

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Conneaut Volunteer Firefighters Organization,

Employee Organization,

and

City of Conneaut,

Employer.

2014 OCT -9 PM 1:26

STATE EMPLOYMENT  
RELATIONS BOARD

Case Number 2014-MED-01-0022

**DIRECTIVE GRANTING MOTION TO DISMISS NOTICE TO NEGOTIATE  
(OPINION ATTACHED)**

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Brundige:  
October 9, 2014.

This matter comes before the State Employment Relations Board (“the Board” or “SERB”) upon the City of Conneaut’s (“Employer” or “City”) March 25, 2014, “Employer’s Motion to Stay Negotiations and Motion to Dismiss.” The City’s motions were filed in response to the Notice to Negotiate filed by the Conneaut Volunteer Firefighters Organization (“Union” or “CVFO”) on January 8, 2014. On April 4, 2014, CVFO also filed “Employee’s Motion to Enforce Intent to Negotiate Filing.”

On May 2, 2014, the Board granted the City’s Motion to Stay Negotiations and directed this matter to an inquiry to determine whether the employees in the bargaining unit represented by CVFO are “casual employees” pursuant to Ohio Revised Code (“O.R.C.”) § 4117.01(C)(13) and whether CVFO is an active employee organization under O.R.C. Chapter 4117. On June 18, 2014, an inquiry was held in this matter, at which time, testimonial and documentary evidence was presented. Subsequently, the parties filed post-inquiry briefs. On July 30, 2014, the Employer filed a Motion to Strike the documents attached to the Union’s post-inquiry brief. On September 2, 2014, the assigned Hearing Officer submitted to the Board an Inquiry Report and Recommendation, finding that the volunteer firefighters in the CVFO bargaining unit are “casual employees” and, therefore, are exempt from the definition of “public employee” pursuant to O.R.C. § 4117.01(C)(13), and recommending that the Employer’s Motion to Dismiss the Union’s Notice to Negotiate be granted and the Employer’s Motion to Strike be denied.

After reviewing the Hearing Officer's Inquiry Report and Recommendation, the parties' exhibits and post-inquiry briefs, and the entirety of the record, the Board expressly adopts the reasoning in the Discussion, the Findings of Fact, Conclusions of Law, and Recommendations in the Report and Recommendation, incorporated by reference, finding that the volunteer firefighters in the CVFO bargaining unit are "casual employees" and, therefore, are exempt from the definition of "public employee" pursuant to O.R.C. § 4117.01(C)(13); grants the City's Motion to Dismiss CVFO's Notice to Negotiate; dismisses the January 8, 2014 Notice to Negotiate; and denies the City's Motion to Strike.

It is so ordered.

ZIMPHER, Chair, SCHMIDT, Vice Chair, and BRUNDIGE, Member, concur.

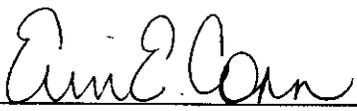
  
\_\_\_\_\_  
W. CRAIG ZIMPER, CHAIR

#### **TIME AND METHOD TO PERFECT AN APPEAL**

Any party that desires to appeal the order of the State Employment Relations Board shall file a Notice of Appeal setting forth the final order appealed from and the grounds of appeal with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of the State Employment Relations Board's order. The Notice of Appeal shall also be filed with the State Employment Relations Board, at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Revised Code Section 119.12.

#### **PROOF OF SERVICE**

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 09<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
ERIN E. CONN, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

<b>CITY OF CONNEAUT, OHIO,</b>	:	<b>CASE NO. 2014-MED-01-0022</b>
	:	
<b>Employer,</b>	:	
	:	
<b>and</b>	:	<b>ELAINE STEVENSON</b>
	:	<b>Staff Attorney</b>
	:	
	:	
<b>CONNEAUT VOLUNTEER FIREFIGHTERS ORGANIZATION,</b>	:	<b><u>INQUIRY REPORT AND RECOMMENDATION</u></b>
	:	
<b>Employee Organization.</b>	:	

**INTRODUCTION**

This matter comes before the State Employment Relations Board (“the Board” or “SERB”) upon the City of Conneaut’s (“Employer” or “City”) March 25, 2014, “Employer’s Motion to Stay Negotiations and Motion to Dismiss.” The City’s motions were filed in response to the Notice to Negotiate filed by the Conneaut Volunteer Firefighters Organization (“Union” or “CVFO”) on January 8, 2014. On April 4, 2014, CVFO also filed “Employee’s Motion to Enforce Intent to Negotiate Filing.”

On May 2, 2014, the Board granted the City’s Motion to Stay Negotiations and directed this matter to an inquiry to determine whether the employees in the bargaining unit represented by CVFO are “casual employees” pursuant to Ohio Revised Code (“O.R.C.”) § 4117.01(C)(13), and whether CVFO is an active employee organization under O.R.C. Chapter 4117. On June 18, 2014, an inquiry was held in this matter, at which time, testimonial and documentary evidence was presented. At the inquiry, the City called Conneaut Fire Chief, Steven Lee, and City Manager, Tim Eggleston, as witnesses. CVFO called former Conneaut Fire Chief, Bim Orrenmaa, and CVFO President, Ryan Tattrie. Subsequently, the parties filed post-inquiry briefs. On July 30, 2014, the Employer filed a Motion to Strike the documents attached to the Union’s post-inquiry brief.

**FINDINGS OF FACT**

1. In 1992, the City of Conneaut’s Fire Department operated four Fire Stations: Stations 1, 2, 3, and 4. Stations 1 and 2 were staffed by full-time and part-time firefighters and Stations 3 and 4 were staffed by volunteer firefighters (a.k.a. on-call firefighters).

2. On August 8, 1992, the Conneaut Volunteer Firefighter's Organization filed a Request for Recognition with SERB. (SERB Case No. 92-REP-08-0180). The list of volunteer firefighters submitted in the representation case contained 52 names.
3. On September 8, 1992, the City filed a Petition for Representation Election. On January 28, 1993, a representation election was held. On February 23, 1993, SERB certified CVFO as the exclusive representative for the following bargaining unit:
  - Included: All fire/rescue personnel at Station #3 and #4, including Firefighters, Lieutenants, Captains, and Assistant Battalion Chiefs.
  - Excluded: Battalion Chiefs and all other employees of the City of Conneaut Fire Department.
4. The City and CVFO have never executed a collective bargaining agreement.
5. SERB's records indicate that CVFO filed a Registration Report after certification in 1993. In October 2002, CVFO filed its Constitution and Bylaws, another Registration Report, Employee Organization's Annual Report, and a Financial Report. There were no other filings until 2011. CVFO filed Annual Reports and Financial Statements for 2011, 2012, and 2013. CVFO has never collected union dues from its members.
6. From at least 2009 through January 1, 2014, the volunteer firefighters were paid an hourly rate for their service. The hourly rate of pay for volunteer firefighters' just prior to January 1, 2014 was \$10.00 to \$12.00 per hour.
7. On January 1, 2014, the City of Conneaut passed Ordinances Nos. 107-13 and 108-13, which changed maximum rates of pay for the fire department and volunteer personnel. As of January 1, 2014, the volunteer firefighters in the CVFO bargaining unit receive an annual stipend of \$2,000.00 for their services, to be paid in quarterly increments. In order to receive the annual stipend set forth in City Ordinance No. 108-13, volunteer firefighters must respond to twenty-five calls/runs per quarter, complete the requisite number of training hours to maintain their state firefighter certification, and, if applicable, their EMS certification. They also are required to perform four hours of maintenance at Station 3 each quarter.
8. On January 8, 2014, CVFO filed a Notice to Negotiate pursuant to O.R.C. § 4117.14. CVFO properly served the City of Conneaut with the Notice to Negotiate.

9. On March 25, 2014, the City filed "Employer's Motion to Stay Negotiations and Motion to Dismiss Notice to Negotiate."
10. On April 4, 2014, CVFO filed "Employee's Motion to Enforce Intent to Negotiate Filing."
11. On May 1, 2014, SERB directed this matter to an inquiry to determine whether the employees in the bargaining unit represented by CVFO are "casual employees" pursuant to Ohio Revised Code ("O.R.C.") § 4117.01(C)(13) and whether CVFO is an active employee organization under Chapter 4117.
12. Steven Lee has been employed by the City of Conneaut for approximately twenty-two years. Mr. Lee has held the position of Fire Chief for the past four years. As Conneaut Fire Chief, he is responsible for administration, payroll, scheduling, and the overall operations of the City's Fire Department. Chief Lee began his employment with the City as a volunteer firefighter.
13. All firefighters must attend continuing education training (CE) to maintain their firefighter and/or EMS certification. Chief Lee indicated that CE requirements are on a three-year cycle. He further indicated that a firefighter must accumulate 18 hours of CE per year and 8 hours hazardous material training. If a firefighter has EMS certification, he or she must accumulate a certain number of CE hours each year in accordance with their level of EMS certification. The City offers certain CE training. Employees may earn Firefighter or EMS CE hours through the City and authorized or recognized entities outside the City.
14. The City's Fire Department currently operates two Fire Stations; Stations 1 and 3. The City employs ten full-time firefighters, including the fire chief, assistant fire chief, captains, and firefighters. Full-time firefighters are scheduled on a three-day cycle; on 24 hours/off 48 hours. The City also employs fifteen part-time firefighters, who are pre-scheduled to fill in shifts and to respond as-needed. Part-time firefighters are also known as "utility" firefighters. The full-time and part-time firefighters staff Station 1. Full-time and part-time firefighters are paid for shifts they are scheduled to work, regardless of whether they respond to a call. The full-time firefighters are represented by the International Association of Firefighters, Local 651, AFL-CIO, and they have a current collective bargaining agreement. The part-time firefighters are not represented by a union. Full-time firefighters and part-time firefighters are subject to possible disciplinary action for failure to report to work.

15. At the time of this proceeding, the City employed approximately fifteen to twenty volunteer (on-call) firefighters. The volunteer firefighters staff Station 3 and are utilized by the City to supplement the full-time firefighters on an as-needed/on-call basis. The volunteer firefighters do not have scheduled work hours. Volunteer firefighters are contacted as needed via pagers and radio. The volunteer firefighters may decline work assignments and are not subject to any type of disciplinary action for failure to respond to a call to work.
16. As noted above, volunteer firefighters must fulfill certain requirements in order to receive the annual stipend set forth in City Ordinance No. 108-13. Volunteer firefighters must respond to twenty-five calls/runs per quarter, complete the requisite number of training hours to maintain their state firefighter certification, and perform four hours of maintenance at Station 3. A call/run includes: manning Station 3 on "standby" while full-time firefighters are out on a call/run; responding to fire, emergency, and rescue calls when full-time firefighters are out on a call; responding to a "recall" or "all-hands" call; and volunteer sign-up for special duty to cover events such as Fourth of July celebrations and parades. A volunteer firefighter usually obtains his or her four hours of maintenance work performing such work while on standby at Station 3.
17. Tim Eggleston has served as City Manager for approximately three years. As City Manager, Mr. Eggleston oversees operations, manages budgets, and participates in collective bargaining negotiations on behalf of the City. Mr. Eggleston identified Employer's Exhibit 12 as a series of volunteer firefighters' lists showing the total hours worked by CVFO employees annually from 2009 to 2013. Mr. Eggleston indicated that the work hour totals in Exhibit 12 were calculated by the City's payroll officer.
18. The Union called the former Conneaut Fire Chief, Bim Orrenmaa, as a witness. Mr. Orrenmaa was employed by the City for approximately thirty-six years, and he held the position of Fire Chief from 1988 until his retirement in 2009. Mr. Orrenmaa's previous positions with the City's Fire Department include cadet firefighter, volunteer firefighter, and full-time firefighter.
19. Mr. Orrenmaa confirmed that there was never a signed collective bargaining agreement between the City and the Union. Mr. Orrenmaa indicated that the parties discussed employment issues on an informal basis, as needed. Mr. Orrenmaa testified that the parties had verbal agreements regarding employment conditions, including compensation and work hours. Mr. Orrenmaa testified that the volunteer firefighters and the City had an established grievance procedure. During his employment, volunteer firefighters filed grievances. Those grievances were settled or resolved.

### DISCUSSION

In its Motion to Dismiss, the City argues that the Board should dismiss CVFO's Notice to Negotiate on the grounds that: (1) the employees in the bargaining unit are casual employees and are, therefore, exempted from the definition of public employees pursuant to O.R.C. § 4117.01 (C)(13); (2) CVFO has waived its right to negotiate for these employees by its own inactivity; and (3) CVFO's inactivity provides the City with a good faith doubt as to whether the Union still has majority status. CVFO requests that SERB uphold the recognition of CVFO as the exclusive representative of the City's volunteer firefighters and enforce CVFO's January 8, 2014 Notice to Negotiate.

O.R.C. § 4117.01(C)(13) excludes from the definition of public employee, "all seasonal and casual employees as determined by the Board." In *In re Ohio Turnpike Comm*, SERB 93-022 (12-21-93), the Board adopted a bright line numerical standard to define a "casual employee." *In re Ohio Turnpike Comm*, states, in pertinent part:

Casual employees are those employees who are assigned on an on call or as needed basis to supplement the work force and either: 1) averaged in the aggregate less than 500 hours over the previous year; or 2) among whom less than 60% who worked one year returned for the following year.

These standards are for job classifications. If a classification meets the requirements, then all members of the class are considered not to be casual or seasonal, even though specific individuals may or may not meet the requirements.

Since 1993, SERB has consistently applied this numerical standard of a "casual employee" to affected employees who seek representation or protection under O.R.C. Chapter 4117. See *In re City of Tallmadge*, SERB 95-011 (6-30-95) (the Board held that part-time fire fighters were not casual employees because the firefighters were regularly scheduled for a certain number of shifts and were required to sign-up for at least four six-hour shifts every month or be subject to discipline); *In re Howland Township Trustees, Trumbull County*, SERB 98-001 (1-23-98) (the Board held that part-time police officers were casual employees because they had no set hours, they were free to decline any assignments without fear of discipline or removal, and they averaged 317.44 hours in the previous year).

The testimonial and documentary evidence presented at the inquiry established that, from 2010 through 2013, the volunteer firefighters in the CVFO bargaining unit have met the numerical standard of a casual employee set forth in *In re Ohio Turnpike Comm*. The volunteer firefighters are used to supplement the full-time firefighter workforce on as needed basis and are not regularly scheduled to work. The City

submitted documentary evidence regarding the work hours of the volunteer firefighter bargaining-unit members for years 2009 through 2013. The average number of hours the volunteer firefighters worked in 2013 was 154.8 hours. Their average hours worked from 2009 to 2013 was 154.4. Additionally, the evidence established that the volunteer firefighters are not subject to any sanction for not responding to a call to report to work. Based on these facts, the CVFO volunteer firefighters, *as currently utilized*, are "casual employees" and are, therefore, exempted from the definition of public employee pursuant to O.R.C. § 4117.01(C)(13).

In its post-inquiry brief, CVFO disputes the accuracy of the volunteer firefighters' reported work hours outlined in Employer's Exhibit 12. CVFO argues that the City omitted the time that volunteer firefighters are "on call" waiting to "compliment" the full-time firefighters. This argument is without merit. Fire Chief Lee testified that, prior to January 1, 2014, volunteer firefighters were paid an hourly rate for the total number of hours they worked responding to calls/runs and performing special duty assignments. Chief Lee explained that calls/runs included the time volunteer firefighters spent manning Station 3 on "stand-by" while full-time firefighters responded to a call. This "standby" status is similar to the full-time and part-time firefighters who are paid for all of the hours they are scheduled to work, regardless of whether they actually respond to a call/run. CVFO further argues that the City's numbers in Exhibit 12 are inaccurate because the City did not include Battalion Chief Nick Colby, who is a volunteer firefighter. This argument also is without merit. Battalion Chiefs have never been part of the CVFO bargaining unit; therefore, their work hours are not relevant to the issues presented in this case. CVFO argues that the volunteer firefighters could reach the threshold 500 work hours per year if they spent time obtaining firefighter or EMS certifications through the City. No evidence was presented to support this argument, or to refute the number of work hours contained in Employer's Exhibit 12.

CVFO further argues that the City's full-time, part-time, and volunteer firefighters perform the same duties and are vital to the operations of Conneaut Fire Department; therefore, SERB should use a qualitative analysis to determine whether or not the CVFO bargaining unit members are casual employees. The standard for determining casual employee status set forth in *In re Ohio Turnpike Comm*, was adopted by SERB to provide "clarity on an objective basis." *In re Ohio Turnpike Comm, supra* Given the vague nature of the collective bargaining relationship that has existed between the parties for approximately twenty years, it would be injudicious to reexamine this bright line test at this time.<sup>1</sup> Therefore, while it is undisputed that the volunteer firefighters provide an important service to the City of Conneaut by supplementing the City's

---

<sup>1</sup> At inquiry, the parties presented differing accounts of their interactions over the past twenty years. CVFO asserts that the parties have interacted as employer and exclusive representative through informal communications. It is noted that the parties have never executed a collective bargaining agreement since CFVO became the exclusive representative of the volunteer firefighters in February 1993. The parties have never reduced to writing any verbal understandings or discussions regarding work matters, including hours, wages, terms and other conditions of employment. The parties have never established exclusive written grievance procedures for CVFO and the City has never received a formal written grievance from a bargaining-unit member. The first Notice to Negotiate filed by CVFO and served on the City was in January 2014.

firefighter workforce, the evidence contained in the record established that the volunteer firefighters' aggregate work hours have fallen well below the threshold minimum of 500 that would qualify them as "public employees" under O.R.C. Chapter 4117. This has been the case for the past five years.

Having determined that the City's volunteer firefighters are "casual employees" pursuant to O.R.C. § 4117.01(C)(13), it is not necessary to consider the City's remaining two arguments regarding waiver of the statutory right to bargain and the Employer's good faith doubt regarding the Union's majority status. It is worth noting, however, that this Board applies a high standard regarding whether there has been a waiver of a statutory right. "It is well established that a waiver of the statutory right to bargain must be demonstrated by clear and unmistakable action by the waiving party." (*In re City of Canton*, SERB 94-011 (6-29-94)) "A waiver of the right to bargain will not be allowed unless established by clear and unmistakable evidence." (*SERB v. Akron Public School District Board of Education*, SERB 96-013 (12-30-90)) With regard to the Employer's good faith doubt regarding the Union's majority status, it is noted that the duty to bargain arises when an employee organization becomes the exclusive representative of a bargaining unit. That event occurs either through certification by SERB pursuant to O.R.C. § 4117.05(A) or "deemed" certified status pursuant to Section 4(A) of Am.Sub.S.B. No. 133, effective April 1, 1984. (140 Ohio Laws, Pt. 1, 367) A public employer is not relieved of this obligation simply because it believes a majority of its bargaining-unit employees no longer support the certified employee organization. (*In State Emp. Relations Bd. v. Miami University*, 71 Ohio St.3d 351, SERB 4-1 (1994); *In re Marion County Children's Service Bd.*, SERB 92-017 (10-1-92); *In re OAPSE, Local 179 and Springfield Local School Dist Bd of Ed*, SERB ALJ 2000-BD-003 (1-19-00))

Regarding the City's Motion to Strike the two documents attached to the Union's post hearing brief, it is recommended that this motion be denied as the City has suffered no prejudice from the inclusion of these documents in the record.

### **RECOMMENDATION**

Based on the evidence presented at the inquiry and the parties' post-inquiry briefs, it is recommended that the Board adopt the findings of fact and conclusions of law in this report, finding that the volunteer firefighters in the CVFO bargaining unit are "casual employees" and are, therefore, exempted from the definition of "public employee" pursuant to O.R.C. § 4117.01(C)(13); grant the City's Motion to Dismiss CVFO's Notice to Negotiate; dismiss the January 8, 2014 Notice to Negotiate; and dismiss the City's Motion to Strike.

# SERB

"Promoting Orderly and Constructive  
Labor Relations Since 1984"

**State  
Employment  
Relations  
Board**



65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Phone 614.644.8573  
Fax 614.466.3074  
[www.serb.state.oh.us](http://www.serb.state.oh.us)

W. Craig Zimpher, Chair  
Aaron A. Schmidt, Vice Chair  
N. Eugene Brundige, Board Member

John R. Kasich, Governor

Christine A. Dietsch, Executive Director

*City of Conneaut, Ohio v. Conneaut Volunteer Firefighters Organization*  
SERB Case No. 2014-MED-01-0022

## CERTIFICATION

I, the undersigned General Counsel for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order of the State Employment Relations Board entered on its journal, on the 9<sup>th</sup> day of October, 2014.

  
DONALD M. COLLINS  
General Counsel