section 5.

Annually each Bargaining Unit employee who has completed one (1) year of service and has been paid a minimum

of four hundred fifty (450) hours on the payroll as of June 30th from July 1st of the prior year, shall receive a lump sum uniform maintenance clothing payment of three hundred twenty-five dollars ($325.00).

Employees with less than one (1) year shall receive a lump sum uniform maintenance clothing payment equal to twenty-five dollars ($25.00) for each month of service in which a minimum of thirty-six (36) hours worked have been paid.

Section 6.

On the following holidays, Bargaining Unit employees shall be compensated at one and one-half (1-1/2) times the regular rate for hours worked providing station duty, company or general alarms including fire, EMS emergencies, mutual aid calls and other emergencies as defined by the Director of Public Safety: Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, Christmas Day, New Year's Eve, New Year's Day, Good Friday, and Holy Saturday.

Section 7.

Whenever a Bargaining Unit employee assumes a Shift Commander position in the absence of an Officer for a period of one (1) hour or more, said individual shall receive an additional one dollar ($1.00) per hour in addition to his regular rate of pay.

Section 8.

Whenever a Bargaining Unit employee, in absence of the Chief or Assistant Chief of the Department, and at the request of, or with the knowledge and acquiescence of, the City, assumes the responsibilities of Acting Chief or Assistant Chief for thirty (30) consecutive days or more, he shall be compensated at the rate of one-twelfth (1/12) of the regular salary for the position assumed for each month served in that position or based on ordinance establishing compensation for such position. An employee who assumes such responsibilities shall be, for the duration of his service as an Acting Chief or Assistance Chief, deemed to be a member of management and not subject to the provisions of this Agreement. An employee who qualifies for compensation under this Section shall be, upon being relieved of the responsibilities assumed, compensated at the higher rate for the entire bi-weekly pay period in which he returns to the Bargaining Unit."

ARTICLE 18 - MISCELLANEOUS (SECTION 6 - RESIDENCY)

The present contract provides that employees are required to maintain their principal residence within a 3-1/2 mile radius of the fire department headquarters, excluding an extension of the radius into Lake Erie (obviously precluding the use of a "houseboat" as a "principal residence"). Although not particularly germane to the instant case, there is a grandfather clause. Section 6 of the present contract states as follows:

> "Section 6. - RESIDENCY
>
> Bargain Unit employees shall maintain their principal residence within a three and one-half (3-1/2) mile radius of the Department, excluding the Lake. No member of the Bargaining Unit employed by the City at the effective date of this Agreement who already resides further from the Department than the distance specified in this Section shall be required to move his residence or terminate his employment as a result of the requirements of this provision. Any such employee who, after the effective date of this Agreement, moves his place of residence, shall be subject to the terms of this provision at the time of such move. All Fire Fighters/EMT hired after the effective date of this Agreement shall be subject to the terms of this provision at the time of hire, and at all times thereafter."

The Fact-Finder, although recommending retention of most of the section, also recommended the following modifications:

1. At the end of the first sentence of Section 6, the following be added: "except that, in addition, an employee may live west of Route 306 and North of Route 90, east of the City."

2. In addition, for clarification purposes, it was recommended that the current second sentence of Section 6 be deleted and the following be inserted in lieu thereof: "No member of the Bargaining Unit employed by the City at the effective date of the 1992 Agreement who was authorized to reside further from the Department than the distance specified in this Section shall be required to move his residence or

terminate his employment as a result of the requirements of this provision."

The Association, as its position for conciliation, urged adoption of the Fact-Finder's recommendation. The City, on the other hand, had modified its previous position and, at the time of the conciliation, urged that the residence requirement be set at four miles. The City was willing to accept the "grandfather" language recommended by the Fact-Finder as being a language clarification issue and not a substantive one.

The Association had argued that the residency change was necessary since the Department had increased its number of paramedics from 15 or 16 in 1992 to 28 at the present time. Thus, there is a continuing need to have paramedics available. The City's own records substantiate that most of the Fire Department's activities are EMS related rather than fire related. For example, during the period from approximately 1989 to 1996, the Department has had anywhere from a low of 892 EMS responses in 1991 to as high as 1,266 responses in 1996. This compares to a range of 233 fire emergency responses in 1989 to as high was 457 fire responses in 1996. Utilizing the same data, the City, however, argues that response time is the most critical element, particularly as relates to emergency medical services and the fact that the City is maintained by a part-time fire force.

The Fact-Finder in his Report noted at pp. 6-7:

> "However, response to a call cannot simply be measured in distance. The route of travel significantly impacts travel time. Access to major thru-ways such as [Ohio] Route 2, [Interstate] Route 90 and [Ohio] Route 306 is an important factor when one considers the need to travel to the Department without time consuming delays caused by single lane roads, stop lights and stop signs at intersections.
>
> In addition, it was noted that a majority of the Bargaining Unit lives east of the City. As families grow, the needs of

> employees change regarding appropriate housing. A reasonable accommodation is called for that considers employee needs, without compromising the aforementioned needs of the City and its citizenry."

The Conciliator recognizes the sensitivity of the residency issue and, in that employment is contingent upon residency, it is within the scope of mandatory bargaining. In the case of *City of St. Bernard v. State Employment Relations Board* (1991), 74 Ohio App.3d 3, motion to certify overruled (1991), 62 Ohio St.3d 1434, the city's fire fighters commenced negotiations and among the items included was the issue of residency. The City refused to bargain on this issue, contending that residency was not a subject of mandatory bargaining. Ultimately, SERB determined that the city had committed an unfair labor practice, which view was upheld by the Court. Within its decision, the Court noted at pp. 5-6:

> "Mandatory subjects of collective bargaining are deemed to be matters of immediate concern that vitally affect the terms and conditions of employment of the bargaining-unit employees.
>
> * * *
>
> As further required by R.C. 4117.08(C), public employers must also bargain in areas that are subjects of management rights and direction of the governmental unit if they 'affect wages, hours, terms and conditions of employment.' Therefore, a public employer's decision to exercise a management right which affects the terms and conditions of the unit's employment becomes a mandatory subject for bargaining."

The Court ultimately concluded that, inasmuch as employment was contingent upon residency, it was thus within the scope of mandatory bargaining.

Although the Conciliator appreciates the Association's position and the need to maintain a sufficient fire force while at the same time having concerns over appropriate response

time, the Conciliator is unable to concur with the recommendation of the Fact-Finder and adopts the City's position.

First, it was specifically noted that no present fire fighter is adversely affected by the 4 mile radius rule and, thus, no present employee would be facing the likelihood of termination of employment. There was a potential question as to some more senior fire fighters who might arguably be living beyond the 4 mile radius area, but such employees would be "grandfathered" and, thus, not directly affected by the 4 mile rule. Thus, the potential impact of utilizing the City's 4 mile rule would only apply to future employees.

Secondly, the City's ability to be able to attract sufficient part-time fire fighters within the 4 mile radius area is essentially a City administrative and/or political issue. If the City, by its utilization of the 4 mile radius rule, is unable to attract and maintain sufficient and qualified fire fighters and paramedics, then it is the City and its populace which will suffer the consequences. Such consequences could be most grave, and the City would thus be held accountable for its decision or, if such decision is so unpopular or incorrect, the matter can be changed by the electorate in determining the City's executive and legislative officials or by the City officials in its collective bargaining negotiations.

Accordingly, the Conciliator orders that the residency provision under Article 18, Section 6, be amended to read as follows:

"Section 6. - RESIDENCY

> Bargain Unit employees shall maintain their principal residence within a four (4) mile radius of the Department, excluding the Lake. No member of the Bargaining Unit employed by the City at the effective date of the 1992 Agreement who was authorized to reside further from the Department than the distance specified in this Section shall be required to move his residence or terminate his employment as a result of the requirements of this

provision. Any such employee who, after the effective date of this Agreement, moves his place of residence, shall be subject to the terms of this provision at the time of the move. All Fire Fighters/EMT hired after the effective date of this Agreement shall be subject to the terms of this provision at the time of hire, and at all times thereafter."

ARTICLE 18 - MISCELLANEOUS (SECTION 8 - LOCKERS)

The present contract states: "There shall be lockers provided in the Fire Station for employees. There will be no more than two (2) employees to each locker provided." During the fact-finding, and during the conciliation hearing, the Association had argued that single unit lockers were necessary in order to afford each fire fighter his/her privacy and also to avoid possible consequences resulting from the spread of infection or other contamination from bio-hazardous exposures incurred during a fire or related incident. During fact-finding, the City had sought to maintain current contract language, however, the Fact-Finder recommended that the second sentence of Section 8 should be changed to read: "The Employer shall increase the current number of lockers in the Fire Station by an additional 16 single unit lockers within the first year of this Agreement."

During conciliation, the Association's position was to adopt the recommendation of the Fact-Finder. The City, likewise, adopted as its position the recommendation of the Fact-Finder, however, a disputed issue arose as to just what was meant by use of the term "single unit lockers." Unfortunately, this issue has sparked more discussion and debate than one would normally have anticipated. The Association indicated that currently there are 42 lockers with varying measurements, to wit, 24 having the measurements of 18" w x 18" d x 17" h, 9 having dimensions of 15" w x 18" d x 72" h, and 9 with dimensions of 12" w x 18" d x 60" h.

Unfortunately, there was no testimony presented to the Fact-Finder as to what the dimensions of the 16 additional single unit lockers were to be nor, apparently, was this issue aggressively addressed during fact-finding. Equally so, during conciliation, there was no evidence presented which would indicate what the Fact-Finder's intent was in using the language which he did, at least as regards the dimensions of the proposed new lockers. It is this Conciliator's view that the Fact-Finder never was really presented with the issue of dimensions of the lockers but, rather, was addressing the issue of single unit lockers as opposed to present contract language allowing for two employees to share a locker. There is no uniformity of locker sizes. If there were, it would be a simple matter for this Conciliator to order that the new lockers simply comply with the presently existing lockers. At a minimum, however, it would seem to be a reasonable inference from the Fact-Finder's Report that the new additional lockers should, within reason, be within the dimensions of one or more of the existing lockers rather than implementation of a whole new set of lockers applicable only to the additional 16. The Fact-Finder was only presented with current locker data and not proposed new data. Thus, the Fact-Finder could have concluded that the new lockers would be comparable to existing lockers.

Equally perplexing is the situation that neither the Association nor the City is quarrelling with the Fact-Finder's recommendation but, rather, disagreeing as to the precise method of implementation. Arguably, this is beyond the scope of this Conciliator's authority to determine precise implementation because the implementation, *per se*, is not encompassed within either the City or the Association's final position which was to accept the Fact-Finder's recommendation. Accordingly, the Fact-Finder orders that Section 8 be modified to read as follows:

"Section 8. - LOCKERS

> There shall be lockers provided in the Fire Station for employees. The Employer shall increase the current number of lockers in the Fire Station by an additional sixteen (16) single unit lockers within the first year of this Agreement so that each member will have his/her separate locker."

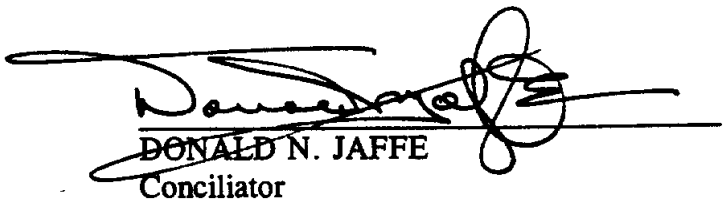
Parenthetically, the Conciliator is of the view that, in overall fairness, the new lockers should bear some consistency with the lockers presently being utilized. The standard of reasonableness and good faith should be used by both parties. Although the Conciliator is not proposing, but merely suggesting, in the event that the implementation of this particular section becomes contentious or irreconcilable, then, to avoid further time consuming action by way of either the filing of an unfair labor practice or the filing of a grievance, the parties might agree to re-open the implementation issue pertaining to the lockers for further submission to this Conciliator. The Conciliator recognizes that this is somewhat of an unorthodox approach, and the Conciliator is not suggesting that he has continuing jurisdiction over this conciliation but, rather, offers this modified procedure to avoid more formal or protracted hearings pertaining to the implementation of this order. The Conciliator would like to resolve it with minimum time and effort by the parties and yet as expeditiously as possible.

NEW ARTICLE - SICK TIME ACCRUAL

During the fact-finding, the Association proposed to add sick leave benefits for the part-time employees which is permitted under current Ohio law. The City had objected to inclusion of such language, arguing, in part, that the City's finances could not afford a sick leave provision for part-time employees. The Fact-Finder ultimately concluded that the sick time accrual proposal should not be added to the new contract.

During conciliation, the Association sought to resurrect the sick time accrual issue. However, as stated orally by the Conciliator at the time of the hearing, the Association, as its position statement, had accepted the Fact-Finder's recommendation. As noted in their position statement of February 27, 1998, the Association stated: "The Fire Fighters accept all of the recommendations of the Fact-Finder, Robert G. Stein, in their entirety and adopt the rationale set forth in his Report." In light of the Association's position to adopt the Fact-Finder's Report as their final position for conciliation, the Conciliator is of the view that he has no option but to consider that the Association was willing to accept Fact-Finder Stein's recommendation of no new contract language pertaining to the accrual of sick time. In light of that disposition and the City's continuing position during conciliation to likewise accept the Fact-Finder's recommendation, it is therefore the Conciliator's decision to accept the Association's statement and the City's position. Therefore, the proposed new article pertaining to the accrual of sick time is not to be adopted in the new contract.

Respectfully submitted,



DONALD N. JAFFE
Conciliator