

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATOR'S REPORT

IN THE MATTER OF:

[Interest Arbitration]

Fraternal Order of Police
Lodge No. 36
And
The City of Middletown

Case Number:
03-MED-08-0816

STATE EMPLOYMENT
RELATIONS BOARD
2004 APR -5 A 9:33

Before Conciliator
N. Eugene Brundige

PRESENTED TO:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
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And

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And

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N. Eugene Brundige was appointed by the State Employment Relations Board to serve as Conciliator in this matter, in compliance with Ohio Revised Code Section 4117.14(D)(1) by letter dated December 30, 2003.

A hearing was held March 1, 2004 in the city government center in Middletown, Ohio. The parties timely filed the required pre-hearing statements.

In their pre-hearing filings the parties identified different issues as being unresolved. This matter was clarified at the hearing and the parties agreed the remaining unresolved issues were:

- 1. Wages**
- 2. Health Insurance**
- 3. Holiday Conversion**
- 4. Layoff - Recall**

The parties submitted to the Conciliator, all other Articles that had been previously negotiated, as well as issues that were agree upon during the hearing and those contract sections not opened by either party during these negotiations. The Conciliator agreed to incorporate all these previously agreed to items into this report.

The Union was represented by Susan D. Jansen, Esq.

The City of Middletown was represented by Donald L. Crain, Esq.

BACKGROUND:

The bargaining unit consists of thirteen sergeants and lieutenants within the City of Middletown. This "command unit" bargained in tandem with the Patrol Officers unit. The parties submitted twenty seven

unresolved issues to the fact finding process. Fact Finder James L. Ferree was appointed by the State Employment Relations Board and a hearing was conducted November 10, 2003. Many of the open items were settled or withdrawn and the Fact Finder issued his report on November 28, 2003.

While a majority of the patrol officers voting rejected the Fact Finders Report, they failed to achieve the 60% of membership required by the statute for rejection, and the reported was deemed adopted.

The members of this unit did reject the Report by more than 60% and the matter has proceeded to Conciliation.

For the most part the City has adopted the positions recommended by the Fact Finder.

WAGES:

Position of the City.

The Fact Finder recommended a 2% increase retroactive to November 1, 2003 with a re-opener for each of the two remaining years of the Contract. The City has adopted this provision as its last best offer for this Conciliation Hearing.

City Manager Ronald L. Olson presented a comprehensive view of City finances. He pointed to the loss of jobs within the City and the relatively flat collection of income tax revenues over the past few years.

He discussed the budget cutting measures that have taken place within the City and the need for additional budget cuts in the future.

Police Chief William Becker provided detailed information on the impact of cuts he has already made in his department. He indicated that further cuts will likely involve layoffs of current employees.

Position of the FOP

The FOP provided detailed information on comparables both internal and external. They argued that the Butler County area is one of growth and development. They noted that police sergeants and lieutenants in other jurisdictions are getting larger increases than the City of Middletown is offering. They note that Fire Fighters are receiving a greater increase for the same period.

Discussion and Award:

The City of Middletown is in the midst of a difficult financial situation. Middletown depends on old industry and the income is not increasing at a desired rate. There are signs of some addition of jobs but few of them are industrial based positions.

Like many others, this Conciliator anxiously awaits an economic upturn but there is little evidence that it is imminent or that it has already begun.

As I have noted in other reports, Middletown appears to be a "well run fiscally responsible organization." Nothing presented in this hearing would alter my views on that subject. While it is apparent that Police Officers, Sergeants and Lieutenants in Middletown deserve a greater

increase than that recommended by the Fact Finder, it appears that 2% is a reasonable increase in the current economic situation.

This Conciliator has also noted that a significant problem could be created if a different increase were awarded to members of this Bargaining Unit, that that which was accepted by the Officers unit.

The FOP notes that the Patrol Officers unit did not affirmatively vote to accept the Fact Finders Report, but rather failed to garner the 60% necessary to reject the report. While this is helpful information, the reality is that officers are receiving a 2% increase.

Other Conciliators, in similar financial situations, have reached the same conclusion. Michael A. Paolucci, in a case involving the City of Columbus, Ohio and FOP, Capital City Lodge No. 9, awarded a 2% per year increase coupled with increases in health care that are significantly more than those agreed to in Middletown. In rejecting the Lodge's last best offer of 4% per year Conciliator Paolucci stated the 4% was "plainly wrong."¹

Finally, due deference must be given to the Fact Finder's Report and recommendations. The statute established a two step process wherein a fact finders report would first be considered and, only if it was rejected, would a conciliator be appointed in bargaining units designated as "safety units." If due consideration is not given to the report of the Fact Finder then the parties would be in the position of taking every contract to conciliation so they might shop for the best deal.

In order for the statute to meet its intended purpose, the conciliator should begin with consideration of the Fact Finder's Report and deviate only if the conciliator finds a sufficient reason to find and recommend differently.

For these reasons, I award the position of the City on wages. The language is included at the end of this decision.

HEALTH INSURANCE

Position of the FOP.

The FOP has agreed to increase the employee paid share of the health care premium. As a result they should not suffer from the addition of a "true deductible" for health care use.

The FOP believes the City has misunderstood and misapplied the Fact Finder's recommendation regarding this section. When Fact Finder Ferree referred to "Appendix A on file" he was not referring to the addition of deductibles which employees have not paid previously.

They also note that the Insurance program provides a co-insurance payment up to a certain limit and this co-insurance acts in much the same way as a deductible.

Position of the City

The City has two goals in health insurance. The first is to get the various bargaining units into the same health care program under the same conditions or as close as possible. The second is to shift some part of the increasing cost of health care to the employees.

¹ Columbus Dispatch, March 29, 2004.

They note that Middletown employees pay a much smaller share of health care than do most other Ohio public employees and they point to the SERB health care survey to support this claim.

Discussion and Award

Both parties make excellent arguments regarding health care costs. The rapidly increasing costs of health care, in the midst of difficult economic times, burden employers as never before.

Likewise, the FOP correctly notes that employees, who have not had large increases in health care costs in the past, now are faced with increases that will eat up their modest salary increases.

Then there is the matter of what the Fact Finder intended in his recommendation. This is a much more difficult issue. The reference to "Appendix A" would tend to indicate an existing document on file. The evidence shows that there was no such document.

Without assigning blame, it is apparent that the parties did not have adequate discussion of this topic to share an understanding that the concept of deductibles was being introduced into the health care plan.

Sara Mills, in her testimony, points the conciliator to documents that show the concept was included in the documents given to the Fact Finder. This appears to be the only discussion of this important addition.

The question of the intent of the Fact Finder is not one this Conciliator can, or should address. That is a question left to a grievance arbitrator and nothing in this award should be read to imply that the

outcome of such an arbitration should be different for this unit than is decided for other units bringing the grievances.

This Conciliator must decide which of the last best offers of the parties best meets the statutory criteria.

The FOP last best offer not only excludes any deductibles, it also maintains the co-insurance at current levels.

The City's last best offer includes the new concept of deductibles and a modest increase in the co-insurance.

I don't like either option, but I must choose one. Because it is unreasonable to keep co-insurance at a static rate in light of the large increases in health care costs and because Middletown's insurance program is still a very good deal for employees compared to other jurisdictions, I reluctantly award the position of the city.

HOLIDAY CONVERSION

Position of the FOP

The old contract allowed for the conversion of three holidays for cash payment. The parties agreed to allow some employees to participate in the one time DROP program and convert twelve days in order to increase their wages to aid their pension calculation.

The FOP proposes to increase the three days to twelve days in the new contract over a three year period, noting that the Chief would still have to approve the request and unused funds would still need to be available in order for the conversion to take place.

Position of the City

The City states that such an increase would be very expensive and proposes maintaining the three days. They note the Fact Finder recommended the three days. Both parties agree that the one-time twelve day DROP provision should be added.

Discussion and award

In light of the current financial situation of the city this is almost a meaningless provision. Even if it was added it is hard to envision adequate funding to enact it.

The addition of the one-time DROP provision is a good idea.

I recommend the position of the City.

LAYOFF/RECALL

Position of the FOP

The Fact Finder in an attempt to fashion compromise language, made the determining seniority for supervisors bumping into lower units, the total service within Middletown Police Department. This does not recognize supervisory experience. The FOP proposes that the determining seniority for bumping should be total time as a supervisor.

Position of the City

The City notes that they tried to propose a "super seniority" for supervisors but that was rejected by the FOP at the table. Their main concern is related to having different language in this contract than they have in the Patrol Officers contract.

Discussion and Award

I agree with the FOP. The determination should be based on supervisory experience rather than total service as a Police Officer. I award the FOP position.

HOUSEKEEPING

The City has proposed several housekeeping and cleanup items for the contract. The FOP indicated that they were in agreement with the changes they had been given.

While these housekeeping changes are incorporated by reference into this report, I will not list them.

Summary

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7) the Conciliator awards the above stated positions. Specifically those criteria are:

- 4117.14(G)(7)(a) Past collectively bargained agreements, if any, between the Parties;
- 4117.14(G)(7)(b) Comparison of the issues submitted to the 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;
- 4117.14(G)(7)(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;
- 4117.14(G)(7)(d) The lawful authority of the public employer;
- 4117.14(G)(7)(e) The stipulations of the Parties;
- 4117.14(G)(7)(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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.

In addition, all agreements previously reached by and between the parties and tentative agreed to, as well as all sections of the previous Collective Bargaining Agreement, not opened by either party for negotiations, are hereby incorporated by reference into this Conciliation Report, and shall be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this second day of April, 2004.


N. Eugene Brundige, Conciliator

Language for inclusion in the Collective Bargaining Agreement

ARTICLE VII

Wages

Section 1

There are hereby established the following biweekly pay ranges for certain members of the Division of Police with the service of the city.

EFFECTIVE NOVEMBER 1, 2003 (2.0%)

RANGE

STEPS

SERGEANTS

	A	B	C	D	E	F	G
Annual	\$44,158.4	\$46,255.04	\$48,426.56	\$50,697.92	\$53,080.56	\$55,573.44	\$58,186.96
Biweekly	\$1,698.4	\$1,779.04	\$1,862.56	\$1,949.92	\$2,041.56	\$2,137.44	\$2,237.96
Hourly	\$21.23	\$23.238	\$23.282	\$24.374	\$25.5195	\$26.718	\$27.9745

LIEUTENANTS

	A	B	C	D	E	F	G
Annual	\$50,697.92	\$53,080.56	\$55,573.44	\$58,186.96	\$60,924.24	\$63,788.40	\$66,783.60
Biweekly	\$1,949.2	\$2,041.56	\$2,137.44	\$2,237.96	\$2,343.24	\$2,453.40	\$2,568.60
Hourly	\$24.374	\$25.5195	\$26.718	\$27.9745	\$29.2905	\$30.6675	\$32.1075

Re-opener

Effective sixty (60) days prior to November 1, 2004 and November 1, 2005, this Article shall be re-opened to negotiate wages. The results of the negotiation process or any settlement reached between the parties or any determinations ordered by a Conciliator will become effective as allowed by law.

Article VII Section 6 Group Health Insurance Premiums

- 1) The employees' share of monthly premiums shall be as follows:

<i>Item</i>	Single Plan Member Cost (\$)	Family Plan Member Cost (\$)
Monthly Premiums (based upon the 5% formula)		
For calendar year 1/01/04 to 12/31/05	\$15.74	\$39.36
For calendar year 1/01/05 to 12/31/06	Not to exceed \$25.47	Not to exceed \$49.36
For calendar year 1/01/06 to 10/31/06	Not to exceed \$35.74	Not to exceed \$59.36

- 2) Doctor and prescription co-pays shall be as follows:

<i>Item</i>	Member Cost under new contract (\$)
Co-Pays	
Physician Visit Co-Pay (In Network)	10.00
Physician Visit Co-Pay (Out of Network)	15.00
Prescription Co-Pay (generic)	8.00
Prescription Co-Pay (brand name with no <i>generic</i> equivalent or prescribed "dispense as written")	15.00
Prescription Co-Pay (other brand drugs – the difference in cost between the brand name and its generic equivalent)	10 plus the difference
Prescription Co-Pay by mail order (generic)	10.00
Prescription Co-Pay by mail order (brand name with no generic equivalent or prescribed "dispense as written")	25.00

- 3) Out of pocket maximums are comprised of both a true deductible and co-insurance. The deductible must be satisfied prior to the insurance paying for coverage. The deductible and co-insurance shall be as follows:

Calendar Year Deductible	Amount (\$)
Per Covered Person (network)	\$200
Per Covered Person (non-network)	500
Per Family (network)	400
Per Family (non-network)	1,000
Co-Insurance Limit Per Calendar Year	Amount (\$)
Per Covered Person - in network	\$300
Per Covered Person - non-network	\$500
Per Family – in network	\$600
Per Family - non-network	\$1,000
Total Out of Pocket Limits Per Year (Deductible Plus Co-Pay)	
Per Covered Person - in network	\$500
Per Covered Person - non-network	\$1,000
Per Family – in network	\$1,000
Per Family - non-network	\$2,000

In the event the City investigates alternate forms of health insurance or carriers, the Union will be consulted prior to any change in carriers or forms of coverage. Current levels of insurance benefits will remain the same for the term of this agreement. In the event the City creates a task force or committee to study alternate forms of health

insurance, the Union President will be invited to become a member of such task force or committee.

APPENDIX A

HEALTH INSURANCE

1. Members shall be provided medical insurance coverage in accordance with the plan document on file in the Finance Department.

2. Member contributions:

The employee/member contribution which shall be 5% of the actual cost of the City's medical insurance plan from the previous year shall be calculated as follows:

Y = employee share of the cost of single plan.

2.5 Y = employee share of the cost of a family plan.

(No. of family plans x 2.5 Y :- (No. of single plans X Y = Total cost of Health Insurance Coverage in previous year x .05 (5%).

E.g. Calculation for 2003

$$\begin{aligned}
 &73 \text{ single plans} \\
 &354 \text{ family plans} \\
 &\$3,621,009 \text{ (actual 2002 costs)} \\
 &(354 \times 2.5 Y) \text{ :- } (73 \times Y) = \$3,621,009 \times .05 \\
 &958Y = \$181,050 \\
 &Y = \$188.99 \\
 &2.5Y = \$472.48
 \end{aligned}$$

The employee/member contribution shall be payroll deducted in equal installments not less than one time per month. The 2004 employee monthly contribution for the family plan will be \$39.35 and for the single plan will be \$15.74.

During the term of this Agreement, the amount due under paragraph 2 of this Appendix shall not exceed \$49.36 per month for family plan and \$25.74 per month for the single plan, inn 2005. The monthly contribution shall not exceed \$59.36 per month for the family plan and \$35.74 for the single plan in 2006.

Article VII h (Holiday Conversion)

The language will be status quo except that both parties agreed to the addition of the DROP option. Neither party provided me with language to accomplish this. The parties should meet to agree upon language to implement this part of the award.

ARTICLE XVI LAYOFF/RECALL

(A 1-5 shall read as follows – B and C remain current language)

Layoff/Bumping. In the event the City should lay off police personnel such lay offs shall be solely in accordance with this Article and in lieu of any provisions in Chapter 124 of the Ohio Revised Code or any conflicting provisions of the City Chart or City policy. For the purpose of this agreement, seniority shall be the total service within a sworn police position with MPD less any time, which constitutes a break in service. For layoff only, seniority shall constitute time in rank, subject to the provisions herein.

1. Patrol officers with the least seniority shall be laid off first.
2. In the event the City should reduce the number of police supervisors, the supervisors with the least time in rank shall bump too the next lower rank.
3. In the event the City should reduce the number of Deputy Chiefs, such Deputy Chief shall bump to the lower rank of Lieutenant. A Deputy Chief reduced in rank shall bump the Lieutenant with the least amount of time in grade. A Lieutenant reduced in rank shall bump the Sergeant with the least amount of time in grade and a Sergeant reduced in rank shall bump the least senior Patrol Officer. A supervisor bumped into a lower supervisory rank will be placed in the lower rank based upon the employee's total time as a supervisor for the Middletown Police Department. Once bumped into the patrol rank, the bumped member shall become the senior ranking officer in the patrol rank for the purposes of recall lonely. For layoff purposes, the employee bumped into the patrol rank is placed according to his departmental seniority. This bumping procedure shall continue until no lower rank exists.

4. An employee who is reduced in rank shall be reinstated to their previous rank in reverse order of bumping and before any competitive rest is given for a supervisory opening.
5. In the event a member is laid off, he shall receive payment for earned but unused vacation and/or holiday (to include current calendar year) sick leave conversion, uniform maintenance, and clothing allowance with his termination pay.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Conciliator's Report was sent by regular U.S. mail to:

Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Susan D. Jansen, Esq.
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this second day of April, 2004.


N. Eugene Brundige
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