

**STATE OF OHIO**  
**STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT  
RELATIONS BOARD

2003 SEP 16 A 10: 28

<b>In the Matter of</b>	)	
<b>Conciliation Between:</b>	)	
	)	
	)	
<b>CITY OF STRONGSVILLE, OHIO</b>	)	<b>Case No. 02-MED-09-0846</b>
	)	
	)	
<b>-and-</b>	)	
	)	<b>Jonathan I. Klein,</b>
	)	<b>Conciliator</b>
	)	
<b>FRATERNAL ORDER OF POLICE,</b>	)	
<b>LODGE NO. 15</b>	)	
	)	

---

**FINAL OFFER SETTLEMENT AWARD**

---

Appearances

For Union:  
Frank G. Bolmeyer, Esq.  
John T. Janowski - Patrol Officer  
Brad Busch - Patrol Officer  
Steve Piorkowski - Patrol Officer  
Robert Kustis - Patrol Officer

For Employer:  
James A. Budzik, Esq.  
Nicholas DeBaltzo, Esq.  
Don Batke - Director of Finance  
Police Chief Goss

Date of Issuance: September 13, 2003

**I. PROCEDURAL BACKGROUND**

This matter came on for hearing on August 7, 2003, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board (“SERB”), pursuant to Ohio Rev. Code Section 4117.14(D)(1). The hearing was conducted between the City of Strongsville (hereinafter “Employer” or “City”), and the Fraternal Order of Police, Lodge No. 15 (hereinafter “Union”), at the Strongsville Police Department located at 18688 Royalton Road, Strongsville, Ohio. The bargaining unit involved in the conciliation consists of approximately fifty-nine (59) full-time patrol officers.

A fact-finding hearing took place on March 18, 2003, concerning numerous disputed issues between the parties. The fact-finder’s recommendations were not mutually accepted by the Union and the Employer, and as of the commencement of the conciliation hearing the parties remained at impasse on five issues: wages; duration; dental coverage; professional pay; and vacations.

At the conciliation hearing, the parties agreed to delete the language “or his designee” which is contained in Step 1 of the grievance procedure set forth in Article X of the collective bargaining agreement. As such, grievances must be filed with the police chief, and the chief must answer grievances within the contractual time period. The parties further agreed to retain the language contained in Step 2 of the grievance procedure which provides that grievances shall be appealed to either the Mayor or his designee. Additionally, either the Mayor or his designee shall meet with the grievant and/or a Union representative, and either the Mayor or his designee shall issue a written decision to the grievance.

Article XXI, Section 21.01 of the collective bargaining agreement currently provides as follows:

Holidays. In lieu of eleven (11) holidays, employees shall be credited with one (1) day off for each full month on the payroll, to a maximum of eleven (11) days off per calendar year. Employees who wish to take time off must receive advance approval of the Chief or his designee. An employee may carry over no more than four (4) days from one calendar year to the next. Any remaining unused holidays above (4) shall be paid in cash by the first pay in February. Employees who work on Christmas or Thanksgiving shall be compensated at the overtime rate for all hours worked.

The City seeks to clarify the definition of “each full month on the payroll” for the purpose of earning or losing a holiday. Currently, an officer could be docked the amount of pay for the entire holiday if he or she is tardy. The City proposes that the aforementioned language should be interpreted to provide that an officer would be docked the amount of pay for the time missed, and the officer would not lose a holiday unless he or she is absent without leave for more than one-half of a tour of duty or suspended without pay during the month. At the conciliation hearing, the parties agreed to the contractual interpretation proposed by the City.

The Union proposed a modification to Article XXI, Section 21.01 of the contract to provide that patrol officers who are required to work on the Fourth of July shall be compensated at the overtime rate for all hours worked. At the conciliation hearing, the City agreed to add the Fourth of July to the list of holidays, which currently includes Christmas and Thanksgiving, for which employees who are required to work on that holiday shall be paid at the overtime rate.

The City proposed to modify Article XXI of the contract in regard to prescription co-pay amounts. Under the City's proposal, there would be a \$5.00 generic co-pay; a \$15.00 name brand co-pay; and \$25.00 non-formulary co-pay by the employees. At the conciliation hearing, the Union agreed to the City's proposal as recommended by the fact-finder.

Finally, the parties agreed to a retroactive wage rate increase of 3.75 % for 2003, and the conciliator incorporates into this Final Offer Settlement Award all tentative agreements entered into by the parties prior or subsequent to the conciliation hearing.

## **II. CONCILIATION CRITERIA**

In the determination of the facts and the selection, on an issue-by-issue basis, from between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 in this section, which are normally or traditionally 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.

### **III. FINDINGS OF FACT AND OPINION**

#### **Introduction**

The City of Strongsville (pop. 45,000) is a chartered municipality located in southern Cuyahoga County. As previously noted, there are approximately fifty-nine (59) full-time patrol officers employed by the City. Upon review of the comparable jurisdictions submitted by both parties, the conciliator determines that the following cities will be referenced for comparability purposes throughout this Final Offer Settlement Award based upon their populations and/or proximity to the City of Strongsville, and overall quality of available data: Berea, Middleburg Heights, North Olmsted, North Royalton, Parma and Westlake.

Initially, the City proposes the fact-finder's award in its entirety as its final offer on each of the issues before the conciliator. According to the City, there is an inference that the fact-finder's award is accorded "great weight." Furthermore, fact-finding awards are to be "given deference unless manifestly or grossly in error." In the instant case, there is no reason to overturn the fact-finder's award. The City also points out that the fact-finder's award in this case constitutes a compromise position.

The Union asserts that the conciliator, rather than SERB or the provisions contained in the Ohio Revised Code, creates the standard to be utilized in determining the last best offers of the parties. The Union points out that its current position regarding the issues before the conciliator is substantially different than its position before the fact-finder concerning those matters. The Union also claims that the fact-finder's reasoning regarding the City's ability to pay and its control of discretionary spending was in error. The Union has selected the following communities for comparable data purposes: Berea, Middleburg Heights, North Olmsted, North Royalton, Parma, Westlake and Solon.

**Issue 1: Wages**

The City proposes a one-year contract with a wage rate increase of 3.75 % for all bargaining unit employees. As previously noted above, the parties have agreed to the aforementioned wage rate increase in 2003. The City vehemently opposes the Union's proposal of wage increases each subsequent year of a two or three-year contract. The City claims that it has an extremely limited ability to pay due to severely decreased revenue from multiple sources. According to the City, the financial data which was supplied to the Union substantiates its limited ability to grant wage rate increases to bargaining unit employees. The City points out that it recently entered into a one-year contract with the service workers which imposed a three percent wage rate increase. Furthermore, the service workers were informed that the City may have to lay off employees due to its tight budget constraints and a potential inability to fund even a three percent wage rate increase.

The City maintains that its proposed wage rate increase is consistent with general cost of living increases at the national level. Furthermore, the bargaining unit employees are already compensated in an appropriate manner as compared to employees in other police departments. Accordingly, the Union's excessive and unwarranted economic proposals should be rejected by the conciliator.

At the conciliation hearing, Don Batke, the City's Director of Finance, discussed the City's revenue analysis and confirmed that seventy-six percent (76%) of the operating revenue is derived from the City's income tax. According to Batke, the City was in "fairly decent shape" at the end of 2002 in regard to the cash carryover balance of approximately \$1,000,000. However, he stated that the cash carryover balance in past years was approximately \$2,300,000. Additionally, he noted that tax collections were down. Batke testified that the City has an AA1 bond rating by Moody's, and the rule of thumb utilized by Moody's is a five to ten percent carryover balance. According to Batke, all of the City's departments were "holding their own per the budget" at the halfway point of fiscal year 2003. (City Ex. 4).

Batke confirmed that the service department employees recently entered into a one-year contract with the City which provided a three percent (3%) wage rate increase. He further stated that "revenue was ahead of projections, but expenses were more than expected" for the year. Batke asserted that there have been no significant financial changes since the date of the fact-finding hearing, and it is too speculative to determine the cash balances for the 2004 budget. He acknowledged that the City will save money in the future under the new prescription drug provision. Batke further testified that it is unlikely that council would reduce the income tax

credit during an election year. He also testified that there has not been absolute parity in the past between the police officers and the firefighters. Finally, Batke claimed that the City has an extremely limited ability to pay the wage rate increases sought by the Union, and other department budgets must be lowered in order to account for the increase in the police department budget.

On cross-examination, Batke acknowledged that other cities in the area are also experiencing difficulties as a result of the economic downturn. Additionally, other cities also face similar health care problems. He stated that it is difficult to forecast the City's finances for three years into the future, however, he has performed such forecasts in the past. He admitted that it is rare for a city such as Strongsville to offer a one hundred percent (100%) tax credit, and a fifty percent (50 %) reduction in the tax credit would generate approximately \$5,000,000 to \$6,000,000 for the City. Batke reiterated that the City received a very high rating from Moody's. He acknowledged that the economic outlook is better now than it was in March 2003, and the year end balance could be approximately \$1,800,000. According to Batke, a three percent (3%) wage rate increase is a "great wage raise considering what is going on today."

The Union is in agreement with the fact-finder's decision recommending a three and three-quarter (3.75%) wage rate increase effective January 1, 2003, and it proposes a modest three percent (3%) wage rate increase in the second year of the contract, effective January 1, 2004. The Union argues that there is no justification for the significant disparity in the compensation for firefighters and police officers employed by the City. The Union points out that the firefighters were granted a three and three-quarter (3.75%) wage rate increase in the third



year of their contract which expires on December 31, 2003. Additionally, the \$1,500.00 annual paramedic bonus is rolled into the firefighters' annual base pay, and therefore, is subject to yearly percentage wage rate increases. In 2002, the firefighters employed by the City received total compensation of \$54,489.00, while the police officers employed by the City earned only \$53,255.00.

Although firefighters and police officers perform different duties and functions, the two safety forces most closely resemble each other when compared to other City departments. The City acknowledges the similarities between the two safety forces as reflected in the equal pay provided management personnel, but it attempts to discount those similarities in order to support the disparity in pay for the rank and file employees. According to the Union, the comparable data highlights the trend toward equalization of compensation among safety forces. Even in the event that the Union's proposal is awarded by the conciliator, police officers would still lag behind firefighters in total compensation by \$991.00 for 2003.

In comparison to police officers employed by comparable cities, the compensation afforded the City's police officers in 2002 places them in the "middle of the pack." (Union Ex. 6). The Union's proposed wage rate increase would essentially maintain the status quo in regard to the comparable communities. According to the Union, the wage rate increases in 2003 for police officers employed by comparable cities range from a low of three percent (3%) to a high of four and one-half percent (4.5%). The Union asserts that Strongsville is a wealthy community and the movement of police department compensation toward the top of all Cuyahoga County

cities is warranted. It points out that the deceased Mayor Ehrnfelt's compensation rightly placed him third among the highest paid suburban mayors.

According to the Union, its proposed wage rate increases will cost the City \$96,693.00 in 2003, and \$116,908.00 in 2004. (Union Ex. 11). It notes that a change in the prescription coverage will save the City approximately \$71,000.00 in premium costs. The Union also contends that the "post-9/11" downturn in the economy has affected the City just as it has affected all communities in Cuyahoga County. Nonetheless, neighboring cities have found a way to grant reasonable compensation increases over the course of two to three-year contracts. Despite the downturn in the economy and the decrease in income tax receipts during 2002, the City government has not taken steps to increase revenue by reducing the one hundred percent (100%) tax credit provided to Strongsville residents who work outside the City. The Union points out that the tax credit could be reduced without a vote by the residents, and a fifty percent (50%) reduction in the tax credit would increase revenue by approximately \$5,000,000 to \$6,000,000 per year. It notes that Parma recently chose to reduce the income tax credit for its residents who work outside the city.

In addition to its failure to take advantage of increased revenue opportunities, the City's limited ability to pay argument should be rejected until it establishes that it has cut back on discretionary spending. The Union asserts that reasonable wage and benefit increases for City employees should be a priority over discretionary spending. It points out that the City recently

entered into a 15-year lease agreement which will subsidize a skating facility.<sup>1</sup> The City can afford to pay the wage rate increases which the Union has requested without creating an undue hardship. During the first half of 2003, revenues are up 11.58 % over budget, and expenses are down 6.98 %.

The Union asserted at the conciliation hearing that its proposed three percent (3%) wage rate increase in 2004 although reasonable, remains below the average. It reiterated that the fact-finder highlighted the fact that income tax revenue for the City is down. However, he ignored the tax credit issue. Additionally, the fact-finder failed to address the City's discretionary spending. The Union is not arguing that the police officers are underpaid. However, it maintains that they should be compensated in an appropriate manner.

Last Best Offer

Based upon the statutory criteria and supporting evidence presented at hearing, the conciliator finds that the City's proposal represents the last best offer. This conclusion is reached for the following reasons. First, there is critical dearth of comparable wage data for 2004. This is not to say that an award based upon historical trends and the current economic conditions cannot or should not be made – for example, there has to be a initial collective bargaining agreement between parties, and subsequent collective bargaining agreements of multiple year duration if the parties are to move ahead and maintain stability in their collective bargaining

---

1. According to Finance Director Batke, this subsidy will cost the City \$370,000 for each of the next fourteen years.

relationship. The general weakness in the economy is readily ascertainable by the most casual observer, although this weakness is somewhat countered by the particular strength of growth and development in the City.

Second, the other internal bargaining units in the City have either agreed to one year agreements or are about to have their contracts expire this year. This is not to say that all agreements must work in lock-step with one another with respect to duration, but this fact is some evidence of the validity of the City's position. Third, a contributing factor is the City's overall economic strength and reduced revenues, although to be sure there is no evidence that the City has an absolute inability to pay the Union's wage request. To paraphrase the City's finance director, the economic picture has improved somewhat since the fact-finding hearing was conducted in March 2003, and the ability to conduct financial forecasts has improved.<sup>2</sup>

Fourth, this selection is consistent with the fact-finder's recommendation on this very issue. The wage increase of three and three-quarter percent (3.75%), as highlighted by the fact-finder, will permit the City's patrolmen to maintain their relative ranking with respect to patrolmen in comparable jurisdictions.

Finally, the conciliator is well aware of the Union's assertion that the fact-finder disregarded its contention that a change in the City's income tax credit would be more than sufficient to cover all of its proposals. By the finance director's own admission, the one hundred

---

2. This can best be illustrated by the City's anticipation at fact-finding of a year end cash reserve for 2003 of \$250,000, compared with the finance director's more recent projection at conciliation of a year end balance of \$1,800,000.

percent (100%) income tax credit afforded the City's residents who work in other municipalities where they pay income tax is rare. The conciliator agrees that this is a critical factor in terms of the City's financial well-being and its ability to provide its citizens with professional law enforcement by well-trained and dedicated police officers. With a one year agreement the City may find itself paying its police officers more in 2004 than the Union's last offer, particularly in light of the current income tax credit structure which results in a significant percentage of its residents paying no income tax to their city of residence, and the better than expected financial health of the City. In any event, the conciliator stands in agreement with the fact-finder on this issue.

**Issue 2: Professional Pay**

Article XXIII, Section 23.06 of the collective bargaining agreement currently provides as follows:

In order to encourage continuing professional training and proficiency, similar to the Paramedic Pay Supplement granted by the Employer to its employees represented by the Fraternal Order of Police, Local #15, all employees who (a) undertake specialized training and (b) are granted accreditation or certification in at least five (5) of the following fields, to wit:

1. Domestic violence response;
2. Firearm proficiency;
3. Blood alcohol analysis;
4. K-55 Unit and S-80 Unit radar operation;
5. Approved defensive tactics techniques; and
6. L.E.A.D.S.

shall be paid an annual professional wage supplement of Five Hundred Dollars (\$500.00) provided, however, that such employees shall maintain such accreditation or certification in all five (5) fields under professional guidelines and requirements established by the State of Ohio or the Chief of Police for the City of Strongsville.

Such wage supplement shall be paid by separate check to qualifying employees with their pay for the first period in July of each year.

The Union proposes a two hundred and fifty dollar (\$250.00) increase in the annual professional pay supplement effective January 1, 2003, and no increase in the second year of the proposed contract. It acknowledges that the various certifications listed in the proficiency pay supplement provision are part of a police officer's daily job duties, and such certifications must be maintained in order to properly function as a police officer.

Likewise, Strongsville firefighters must have a paramedic certification as a pre-condition of employment, and paramedic duties are part of their daily job duties as firefighters. The Union admits that paramedic certification requires specialized training over a period of six hundred (600) hours. However, specialized training requirements also apply to Strongsville police officers. Additionally, the Strongsville Civil Service Commission requires that applicants for the police department have either a four-year Bachelor of Science or Arts Degree in Criminal Justice or Criminology, or an equivalent four-year law enforcement degree prior to appointment to the police department. The Strongsville Civil Service rules do not require an individual to possess an advanced degree in order to become a firefighter, other than paramedic certification.

The proficiency pay for patrol officers and the paramedic pay for firefighters are simply avenues to compensate safety forces for their unique skills and qualifications without having to pay such a benefit to departments on a City-wide basis. The Union acknowledges that these payments are “hidden wages” which are generally the result of political expediency. If the proficiency pay benefit was rolled into base wages and removed from the contract, which the Union would not object to, it could impact negotiations with other City departments. The Union asserts that the comparable data supports its request for incremental increases in the professional pay supplement over the term of the contract in order to equalize the compensation between the City’s two safety forces.

At the conciliation hearing, the Union reiterated that police officers and firefighters are not the “same,” however, they are “similar.” Accordingly, there should be a “move towards equalization with the firefighters.” The Union also pointed out that it scaled back its original proposal in light of the City’s financial data. The Union further noted that firefighters are compensated at a significantly greater rate than police officers by the City in comparison to the compensation rates paid to police officers and firefighters employed by comparable cities. (Union Exs. 12 and 13). Furthermore, the record reveals that the Police Chief and the Fire Chief, as well as the deputy chiefs, are compensated at the same wage rate by the City. Additionally, the police department responds to approximately 28,000 calls for service each year compared to only 3,700 calls for service by the fire department.

The City proposes that there should be no increase in the professional wage supplement afforded police officers. It points out that the fact-finder rejected the Union’s proposed increase

in professional pay. The City further asserts that the police department and the fire department are not “equal,” and it notes that police officers and firefighters work different schedules. Specifically, firefighters are assigned to work forty-eight hour weeks. The Union’s proposal is simply a request to obtain more compensation for the police officers, and the Union does not assert the position that police officers must be more proficient in order to receive an increased professional wage supplement. Accordingly, the City requests that there should be no increase in professional pay, and its position should be selected as the last best offer.

#### Last Best Offer

The conciliator selects the City’s position as the last best offer on professional pay. When wage compensation for the members of the bargaining unit is viewed in its totality, an increase in professional pay is unwarranted. The rational basis offered by the fact-finder to not recommend an increase is equally applicable to this conciliation proceeding, and evidence of the statutory criteria does not warrant an increase in what the Union itself describes as “hidden wages” due to “political expediency.”

#### **Issue 3: Duration**

The Union has modified its position at the fact-finding hearing and reduced its original proposal for a three-year contract to a two-year contract retroactively effective on January 1, 2003, through December 31, 2004. The Union points out that one-year contracts are a rare exception rather than the rule, and the vast majority of collective bargaining agreements span



periods of three years. Although the economic downturn has impacted all other Cuyahoga County communities, the Union is unaware of a single collective bargaining agreement with a one-year duration. It asserts that negotiations will begin again before the ink is dry on this decision in the event a one-year contract is awarded. The Union notes that these negotiations have been costly for both parties.

According to the Union, the fact-finder's reliance upon the "whip-saw" effect created by staggered negotiations is somewhat misplaced. Negotiations which will result in contracts for the firefighters unit and service workers in 2004 will set the stage for future negotiations within the City. The Union's modest request for a three percent (3%) wage rate increase in 2004 certainly lessens the economic impact on the City because no other economic increases are requested during the second year of the contract. Additionally, the proposed language which permits the City wider latitude to change health insurance plans during the pendency of this agreement further weakens the City's rationale for a one-year contract.

At the conciliation hearing, the Union reiterated that "one-year deals just don't happen," and the burden to award a one-year contract is very high. It questions the City's position that this is a unique situation. The Union further points out that every year is unpredictable, and it notes that the City has still negotiated three-year contracts although health care costs have changed in the past.

The City proposes a modification to Article XXXII, Section 32.01 of the contract to impose a one-year agreement upon the parties. Normally, the City would propose a multi-year contract. However, given the City's serious financial stress and the uncertainties due to the

untimely death of Mayor Walter Ehrnfelt, the City cannot grant wage increases for a second (or third year) until the economic picture clears and data is compiled at the end of 2003 with a new City administration in place. The City rejects the Union's proposal for either a two or three-year contract with guaranteed increases each year. According to the City, the Union's proposal would result in significant layoffs which are undesirable to the City's administration.

The City is also vehemently opposed to a multi-year agreement inasmuch as the fire fighters and the service department workers have contracts which terminate on December 31, 2003. The City seeks to have consistency with the aforementioned bargaining units and eliminate the "whip saw" effect of staggered contracts and negotiations with the police, fire and service divisions. It points out that the fact-finder recommended a one-year collective bargaining agreement.

At the conciliation hearing, the City acknowledged that it has never previously proposed a one-year contract, and it prefers multi-year agreements when it is "necessary." The City admits that one-year contracts are unique, however, the circumstances presented in this case are also unique. The City claims that "things are tight" in an economic sense, and the death of its former mayor creates more uncertainty. It desires consistency among all of the bargaining units, rather than staggered contracts. Finally, the City asserts that the fact-finder's decision was not clearly erroneous. Accordingly, its proposal should be adopted as the last best offer.

Last Best Offer

Based upon the evidence of record, the conciliator determines that the City's position represents the last best offer. A collective bargaining agreement of one year duration is dictated in this case by the conciliator's selection on wages, the fact-finder's report and recommendation, and the evidence of the internal bargaining units. Far less weight is accorded to the death of the City's mayor, for as distressing as his death might be to the City's administration and sense of continuity, it is nevertheless a fact in all governmental or other organizational structures and is an ever present uncertainty suggesting the usefulness of collective bargaining agreements with multiple year durations.

**Issue 4: Vacations**

Article XXVI, Section 26.01 of the collective bargaining agreement currently provides, in pertinent part, as follows:

\* \* \*

During calendar year 2001, and thereafter all full-time employees of the City shall be entitled on the anniversary date of each year to the following paid vacation provided they have worked at least one thousand forty (1,040) hours in the preceding anniversary year and have accrued the required years of service as follows:

- A. Each employee who has completed one (1) year of continuous employment beginning with his first date of employment shall receive two (2) weeks vacation, with pay after such anniversary date.
- B. Each employee who has completed five (5) years of continuous employment beginning with his first date of employment shall receive three (3) weeks vacation, with pay after such anniversary date.

- C. Each employee who has completed ten (10) years of continuous employment beginning with his first date of employment shall receive four (4) weeks vacation, with pay after such anniversary date.
- D. Each employee who has completed eighteen (18) years of continuous employment beginning with his first day of employment shall receive five (5) weeks vacation, with pay after such anniversary date.

\* \* \*

The Union proposes to modify the aforementioned provision to provide five weeks of vacation after fifteen years of service and six weeks of vacation after twenty years of service. The Union asserts that the reduction of service periods necessary to qualify for five or six weeks of vacation are compatible with the vacation schedules afforded police officers employed by comparable cities. (Union Ex. 6). It acknowledges that the proposed amendment to the vacation schedule grants police officers a more generous vacation schedule than the schedules provided to other bargaining units within the City. However, the comparable data strongly supports a change in the present vacation schedule, and therefore, the Union's position should be accepted. The Union points out that six of the seven comparable communities provide six weeks of vacation at intervals ranging between twenty and twenty-six years.

Although the fact-finder indicated that the Union's proposal would create more overtime work, Chief Goss testified that there would be no increase in overtime work under the Union's proposal. Specifically, vacation leave is not approved if it will result in overtime work for the department. Chief Goss also stated that there is "very little vacation cash out taken" by the police officers.

The City vehemently opposes the Union's proposal inasmuch as no other City employees obtain or earn such generous vacation benefits. Additionally, an increase in vacation leave would result in further financial detriment to the City. According to the City, it simply cannot afford the Union's proposal. It also points out that vacation leave has traditionally been a benefit which has been accorded to employees in an equal manner on a City-wide basis. Furthermore, the City notes that the fact-finder rejected the Union's proposal.

According to the City, there will be an increase in overtime work if the Union's vacation leave proposal is granted due to minimum shift requirements. However, the City acknowledged that minimum shift requirements are non-contractual. Moreover, the City admitted that it does not approve vacation leave if it results in overtime work. It reiterated that all other City employees are afforded a maximum of five weeks of vacation. The City desires to maintain a consistent level of accrual regarding vacation leave. Finally, the City notes that the police officers received a "bump" in vacation as a result of the fact-finding decision which preceded the current contract.

#### Last Best Offer

Based upon the evidence of record, the conciliator determines that the Union's position represents the last best offer. While there was evidence that the other internal bargaining units generally receive the same vacation periods based on years of service, the evidence of comparable bargaining units establishes that with respect to police officers the vacation schedule is accelerated. In addition, the record evidence demonstrates no significant vacation cash outs,

and there is no probative evidence that Union's proposal carries with it any significant cost implications as suggested by the fact-finder.

In particular, there is no foundation for the conclusion reached at fact-finding that considerably more overtime costs would be involved. The undisputed testimony of Chief Goss was that there would be no increase in overtime work under the Union's proposal, especially since vacation leave is not approved if it would result in departmental overtime. For each of the foregoing reasons, the conciliator selects the Union's proposal on vacations as the last best offer.

#### **Issue 5: Benefits**

The City has proposed to include a provision in Article XXI of the contract which provides that spouses employed by the City, regardless of bargaining unit or non-bargaining unit status, would be subject to one family plan insurance coverage. The precise language as proposed by the City has been agreed to and codified in its collective bargaining agreement with the service department employees. The City also adopts the fact-finder's report in regard to the dental coverage afforded employees under the Kaiser option. The Union may file a grievance in the event that it believes the Kaiser dental program is insufficient.

At the conciliation hearing, Batke confirmed that Kaiser Permanente now provides dental coverage. Previously, employees under the Kaiser plan were provided with dental and vision coverage through a Medical Mutual rider. According to Batke, the City offered the patrol officers similar dental coverage through Kaiser, and no grievances have been filed by the Union

which allege that the benefits provided under the Kaiser plan are not equal to the benefits which were previously provided by Medical Mutual.

The City asserts that it is not contractually obligated to continue the rider which provided Medical Mutual dental coverage to employees under the Kaiser Permanente plan. According to the City, an employee who selects the Kaiser Permanente option must “take what they [Kaiser] offer.” It chose a plan under Kaiser Permanente which equaled the total premium paid under the City plan. The City asserted that its goal was to provide similar coverage. Accordingly, the premiums under the different health insurance plans are similar.

Although the Union agrees with the fact-finder’s recommendation regarding prescription co-pay increases, it requests that its proposal regarding dental coverage provided to Kaiser Plan employees be awarded. For more than a decade, bargaining unit employees were afforded a choice of healthcare coverage between major medical coverage provided by either Blue Cross or Medical Mutual or a HMO option of coverage provided by either Kaiser Permanente or another suitable HMO approved by the City. However, the Kaiser option provided no dental coverage at the time it was negotiated by the City. As such, those employees who chose Kaiser as their major medical provider were provided dental coverage via a rider from the other major medical insurer. However, the police officers were never informed that the dental coverage which was provided to Kaiser option employees was not actually provided under the Kaiser plan.

In December 2002, all Kaiser plan participants were informed that effective January 1, 2003, Kaiser would begin offering dental and vision benefits. Thus, these benefits would now be available to Kaiser option employees through that plan, rather than through Medical Mutual

dental and vision coverage. Without any notice to the Union, or any attempt to negotiate this change in health care coverage, the City unilaterally chose the basic Delta Dental plan provided by Kaiser as the only option available to Kaiser plan employees. The Union points out that the Medical Mutual dental plan pays 100 % of a number of particular benefits and 80% of procedures defined as standard dental treatments. (Union Ex. 9). However, standard dental work under the Delta Dental basic plan through Kaiser requires *employees* to pay 85% of the cost. It is obvious that the benefit level provided under the Kaiser Delta Dental basic plan is significantly less than the benefit level under the Medical Mutual plan.

However, the Union notes that Kaiser Delta Dental has available an additional plan with benefit levels which are substantially similar to those offered by Medical Mutual. (Union Ex. 10). Specifically, the Kaiser Delta Dental “High” plan is substantially similar to the Medical Mutual plan. However, the “High” plan was not offered by the City to Kaiser option employees. According to the Union, it is obvious that the longstanding past practice of the City in regard to providing both dental and vision coverage to Kaiser option employees modified and clarified the applicable contractual provision concerning health care benefits. The Union asserts that the fact-finder provided no analysis or rationale to explain or support his decision to deny the Union’s request for similar dental coverage for employees enrolled in the Kaiser plan. The Union points out that the City provided all employees with equal dental coverage for more than ten years, and there is no rationale basis to provide a lesser level of coverage to Kaiser plan employees where equal dental coverage is offered by the Kaiser plan.



The Union has proposed the following language for the health insurance benefits provision contained in Article XXI of the contract:

Health Insurance Benefits

Hospitalization insurance shall be furnished by the Employer for all full-time employees including comprehensive major medical benefits and prescription drug benefits. Effective as soon as practicable, the Employer may implement a drug prescription co-pay of \$5.00 for generic drugs; \$15.00 for formulary name brand drugs; and \$25.00 for non-formulary brand name drugs as set forth in the City's prescription plan. The City shall also continue to provide major dental and vision care as currently in effect, as well as life insurance, accidental and dismemberment insurance.

In those cases where both spouses are employed by the City of Strongsville in any position or capacity, only one will be eligible for health insurance coverage, which shall be the family plan as determined by first date of birth. In such circumstances, only the one eligible spouse shall be required to pay a contribution towards the premiums as set forth herein.

The Employer shall have the right to select or change insurance carriers or coverage at its discretion provided such changes shall be effective for other City employees under the health plan. All benefits will remain as good or better regardless of the carrier.

Employees who chose Kaiser Permanente as their major medical provider shall be provided dental coverage which is substantially similar to dental coverage provided by the City plan.

The Union pointed out at the conciliation hearing that the City did not negotiate any changes regarding the dental coverage through Kaiser Permanente. The Union reiterated that the benefit levels afforded some employees were changed as a result of the City's unilateral decision. (Union Exs. 9 and 10). Specifically, the dental benefits proposed by the City are inferior to the

benefits provided under the existing plan. According to the Union, the City should provide equal benefits to all of its employees.

Last Best Offer

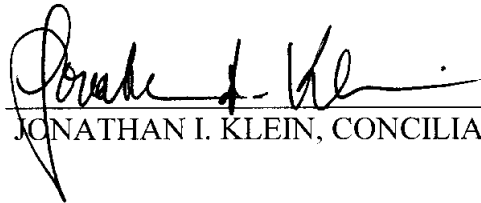
Based upon the evidence of record, the conciliator determines that the Union's position represents the last best offer. Despite the City's protestations that its goal was to provide similar dental coverage, it is self-evident that the two plans – dental coverage under Medical Mutual and the standard plan selected under Kaiser Delta Dental are far from comparable. Moreover, the conciliator cannot ignore the fact that for over ten years the dental coverage has been the same for all members of the bargaining unit whether Kaiser Permanente or Medical Mutual was the health insurance provider.

Whether a grievance was filed since January 2003 is immaterial – contract negotiations, including this proceeding, represent a suitable juncture to clarify the terms and conditions of employment. Other than a difference in premium costs, there is no rational basis to provide one group of the bargaining unit with more favorable dental insurance coverage than another, particularly with a decade long history of identical coverage. Moreover, the City has achieved its goal of securing a collective bargaining agreement of one year duration, and should it desire to eliminate the choice of insurance coverage, including dental coverage, it may attempt to do so in the negotiations which are only months away. Moreover, the prescription co-pays have been adjusted, one spouse eligibility has been incorporated and contrary to the respected fact-finder's

conclusion, this is the proper forum to insure that the long-standing practice of the parties establishing equity between the bargaining unit members continues.

**FINAL AWARD**

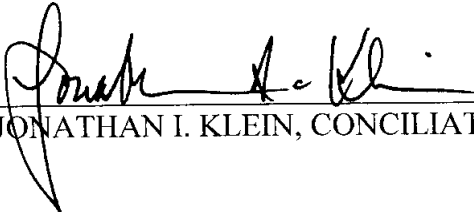
Each of the selected last best offers noted above shall be incorporated into the parties new collective bargaining agreement, together with any tentative agreements not modified or otherwise affected by the terms of the this Award.

  
\_\_\_\_\_  
JONATHAN I. KLEIN, CONCILIATOR

Dated: September 13, 2003.

**CERTIFICATE OF SERVICE**

Originals of this Final Offer Settlement Award were served upon Frank G. Bolmeyer, Esq., Sammon & Bolmeyer, 1160 Rockefeller Building, 614 Superior Avenue, N.W., Cleveland, Ohio 44113-1311, and upon James A. Budzik, Esq., Johnson Angelo & Colaluca L.L.C., 1700 North Point Tower, 1001 Lakeside Avenue, Cleveland, Ohio 44114, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 13<sup>th</sup> day of September, 2003.

  
\_\_\_\_\_  
JONATHAN I. KLEIN, CONCILIATOR