

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of Conciliation Between:

2003 MAY 22 A 10: 35

Ohio Patrolmen's Benevolent Association :	
Labor Organization :	Case No. 02-MED-10-1029
	:
and	:
	:
City of Englewood	:
Public Employer :	

I. Introduction

The 2002 collective bargaining agreement was set to expire on December 31, 2002. On October 4, 2002, the Ohio Patrolmen's Benevolent Association (OPBA) sent the City of Englewood a memorandum stating its intention to renegotiate the contract. On October 8, 2002, a Notice to Negotiate was filed with SERB. On or about October 22, 2002, Dwight A. Washington, counsel for the City sent the OPBA's counsel a letter indicating that the notice to renegotiate the contract was untimely pursuant to Article XXXII of the collective bargaining agreement. Thus, the City was seeking to renew the agreement for a period of one year in accordance with the terms of the agreement. Finally, after considerable posturing on the issue the parties agreed that the terms of the 2002 contract would be extended for one year, except that the parties would negotiate about wages for the 2003 calendar year. In addition, it was agreed that those negotiations would be conducted in accordance with Chapter 4117 of the Ohio Revised Code.

Indeed, the OPBA and the City met and negotiated about wages, but were unable to reach a satisfactory resolution of the matter. As a result, a fact-finding hearing was conducted before fact-finder David Stanton on the only issue between the parties. The fact-finding took place on January 21, 2003.

The Union presented the fact-finder with the position that a 4% base wage increase was appropriate, in that it is supported by wages paid in geographically comparable organizations, such an increase is consistent with the history of bargaining between the OPBA and the City, and that the City is not advancing an inability to pay argument. The City, on the other hand, was offering a 3% wage increase coupled with the elimination of the first step in a seven step wage scale.

After due consideration of the appropriate and critical factors presented the fact-finder made a recommendation that the parties implement a 3.75% wage increase for the year 2003. The City rejected the recommendation and the parties elected to proceed to conciliation as prescribed by the statute.

On March 6, 2003, the undersigned was appointed to serve as the conciliator. A conciliation hearing was conducted on April 23, 2003 in Englewood, Ohio. This document represents the Conciliator's Report and Award.

II. Criteria

Pursuant to O.R.C. Section 4117.14 (G)(7) the conciliator is obliged to consider the following factors when choosing between the parties final offers on an issue by issue basis.

- (1) Past collective bargaining 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 employers doing comparable work, giving consideration to factors peculiar to the area and classification involved.

- (3) The interests 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) The 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.

The undersigned took into consideration all of the relevant factors presented at the conciliation hearing in rendering this Report and Award.

III. Discussion and Award

This case comes to the conciliator in a very unusual posture. The totality of the negotiations that took place in connection with this matter revolved around one issue—wages for 2003. The normal give and take of negotiations was truncated. However, the representatives of the City and OPBA did an excellent job of staking out their respective positions during the course of the hearing and providing supporting evidence for those arguments advanced.

OPBA's Position

At the fact-finding hearing the OPBA tried to persuade the fact-finder to provide a recommendation calling for a 4% across the board increase in base wages for the officers

n the bargaining unit. The fact-finder's recommendation called for a 3.75% wage increase. In its pre-conciliation submission, the Union adopted the fact-finder's recommendation and asked the conciliator to adopt a 3.75% wage increase.

It is the position of the Union that the two (2) most significant criteria to be considered in this instance are: (1) the history of collective bargaining; and (2) the relevant comparables. The Union argues that a review of the history of wage increases for this bargaining unit over the past ten (10) years indicates that base rate increases averaged 3.9%. The Union's final offer was 3.75% across the board increase. The bargaining history on this issue supports the OPBA's demand. Additionally, the SERB benchmark report demonstrates that a 3.75% wage increase will keep the Englewood police officers competitive the local communities of Vandalia and West Carrollton. Finally, the average wage rate increase in 2003 as set forth in Union Exhibit # 7 is 3.81%, which further justifies the Union's stance.

The Union also notes the workload has increased and that because of accreditation the officers are held to a higher than normal standard. These facts suggest a very high quality of performance by the officers in the bargaining unit, which should be rewarded.

The OPBA also contends that the conciliator has a responsibility to to give substantial deference to the fact-finding report. In support of its position on this point the Union directed the conciliator's attention to the case of IAFF and City of Portsmouth, Case No. 93-MED-10-0976 (1994).

City of Englewood's Position

As noted above, the City's final offer calls for a 3% base rate increase and for the elimination of the first step of the wage progression. It is the City's position that its offer

is reasonable given the unique circumstances surrounding these negotiations and the goal it is trying to attain.

According to the City, the conciliator cannot give weight to the comparables offered by the OPBA, because the comparable wage increases were a product of negotiations with a full panoply of give and take. The present situation is a single issue discussion without the give and take of full blown negotiations. Therefore, the comparable do not add value to the conciliator's analysis.

Moreover, during the last negotiations the Union successfully negotiated the 7th step into the wage progression. With the addition of the 7th step in the wage progression the eight (8) senior officers realized a 9% wage increase in one year of the contract.¹ With its proposal, the least senior employees will realize a larger increase than the remaining members of the bargaining unit, but all employees will have realized a 5% increase over the 4 years of the contract.

The City argues its offer is also supported by the DOL CPI, which is 2.4%. The 3% wage increase offered exceeds the CPI. Thus, the City urges the conciliator to adopt its proposal.

Analysis and Award

While a fact-finder's report shall be given deference in a conciliation, provided it is "well reasoned" and grounded in the evidence presented, the conciliator is obligated to weigh the evidence presented at the hearing before reaching a decision. Three factors warrant significant attention in the analysis of this matter. Those factors are: (1) the

¹ The City takes the position that the collective bargaining agreement is a 4 year agreement rather than a 3 year agreement which has been extended for all purposes except wages.

history of collective bargaining between the City and the OPBA; (2) the City's financial status; and (3) the overall stature of the police department.

The evidence submitted at the hearing indicates that over the past 10 years wage increases have averaged 3.9% per year. The counter argument advanced by the City is that its proposal yields a 5% average increase for the officers over the 4 years. As noted in footnote 1 of this Report and Award, the City takes the position that the contract is a 4 year agreement running from 2000 through 2003. In doing so the City lumps the past 3 years in with 2003 extension for all terms and conditions except wages in making its calculation on wage increases. Attempting to vault the final offer of a 3% wage increase into a 5% increase by using the past contract wage increases (coupled with step adjustments) is unpersuasive. The undersigned finds that the Union's 3.75% final offer is supported by the history of bargaining between the parties.

The Union's offer is also supported by the overall economic status of the City and the stature of the police department. At no time during these wage negotiations did the City claim an inability to pay. At the conciliation hearing no evidence of an inability to pay was offered. Thus, the operating premise is that the City has the financial wherewithal to fund the wages increase proposed by the Union. Additionally, the record indicates that the police department successfully achieved accreditation. Officers in the department are held to higher standards than the average police officers. The department achieved this status and has maintained it even though the workload has increased.² The conclusion to be drawn is that the all officers in the department should be rewarded for the effort.

² A January 18, 2003 Activity Statistics Memorandum covering the years 2000-2002 indicates that traffic enforcement increased 304% and that the City realized a 340% increase in traffic fine revenue.

Two other factors also come into play in reaching a determination on this matter. Those factors are: (1) the comparable data offered by the parties; and (2) the impact of the final offers on the pension of the officers. The State Employment Relations Board Clearinghouse Wage Increase Report (dated April 17, 2003) shows that the City of Brookville police officers received a 4% wage increase on January 1, 2003. The officers in the City of Miamisburg will receive a 5% wage increase on July 7, 2003. Similarly, the City of Oakwood police department a 4% raise in October of 2002. Finally, West Carrollton police officers received a 4% increase on December 16, 2002. The communities of Huber Heights, Moraine, Trotwood, and Vandalia received either a 3% or 3.5% wage increase most recently. On balance, these comparables support the Union's final offer.

The City argues that the comparables add no value to the analysis in this case because those increases were the product of the give and take of full blown negotiations. Thus, the comparisons should not be considered. Appropriate comparable data invariably adds value to a conciliator's analysis of the issues presented. However, the weight accorded the comparisons will vary depending on the situation. The comparable data does not rise to a level of a determining factor in this situation, but comparables are a factor to be considered. Proper weight was afforded the comparable data.

At the hearing the OPBA offered evidence that the elimination of the first step of the wage progression coupled with the Employer's offer of a 3% wage increase will have a negative impact upon the officer's pension entitlement. This information stands relatively unrefuted on the record and dictates in favor of the Union's offer.

Finally, the deference to be given to the fact-finder's antecedent report and recommendation must be considered. As stated by Conciliator Frank Keenan³: where the fact-finder's report and recommendation is "well reasoned and grounded upon sound evidence, [it] must be granted considerable deference."

In this case the fact-finder issued a "well reasoned" decision, which was "grounded upon sound evidence." Fact-Finder Stanton initially determined that, while at first blush the City's proposal had some appeal, close scrutiny militated against recommending the offered 3% base rate increase coupled with the elimination of the first step of the wage progression.

To quote the fact-finder: "simple mathematics seem to suggest that a seven-year step system at five percent per step equates to 35% for a seven year period. By eliminating the initial step and reducing that to six, such equates to six steps at 5% or 30%, adding the 5% increase of that step, notwithstanding. So even though it may be 'fashionable' at the front end, the elimination of one (1) step at 5% would impact one's pension, at the back end of the City's proposal. Moreover, the fact that the Parties are only addressing one issue, wages, seems to compel the recommendation that the Parties do so without addressing any modification to the step system process." The parties are better served to take that issue up during the course of full blown negotiations, according to the fact-finder. There simply is "no leveraging ability concerning modification of the step process that would be seemingly beneficial to the Union at this juncture." The fact-finder then analyzed the comparable data supplied by the parties. In addition, he took into account the overall economic status of the City and the history between the parties (which has produced 4% increases for each year since 1997) and concluded that a 3.75%

³ See, The City of Portsmouth and IAFF, Local 512, SERB Case No. 93-MED-10-0976 (1994).

wage increase was appropriate. The fact-finder has presented a "well reasoned" report that must be given considerable deference by the undersigned.

The undersigned would be remiss if the issue of minority recruitment was not addressed. It is the City's position that eliminating the initial step of the wage progression will assist in attracting minority candidates. This is a laudable goal.

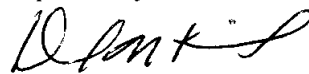
However, it must be noted that the CALEA's Assessment team's On-Site Assessment Report, Chapter 31 reads as follows:

Englewood Police Department appears to have appropriate recruitment procedures in place to satisfy CALEA standards...Englewood Police Department appears to be very successful in the recruiting of female candidates as their numbers exceed city's work force demographics. The city does have an affirmative action plan in place...

While a higher level entry wage may result in attracting more minority candidates, the programs and policies in place currently serve to address this concern. Standing alone in this circumstance, recruitment is not a sufficient reason to alter the wage progression.

AWARD: THE UNION'S FINAL OFFER OF A 3.75% WAGE INCREASE IS AWARDED RETROACTIVE TO JANUARY 1, 2003.⁴

Respectfully submitted,



Daniel N. Kosanovich
Conciliator
May 19, 2003

⁴ In their agreement to conciliate this matter executed on October 22, 2002, the parties authorized the conciliator to make the wage increase retroactive to January 1, 2003.