

STATE OF OHIO

2003 DEC 10 A 10:43

STATE EMPLOYMENT RELATIONS BOARD

\*\*\*\*\*

In the Matter of the Conciliation  
Between  
THE CITY OF INDEPENDENCE  
and  
FRATERNAL ORDER OF POLICE,  
LODGE NO. 67

\*  
\* Case Nos:  
\* 02-MED-09-0878  
\* (Patrol Officers)  
\* 02-MED-09-0879  
\* (Sergeants)

\*\*\*\*\*

CONCILIATION AWARD  
DENNIS E. MINNI, ESQUIRE

Dennis E. Minni, Esquire  
Conciliator  
Suite 104  
14761 Pearl Road  
Strongsville, Ohio 44136  
(440) 238-0365

## HEARING BACKGROUND

The above matter was heard on October 28, 2003 pursuant to party selection and administrative appointment. There has been a Fact Finding Report and Recommendation issued on August 6, 2003 and, uniquely, a subsequent return to the bargaining table conducted on September 3, 2003 between the parties and their representatives. This continuation of negotiations was made manifest by both sides' desire to fine tune issues needing further clarification in the aftermath of the Fact Finding's resulting lack of ratification by both parties.

There had been five (5) bargaining sessions held since early December of 2002. The immediate bargaining history of the parties is a well-developed one with this being a successor contract for both bargaining units comprising twenty-eight Patrolmen and six (6) Sergeants. The unique aspect of this case is that the bargaining units and City Council, after submitting some thirteen (13) items to the Fact Finder for recommendation, did not reach agreement on these comprehensive matters which touched upon wages, health care insurance and working language items typically the "difficult" issues in cba renegotiation. Instead, the police units voted to reject the Fact Finder's terms and the Independence City Council failed to even conduct a ratification vote and report its stance to the SERB in Columbus.

When the parties reconvened negotiations (September 3, 2003) it was with the participation of the bargaining committees and representatives plus Mayor Fred Ramos attended.

Simply put, the FOP felt resolution was reached by this effort which was structured around the Report and Recommendation, adopting that effort's positions on wages, FMLA language and duration while modifying unused vacation days/holidays, disability leave, compensatory time bank and, adding a new demand for a sick leave bonus clause.

Absent a vote as stated, Council had its representative tender a counter-offer in a letter dated September 18, 2003. Said communication expressly recites a lack of authority to bind the City during the September 3rd negotiations and, although close to the terms the bargaining units were willing to accept, does not include a sick leave bonus provision.

That item, therefore forms the pivotal point of the task at hand. Whether there was no authority to bind the City or if the Union breached the parties' groundrules by adding the demand for sick leave bonus language needs to be determined.

At the hearing the parties both appeared, with the City being represented by Human Resources Director Charleen Armenti and labor counsel Jack Petronelli. The two bargaining units' interests were set forth by labor counsel Robert M. Phillips who had in attendance

a joint committee composed of Lt. Paul Luikart, Sgt. Chuck Wilson and Ptl. Brian Dalton. Post-hearing briefings were timely filed and this matter provided an ample opportunity for each party to present evidence and explain its respective positions. A stenographic record of this hearing was not undertaken.

Without begging the question, this being a conciliation proceeding means that fact finding failed to secure both sides' acceptance of the contract terms recommended by fact finder James Mancini on August 6, 2003. In fact, at the risk of being overly simplistic, the parties' dichotomy herein is most evident in their acceptance (Union) and rejection (City) of not said Factfinder's Report And Recommendation, but of the subsequent September 3, 2003 meeting's negotiated terms.

The Public Employer, a municipality, employs in two bargaining units ("Unit 1", "Unit 2") all sworn peace officers (excluding the Chief) and Dispatchers). Herein the Employer shall be referred to as the "City" or "Management" in this Award. The Employee Organization, referred to as the "Union" or the "FOP", is formally known as the Fraternal Order of Police, Lodge No. 67 (Independence Division).

#### MEDIATION

Given the background of this particular set of negotiations, mediation was neither requested by a party nor suggested by the undersigned. The parties, being unable to resolve all the open issues per fact finding and bargaining efforts, as described supra, it was necessary to proceed to hearing in the manner addressed earlier to formally obtain evidence and render a binding opinion.

I note that the advocates extended their cooperation and skills to me and were equally responsible for paring down the time needed to present the issues.

#### RESOLUTION CRITERIA

The following recommendations take into consideration the factors enumerated in Section 4117.14 (C) (4) (e) of the Ohio Revised Code. These are:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining units 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 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 mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

#### ITEMS FOR RESOLUTION

As a result of the above referenced history of this matter, it is not necessary to restate the open items which were presented and heard by the Factfinder. Instead, the September 3, 2003 meeting's issues form the focal point of this Award.

These items are;

1. WAGES;
2. UNUSED VACATION DAYS/HOLIDAYS;
3. DISABILITY LEAVE;
4. COMP. TIME "BANK";
5. FAMILY MEDICAL LEAVE;
6. SICK LEAVE BONUS; AND,
7. DURATION.

#### ANALYSIS AND AWARD

1. Article XXXVII WAGES

Per the Fact Finding Report, there shall be a 3% raise retroactive to January 1, 2003 for 2003. In 2004, the raise from the 2003 rate(s) shall be 3.5%

2. Article XXIII Unused Vacation Days/Holidays

Currently officers may "sell back" up to forty (40) hours of this type of time. The limit shall be raised to up to but not to exceed, eighty (80) hours. This is a discretionary item for the employees and bears no great cost for the public employer.

3. Article XXVI DISABILITY LEAVE

I grant the Union's demand to reduce the threshold for charging an employee's sick leave account from seventy-two (72) hours to thirty-six (36) hours without modifying any other provision in this Article.

4. Article XIX COMPENSATORY TIME

Modify the Fact finder's recommendation and allow the eighty (80) hour maximum to be retained throughout the year, whether a calendar year or a contract year.

5. FAMILY MEDICAL LEAVE

As per Factfinder's recommendation; same as originally proposed by the City;

6. SICK LEAVE BONUS (Article ? T/B/A)

(New Proposal) I award the Union's proposal, except that starting with October 1, 2003, employees not utilizing sick leave benefits during the triennium shall receive a bonus of twelve (12) hours sick leave. Commencing with 2004, employees not taking sick leave time off for the entire calendar year shall receive forty-eight (48) bonus hours of sick leave in their "banks" for same.

7. Article XLIII DURATION

Per Factfinder's recommendation, the cba shall be for two (2) years' duration, ending on December 31, 2004.

The rationale for the foregoing is, to be utterly candid, an adaptation of the FOP's stance herein, adding the Sick Leave bonus language and modifying the Factfinder's recommendations in the noted respects, supra.

My reason for doing so is not that I found error in Mr. Mancini's recommendations as much as their being an "other good cause" scenario as set forth in Conciliator Smith's award in 93-MED-09-0879.

That good cause resides with the rather untenable stance of the City that the parties' efforts on September 3, 2003 were only exploratory in nature and of no binding effect. I disagree. Mayors and other chief elected officials rarely attend contract negotiation sessions. To his credit, Mayor Ramos, as does several of his colleague mayors took an active role in this set of negotiations. going back to the table is not an unheard of move

even for a non-right to strike unit such as these are. If the timing of the Factfinder's report was an issue that alone would be a cogent reason to resume contract talks. This is not "error", per se, as the City correctly cites my prior awards on how to conduct conciliation hearings.

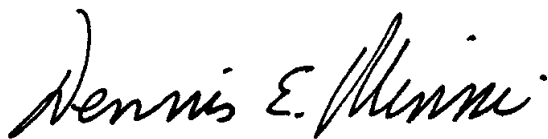
However, given the fact that the FOP had every reason to accept and believe that what took place was not the launching of some sort of labor-management "test balloon", the political aspects of the Council's move to distance itself from the accord reached on September 3, 2003 and tender a "counter" while rejecting the notion that impasse had been overcome, was not good faith bargaining.

This was an apparent effort to politically embarrass an incumbent mayor who just happened to be standing for re-election two months hence. Such a chilling effect on incumbent elected officials from participating in labor contract resolution, such as demonstrated on this record, may well be why so few of them get "hands on" and perhaps why negotiations need resort to statutory processes.

I choose not to reward the (then) Independence City Council for venturing into surface bargaining. The requirements of ORC 4117 must not be treated with insouciance. The public sector would do well to divorce its politics from this process. This award is predicated upon making not only these police officers "whole" but upholding the integrity of this process and providing the citizens both parties serve the benefit of labor peace.

All other matters recommended by the Factfinder and not modified herein as noted are incorporated by reference into this Award.

Respectfully submitted this 5th day of December, 2003 at Strongsville, Ohio



---

Dennis E. Minni  
Conciliator