

STATE EMPLOYMENT
RELATIONS BOARD
2004 JUN 10 A 10:33

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

<p align="center">BETWEEN</p> <p align="center">FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL, INC.</p> <p align="center">And the</p> <p align="center">CITY OF MANSFIELD, OHIO</p>	<p>CASE NO: SERB 03-MED-05-0636 Gold Unit</p> <p>CONCILIATOR: JOHN S. WEISHEIT</p> <p>HEARING DATE(S): May 4, 2004</p> <p>AWARD ISSUED: June 7, 2004</p>
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**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Jeff Fogt, Director, Human Resources City of Mansfield 30 N. Diamond St. Mansfield, OH 44902	Hugh Bennett, OLC, Staff Rep. Fraternal Order of Police, OLC, Inc. 3076 Hillside Trail Stow, OH 44224-4791
Dave Remy, Law Director Ron Kruter, Safety Director Jim Boyer, Assistant Chief of Police	Allen Vaudanburg Robert Powers Steve Sheldon Mike Bamman

AUTHORITY

This matter was brought before Conciliator John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related 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 recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces.

BACKGROUND

The City of Mansfield, hereinafter called the “Employer” and/or the “City”, recognizes the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter called the “Union” and/or the “OLC”, for all full-time command officers of the rank of sergeant, lieutenant, and captain, employed by the Employer. The bargaining unit consists of approximately thirty (30) members. The above named parties engaged in bargaining for a successor Agreement to the one expired September 1, 2003. In the course of good faith bargaining, several issues were resolved by tentative agreement while others were resolved in the course of Fact Finding under terms of ORC 4117. The Fact Finding procedure did not resolve final resolution of a successor Agreement. The parties resolved a number of additional matters in dispute relying heavily on the recommendations of the Fact Finder. However, certain issues remained unresolved and were submitted to Conciliation for final resolution as set forth under provisions of ORC 4117. A Conciliation Hearing was convened on May 4, 2004, at the administrative offices of Lahm Field, Mansfield, Ohio. The parties timely submitted pre-hearing briefs and presented additional testimony and documentation at the Hearing. The Hearing was concluded after the parties had indicated they had nothing additional to submit on behalf of their bargaining 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.

The findings and determinations set forth in this Report is based on facts provided in document and testimony introduced at that the Hearing and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following Articles were resolved in negotiations and tentatively agreed prior to Fact Finding, during Fact Finding, and/or subsequent to Conciliation:

Article	Title	Article	Title
1	Agreement	12	Reasonable Suspicion Drug/Alcohol Testing
2	Recognition	13	Insurance
3	Union Membership & Union Dues Deduction	14	Seniority
4	Discrimination & Equal Employment Opportunities	15	Paid Leaves of Absence
5	Union Business	16	Unpaid Leaves of Absence
6	Management	18	Holidays/Personal Days
7	Discipline & Self-Incrimination	20	Special Events & Auxiliary Police
8	Grievance Procedure	21	Miscellaneous
9	Labor Management Committee	22	Scope and Duration of Agreement
10	Hours of Work & Overtime	App. A	Schedule of Salaries
11	Probationary Period	App. B	Insurance Coverage Schedule

ISSUES AT IMPASSE

The following Sections in the following mentioned Articles remained at impasse, at the time of the Conciliation. All remaining sections in the said Articles have been agreed to or otherwise resolved by the parties.

Article/Sec.	Title
Art. 10 Sec. 10.3	Hrs of Work Overtime
Art. 15 Sec. 15.1	Paid Lvs of Abs.
Art. 18 Sec. 18.1	Holidays Personal Days
Art. 18 Sec. 18.2	Holidays Personal Days
Art. 19 Sec. 19	Tuition Reimbursement

SUMMATION OF LAST-FINAL OFFER OF ISSUES AT IMPASSE

The following Articles remain, in part and/or whole, unresolved at Conciliation. Only those issues as specifically reflected below remain unresolved. The description reflects a summary of the respective party's final position on each of the unresolved issues.

Union Final Position	Issue	Employer Final Position
<ol style="list-style-type: none"> 1. Accept the Fact Finder's Recommendation regarding minimum use of compensatory time in one hour increments. 2. Increase the compensatory time bank to 480 hours. 3. All other terms set forth in Article 10 to remain as written. 	<p style="text-align: center;">Sec. 10.3 Hrs of Work Overtime</p>	<ol style="list-style-type: none"> 1. Accept the Fact Finder's Recommendation. 2. Minimum use of compensatory time in one hour increments. 3. Compensatory time bank be retained at the current levels of 200/280 hours. <p>All other terms set forth in Article 10 as written.</p>
<p>Accrue sick leave for all hours worked, including overtime.</p>	<p style="text-align: center;">15.1 Paid Lvs of Abs. Sick Lv. Accumulation</p>	<p>Accept the FF recommendation to retain current language.</p>
<p>Add "Police Memorial Day" as a paid holiday.</p>	<p style="text-align: center;">18.1 Holidays Personal Days</p>	<p>Accept the FF recommendation to retain current language.</p>
<p>Employees working a paid holiday to receive 1 ½ pay for the 8 hr shift in addition to the straight pay of 8 hrs paid all employees regardless of working the holiday.</p>	<p style="text-align: center;">18.2 Holidays Personal Days</p>	<p>Retain current language as recommended by the FF.</p>
<p>Retain current language.</p>	<p style="text-align: center;">19.1 Tuition Reimbursement</p>	<p>Revise as recommended by the FF. Specifically:</p> <ol style="list-style-type: none"> 1. Retain current language in Section 19.1(A) & 19.1(B). 2. Proposed change in Section 19.1(C).

DISCUSSION & DETERMINATION

General

In the early stages of the negotiations, the Employer raised contention of an inability to pay. This was addressed in detail in the course of Fact Finding and was not challenged by the Union. The same premise was carried into the Conciliation process. Though the issues at impasse address economic consequences, such economic factors are considered of a limited nature. The selection of the last-best offer, item by item of either party is not a major consideration in this proceeding. This has been an accepted controlling factor throughout all stages of the negotiation segments in this round of bargaining. This includes the Mediation, Fact Finding, and Conciliation procedures.

The “playing field” has undergone a significant change from the time the Fact Finder issued his Opinion and Recommendation and Conciliation was introduced.

- A. The parties have demonstrated great efforts to reach agreement on the limited number of remaining unresolved issues.
- B. They have demonstrated a very mature effort to resolve disagreements without resulting to engaging in “disagreeable” attitudes or actions.

This is of significant consideration as the other police bargaining unit, consisting of patrol officers, have common and direct referenced terms yet to be resolved. It is not by coincidence that I am Conciliator for all parties regarding two separate labor agreements. Such are given consideration of a higher degree than the incidental relationship with other bargaining units in the City.

The five (5) unresolved issues are the last remaining elements, in this instant bargaining situation, in bringing finality to a successor agreement to the one expired August 31, 2003. The Conciliator has used generally accepted standards applied in making a finding and recommendation in interest rights matters in this instant situation.

**Conciliator's Determination
Issue by Issue**

Issue	Discussion/Determination
	<p>While the overall number of issues has been reduced since Fact Finding , I concur with a number of the Fact Finder's notations on this instant matter. It is determined that there is minimal, if any, increased cost implications to increase the number of hours in the overtime bank. There is a deferral of payment for hours worked. The financial condition put forth by the City, is not refuted by the Union. The major cost terms of the Contract, wages and insurance, for the most part, are resolved. There are limited additional economic matters unresolved that can be incorporated into the Agreement without no cost or limited cost implications to the City.</p> <p>Further, the parties indicate agreement to reducing the minimum time usage of compensatory time to one hour increments.</p>

<p>Sec. 10.3 Hrs of Work Overtime cont'd</p> <p>Determination</p>	<p>Considering the narrowing limits of give and take at this stage of the bargaining process, the following recommendation is considered appropriate.</p> <p>It is determined that Section 10.3 should be included in the Agreement as offered by the Union.</p>
<p>15.1 Paid Lvs of Abs. Sick Lv. Accumulation</p> <p>Determination</p>	<p>This matter, considered an isolated issue as well as collectively, is determined a “non-issue” at this time. The general 15 days a year of sick leave accumulation is the generally accepted basic limit. This practice originates, at least, from early Ohio public sector law, and has continued in general practice to date. While ORC 4117 does provide for the terms of collective bargaining agreement to supersede statutory terms in this matter, no persuasive argument is found to support the Union position on this instant matter in Fact Finding nor in this instant situation before the Conciliator.</p> <p>It is determined that Section 15.1 should be included in the Agreement as offered by the City.</p>

<p>18.1 Holidays Personal Days</p>	<p>This is a noted cost increase factor. Considering the economic times put forth by the City is not refuted by the Union, no justification to have a “premium pay” day to the work year is found regarding this matter. No changing conditions have been illuminated on this point to support a change in the recommendation of the Fact Finder to retain current terms on this issue.</p>
<p>Determination</p>	<p>It is determined that Section 18.1 should be included in the Agreement as offered by the City.</p>
<p>18.2 Holidays Personal Days</p>	<p>The principles expressed in this matter by the Union, would require a significant increase to the City under currently defined economic conditions. The manner in which the pay is made would significantly increase if the Union’s proposal on this matter were to be incorporated in the Agreement. No convincing fact is offered to support such expansion at this time.</p>
<p>Determination</p>	<p>It is determined that Section 18.2 should be included in the Agreement as offered by the City.</p>

<p>19.1 Tuition Reimbursement</p>	<p>This is found to be the most controversial issue in this instant Conciliation.</p> <p>It is a general practice, in Conciliation, to support the findings of fact as put forth by a Fact Finder. The purpose is clear and reasonable. To do so establishes consistency for the parties and adds uniformity in the process of third-party intervention in labor-management relations. Only in extreme exceptions is it normally acceptable for a Conciliator to alter a Fact Finder's determination. This is such a situation.</p> <p>In this instant matter, I concur with the Fact Finder that evidence exists for change in this issue. To what extent the parties shared with the Fact Finder the bargaining history on this issue, practice, and related consideration of its inclusion as to the totality to the Agreement is not known to this Conciliator. However, the Fact Finder's final resolution of this matter is not shared by this Conciliator.</p> <p>This provision incorporates cost-saving terms in a manner similar to the additional costs of issues proposed by the Union, yet appears to have been given like consideration of the totality of economic conditions recognized by the parties.</p>
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<p>19.1 Tuition Reimbursement cont'd</p>	<p>This Conciliator concurs with the Fact Finder that there is cause to change certain terms of the current provision ; however, the parties have clearly expressed the expertise and basis of compromise to find common ground to accomplish such change prior to third-party neutral intervention. It is this Conciliator's determination that the premise for such change would be best served if the parties would seek revision using the terms and conditions they have developed and applied over time.</p>
<p>Determination</p>	<p>It is determined that Section 19.1 should be included in the Agreement as offered by the Union.</p>

TOTALITY OF AGREEMENT

- It is determined that all items of tentative agreement prior to Conciliation be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Conciliator in the Award.
- This will affirm the foregoing report, consisting of **14 pages**, includes the findings and recommendations set forth in this Award by the below signed Conciliator.
- * Any matter presented before the Conciliator and not specifically addressed in this Determination and Award were given consideration but are not recommended for inclusion in the Agreement.

- If there is found conflict in the Report between the Conciliator's Discussion and Recommendations, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of

John S. Weisheit, Conciliator

CERTIFICATE OF SERVICE

This will affirm that the Conciliation Report in the Matter of Conciliation between

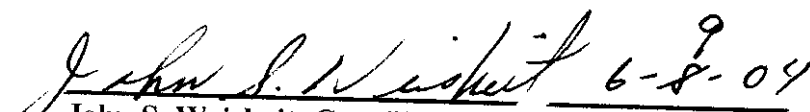
BETWEEN FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL, INC. And the CITY OF MANSFIELD, OHIO	CASE NO: SERB 03-MED-05-0636 Gold Unit
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was served to the below named parties at the stated addresses

Jeff Fogt, Director, Human Resources City of Mansfield 30 N. Diamond St. Mansfield, OH 44902	Hugh Bennett, OLC, Staff Rep. Fraternal Order of Police, OLC, Inc. 3076 Hillside Trail Stow, OH 44224-4791
Dale Zimmer, Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213	

by U.S. Postal Service mailed, First Class, on June ⁹~~8~~, 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, Conciliator 6-8-04
Date