

STATE OF OHIO

STATE EMPLOYMENT  
RELATIONS BOARD

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CONCILIATION AWARD

August 11, 2004

In the Matter of:

City of East Cleveland )

and )

Fraternal Order of Police )  
Ohio Labor Council, Inc. )

Case No. 03-MED-09-0938

APPEARANCES

For the Employer:

Jon Dileno, Outside Counsel  
Janette Louard, Outside Counsel  
Ronda G. Curtis, Assistant Law Director  
Brian Thompson, Finance Director

For the Union:

Otto Holm Jr., Staff Representative, FOP/Ohio Labor Council, Inc.  
Michael C. Perry, President  
David Dearden, FOP Bargaining Unit

Conciliator:

Nels E. Nelson

## BACKGROUND

The instant case involves the City of East Cleveland and the Fraternal Order of Police, Ohio Labor Council, Inc. The union represents the ten police officers with the rank of sergeant or above. The city has 36,957 residents and consists of approximately 3 1/2 square miles with one square mile being parks. A fiscal emergency was declared on September 9, 1988, and the city has remained in that status to the present time.

The collective bargaining agreement between the parties expired on December 31, 2003. When the parties were unable to reach agreement, a Fact Finder was appointed. A hearing was held on April 21, 2004, and he issued his report on May 13, 2004. His recommendations were rejected by both sides and the dispute proceeded to conciliation.

The Conciliator was appointed on June 8, 2004. A hearing was held on July 27, 2004. Following the hearing and after mediation, the parties were given 72 hours to submit revised final offers. The Conciliator received a revised a final offer for wages from the city and a revised offer for life insurance from the union.

The Conciliator is required to select one party's offer or the other without modification. His selection is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 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 interest and welfare of the public, and 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.

## ISSUES

The parties submitted six issues to the Conciliator. For each issue, he will set forth the positions of the parties and then summarize the evidence and arguments they offered in support of their offers. The Conciliator will then provide his analysis of the issue and indicate which of the offers he selected.

1) Article 19, Sections 19.1, 19.3, 19.4, & 19.5 - Overtime, Call-in Time, & Court Time - The current contract provides for minimum call-in and court time of four hours and overtime after 86 hours of work, including regular holidays, compensatory time off, and the three festive days, in any 14-day work period. The city seeks to decrease the minimums for call-in and court time to two hours and proposes no change in the overtime requirement. The union agrees to the reduction in the minimums for call-in and court time but proposes reducing the requirement for overtime so that overtime would be paid after 80 hours in any 14-day work period.

City Position - The city argues that its proposal is reasonable. It contends that while its financial situation would justify seeking reductions in wages and benefits, such as longevity or uniform allowances, it is only asking for modest reductions in overtime costs.

The city reports that a number of factors support its position. It points out that several jurisdictions in Cuyahoga County have minimums of less than four hours. The city adds that the Fact Finder recommended reducing the minimums.

Union Position - The union contends that its offer is a compromise. It points out that it agrees to reduce the minimums for call-in and court time to two hours, even though the peer communities have four-hour minimums, provided the threshold for overtime is reduced. The union claims that its proposal will reduce the city's costs while satisfying its members.

Analysis - The Conciliator must award the city's final offer. As indicated above, the city has been in fiscal emergency for 15 years and must very carefully consider any proposal that increases costs. Changing the number of hours in the work period has the potential to significantly escalate the city's overtime expenses. While the union maintains that its proposal will save the city money, this was disputed by the city.

Award - The Conciliator must select the city's offer of the current contract language.

2) Article 20, Sections 20.8 & 20.9 - Sick Leave - The current contract provides that employees are entitled to receive a cash payment upon retirement or death equal to 1/4 of their unused sick leave hours up to a maximum of 240 hours. The union seeks to increase the maximum cash out to 380 hours. The city proposes no increase in the current cash-out.

Union Position - The union suggests that officers should be recognized for their judicious use of sick leave. It points out that they have an average accumulation of sick leave of more than 1000 hours. The union indicates that this demonstrates a high level of professionalism and loyalty to the city.

The union complains that the city is at the bottom of the peer group with regard to sick leave cash-out. It reports that the maximum hours that can be cashed out in the peer comparison group identified by the city are as follows:

Euclid	1250 hours + \$20 for additional days
Garfield Heights	50% of all hours with no limit
Warrensville Heights	400 hours

The union stresses that its demand will not even bring it to the middle of the peer cities.

City Position - The city argues that it cannot afford the union's demand. It reports that increasing the cash-out would more than double its liability at a time when it is scrapping for every penny. The city claims that citywide liability would balloon to hundreds of thousands of dollars. It observes that the Fact Finder refused to recommend the union's demand to increase the cash-out.

Analysis - The Conciliator cannot not award the union's demand. While the data for the peer cities supports the union's demand, the city's current financial situation makes it essential to strictly limit increases in benefit costs. In the case of the sick leave cash-out, any increase in the benefit for this group is very likely to be extended to other employees making the change quite costly.

Award - The Conciliator awards the city's final offer of the current contract language.

3) Article 26, Section 26.1 - Base Salaries - The current contract provides for annual salaries ranging from \$34,970.34 for sergeants to \$55,649.95 for captains. The union proposes increasing salaries by 3% effective January 1, 2004; 2% effective January 1, 2005; and 2% effective January 1, 2006. The city proposes freezing salaries in 2004 and increasing salaries 2% effective January 1, 2005, and January 1, 2006.

Union Position - The union argues that the city has failed to maintain fair wages. It acknowledges that the city has had financial problems but charges that it “has done little to change the situation short of trying to fix the issue on the backs of the employees.” (Union Statement, page 8) The union complains that the city has been unable to bring the issue of the finances to the voters. It worries that “even if this issue gets through council and on the ballot, there is no guarantee that it will pass.” (Ibid.)

The union contends that it has already supported the city and should not be asked to forgo wage increases. It states that it agreed to a “massive” change in health insurance, saving the city \$15,000 per month. The union claims that its total wage request for the term of the agreement is much less than one month’s healthcare cost savings.

The union maintains that a comparison to the three peer cities shows that its members are far behind officers in those cities and strongly supports its demands. It reports that the salaries for sergeants in the city and the peer cities are as follows:

East Cleveland	\$43,970.34
Euclid	53,134.12
Garfield Heights	58,165.00
Warrensville Heights	55,481.00

The union stresses that its proposal will only allow it to keep pace at the bottom of the group.

City Position - The city argues that it is the poorest city in the county and one of the most fiscally strapped cities in Ohio. It indicates that it has an eroding economic base and double-digit unemployment. The city reports that it has been in fiscal emergency for 15 years. It states that its situation has been exacerbated by declining state aid.

The city contends that it has no money to spare for a wage increase. It points out that it had to lay off employees to maintain a balanced budget in 2002 and 2003. The city notes that it submitted a budget for 2004 with very tight expenditure constraints and a wage freeze for the year.

The city observes that its 2004 budget called for drastic cuts in overtime. It reveals that the fire and police departments were each budgeted for \$50,000 of overtime compared to actual overtime in 2003 of more than \$450,000 in the fire department and \$225,000 in the police department. The city stresses that by the end of the first quarter overtime in the fire department was \$101,000 and police department overtime was \$32,000.

The city states that it had to make further cuts in spending after the adoption of the budget. It points out that beginning in May it laid off 17 employees and reduced the workweek for many employees to 32 hours per week. The city asserts that a 3% wage increase would cost the city more than \$300,000 in 2004 and would result in further lay offs and expenditure cuts.

The city acknowledges that the Fact Finders for the fire fighters and for this bargaining unit recommended 3% wage increases for 2004. It indicates, however, that they rejected other monetary demands and recommended reductions in call-in and court

time minimums. The city notes that since the reports were issued, 17 additional employees were laid off and the workweek was reduced for all non-union employees.

The city indicates that it faces a dire financial situation. It reports that it ended 2003 with a general fund cash balance of only \$400,000 or 2.5% of its budget. The city adds that it was forced to maintain a negative fund balance in other funds because the general fund was unable to cover the shortages.

The city acknowledges that its employees have not kept pace with other communities in Cuyahoga County. It admits that the base wage of sergeants and other officers rank last in the county. The city, however, notes that it does provide favorable benefits, including 17 holidays and personal days, which is exceeded only by Euclid.

The city concludes that its “desperate fiscal condition mandates that no increases be provided ... [and asserts that] to impose an increase on a broke City would be wholly irresponsible.” (City Statement, page 2)

Analysis - The Conciliator’s authority is strictly limited. He is required to choose the city’s offer or the union’s offer without modification. In the instant case, both parties’ offers call for 2% wage increases in 2005 and 2006. The difference between the offers is the raise, if any, to be effective January 1, 2004. The union proposes a 3% increase and the city seeks a wage freeze.

The record makes two things clear very clear. First, the promoted officers in East Cleveland are substantially under paid. For example, the average salary for sergeants for the three peer cities, selected by the city, is \$55,593 compared to the East Cleveland salary of \$43,970. The SERB Benchmark Report, dated April 9, 2004, submitted by the union, shows an average starting salary for sergeants in 24 Cuyahoga County police



departments of \$58,996.<sup>1</sup> Even without considering the challenging environment in East Cleveland, the record would justify a salary increase bigger than that proposed by the union.

The second fact established by the record is the city is and has been in financial distress for at least 15 years. The city has laid off workers and reduced the workweek for non-union employees. It has cut other expenditures to the point that it appears that there is little left to cut.

The current year presents a very serious problem. As required, a balanced budget was approved by city council but it involved some heroic assumptions, including huge reductions in overtime in the police and fire departments. By mid-year, it appeared clear that the city might have difficulty finishing the year in the black.

Given the dismal financial picture for 2004, the Conciliator cannot select the union's salary offer. Brian Thompson, the city's finance director, testified that a 3% wage increase citywide would cost the city \$300,000 in 2004. The city cannot absorb the extra cost given the cuts and reductions that have already taken place.

The Conciliator recognizes that unless the levy that city council is planning to put on the ballot is passed, the city will not be able to function at anything approaching an acceptable level. City services, including essential police and fire protection, must be maintained at least at the minimum levels that currently exist. The citizens of East Cleveland must recognize the situation and, despite their own tight budgets, vote to approve the levy.

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<sup>1</sup> Two of the departments have salary schedules with steps that raise the average maximum salary to \$59,243.

The Conciliator also understands that his award differs from the recommendations of the Fact Finder in the city's dispute with the fire fighters and the Fact Finder for this bargaining unit. The Conciliator, however, has information at his disposal that the Fact Finders did not have when they issued their recommendations. In both cases, the hearings took place long before the mid-year revenue and expenditure reports were available. In addition, the likelihood of a levy appearing on the ballot was publicly reported by the time of the conciliation hearing.

Award - The Conciliator awards the city's final offer. It is as follows:

Irrespective of rank differential referred herein, the wages of members shall be increased as follows:

Effective January 1, 2004 - Wage freeze  
Effective January 1, 2005 - 2% Wage increase  
Effective January 1, 2006 - 2% Wage increase

4) Article 26, Section 26.1 - Rank Differentials - The current contract establishes a rank differential of 14% for sergeants, 12.5% for lieutenants, and 12.5% for captains. The union wishes to increase the rank differentials to 14.5% for sergeants, 13.5% for lieutenants, and 13.5% for captains. The city proposes retaining the current rank differentials.

Union Position - The union proposes increasing the rank differentials to 14.5% for sergeants, 13.5% for lieutenants, and 13.5% for captains.

City Position - The city argues that the circumstances compel a rejection of the union's demand to increase rank differentials. It indicates that an increase in rank differentials is no different than a request for a wage increase. The city stresses that its fiscal emergency countenances against any wage increase.

The city contends that its rank differentials are among the highest in the county. It points out that sergeants have the third highest rank differential in the county; lieutenants rank third; and captains rank second.

The city notes that the Fact Finder rejected the union's demand to increase rank differentials.

Analysis - The Conciliator must reject the union's attempt to raise the rank differential. The data submitted by the city for 25 departments in Cuyahoga County indicate that the average rank differential for sergeants is 12.33% compared to 14% in East Cleveland and the results for lieutenants and captains are similar. Obviously, the problem is not the rank differentials but the low salary of patrolmen. Increasing the rank differentials would provide some relief to the promoted officers but it would not help the patrolmen.

The Conciliator recognizes that the fact that the parties submitted final offers for both the promoted officers' salaries and rank differentials could lead to a problem should the patrolmen ultimately get a wage increase that is different from the promoted officers. The city, however, can be expected to propose the same wage increase as its final offer in the instant case to other bargaining units.

Award - The Conciliator selects the city's final offer of the current contract language.

5) Article 31, Section 31.2 - New Section - Life Insurance - The current contract does not provide for life insurance. The union proposes that the city be required

to provide to its members with life insurance in the amount of \$50,000. The city opposes the union's demand.

Union Position - The union claims that life insurance is "a basic staple for those who put their life on the line." The union notes that life insurance is not an expensive benefit. It stresses that the three peer cities chosen by the city provide life insurance as follows:

Euclid	\$75,000
Garfield Heights	30,000
Warrensville Heights	40,000

City Position - The city opposes the union's demand. It acknowledges that life insurance is not a costly item compared to other insurance. The city, however, states that it could constitute a significant cost if it became citywide. It stresses that due to its financial situation, it cannot take on any added costs.

Analysis - The Conciliator must award the union's demand. The members of the union have jobs that are recognized by the public as involving significantly higher risks of death than the jobs held by most other employees. The risk to officers in the city would appear to be significantly greater than to officers in other communities with significantly lower rates of violent crime. The fact that all of the peer departments offer life insurance strongly supports the union's demand.

The Conciliator is fully aware of the city's extremely poor financial situation. However, he does not believe that life insurance should be a big cost item. The cost of life insurance is relatively low. The city's concern that the benefit will become citywide ignores the fact that the claim of the safety forces to life insurance is much stronger than any claim that might be made by other employees.

Award - The Conciliator awards the union's final offer. It states:

The city at no cost to the employee shall provide a Life Insurance policy for the employees of the FOP in the amount of \$50,000 dollars to be effective starting January 1, 2005.

6) Article 33 - Miscellaneous, Section 33.3 - Residency - The current contract states that no employee shall be required to be a resident of the city. The city proposes amending the contract to require employees to become residents within six months of the ratification of the contract or upon hire. The union's offer calls for no change in the current contract language.

City Position - The city argues that there are advantages to requiring employees to live in the city. It points out that it would not only increase income tax revenue but would mean increased spending and enhanced property values. The city further claims that a residency requirement would increase employees' dedication to their jobs. It claims that many employees are required to live in the city and maintains that a collective bargaining agreement "should not serve as an impediment to such a sensible requirement." (City Statement, page 13)

Union Position - The union argues that residency for the sake of residency is wrong. It claims that required residency "would have a negative affect on the morale of the members of Fop/Olci and would decrease the daily comfort level and safety factor of our membership." (Union Statement, page 5) The union maintains that anonymity is a great part of the daily comfort at home.

The union contends that a residency requirement would increase the risk to officers. It observes that the city is a compact community, which increases the likelihood

that an officer would be recognized by an individual who has been “the focus of the law.” The union adds that contacts with these individuals could become a daily occurrence because the city has one of the highest crime rates in the state.

The union charges that a residency requirement might create a housing problem. It suggests that the supply of suitable housing is limited. The union indicates that the problem would be increased if the residency requirement were imposed citywide.

The union maintains that officers consider the ability to live outside the city one of the few perks they receive. It reports that most of the officers have lived outside the city for many years. The union complains that the city made no offer or provision for relocation costs or educational expenses.

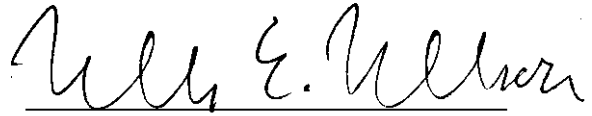
The union states that officers have shown loyalty and service to the community. It notes that they have an average tenure of 18 years and an average service of 14 years. The union observes that some of the officers are involved in community service for the betterment of the youth of the city.

Analysis - The Conciliator must reject the city’s attempt to establish a residency requirement. First, the union’s argument that requiring officers to live in the city might create problems for the officers and their families is well taken. The city is rather small and has limited shopping and a high crime rate. These two factors would appear to result in officers and their family members coming in contact with individuals they had arrested. Second, the members of the other unions in the city do not have residency requirements. Third, there is no evidence that the city has experienced any problems due to the absence of a residency requirement for police officers.

Award - The Conciliator selects the union's final offer of current contract language.

6) Tentative Agreements - The parties reached tentative agreements on a number of issues. They requested the Conciliator to make them part of his award.

Award - The Conciliator incorporates the tentative agreements of the parties in his award.

A handwritten signature in cursive script, reading "Nels E. Nelson", is written over a horizontal line.

Nels E. Nelson  
Conciliator

August 11, 2004  
Russell Township  
Geauga County, Ohio