

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

CITY OF ZANESVILLE
EMPLOYER

2003 MAY 14 A 10: 24

and

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.
ZANE LODGE NO. 5
EMPLOYEE ORGANIZATION

In the Matter of:

02-MED-07-0666

CONCILIATOR'S AWARD

CONCILIATOR:

Philip H. Sheridan, Jr.
Attorney at Law
915 South High Street
Columbus, Ohio 43206-2523
(614) 445-0733

FOR THE UNION:

Frank Arnold, Staff Representative
Ohio Labor Council
222 East Town Street
Columbus, Ohio 43215

FOR THE CITY:

Dale Raines, Budget & Finance Director
City of Zanesville.
401 Market Street
Zanesville, Ohio 43701

**Award:
May 12, 2003**

CONCILIATION AWARD

STATEMENT OF CASE: The parties, the City of Zanesville, represented by Dale Raines, Budget & Finance Director, City of Zanesville and the bargaining unit, Zane Lodge Number 5, Fraternal Order of Police, Ohio Labor Council, Inc., including 46 Patrol Officers of the City, represented by Frank L. Arnold, Staff Representative, F.O.P.-O.L.C., have entered into negotiations for a contract between the parties to take effect January 1, 2003, and to expire December 10, 2005.

The parties have engaged in previous contract negotiations leading to agreed contracts. The parties attached a copy of the expired collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree on all but four sections of the contract. The parties submitted the issues to fact-finding on December 12, 2002, which led to a fact-finding and recommendation, which was rejected by the City. I was chosen to serve as conciliator and issue a binding conciliation award pursuant to R.C. 4117.14(G). At the conciliation hearing on March 4, 2003, the parties outlined their position on the remaining issues.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, was chosen by the parties as conciliator.

The parties agreed to a conciliation hearing on March 4, 2002, and the meeting was convened at 10:00 a.m. at the Zanesville Administration Building. In addition to the Mr. Raines, Chief Eric Lambes appeared for the City. In addition to their representative, Charles Black, F.O.P.-O.L.C., Jon Hill, Terry Sheets, Michael P. Brown, Brent McCutcheon, and David A. Halsey, members of the lodge, appeared on behalf of the bargaining unit. The matter was submitted upon statements and arguments presented to the conciliator.

According to the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's final offer on the unresolved issues.

In issuing this conciliation report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G)(7)(a)-(f).

Issues for determination:

Article 2, Section 2.5: Working out of Rank

Article 9, Insurance Schedule

Article 10, Section 10.4: Termination of Employment

Appendices I, II, and III: Wages.

POSITION OF THE PARTIES AND AWARDS

THE CITY'S POSITION:

Section 2.5: Working Out of Rank

Any Patrol Officer assigned as "officer in charge" will be paid a supplement for all such time worked. The rate of pay for hours worked out of rank shall be equal to the top rate of pay in the sergeant's pay range. No employee shall be ordered to serve as "officer in charge" except in an emergency when no supervisor is available to work.

The City offered this compromise language after the fact finder's award. The City believes there are management rights issues involved and that the bargaining unit and the fact finder would limit its ability to direct and schedule employees in the most efficient, cost-effective manner. The City's offer pays officers at the highest sergeant rate, but if the City is forced to call in one of its supervisors it would have to pay that supervisor overtime. There are only six of the total police

sergeants and lieutenants that would disproportionately bear the brunt of the bargaining unit's demand.

The City presents its proposal and agrees to contact its supervisors to offer them the overtime opportunity when a supervisor is ill or otherwise unavailable. The City uses the term "emergency" in its proposal and argues that the number of officer in charge opportunities has lessened this calendar year and that the problem of supervision of the jail will be removed.

THE BARGAINING UNIT POSITION:

The bargaining unit accepted the decision of the Fact Finder, and proposes the following language:

Section 2.5: Working Out of Rank

Any Patrol Officer assigned as "officer in charge" will be paid a supplement for all such time worked. The rate of pay for hours worked out of rank shall be equal to the top rate of pay in the sergeant's pay range. This Section shall only be used during emergencies when no supervisor is available to work. (Although the language in the bargaining unit's proposal places the clauses in a different order, I consider the bargaining unit's proposal to be the language of the fact finder, which is quoted above).

The bargaining unit argues that the City has enough supervisors that there should be a supervisor on duty 24 hours a day, seven days a week. The fire department operates with fewer supervisors and has a supervisor scheduled for every shift. The bargaining unit does not believe that scheduled vacation and other forms of time off do not constitute an emergency, while illness or injury or other unexpected problems would. The bargaining unit submits that patrol officers filled 206 shifts of supervision in the last year, and that the City has been using working out of rank in

place of proper scheduling. The bargaining unit also complains that working out of class requires supervision of the jail, and they are not trained to deal with the jail.

AWARD

Chapter 4117 requires the conciliator to consider the past collective bargaining agreements between the parties. The fact finder determined that the parties have had a dispute over this issue for the past 10 years. He believed that the change proposed would increase efficiency and cost savings. Both parties presented a proposal that mentioned “emergency” situations. Merriam-Webster defines “emergency” as “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” The City reduced the use of O.I.C. from almost 19 percent of the available shifts in 2002 to 8.5 percent of the available shifts in January and February 2003.

I find no increased efficiency and cost savings in any of the proposals. I adopt the position of the City as quoted above, with the gloss placed on the language that the potential overtime will first be offered to the supervisors before an O.I.C. can be appointed. The City can avoid a lot of problems by not allowing the supervisors to schedule the same day off routinely.

THE CITY’S POSITION:

Article 9, sections 9.1, 9.2(A) and (E): The City proposes the fact finder’s recommendation:

Section 9.1 – Insurance. During the term of this contract, the City of Zanesville shall continue its premium payment for the existing health, dental and vision insurance plan for the employee, except employees choosing single coverage shall pay by payroll deduction \$5.00 per pay period. Bargaining unit employees choosing family coverage shall pay by payroll deduction \$15.00 per pay period. Deductions for coverage shall be made only if unaffiliated (non-contract) employees of the City pay an equal or greater amount.

Section 9.2 – Content of Insurance Plan

- (A) **The City of Zanesville may periodically change the content of the insurance plan after consultation with representatives of the affected bargaining units. A \$350.00 deductible for family coverage and a \$150.00 deductible for single coverage shall be in effect. Co-pay under the prescription drug plan shall be \$5.00. The plan will not pay for a brand drug unless no generic is available or the prescribing physician specifies “no generic.”**

- (E) **The City will provide a twenty thousand dollar (\$20,000.00) life insurance policy on members.**

The City provided comparables that show that the City does not recoup as much as most Cities in the State and area for health insurance costs. The City’s costs continue to rise, and the bargaining unit’s costs are fixed for the term of the contract. The deductible is the same as it was for the previous contract. The increase of the prescription co-pay is necessary because the drug costs are rising even more than the premium costs. The City agreed to increase the life insurance amount. The City has negotiated the same language with the Police Supervisor’s bargaining unit and with A.F.S.C.M.E. The fact finder properly analyzed the issue, according to the City.

THE BARGAINING UNIT POSITION:

Section 9.1 – Insurance. During the term of this contract, the City of Zanesville shall continue its premium payment for the existing health insurance plan for the employee. Bargaining unit employees choosing family coverage shall pay, by payroll deduction, \$15.00

per pay period. Deductions for coverage shall be made only if unaffiliated (non-contract) employees of the City pay an equal or greater amount.

Bargaining unit employees shall be included should the City add an optical plan to the health plan of any other group. It is the intent of the City to add such coverage if, through the process of negotiations, the number of employees eligible justifies adding such coverage.

Section 9.2 – Content of Insurance Plan

- (A) The City of Zanesville may periodically change the content of the insurance plan and/or the insurance carrier after consultation with representatives of the affected bargaining units. Bargaining members shall have a \$100.00 deductible for individual coverage and the maximum deductible for family coverage shall be \$200.00 per calendar year. (The deductible for a Family is met for an individual in the family at the \$100.00 or a total for the entire family at the \$200.00 in any calendar year.) The following co-pay for prescription shall be \$2.00, and employees shall take the generic brand if a generic brand is available. If the employee opts to take the brand name prescription drug over the generic the employee shall pay the difference between the generic and the brand name drug plus the \$2.00 co-pay. If there is no generic brand then the co-pay is \$2.00 for the brand name prescription.**

- (F) The City will provide a twenty thousand dollar (\$20,000.00) life insurance policy on members.**

The bargaining unit argues that its single members should continue to pay nothing toward the premium cost, while the members who elected family coverage will pay \$5.00 more per pay. The members argue that they should receive the same benefit as the unaligned employees with reference to the deductible amount, and that the drug co-pay should remain the same except for language that allows members to pay for name brand drugs if they choose. The parties agree on the amount of life insurance.

AWARD

I choose the fact finder's award, which is the City's position as quoted above. The comparables are clear, both internally and externally. Bargaining units are not being awarded decreases in the share of the cost of insurance coverage, and the increases recommended fairly provide some internal consistency in the way in which the City manages insurance costs. The fact that the City treats its unaligned employees differently was not sufficient reason to support the bargaining unit's position.

THE CITY'S POSITION:

Article 10, Section 10.4 – Termination of Employment

- (A) No payment shall be made for accumulated sick leave at the time of termination of employment except that a permanent employee with ten (10) or more years of service may elect at the time of retirement to be paid in cash for one-third of the value of his accrued but unused sick leave credit. Such payment shall be based on the employee's rate of pay at the time of retirement. Payment for such leave on this basis shall be considered to eliminate all sick**

leave credit accrued by the employee at that time. Such payment shall be made only once to any employee. The maximum payment shall be 385 hours.

- (B) In the event a Police Officer dies or is permanently disabled: (1) the ten (10) year service requirement shall be waived, and (2) in the case of death, payment shall be made to the estate of the deceased.**

The City offers its proposal as a compromise that would bring this bargaining unit in line with other city unions and unaffiliated employees. The fact finder's recommendation appears to the City to be based on some erroneous suppositions.

THE BARGAINING UNIT POSITION:

Article 10, Section 10.4 – Termination of Employment

- (A) No payment shall be made for accumulated sick leave at the time of termination of employment except that a permanent employee with ten (10) or more years of service may elect at the time of retirement to be paid in cash for one-third of the value of his accrued but unused sick leave credit. Such payment shall be based on the employee's rate of pay at the time of retirement. Payment for such leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. Such payment shall be made only once to any employee. The maximum payment shall be one-third of 1,500 hours.**
- (C) In the event a Police Officer dies or is permanently disabled: (1) the ten (10) year service requirement shall be waived, and (2) in the case of death, payment shall be made to the estate of the deceased.**

The bargaining unit proposes the fact finder's result, if not the exact language of the fact finder. The bargaining unit argues that the increased maximum payment will encourage long time employees to conserve sick leave, and that the actual payment is a cost saving to the City because the amounts are calculated without the requirement to pay retirement and pension pick-up. The bargaining unit also presents comparables that show that similarly situated cities allow a larger upper limit or allow more than one-third of each hour to be paid.

AWARD

I choose the Bargaining Unit's position, as quoted above. The increase in the maximum amount is a benefit to Bargaining Unit members that is unlikely to result in significant increased cost to the City. If the bargaining unit members accumulate sick leave at 120 hours per year, without any use of sick leave, the full 10 years would be required to accumulate 1200 hours. The Bargaining Unit members who use no, or very little, sick leave are more likely to take even longer to accumulate such an amount because they obtain more benefit from Section 10.11 – Sick leave reciprocity, which allows the patrol officers to choose an annual payment of up to 40 hours per year at the employee's base hourly rate, hour for hour.

THE CITY'S POSITION:

Appendices I-III – Pay Rates

The City's position on Wages is contained in its report to the Conciliator, pages 7 and 8, attached to this Conciliator's Award.

The City's submission amounts to 4 percent raises in each of the years of the contract, with the 2003 raise retroactive to January 1, 2003. The City points out that its position is higher than its position at fact finding and believes that its position is supported by the low rate of inflation, the

economy in general, and comparables, when they are properly analyzed. The City presented comparables that took into consideration the pension pick-up that is enjoyed by this bargaining unit. The City also argues for internal equality among its employees. The A.F.C.M.E. unit accepted 3.5 percent raises in its contract and the City granted 3.5 percent raises to its unaligned employees. It has offered the I.A.F.F. the same 4 percent raises before conciliation.

THE BARGAINING UNIT POSITION:

Appendices I-III – Pay Rates

The Bargaining Unit's position on Wages is contained in its FOP/OLC Proposal 02/13/03, pages 71, 72 and 73, attached to this Conciliator's Award.

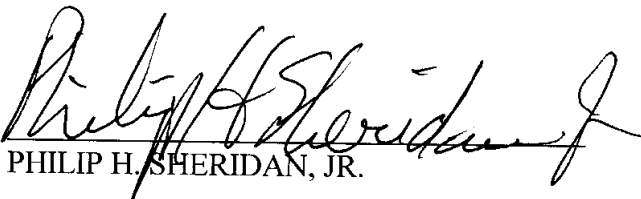
The Bargaining Unit's position amounts to 5 percent raise effective January 1, 2003, and 4 percent raises in the second and third years of the contract. It is the fact finder's recommendation. The Bargaining Unit points out that the City is able to pay. It relies on SERB reports that show the patrol officers are over 37 percent behind the State average in beginning salary, and over 14 percent below the average top wage. Similarly, SERB statistics for similarly sized cities supports the Bargaining Unit argument that they are below average. They argue that the City, based on its economy, income, and relative prosperity, should be higher ranked. The Bargaining Unit believes that if the City is going to continue to annex territory without increasing the number of officers it ought to increase the pay commensurately and the position of patrol officer will again be an attractive one that will attract sufficient qualified applicants for future positions.

AWARD

I choose the City's position on Wages, as attached to this award. The Cities of Cambridge, Lancaster, and Newark, used by the City in its comparables, in combination with perhaps Athens,

and Chillicothe, from the eleven cities on the SERB Benchmark report, would share general geography and economy as well as size. The other cities on the Benchmark appear to share only population size, and I do not share the fact finder's opinion of their value as comparables. I value the pension pick-up that the City provides, and I believe that benefit places the City much closer to the average the Bargaining Unit aspires to. I am not presented with any extraordinary circumstance that would persuade me that the Bargaining Unit has not received fair raises over the previous contract, or earlier negotiations. Acceptance of pension pick-ups in lieu of raises still amounts to a raise in overall compensation. Four percent is above the average increase, and is certainly above the average increase in Zanesville's area of the state.

Respectfully submitted,


PHILIP H. SHERIDAN, JR.

May 12, 2003

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of this Conciliation Award to the parties by ordinary U.S. mail, postage prepaid, this 12th day of May, 2003.


PHILIP H. SHERIDAN, JR.

Report to Conciliator
City of Zanesville

Appendices I-III Pay Rates

Appendix I, II and III will set the wage rates for bargaining unit employees, effective the first full pay period of each year of the contract. After fact finding and prior to conciliation, the City presented a revised, compromise proposal to the union, which was not accepted. This compromise offer is included in the following wage rates proposed by the City:

**APPENDIX I
PAY RATES EFFECTIVE JANUARY, 2003
POSITION CLASSIFICATION OF POLICE OFFICER**

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$12.11	\$25,188.80
C	\$13.22	27,497.60
D	\$14.66	30,492.80
E	\$15.42	32,073.60
F	\$18.64	38,771.20

**APPENDIX II
PAY RATES EFFECTIVE JANUARY, 2004
POSITION CLASSIFICATION OF POLICE OFFICER**

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$12.59	\$26,187.20
C	\$13.75	28,600.00
D	\$15.25	31,720.00
E	\$16.04	33,363.20
F	\$19.39	40,331.20

Appendices, continued

**APPENDIX III
PAY RATES EFFECTIVE JANUARY, 2005
POSITION CLASSIFICATION OF POLICE OFFICER**

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$13.09	\$27,227.20
C	\$14.30	29,744.00
D	\$15.86	32,988.80
E	\$16.68	34,694.40
F	\$20.17	41,953.60

The revised rates offered by the City represent a 4% increase in each of the three years.

The wage rates proposed are justified for several reasons. First, the rate of inflation as measured by the Consumer Price Index has, for the past several years, been comparatively low; employees of this bargaining unit have outpaced it. The City's offer exceeds the average rate of inflation during 2002 by more than 2% per year; in the past ten years, inflation has only once exceeded 3%.

Second, the City's proposal exceeds the percentage increase negotiated with A.F.S.C.M.E. in November and granted to unaffiliated employees at the start of 2003. The City is going into conciliation with the I.A.F.F., but the wage proposal to that union is the same.

Finally, the annual percentage increase the City offers is supported by evidence of comparability with similar bargaining units in this area of the State, particularly when the pension pick-up is factored in. The pension pick-up is relevant because several years ago this bargaining unit received the pension pick-up in lieu of a pay increase. Exhibit 6 illustrates these wage comparables. Additionally, Exhibit 7, a wage increase report from SERB shows that the percentage increase in the first year is not in keeping with recent increases by other bargaining units in the region. In its position statement to the Fact Finder, the union reported that the average wage increase state wide was 3.5% in 2002.

Response to Fact Finder: The Fact Finder recommended annual wage increases of 5%, 4% and 4% during the three-year term of the new contract. The City argues simply that the 5% first year increase is out of line for the reasons stated above. The City in this report has revised its proposal on wages from 3.5% per year to 4% per year; except for the excessive first year, the City finds the Fact Finder's recommendation on wages to be reasonable.

APPENDIX I

PAY RATES EFFECTIVE JANUARY 1, 2003

POSITION CLASSIFICATION OF POLICE OFFICER

5%

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$12.22	\$25,417.60
C	\$13.35	\$27,768.00
D	\$14.81	\$30,804.80
E	\$15.57	\$32,385.60
F	\$18.82	\$39,145.60

APPENDIX II

PAY RATES EFFECTIVE JANUARY 1, 2004

POSITION CLASSIFICATION OF POLICE OFFICER

4%

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$12.71	\$26,436.80
C	\$13.88	\$28,870.40
D	\$15.40	\$32,032.00
E	\$16.19	\$33,675.20
F	\$19.57	\$40,705.60

APPENDIX III

PAY RATES EFFECTIVE JANUARY 1, 2005

POSITION CLASSIFICATION OF POLICE OFFICER

4%

<u>STEP</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>
B	\$13.22	\$27,497.60
C	\$14.44	\$30,035.20
D	\$16.02	\$33,321.60
E	\$16.84	\$35,027.20
F	\$20.35	\$42,328.00