

STATE EMPLOYMENT
RELATIONS BOARD

2004 OCT 18 A 10:47

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

* * * * *

IN THE MATTER OF: *

OHIO PATROMEN'S BENEVOLENT ASSN. *
DISPATCHERS UNIT *

AND * CASE NO. 03-MED-19-0912

CITY OF WILLOWICK *

* * * * *

REPORT AND AWARD OF THE CONCILIATOR

DATED AT SOLON, OHIO

OCTOBER 14, 2004

I. BERNARD TROMBETTA
CONCILIATOR
P.O. BOX 391403
SOLON, OHIO 44139
[440] 349-2110

CONCILIATOR'S REPORT AND AWARD

I. PLACE AND DATE OF HEARING

The hearing was held on the 30th day of September 2004 in Willowick, Ohio.

II. HEARING BACKGROUND

This matter is a conciliation between the City of Willowick, hereinafter referred to as the "Union" and its Dispatchers, represented by the Ohio Patrolmen's Benevolent Association, hereinafter referred to herein as the "Union" pursuant to Sec. 4717.14 of the Ohio Revised Code.

The Union is the sole bargaining agent for the 10 dispatchers.

The City is a suburb located in western Lake County with approximately 14,500 resident. It consists primarily of single and multi-family dwellings and has a limited commercial base and almost no industrial property. The City has an income tax. The tax burden falls almost exclusively upon homeowners.

The current contract expired on December 31, 2003. The parties went to fact finding on nine issues. The Fact Finder issued his report on August 13, 2004. Neither party accepted the recommendations.

Eleven issues were submitted to conciliation, the twelfth issue was withdrawn in the Union's Position Statement. The City filed a position statement as required by law.

The unresolved issues as represented in the Union's position statement which was followed during the hearing are as follows:

1. Wages, Section 13.01;
2. Head Dispatcher's Wages, Section 13.02;
3. Longevity, Section 13.04;
4. Health Insurance, Article 14;
5. Overtime (Additional Time), Sec. 18.01;
6. Overtime (Accumulation of Compensatory Time) Sec. 18.01;
7. Overtime (Sell Back) Sec. 1801;
8. Uniforms (Allowances) Sec. 19.01;
9. Uniforms (Maintenance), Sec 19.04;
10. Sick Leave (Withdrawn by the Union) Art. 21;
11. Vacations (Sell Back), Art. 23;
12. Holidays (Personal Days), Sec. 24.01;

III. APPEARANCES

On Behalf Of The Union:

Colleen M. Bonk, Esq.
Union Representative
1228 Euclid Avenue, #900
Cleveland, OH 44115

Kelly Tadiello, Chief Dispatcher
Jeannie Fiorelli
Angela Trend, president

On Behalf Of The City:

Tom Grabarczyk, Consultant
6800 W. Central, #L-12
Toledo, OH 43617

Cheryl Killen, Finance Director
Michael Lazor, Police Chief

IV. CONCILIATION CRITERIA

The criteria used by the Conciliator in determining this matter is found in R.C. 4117.14[G][7][a] through [f] and OAC 4117.14(G)(7)(a) through (f), and include: past collectively bargained agreements between the parties, comparison of issues between the affected employees with those issues related to other public and private employees doing comparable work, the interest and welfare of the public, the ability to finance and administer the issues proposed and the effect of the adjustments on the normal standard of public service.

The Conciliator must chose between the final offers of the parties as contained in their respective position statements and has no authority or discretion to craft different terms or compromises.

The criteria used in conciliation are included in the criteria used in fact finding. [R.C. 4117.14[C][4][e]]. The

standard employed by most conciliators requires a finding of clear error in the fact finding process before a recommendation will be overturned. This standard, though not statutory, appears to be followed by most conciliators since first advanced by Professor Drotning.

A conciliator must chose between the final offers of the parties as contained in their respective position statement and, unlike the Fact Finder, has no authority or discretion to craft a compromise to or differ from either final position. He must chose one or the other.

This conciliator does not rigidly employ the "Clear Error Standard", but will not disturb a fact finder's recommendation based upon a simple difference of opinion. Most conciliators will not substitute their views for that of the Fact Finder. Conciliation was not intended to be a de novo process.

V. WITNESSES

For the Union

Jeannie Fiorelli

Kelly Tadiello

Angela Trend

For the City

Cheryl Kollen

Chief Michael Lazor

VI. EXHIBITS

Joint Exhibits

- No. 1 Collective Bargaining Agreement
- No. 2 Waiver dated May 27, 2004

Union Exhibits

- No. 1 SERB Benefits Report
- No. 2 SERB Wage Increase Report
- No. 3 SERB Benchmark Report
- No. 4 Retirement Planning Handout
- No. 5 Collective Bargaining Agreement- Beachwood
- No. 6 Collective Bargaining Agreement- Bedford
- No. 7 Collective Bargaining Agreement- Broadview Heights
- No. 8 Collective Bargaining Agreement- Brooklyn
- No. 9 Collective Bargaining Agreement- Conneaut
- No. 10 Collective Bargaining Agreement- Lyndhurst
- No. 11 Collective Bargaining Agreement- Mayfield Heights
- No. 12 Collective Bargaining Agreement- Mentor on the Lake
- No. 13 Collective Bargaining Agreement- Middleburg Heights
- No. 14 Collective Bargaining Agreement- Richmond Heights
- No. 15 Collective Bargaining Agreement- University Heights
- No. 16 Collective Bargaining Agreement- Willoughby Heights
- No. 17 Auditor's Estimate of Resources
- No. 18 SERB 10-Year Settlement Data Report
- No. 19 Minutes of Council Meeting
- No. 20 Mayor's Report, May 2004
- No. 21 Percentage of Employee Paid Medical Costs

City Exhibits

- No. 1 Fact Finder's Report- Firefighters
- No. 2 Fact Finder's Report- Police
- No. 3 Tax Rates
- No. 4 Estimated Resources- Auditor
- No. 5 Finance Director's Memorandum
- No. 6 General Fund Summary
- No. 7 Wage and Hospitalization Costs
- No. 8 Reductions in Expenditures
- No. 9 Projected Costs of Safety Forces Wage Increases
- No. 10 Dispatchers' Costing Exhibit
- No. 11 Revised Calculation of Costs
- No. 12 Projected Costs of a 2% increase
- No. 13 Costing Projection of Union Proposals

- No. 14 SERB Comparable Wage Report
- No. 15 Amended Certificate of Estimated Resources
- No. 16 Dispatcher Rates
- No. 17 Cost of Hospitalization Rates
- No. 18 Cost of other Plans
- No. 19 Qual Choice Option Costs
- No. 20 2003 Comparable Cost of Plans
- No. 21 2002 Comparable Cost of Plans
- No. 22 Lake County Hospitalization & Medical Costs

VI. OVERVIEW

All of the issues submitted have financial implications, and since all do, this discussion will set forth much of the reasoning of the Conciliator in making the awards.

After hearing the evidence, the Conciliator can only conclude that the condition of the City's finances are not healthy. Income is flat. Population is not increasing, and likely growing older. Industry is limited and there is little new construction. There are no new sources of income, and the tax burden continues to be placed at the feet of the homeowner. The City is, also engaged in contract disputes with the police and firefighters unions. The Dispatchers is the first to go to conciliation.

The Union appeared recognize the quandary facing the City and its employees when it withdrew Issue No. 10 with the following: "In view of the City's ability to fund limited economic issues, this extra bonus may be forgone at this time..." It argued that the City could increase revenues by charging for or increasing user fees for

services such as EMS and sewer cleaning and inspections. The called into question both 1) the ability of the City to fund the economic package proposed by the Union, and 2) establishing error on the part of the Fact Finder in order to justify an award different from the recommendation.

VI. ISSUES SUBMITTED TO CONCILIATION

ISSUE NO. 1

WAGES (Art. 13.01)

The Fact Finder recommended wage increases of 1%, 2% and 2%. The Union proposed an increase of 3% in each of the 3 years of the new agreement. During argument, the Union reduced its first year demand to a 2% increase in recognition of the difficulty in increasing revenues on short notice.

The City, on the other hand, deviated from the position taken in fact finding and increased its final offer to a 2% across the board increase in each of the years of the contract.

The evidence submitted by both sides was essentially the same as submitted to the Fact Finder. Increasing revenues from city provided services, prospectively and in an unknown amount, is not a sound basis for awarding a wage increase different from that proposed by the City, despite the fact that the increases do not keep pace with increases

in the cost of living and the added costs of medical coverage.

AWARD: The Conciliator adopts the final position of the City and orders that the wage schedule be increased by 2% per year in each of the three years of the contract. The Clerk-Dispatchers shall be compensated based on the following schedule:

	1/1/04	1/1/05	1/1/06
Start	14.07	14.35	14.64
1	15.09	15.39	15.70
2	15.58	15.89	16.21
3	16.07	16.39	16.72
4	16.55	16.88	17.22
5	17.04	17.38	17.33

ISSUE NO. 2

WAGES- HEAD DISPATCHER- (ART. 13.02)

Currently, the head dispatcher receives \$1 per hour over the Clerk-Dispatcher rate to which she would otherwise be entitled. The Union seeks an increase to \$1.25 commencing January 1, 2005. The City was opposed and noted that a \$.25 per hour increase (\$1.25 per hour) would amount to a 7% increase over the standard rates.

The Fact Finder recommended that present contract language be retained since "most cities do not provide additional compensation for a head dispatcher."

While the head dispatcher has more responsibilities, the present differential adequately compensates her.

AWARD: The Conciliator adopts the final position of the City and orders that the head dispatcher receive \$1.00 per hour over the rate to which she would otherwise be entitled.

ISSUE NO. 3

WAGES- LONGEVITY PAY (ART. 13.04)

The Union proposed an increase in Longevity Pay of between \$.09 and \$.66 per hour, depending upon length of service. The City offered no increases to the present schedule and noted that longevity was first contained in this collective bargaining agreement in 2001.

The Fact Finder recommended an across the board \$.10 per hour increase. Neither side adopted the recommendation as its final offer. The Conciliator is estopped from adopting the Fact Finder's recommendation and must choose between the final offer of the City of the Union.

AWARD: The final position of the City is adopted. The new contract shall contain the present longevity schedule.

ISSUE NO. 4

HEALTH INSURANCE

The final position of the Union on this issue not only contained a demand for a continuation of the same benefits (which appears to be a request for the inclusion of the

present language), but capped the employees contribution at \$154.98 for family coverage and \$47.66 for single coverage, and the elimination of the 70/30 split, placing the entire burden of escalating medical coverage on the employer. The City countered by offering to maintain comparable benefit levels, eliminating the coverage of ex-spouses, except as provided by COBRA, increasing the co-pay for prescriptions from the current \$3.00/\$5.00 to \$5.00/\$10.00 with a 2 month co-pay for a 90 day supply, modifying the contribution rate of the City and retaining the 70/30 split on excess costs.

Medical coverage costs are high. The Union in conjunction with other employee unions elected to be covered by the present hospitalization plan. The evidence disclosed that a health care committee comprised of one member from each union with which the City has a collective bargaining agreement and one member from the unrepresented employees meets annually to review yearly health care proposals. The present plan was selected by the representatives. Changes which would have resulted in lower costs were rejected by both the police on one occasion and the service department employees on another. The employees also rejected a change in carriers, from Qual Choice to United Health Care that also would have lowered costs.

On the one hand, it is apparent that these employees are paying a significant portion of their health care costs,

and on the other hand, it is also apparent that they elected to be covered under the present premium plan and have resisted changes that would have lowered costs.

A comparison in health care costs discloses that the City plan are among the highest in surrounding communities. (See City Exhibit No. 22 and Union No. 23).

The Fact Finder adopted the City's proposal.

Five separate questions are presented in this single issue. They are: 1) maintenance of benefits, 2) elimination of coverage for ex-spouses, 3) prescription co-pays (multiple question), 4) contribution rates, 5) excess cost splitting.

AWARD: The Conciliator finds in favor of the Union on the maintenance of benefits question and orders that current contract language of Section 14.01 be retained in the new agreement.

The Conciliator orders that ex-spouses not be offered coverage, except as may be required by COBRA. Section 14.02 of the new agreement shall be as follows: "Health insurance coverage for former spouses, except as may be provided by COBRA are hereby eliminated."

The position of the City is adopted in regard to prescription co-pays and mail-in services. Section 14.03 of the new agreement shall contain the following or substantially the same language: a) Effective April 1, 2005,

prescription co-pays may be increased from \$3/\$5 to \$5/\$10 (generic/proprietary) for a 30 day supply; and b) on all prescription renewals of a supply of 90 day or more supply, shall be by mail as may be provided by the carrier with a co-pay not to exceed \$10/\$20.

The position of the City regarding contribution rates is sustained. Section 14.04 of the new contract shall contain the following monthly contribution rates:

Effective 1 st day Of month after execution Or 1 st day of the month 30 days after issuance of this award	Family (City/ Emp.)	Single City/Emp)
	\$734.22/\$52.81	\$256.93/\$14.73
Effective 4/1/05	\$748.90/\$53.87	\$262.07/\$15.02
Effective 4/1/06	\$763.88/\$54.95	\$267.31/\$15.32

The City's position regarding retention of the 70/30 split on excess costs is sustained. Present contract language on that issue shall be retained in the new agreement.

ISSUE NOS. 5, 6 & 7
OVERTIME COMPENSATION (ART. 18.01)

These three issues deal with overtime compensation. In Issue No. 5, the Union seeks the addition of New Years Eve, Day after Thanksgiving and Christmas Eve as days on which time and one-half shall be paid. In Issue No. 6, the Union seeks to increase accumulated compensatory time from 80 to 100 hours, and in Issue No. 7, the Union seeks to increase

compensatory sell back time from 20 to 40 hours per year. The City desires to keep the current language. The Fact Finder recommended against any changes to the current language.

The addition of the 3 extra days for purposes of overtime compensation would have a significant economic impact upon the City budget, the points raised in Issues 6 and 7 do not appear to have the potential to create a significant impact upon City finances.

There was also evidence that other cities permit employees to accumulate more than 80 hours of compensatory time.

City police officers are permitted to sell back up to 80 hours of comp time per year.

Nevertheless, there has been no evidence that the recommendation of the Fact Finder was erroneous in either Issue No. 5 or Issue No. 6. The Conciliator is not willing to substitute his view for those of the Fact Finder.

In Issue No. 7, the Dispatchers are permitted to sell back up to 20 hours of comp time per year, but the police can sell back up to 80. This constitutes a disparity that was not explained by the City. Moreover, this Conciliator disputes that increasing the amount of the sell back would have a significant budgetary impact.

AWARD: The position of the City is sustained on Issue Nos. 5 and 6 and the Union position is sustained on Issue No. 7. "Sell Back" hours are increased from 20 to 40 at such times as designated by the City.

ISSUE NOS. 8 & 9

UNIFORM ALLOWANCE AND MAINTENANCE (ART. 19)

Currently, the City provides the dispatchers with a uniform allowance of \$325 per year and up to \$175 per year in uniform maintenance reimbursement expenses. The Union is seeking an increase in the purchase allowance to \$400 and an increase in maintenance to \$200, both commencing January 1, 2005. The City opposed increasing either and the Fact Finder upheld the City's position on both issues.

Neither issue involves allowances in the typical sense of the word. A spending account is established from which uniform purchases are deducted, and the employee is reimbursed up to \$175 per year for uniform maintenance upon presentation of receipts. Although the Union presented evidence of the increasing costs, no evidence was presented to establish that the allowance for either purchases or maintenance was insufficient as presently constituted.

AWARD: The position of the City is sustained. The current contract language shall be retained.

ISSUE NO. 10

SICK LEAVE (ART. 21)

This issue was withdrawn by the Union.

ISSUE NO. 11

VACATIONS (ART. 23)

The Union is requesting the inclusion of a new section whereby an employee may sell back up to 40 hours of vacation per annum. The City was opposed on the basis of inconvenience, and cost. The City argued that no other group had this right. The Fact Finder recommended against this clause.

The City estimated that the proposal would cost it an additional \$6,240 per year (See. City Ex. 13).

AWARD: The position of the City is sustained. The clause suggested by the Union shall not be included in the new agreement.

ISSUE NO. 12

HOLIDAYS (ART. 24.01)

The Union proposed the addition of a fourth personal day in recognition of Patriot's Day (September 11th), but not necessarily on Patriot's Day. This is a simple request for another paid holiday and has nothing whatsoever to do with recognition of this national tragedy. The City opposed increasing the number of personal days from three to four.

(See City Ex. 16). The Fact Finder recommended against increasing the number of personal days.

AWARD: The position of the City is sustained. The number of personal days shall remain at 3.

Pursuant to §4117.14(H)(1) of the Revised Code, the issuance of this Award constitutes a binding mandate to the parties to take whatever action is necessary to implement the award. The parties, however, are free to modify the Conciliator's award through mutual agreement.

Respectfully Submitted,

I. Bernard Trombetta,
Conciliator

VII. CERTIFICATE OF SERVICE

A copy of the foregoing report and award was served upon Colleen Bonk, Attorney for the Union, 1228 Euclid Avenue, #900, Cleveland, OH 44115 and Thomas Grabarczyk, Consultant for the City of Willowick, 6800 W. Central Ave., L-2, Toledo, OH 43617 on this 14th day of October 2004 by overnight mail per the request of the parties.