

CONCILIATION AWARD

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

September 29, 1998

STATE EMPLOYMENT  
RELATIONS BOARD  
Oct 1 11 00 AM '98

In the Matter of :

City of Brook Park )  
 )  
 and ) Case No. 98-MED-01-0067  
 )  
 Brook Park Firefighters Association, )  
 IAFF Local 1141 )

APPEARANCES

For the Employer:

Marc J. Bloch, Counsel  
Eileen McNamara, Commissioner, Human Resources  
Bill Horvath, Assistant Director of Finance

For the Union:

Tom Hansulak, Attorney  
James Astorino, President  
Linbell Lewis Jr., Vice President  
Terry Rinas, Secretary  
Edward J. Dargay, Lieutenant

Conciliator:

Nels E. Nelson

//

## BACKGROUND

The instant dispute involves the City of Brook Park and the Brook Park Firefighters Association, IAFF Local 1141. On October 29, 1996 they agreed to a collective bargaining agreement to be effective January 1, 1996 through December 31, 1998. It provided for a 4% wage increase in 1996 and 3% wage increases in 1997 and 1998. A letter of understanding was attached to the contract stating that "in the event any other union receives a higher wage settlement, the City of Brook Park agrees to reopen negotiations for the purpose of adjusting wages to that higher amount."

On April 16, 1997 the city reached agreement with the police officers who are represented by the Ohio Patrolmen's Benevolent Association. The contract called for the same wage increases as the agreement with the firefighters. It also created a patrolman/certificate of proficiency classification at a higher salary than the patrolman classification. Since all of the patrolmen met the requirements for the certification of proficiency, the effect was that patrolmen received a 7.4% salary increase. The same percentage increase was granted to sergeants by the contract provision that required them to be paid 113% of a patrolman's wage.

On May 7, 1997 James Astorino, the president of the Brook Park Firefighters Association, sent a letter to the city. He requested the city to adjust the wages of the firefighters to reflect the higher first year wage settlement received by the police. The city responded on May 15, 1997 that it did not believe that the letter of understanding was triggered by the agreement with the police. On May 19, 1997 Astorino suggested that the parties arbitrate the issue regarding the letter of understanding. The city agreed to the union's request on May 23, 1997.

The arbitration hearing took place on October 1, 1997. The parties agreed that the issue was "whether ... the ... police received a 'higher wage settlement' than the Firefighters, thereby involving application of the Me-Too provision." Arbitrator Mark Lurie found that the me-too provision was triggered by the police settlement but rejected

the union's request that to adjust the firefighters' wages to be consistent with the increases received by the patrolmen and sergeants. He directed the city "to reopen negotiations for the purpose of adjusting wages to the higher amount awarded the Police Union."

When the parties were unable to reach agreement, a Factfinder was appointed on February 27, 1998. A factfinding hearing was conducted on May 1, 1998. Factfinder Anna DuVal Smith recommended the wage adjustment sought by the union which increased the 1996 wages of the firefighters to equal the increase received by the police.

The factfinding report was rejected by the city. The parties met to attempt to resolve the dispute. When their efforts failed, the Conciliator was appointed on July 2, 1998.

The Conciliator held a hearing on August 27, 1998. At the hearing the city argued that the union's prehearing statement should not be considered by the Conciliator. It pointed out that Section 4117.14(G)(3) of the Ohio Rived Code states:

not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and the rationale for that position.

The city noted that Section 4117-1-02(C) of the Ohio Administrative Code indicates:

service may be made by mail or by personal service, including hand delivery or by leaving a copy at the principal office or personal residence of the party or representative required to be served. Service by mail shall be deemed complete upon mailing. (Emphasis added by the city).

It stressed that the union failed to deliver a copy of its statement to the city's attorney, Marc Bloch, in accord with these requirements.

The city also cited the Ohio Civil Rule Procedure. It observed that Rule 5(B) provides:

whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in a proceeding, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or party shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served

by facsimile transmission, making it to the last known address of the person to be served, or, if no address is known, leaving it with the clerk of the court. (Emphasis added by the city).

The city reported that in Swander Ditch Land Owners' Ass'n v. Joint Bd. of Huron and Seneca County Com'rs, 51 Ohio St.3d 131, 554 N.E.2d 1324 (1990), the Ohio Supreme Court held that when service is required to be made upon a party who is represented by an attorney of record, service should be made upon the attorney unless the court expressly orders that it be made upon the party.

The city contended that the record indicates that Bloch was the "representative required to be served." It observed that correspondence from the State Employment Relations Board beginning with the certificate of the factfinding vote dated June 7, 1998 through the notice of the appointment of the Conciliator on July 2, 1998 was sent to him. The city further noted that the Conciliator's notice to the parties pursuant to SERB's order was sent to Bloch.

The union maintained that proper service was accomplished when it delivered its statement to the offices of the city. It pointed out that Section 4117.14(G)(3) of the Ohio Revised Code states that the statement must be submitted to "the opposing party" which is the City of Brook Park. The union noted Section 4117-1-02(C) of the Ohio Administrative Code indicates that service may be made "by personal service including hand delivery or by leaving a copy at the principal office ... of the party required to be served."

The Conciliator believes that the city was served as required by the Ohio Revised Code and the Ohio Administrative Code. Delivery of its report to the office of the mayor of the city satisfies the relevant requirements. In any event the city suffered no prejudice whatsoever.

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

### ISSUE

The single issue is the wage increase for 1996. The Conciliator will summarize the arguments and evidence presented by the parties, provide a brief rationale for his selection of a final offer, and furnish a copy of the offer that is selected.

#### Article XIV - Compensation and Article XX - Fire Prevention Bureau -

The current contract provides salary schedules for five classifications of firefighters, lieutenant, fire inspector, and assistant fire prevention officer. The union seeks to adjust the salaries to reflect the increase in police salaries due to the creation of the new patrolman/certificate of proficiency classification. The city proposes to increase the salaries of the 13 members of the fire department who earn less than the patrolman/certificate of proficiency classification.

Union Position - The union argues that the police patrolmen and sergeants got a larger wage increase in 1996 than the firefighters and lieutenants and that under the me-too provision in its contract they are entitled to the same increase in wages. It

acknowledges that the police appeared to receive the same wage increase as the firefighters but points out that the creation of the patrolman/certificate of proficiency classification resulted in a greater wage increase. The union stresses that the new classification does not involve any more training or certification but rewards police officers for completing the required police training course. It charges that the new classification is "bogus" and is designed to address the issue of parity.

The union contends that the city is not obligated to maintain parity between police and fire salaries. It observes that the clause in the police and fire contracts which required parity was eliminated in 1987. The union states that the city's concern regarding parity is not relevant to the me-too provision in the fire contract.

The union maintains that the city's situation is analogous to a cost overrun. It observes that many times the city enters into a contract and is later subject to a cost increase. The union indicates that the city routinely amends contracts with suppliers to pay the higher costs. It claims that in the instant case the city's agreement with the police caused a cost overrun.

The union rejects the city's contention that awarding its offer will result in layoffs. It reports that a presentation by the finance director to city council indicated that between 1998 and 2002 the city will save almost \$4 million due to a buy-out. The union asserts that billing for emergency medical services, charging for airport parking, changing insurance arrangements, and selling land along with the expansion of operations at the Ford Motor Company will increase revenue by \$11 million. It observes that the general fund balance increased from \$1.3 million in 1995 to \$2.9 million in 1997. The union claims that the 21% salary increases for the mayor and the finance director reveal that the city is comfortable with its financial outlook.

The union asks the Conciliator to confirm the Factfinder's recommendations and award the salary adjustment it seeks which restores the relationship between police and fire salaries that existed in 1995.

City Position - The city argues that the me-too clause does not mandate that firefighters receive an additional wage increase for 1996. It claims that the creation of the patrolman/certificate of proficiency classification does not trigger the me-too clause. The city acknowledges that the new classification does permit police employees to partially catch-up to firefighters. It asserts, however, that the police were only demanding a proficiency allowance similar to the ones received by police in some other communities.

The city indicates that although it believes that the decision of Arbitrator Lurie is "fundamentally flawed," it is offering additional compensation to firefighters affected by the police settlement. It claims that paramedics were not impacted by the police settlement because they still earn more than those in the patrolman/certification of proficiency classification. The city states that lieutenants were not affected because they are paid 11% more than the highest ranking paramedics. The city acknowledges that EMT's and the assistant fire prevention officer are arguably harmed and offers to compensate them.

The city disputes the union's claim that it will receive substantial new revenue. It indicates that to date emergency medical service billing has been only \$30,000 and that additional revenue from airport parking is not in the budget. The city claims that there is no basis for the claim that the expansion at the Ford Motor Company will result in \$4.8 million in new revenue. It does not challenge the union's figures regarding ending balances but notes that it owes the Ford Motor Company \$1.0 million for the overpayment of taxes.

The city contends that the union's demand will cause economic harm to the city. It states that its offer represents \$83,696.26 in back pay while the union's offer involves \$210,885.03 in back pay. The city claims that if the union's offer is selected, there more than likely will be layoffs.

The city concludes that its offer is fair and should be adopted.

Analysis - The instant case is a departure from the usual situation facing a Conciliator. In most cases a Conciliator is required to select a wage offer based on

comparable wage data and the arguments of the parties regarding the employer's ability to pay. The key consideration in the instant case, however, is the me-too clause in the collective bargaining agreement.

The me-too clause is straightforward. It states:

in the event any other union receives a higher wage settlement, the City of Brook Park agrees to reopen negotiations for the purpose of adjusting wages to that higher amount.

This language obligates the city to increase wages to equal a higher settlement achieved by another union. The reopening of negotiations is intended to provide an opportunity for the parties to agree on how the equalization should be accomplished.

The Conciliator believes that there is no doubt that the police settlement triggered the wage reopener. While the greater wage increase was the result of the creation of the patrolman/certificate of proficiency classification, the impact was the same as granting a larger percentage wage increase. This conclusion is supported by the decision of Arbitrator Lurie and the report of Factfinder Smith.

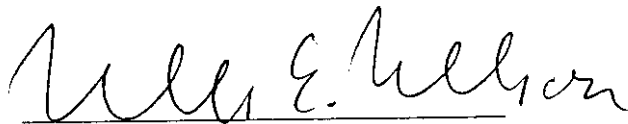
The Conciliator must reject the city's argument that the paramedics and lieutenants were not harmed by the police settlement. While they still earn more than patrolmen and sergeants, the differential has been reduced. The loss in income due to the reduced differential is clearly harm from the perspective of the paramedics and lieutenants.

The Conciliator does not feel that awarding the union's offer will create an economic hardship. The city's year end balances have been growing and it has some prospects for increased revenue. The Conciliator does not believe that paying what the contract mandates will require the city to make layoffs.

The Conciliator is sympathetic to the city's position. It finds itself facing demands from competing unions. Hopefully, in the current round of bargaining the city and the union will be able to resolve some of issues related to relative rates of pay.



Award - The Conciliator awards the union's final offer shown in Appendix A.

A handwritten signature in cursive script, reading "Nels E. Nelson". The signature is written in dark ink and is positioned above a horizontal line.

Nels E. Nelson  
Conciliator

September 29, 1998  
Russell Township  
Geauga County, Ohio

APPENDIX A

ARTICLE XIV

COMPENSATION

The annual salary paid to Firefighters shall be as follows:

FIREFIGHTER/PARAMEDIC CERTIFIED

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
Start	36,640.53	37,739.75	38,871.94
After 6 months	38,068.94	39,211.01	40,387.34
After 12 months	40,781.01	42,004.44	43,264.58
After 18 months	42,255.80	43,523.47	44,829.17
After 24 months	43,730.62	45,042.54	46,393.81
After 5 years	44,116.38	45,439.87	46,803.07
After 10 years	44,605.94	45,944.12	47,322.44
After 15 years	45,097.51	46,450.43	47,843.94
After 20 years	45,586.86	46,954.46	48,363.10
After 25 years	46,078.12	47,460.47	48,884.28

FIREFIGHTER/CERTIFICATE OF PROFICIENCY (NON-PARAMEDIC)

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 5 years	42,515.34	43,790.80	45,104.52
After 10 years	43,000.59	44,290.60	45,619.32
After 15 years	43,487.83	44,792.46	46,136.24
After 20 years	43,970.01	45,292.20	46,650.96
After 25 years	44,460.11	45,793.91	47,167.73

FIREFIGHTER/ASSOCIATE, BACHELOR OR MASTERS DEGREE (NON-PARAMEDIC)

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 5 years	43,377.45	44,678.77	46,019.13
After 10 years	43,865.01	45,180.96	46,536.39
After 15 years	44,354.58	45,685.22	47,055.77
After 20 years	44,842.00	46,187.26	47,572.87
After 25 years	45,331.35	46,691.29	48,092.02

FIREFIGHTER/EMT QUALIFIED (NON-PARAMEDIC)

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
Start	34,255.82	35,283.50	36,342.00
After 6 months	35,684.23	36,754.76	37,857.40
After 12 months	38,318.80	39,468.36	40,652.41
After 18 months	39,793.57	40,987.37	42,217.00
After 24 months	41,268.40	42,506.45	43,781.64
After 5 years	41,653.24	42,902.84	44,189.93
After 10 years	42,136.16	43,400.25	44,702.25
After 15 years	42,621.08	43,899.71	45,216.70
After 20 years	43,104.00	44,397.12	45,729.04
After 25 years	43,588.86	44,896.52	46,243.42

Section 2. Differential. The City will maintain an 11% differential between the top Firefighter's salary and the Lieutenant salary. The pay schedule for Lieutenant shall be:

	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	48,540.98	49,997.21	51,497.13
After 5 years	48,969.19	50,438.27	51,951.42
After 10 years	49,512.60	50,997.98	52,527.91
After 15 years	50,058.24	51,559.99	53,106.78
After 20 years	50,601.41	52,119.45	53,683.03
After 25 years	51,146.72	52,681.12	54,261.51

Section 3. AS IS

Section 4. AS IS

Section 5. AS IS

Section 6. AS IS

ARTICLE XX

FIRE PREVENTION BUREAU

Section 1. AS IS

Section 2. AS IS

Section 3. AS IS

Section 4. AS IS

Section 5. AS IS

Section 6. AS IS

Section 7. During the term of this Agreement, the annual salaries shall be:

<u>FIRE INSPECTOR</u>	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	48,540.98	49,997.21	51,497.13
After 5 years	48,969.19	50,438.27	51,951.42
After 10 years	49,512.60	50,997.98	52,527.91
After 15 years	50,058.24	51,559.99	53,106.78
After 20 years	50,601.41	52,119.45	53,683.03
After 25 years	51,146.72	52,681.12	54,261.51

<u>ASSISTANT FIRE PREVENTION OFFICER</u>	Effective <u>1/1/96</u>	Effective <u>1/1/97</u>	Effective <u>1/1/98</u>
After 24 months	45,917.15	47,294.67	48,713.51
After 5 years	46,322.20	47,711.86	49,143.22
After 10 years	46,836.24	48,241.33	49,688.57
After 15 years	47,352.38	48,772.95	50,236.14
After 20 years	47,866.20	49,302.19	50,781.25
After 25 years	48,382.03	49,833.49	51,328.49

Section 8. AS IS