

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FINAL OFFER  
SETTLEMENT AWARD  
February 9, 2004**

STATE EMPLOYMENT  
RELATIONS BOARD  
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**IN THE MATTER OF CONCILIATION  
PROCEEDINGS BETWEEN:**

The FRATERNAL ORDER of POLICE,  
LODGE No. 38

Employee Organization

and

The CITY of HAMILTON, OHIO

Employer

Case No. 03-MED-06-0703

Hearing Date: January 30, 2004

Location: City Conference Room, Hamilton, Ohio

Conciliator: James L. Ferree

**APPEARANCES**

For the Employee Organization:

Timothy R. Evans, Attorney, Holbrock & Jonson  
Brian Robinson, President  
Dean Whitaker, C.P.A.  
Bob Snyder, Labor Management Representative  
Michael Waldeck, Labor Management Representative

For the Employer:

Timothy G. Werdmann, Assistant Law Director  
Neil R. Ferdelman, Chief of Police  
George Gordon, Finance Director

## **PROCEDURAL BACKGROUND**

The City of Hamilton (herein called “the Employer” or “the City”) is located in Butler County, Ohio, where it employs 104 permanent sworn Police Officers and Detectives who are represented in collective bargaining by the Fraternal Order of Police, Lodge 38 (herein called “the Employee Organization” or “the Union”). The City and the Union are parties to a collective bargaining agreement which is effective from September 1, 2002 through August 30, 2005. The last Article of that contract provides that the parties will “negotiate solely about wages which . . . shall become effective on September 1, 2003 . . . .”

The parties met to negotiate new wage rates, but were unable to reach an agreement. A fact-finding hearing was held on November 24, 2003 before Fact Finder Tobie Braverman, who issued her report and recommendations on December 12, 2003. On December 22, 2003, the State Employment Relations Board (SERB) issued a notice that the Union had rejected the Fact Finding Report. By letter dated January 6, 2004, SERB appointed the undersigned as Conciliator, pursuant to Ohio Revised Code Section 4117.14(D)(1). The SERB provided the Conciliator with a copy of the Fact Finder’s Report and Recommendations. Prior to the hearing, the parties submitted their written reports, summarizing the unresolved issue, the parties’ final offers as to the unresolved issue, and the rationales for their positions.

The conciliation hearing, at which both parties were given full opportunity to call witnesses to testify, to offer documentary evidence, and to argue their positions, was held on January 30, 2004 in the City’s conference room. The Conciliator arranged for the parties to discuss the feasibility of settling the issue prior to opening the hearing, but no agreement was reached. The unresolved issue before the Conciliator was the wages to be effective September 1, 2003.

## **CRITERIA**

Consideration was given to the criteria listed in Ohio Revised Code and Section 4117.14 (G)(7) of the State Employment Relations Board Guidelines:

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, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) 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.

After carefully considering all reliable and relevant evidence presented with respect to the issue at impasse, the arguments of the Parties, and the foregoing criteria, the Conciliator resolves the dispute as follows.

### **ISSUE:**

The current collective bargaining agreement provides, in "Article VI. Wages:"

Wage rates for unit members of FOP 38 shall be in accordance with Appendix A, which shall contain at least a three percent wage increase, retroactive to September 1, 2000. Further wage adjustments thereafter will be based upon the wage study as outlined in Appendix "C". Effective September 1, 2001 and again on September 1, 2002, the three percent wage increase shall be applied to the recommended base scale of the consultant's report. However, if an officer's wage is above the recommended scale, the officer's wage shall be frozen until such time that the officer's base pay is in alignment with the consultant's recommended wage scale. The top base pay for the rank of Detective shall be fifteen percent (15%) above the top base pay for the rank of Police Officer.

Appendix A, referred to above, reads as follows:

SCHEDULE B-2  
POLICE DIVISION (F.O.P.)  
Effective September 1, 2002

	CODE	CLASSIFICATION		1	2	3	4	5	6
27-P	430	Police	Hour(40)	\$ 17.11	\$ 18.93	\$ 19.89	\$ 20.63	\$ 21.37	\$ 22.09
		Officer	Bi-Wk.	1,368.80	1,514.40	1,591.20	1,650.40	1,709.60	1,767.20
			Annual	\$ 35,589	\$39,374	\$41,371	\$42,910	\$44,450	\$45,947
30-P	434	Police	Hour				\$ 23.73	\$ 24.47	\$ 25.41
		Detective	Bi-Wk.				1,898.40	1,957.60	2,032.80
			Annual				\$49,358	\$50,898	\$52,853

	LONGEVITY		
	(Hired before 1995)		(Hired on/after 1-1-95)
Yrs. continuous service	Percent of Maximum		Flat Amount
	Police Officer Salary		
5 – 9	2%	\$ 918.94	\$725
10 – 14	4%	\$ 1,837.89	\$1,450
15 – 19	6%	\$ 2,756.83	\$2,175
20 +	8%	\$ 3,675.78	\$2,900

**Position of the Employee Organization:**

The Union's pre-hearing position statement included a final offer of a seven percent (7%) increase, effective retroactively to September 1, 2003.

**Position of the Employer:**

In its position statement submitted prior to the conciliation hearing, the City offered a four percent (4%) general wage increase effective September 1, 2003. The City's final offer would also strike the following language:

which shall contain at least a three percent wage increase, retroactive to September 1, 2000. Further wage adjustments thereafter will be based upon the wage study as outlined in Appendix "C". Effective September 1, 2001 and again on September 1, 2002, the three percent wage increase shall be applied to the recommended base scale of the consultant's report. However, if an officer's wage is above the recommended scale, the officer's wage shall be frozen until such time that the officer's base pay is in alignment with the consultant's recommended wage scale.

Thus, the Employer's final offer is as follows:

Wage rates for unit members of FOP 38 shall be in accordance with Appendix A, and shall reflect a four percent (4%) increase effective upon the beginning of the first full pay period which includes September 1, 2003. The top base pay for the rank of Detective shall be fifteen percent (15%) above the top base pay for the rank of Police Officer.

**Discussion:**

**Fact Finder's Recommendation**

At the Fact Finding Hearing, the Union sought to increase the top pay for patrol officers to \$55,000, which the Fact Finder calculated was approximately an 18% increase. The Union cited higher rates paid by comparable jurisdictions, the relatively high rate of violent calls per officer, and indications that the City could afford the increase. The City offered an increase of 3%, consistent with its financial status and its historic uniform treatment of all City employees. The Employer pointed out that police officers benefit from overtime and longevity payments. Fact Finder Braverman concluded, "an increase of 3% is inadequate to keep this bargaining unit in a reasonably competitive wage position relative to comparable communities" in the region, although some of those communities are far wealthier than Hamilton, which "cannot afford the double digit increase requested by the union." She recommended an increase of 5%, which would place members of this bargaining unit at rates comparable to those paid by Middletown, yet would be affordable to the Employer.

**The Union's Case**

The Employee Organization contended in its **pre-hearing statement** that a 7% wage increase is justified to restore bargaining unit members to a position comparable to other area police departments. The Union's brief pointed out that the City pays its managers relatively well, compared with nearby jurisdictions, but its police officers' wages have slipped to the bottom of the rankings. Thus, the City's beginning hourly wage for an officer (\$17.11) is below 14 other jurisdictions within adjacent counties, including two neighboring communities within Butler County, Middletown (\$18.24), and Fairfield (\$19.72). Similarly, the City's wages top out at a lower rate (\$22.09) than any of the other comparable jurisdictions, including Middletown (\$23.41) and Fairfield (\$25.91).

Adding in longevity pay, an officer hired before 1995 tops out at \$49,622, and an officer hired after January 1, 1995 is scheduled to receive a maximum of \$48,847. Both rates are slightly above Middletown's top rate without longevity pay (\$48,695), but less than any other regional police department, including Middletown officers with longevity pay (\$49,173), Cincinnati (\$50,856 without increases for experienced-based promotions to specialist rank, and \$54,932 including them) and Fairfield (\$53,892, or \$55,140 with 20 years' service).

The Union's pre-hearing submission included materials showing that the City's police force is quite busy, and handles a relatively high proportion of 9-1-1 calls and violent crimes. The City's police force is understaffed, and will add officers to come back up to 126 full time officers thanks to a recent police levy, but is still below the recommended level,. Although the City projected that its general fund balance would be \$3.7 million at the beginning of 2003, in fact it was \$5.5 million. In addition to the levy revenue, the City receives thousands of dollars in grants which support police activities. Police officers have cooperated in saving the City money, but the savings are used outside the department. Officers who maintain their accustomed level of health care coverage are paying a larger portion of the costs of insurance, and the increased premium will absorb all of a 3% wage increase.

The Union points out that Fact Finder Braverman's report observed:

There was evidence submitted to demonstrate that the police officers employed in communities in Butler County in close proximity to Hamilton are paid significantly more while answering far fewer calls for service in general, and violent calls for service in particular. Additionally, some of those communities will be hiring significant numbers of police officers. They are thus in direct competition with Hamilton for officers. This is likely to directly impact upon both recruitment and retention in the very near future.

The City's police force is already relatively inexperienced, and officers with little seniority would lose very little by going to a neighboring jurisdiction. Recruiting and training new officers costs tens of thousands of dollars

Statements by City officials quoted in the press indicate that the City's financial condition improved enough to earn an upgraded bond rating The City negotiated a contract with the firefighters union with wage increases totaling 7.9% over two years, and

the City made several expenditures in areas such as participation in a fiber optic system, expanded bus service, and purchase of the former Mercy Hospital site. The area's employment is forecast to increase, which will add to the City's tax revenue

At the **conciliation hearing**, the Union explained the above exhibits which were submitted in advance, and it presented testimony and documents in support of its case. The Union contends that the City's officers are \$8000 to \$9000 behind, despite the facts that they handle the majority of the county's 9-1-1 calls and they handle the highest violent crime rate per officer in the state. Fairfield and West Chester are hiring new officers, and they offer better benefits and higher wages than the City gives. In addition to the comparison with adjacent cities and townships, Butler County Sheriff's office is paying \$55,000 per year. It is no longer necessary to pass a civil service examination to be hired in most jurisdictions. The City's police department is certified, so other departments are happy to hire its officers. Other jurisdictions like Middletown have a cap on the employees' contribution to their health insurance. The Employer's current wages are at the midpoint of what other areas paid in 2001. Officers hired by the City since 1995 receive less generous longevity and sick leave benefits.

The 2000 census showed that the City's median household income was \$35,365, and its population was 60,690. This is close to Middletown, which had a median household income of \$36,215 and a population of 51,605, but these statistics alone do not explain the City's relative ability to pay a good wage rate. Union President Robinson testified that the 2002 data for public employment showed an average full-time equivalent employment of 22 officers per 10,000 population in Ohio, so the City should have had over 134 police officers to match that ratio, but it had only 117 that year. The same report revealed that officers in Ohio averaged \$52,079 per year, which probably included some overtime.

Considering nine large cities in Ohio, the City has the fewest police officers per thousand residents, but has the second highest rate of violent crimes per thousand residents, and the highest rate of violent crimes per police officer.

The City received grants to cover the cost of employing some police officers: the Butler Metropolitan Housing Authority pays for the services of an officer, and a “weed and seed” grant covers the cost of two officers in the north end.

Police Officers’ contribution to their health insurance is going up, and it compares unfavorably with nearby communities. West Chester and Fairfield probably would offer a trained officer something better than their starting wage rates. According to a newspaper column by a longtime City councilman who claims to understand City finances, the wage increase which the City gave its fire fighters will not harm the City’s finances because the City has a balance of \$5,561,021, and the City could not have easily pled poverty if the fire fighters bargaining had gone to conciliation. New businesses and jobs are coming into the City. Even when a City resident takes a job elsewhere, he may be paying an earnings tax to the City. The City’s promotional brochure paints a glowing picture of the City’s financial outlook. The City receives revenues from fines due to charges brought under City ordinances and saves the cost of prisoners who are incarcerated under a State statute.

The Union offered an exhibit comparing pay rates of the City’s fire department with those of other jurisdictions in the region; it shows that the City’s fire fighters earn the fourth highest wages, among ten communities in the chart. In conclusion, the Union observed that its proposal in Fact Finding of a \$55,000 top wage rate for police officers would have put the City right in the middle of the chart of surrounding jurisdictions, and the Fact Finder’s recommended 5% increase would not have even offset the increase in the health insurance premiums. The Union is proposing a 7% raise, which will raise the top pay to \$49,000 but will still be among the lowest in the area. If the City does not raise its wages soon, officers will be going to some of the higher paying departments in the area, where they will not have to work so hard and such long hours.



## **The City's Case**

In its **pre-hearing submission**, the City supported its final offer of four percent (4%). The Consumer Price Index (CPI) has risen only 2% recently, and wage increases over the past ten years have outpaced the cost of living. Historically, the City has consistently granted 3% increases to all City employees, including those with union contracts. The 2003 increases were 3% for everybody, except the Fire Department received an additional raise, pursuant to a fact finder's report, to catch up with the Police Department. The City's wage scale compares well with Ohio communities which have similar size and economic demographics. If the Fact Finder's analysis is accepted, a 4% increase keeps the City in a very competitive position within Butler County, particularly when longevity payments are considered.

Although the collective bargaining agreement lists a top annual wage for patrol officers of \$45,947, in fact, the two highest paid officers made over \$73,000 in 2003, and four of the detectives made more than \$80,000. Wages for Detectives, Sergeants, and Lieutenants are based on a rank differential, calculated on the patrol officers' wage rate, so a large increase for this bargaining unit would result in disproportionately higher wages for supervisory officers.

The Employer has had no trouble retaining and recruiting officers at the present level of pay. In the past five years, the City averaged one resignation per year, and recently it had no trouble attracting applicants and hiring ten new officers, including four with college degrees.

The City is projecting a general fund deficit of over \$2 million for the year 2004 because revenues have not kept pace with rising expenses. The unencumbered balance of the general fund has grown in the past three years, but is well short of the \$10 million balance which is recommended for a city of this size. Citizens expect the City to hold expenses down, and news reports indicate that anything more than a 5% increase in police wages will be viewed as excessive, in light of the recent tax levy which was intended to increase the number of officers.

At the **conciliation hearing**, the City stated that it is not saying that its police officers are not worth their pay. The City is offering 4%, which is above the statewide average increase for law enforcement agencies. The bargaining unit's wage rates moved to the relative position they are in, over many years, and the City cannot afford to give large increases year after year to bring its police officers into the lead quickly.

The Employer made some observations regarding the Union's exhibits. The City's Detectives hold a position which is paid 15% above the patrol officers' rate; in many other departments, the detective title reflects a work assignment rather than a promotion. The supervisory positions also have rank differentials of 15% above the next lower rank; in a department as large as the City's, that offers career advancement opportunities not available in some of the smaller departments. Some of the "surrounding jurisdictions" in the Union's exhibit are pretty far from Hamilton, such as Centerville, Kettering and Dayton. The Union's list shows that urban jurisdictions such as the City do not pay as much as suburban communities, which have more money partly because their citizens are more affluent. There is a significant disparity between the City's median household income and those of Fairfield and West Chester. If pay rates were based solely on the volume of 9-1-1 calls, Cincinnati and Dayton would pay their officers more.

The 2002 census data for "police – arrest" probably includes all sworn officers, including supervisors; if the City's Sergeants and Lieutenants were included in the calculation, the figures for average wages paid by the City would be higher, too. The census figures include overtime and other earnings besides the contract wage rate, which also increases the income of the City's officers above what the Agreement requires. If current employees are given a larger raise, it will impact the amount of money available to hire additional officers. The recent police levy generates about \$750,000 per year to put more officers on the street, and diverting any of it to give officers a wage increase would be contrary to what the voters approved.

There are health care insurance plans available to City employees which permit them to pay only 2% or 5% of the cost, as well as the plan which costs them 12%. Until 2003, the City provided health insurance at no cost to employees, contrary to the trend which

requires employees to pay increasing amounts for their coverage. The Union has a representative on the insurance committee which works on the health insurance plan. According to the SERB “2002 11<sup>th</sup> Annual Report on the Cost of Health Insurance in Ohio’s Public Sector,” the statewide average contribution for family coverage is 13.0% and the average for jurisdictions the size of the City is 10.3%, while the average contribution in the Cincinnati area is 12.4% and the average for plans covering 500 to 999 employees is 12.0% for family coverage. Thus, even the City plan with the highest employee contribution is right in line at 12%, and it does not justify a higher rate of pay.

The City questioned the Union’s assertions that West Chester and Fairfield will be hiring police officers, because there has been nothing published to support that claim. The City’s fire fighters received a 3% wage increase, and a 2% mid-year increase in fact finding partly in order to catch up with the police officers, who now want to use that raise to support their request for an increase; the City is being whipsawed by the two bargaining units. The City’s offer is higher than the usual 3% increase, and the City cannot afford to do more. Some of the expenditures cited by the Union are investments to improve the City’s economy. The newspaper article projecting job growth in the area refers to developments which are mainly in the townships, not in the City, so the City is unlikely to benefit from more earnings taxes. Much of the growth in the City is made up of small retail establishments which generate less revenue. The City’s promotional brochure touts the high growth rate, but that is starting at a low base. The City’s revenue from the courts, referred to by the Union’s counsel, may not continue, in light of a recent attorney general opinion.

**The Union responded**, at the hearing, to the Employer’s critique of the Union’s exhibits. A 4% wage increase will not nearly restore the City’s officers to the position they held, relative to surrounding communities, in prior years. There are not enough promotional opportunities available to bargaining unit employees to offset the low wages available to police officers. The police levy was not based on an expectation that officers would not receive a pay increase, and hiring new officers will do no good if the retention rate drops.

The low-cost health care options have higher deductibles and co-pays, so they are not a saving for families with children; the City used to pay 100% for coverage which is better than is available today. A Union committee member observed that Fairfield has only 18 full time employees, and their department is not comparable with the City's in that respect. The City's detectives are also paid less than the surrounding jurisdictions pay their detectives.

Local President Robinson related that the City's fire fighters are paid a competitive wage rate, unlike the police officers, and they handle far fewer calls. The City settled with the Firefighters union prior to fact finding. Police officers with high total earnings have put in large amounts of overtime, and one of them did not even claim overtime for much of his work on his own time which did not result in arrests. Two police officers resigned for more money in other positions, and another one transferred to the Fire Department. A 5% pay raise would still leave the City's officers below the Middletown wage rate. Median income levels are irrelevant regarding townships which have no earnings tax. The Union worked to support the police levy, and it produced revenues for some time before the first new officers were hired, so the levy fund should have had money carry over to the next budget year. The Michael A. Fox regional highway has spurred growth in the area, including some within the City limits, and will improve City revenues.

Union accountant Whitaker observed that industries considering where to locate do not consider employee earnings taxes to be as important as whether their corporate earnings will be taxed, whether transportation is available for their products, etc.

**The City** explained its exhibits, in the conciliation hearing. To put the issue in perspective, the Employer declared that it is not asking for concessions, despite its projected deficit of \$2 million; its offer is more than has been given historically. All the City asks for is a fiscally conservative approach consistent with its economic condition. The most recent Department of Labor report shows the Cincinnati-Hamilton area's Consumer Price Index is a 2.0 percent increase from the first half of 2002 to the first half of 2003, so the City's 4% offer is twice the rate at which the cost of living increased. In

the last decade, the CPI exceeded 3% only in the year 2000, but this bargaining unit received at least 3% wage increases every year, and 5.7% in 2001, so the officers have more than kept up with inflation. The history of wage increases for City employees shows that 3% is the standard, and will continue to be the annual increase for contracts which have already been negotiated, except for the agreement with the fire fighters which resulted from a fact finding proceeding.

Comparing the City's wages with eight other Ohio cities of similar populations and median incomes (Employer Exhibit E), the City's starting wages (\$35,588) are above the average (\$34,188), and the City's top wages, either with or without longevity pay, is also above the average. Applicants for police officer positions come from residents of the Hamilton-Cincinnati area, with few exceptions. The City therefore compared its police wages with those of the applicants' home jurisdictions in Butler County and found that the proposed 4% wage increase would raise the City's officers starting wages to \$37,012, above the average of those seven jurisdictions, \$36,528. For officers with five years' experience, the City's wages, including longevity pay (\$46,672), is only slightly below the average paid by the seven other Butler County communities (\$46,887), so adding a 4% increase as proposed by the Employer would give the City an advantage (\$48,510). The City's top wages, including longevity for those hired since January 1, 1995, but without a 4% increase, already almost exactly matches the average of the other communities (\$48,847 v. \$48,853). Adding a 4% increase would boost the City's top wages to \$51,607 for those hired before 1995, and \$50,685 for those hired since January 1, 1995. Thus, after applying the 4% increase proposed by the City, the police departments of most of the applicants' home jurisdictions will be no clear recruitment or retention threat to the City. The City's sergeants and lieutenants also receive top wages which are better than the average paid their counterparts in the other seven Butler County jurisdictions.

The bargaining unit received an extra 2.7% increase in 2001, in addition to its annual 3% increase, pursuant to a mutually-agreed-upon study by a consultant who took into account the "unusual amount of holidays and personal days," and other "items most

agencies do not have, such as fitness, certification, and eye insurance, and the unusual amount of uniform and maintenance allowance.”

The Employer disclosed the actual gross wages earned by police officers in 2002 and 2003: in 2003, the average actual earnings were \$56,031 for the City’s officers, compared with \$54,080 for West Chester officers. Five of the City’s officers made over \$70,000 in 2003, including a patrol officer hired in 1998 (the officers get a lot of overtime).

Over the past five years, seven officers have resigned from the department, an average annual turnover rate of about 1%. Resignations have not posed a problem for the department at the current wage levels. There was no difficulty finding applicants to fill ten new positions this November, at current wage rates. The seniority list shows that officers are staying; the average tenure, department-wide, is about nine years. The list also shows that a large number of officers have advanced to better-paid positions.

The City is asking for fiscal conservatism in this case because the City has suffered some economic blows. The unemployment rate in the City was 6.2% in 2002, which was higher than the Butler County rate (4.1%). The City received a grant from the Federal government on January 24, 2002 because it was judged to be one of the 40 “most economically distressed communities” in the nation. The history of the City’s general fund balance shows that the projected \$2 million deficit for 2004 would drop the year-end balance to \$4.1 million, which is far below the \$10 million balance that Moody’s Investor Service said the City needs. The shortfall is because expenditures have outpaced revenues.

**Finance Director George M. Gordon** explained that the City faced some unique circumstances, stemming from the loss of some major employers, unprecedented rates of delinquency of real estate tax bills, and a slow economy. Income tax revenues increased by only 2.3%, rather than the anticipated 6%. The 2004 budget shows a \$2 million deficit, based on current projections of income tax receipts, the primary source of revenue. No appropriation was made for any increase in police wages, in the 2004 budget. The biggest bright spot is that the 2003 General Fund balance grew to \$6.1

million, about \$3.9 million below the bond rating agencies' recommendations of where the City should be to maintain services, which is \$10 million. The ability to grow that balance ensures the Employer's ability to maintain its employment levels. Sixty-five percent of the budget goes to public safety forces, and 53% of that is for wages. An increase in wages would affect the City's ability to pay without impacting the General Fund. The 2004 budget includes one anomaly, the occurrence of 27 paydays; other years have 26 payrolls, and the additional paycheck accounts for some of the budget shortfall.

The May 2003 report to the City from Moody's Investors Service stated, "The General Fund balance increased to \$4.5 million or a satisfactory 13.3% of revenues, though this level remains well below the Moody's median of 33.9% for Ohio cities." The recommended balance would be somewhat over \$10 million, which is the City's goal.

Each percent increase in base wages costs the City \$60,505, in a 26 payday year, without calculating the cost of overtime, retirement fund contributions from the Employer, etc. Bargaining unit wage increases will also increase the cost of wages paid to their supervisors. Feedback to the local newspaper on the wage issue indicates that even the 5% increase recommended by the Fact Finder is viewed as too much. In conclusion, the City urged the Conciliator to adopt a fiscal conservative approach.

**The Union** pointed out that some employers in Hamilton will also have 27 biweekly payrolls in 2004, and this will increase City tax revenues. Mr. Dean Whitaker, a CPA, testified about Union Exhibit N, a table which he compiled from City data. His observation of budgeted 2004 expenditures which exceed actual 2003 expenditures leads him to conclude that there is some padding in the budget which can be moved around during the year. The City has budgeted a 6.5% increase in revenue for 2004. The City is to be congratulated for paring its expenses not to exceed revenues over the years, which is difficult. The City could increase its utility fees, if it chose to do so. (The City responded that the utility funds are separate from the rest of the budget, with transfers set at levels established over ten years, and funds normally cannot be transferred to other uses. For instance, the City does not charge itself \$1.3 million for street lighting.) In short, the

budgeted expenditures are greatly inflated over the actual expenditures in 2003, so the projected deficit is greatly inflated.

Lodge 38 President Robinson pointed out that the City carried over funds appropriated to the police department. Chief Ferdelman clarified the figures, which include a corrections fund. Officer Robinson observed that actual expenditures have been less than anticipated, and the City carries over a surplus every year. The City's income tax predictions, he said, have overlooked construction projects which will contribute substantially to revenues; he described several such projects. Housing permits have increased, also.

The Union commented on the City's exhibits. It pointed out that the CPI data for the Hamilton area also applies to other communities in the county. The wage increase which the City agreed upon for the fire fighters was considered reasonable for them, so it should be considered reasonable for police officers. The City did not reject the Fact Finder's recommendation of a 5% wage increase, so it is deemed to have accepted it. Regarding the City's comparison with other Butler County jurisdictions, some of those communities have only a few officers, and some do not offer benefits comparable with the City's. The management consultant's report started from a base of an 8% wage increase, and dropped the amount due to what they considered to be superior benefits, but factors supporting that conclusion (such as the number of holidays) can be challenged. City evidence regarding total earnings includes many overtime hours, which cut down on officers' opportunities for off-duty earnings. Although some employers have moved out of the City, some of them did not move far, and their employees still live in the City and pay income taxes. The City often makes dire predictions about its budget which never happen. The estimates of revenue loss from the loss of Mercy Hospital are inflated. Mr. Robinson explained that the officer whose high total earnings was cited by the Employer earns a night shift differential and makes many arrests, so he works much overtime with court appearances. He described some fee generating and cost saving measures instituted by the police force, which can offset the additional 2%, beyond the City's offered wage increase.



**The City** pointed out that any changes in its practice of housing prisoners will not decrease its continuing wage obligations. Despite the new construction, there are weak areas of the local economy. The City Council did not call a special meeting to vote on the Fact Finder's Report because the Union had already rejected it, and the parties were going to conciliation in any event.

Any large wage increase should be the result of negotiations between the parties, in which offsetting concessions could be made, and not through conciliation. The large increase requested by the Union is unwarranted in a wage reopener, when wages will be opened again in six months. An incremental approach should be used.

**AWARD:**

If a conciliator were permitted to fashion contract language, as was the Fact Finder, I would not choose either of the parties' final offers, on the basis of the evidence before me. I would find that the City could afford somewhat more than it has offered, if it chose to make the police department a higher priority, and that the officers deserve it. On the other hand, new evidence, not available to the Fact Finder (Employer Exhibit E), shows that it is unnecessary to raise the City's rates as high as the Union has proposed, to be competitive in the job market. Moreover, as the Employer pointed out, there is no evidence before me to support the Union's assertion that other nearby jurisdictions are seeking to hire more police officers.

If I could, I would set the wages for the current contract year at 5%, as recommended by the Fact Finder, or I would select the Union's final offer of 7% and require the parties to forego the contractual wage reopener scheduled to occur again in six months. Those options are not available to me. The best I can do is to select the final offer which rewards the bargaining unit employees sufficiently without imposing an unfair burden on the City's resources.

The proposal of the Employer for a 4% wage increase retroactive to September 1, 2003, as set forth in full above, is hereby selected for inclusion in the Parties' collective bargaining agreement.

## TRANSMITTAL

The Conciliator's final offer settlement award is hereby transmitted by U.S mail to the representative of the Employer, Timothy G. Werdmann, Assistant Law Director, City of Hamilton, One Renaissance Center, 345 High Street, Hamilton, Ohio, 45011; to the representative of the Union, Timothy R. Evans, Holbrock & Jonson, 315 South Monument Avenue, P. O. Box 687, Hamilton, Ohio, 45012-0687; and to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus OH 43215-4213.

**Issued** at Loveland, Ohio this 9th day of February, 2004.

  
James L. Ferree, Conciliator