

STATE EMPLOYMENT  
RELATIONS BOARD

2004 JUN -7 A 11: 03

**Conciliation Report and Award**

**In the matter of Conciliation between**

**The City of Zanesville (Ohio)**

**And**

**The Fraternal Order of Police/ Ohio Labor Council Incorporated**

**SERB Case Number: 03-MED-08-0824**

**Marcus Hart Sandver, PhD. Conciliator**

Hearing Date: April 30, 2004  
Decision Issued: June 1, 2004

Representing the City:

Mr Dale Raines  
Budget and Finance Director  
City of Zanesville  
Zanesville, Ohio

Representing the FOP/OLC:

Ms Andrea Johan  
Staff Representative  
FOP/OLC  
Columbus, Ohio

## I. Background

This case arises out of a dispute between the City of Zanesville (the employer) and the Fraternal Order of Police/Ohio Labor Council Inc. (the Union) involving the negotiation of a collective bargaining agreement. The agreement would be the successor to the past CBA, which expired on December 15, 2003. The parties met several times to negotiate the expiring agreement; 11/25/03, 12/12/03, 12/16/03, 12/23/03 and 1/7/04 without resolution of the dispute. The dispute was submitted to fact finding. The fact finding hearing was held on February 10, 2004 before Howard D. Silver. The fact finding report was issued on March 17, 2004. The fact finding report was not accepted by the employer. Following the procedures established under Section 4117.14 of the Ohio Revised Code the parties submitted the dispute to SERB. SERB then provided the parties with a list of conciliators. The parties, through mutual agreement, chose Marcus Hart Sandver to conciliate the dispute. Through mutual agreement, the date for the conciliation was set for April 30, 2004.

## II. The Hearing

The hearing was convened at 10:00 am in the second floor conference room of the Zanesville Public Service Building. In attendance at the hearing were:

For the City of Zanesville:

1. Mr. Dale Raines, Budget and Finance Director, City of Zanesville
2. Mr. Eric Lambes, Chief of Police, City of Zanesville

For the FOP/OLC

1. Ms. Angie McDonald, Bargaining Unit Representative
2. Ms. Michelle Duke, Bargaining Unit Representative
3. Mr. Donald Watts, Bargaining Unit Representative
4. Ms. Andrea H. Johan, OLC Staff Representative

The parties were asked to submit exhibits into the record. The following were submitted as Joint Exhibits.

1. Joint Exhibit #1: Fact finding Report and Recommendations of Howard Silver  
Dated March 17, 2004
2. Joint Exhibit #2: City of Zanesville and the Fraternal Order of Police/Ohio Labor  
Council Collective Bargaining Agreement. Correction Officers. Effective January  
1, 2001 through December 15, 2003.

The following were marked as City Exhibits:

1. City exhibit #1: City of Zanesville Position Statement to Marcus Hart Sandver  
Conciliator

The following were marked as FOP/OLC Exhibits:

1. FOP Exhibit #1: FOP Prehearing statement to the conciliator dated April 23, 2004
2. FOP Exhibit #2: Agreement between Local 1573 Council 8 AFSCME and City of Zanesville. 1/1/03-12/31/05
3. FOP Exhibit #3: Ordinance No.04-57; first reading Introduced by Zanesville City Council dated 4/26/04
4. FOP Exhibit #4: Ordinance No. 03-5 introduced by Zanesville City Council dated 1/8/03
5. FOP Exhibit #5: Report on Proposal to Subcontract the Operations of the Jail Kitchen. Prepared by Chief Eric P. Lambes dated 11/21/03

The conciliator notified the parties that the hearing would be conducted and that the award would be prepared in conformity with the rules for conciliation as found in O.R.C. 4117 and associated administrative rules as promulgated by SERB. The conciliator further informed the parties that it was his intention that all tentative agreements thus far agreed to by the parties should be incorporated into his award. At this point in the hearing the conciliator gave the parties the opportunity to make opening statements; both parties declined the opportunity and expressed a willingness to proceed directly to the issues.

### III. The Issues

#### A. Article 25.5 Working out of Rank- Officer in Charge

##### 1. Union Position

The Union position on this issue was that the conciliator adopt the fact finder's recommendation. The issue arises here because of the fact that upon occasion there were no jail sergeants on duty in the correctional facility. Thus the supervisor must be from a designated officer in charge. The parties are currently functioning under a Memorandum of Understanding written on June 25, 2003 and signed by representatives of the FOP and the City of Zanesville. Under this MOU the most senior officer working at the post will be designated the Officer in Charge. The OIC receives a wage rate of 8% per hour greater than his or her regular rate of pay for those hours during which he or she functions as the OIC.

##### 2. City Position

The City position on this issue is that the OIC needs to be mobile; he or she needs to move through the jail complex watching what is going on at each and every work station. The issue then arises; what if the most senior person on one shift who will be designated

OIC is working Central Control or Booking? In these positions the officer is not free to roam around or visit each work station but is frozen to a particular work location. What if the person who is the most senior and is designated OIC is for some reason or another scheduled to be out of the building for that shift? In an instance such as this, the OIC is not able to perform the critical functions of his or her supervisory position.

### 3. Discussion

It seems to me that management needs some flexibility in assigning the OIC designation. Both sides agree in their position statements and the fact finder makes reference in his recommendations that under O.R.C. 4117.08 that the promotion of a member of the bargaining unit (even if temporary) is a management right. Therefore, I would rule the management position be awarded. The dispute here is over one sentence in a section of 23.5 which was not directly addressed by the fact finder. The issue that was addressed by the fact finder, filling of positions, has been agreed to by the parties. However, when the union representative wrote up the language of the MOU and put it into concrete contract language the City objected to one sentence in the provision. That sentence: "For purposes of this section, a post is defined as: Central Control, Booking, Rover, Second Floor and Third Floor" is to be removed from Section 23.5.

#### 4. Award

The City's position is awarded.

#### B. Issue 2 Wages

##### 1. Union Position

The union position on this issue is to request a 4 per cent raise in the first year of the agreement, a 6 per cent increase in the second year of the agreement and 4.5 percent increase in the third year of the agreement. This proposal reflects a modification of the union's proposal of 10-5-5 in fact finding. In support of this position the union directs the conciliator's attention to top step hourly wage of corrections officers in Garfield Heights, Muskingham County, Guernsey County, Adams County, Carroll County and Euclid. The average top step salary in these counties and municipalities in 2004 is 14.24 per cent above what it is in Zanesville. The starting salaries in these counties and cities are 11.9 percent above what it is in Zanesville.

Ms Johan pointed out to the conciliator that the City of Zanesville has experienced a substantial level of turnover among its corrections personnel in the past year or two mostly to pursue higher paying positions. Ms Johan reported that last year (2003) the City

made the decision to contract out the food service function of the jail thus saving costs to the Sheriff's budget that could be used to fund wage and benefit increases.

Ms Johan pointed out to the conciliator that the past two collective bargaining agreements contained "catch up" wage provisions. In 1998, the corrections officers received a \$1.00 per hour wage increase (equivalent to a 10.9% increase). In 2001, the first year of the expired collective bargaining agreement a 6.7 percent catch up wage increase was given to the corrections officers. In this proposed agreement the "catch up" would come with the 6 per cent in the second year and the 4.5 per cent in the third year. The justification for the catch up is the disparity between what is paid to the corrections officers in Zanesville and the corrections officers at the comparison cities and counties of Garfield Heights, Muskingham County, Guernsey County, Adams County, Carrol County and Euclid.

#### B. City Position

The City position is to pay the correction officers an increase of 4 percent in 2004, 4 percent in 2005 and 4 percent in 2006. The City representative pointed out to the conciliator that during the years 1998-2003 the average rate of inflation was 2.3 percent yet the City paid the corrections officers an annual wage rate of 5.8 percent. Mr. Raines restated a point made by Ms. Johan and emphasized that the catch up monies had already been paid; once in 1998 and once in 2001. Mr. Raines directed the conciliator's attention to the City Exhibit #2.



In City Exhibit #2 the data shows that the AFSCME bargaining unit negotiated a 3.5 percent increase in wages for 2003, 2004 and 2005 plus a .5 percent pension pick up. The Fire fighters negotiated a 4 percent increase for 2003, 2004 and 2005. The police captains negotiated a 4 percent increase for 2002, 2003 and 2004. The police officers negotiated a 4 percent increase for 2003, 2004 and 2005. The police sergeants and lieutenants negotiated a 4 per cent increase for 2003, 2004 and 2005. The unaffiliated employees of the City received a wage raise of 3.5 percent in 2003, 4 percent in 2004 and 4 percent in 2005. The six groups of employees referenced above represent approximately 300 employees of the City of Zanesville.

Mr. Raines directed the conciliator's attention to City Exhibit #3 (included in City Exhibit #1) the SERB clearing house benchmark report dated January 29, 2004 In this report Mr. Raines emphasized the fact that 10 of 13 bargaining units of corrections officers in the SERB report are in Cuyahoga County; the other 3 (Mentor, Middletown and Toledo) are in municipalities much larger and more prosperous than Zanesville and thus not comparable.

Mr. Raines addressed the issue of employee turnover. Mr. Raines stated that in the last 3 years 9 employees had left employment at the jail, not 11 as the union had claimed. Two had left to become police officers. Four did not complete their probationary period. One resigned to avoid criminal charges. That leaves one who could have left to pursue a higher paying job. Mr. Raines stated that of the 21 correction officers currently employed, the average length of employment is 6.8 years. Seven officers have been with the department less than 5 years; fourteen have been employed 5 years or more. Six of the twenty one have been employed ten years or more.

Mr. Raines asked the conciliator to look over City Exhibit #4 (included in City Exhibit #1). City Exhibit #4 contains wage raise information for police officers in the Cities of Cambridge, Heath, New Lexington, Pataskala and Zanesville. The most recent raises for police officers in these cities were 3 percent in Cambridge (2002), 3.5 percent in Heath, 2.5 percent in New Lexington (2003) and 3 percent in Pataskala.

### C. Discussion

I've looked over the internal comparables, the external comparables (both the Union's and the City's), the inflation data and the fact finders report. I must admit that I agree with the fact finder that it is hard to compare Zanesville to 10 municipalities in Cuyahoga County or to the City of Toledo, or the City of Mentor or Middletown. The internal comparables are quite persuasive; the "rule of 4" seems pretty well established for the year 2004 in the compensation system in the City of Zanesville.

There is no issue of ability to pay here. The City has saved some \$100,000 or so by contracting out the cooking in the jail, but I don't hear the Union laying claim to that money. It was a management decision and apparently a good one.

The local comparables show a pattern of wage raises of City Police Officers in the 2.4 percent range.

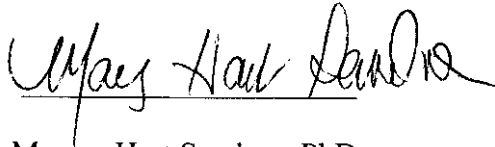
My own experience with the several police contracts in which I have served as a neutral this year is that most raises are in the 3-4 percent range. The SERB data show this as well.

4. Award

The City's position is awarded.

IV. Certification

This Conciliator's report and award is based upon a conciliation hearing conducted by me on April 30, 2004 in Zanesville and on evidence and testimony presented by the parties.

A handwritten signature in black ink, reading "Marcus Hart Sandver". The signature is written in a cursive style and is positioned above a horizontal line.

Marcus Hart Sandver, PhD.  
Conciliator  
Columbus, Ohio  
June 1, 2004

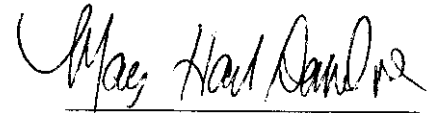
CERTIFICATE OF SERVICE

I hereby certify that the foregoing conciliation report and award between the City of Zanesville and the Fraternal Order of Police/ Ohio Labor Council Inc was filed via U.S. mail with the State Employment Relations Board and hand delivered this 1<sup>st</sup> day of June 2004 to the following:

Dale Raines  
Budget and Finance Director  
City of Zanesville  
401 Market Street  
Zanesville, Oh 43701

And

Andrea H. Johan  
Staff Representative  
Fraternal Order of Police  
Ohio Labor Council Inc.  
222 E Town Street  
Columbus, Oh 43215-4611



Marcus Hart Sandver, PhD.

Conciliator

June 1, 2004

Columbus, Ohio