

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF CONCILIATION

BETWEEN

CITY OF NORTH CANTON, OHIO

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

BEFORE: Robert G. Stein, Conciliator

SERB CASE NO. 00 MED 05-0067 0667

PRINCIPAL ADVOCATE (S) FOR THE UNION:

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and

PRINCIPAL ADVOCATE (S) FOR THE SHERIFF:

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INTRODUCTION

The City of North Canton is located in northeastern Ohio. The Union represents a bargaining unit comprised of full-time police patrolmen. The parties held several negotiation sessions prior to fact-finding and eventually to conciliation. A conciliation hearing was held on December 13, 2000 in North Canton, Ohio. With the mediation assistance of the Conciliator, the parties were able to resolve several issues prior to the conciliation hearing. The following issues remained unresolved, went to hearing, and are the subject of this award:

1. Wages, Article 26
2. Shift Differential, Article 26

CRITERIA

OHIO REVISED CODE

In conciliation, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements;
2. Comparisons of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those related to public

and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interest and welfare of the public and the ability of the employer to finance and administer the issues proposed, and the effect of the adjustments of the settlement on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed in this rule, which are normally 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.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following decisions are made:

ISSUE 1 Article 26 WAGES

Employer's Position

See EPS (Employer Position's Statement)

The Employer modified its wage offer at the hearing to the following:

1 st year	4.0% (3.5% wage increase, .5% inequity adjustment)
2 nd year	3.5%
3 rd year	3.0%

A total of 10.5% over 3 years.

Evidence/Argument Summary

The Employer contends that its wage offer, modified at the conciliation hearing represents a fair and equitable increase. It is internally comparable with the wage increases offered to all other employees and includes a .5% equity adjustment in wages that would put the patrol officer bargaining unit on equal footing with the three year wage increases offered to all the other bargaining units in the City.

The Employer also contends that its 10.5% 3-year offer places the wages of the bargaining unit in a very favorable position with respect to surrounding comparable jurisdictions in Stark County. The City cites the fact that in addition to regular wages, the bargaining unit receives 4 hours of premium pay for work on Sundays. The City argues that the bargaining unit is the highest paid in Stark County.

The City contends that the Union's modified wage demand of 4.5%, 4.0%, and 3.0% over the next three years would create a continued disparity and a perceived inequity in the patrol officer's bargaining unit. It points to the fact that if the Union's position of 11.5% over three years (versus the City's offer of 10%, plus a .5% wage inequity adjustment) is granted by the Conciliator, "me too" clauses contained in the agreements of the other bargaining units in the City would require the City to up wages for those bargaining units by a comparable amount.

Union's Position

See UPS (Union's Position Statement)

The Union modified its wage proposal at the hearing to the following:

1 st year	4.5% (3.5% wage increase, 1% inequity adjustment)
2 nd year	4.0% (3.5% wage increase, .5% inequity adjustment)
3 rd year	3.0%

A total of 11.5% over 3 years.

Evidence/Argument Summary

The Union views its modified wage proposal to be consistent with erasing the inequity that it argues was created by the City at the end of negotiations in 1997. It points to the fact that following the conclusion of bargaining (with conciliation, See UX 3) the City passed an ordinance that provided additional increases to other City

bargaining units (See UX 4). However, the increases, rather than creating parity with the conciliation award, resulted in other City bargaining unit employees receiving a total of 1% more in wages over the three years of the current Collective Bargaining Agreement, asserts the Union. The Union contends the City created an internal disparity when all along it argued that internal wage increase equity was a paramount principle in its position.

The Union argues its position is intended to end the running disparity that has existed for 3 years and also represents a wage offer that is closer to the average "going wage rate increases" being issued to other bargaining units (See UX 6, 7).

Discussion

This Conciliator has had the privilege and advantage of being the Conciliator in the last negotiations involving the same bargaining, as well as the bargaining unit comprised of Dispatchers. The results of that settlement and in particular the subsequent actions of the City to maintain parity laid the foundation for the inequity that exists today.

During the conciliation hearing in the instant matter, Finance Director V. Margaret Loretto, recalculated the wage increases provided to the bargaining unit as a result of the 1997 negotiations as compared to the revised (See City Ordinance 21-98) wage settlements provided to all other City bargaining units (See CX 8). I found Ms. Loretto to be a competent and frank witness and the information she provided in City Exhibit 8 to represent a true assessment of the inequity in wages that was created over the past three years. It demonstrates a 1% difference in wages. The bargaining unit received the equivalent of 14% over three years (7%, 3.5%, 3.5%). The other City bargaining units had their wages adjusted by an additional 4% some 18 months into their contract period (5%, 3%, 4% (2/1/98 adjustment by ordinance), 3%). They were provided a total of 15% over the last three years.

The City argues that its wage offer of 3.5%, 3.5% and 3.9%, plus a wage inequity adjustment of .5% on the first year (a total of 4%) will make up for the inequity created in the last round of bargaining. The Union argues that a 1% difference needs to be made up because that represents an accurate accounting of the difference in wages from the 1997 City wage settlements. However, the Union also includes an additional .5% based upon the "going rate." Therefore, it proposes the equivalent of 3.5%, 4%, and 3.0% with 1% inequity being paid on year 1 and a larger wage increase paid in year 2 of the Agreement.

The City is influenced by its perception of the favorable position of the bargaining unit in Stark County and about the "me too" clauses that exist in the contracts of other bargaining units. I find the City's concern to be sincere and substantive. It wants to stick with its principle of maintaining internal equity (which it concedes must include an inequity adjustment of .5% to its wage offer in the first year). It is concerned that the Union's inequity adjustment that is 1.5% above the 10% increased offered to other bargaining units may trigger additional increases because of the "me too" contract clauses contained in other agreements.

The facts in this case, and in particular the accurate accounting of Finance Director Loretto, lead this Conciliator to one conclusion. The true inequity in wages that exists from the last round of negotiation was 1% (14% versus 15%). The City caused this gap to occur in its attempt to create wage increase parity following the 1997-conciliation award provided to the police officers unit. The City simply committed an over correction and inadvertently provided other bargaining units with a 1% greater wage increase during the contract period.

Therefore, given the history of the negotiations between the parties and between the City and other units, a 10% increase in wages over the next 3 years plus a wage increase equity adjustment of 1% would represent true parity (past and present).

However, this Conciliator does not have the authority under ORC 4117 to award the equivalent of an 11% wage increase. This option is simply not available. Instead, an award must be confined to selecting one of the party's wage proposals, neither of which accomplishes wage increase parity from 2/1/98. The Conciliator is confined to making a determination as to which proposal (Union or City) is more reasonable in light of the facts.

The City's position falls .5% short in making up the inequity gap. The Union's position exceeds the gap by the same amount, .5%. While I find there is partial justification for closing the inequity gap (as opposed to the proper course of totally righting this wrong), there is less justification for going above parity and creating another inequity that will simply accelerate the "wage race." The City and the Union need to work their way out of this cycle of non-parity wage increases in a sensible manner.

If the Union's demand for an 11.5% increase were granted, only part of that increase could not be justified in terms of past wage increase inequity. This action would trigger the "me too" provisions contained in other City collective bargaining agreements and once again put the bargaining further behind in terms of wage increase parity. Once the "me too" provisions are invoked, it is uncertain whether they would trigger the full 1.5% increase or would be discounted by the true 1% inequity difference identified above. It would be a matter of interpreting intent in every one of the "me too" provisions negotiated with the other units. Those facts presented in this case did not make this intent clear and the risk of such an outcome should be avoided.

It seems more reasonable for the City, which caused the inequity in 1998, to make more cautious progress toward closing the wage increase parity gap without again having to revisit every wage settlement. The risk of triggering the "me too" clauses still exists, but to a far lesser degree because it represents movement toward correcting a 1997-2000 wage increase inequity without exceeding it. It is also noted that the three year average for the increases proposed by the Employer is 3.5%, which represents the three year average increase granted to all state employees during the period of 2000 to 2003. This is a large and influential group of public sector employees, which includes a large group of law enforcement officers, the State Highway Patrol. Furthermore, it is not far from the 3 year average (albeit a 1999 figure) contained in the SERB data (See Union Exhibit 6). In

... a 3.5% average wage increase is within the range of the "going rate" of wage increases.

Let me be clear that by granting the City's position and assuming there are no additional "me too" increases, there is still a wage increase inequity gap of .5% based on the City's 2/1/98 action. This continued disparity, although much smaller, is still in conflict with the parties' long standing history of maintaining internal wage increase parity. It is presumed the parties shall address this smaller gap in the next round of negotiations.

AWARD

The position of the Employer is awarded.

Wages shall be increased as follows:

1st year 4.0% (3.5% wage increase, plus a .5% (1997-2000) wage increase equity adjustment)

2nd year 3.5% wage increase

3rd year 3.0% wage increase

ISSUE 2 Article 26 Shift Differential

Employer's Statement

See EPS

Evidence/Argument

The Employer argues that the Factfinder erred when he granted a significant increase in shift differential to the bargaining unit. The Employer contends the Factfinder erred because he did not base his recommendation upon any rationale. The Employer points out that the Factfinder's recommendation doubles the shift differential over and above the highest external comparable that the City submitted into evidence. Based upon these arguments, the Employer states that without rationale, the Conciliator should choose its position of no change in the amount of shift differential paid to the bargaining unit.

Union's Position

See UPS

Evidence/Argument

The Union argues that its position to increase shift differential is designed to extinguish the running deficit created by the City's past conduct and is identical to the Factfinder's recommendation. The Union adds that by increasing the shift differential it would serve to elevate the overall compensation of the bargaining unit, making it come closer to the average of the comparable bargaining units (UX 7).

Discussion

In the history of factfinding and conciliation in Ohio since the passage of the collective bargaining law in April of 1994, great deference has been given factfinding reports that come under scrutiny of the conciliation process. Unless a Factfinder fails to properly apply the criteria of ORC 4117, errs by not considering relevant data, or does not apply sound reasoning to his or her decisions, the factfinding report carries considerable weight in the conciliation process.

A review of the Factfinder's recommendation supports the Employer's contention that the Factfinder offered no rationale for his decision to increase shift differential. In addition, the Factfinder's report does not contain any reasoning or supportive data. A statement that the Union's proposal for shift differential increases is "fair" is not a recommendation based upon statutory criteria. The Factfinder appeared to lump shift differential with wages. Although shift differential is compensation, it is distinct from the criteria upon which wages are built. It is related to hours of work and the inconvenience attached thereto. It is more than a mere appendage of wages, and the rate at which it is paid is highly dependent upon comparative data and the other criteria contained in ORC 4117. I find the Factfinder erred his granting of shift differential when he did not base his recommendation on statutory criteria.

The other shift differential comparables offered by the Union in Union Exhibit 7 do not establish a basis for an increase at this time. Although the City of Canton has a higher differential, the average shift differential increase is below that which is paid to the bargaining unit.

AWARD

The position of the Employer is awarded.

Current language.

TENTATIVE AGREEMENTS

All tentative agreements reached by the parties prior to and during the Conciliation hearing, including the issues of Vacation Advancement, as awarded in factfinding, (Article 18, Section 8), Holidays, (Article 17, Section 1 and 3), Residency, (Article 38), and Hospitalization, (Article 31) are incorporated in this Award.

Respectfully submitted to the parties this 31st day of January, 2001.

A handwritten signature in black ink, appearing to read 'R. Stein', written over a horizontal line.

Robert G. Stein, Conciliator