

STATE EMPLOYMENT  
RELATIONS BOARD

IN THE MATTER OF CONCILIATION <sup>7801 MAR -7 A 11: 15</sup>  
BETWEEN

|                           |   |                          |
|---------------------------|---|--------------------------|
| CITY OF SOUTH EUCLID      | ) | CASE NOS. 00-MED-09-0978 |
|                           | ) | (Patrol Officers)        |
| AND                       | ) | 00-MED-09-0977           |
|                           | ) | (Sergeants/Lieutenants)  |
|                           | ) |                          |
| FRATERNAL ORDER OF POLICE | ) | <u>OPINION AND AWARD</u> |
| LODGE NO. 80              | ) |                          |

JAMES M. MANCINI, CONCILIATOR

APPEARANCES:

FOR THE FOP

Robert M. Phillips, Esq.

FOR THE CITY

Marc J. Bloch, Esq.

## SUBMISSION

This matter concerns conciliation proceedings between the City of South Euclid (hereinafter referred to as the City) and the Fraternal Order of Police, Lodge No. 80 (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter.

The conciliation proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations established by SERB. The conciliation hearing was held on February 28, 2001 in South Euclid, Ohio. The conciliator attempted mediation of the outstanding issues during the course of the hearing. The issues remaining for this conciliator's consideration are set forth in this report.

The bargaining units involved herein consists of all full-time Patrol Officers and Sergeants and Lieutenants employed by the City's police department. There are approximately thirty-eight sworn officers in the bargaining units represented by the FOP. This conciliator in resolving the dispute between the parties by selection between each of the parties' final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Further, this conciliator has taken into consideration all reliable evidence presented relevant to the outstanding issues before him. Therefore, this conciliator after carefully reviewing all of the evidence and arguments presented by the parties hereby submits his Opinion and Award with respect to each of the outstanding issues submitted.

## **1. UNIFORM ALLOWANCE**

The Union proposes an increase in uniform allowance of \$50, \$75, and \$100 in each respective contract year. The City adopts the fact-finder's recommendation for an increase of \$50 in the uniform allowance in each year of the Agreement.

The Union contends that an additional increase in the uniform allowance beyond that recommended by the fact-finder is justified when one considers the entire economic package involved in this dispute. The increase in uniform allowance proposed by the Union is needed to offset the anticipated increase in maximum employee contributions for healthcare which are to take effect on March 1, 2001. The Union points out that the uniform allowance issue has been on the table from the inception of negotiations. The data which it provided at fact-finding supports the FOP's position for uniform allowance increases.

The City contends that there is no logical basis to support the increases sought by the FOP for uniform allowance. The City reluctantly agreed to the fact-finder's recommendation which was that the uniform allowance be increased by \$50 in each year of the Agreement. There simply is no justification established for any further increase beyond that recommended by the fact-finder.

ANALYSIS – This conciliator finds that the FOP's final offer concerning uniform allowance should be adopted. There was justification established for the increases in uniform allowance proposed by the FOP. As more fully discussed under the Hospitalization issue, employees beginning on March 1, 2001 will have to contribute to

the cost of their health insurance. This conciliator would agree with the FOP that increases in uniform allowance are warranted in order to offset at least to some extent the additional cost to the employees for health care coverage.

Moreover, the annual increases in uniform allowance of \$50, \$75, and \$100 over the life of the contract will total only \$225. This is only slightly above the fact-finder's recommendation of three \$50 increases over the term of the Agreement which total \$150. With only thirty-eight officers in the bargaining units, it is evident that the City has the ability to fund the relatively modest increases in uniform allowance which this conciliator has awarded herein. Therefore, for the above reasons, this conciliator has determined that the FOP's final offer concerning uniform allowance is the more reasonable of the final two offers proposed on this issue.

### **A W A R D**

It is the award of this conciliator that Uniform Allowance be increased as proposed by the Union as follows:

#### **ARTICLE VII, UNIFORM ALLOWANCE**

There shall be three (3) annual increases of \$50, \$75, and \$100 in Uniform Allowance over the term of the contract.

## **2. HOSPITALIZATION**

The City proposes to require bargaining unit members to contribute to the cost of health insurance. The FOP incorporates in its final offer the fact-finder's recommendation concerning employee contributions towards health care premiums.

The City contends that its proposal for employee contributions towards healthcare costs is justified. The Employer points out that there has been a 39% increase in the cost of health insurance coverage for employees. In response to escalating costs, the City has proposed to offer employees a choice of one of three QualChoice Plans. The employee contributions per month will vary according to the plan selected.

The FOP initially opposed the City's request to have employees contribute towards the cost of healthcare premiums. However, its final offer incorporates the fact-finder's recommendation which does provide for employee contributions towards healthcare costs. However, the fact-finder's recommendation for employee contributions is somewhat less than that proposed by the City. The FOP argues that employee contributions effectively reduce the wages of bargaining unit members and for that reason it proposes increases in other economic benefits to compensate employees for the diversion of income to healthcare participation.

**ANALYSIS** – This conciliator finds that the City's final offer concerning Hospitalization should be adopted. The City has presented a proposal for a reasonable employee contribution towards healthcare premiums. The maximum employee

contribution will vary depending upon the employee's choice of one of three QualChoice plans. The monthly maximum employee contributions for health insurance which are set out in the City's proposal appear to be in line with employee contributions which this conciliator has observed in other public sector contracts.

Most significantly, internal comparisons support the City's position regarding Hospitalization. The employee contributions for healthcare costs which the City seeks here is the same as that which have been provided to all other bargaining units in the City. The Firefighters as well as Service Department employees have agreed to the exact same Hospitalization provision which the City proposes herein. That is, employees in these other bargaining units will be contributing towards the cost of their health insurance as the City's plan provides beginning on March 1, 2001. The evidence indicated that there has been a past pattern of health insurance parity between the police and the other bargaining units in the City. There was no basis established for varying from the establishes city-wide pattern for Health Insurance. Therefore based upon evidence of internal comparisons, this conciliator must find that the City's proposal concerning Hospitalization is to be adopted.

### **AWARD**

It is the award of this conciliator that the Hospitalization Provision proposed by the City be adopted as follows:

**ARTICLE X, HOSPITALIZATION**

|           | 2001          |               | 2002          |               | 2003          |               |
|-----------|---------------|---------------|---------------|---------------|---------------|---------------|
|           | <u>Single</u> | <u>Family</u> | <u>Single</u> | <u>Family</u> | <u>Single</u> | <u>Family</u> |
| 2001 Plan | \$ 0.00       | \$ 0.00       | \$ 5.00       | \$15.00       | \$10.00       | \$30.00       |
| 1001 Plan | 10.00         | 25.00         | 12.50         | 37.50         | 18.00         | 50.00         |
| 5001 Plan | 14.00         | 38.00         | 18.00         | 50.00         | 22.00         | 60.00         |

### **3. LONGEVITY**

The FOP incorporates into its final offer the recommendation of the fact-finder which was to provide increases in longevity pay in each year of the parties' Agreement. The City's position is to provide increases in longevity pay only in the first and third year of the Agreement.

The Union cites longevity pay comparisons in support of its position. The Comparisons were made with neighboring jurisdictions such as University Heights, Richmond Heights, Lyndhurst and Mayfield Heights. The Union argued that South Euclid's longevity pay ranked in the low to mid range of allowances provided in these other jurisdictions. In order to retain qualified officers in the City, the Longevity Pay Provision should be increased for this bargaining unit as proposed by the FOP.

The City contends that the FOP's final offer should be rejected in light of the fact that all other bargaining units have accepted the longevity increases proposed by the City. The firefighters have the exact same longevity as the police unit. Other employees in the City have also accepted the same increases which are being proposed herein for the police unit in the first and third year only. There was no basis established for deviating from the internal parity established within the City for longevity pay.

ANALYSIS – This conciliator finds that the FOP's final offer concerning longevity increases is the more reasonable of the proposals presented. This conciliator is obligated under SERB's rules and regulations to give consideration to the fact-finder's recommendation in this case. As indicated, the Union's longevity proposal is



the same as that recommended by the fact-finder. Contrary to the City's contention, it does not appear that the fact-finder in any way rendered an erroneous decision regarding the longevity issue. This conciliator would agree with the basic conclusion reached by the fact-finder which was that there should be increases in longevity pay in each year of the Agreement as proposed by the FOP herein "in order to retain qualified officers in the City."

This conciliator finds no merit to the City's contention that its final longevity proposal should be adopted because other bargaining units agreed to the longevity increases proposed. First, evidence of internal comparisons indicates that there are some differences in the Longevity Pay Provision provided to other bargaining units in the City. For example, the Service Department and Dispatcher units have longevity provisions which differ from that found in the Police and Firefighter's contracts. When it comes to longevity pay provisions, there are differences among the various bargaining units involved.

Moreover, longevity pay comparisons with neighboring jurisdictions supports a finding that an additional increase is justified for the police units in South Euclid. That comparison shows that South Euclid's longevity benefits for its police units rank in the low to mid range of similar provisions provided to police in neighboring jurisdictions. An additional increase in longevity pay for the bargaining units in the second year of the Agreement is warranted so that the police units can retain their relative ranking in the area. This conciliator finds no justification for the City's proposal which does not include any increase in longevity during the second year of the

Agreement. The FOP's proposal to provide for additional \$200 increases in the second year in longevity pay is reasonable.

**A W A R D**

It is the award of this conciliator that the Union's final Longevity Pay proposal be included in the parties' bargaining Agreement as follow:

**ARTICLE XI, LONGEVITY**

| <u>Length of Service</u> | <u>Payment</u>             |
|--------------------------|----------------------------|
| <u>2001</u>              |                            |
| 5 Years                  | \$655.00 (\$100 increase)  |
| 10 Years                 | \$1075.00 (\$200 increase) |
| 15 Years                 | \$1545.00 (\$300 increase) |
| 20 Years                 | \$1925.00 (\$300 increase) |
| <br><u>2002</u>          |                            |
| 5 Years                  | \$855.00 (\$200 increase)  |
| 10 Years                 | \$1275.00 (\$200 increase) |
| 15 Years                 | \$1745.00 (\$200 increase) |
| 20 Years                 | \$2125.00 (\$200 increase) |
| <br><u>2003</u>          |                            |
| 5 Years                  | \$1055.00 (\$200 increase) |
| 10 Years                 | \$1475.00 (\$200 increase) |
| 15 Years                 | \$1945.00 (\$200 increase) |
| 20 Years                 | \$2325.00 (\$200 increase) |

#### **4. DETECTIVE PAY**

The City proposes a \$100 per month (\$1,200 per year) total differential for employees assigned to the Detective Bureau. The Union's final offer was the same as the City's with the Detective Differential of \$100 per month commencing January 1, 2001.

#### **A W A R D**

This conciliator adopts the Detective Pay Provision which was proposed by the both parties as follows:

#### **ARTICLE XI, DETECTIVE PAY**

There shall be a Detective Differential of one-hundred dollars (\$100) per month for employees assigned to the Detective Bureau (\$1,200 per year) commencing January 1, 2001.

## **5. COURT TIME**

The FOP proposes that all court time should be paid at a three-hour minimum. The City adopts as its final offer the fact-finder's recommendation which was that employees should be paid at a minimum of two hours at time and one-half for local Municipal Court appearances and three hours at time and one-half for Court of Common Pleas appearances.

The FOP argues that all court time should be paid at the same minimum of three hours at time and one-half because for all practical purposes there is no difference in going to Municipal or County Court. The officer's day off is still disrupted in either case. The FOP also cites comparables which it claims show that a majority of the area jurisdictions provide for at least three hours minimum for all court time. The comparables cited included Bedford Heights, Independence, Mayfield Heights, Lyndhurst, Beachwood, University Heights and Richmond Heights.

The City argues that the fact-finder was correct in holding that there is a distinction to be made for the time allotted for attendance at the local Municipal Court and for the County Court. The City contended that the fact-finder looked at comparables and still recommended that officers be paid a minimum of two hours at time and one-half for Municipal Court appearances. The City noted that in many of the jurisdictions cited by the Union, employees are paid a minimum for court time at the straight time rate of pay.

ANALYSIS – This conciliator has determined that the FOP’s final offer concerning court time is to be included in the parties’ Agreement. There appears to be no reason to distinguish between appearances in Municipal Court and Common Pleas Court. As the FOP noted, an officer’s day off is still disrupted in either case.

Comparable evidence further supports the FOP’s proposal that all court time be compensated at a minimum of three hours at time and one-half. It was established that a vast majority of comparable jurisdictions in the area grant at least three hours minimum for all court time, with several granting four hours. The comparables cited included Lyndhurst, Mayfield Heights, University Heights, Beachwood, Bedford Heights and Richmond Heights which are all in the immediate area. In most of these jurisdictions, there was no distinction made between appearances in Municipal Court and the Court of Common Pleas. Indeed where there were differences such as in Bedford Heights, Richmond Heights and Mayfield Heights, officers receive a minimum of three hours pay for appearances in Municipal Court and four hours minimum pay for appearances in Common Pleas Court. It should be noted that minimum court time in these jurisdictions is paid at time and one-half an officer’s rate of pay. Without question therefore, the comparables cited by the FOP clearly support a finding that all court time should be provided at a three-hour minimum at time and one-half of an officer’s wage.

**A W A R D**

It is the award of this conciliator that the three-hour minimum court time pay provision proposed by the FOP be included in the parties' Agreement as follows:

**ARTICLE XI, COURT TIME**

Employees will be paid a minimum of three (3) hours pay at time and one-half the employee's regular straight time hourly rate for all court appearances.

## **6. RETROACTIVITY**

The City contends that this conciliator has no authority to award retroactive compensation in this case. The FOP contends that the conciliator has the authority to order retroactive pay increases.

The City contends that the order from SERB appointing this conciliator was not given until January 5, 2001. Consequently, the conciliator cannot make any monetary award that has cost implications in the current year. The City cites Ohio Revised Code Section 4117.14(D)(11) which forecloses the conciliator's ability to award retroactivity in this case.

The FOP contends that ORC 4117.14(D) is not controlling in the instant matter. The FOP points out that the Board's order directing conciliation was issued on December 30, 2000. As a result, this conciliator was properly appointed prior to the current fiscal year and as such can award monetary increases that have cost implications retroactive to the beginning of the year.

ANALYSIS – This conciliator finds that he has the authority to order retroactive increases in the instant case. The City is correct in citing ORC 4117.14(D) as providing that a conciliator does not have the ability to award retroactivity if the Board order to commence conciliation proceedings is made in that same year. However in the instant case, the evidence clearly shows that it was on December 30, 2000 that SERB issued its order of conciliation in this case. As such, this conciliator is not precluded by ORC 4117.14(D) from issuing a monetary award that has cost

implications in the current year. That is, this conciliator clearly has the authority to award retroactive increases in rates of compensation and other matters with cost implications to January 1, 2001.

### **A W A R D**

It is the award of this conciliator that the Union's position with respect to retroactivity is upheld. SERB's order for the parties to proceed to conciliation was issued on December 30, 2000. As a result, this conciliator has the authority in the instant case to issue retroactive monetary increases to January 1, 2001.



## CONCLUSION

In conclusion, this conciliator hereby submits his award on each of the outstanding issues presented to him for his consideration. Further, this conciliator incorporates herein all tentative agreements previously reached by the parties including those involving the Sick Leave Ordinance and Compensatory Time Provisions and orders that they be included in the parties' Agreement.

MARCH 3, 2001

  
JAMES M. MANCINI, CONCILIATOR