

**IN THE MATTER
OF
INTEREST ARBITRATION
CONCILIATION
OPINION & AWARD**

STATE EMPLOYMENT
RELATIONS BOARD

2004 FEB 24 A 10: 23

BETWEEN	CASE NO: SERB 02-MED-09-0808
United Steelworkers of America	FACT FINDER: JOHN S. WEISHEIT
And	HEARING DATE(S): January 28, 2004
The City of Lorain	AWARD ISSUED: February 23, 2004

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Michael J. Angelo, Labor Counsel Craig Miller, Service/Safety Dir. Michael J. Scherach, City of Lorain	John T. Gallo, Pres. Mark Wickline, Treas. Nellie Caraballa, USWA Staff Rep. Pat Riley, Attorney

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC 4117 and rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Conciliator are for consideration and determination, based on merit and fact according to terms of the labor agreement and provisions of ORC 4117.

BACKGROUND

The City of Lorain, hereinafter called the “Employer” and/or the “City”, recognizes the “United Steelworkers of America”, as the collective bargaining agent for about 190 full-time employees, in various job classifications of the City. The bargaining unit is not a strike prohibited bargaining unit, as defined in ORC 4117. The parties, in their most recent Collective Bargaining Agreement, effective from January 1, 2001, through December 31, 2003, included a re-opener provision for Article 28, Insurance Coverage, and Article 29, Wages, during the final year of the Contract. A Mutual Agreed Alternate Dispute (MAAD) resolution procedure was included in the re-opener provision. The MAAD specifically addressed the use of, and authority of, a Fact-Finder and Conciliator in this process. It also referenced certain Sections of the Ohio Revised Code 4117. The parties mutually agreed that if a bargained agreement was not reached, the unresolved issues would be submitted to “last best issue by issue offer” final and binding arbitration.

The parties did engage in collective bargaining in keeping with the terms of this provision and did reach a point in time when impasse was declared. In keeping with terms of the Agreement, the parties did attain the services of Fact-Finder James M. Mancini, who conducted Hearings on the matter in February and March, 2003. He issued his Findings and Recommendations dated April 18, 2003.

The Fact-Finding report was rejected by the Union and was not rejected by the City by a tie vote. The parties attained this Conciliator from the State Employment Relations Board (SERB) in keeping with terms of the Agreement. Said Conciliator was notified of his selection and appointment in a letter from SERB dated December 23, 2003.

A Conciliation Hearing was convened by the Conciliator on January 28, 2004, at Lorain, Ohio. At the Hearing, the respective representatives presented testimony and documentation regarding the respective positions on matters yet to be resolved. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public Employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public Employer;
5. Any stipulations of the parties;

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

This Report is based on facts provided in document and testimony introduced at the Hearing and in keeping with statutory consideration cited above.

PERTINENT CONTRACT TERMS

Article 34 - Duration of Agreement - Re-Opener Clause Provision

Section 1. This Agreement shall be effective as of January 3, 2001, and shall remain in full force and effect through December 31, 2003.

Section 3. Re-Opener Clause Provisions

On September 1, 2002, the parties shall reopen negotiations for the final year of the contract. The reopened negotiations shall be limited to the following matters only:

1. Wages for the final year of the contract.
2. Insurance coverage, including but not limited to cost allocations of such insurance between the employer and bargaining unit employees for the final year of the contract.

On or before October 1, 2002, if no agreement is reached, the parties shall petition SERB to appoint a fact-finding panel pursuant to SERB procedures. Thereafter, if no agreement is reached by November 1, 2002, the parties shall submit to final offer settlement (Conciliation) pursuant to 4117(G) and SERB Conciliation procedures.

The issuance of a final offer settlement award by the Conciliator shall constitute a final and binding mandate on the City and the Union for the final year of the contract. The parties shall equally share the cost of the fact-finding and conciliation process.

SELECTED CITATIONS FROM SERB CONCILIATION HEARING AND REPORT GUIDELINES AND SECTIONS OF ORC 4117

Scheduling of Hearing

The conciliator has authority to set the date, time, and place of the hearing. The Conciliator shall hold a hearing within thirty days of the effective date of the board's order to conciliate, or as soon thereafter as practicable. *****

Conciliation Extensions

The conciliator has no authority to extend time lines absent mutual agreement of the parties. *****

Postponing or Canceling Hearing

The parties by mutual agreement may postpone or cancel a scheduled conciliation hearing. *****

Implementation and Enforcement of Award

The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award. [O.R.C. Sections 4117.14(F) and 4117.19(B)(1)].

4117.14(G)(8) Final offer settlement awards made under Chapter 4117, of the Revised Code are subject to Chapter 2711, of the Revised Code.

4117(G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers *****

4117(G)(11) Increases of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year.

**SUMMARY OF PARTY POSITIONS
ISSUES AT IMPASSE**

The following unresolved issues at Conciliation are listed with a summary position of the respective parties.

Employer	Issue	Union
<p>Note: Insurance program currently is a self-paid plan funded 100% by the City, except for a \$10.00 fee per office visit, a \$2.00/\$5.00 co-pay on generic/brand name drugs.</p> <p>Impose a deductible of medical \$250.00 Ind. & \$500.00 Fam.</p> <p>Increase office visit to \$20.00.</p> <p>80/20 co-pay for in-network 60/40 co-pay for out of network.</p> <p>Increase Vision coverage to 20% employee co-pay.</p>	<p>ARTICLE 28 INSURANCE COVERAGE</p>	<p>5% premium paid by bargaining unit members, not to exceed \$40.00 per month for family and \$20.00 individual coverage, conditional to prior adjustment of other City bargaining unit and non-bargaining unit employee insurance rates.</p>
<p>Status Quo</p>	<p>ARTICLE 29 WAGES</p>	<p>Inc. base wage by 3.5% effective December 31,2003</p>

CONCILIATOR'S DISCUSSION & DETERMINATION

Procedural Issues

At the commencement of the Conciliation Hearing, the following issues were raised regarding procedure as related to arbitrator authority. The Union contended the re-opener provision was limited to Wage and Insurance terms for the year of 2003. Since the Hearing was convened in 2004, it contended the Conciliator was without authority to make determinations that would be effective in 2004. The City, while not challenging the general authority of the Conciliator to make a determination, did contend that any decision regarding wage increase was time barred from being implemented until January 1, 2005.

It was determined by the Conciliator that the matter is properly before him for determination on its merit based on the following:

1. The Conciliator was duly issued notice of his appointment by SERB in a letter dated December 23, 2003, and received on or about December 27, 2003.
2. The Conciliator was in contact with respective agents of record for the parties since early January, 2004, through the hearing date of January 28, 2004. The Hearing date was mutually agreed to as a result of such communication.
3. Prior to the Hearing, the said procedural questions of arbitrability were not raised with the Conciliator.

4. Terms of the Agreement between the parties, ORC 4117 and SERB rules do not extend to the Conciliator specific authority to determine the procedural challenge raised at Hearing. ORC 4117 does specifically provide another forum for such matters to be addressed after a Conciliation determination has been issued.

Discussion of Issues

General

The economic impact is reviewed in total context of the cost estimates as introduced at the Hearing. While the determinations are made issue by issue, the total projected cost is given consideration in the course of reaching this Award. A review of the City's financial condition, as submitted in Conciliation, was made and determined that generally, the current conditions were similar to those described by the Fact Finder in his Award of April 18, 2003. While the City argued in Fact Finding, as at Conciliation, a dire economic condition is facing the City, it does not raise an argument of an inability to pay. The issues before the Conciliator have a cost implication.

Each party has framed its final position in a manner that reflects selected recommendations by the Fact Finder, while excluding others. This is found helpful as the Fact Finder's conclusions and recommendations are given great weight in the Conciliation determinations. It is a generally accepted standard that the inclusion of a Fact Finder's opinion in conciliation adds a sense of uniformity and continuity to the process. Only when a significant change in facts or error in rationale is found, should a different conclusion be applied at conciliation. No such situation is ascertained in this instant case.

A Fact Finder offers an opinion with recommendation that is subject to further modification of the bargaining parties to attain mutual agreement. This is a significant contrast to the final and binding decision in conciliation. The parties expressed a common understanding and desire to the Conciliator that the final and binding determination be the last best offer as put before him in this instant matter. The examination of the respective positions of the parties is made consistent with the general background cited in the foregoing.

Issue #1 Insurance

The City has incorporated in a portion of the Fact Finder's recommendation. It includes employee contribution to the health insurance program, co-pay for benefits, and increase charge to employees office visits. It also proposes increasing the employee share on prescription coverage.

The Union proposed that employees contribute 5% of premium cost, not to exceed \$40.00 per month for family and \$20.00 for individual plan. This position is made with specific conditions contingent upon all other City employees, not in this bargaining unit, being required to contribute to the premium cost of health insurance coverage.

The Fact Finder recommended that effective December 31, 2003, "the Employer may implement a modification in healthcare benefits to Option 1 or 2 of the Super Med Plus Plan". This was a limitation of the Employer's position at the time of his review. The current City position reflects terms in Option 2.

The Union position to have employees make contributions of 5% with a \$40.00/\$20.00 monthly cap is viewed as a reasonable revised position. However, the reasonableness is eroded with the qualifying conditions attached. Its position requires what is considered unreasonable determinations by other bargaining unit employees and “at will” employees of the City before such a concession is made. External comparisons are found less influential in this matter than focus on internal application. To fully comprehend the degree of external comparisons to that of the City at this point in time, requires consideration of the respective total economic climate of the cited comparable employing agency. Such information was not sufficiently introduced.

The Fact Finder’s conclusion must be considered as a total of its parts. While recommending the bargaining unit forego its traditional virtual first dollar paid insurance program for a contribution share and co-pay cost containment terms, such also includes a recommended wage increase as of December 31, 2003, the second issue before the Conciliator.

Issue #2 Wages

The Union position calls for a base rate wage increase of 3.5% effective December 31, 2003, while the City proposes a freeze at the current rate. The Fact Finder recommended a 3.5% increase effective December 31, 2003.

Each bargaining unit must consider its priorities and the membership it represents. It was noted that the Fire Fighters bargained economic concessions and in turn attained concessions from the City regarding layoffs in its bargaining unit and absent any mention of any change in insurance benefits for that period. This included agreement to a contract extension for a one

year period. The referenced parties reached agreement in negotiations without implementing conciliation. The situation painted in that scenario is much different than our instant situation. The Conciliator, in this instant setting, does not have the authority to impose such terms even if considered more appropriate.

What is considered relevant is the totality of the issues before him and the respective positions from which to choose.

Determinations

Based on the foregoing, it is determined that:

1. Article 28, Insurance Coverage, shall reflect the changes as put forward by the City at the Conciliation Hearing.
2. Article 29, Wages, shall reflect the changes as put forward by the Union at the Conciliation Hearing.

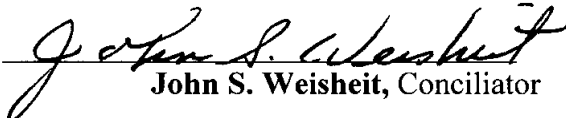
Implementation of this Award shall be effective as of December 31, 2003.

TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **12 pages**, includes the findings and set forth in this Award by the below signed by the Conciliator.
- Any matter presented before the Conciliator and not specifically addressed in this Determination and Award were given due consideration in the course of reaching the finding.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of the Agreement between the parties, applicable Sections of ORC 4117 and SERB Rules and Regulations.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of **February 23, 2004**.


John S. Weisheit, Conciliator

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

BETWEEN United Steelworkers of America and the City of Lorain, Ohio	CASE NO: SERB 02-MED-09-0808
--	-------------------------------------

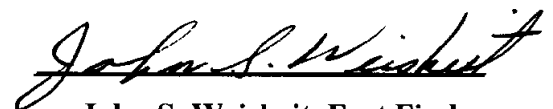
was served to the below named parties at the stated addresses

John Thomas Gallo, President United Steelworkers of America 1326 W. 33rd St. Lorain, OH 44053	Michael J. Angelo, Esq. Johnson, Angelo & Colaluca 1001 Lakeside Ave. Suite 1700 Cleveland, OH 44114
---	---

by U.S. Postal Service mailed, First Class Mail, on
February 23, 2004.

Copy of this Award was submitted U. S. Postal Service by First Class Mail to
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on
February 23, 2004.

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC
4117 and related SERB Rules and Regulations.



John S. Weisheit, Fact Finder

Date: February 23, 2004