

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

Oct 24 10 06 AM '00

In the Matter of Negotiations Between:

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	CASE No. 00-MED 04-0469
)	00-MED-04-0470
)	00-MED-04-0471
)	
and)	CONCILIATION AWARD
)	
)	
)	Margaret Nancy Johnson
CITY OF LONDON, OHIO)	Conciliator

In accordance with Ohio Revised Code 4117.14(D)(1), the State Employment Relations Board appointed Margaret Nancy Johnson as conciliator in the bargaining impasse between these parties. The matter came on for hearing on October 13, 2000, in a conference room at the City Hall, in London, Ohio. Marc A. Fishel, Attorney with Downes & Hurst, represented the city. The case for the Union was argued by Joseph M. Hegedus, Attorney with Climaco, Lefkowitz, Peca, Wilcox & Garofoli. Both parties timely filed prehearing position statements with the Conciliator for her review prior to the hearing.

The City of London, Ohio, hereinafter "City," and the Ohio Patrolmen's Benevolent Association, hereinafter "OPBA" or "Union," are parties to a collective bargaining agreement which expired on June 30, 2000. Unable to successfully negotiate a successor contract, the parties engaged in fact finding on July 14, 2000. On August 11, 2000, recommendations were issued which the Union ratified but which the City rejected in a timely manner in accordance with the statutory requirements.

Thereafter, on August 14, 2000, alleging error in the fact-finding report, the City filed with SERB a Motion to Reopen the Fact-finding Report and Impose New Time Periods. Heard before the Board on September 7, 2000, the motion filed by the Board was denied. The matter is now before the Conciliator for a final and binding resolution.

Issue

The sole issue presented to the conciliator for resolution is whether one (1) additional holiday should be included in the Holiday provisions of the Collective Bargaining Agreement.

Criteria

In rendering the award which follows, the conciliator gave consideration to the factors outlined in O.R.C. Section 4117.14(G)(7) and Ohio Administrative Code 4117-9-07.

Position of the Parties

I The City

The City maintains that the additional holiday recommended by the fact-finder ought not to be included in the Collective Bargaining Agreement. In presenting its case, the City argues that the recommended inclusion of Easter as a paid holiday is not consistent with statutory criteria, collective bargaining history, the current negotiations between the parties, or the comparables, both internal and external. Moreover, the City contends that the additional holiday imposes on management an undue financial burden. Finally, the City suggests that the addition of a religious holiday is not proper and is contrary to the principles of the City. The City suggests that the fact-finder committed error in recommending Easter as a holiday and that the Conciliator is justified in rejecting the recommendation.

II The Union

The Union contends that the fact-finder did not commit error in recommending the additional holiday and that the conciliator ought to defer to his findings. As the question of error was conclusively addressed by the State Employment Relations Board, the conciliator is now precluded from reviewing the matter again. In the absence of error or omission, Conciliators have consistently upheld the recommendations of fact-finders. The recommendations issued by this fact-finder were based upon evidence presented at the hearing, in keeping with applicable statutory criteria, and ought to be reviewed as a whole, rather than in isolation. Considering comparables and the entire economic package presented in the report, the recommended inclusion of Easter as a holiday is supported by the record. The argument never previously raised about the religious nature of the holiday is specious and ought to be dismissed.

Discussion

Although only one issue, the addition of Easter as a paid holiday, is presented to the conciliator for review, this case raises several substantive questions which the conciliator must address. Included within the arguments raised by the parties are the scope of review by the conciliator, the impact of a SERB order, the deference due fact-finding, and the propriety of Easter as a holiday.

In determining whether or not Easter should be included as a holiday in the collective bargaining agreement between the parties, the conciliator first disposes of the question of the constitutional ramifications of the recommendation. The hearing officer concurs with the Union that, like several other paid holidays already included in the agreement, Easter is a financial benefit to employees rather than a religious observation. Other public sector bargaining units in Ohio have designated Easter as a paid holiday without having encountered

opposition on establishment grounds. Should there be merit to such an objection, conciliation is not the proper forum for resolving the dispute. Thus, the recommendation of the fact-finder ought not to be disallowed on the basis of the religious nature of the holiday.

Addressing, next, the impact of the SERB order of October 6, 2000, on these proceedings, the conciliator finds she is not estopped from reviewing the question of error. Although the administrative rules require the fact-finder to petition SERB to correct any errors in recommendations issued pursuant to Section 4117, the failure of a fact-finder to make such a request does not preclude a conciliator from addressing mistakes or omissions. The SERB order of October 6, 2000 denied the motion to reopen the fact-finding process, but it did not impose limitations upon the scope of review to be undertaken by the conciliator.

Accordingly, the conciliator next addresses the allegation of error in the report of the fact-finder. While the issue of holidays was discussed at fact-finding, the City contends that the inclusion of Easter as a holiday was never proposed at the hearing but was, on the contrary, specifically withdrawn by the Union. Indeed, the Fact-finding Position Statement of the Union explicitly states retention of current contract language on days observed as holidays. Nonetheless, in his summary of the positions of the parties on issues at impasse, the fact-finder listed the additional holiday as a proposal of the Union. Since Easter as a holiday was not a Union proposal, the City contends the fact-finder erred in his analysis. As a consequence of this error in the fact-finding report, the City maintains the conciliator ought not to defer to the recommendations set forth therein.

Unlike conciliation, in which the hearing officer must choose between the positions specifically stated by the parties, fact-finding is a much more flexible forum. Indeed, fact-finders routinely fashion recommendations which combine elements from different proposals presented by the parties. Moreover, fact-finders may use mediation to discern possible compromise resolutions and to creatively engineer recommendations which neither party may have contemplated. When formulating recommendations, the neutral views the issues discussed in a broad context rather than in isolation and endeavors to combine economic benefits with managerial restraints.

In this case, the fact-finder devoted an entire day to discussing, mediating, and negotiating a possible solution to remaining issues, including holidays. When the parties proceeded to fact-finding, holidays remained an outstanding issue on which the fact-finder took evidence. Whether or not this conciliator would have resorted to a position which had been removed from the bargaining table by one of the parties and specifically rejected by the other, she can not fault the fact-finder for doing so. Nor can she determine that the use of such a proposal by a fact-finder is statutorily prohibited. In the opinion of the conciliator, the attempt by the fact-finder to utilize an

earlier proposal to effect a solution to the bargaining impasse does not constitute error.

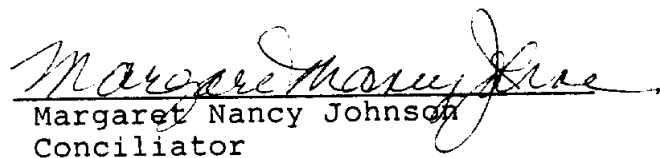
Having found that the fact-finder did not err in his reliance on a prior proposal, the conciliator next addresses whether or not the holiday recommendation is consistent with statutory criteria. Although this conciliator concurs with the generally held opinion that the recommendations of fact-finders ought to be given substantial weight by a conciliator, when the facts require, she has demurred to the recommendations. An improper analysis of comparable contract language or the availability of more current financial data have, for example, provided a basis for refusing to defer.

In this instance, however, the conciliator finds the facts sufficiently sustain the recommendations submitted by the fact-finder. It is apparent that the fact-finder considered the holiday benefits in comparable jurisdictions as well as in view of the overall economic impact of his recommendations. In addition, distinguishing this unit from internal comparables working a traditional work week, the fact-finder deemed the additional holiday benefit to be warranted. Moreover, the absence of Easter as a paid holiday in the contract of the firefighters does not preclude the fact-finder from recommending it for the patrol officers. Finally, the fact that Easter has not heretofore been included as a holiday for any of the bargaining units in the City does not restrict the fact-finder from recommending its inclusion during these negotiations for the patrol officers. Indeed, change is inherent in the collective bargaining process.

The conciliator notes that the recommendations of the fact-finder did, except for the holiday pay issue, provide the basis for a subsequent agreement between the parties. His findings of fact were based upon evidence and information gathered over two days of working with the parties. In rendering his recommendations the fact-finder adapted from proposals submitted by either the Union or the City, and he endeavored to establish an agreement which embodied the spirit of compromise and collective negotiations. Nothing in the recommendations issued indicates improper analysis of statutory criteria.

Award

The conciliator awards the position of the Union on the additional holiday.


Margaret Nancy Johnson
Conciliator

Service

This award has been personally served by Margaret Nancy Johnson on Marc A. Fishel, Attorney at Law, at 300 South Second Street, Columbus, Ohio, 43215, and Joseph M. Hegedus, Attorney at Law, at 175 S. Third Street, Suite 820, Columbus, Ohio, and by regular mail, on George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio, 43215 this 23rd day of October, 2000.


Margaret Nancy Johnson